

Representing Children in Abuse and Neglect Cases

LEGAL AID CENTER Since 1958
■ ■ ■ ■ *of Southern Nevada*

A MANUAL
FOR PRO BONO
ATTORNEYS



This Manual is drafted to provide general information to pro bono attorneys on handling an abuse or neglect case in Clark County, Nevada. It is not intended to be legal advice on a specific matter involving a specific case.

The legal information is believed to be current, as of December, 2015.

Although the client is referred to as “he” and “him” throughout the Manual, obviously, there are as many if not more dependent children who are female, and the use of the masculine pronoun includes the feminine pronoun (and vice-versa, where applicable).

Nothing in this Manual should substitute for reference to Nevada statutory or case law. When in doubt, please contact your mentor at the Children’s Attorneys Project for information concerning current law or current practice in the Eighth Judicial District, Juvenile Court.

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What Am I Getting Myself Into?

Representing a child who has been abused or neglected can be a frustrating and time-consuming, yet very rewarding, experience. Depending on the age of your client, his ability to recount what happened to him or what he wants may be limited. Sometimes the facts surrounding his abuse or neglect will be horrifying or heart-rending.

Your client will have been taken from his home (and perhaps, separated from his siblings) and placed into an institution or unfamiliar foster care setting, without fully understanding what is happening or why. He is likely to be angry or resentful of this change, he may believe that he is being punished or that what has happened is somehow his fault. He may “act out”, or be sullen, uncommunicative or depressed – all of which may be appropriate responses to the trauma he has experienced.

Accepting this child as a client means **you must advocate for what he wants** – not what any other person or professional, *including you*, thinks *ought* to happen or is *in his best interests* (leave this for the CASA). Your job is to promote what the child wants to the caseworker, the therapist and, most importantly, to the court, and **work to make that happen**. In most cases, this will require you to confront an inefficient and impersonal bureaucratic and legal system. If what he wants is impossible, work to achieve a viable alternative (i.e., the child wants to live with mom - who is in prison; perhaps living with grandmother until mom is released and able to care for the child is an alternative your client can accept). And there is no telling what the child may want: he may be in foster care and want to live with a relative in another state; he may want to be adopted; he may be in a residential treatment center (locked facilities like Desert Willow or Spring Mountain) and desperately want to be anywhere but there; or he may want to be on his own.

Chapter 2 of this Manual gives a brief description of the legal process that is initiated once an allegation of abuse or neglect is made. However, the issues affecting the child you have been asked to represent are unlikely to be limited to these standard court proceedings. Usually there are other issues – appropriate therapeutic or educational services, changes in placements, open adoption agreements, etc. – that will require your intervention on behalf of your client. An in-depth discussion of every issue that may arise is beyond the scope of this Manual and may not be necessary for your particular client. Therefore, the attorneys for the Children’s Attorneys Project (CAP) are available as mentors and experts to advise and assist you with issues that can arise beyond the ordinary task of ensuring that the permanency plan adopted by the court is acceptable to your client. Please feel free to contact them for assistance.

Right now (as of this writing), 85% of all children removed from their homes are represented by counsel. This means that for 500 children, the court never hears their voices, never hears their wants or needs - yet they are permanently affected by any decision the court makes. Your willingness to advocate for an abused or neglected child means there is one less child who will be re-victimized by the legal process.

TABLE OF CONTENTS

CHAPTER ONE: ACRONYMS AND DEFINITIONS	1
CHAPTER TWO: A CHILD’S JOURNEY THROUGH DEPENDENCY COURT	
Introduction	9
Steps Leading Up to Litigation	9
Pre-litigation Investigation by Child Protective Services	10
Protection without Removing the Child	10
Emergency Removal	12
Preliminary Protective Hearing	12
Plea and Adjudication Hearings	
Adjudicatory Plea Hearing	13
Adjudicatory Trial	13
Disposition Hearing	13
Review Hearings	14
Other Hearings	15
Permanency Planning Hearing	16
CHAPTER THREE: THE LAWYER’S ROLE	
Nevada Revised Statutes	19
ABA Standards of Practice for Lawyers who Represent Children	19
The Lawyer’s Role in Practice	20
CHAPTER FOUR: THE LAWYER’S DUTIES	
Interview Your Client	22
Determine Your Client’s Interests	23

Mandatory Reporting Rules and Exceptions	24
Soliciting And Taking Direction from Your Child Client	25
What to Do If Your Client’s Direction Appears Harmful	26
Counseling Your Client	27
Become Informed	27
Conducting Discovery, Filing Motions & Getting Court Orders	29
Appear In Court	29
Preserve Your Independence	30
Other Proceedings	30
CHAPTER FIVE: PERMANENCY	32
CHAPTER SIX: TERMINATION OF PARENTAL RIGHTS	34
CHAPTER SEVEN: CHILDREN IN COURT	
Review Hearings	37
Criminal Or Evidentiary Hearings	37
CHAPTER EIGHT: SPECIFIC CHILD PROTECTION ISSUES	
Foster Care Issues	39
Visitation	40
Reasonable and Prudent Parent/Normalcy	41
Education	41
Special Education	43
Placement with Relatives	44
Interstate Placement	45
Open Adoption	46

Adoption Assistance	47
Psychological/Behavioral Issues	48
Psychotropic Drugs/Chemical Restraint	50
Special Immigrant Juvenile Status	52
“Aging Out” – Independent Living	54
Assembly Bill (AB) 350	55
Step Up	57
Status Quo	57
Nevada’s Foster Youth Bill of Rights and Sibling Bill of Rights	57
CHAPTER NINE: REPRESENTING PREVERBAL CHILDREN	61
CHAPTER TEN: ADVOCATING WITH OTHERS ON YOUR CLIENT’S CASE	
CPS And DFS Caseworkers	66
Court Appointed Special Advocates (CASA)	66
Foster Care Agencies	67
Therapists And Teachers	68
Permanency Worker	68
CHAPTER ELEVEN: INDIAN CHILD WELFARE ACT (ICWA)	70
CHAPTER TWELVE: OTHER USEFUL INFORMATION AND RESOURCES	73

CHAPTER ONE

Acronyms and Definitions

The following is a list of abbreviations and terms that you are likely to encounter.

Abuse: N.R.S. § 432B.020 provides:

1. "Abuse or neglect of a child means, except as otherwise provided in subsection 2:
 - a. physical or mental injury of a non-accidental nature;
 - b. sexual abuse or sexual exploitation; or
 - c. negligent treatment or maltreatment as set forth in NRS 432B.140, of a child caused or allowed by a person responsible for his welfare under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.
2. A child is not abused or neglected, nor is his health or welfare harmed or threatened for the sole reason that his
 - a. Parent delivers the child to a provider of emergency services pursuant to NRS 432B.630, if the parent complies with the requirements of paragraph (a) of subsection 3 (delivery of unwanted newborn less than 30 days old); or
 - b. Parent or guardian, in good faith, selects and depends upon nonmedical remedial treatment for such child, if such treatment is recognized and permitted under the laws of this State in lieu of medical treatment. This subsection does not limit the court in ensuring that a child receive a medical examination and treatment pursuant to NRS 62E.280.
3. As used in this section, "allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected."

The terms "*mental injury*", "*physical injury*", "*sexual abuse*", "*sexual exploitation*" and "*negligent treatment or maltreatment*" are specifically defined in N.R.S. §§ 432B.070, 432B.090, 432B.100, 432B.110 and 432B.140.

Adjudicatory Plea Hearing: A hearing that occurs within 30 days after the District Attorney files a Petition – Abuse/Neglect, where the mother/father of the child alleged to be the subject of abuse or neglect either admits, denies, or does not contest the factual allegations in the Petition.

Adjudicatory Trial: If the parents deny the allegations in the Petition filed by the District Attorney, an adjudicatory trial will be held. If the parents do not appear, the District Attorney will make an offer of proof regarding the allegations. If the parents appear, the District Attorney must prove the allegations by a preponderance of the evidence: the court will record its findings of fact and proceed to order a further hearing to dispose of the case. N.R.S. § 432B.530

Adoption and Safe Families Act (ASFA): ASFA (42 U.S.C. § 671, *et seq.*) was passed by Congress in 1997 in order to assure the health and safety of children and to promote permanent homes for children. ASFA requires, among other things, that children who are removed from the care of their parents either be returned to them or placed in an alternative permanent placement within one year from the date they are taken into protective custody. ASFA mandates that caseworkers plan concurrently to return the child home and to place the child in an alternative permanent placement. ASFA mandates that safety of children be the paramount concern in all decisions concerning placement. These federal mandates were enacted in Nevada and are set forth in Chapter 432B of N.R.S.

Alternate Plan: An alternate plan is a plan made in case a child cannot be safely returned to his parents. Families, relatives, foster parents, attorneys for the parents or for the child, or others in the community, may help develop the plan. The alternate plan may be adoption, permanent placement with a relative, guardianship, or permanent foster care. If an alternate plan becomes the goal for a child, the court must approve that plan.

Basic Skills Training (BST): A BST Worker offers services in the community or home setting. These services include, but are not limited to, social skills, problem solving, basic living skills, personal safety, self-care, organizational skills, time management, and transitional living skills.

Case Plan: A case plan is a plan approved by the court that outlines the minimum tasks a parent or guardian must complete before a child will be returned to their care. It is a "working document," which may change periodically during the course of a dependency case, with each change requiring court approval. It may include evaluations of the parents and the child, completion of counseling sessions, and maintaining stable employment or housing, among other things. Contrary to widespread belief, **successful completion of the case plan does not guarantee that a child will be returned to a parent or guardian.** In addition, it's possible that a child may be returned home before completion of a case plan if there is no current safety plan.

Chafee Funds: A client over age 15-½ may apply for Chafee funds to pay for expenses such as driver's license fees, graduation pictures and announcements, or other necessities (up to \$750 annually – depending upon the age of the child).

Child Abuse and Neglect Reporting System (CANS): Refers to the Child Abuse and Neglect Screening which consists of a thorough search of the UNITY system for information on any reports and/or investigations pursuant to NRS 432B.

Child Abuse, Prevention and Treatment Act (CAPTA): CAPTA (42 U.S.C. § 5101, *et seq.*) first passed in 1974, set standards for the definition of child abuse and neglect and provided assistance to states to develop child abuse and neglect identification and prevention programs. Subsequent CAPTA amendments required states to implement protective systems to respond to reports of medical neglect, establish comprehensive

adoption assistance programs, and expedite termination of parental rights in certain cases, among other things. These federal mandates were enacted in Nevada and are set forth in Chapter 432B of N.R.S.

Child and Family Team (CFT): A team that is comprised of family members, friends, foster parents, legal custodians, community specialists and other interested people identified by the family and agency who collaboratively develop a plan of care and protection to achieve child safety, child permanency, and child and family well-being.

Child Haven: A *temporary*, emergency residential facility for children who cannot remain safely in their home, where children remain until they may return safely to their home, are placed with a relative, or are placed in a foster home. Child Haven is located at 701 N. Pecos Road, Las Vegas, Nevada (on the north end of the Clark County Family Court campus). The general telephone number for Child Haven is: (702) 455-5390.

Child Protective Services (CPS): CPS is the group within the Clark County Department of Family Services responsible for investigating allegations of child abuse or neglect; linking families to community services and providing guidance and supervision to families at risk of abuse and neglect; or, if it is not possible to keep a child safe in his home, taking a child into protective custody until appropriate permanent placement plans can be developed. The primary job of CPS caseworkers is to ensure the safety of children. The general telephone number for CPS is: (702) 455-5200.

Child Protective Services (CPS) Caseworker: This is the caseworker who responds to reports of child abuse or neglect, investigates the allegations, decides whether the child can remain safe in the home, with or without voluntary services, or whether the child should be removed and placed into protective custody. This investigative caseworker helps the Clark County District Attorney complete the Petition – Abuse/Neglect and prepares the Summary Report on the case for the Report & Disposition Hearing, which includes an initial case plan for the family and initial placement recommendation for the child.

Children’s Attorneys Project (CAP): The Children’s Attorneys Project of Legal Aid Center of Southern Nevada, Inc., represents abused and neglected children. Most clients are children in the custody of the child welfare agency and are usually referred to CAP by the Juvenile Division of the Family Court.

Court Appointed Special Advocate (CASA): A CASA is a volunteer member of the community who is appointed by the court to be a child’s *guardian ad litem*, and represent and protect the best interests of the child in court proceedings. A Clark County CASA volunteer is supposed to receive 40 hours of training before being assigned to a case. N.R.S. § 432B.500 requires that the court appoint a *guardian ad litem* for the child after a petition alleging abuse or neglect has been filed. However, in practice, CASA’s are appointed in about 1/3 of the cases in dependency court.

Department of Family Services (DFS): DFS is the Clark County agency formed in 2002 to be responsible for providing services for Clark County families, including: The Child Abuse Hotline (responsible for accepting reports of abuse and neglect, 24/7); Child Protective Services, (See, Above); Child Haven and emergency shelter homes (See, Above); Children's Advocacy Center (a facility adjacent to Child Haven that provides a child-friendly setting to interview children about reports of child abuse, particularly sexual abuse, conducts medical exams and provides therapy); Parenting Project (a program to help parents have positive, healthy and nurturing relationships with their children); Foster Care Services (the program responsible for recruiting and training foster parents to meet the needs of children and the licensing of foster homes); and Adoption Services (the program responsible for recruiting adoptive parents who will provide an alternative, permanent home for children who cannot be reunited safely with their parents).

A child in protective custody may have contact with numerous caseworkers: the CPS caseworker who investigates allegations of abuse/neglect and prepares the Disposition Hearing Report and initial placement plan; the DFS caseworker who develops case plans to reunify a child with his parent(s) and alternative placements in the event reunification is not possible; and their substitutes or replacements. In addition, a Permanency Worker will be appointed to arrange the adoption of a child, if adoption becomes the permanent placement plan. The administrative offices for DFS are located at 121 S. Martin Luther King Boulevard, Las Vegas, Nevada 89106. The general telephone number is: (702) 455-5444.

Department of Family Services (DFS) Caseworker: This is the caseworker assigned after the CPS caseworker has investigated the case, caused the child to be placed in the County's custody and prepared the Disposition Hearing report developing the initial case plan and recommendations for placement. The DFS caseworker is primarily responsible for the day-to-day monitoring of the care your client receives during the term of his wardship, including the arrangement of foster care or other caretaker placement. This caseworker also prepares status reports for the court on the parents' progress in achieving the case plan.

Department of Juvenile Justice Services (DJJS): DJJS provides intervention services, guidance and control for youth ages 18 and under who are involved in delinquency and truancy. DJJS consists of four divisions: Clinical Services, Probation, Juvenile Detention, and Spring Mountain Youth Camp.

Disposition Hearing: The stage of the juvenile court process in which, after finding that a child is in within jurisdiction of the court, the court determines who shall have custody and control of a child. The Disposition Hearing should occur within 15 working days after the Adjudicatory Plea Hearing or Adjudicatory Trial. The court will receive the DFS report and hear from the caseworker, the CASA (if one is appointed), and the attorneys for the child and parents, and make orders concerning the custody and placement of the child, what CPS, DFS and the parent(s) must do.

Disposition Report: If the court finds that the allegations of the Petition – Abuse/Neglect are true, the court will order DFS to submit a Disposition Report and Permanency Plan containing the following:

- 1) The conditions of the child’s residence, the child’s record in school, the mental, physical and social background of his family, the family’s financial situation and other relevant matters, or if the child is a newborn delivered to a provider of emergency services, any matters relevant to the case; and
- 2) A plan to place the child in a safe setting as near to the residence of his parent(s) as is consistent with the best interests and special needs of the child. The plan must include:
 - a. A description of the type, safety and appropriateness of the home or institution (consistent with N.R.S. § 432B.3905, limiting placement of children in child care institutions);
 - b. A description of the services that will be provided to try to reunify the child with the parent(s) and alternative permanent placements that will be explored;
 - c. A discussion of the appropriateness of the services that will be provided under the plan; and
 - d. A description of how the plan will be carried out (pursuant to court order).

District Attorney (DA): The “D.A.” is counsel to DFS and represents the agency at all abuse and neglect proceedings, from the initial protective custody hearing until the case closes and court jurisdiction terminates. The D.A. files all abuse and neglect petitions as well as petitions to terminate parental rights (“TPR”). When legal issues about the case or caseworker arise, the D.A. handles them on behalf of DFS.

Division of Children and Family Services (DCFS): DCFS is a division of the Nevada Department of Health and Human Services, the state agency responsible for providing mental health services to residents of the State of Nevada. The general telephone number for DCFS is: (702) 486-7800.

Educational Training Voucher (ETV) funds: ETV funds can be used to pay for higher education for children who are in foster care or who have aged out of the system. The money can be used at nearly all post-secondary education programs, including college, community college, culinary school, etc. Each child is entitled to \$5,000 per year, paid directly to the educational institution. Information on ETV can be found at <http://dcfs.nv.gov/Programs/CWS/IL/ETV/>.

Fictive Kin: A person who is not related by blood but who has a significant emotional and positive relationship with the child.

Foster Mother, Foster Father (F/M, F/F): Foster mothers/fathers are the adults in the home where the County has placed a child in protective custody, who are not the relatives, natural parents, or adoptive parents of such child.

Indian Child Welfare Act (ICWA): ICWA determines the jurisdiction for Indian children or those eligible for tribal membership. ICWA gives Indian parents greater protections; allows Indian tribes to exercise control over, or have input into placement decisions; proscribes the order of placement preference for Indian children; mandates compliance with extensive notice procedures; and requires social workers to provide an increased level of services. State court decisions may be invalidated for failure to follow these and other ICWA requirements.

Individualized Education Plan: An Individualized Education Program (IEP) is a written statement of the educational program designed to meet a child's individual needs. It is usually prepared by a school district employee and a parent. Every child who receives special education services must have an IEP.

Interstate Compact for the Placement of Children (ICPC): ICPC is the agreement among the states to share information about the suitability of homes in their state as a placement location for a child in protective custody. ICPC signatory states agree to certain procedures and responsibilities regarding children in out-of-state placements. The receiving state upon approving a placement provides monthly reports to the worker of the sending state.

Juvenile Court: The Juvenile Court handles cases involving minors (anyone under the age of 18) who have been charged with violating the law or who are in need of supervision.

Natural Mother, Natural Father (N/M, N/F): Natural mothers and natural fathers are the birth parents of a child in protective custody.

Normalcy: Refers to age and developmentally-appropriate activities and experiences that allow children and youth to develop and grow in a nurturing and normal manner.

Notice and Approval to Reschedule or Reset a Court Date (NARD): A form used with the court to vacate, reset or add hearings. The NARD form is only for minor hearings such as status checks or placement reviews. More substantive hearings will require a motion to be filed with the court.

Permanency Plan: A Permanency Plan is a plan created by setting out where a child in protective custody will live permanently, which could include natural parents, relatives, guardians, permanent foster parents, adoptive parents, or independent living for an older child. DFS must draft the plan and present it to the court for adoption by the court, at the Permanency Planning Hearing.

Permanency Planning Hearing: The Permanency Planning Hearing is a formal hearing held at the one year mark after a child is taken into protective custody, where the court will review the status of the case and reach a decision concerning the permanent plan for the child, of:

1. reunification with the parent or guardian;
2. termination of parental rights and adoption;
3. placement in a permanent guardianship (including a permanent foster home or with a fit and willing relative); or
4. transition to independent living for children aged 16-1/2 or older.

Permanency Worker: This is a DFS caseworker who is responsible for preparing the court reports and other documents (Home Study and Social Summary) necessary to effectuate the adoption of a child in protective custody.

Person Legally Responsible for the Psychiatric Care of the Child (PLR): A person appointed by the court to be legally responsible for the psychiatric care of the child, which includes the procurement and oversight of all psychiatric treatment, related care and provision of informed consent and approval to administer psychotropic medications.

Petition – Abuse/Neglect: A petition filed by the Clark County District Attorney, within 10 days after the Preliminary Protective Hearing, alleging facts of abuse or neglect sufficient to bring the child within the jurisdiction of the juvenile court (for protective custody). N.R.S. § 432B.490.

Placement: A placement is the location where a child in protective custody will live or is living.

Preliminary Protective Hearing: A hearing before a judge or hearing master that must occur within 72 hours after a child has been removed from his home, to determine if CPS made “reasonable efforts to prevent removal of a child” (as per the requirements of N.R.S. § 432B.490) and decide if there is reasonable cause to believe that the child may be at risk of harm if released from protective custody.

Psychosocial Rehabilitation Skills (PSR): A PSR Worker offers services in the community or home setting. These services include, but are not limited to, behavioral management, social skills, problem identification and resolution, effective communication, moral guidelines and judgment, and life goals.

Reasonable and Prudent Parent Standard: The standard characterized by careful and sensible parental decisions that maintain the child’s health, safety, and best interests.

Reunification: Reunification is the return of a child to the home and care of the parent(s), caretaker or guardian from whom he was removed and placed into protective custody.

Review Hearing: A Review Hearing is formal hearing that occurs every six months, after the Disposition Hearing, to review the child’s status and the progress made to achieve a permanent placement for the child.

Safety Intervention and Permanency System (SIPS): A model recently implemented by the Department of Family Services that focuses on safety as the basis for removal and return of a child.

Special Immigrant Juvenile Status (SIJS): A federal law that helps certain undocumented children and youth in the state juvenile system obtain lawful immigration status.

Status Hearing: A Status Hearing is a hearing ordered at the discretion of the court to review case status between the formal Review Hearings, usually, to deal with a specific issue presented in the case.

Subject Minor (S/M): A minor child who is placed in protective custody - your client.

Supervised Contact/Visits: Contacts or visits between a child in protective custody and the parent(s) or other guardian from whose custody he was removed that are monitored by a caseworker or other adult.

Termination of Parental Rights (TPR): TPR involves the permanent severing of the parent-child relationship. The District Attorney will file a Petition to Terminate Parental Rights in Family Court (with a new case number) asking the court to terminate all of a parent's rights to a child. If a parent contests the Petition, there will be an evidentiary hearing, where the District Attorney must submit clear and convincing evidence that it is in the best interests of the child that his/her parents should no longer have any rights to him/her. (See, Chapter 128 of the Nevada Revised Statutes).

Therapeutic Foster Care: A foster home or group home that is supposed to be specially equipped to address the physical, mental, or emotional needs of a child in protective custody.

Unified Nevada Information Technology for Youth (UNITY): Nevada's statewide automated child welfare information system.

Wraparound in Nevada (WIN): WIN Workers are employed by DCFS and are assigned to cases where youth have mental health issues. They do targeted case management and ensure that the youth is wrapped in proper services. These workers hold CFT meetings on a monthly basis and visit the youth weekly.

CHAPTER TWO

A Child's Journey through Dependency Court

Introduction

The juvenile dependency court is comprised of three district court judges and three juvenile hearing masters. The cases are divided by geographic location and specialized units.

Hearing Masters issue findings of fact and recommendations which must be countersigned by a district court judge to become an order. Parties have the right to object to a hearing master's recommendations. Pursuant to Eighth Judicial District Rule 1.46, the party should make their intention to object on the record at the hearing. Once the written findings of fact and recommendations are received, the party has five days to file the written objection to the district court. Effective January 1, 2016, hearing masters will handle their own caseloads from beginning to end. If the hearing master rules against your client or another party decides to object, and a delay will hurt your client, you can ask the hearing master to have the "duty judge" hear the matter immediately that day. The "duty judge" is rotated every week. If any party is causing harmful delay to your client, ask for the matter to be reviewed that day.

Each courtroom is staffed with a marshal. As a pro bono attorney, you should check in with the marshal and let him/her know that you are a pro bono attorney. This will enable you to get priority, recognizing that you are a volunteer and donating your time. Also, remember that the calendar is organized by the mother's name.

Steps Leading Up to Litigation



Before Clark County becomes involved with a family, someone must file a report of abuse or neglect. The report may be a tip on the Child Abuse Hotline, or a hold on a drug-exposed baby at the hospital. It could be a formal report submitted by a mandated reporter (N.R.S. § 432B.220), such as a teacher or hospital staff. Law enforcement may file a report if a parent is arrested and there is no one home to care for a child.

Nevada law requires that Child Protective Services (CPS) investigate reports of child abuse or neglect. If CPS believes a child has been abused, neglected, or is otherwise in need of protection, CPS has the authority to place the child into protective custody, petition the court for custody of the child or offer services to the family of the child. What CPS does depends on the circumstances of each family: the goal is to ensure the safety of children who have been reported as being abused or neglected and protect them from the risk of further harm.

Pre-litigation Investigation by Child Protective Services

When CPS receives a report of abuse or neglect of a child, the nature of the allegations and the age of the child are factors that determine how quickly an investigation is started. (Police may also investigate if the abuse or neglect involves criminal conduct.) The CPS caseworker will gather information about the alleged abuse or neglect by interviewing the child's parent(s), guardian or other caretaker, siblings or other persons living in the child's home, and law enforcement, medical and school personnel, if necessary. The CPS caseworker will also interview the child and does not require the consent or presence of the parent or guardian to do so. CPS must determine if there is reasonable cause to believe that abuse or neglect has occurred and if so, who is responsible. As a result of this investigation, CPS will either substantiate the report of abuse or neglect, or determine the report is unsubstantiated. If the report of abuse or neglect is unsubstantiated, the case is closed and the family has no further involvement with CPS.



Protection without Removing the Child

Removing children from their homes can be even more traumatic than the underlying abuse or neglect and should be the last resort, even if the investigation substantiates the report. Until recently, however, deciding whether or not to remove was imprecise and largely subjective, too often based upon the attitude and experience of the decision maker. The same facts often produced wildly different outcomes for children and families.

To bring objectivity to the process, the Department of Family Services (“DFS”) has implemented a safety practice model. The Safety Intervention and Permanency System (SIPS) focuses on safety at the beginning and throughout the life of the case. SIPS presumes that children must not be removed unless CPS determines that leaving them in the home would render them “unsafe.”

When determining whether or not a child is safe, there are three elements that should be considered:¹

- Threats of Danger – a specific family situation or behavior of a family member that is (1) specific and observable; (2) out of control; (3) immediate or liable to happen soon; and (4) has severe consequences;
- Child Vulnerability – a child’s ability to protect himself; and
- Protective Capacities – the ability to protect one’s child.

¹ Therese Roe Lund, MSSW, National Resource Center for Child Protective Services & Jennifer Renne, J.D., National Resource Center on Legal and Judicial Issues, *Child Safety: A Guide for Judges and Attorneys*, American Bar Association, (2009).

Children are considered “safe” when there are no present or impending threats of danger or the caregivers are sufficiently protective to be able to control any existing threats.²

By contrast, a child is unsafe if the following criteria are met:³

- There is actual or threatened danger.
- The child is vulnerable to the danger or threatened danger (i.e., because of age or disability, the child is unable to protect himself/herself and depends on others)
- The caregivers are unable to protect the child from the danger. In CPS terminology, this is called “protective capacity.”
- The danger or threat of danger cannot be mitigated or controlled even with a written safety plan.

It is important to remember that CPS sometimes confuses risk with safety. Risk refers to the probability that any form of child maltreatment, regardless of severity, may occur or reoccur in the future.⁴ For a child to be considered unsafe, the consequences must be severe and imminent.⁵

Under the Adoption and Safe Families Act (ASFA), state child protection agencies are required to make reasonable efforts to keep children safe *in their homes*. An unsafe child does not automatically need to be removed from his home. CPS can work with the family to develop a plan to ensure the safety of the child without going to court. These safety plans can include in-home or out-of-home services. The family is not legally obligated to comply with the plan; however, if the family fails to comply, CPS can refer the matter to the Clark County District Attorney (DA) and if the DA accepts the referral, a petition alleging abuse or neglect may be filed and a dependency case formally opened.

Practice Tip: These same criteria also determine when a removed child should go home. As previously mentioned, SIPS focuses on safety throughout the life of the case. “Why can’t my client go home? Is my client safe? What can be done to make it safe for my client to return home?” are all appropriate questions to ask at every hearing. It is up to the caseworker to justify continued out of home placement based upon the criteria set forth above. If the caseworker cannot tell the court specifically how and why the child is still unsafe, ask the court for immediate reunification. Remember: reunification does not depend on parents completing court ordered services. Children can be safe at home while their parents complete their case plans.

Emergency Removal (N.R.S. § 432B.390)

² See, Appendix C – Nevada Safety Assessment.

³ *Supra*, note 1.

⁴ National Association of Public Child Welfare Administrators, *A Framework for Safety in Child Welfare* (2009).

⁵ *Supra*, note 1.

If, as a result of its investigation, CPS finds that immediate removal is necessary to protect a child from the threat of further abuse or neglect, CPS may remove the child without the consent of the caretaker.⁶ Emergency removal can occur at any time, even if the parents are cooperating with CPS. If there is not an emergency, DFS is required to obtain a warrant before removing a child. (*See, Kirkpatrick v. Cty. of Washoe*, 792 F.3d 1184 (9th Cir. 2015)). DFS is beginning to comply with this requirement. The child is said to be taken into “protective custody.” If a child is taken into protective custody, he must be placed in the following order of priority⁷:

- In a hospital, if needed;
- With a suitable relative within the 5th degree of consanguinity or a fictive kin (a person who is not related by blood but who has a significant emotional and positive relationship with the child.), who is able to provide proper care and guidance for the child, whether or not they reside in Nevada;
- In a licensed foster home;
- In any other licensed shelter that provides care to such children.

In determining whether a relative or fictive kin is suitable, CPS considers such factors as the conditions of the relative’s home and the relative’s criminal background, history of child abuse or neglect, substance abuse, ability and willingness to protect the child from his parent or guardian, and the level of cooperation with the case plan developed by CPS and the family. Whenever possible, children must be placed together with their siblings and must not be placed in a jail or other place for detention, incarceration or residential care of persons convicted of a crime or children charged with delinquent acts.

Preliminary Protective Hearing (N.R.S. § 432B.470)

A hearing must be held within 72 hours of a child being placed into protective custody, excluding weekends and holidays. The purpose of the hearing, called the Preliminary Protective Hearing, is to determine if the child should remain in protective custody or if he can be released safely to return to his parents or other caretakers.⁸ At the hearing, CPS will explain to the court why the child could not be left in the home safely and provide any other relevant information that the worker has learned in the course of his/her investigation. If the



If the court decides that the child would remain at risk of harm if returned to his home, the child will remain in protective custody and the court will make written Findings & Order of Reasonable Efforts to Prevent Removal of Child (as required by ASFA). If the court does not make those findings, the child will be released to his family and the case will be closed.

⁶ N.R.S. § 432B.390 (1)(a).

⁷ These priorities were established by the Legislature in A.B. 350 (2011).

⁸ N.R.S. § 432B.470 (1).

While the child will seldom have an attorney representing him at this hearing, the court can refer the child for representation by a CAP attorney. Legal Aid Center is pushing to have more attorneys appear at this stage.

The court has the discretion to appoint counsel for the parents at the Preliminary Protective Hearing or the Adjudicatory Plea Hearing.

Adjudicatory Plea and Adjudicatory Trial Hearings (N.R.S. § 432B.530)

Adjudicatory Plea Hearing

If the court orders that a child be retained in protective custody, the Clark County District Attorney has 10 days to file a Petition – Abuse/Neglect (“Petition”). The Petition must specifically state the reasons the child was brought into custody.⁹

There is a standing order in the 8th Judicial District that allows attorneys from the Children’s Attorneys Project to represent any child with an active family court case; representation is activated by filing a Notice of Appearance in the case. The Petition is presented to the court at this hearing and the parents have an opportunity to enter a plea. If the parents admit to the allegations in the Petition or plead no contest, the court may make a finding of neglect and return the child home before the Disposition Hearing, although usually, the child is kept in protective custody and the case proceeds.

Adjudicatory Trial

If the parents deny the allegations in the Petition, an Adjudication Trial will be set for another date. At the trial, the DA must prove the allegations of the Petition by a “preponderance” of evidence. At the conclusion of the Trial, the court grants or denies CPS continued protective custody over the child. If the Petition is denied, the child is returned to his parents and the case is closed. If the Petition is granted, the child remains in protective custody and the case proceeds to Disposition.



Disposition Hearing (N.R.S. § 432B.530 and § 432B.540)

DFS has an obligation to make “reasonable efforts” to return your client to his family. The CPS caseworker will prepare a report for the court setting forth:

- the concerns for the child’s safety,
- the conditions of his home,
- the child’s progress in school,
- the mental, physical, and social background of the family and its financial situation, and
- the parents’ progress with services arranged by CPS.

⁹ N.R.S. § 432B.490, N.R.S. § 432B.510.

The report, also referred to as the “case plan”, will also include recommendations on where the child should live and what the parents need to do in order for the child to return home or in other words be reunified with his parents. If your case is in this early stage of the proceedings, you may request a continuance to allow for a conference with your client or, if you have already met your client, advocate for him, particularly in regards to interim placements and the requirements set out in the Case Plan. After all parties (parents, caseworkers, attorneys for parents and for the child) have been heard, the court will make a Disposition Order.

Following Disposition, a new caseworker is usually assigned to the child’s case, with their primary responsibility being to monitor the day-to-day care of a child in protective custody, including placement, education, medical care, extra-curricular activities, etc. In addition, the caseworker will assist the parents in complying with their case plan objectives, explain problems noted in the report, discuss what services DFS will provide or recommends, and monitor the parents’ progress. This caseworker arranges foster care or other caretaker placement while the child’s case remains open and prepares periodic reports for the court on the parents’ progress in satisfying the objectives and requirements of the Case Plan.



Please be aware that a Nevada Supreme Court case has held that a non-offending parent is not required to comply with a case plan and accept services under N.R.S. 432B.560 for purposes of reunification. (See, Matter of Parental Rights as to A.G., 295 P.3d 589 (Nev. 2013)).

If your client does not want to return home, it is important to tell this to the court and the caseworker. Even if the caseworker is helping the parents try to reunite with your client, he or she is also supposed to develop a concurrent plan for placement, in the event that the attempts at family reunification fail. It is important for the DFS caseworker to know what alternative plans your client finds acceptable and to advocate strongly for that, if family reunification is not what your client wants or is unlikely to happen.

Also, you may file a motion to waive the requirement of “reasonable efforts” at reunification, especially if your client wants to be adopted, in hopes of speeding up the adoption process.

Review Hearings (N.R.S. § 432B.580)

Regardless of whether there are earlier hearings to check the status of a case, Nevada law requires that the court hold a formal Review Hearing six months after the initial removal to review progress and every 180 days thereafter. The purpose of these hearings is to inform the court if the parents are following through on the case plan and how your client is faring in his current placement. Based on your client’s position, you can take this opportunity to request that the child be returned home, removed from home, or continue in the current out-of-home placement. These hearings are primarily

to check on the welfare of the child, although the court will also inquire into the progress of the parents in completing any case plan and any alternative placement options being explored. **It is important that you are actively involved in these proceedings, to ensure that your client's needs are being met and to advocate for your client.**

The DFS caseworker will prepare a "Report for Permanency and Placement Review" for the court describing the progress that has been made toward reunifying the child with the parent and the "status" of your client. As the child's attorney, you will receive a copy of the Report and Permanency Plan prior to the Hearing. If your client has concerns about what is in the Report or if the Report contains factual inaccuracies about your client or the goals listed do not comply with your client's wishes, you should discuss your concerns with the DFS caseworker. If conversations with the DFS caseworker do not resolve your concerns, raise them with the court at the Hearing. You also need to keep the court informed about how your client is doing in school and/or home, what he wants in terms of permanency (i.e., live with a relative, remain in foster care, be adopted, etc.) and any other specific concerns your client may have. **It is important to have your client present in the courtroom during this Hearing and if, for any reason, your client is not present, you should ask the court for a continuance of the Hearing, so that he may be there** (unless your client refused to attend).



Regardless of what the parents are or are not doing, **you must represent the wishes of your client at this hearing.** If what he wants is something that you are certain the court will not do at the present time (for obvious safety reasons), you should still advocate for that outcome, if not now, then in the future, and work to make that happen.

Other Hearings

From time to time issues may arise that need the court's immediate attention. If it becomes necessary to address or advance your client's interests between scheduled Review Hearings, you may place the case on the court's calendar. The procedure for doing this varies depending on whether the issue is substantive (i.e., enjoining a change in placement or asking for a visitation order) or procedural (i.e., changing a scheduled review hearing date or inquiring on the status of a travel request). Procedural or minor matters that do not require the filing of a full-blown motion, can be brought before the court by filing a setting slip or a Notice and Approval to Reschedule or Reset a Court Date (frequently referred to as a "NARD"). To get a NARD, you must go to the Family Court's clerk and get approval and notify the other parties once approved. The form can be obtained at the Family Court clerk's office and a sample completed form can be found in Appendix B of this manual.

If the issue is substantive, you must file a motion requesting the relief your client needs as well as a Motion for an Order Shortening Time for the hearing. When urgent issues arise, you need to protect your client's interests by bringing the issue before the court at

an expedited hearing. Sample forms are found in Appendix B of this manual or at <http://www.lacsnpobono.org/resources-and-training/childrens-attorneys-project/>.

Permanency Planning Hearing (N.R.S. § 432B.590)

Federal (ASFA) and state law require DFS to find a safe, appropriate and permanent home for any child placed into foster care, with a preference for reunifying a child with his family if it is safe and appropriate. Once a child remains in substitute care for 12 continuous months (or 14 of the last 20 months), Nevada law states that the Court *must* determine a Permanency Plan for the child:

1. If the parent has made significant progress and it is safe and appropriate for the child to return home, the Permanency Plan will be reunification.
2. If the parent has not made significant progress and it is not safe and appropriate for the child to return home, the court will order a different plan such as termination of parental rights/adoption, permanent guardianship or independent living.

The goal underlying these time limits is to benefit children in protective custody by prohibiting practices that historically allowed children to languish in foster care for years. In practice, the stringent guidelines and mandated time lines often operate to the detriment of children. Decisions regarding permanent placements for a child may be made hastily, simply to comply with ASFA time requirements, rather than based upon what is in the best interests of a child.



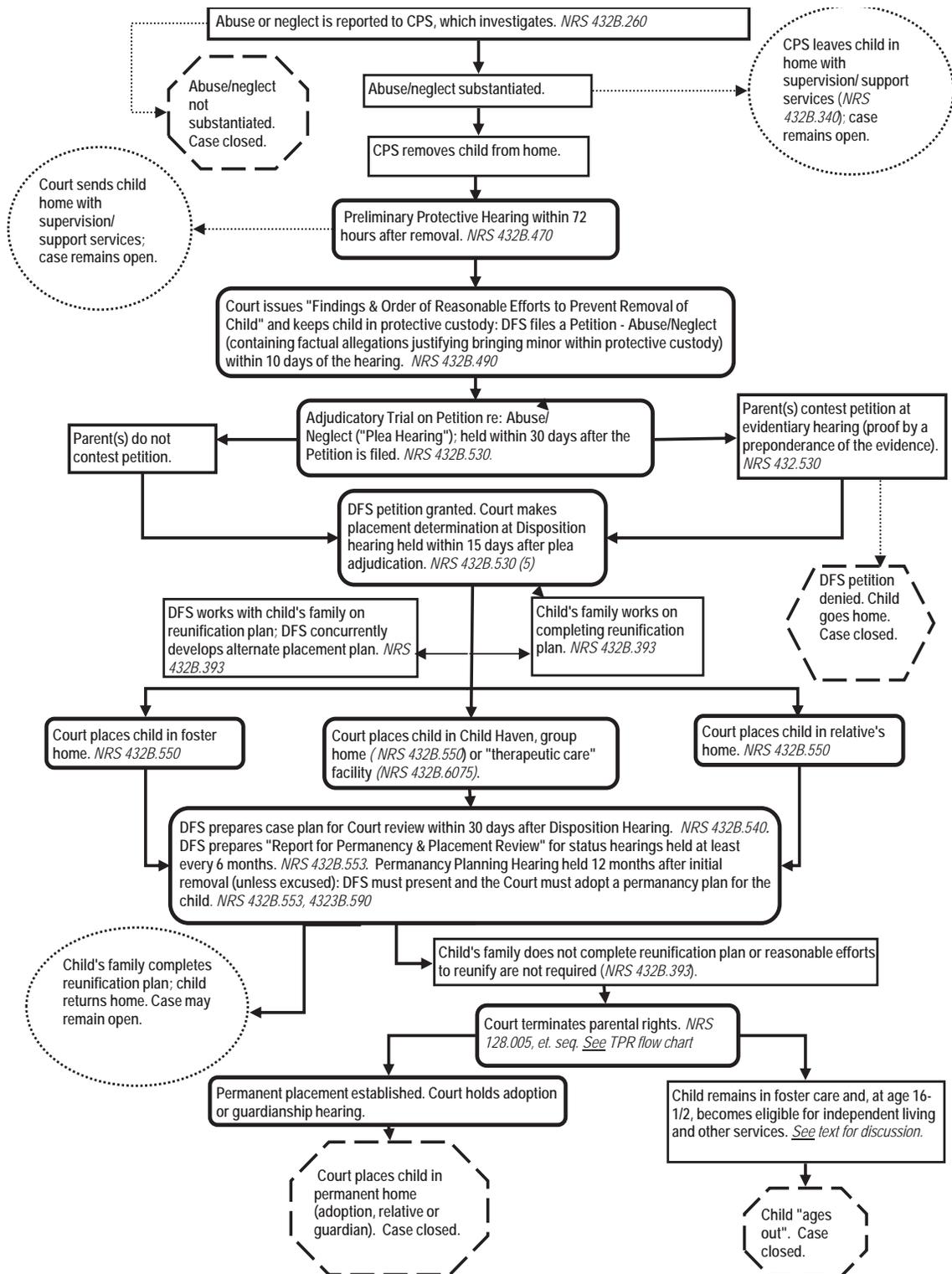
ASFA contains exceptions to the twelve month requirement; for example, a Petition to Terminate Parental Rights does not need to be filed if the child is being cared for by a relative or if termination would not be in the best interests of the child. If your client does not want the rights of his parents to be terminated, you must oppose any attempt to commence the TPR process and ask the court to make a finding of “compelling circumstances” so that the ASFA/statutory timelines for termination are extended, and thus enjoin any attempt to terminate parental rights. (See, Chapter Six).



Reunification issues are among the most difficult that a children’s attorney must confront. A parent may be fully complying with a Case Plan, and yet your client does not want to return home (he may be afraid of his parent). In these circumstances, if DFS is pushing for reunification and the court seems disposed to ordering this, you should

consider asking the court to delay reunification and advocate for “trial home visits” for a day, a weekend, etc., and for family counseling for the parents and the child. On the other hand, if DFS decides the parents are not complying with the case plan and asks the DA to file a Petition to Terminate Parental Rights (Petition), you must strategize with your client on whether to support or oppose the Petition. If he wants to be adopted, you will support the DA’s Petition; however, terminating parental rights when there is little prospect that adoptive parents will be found for the child creates a legal orphan and sets the child up to remain in long term foster care, without a permanent family. You must fully counsel your client on his choices and come up with a plan either to support the Petition or oppose the Petition and recommend that services and reunification efforts continue. You should be aware, however, that a Nevada Supreme Court case has held that the absence of an adoptive resource does not bar the Court from terminating parental rights. (See, *Matter of Parental Rights as to A.J.G.*, 148 P.3d 759 (Nev. 2006)).

ASFA, with its mandated time limits, can be used as a sword (to require a TPR when your client wants to be adopted) or as a shield (when termination is contrary to your client’s wishes, you will argue that compelling circumstances exist which extend any federal or state time limits on the time to file a Petition). You and your client can determine how best to argue its provisions. If you have any questions or concerns about ASFA and its applicability in your case, feel free to contact your mentor at the Children’s Attorneys Project for assistance and advice.



CHAPTER THREE The Lawyer's Role

Nevada Revised Statutes

Nevada statutes recognize the need for a lawyer to represent children, and allow, but does not require, the appointment of an attorney for a child in certain circumstances:



N.R.S. § 432B.420:

1. The court *may*, if it finds it appropriate, appoint an attorney to represent the child. If the child is represented by an attorney, *the attorney has the same authority and rights as an attorney representing a party to the proceedings. (emphasis added).*
2. The court *may* appoint an attorney to represent [an] Indian child. *(emphasis added).*

N.R.S. § 128.100:

1. In any proceeding for terminating parental rights, or any rehearing or appeal thereon, the court *may* appoint an attorney to represent the child as his counsel and, if the child does not have a guardian ad litem appointed pursuant to NRS 432B.500 as his guardian ad litem. *(emphasis added).*

As a best practice, all children need a voice and an attorney to represent their rights. As of this writing, 85% of children have attorneys, and we are working hard to provide an attorney for every child.

ABA Standards of Practice for Lawyers Who Represent Children

In 1996, the American Bar Association adopted Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases.¹⁰ Under the Standards, the role of a child's attorney is to provide legal services for the child and to articulate the child's independent voice.¹¹ While the Standards acknowledge that in some states, some lawyers are required to function in the dual role of lawyer/guardian *ad litem*, it makes it clear that it is preferable that the lawyer appointed for a child act solely or primarily as a lawyer and seek the appointment of a separate guardian *ad litem* if it becomes necessary.¹² The Standards impose upon lawyers who represent children the same duties as those that apply in more traditional attorney - client relationships: namely,

¹⁰American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Proceedings (the Standards), approved by the ABA House of Delegates, February 5, 1996, available at: http://www.americanbar.org/groups/child_law/tools_to_use.html.

¹¹ *Id.* at A-1.

¹² *Id.* at A-2.

lawyers must competently and zealously advocate for their clients.¹³ Lawyers have the same duty of confidentiality with child clients as they do with adult clients.¹⁴

Additionally, in 2011, the ABA adopted the Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings. The Model Act requires the appointment of a lawyer for every child and youth in abuse or neglect proceedings in which the state has removed the child from the home. The Model Act outlines a set of standards, duties and mechanisms that states can put in place to ensure the provision of high-quality, effective lawyering for children. (See, Appendix C).

The Lawyer's Role in Practice

Therefore, the ABA Standards of practice make clear that the role of a lawyer for children is very much the same as the role of a lawyer for adults. In practice, there may be a few differences relating to a client's age that may present issues unique to children, but there are not many differences in the scope of representation. Lawyers for children, like lawyers for adults, zealously represent their client's wishes. Lawyers for children are bound by the duty of confidentiality. Lawyers for children, like lawyers for adults, have a duty to advise and counsel their clients. Lawyers for children should offer an assessment of the likelihood of success on a course of action, and make sure that the client fully understands the possible ramifications of his or her chosen course of action. There are, however, some fundamental differences.



When adults hire lawyers it is usually because a specific legal issue has arisen that needs to be resolved. Adults understand that meetings with the lawyer are for the purpose of discussing that specific legal issue. Children, on the other hand, often don't know the legal issues presented or don't want to talk about them with someone they don't know. Therefore, a lawyer has two challenges: first, you must inform your client of the legal issues presented in his case; and second, you must encourage the client to direct you toward a specific course of action. Children need to develop a relationship with their lawyer before they can give legal direction. Therefore, you will need to encourage your client to talk about his everyday life and should not be discouraged if a meeting, or a large part of one, goes by without any legal issues being discussed.

When adults hire lawyers for a particular legal case, the lawyer and the client may develop a relationship and choose to work together on other or subsequent legal matters, but that is not always the case. When a lawyer begins representation of an abused or neglected child, the scope of the legal issues presented may not be clearly defined. A lawyer for an abused or neglected child must be prepared to handle multiple legal issues: you may have to deal with issues relating to sibling visitation, placement, delinquency, education, medication, estates and religion, all in a single case. Your

¹³ *Id.* at B-1.

¹⁴ *Supra*, note 11.

mentor at the Children's Attorneys Project can help with any issue that may arise in your case, and can provide suggestions and form exemplars to deal with it.

CHAPTER FOUR The Lawyer's Duties

Interview Your Client

Where?

Lawyers for children should meet their clients in their most natural environment. The first meeting with your client should take place where he is living. Ideally, the in-home meeting should occur when the current caretaker is home but in another room. This serves a dual purpose. First, it helps put your client at ease. Second, you can gain information about your client and his environment that may not be available or accessible in your office. Information gained in the home may be used to address your client's legal issues, or help develop rapport with your client. It is always preferable to meet a client at his current home, but subsequent meetings may be held at school or another place that both of you think is appropriate. Regardless of where you meet your client, you should always make sure that you can talk to him freely, outside the presence of others. Attorney-client privilege will attach to all communications between you and your client unless the presence of a third party at that communication somehow waives the privilege.



When?

You should meet your client as soon as possible after his case is assigned to you. Lawyers need to be especially sensitive to a child's schedule. Many meetings will take place after school and during extra-curricular activity hours. Lawyers should take care that meetings are not seen by the interim caretaker or the child as yet another burden. Parents and foster parents can be overwhelmed with the number of appointments that must be kept to comply with court-ordered Case Plans. Sometimes meetings must be scheduled around caretakers' schedules. You do not want to add to your client's stress by placing him in a situation where he can be blamed by the caretaker for the inconvenience of your meetings.

How often?

You should see your client as often as you feel it is necessary. A good rule of thumb is to see the client once a month when everything is going well. You should also visit the client any time there is a change in his placement and before any hearings in his case. You should also see him if problems arise with school or his current placement or if your client specifically asks to see you.

Determine Your Client's Interests

Most children have never had a lawyer. Many children do not know why they have a lawyer, what a lawyer is, or what a lawyer does. You should explain to your client why he has a lawyer and what it is that you will do for him in a way the child can understand. You will need to explain, albeit somewhat simply, the legal process and court proceedings and explain your duty to him of loyalty and confidentiality. It is important that your client understands that the court will expect you to explain what your client wants and that it is your responsibility to disclose what he wants to have happen in his case and in his life. We have a book that can be given to a child to explain the process – please ask for it if you have not received one.

Sometimes children think that they have a lawyer because they have done something wrong. Some think that someone wants to sue them. If the child is in a restrictive therapeutic facility like Desert Willow, they may think that they are in jail. You should explain to your child that none of this is true. Your client should know that you were brought into his case because someone thinks that he should have your independent voice, arguing for his wants and needs. Additionally, children often think that the reason CPS is involved with their family is because of something that they did. Caseworkers sometimes forget to tell children that this isn't true – it can be very important for your client that you reassure him that he did nothing wrong.

A lawyer for children also needs to make it clear that the lawyer represents only the child. The child is usually surrounded by various adults: caseworkers, therapists, CASAs, parents, lawyers for the parents or foster parents, and sometimes police or probation officers. These people often have the difficult job of advocating for the child, or for the parents or for some other interest. Your client needs to understand that your job is to be his voice and that you will interact with these adults on his behalf. Whatever he tells you, you will not judge or scold him for anything that he has said or done in the past.¹⁵ It is important to let him know that he is able to dictate how the representation goes: he is the boss, not his caretakers and not you. At the same time, you need to make clear that you are there only to address legal issues. You should not, and will not, advocate on his behalf to get out of doing homework or household duties, for example.



As with any other client, you have a duty to counsel your client. Lawyers for children must counsel their clients about the legal system, their rights, and the probable consequences of their choices. The lawyer must also educate the client about different

¹⁵ Once a child has a clear understanding of his lawyer's role, it is not uncommon for the child to tell the lawyer things he hasn't expressed to anyone else previously, or tell the lawyer that his wishes are different than what he stated to someone else. This does not mean that the client is lying or trying to manipulate the lawyer. Most often, it simply means that he trusts his lawyer with the truth, as he sees it.

placement opportunities, services, and educational options that may be available to him on request.

Mandatory Reporting Rules and Exceptions

The role of attorneys representing children is also further complicated because Nevada is one of a handful of states which applies "mandatory reporting requirements" to attorneys. Under NRS 432B.220, attorneys who, in their professional capacities, know or have reasonable cause to believe that a child has been abused or neglected must report the abuse or neglect within 24 hours to a child welfare or law enforcement agency. A knowingly and willful violation is a misdemeanor.

NRS 432B.220 was originally enacted in 1985, long before attorneys were provided to these children. In recognition of that unique role, the 2013 Nevada Legislature passed AB 155 (Sec.1.7) – codified in NRS 432B.225 – which created an exception to the requirement that attorneys are mandatory reporters where:

- An attorney represents a child; and
- The attorney acquires the knowledge of the abuse or neglect from the client during a privileged communication (written or verbal communication from the client as opposed to the observation of bruises, etc.); and
- The client (not siblings or others) is the victim of the abuse or neglect; and
- The client is in foster care; and
- The client does not give the attorney consent to report the abuse or neglect.

Note that this exception to the mandatory reporting requirement is quite narrow. The knowledge first must be acquired during a "privileged communication". Lawyer and client privilege is governed by NRS 49.035- 49.115. Generally the client may refuse to disclose and prevent the disclosure of confidential information provided by the client (or through the client's representative) to the attorney (or the attorneys representative). Knowledge obtained by observing the child's physical condition or obtained from sources other than the child's words or writing falls outside the exception.

Nevada Rules of Professional Conduct Rule 1.6 does provide a few exceptions to the general rule that confidential information may not be disclosed. An attorney may reveal otherwise confidential information with the informed consent of the client, if the attorney believes disclosure is necessary to prevent reasonably certain death or substantial bodily harm or to comply with a court order or statute.

Moreover, under NRS 432B.225, the child must be the victim in order for the exception to apply. For example, if the client is reporting the abuse or neglect of siblings the attorney is required to report. Finally, the child must "be in foster care". If the child is then placed in other settings then even privileged communication is reportable.

NRS 432B.225 also notes that while such attorneys are not required to report to authorities within 24 hours, they are not excused from the ethical obligation to take

reasonably necessary actions to protect the child if the child is not capable of making adequately considered decisions because of age, mental impairment or any other reason. Such actions may include, without limitation, consulting with other persons who may take actions to protect the client and, when appropriate, seeking the appointment of a guardian *ad litem*, conservator or guardian.

These ethical obligations flow from Nevada Rules of Professional Conduct 1.14. The rule indicates that while as much as possible a lawyer shall attempt to maintain a normal attorney-client relationship with a person of diminished capacity, when the lawyer reasonably believes that the client is at risk of substantial harm unless action is taken and the child cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including the examples in NRS 432B.225. Under such circumstances, the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Practice Tip: At the first interview, or as soon as possible thereafter, explain privilege, confidentiality and mandatory reporting to the child. For example you might say something like this; "I am your lawyer and that means I keep your secrets. If you never want to see your mother again, and don't want me to tell anyone you said that, I will not tell anyone. If you love your brother more than anything, and want to live with them, but don't want me to tell anyone you said that, I won't. I will always talk to you honestly about the process and the likelihood of whether what you want will happen. I will fight for you— to stay where you want; to go to the school you want; to be placed where you want if your first choice isn't possible, etc. The only time that I have to tell someone what you said is if you tell me someone is hurting you badly, hurting you sexually or beating you severely. If that happens, first, I will tell you...then I will report it...and I will work with you every step of the way on how to deal with it. You should know that you can always call or text me if something goes wrong, and I will fight as hard as I can to make sure you are not lost in this system."

Soliciting and Taking Direction from Your Child Client

Lawyers for children are appointed to represent the child's legal interests. Obviously, these interests will include basic things such as food, shelter, and education. However, there are many other issues that frequently need to be addressed, such as sibling and parent visitation, counseling services, placement, and recreational services.¹⁶ The lawyer's job is to advocate for your client's wishes, even when it might seem that the position is not in the child's best interests.

The ABA Standards reject the idea that children are unable to make choices and direct their lawyer. The ABA Standards rely on general knowledge and psychological studies about competency and recognize that child clients may be able to direct their lawyers about all issues at all times, or may be able to direct their lawyers about some issues

¹⁶ *Supra*, note 10 at B-5, C-4(1)-(2).

only some of the time. The duty of the lawyer is to elicit the child's preferences and represent them throughout the litigation.¹⁷

In determining your client's preferences, you must advise your client of the facts and laws surrounding his case. You must also advise him of the legal ramifications of various possible choices and the likelihood of achieving any particular choice, if you can determine it. You can also offer your client your assessment of the case and inform him what you think may be a reasonable course of action. However, you need to be alert to your ability to influence him and avoid exerting too much influence on him so that he substitutes your judgment for his genuine preference.

So you will need to remain aware of your client's age and level of maturity and consider how that may affect his ability to understand what you are talking about. It is unlikely that he will understand legal concepts or complex words, even those that may seem obvious to you. For example, when discussing visitation with your client, you would probably not call it "visitation" or talk about "siblings", but rather ask whether he would like to see his brothers, sisters or parents and if so, how often?



Conflicts arising while your client is in foster care can present their own set of problems. You may sense that your client is having problems but he won't discuss what they are. He may be reluctant to talk to you about problems with his foster care placement because he fears that if you repeat something he says to you to the court, nothing will be done and he will be returned to his foster parents to face their retaliation. You can try to address your client's concerns by asking him if he wants to stay where he is. If the answer is no, ask him why and tell him that you will not repeat anything he tells you about his foster parents to the court or to his caseworker unless you are certain he will be removed from their care. Your primary concern is not to make his present situation any worse than it is already.

What To Do If Your Client's Direction Appears Harmful

What if your client, instead of deferring to your advice, insists on a course of action that, in your view, is not in his best interest? In such a case, the ABA Standards do not permit you, purely on that basis, to withdraw from representation or to request appointment of a guardian ad litem. Although it is possible in these circumstances to request appointment of a separate guardian ad litem, it is a highly disfavored choice. Moreover, if the substantial danger to your client is revealed to you in a confidential disclosure, the mere appointment of a guardian ad litem may not adequately protect your client.

It is hard for any lawyer to allow a client to embark on a course of action that is likely to result in serious injury or death without any intervention, and doubly hard if the client is

¹⁷ *Id.* at B-3, B-4.

a child. If you confront a situation where your client insists on what you deem to be a clearly harmful course of action, you should consult with your mentor at the Children's Attorneys Project to get their opinion on the level of harm inherent in the client's choice and an evaluation of the likelihood that the danger would be obvious to others (such as DFS or the DA) who will provide input in the case. Your mentor can assist you with deciding on the best course of action in your case. **Deciding how to proceed under these circumstances is not a decision you should make alone.**

Counseling Your Client

Among any lawyer's basic obligation to a client is to counsel him concerning the subject matter of the litigation, the client's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process. As part of this counseling function, the lawyer may express his or her assessment of the case, the best position for the client to take, and the reasons underlying the recommendation. The attorney may counsel against the pursuit of a particular position sought by the client. When your client is a child, such counseling requires particular subtlety and sensitivity. Children are often intimidated and manipulated by adults. Your client may be more susceptible to domination by you because of "the power dynamics inherent in adult/child relationships." Therefore, you need to ensure that the decision he ultimately makes reflects his actual position.

Become Informed

Be aware of the facts surrounding your client's removal from home. Become familiar with the circumstances under which your client was taken from his home. Find out the details of the family's prior contacts with Child Protective Services, if any, who made the decision to remove your client from his home, and the basis for that removal, including:



1. The specific behavior, event or circumstances that put the child at risk of harm and justified removal;
2. How family problems are causing or contributing to the risk; and
3. What services CPS, DFS and/or DCFS (mental health) have provided and will provide for the family to alleviate or diminish the risk and what alternatives, including in-home services and placement with relatives, were considered prior to removal?

The Petition – Abuse/Neglect filed by the District Attorney's office will provide some of this information. The CPS and/or DFS caseworker should be able to provide more information.

Inquire about reunification efforts.

What efforts have been made, to this point, to reunify the family? A call to the DFS caseworker could provide this information. Is a visitation schedule in place for your client and his parents? His siblings? Are they in the same placement location or has the family been split up? If so, why? Are there alternatives to foster care such as kinship care? What relatives have been contacted to see if they can assume custody of the family? What other reunification services have been provided – i.e., homemaker services, child or respite care, family counseling, substance abuse counseling, domestic violence counseling, anger management counseling, etc.? If necessary, you can subpoena the caseworker’s records or ask the court to order that they be disclosed.

Determine Your Client’s Goals and Concerns about Placement

You need to explain to your client what will happen at various points throughout the legal case and find out his view of his current placement and what he would like to see happen at the Permanency Planning Hearing: that is, what is his goal for permanent placement? If his goal is to return home, you will need to figure out whether that is a viable option for the court, what needs to happen to lean the court in that direction, and then actively advocate for the necessary services to get to that place – who is available to provide them, where, who will bear the cost, if any, of the service, what is the time frame attached to “completing” the service? Has your client been home on overnight visits? Weekend visits? How did those go? If there are siblings, did they go home at the same time? Why or why not? Make DFS present evidence on the record of all efforts made or attempted to keep the child in his home and be prepared to introduce evidence of the unreasonableness of DFS’s efforts (what alternative efforts or placements could have been made).



If his goal is adoption, you should be prepared to support the DFS Petition to Terminate Parental Rights, as the first, necessary step toward that end. If he wants to continue visits with his family after the adoption, you will need to get a visitation order in place before the termination order is signed and before an adoption is completed. If his goal is to transition to independent living (and he is the appropriate age – between 16 and 17) you should work closely with the DFS caseworker to get him independent living training/services.

Your client needs to know that there is a secure end to this upheaval in his life and that you will help him get there. You must advocate for the permanent resolution your client wants. You must ensure that DFS is making reasonable efforts to timely place your client in a permanent placement, including:



1. Ensuring that your client's family is receiving the necessary services that will lead to reunification, if that is consistent with your client's wishes;
2. Ensuring that concurrent placement options are being explored even if family reunification efforts are continuing, if that is consistent with your client's wishes;
3. Ensuring the timely filing of termination of parental rights, if that is consistent with your client's wishes; and
4. Ensuring that an Adoption Worker is assigned after a TPR, if that is consistent with your client's wishes.

Conducting Discovery, File Motions and Get Court Orders

To competently represent and counsel your client, you must have “the big picture” and a clear end game in sight. This requires your thorough, independent review of your client's situation, which may require talking to police, caseworkers, CASAs, teachers, parents, therapists, and anyone else who has significant contact with your client. You have a right to review all documents submitted to the court, including any delinquency files that involve your client. Child clients frequently have siblings who are involved in abuse and neglect proceedings or parents who grew up in foster care. These records also can provide information and insight for the lawyer and should be made available to you.

N.R.S. § 432B.420 (1) provides: “[T]he child may be represented by an attorney at all stages of any proceedings held pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive. If the child is represented by an attorney, *the attorney has the same authority and rights as an attorney representing a party to the proceedings.*” Therefore, you may conduct discovery, file motions, appear in court, and perform all other functions of attorneys acting on behalf of clients.

Family Court proceedings are often informal and child dependency proceedings are no exception. Nevertheless, you may need to engage in discovery, particularly if your client has education or mental health issues that need to be resolved.

Much of the advocacy performed by attorneys is oral rather than written. However, lawyers for children can and should file motions when necessary. Specifically, you may find it necessary to file Motions to Enjoin a Change in Placement or to Enforce Court Orders, among other things.

It is important to get a court order for the services your client wants and needs, because otherwise you cannot force DFS or DCFS to provide them. Be prepared for the need to file an Order to Show Cause when DFS or DCFS do not or cannot comply with an order (i.e., visitation with parents or siblings, change in placement by x date, provision of goods or services by y date, etc.). If the matter is of importance to your client, get it memorialized in a court order. Otherwise, going to court over minor issues can often be avoided with a call to a caseworker or a parent's lawyer.

Appear in Court

You must appear at all hearings involving issues related to your client. You should expect to fully participate in all hearings and advocate for your client.



You must represent your client's wishes as you would represent the wishes of any of your adult or corporate clients. This is true even when you do not agree with him and even when you think that his expressed preference is not in his best interests. You are free, however, to counsel the child and explore other acceptable alternatives.

Preserve Your Independence

It is important that your client understand that you are there only for him. He needs to know that he is the focus of your visits. You should not appear too friendly with natural parents, foster parents, therapists or caseworkers if your client feels those people are opposing his interests or otherwise are "against" him.¹⁸



Other Proceedings

Your role as a CAP attorney in other proceedings is subject to the exercise of your judgment and discretion.

When Your Client Is Involved in a Criminal Proceeding as Victim, Witness, or Defendant

It is important to remember that defense attorneys and prosecutors are often unaware of or don't consider that a child has an attorney in child protection proceedings -- especially where the criminal case is unrelated to the abuse/neglect/dependency case. It is, therefore, essential to let them know, from the beginning, that your client has an attorney and to discuss the role that you would like to play in the criminal proceedings. When a parent is charged with a crime arising from the same actions alleged in an abuse or neglect petition, you should inform defense attorneys, parent's attorneys, prosecutors, and other attorneys that you represent the child and that you must be present before they may talk to your client.

When Your Client Is Petitioned as a Delinquent (Juvenile Delinquency)

Your client may be arrested or have a concurrent delinquency case pending in Juvenile Court. In Nevada, children age eight and above can be adjudicated a juvenile delinquent. A complaint or charge begins the process through which the youth may be adjudicated a delinquent. Youth may be referred to the court through complaints or charges from law enforcement, school resource officers, parents, or other citizens.

¹⁸ Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions, 62, Lexis Law Publishing, 1997.

Generally, your client will have a juvenile public defender appointed to represent him. You are encouraged to attend all hearings (e.g., Detention, Plea, Adjudicatory, and Disposition) with the purpose of “reminding” the court that your client is a victim of abuse or neglect, and that the service options within the dependency system are broader than those within juvenile justice, to see whether he or she will refer the behavioral issues to the dependency judge for handling.

Although attorneys from the Children’s Attorneys Project do not usually act as lead counsel when attending the hearings on these matters, you can contact the child’s defense attorney and the district attorney to find out more about the case and, under proper court authority, can share information about the child that might be helpful in achieving a satisfactory outcome for your client. It is critical that your client knows ahead of time that you intend to do this, and to consult with him regarding his wishes on this matter. Furthermore, subject to your client’s wishes and his constitutional right to counsel of his own choosing, you (as a private Pro Bono attorney) may choose to act as sole counsel for your client in the juvenile justice proceeding. Either way, it is important that your client knows that you are there to support him through the entire delinquency process.

CHAPTER FIVE

Permanency

Case Planning

Before ASFA was passed in 1997, caseworkers focused their efforts primarily on reunifying children with their families. Limits on the length of time that could be spent working with a family varied from state to state and were enforced only sporadically. In some states, children remained in foster care for years, sometimes their entire childhood, moving from place to place and family to family. ASFA provides uniform guidelines, stringent timelines, and a clearly articulated intent. As before, workers must make reasonable efforts to keep a child in his home or to return him home if he has been removed.¹⁹ What has changed is that ASFA now has “teeth” in the form of the granting or withholding federal funds, to encourage states to adopt and enforce “best practices”.

Despite its admirable goals, ASFA has created as many problems as it has resolved. Under ASFA, even if a caseworker is working with the family to make the family and home safe for the return of the child, he or she must simultaneously plan for the possibility that the home or family may never be safe for the return of the child.²⁰ This is called concurrent planning and is required by ASFA. Therefore, the caseworker is supposed to make reasonable efforts to place a child up for adoption or with a legal guardian at the same time that he or she is making efforts to reunify the family.²¹ In practice this may not occur.

On September 29, 2015, a federal law affecting “permanency” went into effect. The Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183/H.R. 4980), eliminated Other Planned Permanent Living Arrangement (OPPLA) as a permanency option for a child under the age of 16. Furthermore, this law added additional case plan and case review requirements for older youth who have OPPLA as a permanency goal. Section 113 of the Act, requires that youth in foster care, ages 14 and older, be allowed to: help develop their own case plans, make revisions to their case plans, and select two people, who are not foster parents or caseworkers, to be part of their planning team. DFS may reject either of these individuals if it is believed that they would not act in the best interest of the child. The case plan for all children, ages 14 and older, must include a written “list of rights” document outlining the child’s rights as they pertain to education, health care, visitation, court hearings/participation, and the right to stay safe. The youth must sign



¹⁹ 42 U.S.C. § 671 (15)(B).

²⁰ *Id.* at (15)(F).

²¹ *Id.*

off that they received this document and that it was explained to them in an age appropriate manner.

For your purposes, it is best to view case planning with your client's end goal in mind. When DFS develops a Permanency Plan for your client, you must make certain that the caseworker knows what your client wants and that your client was involved in the plan development. The Plan should be developed with the best interests of the child in mind and must include a completion date.²² You should review the Permanency Plan with your client before it is submitted to the court and if your client objects to the Plan, you should make recommendations about the Plan and put your objections and recommendations on the record at the Review Hearing.



In certain circumstances, consistent with your client's wishes, you may file, or join the DA in filing, a Motion to Waive Reasonable Efforts at Reunification. Sometimes, the DA will file a motion to waive these efforts, usually in cases where particularly egregious facts exist. Ordinarily, however, the DA does not file anything and the case will bumble along (often with your client being buffeted from one placement to another). Consequently, if your client wants to be adopted and your motion is granted, the case should be "fast-tracked" to filing the Termination of Parental Rights Petition. In this situation, you must ask the court to order a TPR Petition be filed. Since the process of finding a permanent placement for a child can be very lengthy and involved, you should not wait until after "reasonable efforts" to reunify the child are no longer necessary. A long delay before a permanent placement can be effectuated can be detrimental to children.

If your client agrees and the Permanency Plan is adoption, DFS must recruit adoptive families.²³ The court should check on the status of this recruitment at hearings held after the six month review and if not, you should inquire about efforts to find a permanent family for your client. Under the "reasonable efforts" standard of ASFA, recruitment efforts should be intensive and DFSF should assign sufficient staff so the Home Study and the Social Summary can be completed and securing subsidies and services does not unduly delay the adoption.



Much more could be said about permanency for children. The main thing is to recognize that growing up without a sense of stability and permanency is detrimental to children and your client is counting on you to help him achieve stability in his young life.

²² Technical Assistance Bulletin, Judge's Guidebook on Adoption and Other Permanent Homes for Children, Permanency Planning for Child Department, Vol. III, No. 1, February 1999, National Council of Juvenile and Family Court Judges at 13.

²³ P.L. 105-89: Sec. 101(a)(C) 42 U.S.C. § 671 (a)(15)(A) et seq.

CHAPTER SIX

Termination of Parental Rights

The TPR process is set out in Chapter 128 of N.R.S. Whenever it appears that a child cannot or will not be reunited with his family, DFS should commence the termination process by asking the DA to file a Petition to Terminate Parental Rights. The statute sets forth the requirements for filing and serving the Petition: in addition to the parents, notice must be served upon the legal custodian or guardian, and the State/County Child Support Enforcement agency. This is because some parents were trying to bring their own petitions to terminate parental rights as a means of avoiding child support. The statute requires that all termination proceedings must be completed within 6 months of the filing of the Petition.

As a practical matter, in dealing with cases where there is or will be a termination of parental rights, it is useful to refer to the legislative intent underlying Chapter 128:

1. The legislature declares that the preservation and strengthening of family life is a part of the public policy of this State.
2. The legislature finds that:
 - a) Severance of the parent and child relationship is a matter of such importance in order to safeguard the rights of parent and child as to require judicial determination.
 - b) Judicial selection of the person or agency to be entrusted with the custody and control of a child after such severance promotes the welfare of the parties and of this State.
 - c) The continuing needs of a child for proper physical, mental and emotional growth and development are the decisive considerations in proceedings for termination of parental rights.



Consistent with this intent, at the evidentiary hearing on the Petition, the DA will have to establish that termination is in the best interests of the child, by clear and convincing evidence. (See, Matter of Termination of Parental Rights as to *N.J.*, 116 Nev. 790, 8 P.3d 126 (Nev. 2000)).

In the event a TPR Petition is filed, you will need to file another Notice of Appearance, this time in the TPR proceeding (although the Petition is filed in Family court it is a separate case with its own case number).

The parents will have special defense counsel appointed for them and DFS will be represented by the DA. The only way your client's voice will be heard is if you appear in the action to represent him.

As counsel for the child, you have all the rights of any other party to this proceeding: “The child may be represented by an attorney at all stages of any proceedings for terminating parental rights. If the child is represented by an attorney, the attorney has the same authority and rights as an attorney representing a party to the proceedings.” *N.R.S. §128.100*. You may ask questions and offer evidence and witnesses of your own, in pursuit of your client’s interests.

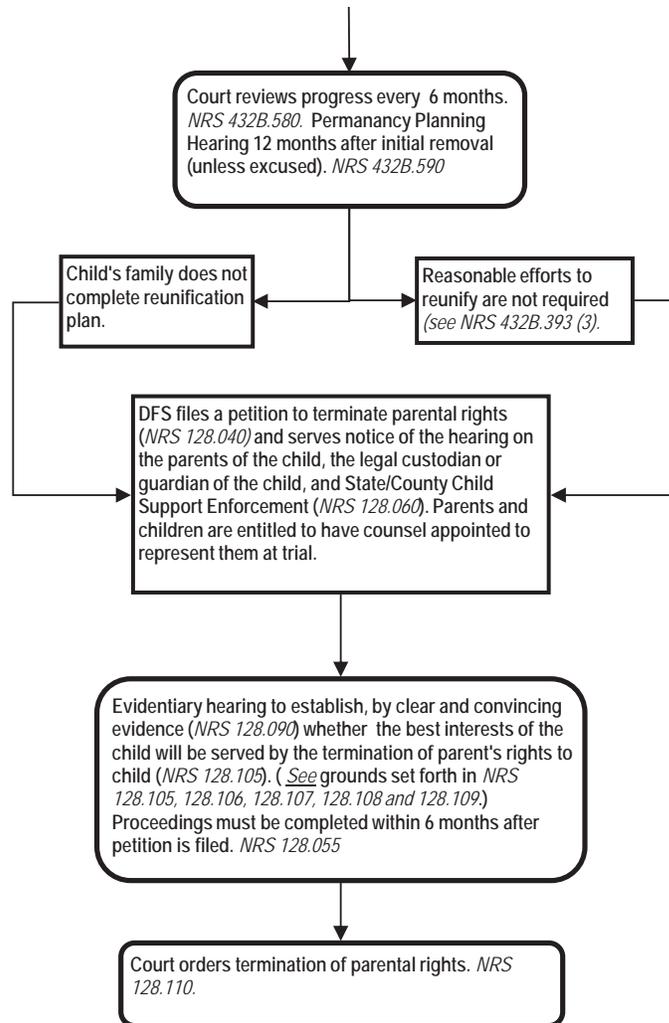
Finally, whether you are allied with the DA or the parents, depends upon your client. If he doesn’t want his parents’ rights terminated, you need to oppose the termination of parental rights (citing the Statute and the ASFA exception where termination is inappropriate if it is not in the best interests of the child). If he wants to be adopted, you will align with the DA.



If the court grants the Petition to Terminate Parental Rights, the parent(s) may appeal this decision to the Nevada Supreme Court. Should the parents elect to appeal the decision, any pending adoption of the child may be delayed. If the parents do not appeal the decision, the child will be available for adoption. In the event that the Petition is denied, the parents typically will be given more time to complete their case plan. The Petition may be re-filed at a later date if the parents still do not substantially comply with their case plan.

An important side issue to consider at the Termination of Parental Rights stage is the issue of sibling visitation. Sometimes, the Permanency Plan is for adoption of only one of a pair (or more) of siblings by an adoptive couple. If this applies to your client and your client wants to maintain contact with his siblings after their (or his) adoption, you should file a Motion and Petition for Sibling Visitation on behalf of your client. (See, *N.R.S. § 432B.580 (2)(b)(II)*). The Motion and Petition should be filed with the court **before** the Petition to Terminate Parental Rights is granted. See www.lacsnprobono.org for samples or contact your mentor.

If you have questions regarding what to expect, how to proceed, or how to handle an unexpected issue, feel free to contact your mentor at the Children’s Attorneys Project for assistance and advice.



CHAPTER SEVEN Children in Court

Review Hearings

Generally, Review Hearings are informal in nature. All parties are given an opportunity to speak – generally, no one is placed under oath.

It is important for your client to be present at his Review Hearings to tell the court how he is doing and what he would like to see happen. The only exception to this would be if your client absolutely does not want to attend and you feel you can adequately represent his position without him. You need to prepare him for the Hearing by explaining the physical layout of the court, the process of when to speak (when asked by the judge), where to stand (with you), and what he might expect to see and hear.

Your client needs to know that you will be at the Review Hearing to speak on his behalf, but that sometimes, the judge will directly ask him general questions, such as: How is he doing at home? In foster care? In school? Does he have any issues or requests for the court? Sometimes the judge will prefer to take your client into Chambers and speak to him outside the presence of counsel. Ordinarily, CAP attorneys do not object to this, because they know that their client is expecting the questions and is capable of providing appropriate responses and, barring special circumstances, a direct request from a child is more persuasive than any amount of rhetoric from a CAP attorney.

Criminal or Evidentiary Proceedings



Children are often called to testify in criminal cases and in evidentiary hearings (Plea Adjudication or in a Petition to Terminate Parental Rights). If your client is subpoenaed, you must notify all parties involved in the case that the child is represented by counsel - you. You should demand to be present any time your client is questioned and advise the parties that he may not be questioned outside your presence (note that the DA may try to ignore this). It is particularly important for children being questioned to have an attorney present because the questions asked may be misleading or confusing to a child. Some children think they must answer all questions put to them, even if they don't know or can't remember the answer. You can protect your client from giving false information and can help your client understand the question being asked so that he may answer truthfully. Additionally, your client will be more at ease if someone he knows and trusts is present during questioning. On the other hand, you should expect that the DA will oppose your efforts and claim you are obstructing justice, or something similar.

Nevada has adopted the Uniform Child Witness Testimony by Alternative Methods Act at N.R.S. § 50.500, et seq. The Act provides that a child witness under the age of 14 *may* be permitted to testify by alternative means (that is, not in an open courtroom, in the presence and full view of the court and all of the parties, who may participate and view and be viewed by the child). If your client is under 14 and subpoenaed to testify but does not want to, you will first want to contact the party serving the subpoena to see if they will withdraw the subpoena (unlikely) or voluntarily agree that your client may testify by alternative means (also, unlikely). Failing this, you must file a motion in that court to ask the judge to permit your client to testify in an alternative manner.



In a *criminal* proceeding, the court will allow your client to testify by an alternative method only if *clear and convincing evidence* demonstrates that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to testify in the open courtroom and/or if he is confronted face-to-face by the defendant. In a *noncriminal* proceeding (including

TPR), the court will allow your client to testify by an alternative method if a *preponderance of the evidence* demonstrates that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact (the court will consider the nature of the proceeding; the age and maturity of the child; the relationship of the child to the parties in the proceeding; the nature and degree of emotional trauma that the child may suffer in testifying; and any other relevant factor). N.R.S. § 50.580.

Of course, sometimes your client will *want* to testify. Also, if your client is 14 or older or if, despite your best efforts, the court orders that a younger client must testify in open court, you must prepare him for what lies ahead. Children often have very basic questions. In addition to wanting to know why they are being called, what questions they will be asked and who will question them, children also want to know what the courtroom looks like, what the judge looks like, who will be in the courtroom, where everyone will sit, etc. Children often are afraid of the judge and want to know if the judge will be mean or if the judge doesn't like what they say or gets mad at them, can they be put in jail? Answering questions about the court and the parties and exploring with your client what kinds of questions he will be likely to hear will help make the experience less traumatic for your client.

If your client is scheduled to appear in court, an excellent resource to refer them is Kids' Court School, a free program offered by the UNLV William S. Boyd School of Law. The purpose of this program is to educate children and youth about the investigative and judicial processes and to teach children strategies to decrease anxiety typically associated with participation in the judicial process. The curriculum consists of two 1-hour sessions and are held at the Thomas and Mack Legal Clinic inside the School of Law. For further information, contact your case mentor or Pro Bono Project staff at probono@lacs.nv.edu.

CHAPTER EIGHT

Specific Child Protection Issues

Foster Care Issues

The bulk of your court appearances will occur after the case has been transferred from the CPS caseworker to the DFS foster care worker and the child is in foster care.

Foster care may be a therapeutic foster home which requires that the foster parents have a special license. The therapeutic foster homes are generally run by “private” agencies paid by the state, such as Olive Crest, SAFY (Specialized Alternatives for Families and Youth), and Eagle Quest. Private foster care agencies may also run a group home, which house several children in one home. Girls and Boys Town and St. Jude’s Ranch are group foster homes which are set up in a more traditional “family-like” setting. Foster care may also be a “typical” family home in which the foster parent(s) are licensed individually by the state.

Several issues can arise in the course of your representation of your client. Children who have been abused or neglected and wrenched out of their “normal” living environment may have emotional or behavioral issues that lead them to “act out” or verbalize their anger. The sad fact is that behavior which, if exhibited by your natural child, would result in “grounding” or other loss of privileges, in the case of an abused or neglected foster child, may simply mean that he gets kicked out of the foster home and must change residences (and schools) again. It is very typical for a child to have three or four different foster care placements before a permanent home can be arranged for him²⁴. Given the disruption not only in home environment but also in your client’s education, you may need to file a motion to enjoin a change in foster care placement until the end of a school term, for example. (See, Discussion of Education below).



Moreover, it is possible that DFS has failed to place all siblings in the same foster home. Pursuant to statute, it is presumed to be in the best interest for siblings to be placed together. This is a rebuttable presumption which must be done by DFS/DA and be endorsed by the court. You should advocate for this early in the case before the kids adjust and no longer want to move yet again. You should file a motion to require this and can ask for the

children to be temporarily placed in Child Haven with weekly status checks to make sure DFS has found a home for them.

While it may be difficult to place a large group of siblings in the same foster home, it is not impossible. It should be even less difficult to find one willing to house 2 or 3 siblings together. The fact that it may be “difficult” to place a group of siblings in the same home does not excuse DFS from making reasonable efforts to ensure that siblings remain

²⁴ Testimony before the Nevada Legislative Subcommittee Workgroup on Foster Care, January 31, 2008.

together. You may need to file a motion for lack of reasonable efforts if it appears that DFS is failing in its duty to place the siblings in the same home. If all siblings cannot be placed in the same foster care home, a regular schedule of visits **must** be arranged (See, Visitation below).

Visitation

Although N.R.S. § 432B.550 (5) “presumes” that it is in the best interests of the child to be placed together with his siblings and that preference be given to placing children with a suitable relative or fictive kin, in practice, this is widely ignored by DFS. Children are regularly placed in the care of non-relatives and siblings are separated for placement purposes. If a child is not placed with siblings, DFS must prepare “a plan for the child to visit his siblings, which must be approved by the court.” N.R.S. § 432B. 580 (2)(b)(II). DFS “must request the court to issue an order requiring the visitation set forth in the plan for visitation. If a person refuses to comply with or disobeys an order issued pursuant to this subsection, he may be punished as for a contempt of court.” N.R.S. §432B.480 (4) (emphasis added).



Your client is entitled to have visitation with his parents, siblings and other caretakers, if appropriate, and as a matter of right. Older children, in particular, may want to maintain the bond with their families and know that they are safe. Younger children need to be given the opportunity to bond with their parents and older siblings. Visitation is not a privilege that can be “lost” as punishment for unwanted behavior. However, you need to be aware that sometimes foster parents or other placement facilities will withhold visitation to punish unwanted behavior – if this happens, you should be prepared to go to court and get an order stopping this practice. Usually, visits with parents or siblings occur on a set schedule determined by DFS.

You should advocate for increased visitation if appropriate and seek a court order if necessary. However, it is important to keep in mind that when you request an increase in visitation, it is usually the caseworker who must transport the children and supervise the visits. It might help your client get more visits with family if there is a CASA volunteer willing to transport the children or supervise some of the visits if necessary.

Chapter 125C of N.R.S. deals with custody and visitation issues. Although the language is geared more toward the interests of parents, grandparents, great-grandparents and “fictive kin,” such as the spouse of a parent who is not the birth parent of the child, rather than children who want to see their siblings, there is an “all purpose” visitation clause found in 125C.050(2) which states: “[i]f the child has resided with a person with whom he has established a meaningful relationship, the district court in the county in which the child resides also may grant to that person a reasonable right to visit the child during his minority, regardless of whether the person is related to the child.” This language has been reasonably interpreted to encompass your client, who is a “person” with a “meaningful relationship” with the minor siblings with whom he has lived

and provides the statutory authority for a Petition for Sibling Visitation in order to get or increase visitation.

Similar to preferences governing temporary placements, Nevada law requires that “a child placing agency shall, to the extent practicable, give preference to the placement of a child for adoption or permanent free care together with his siblings.” N.R.S. § 127.2825. It is especially important for you to understand that any visitation that your client wants with his siblings should be memorialized in a court order before the termination of parental rights (N.R.S.§125C.050) and before an adoption is finalized (N.R.S.§127.171). Although there may still be ways to arrange visitation if those deadlines are missed, it will be a cumbersome process, without any guarantee of success.

Reasonable and Prudent Parent Standard/Normalcy

For years, some foster care policies unnecessarily created barriers for youth to live normal adolescent experiences (e.g., staying over at a friend’s house, getting a driver’s license, going to prom, or getting a part-time job), that were similar to their peers. The Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183/H.R. 4980) was enacted to alleviate these barriers. The law requires states to implement a “reasonable and prudent parent standard” to allow foster parents (including licensed kinship caregivers) to use prudent decisions in determining whether or not to allow a child to participate in age or developmentally-appropriate activities. According to the Act, a reasonable and prudent parent is one who uses careful and sensible parental decisions that maintain the health, safety, and best interests of the child.

The reasonable and prudent parent standard allows caregivers to give their foster children permission to do daily, age appropriate activities without waiting to obtain permission from the case worker or the court. While foster youth will likely never have what would be considered a “normal” childhood or adolescence – the fact that they are in foster care in the first place negates that possibility – this new law creates more normalcy for these children and youth while they are out of the home.

If you believe that your client is being denied the opportunity to participate in age appropriate, “normal” activities, bring it to the attention of the DFS case worker and/or the court to see what steps can be taken to support normalcy for your client.

Education

School of Origin

When children are removed from their homes, they may have to change schools. If a child’s foster care or guardianship placement is changed during the course of the dependency proceedings (i.e., residential therapeutic facility to group home, group home to individual foster home, foster home to foster



home), his “school attendance zone” will change again. Depending on your client’s wishes, you may need to advocate for him to remain in his school of origin. The best course of action, should your client change placements, but wish to remain at the home school, include the following:

- The child should not be unenrolled from the home school and/or re-enrolled in a new school.
- You should contact the DFS caseworker to have the caseworker complete the Clark County School District (CCSD) form requesting that the child remains at the school of origin and for transportation.
- You should contact CCSD Wrap Around Services (702-799-7435) and inform them that your client should remain at the home school and should be provided transportation.
- A call should be made to the CCSD transportation department (702-799-8100) to see if there is a reasonable bus route that can transport your client to their home school until paperwork is processed. This may mean that the placement will have to transport your client to a stop on a current route prior to the transportation route being finalized. (Finalization of paperwork can take up to two weeks).

Additionally, you may need to ask the court to order that your client be placed in a foster care placement located within his school district or to delay a change in placement or a change in schools until the end of the school semester.

Another alternative is that a legal guardian or custodian of a child in foster care can apply to the Nevada Department of Education to enter the Program of School Choice for Children in Foster Care (N.R.S. § 392B110). In the application, the guardian or custodian must list the public school in which the child is currently enrolled and the public school where the child would like to enroll. The Department shall either approve or deny the application. If approved, that child may attend the preferred school (space available) and remain in the School Choice Program until age 21 or upon graduation from high school. Please contact your mentor at the Children’s Attorneys Project if you need assistance.

McKinney-Vento

McKinney-Vento Education for Homeless Children and Youth is a federal law that ensures immediate enrollment and educational stability for homeless children and youth. McKinney-Vento defines homeless children as “individuals who lack a fixed, regular, and adequate nighttime residence.” This includes:

- Children and youth sharing housing due to loss of housing, economic hardship or a similar reason
- Children and youth living in motels, hotels, trailer parks, or camp grounds due to lack of alternative accommodations
- Children and youth living in emergency or transitional shelters

- Children and youth abandoned in hospitals
- Children and youth awaiting foster care placement
- Children and youth whose primary nighttime residence is not ordinarily used as a regular sleeping accommodation (e.g., park benches, etc.)
- Children and youth living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations
- Migratory children and youth living in any of the above situations

Under McKinney-Vento, eligible homeless children can stay in their home school, do not need to provide the school with the usual required documentation, and must be provided school supplies, case management, transportation, and other services (including free breakfast and lunch) as needed. CCSD has a homeless office dedicated to this issue and each school has an advocate who can help the child receive services.

Other Issues



There are other unexpected issues that may arise in the context of a child's education. For example, a change in placement that results in a change of school may mean that your client must have a new school uniform. It is possible for your client to be expelled from school because he lacks the correct uniform. DFS has funds that can be accessed on an emergency basis, in order to meet these unpredictable needs. If your client's caseworker and/or caseworker's supervisor cannot or will not get the funds needed for these or other educationally-required materials, contact your mentor at the Children's Attorneys Project and they will help you

get action for your client (although you could always go to court for an order, this may take time and in the interim, your client is missing out on his education).

Please note, every CCSD campus now has a "foster care advocate" who oversees the rights of students in foster care. This advocate is usually the school counselor and should be contacted if any issues arise with your client.

Special Education

Special education is a program or course of instruction individually designed to meet a child's unique educational needs. It consists of teaching, services and support for children with disabilities so that they can do well in school. Special education is free, should be "appropriate", and should treat each child as an individual. Special education is services and supports — it is not a place.

The first step in determining whether a child qualifies for special education is determining whether the child has a disability under the Individuals with Disabilities Education Act (IDEA). The second step is to show that the child needs special education services or that the disability adversely affects the child's education performance. The following disability categories fall under the IDEA:

- Autism
- Blindness or Other Vision Problems
- Brain Injury
- Deaf-Blindness
- Deafness or Other Hearing Problems
- Developmental Delay (for younger children)
- Emotional / Behavioral Problems
- Health Impairments (such as ADD/ADHD, Fetal Alcohol Syndrome, and Tourette's Syndrome)
- Learning Disability
- Mental Retardation / Intellectual Disabilities
- Orthopedic Disability
- Speech or Language Impairment

The Clark County School District is responsible for conducting evaluations of school age children to determine the existence of a learning disability. To ensure a child is considered for special education services, parents, foster parents or educational surrogate parents should submit a written request to the child's school principal. The school district then has 45 calendar days from receipt of the request to complete the evaluation or 30 days to provide a written notice of its refusal to do so, and why.

Many of our clients are already identified as being eligible to receive special education services. However, some who should be eligible, or at the very least evaluated for special education, fall through the cracks and struggle at school when appropriate supplementary supports and aids would benefit them. Children who have been diagnosed with a disability and who are eligible to receive special education services are entitled to have an Individualized Education Program (IEP) developed and implemented by the CCSD. An IEP is like a contract between the parent and the school. The IEP should tell what the school will do to help the child learn (e.g., use a different way of teaching; make school materials simpler; change the amount or kind of information the child should learn; provide help on class work, homework or tests; give the child services like speech therapy, physical therapy or counseling; provide a person to support the child or the child's teacher). An IEP meeting must occur at least annually. If your client already has an IEP or if your client is having academic or behavioral problems at school (which may indicate an unidentified yet eligible student), contact the Special Education Unit which is an adjunct of the Children's Attorneys Project at 386-1070 option 5 or special@lacs.org. You may also review the information contained on our website. The Special Education Unit provides advice, training, advocacy, and legal representation in the area of Special Education to those involved in the education of children with disabilities.

Practice Tip: The caseworker cannot sign an IEP as a parent. If the biological parent or foster parent is unwilling, a "surrogate" can be appointed to fulfill this role. Legal Aid Center has a program that recruits and trains, law students, paralegals, CASAs, and other volunteers to serve as surrogates. Please contact surrogates@lacs.org for more information.

Placement with Relatives

If a child cannot remain safely with his parents, many children and the court, prefer to see a child placed with relatives (also called “Kinship Care”) rather than strangers.

N.R.S. § 432B.550 states the Nevada preference that children be placed with a relative. (This is also a preference set out in ASFA.²⁵) CPS and DFS are required to do a thorough background check of the relatives and their home before the child can be placed with them. This process is subject to bureaucratic delay, often taking several weeks or months, particularly if the relatives live outside the state. If your client wants to live with relatives who live outside Nevada and the placement is being delayed because the background checks are not completed, you should ask the court to order that the child be sent before the full background check is completed. Failing that, you can ask that your client be sent on a 30-day visit, pending the outcome of the investigation (which can be renewed, indefinitely). Depending on the case and the judge, your request may or may not be granted.

Sometimes, the financial ability of relatives to care for these additional family members may be limited. Relatives have the right to become licensed as foster parents and receive foster care payments.



If relatives do not wish to become licensed, the federal government and the State have authorized that these relatives may receive certain payment subsidies to offset the cost of caring for these children – Kinship Care Payments. These payments are roughly equivalent to the amounts received by foster care parents and are not based on need if the caretaker is over 62 year of age. If the relative is under 62 years of age, a hardship waiver of the age requirement can be considered if the child or children for whom assistance is requested either have “special needs” or are a “hard to place” sibling group and an extreme financial hardship to the caregiver is demonstrated.

If your client wants to be placed with a relative and financial constraints are an issue, contact your mentor at the Children’s Attorneys Project to help get appropriate payments (e.g., Licensed Foster Care, TANF, Kinship Care, Subsidized Guardianship) for your client’s relative/caretaker.

Interstate Placement

When a child is placed out of the state, DCFS, DFS and CPS must comply with the terms of the Interstate Compact on the Placement of Children (ICPC). The ICPC is an interstate agreement among the states that establishes procedures and responsibilities

²⁵ *Supra*, note 22 at 19.

for out of state placements.²⁶ Although a comprehensive discussion of ICPC is beyond the scope of this Manual, a brief explanation of the process is as follows: the state that will receive the child (the “receiving state”) must investigate the family and the home where the child will be sent to determine if the child will be safe in that home and then notify the sending state of its findings. If the sending state sends the child, it remains primarily responsible for the child’s welfare. The ICPC process often takes several months, although the Safe and Timely Interstate Placement of Foster Children Act of 2006²⁷ may help by providing incentive payments to states to complete home studies in a timely fashion.

ANNA: Anna was a 16-year old girl awaiting placement with her aunt and uncle in California. The Court had determined that the out of state placement should have priority status, yet she remained in an emergency shelter for over 3 months, prevented from living with willing relatives by a cumbersome ICPC process. A pro bono attorney can ensure that requests to receiving states are made early and that priority cases are expedited.

ICPC Regulation 7 mandates that proposed placements with a close relative of a child who is either under the age of four, in emergency shelter, or who already has spent a substantial amount of time with that relative, are deemed “priority placements” and receiving states must reach a decision on placement within twenty business days of receipt of the request for investigation from the sending state.²⁸ However, ICPC lacks enforcement mechanisms: while it permits a judge from the sending state to contact a judge in the receiving state about delays in approving placements, nothing requires the judge in the receiving state to answer the telephone!

There are many voices urging a change in the ICPC – particularly, in providing meaningful enforcement or other remedies for intransigent behavior by a potential receiving state. However, unless change comes, the process will be

fraught with delays and complaints.

If you believe that the ICPC process is lagging in your case, bring this to the attention of the court and/or contact your mentor at the Children’s Attorneys Project for advice.

Open Adoption

A lawyer’s representation should last until the case is closed. The case will be closed when the child is reunified with his familil or when a permanent guardian is found and the county wardship is terminated or when the child is adopted.

Some parents recognize their limits and choose to relinquish their parental rights. Relinquishment is a courageous action and has advantages for your client. First, it speeds up adoptions. Second, it eliminates an adversarial tone from the proceedings. Third, in some cases, this voluntary act by parents gives the child “permission” to fully bond with a new family.

²⁶ N.R.S. § 127.320, *et. seq.*

²⁷ Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239).

²⁸ Regulation VII of the ICPC.

Some parents agree to relinquish their parental rights in hope that an open adoption agreement can be negotiated. An open adoption is one where an agreement between the adoptive parents and the biological parents is reached regarding communication between the families in the future. The communication can be as much or as little as the parties agree. For example, an adoptive family might agree to send a picture once a year to DFS for the biological parent to pick up. The adoptive family may agree to invite the biological parent to a birthday party every year or may agree to a regular visitation schedule. The agreement can be as open or as closed as the parties desire.

Whether or not you should advocate for an open adoption depends on your client's wishes. If the parties decide to attempt to negotiate an open adoption agreement, you should be very actively involved in the negotiations, since it may require that your client continue a relationship he has no interest in maintaining. An Open Adoption Agreement will not work, even if both sets of parents agree, if your client does not want to participate.

N.R.S. § 127.187 states that the prospective adoptive parents and natural parents may “enter into an enforceable agreement that provides for post-adoptive contact.” However, a parent's agreement to relinquish parental rights cannot be contingent on the parties agreeing to an open adoption. Further, an Open Adoption Agreement should be drafted as a separate contract, enforceable under contract law. (See, Appendix B – Open Adoption Contact Agreement).

RICHARD: Richard was eight years old when his father abandoned him. He came into the foster care system diagnosed with severe developmental and educational problems. After being bounced around, he was placed in a loving foster care home with a woman who wanted to adopt him. In the process of finalizing the adoption, the father changed his mind and asked the state to reunite them. The child was terrified of returning to his abusive father just when he was finally getting a permanent home. A CAP attorney represented Richard and succeeded in allowing him to be adopted into his new family, while allowing him to see his father through visits in an “open” adoption. Richard is thriving in his new loving adoptive home.

Open adoption is a rapidly changing area of law. Many studies have been done about the benefits and detriments of open adoption. Many articles have been written about the legality of the agreements. This continuing debate gives a lawyer wide latitude to creatively develop mutually satisfactory agreements.

Adoption Assistance

Sometimes financial and other assistance is required in order to make a child with “special needs” adoptable. Nevada defines a child with special needs as one who has at least one of the following needs or circumstance that may be a barrier to placement or adoption without financial assistance:

- a. Five years of age or older (if age is the only factor);



- b. Race;
- c. Member of a sibling group of two or more children to be placed together and at least one of the children is three years of age or older;
- d. Diagnosis of a medical, physical, emotional or mental disability or documented history of abuse/neglect requiring ongoing treatment intervention; or
- e. At risk of developing further problems due to documented factors in his/her background. (“At risk” means those genetically related to persons having inheritable physical, mental, emotional or behavioral concerns; prenatal substance abuse exposure; or other factors determined by a treatment professional to potentially result in a future need for treatment or special services.)

Under Nevada law, people adopting “special needs” children are entitled to subsidies, which are loosely defined. The amount of an Adoption Subsidy is negotiated in each case. Adopting parents who do not agree with the DFS “offer” are entitled to an independent administrative review of the proposed subsidy and if they are not satisfied with the result of that review, are entitled to judicial review.

Any Adoption Subsidy is subject to annual renewal and review: adoptive parents receive an annual adoption assistance review form that updates the agency of any change in living or school arrangements, family circumstances or the needs of the child. If the adoptive parents dispute the agency’s determination after annual review, they may seek administrative review and are entitled to enjoin any changes in their existing agreement during the review period (and judicial review thereafter).

In addition to the subsidy, the family may receive additional money per child to cover non-recurring adoption expenses. There are other services that may be provided to an adoptive family: parent training, support groups, case management, therapeutic counseling/intervention, homemaker services, child care and respite care. Not all of these services will be offered in each case. However, these support services are intended to prevent a failed adoption, so if possible, you should advocate with the Permanency Worker and Adoption Worker for the maximum benefits for your client’s new family.

If you have questions regarding Open Adoption Agreements, Adoption Subsidies or post-adoption services – what is an appropriate level of assistance to expect, what the prospective adoptive parents should ask for in a particular case – please feel free to contact your mentor at the Children’s Attorneys Project for advice or assistance.

Psychological/Behavioral Issues

At some point, your client may be placed in one of the various locked “mental health” facilities. These facilities include Montevista Hospital, Spring Mountain Treatment Center, Desert Willow Treatment Center, and Desert



Parkway Behavioral Healthcare Hospital.

Prior to 2005, a caseworker could place a child in such a facility without prior court approval: AB 369 passed in 2005 requires court review of any *proposed* placement in a restricted setting, a review within five business days of any *emergency* placement in such a facility, and limits the duration of each admission.

N.R.S. § 432B.6075 requires that DFS file a Mental Health Petition before admitting a child to a locked facility. If DFS files such a petition, the statute requires that the child **must** have counsel appointed for him. The petition must be supported by a certification of a physician, psychiatrist or licensed psychologist, stating that examination of the child revealed that he is emotionally disturbed and likely to harm himself or others if not admitted to a restricted facility. The court must find, **by clear and convincing evidence**, that a child's behavior is such that he is likely to harm himself or others if not admitted to such a facility. Before an Order for Admission or Renewal of such an order can be issued, the court must explore other alternative courses of treatment within the least restrictive appropriate environment. N.R.S. § 432B.6076

The initial court order supporting any admission authorized under N.R.S. § 432B.6075 expires in ninety days. If DFS believes your client should remain in the locked facility, the DA will have to file another petition, alleging why further treatment in the facility would be in the best interests of the child. N.R.S. § 432B.608. Any renewal of the order for admission will last for only sixty days. Any subsequent renewal(s) will be for successive sixty day periods and will require the filing of a new petition in each instance.

Sometimes, your client will want to remain in the facility. If he consents to remain, it is important that he be physically present at the court hearing to voice his consent. If he consents, you should negotiate a lesser amount of time in exchange for his consent – that is, thirty days as opposed to ninety, for example. Usually, the DA will be so pleased that he/she does not have to put on a full offer of proof that he/she will gladly agree. Other times, your client can't get out of the locked facility fast enough! He will want you to attack the validity of the assertions in any petition seeking his admission/commitment to the facility. You may ask the court to order that a second opinion be obtained, paid by DFS, to corroborate or contradict the medical certifications that accompany the petition. N.R.S. § 432B.6078. You may always attack the proposed commitment on the ground that less restrictive treatment options are available and should be offered to your client.

You should be aware that state child welfare agencies and private foster care agencies are reimbursed at higher levels for "intensive need" placements. It is a perverse truth that the Medicaid system of reimbursements provides an incentive to label children with a psychiatric disorder,

JIMMY: Jimmy was a 13-year old who had been in foster and group homes almost since birth. At the time his case was assigned to pro bono attorney, Jeffrey Kerrane, Esq., he had spent nine months in a locked treatment facility, where his only opportunity to go outdoors was a small enclosed courtyard. Not surprisingly, Jimmy has a history of behavioral problems. Within one month after he had an attorney, Jimmy was transferred to a group home, and began attending junior high, doing well both academically and socially.

institutionalize and drug them. More federal dollars are available for foster care placements and for related services to a “labeled” and medicated child.

Psychotropic Drugs/Chemical Restraint

Closely related to the “involuntary commitment” issues lurking in locked facility placements is the issue of involuntary chemical restraint.

As previously mentioned, it is entirely predictable, if not totally understandable, that your client displays anger, depression, resentment or anxiety. Children struggling to cope with the trauma that brought them into protective custody “act out” not because they are sick, but because they are healthy. Most adults wrenched from the bosom of their family through no fault of their own would likewise respond with significant behavioral changes. However, foster children are frequently diagnosed with non-organic psychic illnesses and medicated to induce docility.

It is undeniable that many psychotropic drugs are the wonders of modern medicine and that mood altering drugs can cause significant, positive behavioral changes in adults. However, many modern psychotropic drugs have had little or no research into the safety of their administration to children or their potential long term effects on a developing brain and body. The administration of these drugs may manifest themselves in noticeable ways: semi-comatose or flat, “zombie-like” affect, lethargy, inability to focus, mental slowness, drooling, twitching, sudden weight gain or weight loss, etc.

B: B was a 14-year old, inappropriately placed in a treatment facility where he was overmedicated and very unhappy. There was another child at the facility with a similar name: due to administrative confusion, B was accused of the other child’s inappropriate behavior and denied privileges. CAP worked to resolve all of these issues and B was moved into a group home where his attitude and condition improved.

In addition, seldom will your client be on a single drug. Rather there will be a pharmaceutical cocktail of psychotropic drugs that will be administered to him on a daily basis, despite the absence of research into potential drug interactions and adverse physical effects when multiple drugs are given to young children.

Moreover, the mere administration of mood altering drugs may have psychological effects on your client: he learns he is not responsible for his own actions, he may come to see himself as somehow deficient or “defective”, he learns to use drugs to deal with social/academic problems, and he suffers the stigma of being labeled with a psychiatric disorder (with potential long-term consequences for future employment or education opportunities or even obtaining a driver’s license). If your client is medicated to an alarming state, there are

several things you might do.

First, learn your client’s medical history. You should request copies of his medical chart and previous medical records to get a current list of the medications he is being given. Review all hospitalization records, and especially note the nurse’s notes (most likely to be the one involved with the child and noted behavioral characteristics that led to

administration of the drugs). It is important that you elicit, from teachers, parents, other adults who know your client, what his behavior was before the drugs were administered.

Second, talk to the mental health professional who prescribed the medications:

- 1) What is the child's diagnosis?
- 2) What is the name of his current medications? Are they known by other names? Are there alternatives? Are the medications addictive? Can they be abused?
- 3) How will each individual drug help your client? How long before an improvement should be seen? How long will you continue administration without this improvement before his medication is changed?
- 4) What is known about the drug's use in children your client's age: efficacy, known adverse effects, and rare or serious side effects?
- 5) Were laboratory tests done before the medications were administered? Will any tests need to be done while your client is taking the medication?



Third, learn about the prescribed drugs, including the manufacturer's recommendations (indications and contraindications), side effects and whether they have been clinically tested on children. Information can be found in the most recent version of the *Physician's Desk Reference (PDR)*²⁹ and *The Essential Guide to Prescription Drugs*³⁰.

Fourth, file a motion to ask the court to order a second medical opinion as to the type and amounts of medications that are safe and appropriate for a child your client's age, in your client's condition. N.R.S. § 432B.6078.

Fifth, develop strategies for the hearing on the motion. Since any restraint placed upon a child in protective custody should be the least restrictive type and amount, you may be able to demonstrate that no alternatives were first tried before drugs were administered. Be prepared with documentation (the PDR, for example) of side effects. In the case of individual drugs – they were probably not clinically tested on children. In the case of multiple drug therapies, there is little, if any, research into drug interactions, and the long-term effects on developing brains and bodies are unknown. You can challenge the diagnosis – there are no known “organic correlates” (physical findings) that diagnose “behavior disorders” – their diagnosis is entirely subjective. You can demonstrate that no blood tests, ECG, EEG,



²⁹ The PDR is published by Medical Economics Company of Montvale, N.J. and is available on-line at <http://www.pdrhealth.com/drugs/drugs-index.aspx>. Supplements are published two times a year.

³⁰ James J. Rybacki & James W. Long, *The Essential Guide to Prescriptions Drugs* (Harper Perennial, 1997).

MRS, CT or PET scan or other objective test were completed before diagnosis. There is no “treatment specificity” for behavior disorders – if a child has seen multiple doctors, the child has probably been given a laundry list of different psychotropic drugs. Most importantly, you need to develop the idea that the drugs are not being used to address any empirically identified physical pathology, but rather to treat behavior.

Children under medication are “reviewed” by a psychiatrist every 30 days, to verify the appropriateness of the prescriptions. These can be cursory or perfunctory reviews. If you think your client is over-medicated, it is important for you to attend this medical review with the prescribing psychiatrist to ensure that this review of your client’s medications is comprehensive.

In 2011, there was a change to the statute which established “persons legally responsible” for the psychiatric care of the child, commonly referred to as PLR’s. Any child who is receiving psychiatric care must have a PLR appointed to him. This person can be the natural parent or the foster parent, but most often the default, DFS Nursing staff, is nominated and appointed by the court. Although this law was well-intended, it has created issues regarding in some instances, the quality and training of the PLRs coupled with the heavy caseloads of the DFS Nursing staff. You will still need to keep a close eye on this issue in the event your client is receiving psychiatric services. Feel free to contact your mentor at the Children’s Attorneys Project for help.

The Child Welfare League claims that more than eighty percent of children in foster care have developmental, emotional or behavioral problems: “the frequency and severity of emotional problems among children in foster care seem to be strongly related to their history of deprivation, neglect and abuse, and the lack of security and permanence in their lives.”³¹ In 2005, the State of Nevada had 4,696 children in out-of-home care. It is understandable that a burdened child welfare/children’s mental health system sees psychotropic medication of children as a “quick fix”. However, what is understandable is not excusable – children in foster care should not have their physical or mental health compromised in order to makes their numbers “more manageable.” We should not subject vulnerable children to potent drugs simply to make them submit to a system that fails to meet their needs.

Special Immigrant Juvenile Status

Special Immigrant Juvenile Status (SIJS) is a federal law that assists certain undocumented children in obtaining legal permanent residency. Typically, SIJS is granted to children who are placed in foster care (although children under the jurisdiction of the juvenile delinquency court may also be eligible for SIJS). Special Immigrant Juvenile Status is a way for a ward to become a lawful permanent resident of the United States (i.e., get a "green card"). A lawful permanent resident has the right to

³¹ Child Welfare League of American, Child Mental Health: Facts and Figures, <http://66.227.70.18/programs/bhd/mhfacts.htm#FACTSHEETS>.

live and work permanently in the United States and to travel in and out of the country. Also, after five years, permanent residents can apply for U.S. citizenship.

Lawful permanent resident status is permanent – a Special Immigrant Juvenile who obtains permanent residency will keep it after he is no longer under juvenile court jurisdiction. The person remains a permanent resident for his entire life. The only reason it would end would be if the person became deportable for some reason, such as violation of certain laws or conviction as an adult of certain criminal offenses.

The above benefits come with the green card, but two important benefits come as soon as the SIJS packet is submitted to the U.S. Citizenship and Immigration Services (USCIS). The child who has submitted the SIJS Petition and adjustment of status application are protected against deportation and are granted employment authorization until their cases are decided.

To qualify as a Special Immigrant Juvenile, the applicant must meet the following criteria:³²

- The child must be under 21 years of age on the filing date of the SIJ Petition;
- The child cannot be married (includes a child whose marriage ended because of annulment, divorce or death);
- The child must be dependent on a juvenile court in the U.S., or the child must be placed in the custody of an agency or department of the state or an individual appointed by the juvenile court;
- Reunification with one or both of the child's parents is not viable on account of abuse, abandonment, neglect, or a similar basis under state law;
- It is not in the child's best interest to return to his country of nationality or country of last habitual residence; and
- The child must be inside the United States at the time of the filing of the SIJ Petition.

Before a child can apply to the USCIS for SIJS, the juvenile court must first make several findings of fact concerning the child's SIJS eligibility.³³ The court must find:

- The child is dependent upon the juvenile court or has been legally committed to, or placed under the custody of, a state agency or an individual or entity appointed by the state or juvenile court;
- The child's reunification with one or both parents is not viable due to abuse, neglect, abandonment or a similar basis under state law; and
- It is not in the best interest of the child to be returned to his country of nationality or country of last habitual residence.

³² 8 C.F.R. §204.11(c); TVPRA §235(d).

³³ INA§101(a)(27)(J); 8 U.S.C. §1101(a)(27)(J).

Upon receipt of the court order, the SIJS application can be completed. The child, a caseworker, or an attorney can complete the application for SIJS. The child must complete the USCIS forms (including the adjustment of status to lawful permanent resident application), obtain a special medical exam and provide fingerprints, a photograph and proof of age. The application must include the SIJS court order. There is a fee for the application process, but a fee waiver is available. The application can be obtained from the USCIS website at www.uscis.gov.

The USCIS will grant the applicant employment authorization as soon as the application is filed and schedule a date for the SIJS interview. Generally, the USCIS will decide the case at the time of the SIJS interview, which is normally scheduled within 180 days from the official filing date of the SIJS application.

At age 18, an eligible youth, who has been a legal permanent resident for at least five years, can apply for citizenship. Since the granting of SIJ status is based on allegations of abuse, abandonment or neglect by the applicant's parents, a person who receives a green card, or even ultimately citizenship through the SIJ program, cannot petition his parents to become lawful permanent residents, even if parental rights were not terminated. The child can petition for his brothers and sisters to receive a green card, however, the child must wait until he becomes a U.S. Citizen and is at least 21 years old.

Although lawful permanent resident status is permanent, green cards are only valid for ten years and must be renewed before the card expires. Furthermore, in order for the child to get Medicaid coverage, he must wait five years after receiving "qualified" immigration status.

Note: SIJS applications are not confidential. When a child applies for SIJS, he alerts USCIS that he is residing undocumented in the United States. If USCIS denies his SIJS application, USCIS may use the information from his application to initiate removal proceedings against him. It is, therefore, very important that you assess the strength of your client's position. Since SIJS can be a complicated process, you should contact your mentor at the Children's Attorneys Project for assistance and advice. Our office can also handle this portion of the case with you or for the client.

"Aging-Out" – Independent Living

Our clients are legally adults on their 18th birthday, and that means making some decisions about their lives and the direction they want to go. Foster children who "age out" at 18 have choices, and it is our responsibility as their attorneys to counsel them on their options and guide them in their choices.

Most of our 18 year-old clients who have been raised in the foster care system want to be independent, but lack the skills, the finances and the life experience to be on their own. Many have not yet graduated from high school or want to go to college. If you have a client who is about to “age out” of the system or who wants to be independent, you should work with the caseworker, the client, and the adult(s) with whom your client will be living during this transition period (i.e., foster parents, parent of a friend, other adult, or Center for Independent Living) to develop an independent living plan for your client.



Assembly Bill (AB) 350

A law affecting all children “aging out” went into effect during the 2011 Legislative Session. AB 350 (codified in NRS 432B.591 to 432B.595) allows young adults to voluntarily remain under the Juvenile Court’s jurisdiction beyond the age of 18 up to age 21. It is a popular choice, because it pays clients a monthly stipend while they work to reach their life goals. AB 350 clients get a special worker whose job is to help young adults set and achieve their life goals. As adults, our clients make their own decisions about where to live and with whom. The court retains jurisdiction for the limited purpose of resolving disputes. Clients can stay under AB350 and get paid until age 21, even if they leave the state of Nevada, so long as they are making progress toward achieving their goals. Because this has been the most popular option, AB 350 is spelled out in more detail below.

“Child” is *redefined* in NRS 432B.040 to mean a person who is below the age of 18 or if in school until graduation from high school;

As used in NRS 432B.591 to 432B.595, “child” refers to a person who is:

- Under the age of 18, and
- Over 18 and remains under the jurisdiction of the juvenile court.

AB 350 requires that:

- The court to refer **ALL** children to an attorney at age 17 if reunification is unlikely to occur;
- The court to request that the attorney advise the child of the legal consequences of remaining under the jurisdiction of the court versus “aging out”;
- DFS to meet with the child at least 120 days prior to his 18th birthday to determine whether or not the child intends on requesting that the court retain jurisdiction past his 18th birthday; and,
- The child is allowed to change his mind regarding this decision any time prior to his 18th birthday by either informing DFS or the court directly.

If the court retains jurisdiction, DFS must develop a written plan to help the child transition to independent living which must contain the following goals:

- Child saves 3 months worth of expenses;
- High school diploma or GED;
- Postsecondary or vocational education;
- Getting or seeking a job with at least 80 hours a month;
- Housing;
- An identified adult who will be a mentor; and,
- Connect the child with appropriate services to address any issues with mental health or developmental delays.

DFS must then do the following:

- Monitor the independent living plan and adjust as needed;
- Contact the child by phone once a month and make in person contact at least once every 3 months;
- Ensure that the child has a mentor; and,
- Conduct a meeting with the child at least 30 days but not more than 45 days before court jurisdiction terminates to determine if the child requires any additional guidance.

Jurisdiction over a retained child continues until the first of the following conditions is met:

- DFS, child, and the child's attorney agree to request termination of jurisdiction;
- The court determines that the goals set forth in the child's written plan have been met;
- The court determines that the child is not making a good faith effort to achieve the goals in the written plan;
- The child's circumstances have changed in a way such that it is infeasible to achieve the goals in the written plan; or,
- The child voluntarily requests that the court terminate jurisdiction; or,
- The child reaches the age of 21.

If a child requests retention of jurisdiction, a written agreement must be entered into between the child and DFS. This agreement must be filed with the court and must acknowledge that:

- The retention is voluntary on the part of the child, and
- That the child is entitled to continue to receive DFS services and monetary payments made directly to the child or to an agreed upon third party.

DFS is not the legal custodian after the child turns 18 and all proceedings pursuant to NRS 432B.410 through 432B.590 will terminate.

If an issue or disagreement arises involving a child who remains under court jurisdiction, DFS, the child and the child's attorney must first try to resolve the matter informally before requesting a hearing. If the issue cannot be resolved either DFS, the child, or the child's attorney may request a hearing.

If DFS is recommending that the court terminate jurisdiction, DFS must send the child and the child's attorney written notice allowing 15 days for either the child or their attorney to request an administrative review. If the administrative review is not requested, the court will terminate jurisdiction upon written notice from DFS. If the administrative review is requested and does not resolve the dispute, a court hearing may be requested.

Step Up

Before AB350 was passed, Step Up was the only aftercare program for young adults aging out of foster care. It still remains a viable option for clients who want to be completely on their own, without any court oversight. Step Up is administered by Clark County Social Services, rather than by DFS. It helps primarily with rent payments and emergency needs, but only as long as the client is working and/or going to school a specified number of hours per week and provides proof. The big drawback to Step Up was that it made rent payments directly to the lessor, and did not make any money payments directly to the client as AB 350 does, leaving clients with no money for food, clothing and other necessities. That has changed, and Step Up now rebates to clients directly the difference between the maximum rent of \$773 and the actual rent the client pays. Like AB350, Step Up is available to age 21. Although there are still some advantages to AB350, (such as better Medicaid), Step Up's combination of rent payment and cash makes it worth a closer look.

If you have a client who receives SSI, it is better for that client to be on Step Up instead of AB 350. As previously mentioned, AB 350 makes payments directly to the client and these funds are considered income. Step Up, on the other hand, makes payments directly to vendors (landlords) and not to clients. Since Step Up money goes directly to the vendor, it is not considered income and therefore, should not affect your client's SSI benefits.

Both programs are to be merged in 2016 and will be administered by Clark County Social Services. Our office has a paralegal that works exclusively with Step Up/AB 350 clients. Contact the Pro Bono Project at probono@lacsns.org to be put in contact with her.

Status Quo

If your client is 18, still in high school and likes living in his/her foster home, he or she can choose to keep things as they are. The client would still have the same caseworker, the permanency review hearings would continue and the foster parent would continue to receive foster board payments. This is possible because AB350 amended the definition

of “child” to include those who have not graduated from high school. Once the client graduates, he/she must choose between AB350 and Step Up.

Be aware that adolescents often “mess up,” and miss school or lose their jobs. It is important to continue to advocate for your client when the caseworker tries to terminate his independent living agreement as punishment for his “youthful errors”.

Nevada’s Foster Youth Bill of Rights and Sibling Bill of Rights

AB 154 (codified in NRS 432.500 to NRS 432.550), Nevada’s Foster Youth Bill of Rights, was enacted during the 2011 Legislative Session and went into effect on October 1, 2011. The Bill of Rights essentially bundled rights afforded to foster children into one easily accessible point of reference. A copy of the poster and brochures can be downloaded and printed from the State of Nevada, Division of Child and Family Services (“DCFS”) website at:

http://dcfs.nv.gov/uploadedFiles/dcfsvgov/content/Programs/CWS/IL/BOR_Poster.pdf

There are two versions of the Bill of Rights Brochure, one being geared toward younger children. Please feel free to distribute a copy of the Bill of Rights to your client in addition to their placement provider.

To further recognize the rights of foster youth, the Nevada Legislature enacted Assembly Bill 393 (AB 393), Nevada’s Foster Youth Sibling Bill of Rights, during the 2013 legislative session. The Sibling Bill of Rights, effective October 1, 2013, promotes the importance of foster youth maintaining their sibling relationships. A copy of the brochure can be downloaded and printed from the State of Nevada, Division of Child and Family Services’ (“DCFS”) website at:

http://dcfs.nv.gov/uploadedFiles/dcfsvgov/content/Programs/CWS/IL/FINALsiblingBOR_Poster.pdf

Nevada's Foster Youth

BILL OF RIGHTS



The State of Nevada, Division of Child and Family Services (DCFS) recognizes the following rights of children and youth in foster care. These rights are intended to guide the child welfare agencies and their providers in the delivery of care and services to foster youth with the commitment to permanency, safety and well being. This Bill of Rights was developed by DCFS in collaboration with Nevada LIFE, the statewide youth advisory board.

You have the right to live:

- ★ *In a safe, healthy, stable and comfortable environment*
- ★ *In a home best suited to meet all your needs*
- ★ *Have adequate and appropriate clothes*
- ★ *Have access to healthy food*

You have the right to be placed:

- ★ *In a home with your siblings whenever possible*
- ★ *In a home of a relative or stay in your own home if safe and appropriate*

You have the right to:

- ★ *Be treated with dignity and respect*
- ★ *Be free from corporal punishment, such as spanking or hitting*
- ★ *Not be locked in any room, physically restrained or be isolated*
- ★ *Be free from unreasonable searches of your personal stuff or other invasions of your privacy*
- ★ *Send and receive unopened mail (unless a judge says someone else can open your mail)*
- ★ *Go to religious services and activities of your choice or refuse to attend religious services*
- ★ *Maintain a bank account and manage your own personal money*
- ★ *Participate in extracurricular, cultural and personal enrichment activities and to have access to transportation, if realistic, for these activities*
- ★ *Make contact with case workers, attorneys, probation officers, CASAs, and anyone else involved in your case (openly or confidentially)*
- ★ *To talk to your caseworker at least once a month*
- ★ *Participate and be included in your case plan and attend court hearings*
- ★ *Be told about any changes in your case plan or placement*
- ★ *Complete an identification kit which includes your photo and other identifying details you would like to include that will be kept in your file by the child welfare agency, please ask your caseworker for more information*
- ★ *To attend Independent Living Program classes (if you are 15 or older)*
- ★ *To work or be trained to work, if 16 or older and it has been authorized by your case worker*

You have family rights too:

- ★ *You can visit and contact your brothers and sisters, parents and other family members (unless a judge says you cannot)*

You have medical and health rights:

- ★ *You must receive appropriate medical care, which includes seeing a doctor, dentist, eye doctor and talking to a counselor*
- ★ *To take psychotropic medications only if it meets all requirements of Nevada law (NRS 432B.197)*

You have school rights. You should be able to:

- ★ *Attend the school that you were enrolled in before coming into foster care, if it is realistic and in your best interests*
- ★ *Have your educational records transferred quickly when you need to attend a new school*
- ★ *Go to school every day*
- ★ *Attend after school and extracurricular scholastic activities that you were enrolled in before being placed in foster care*
- ★ *Get help with school if you need it*
- ★ *Not be identified as a foster child to other students by any one employed at your school*
- ★ *Have access to information about educational opportunities like scholarships for college and vocational school (if you are 16 years or older)*

If you believe that your rights have been violated or that you are being treated differently because of your race, ethnicity, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability or exposure to HIV, you have the right to have any violations resolved. You can talk about this with:

- ★ *Your foster care provider*
- ★ *An employee of the foster home*
- ★ *An employee of the juvenile court*
- ★ *Your guardian ad litem and or CASA*
- ★ *Your attorney*
- ★ *Your case worker or other employee of the child welfare agency*

Your foster care provider may impose reasonable restrictions on the time, place and manner in which you can exercise your rights if they determine that any restrictions are necessary to keep the order, discipline or safety of the foster home.

As enrolled into Nevada law by Assembly Bill 154 effective October 1, 2011



State of Nevada
Department of Health and Human Services
Division of Child and Family Services

Nevada's Foster Youth

SIBLING BILL OF RIGHTS

The State of Nevada, Division of Child and Family Services (DCFS) recognizes the following rights of children and youth in foster care. These rights are intended to guide the child welfare agencies and their providers in the delivery of care and services to foster youth with the commitment to permanency, safety and well-being. This Sibling Bill of Rights was developed by DCFS in collaboration with *Nevada LIFE*, the statewide youth advisory board and expands the rights of children in foster care (NRS.432.525 – NRS.432.530).

WHEREAS, The importance of sibling relationships is widely recognized; and

WHEREAS, Siblings share similar history, heritage and culture which is important to preserve; and

WHEREAS, Separation from siblings is a significant and distinct loss, and the effect of that loss can be lessened by frequent contact between siblings; and

WHEREAS, Maintaining sibling relations fosters a sense of continuity and stability for children placed in foster care; and

WHEREAS, Every foster child deserves to know and be actively involved in the lives of his or her siblings, absent extraordinary circumstances.

You have the right:

- ★ To be placed with your siblings, whenever possible, if your siblings are also placed outside of your home.
- ★ To be placed in close proximity to your siblings to facilitate frequent contact.
- ★ To contact and visit your siblings, except if prohibited by a judge, and to have contact arranged on a regular basis and on holidays, birthdays and other significant life events.
- ★ Not to have contact or visitation with a sibling withheld as a form of punishment.
- ★ To be informed of any plan to change, or change in, the placement of a sibling, including, without limitation, a plan to change the placement of a sibling resulting from adoption, reaching the age of 18 years or otherwise leaving a foster home.
- ★ To be supported by the Child Welfare Agency in your efforts to maintain relationships with your siblings.

If you believe that your rights have been violated or that you are being treated differently because of your race, ethnicity, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability or exposure to HIV, you have the right to have any violations resolved. You can talk about this with:

- ★ *Your foster care provider*
- ★ *An employee of the foster home*
- ★ *An employee of the juvenile court*
- ★ *Your guardian ad litem and or CASA*
- ★ *Your attorney*
- ★ *Your case worker or other employee of the child welfare agency*
- ★ *DCFS Systems Advocate Unit 775-684-4453*

Your foster care provider may impose reasonable restrictions on the time, place and manner in which you can exercise your rights if they determine that any restrictions are necessary to keep the order, discipline or safety of the foster home.

As enrolled into Nevada law by Assembly Bill 393 effective October 1, 2013



State of Nevada
Department of Health and Human Services
Division of Child and Family Services

CHAPTER NINE

Representing Preverbal Children

From birth to five years, children establish the foundation for their future development.³⁴ Abuse, neglect, and removal from primary caregivers profoundly affect the growth and development of very young children.³⁵ As the largest group to enter the child welfare system,³⁶ very young children involved in dependency court proceedings face many disadvantages, traumas, and losses during a critical time of early brain development.³⁷

Age is strongly associated with (1) the likelihood of the child entering the child welfare system; (2) how long the child will remain in out-of-home placements; (3) how the child exits the system; and (4) the likelihood of the child reentering the system.³⁸ Accordingly, a child's age significantly determines his experience in the child welfare system.

Understanding that representing a young child is challenging, the American Bar Association adopted the Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings. The ABA Model recommends that an attorney for a child, after making a determination that the child has diminished capacity³⁹, should make a substituted judgment determination.⁴⁰ A substituted judgment determination is not the same as determining the child's best interest; it involves determining what the child would decide if he were able to make an adequately considered decision.⁴¹ When determining a substituted judgment position, you should take into consideration the child's legal interests based on objective criteria as set forth in the laws applicable to the proceeding, the goal of expeditious resolution of the case, and the use of the least restrictive or detrimental alternative available.⁴²

To effectively represent your client and strengthen your ability to handle ethical dilemmas that may arise, your advocacy for a young child should be (a) child-centered, (b) research-informed, (c) permanency-driven, and (d) holistic.⁴³ These four elements of representation are mutually dependent and each must be followed to produce the best outcomes for very young children in dependency proceedings.

³⁴ Candice L. Maze, J.D., American Bar Association, *Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation*, ABA Center on Children and the Law, October, 2010.

³⁵ *Id.*

³⁶ U.S. Department of Health and Human Services, Administration for Children and Families: *The AFCARS Report*. Washington, D.C.: Administration on children, Youth and Families, Children's Bureau, 2015. Available at <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf>.

³⁷ *Supra*, note 34.

³⁸ *Id.*

³⁹ American Bar Association Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings, Sec. 7(e) – Commentary, August, 2011.

⁴⁰ ABA Model Act at Sec. 7(d).

⁴¹ ABA Model Act at Sec. 7(d) – Commentary.

⁴² *Id.*

⁴³ *Supra*, note 34.

*Child-Centered Advocacy*⁴⁴

Child-centered advocacy requires making the child's viewpoint the focus of all advocacy. The child's needs and interests, not the adults' or professionals, must be the center of all advocacy. Child-centered advocacy includes the following:

- Learn the child's history:
 - What kind of prenatal care did the mother receive?
 - What kind of early medical and dental care did the child receive?
 - Has the child received immunizations and required health screenings?
 - What kind of relationship does the child have with his parents or other key caregivers?
 - Who cared for the baby before the child entered the system?
 - What child care or early education has the child experienced?
 - What are the familiar comforting items in the child's life?;
- Get to know the child – getting to know your client requires you to visit the client regularly and interacting with him during those visits;
- Ensure the child receives:
 - An initial health screen upon entering care;
 - A comprehensive health assessment within 30 days in care;
 - Proper immunizations; and
 - Appropriate dental care;
- Observe the child's interactions with substitute caregivers (primary relationships):
 - Are the child's needs being met?
 - Does the caregiver interact in a loving, gentle manner with the child?
 - Is the caregiver warm and nurturing?
 - Does the caregiver smile and speak kindly to the child – does the child smile and/or gurgle back?
 - Does the child use the caregiver as a point of reference – physically or verbally connecting with the caregiver after exploration?;
- Understand the parent-child relationship:
 - Does the mother gently soothe the child's cries or is she rough and dismissive?
 - Does the father join in the visits?
 - Is the parent making an effort to interact?
 - When the child requires redirection – is this handled with understanding or is the parent rough and demeaning to the child?;
- Become familiar with the child's environment:
 - In the child's home, are there developmentally appropriate books and toys?
 - Does the child have a safe place to sleep, eat, and play?
 - Does the child have weather-appropriate clothing?

⁴⁴ *Id.*

- Are the child's cultural background and experiences reflected in the environment (i.e., foods, languages, customs)?
- Ensure the child appears before the judge during the process – the presence of the very young child keeps everyone focused on that child.

*Research-Informed Advocacy*⁴⁵

Research-informed advocacy requires the attorney to understand early childhood development and how child abuse and neglect can disrupt healthy physical, social, emotional, and cognitive development. You, as the child's attorney, should ensure that the child is screened for developmental delays and is actually linked to a service or treatment while in care. In Nevada, children should be referred to Early Intervention Services.

*Permanency-Driven Advocacy*⁴⁶

Permanency-driven advocacy requires the attorney to make permanency for their client a priority from day one. Often in child abuse and neglect cases, the early events of the case predict the final disposition. You should keep all people focused on visitation, placement, and services. Permanency should be revisited monthly. It should not be driven by the court process, but by the child's needs and the parent's ability to provide a safe and stable home for the child.

To ensure that permanency is obtained in a timely-manner, concurrent planning should be promoted when it is appropriate. For concurrent planning to be effective, the caregivers (relatives and/or foster families) must be trained and educated to understand the dual requirement of committing long-term to the child, while also supporting the parent(s) toward reunification. In addition, it is essential for the caseworker to search for potential relative placements at the beginning of the case to avoid unnecessary, multiple placement changes for the child.

Consistent contact between the parent and the child improves the chances for reunification and promotes a healthy attachment between the child and his parent(s). When safe, both physically and emotionally, frequent visits and contact between a very young child and his parent(s) are essential to permanency. Unless clearly harmful to a very young child, visitation three-to-four times a week in as normal a setting as possible, is essential to healing the parent-child relationship and setting up the best possible chance for reunification.

Contact between parents and children should be:

- Frequent (multiple time a week);
- Long enough to allow a range of experiences for the parent and child (e.g., diaper changing, playing, feeding);

⁴⁵ *Id.*

⁴⁶ *Id.*

- Connected to daily activities (e.g., going to the park, taking a walk, visiting the pediatrician);
- In the least restrictive, most natural, home-like setting; and
- Conducive to meaningful parent-child interaction.

Identifying and engaging fathers and paternal relatives of children in the child welfare system is a challenge for all professionals. Case managers and others often overlook or disregard fathers as uninterested or incapable of caring for a very young child. While this sometimes is the case, many fathers and paternal relatives are willing and able to be a resource for the child, whether as a permanent or temporary placement, a source of information about the child (e.g., medical history, other relatives), or by providing financial, emotional, or other support.

Advocates must ensure diligent searches for fathers occur early in the process and fathers are offered equal opportunities to parent their children, if interested and capable and no safety concerns exist. When fathers or paternal relatives cannot be located early, despite diligent efforts, the child advocate must ensure the agency continues its search as the case progresses and new information becomes available.

*Holistic Approach*⁴⁷

The holistic approach to child advocacy requires the attorney to ensure the child's needs are met through the entire dependency system. Much of what happens in a child welfare court case takes place outside the judge's presence. Thus, advocacy outside the courtroom is as important as advocacy inside the courtroom.

Just as you must appear for all court hearings, it is equally important that you appear for meetings. Formal and informal permanency, treatment, and service meetings take place regularly, often without involving the child's advocate. There is a perception that very young children are not impacted by the child welfare process. Subsequently, without their representative present at hearings and meetings, their perspective and individual needs and interests are not considered during planning efforts and decision making. It is up to you to be the child's voice and to zealously advocate for his needs and interests.

Often in dependency court, the child's attorney is the one consistent professional involved with the case from the beginning. The attorney knows the case history better than anyone and should connect with caregivers, caseworkers, childcare/early education providers, CASAs, and others involved in the child's case. You should educate service providers, new case managers, and teachers about the child and make sure these professionals understand the child's special needs and attachments.

As an attorney representing a very young or preverbal child, you can greatly influence the child's health, development, and well-being.⁴⁸ An effective advocate can, and should, set or maintain the child on a healthy developmental path and effectively guide

⁴⁷ *Id.*

⁴⁸ *Id.*

the child towards a speedier permanency – whether it is reunification or some other permanency option, such as adoption.⁴⁹

Representing preverbal children in dependency proceedings can be very challenging. However, an attorney who commits to child-centered, research-informed, permanency-driven, and holistic advocacy can promote the best outcomes for every child that he represents. If you have questions regarding representing a preverbal child, please feel free to contact your mentor at the Children’s Attorneys Project for advice or assistance.

⁴⁹ *Id.*

CHAPTER TEN

Advocating with Others on Your Client's Case

CPS and DFS Caseworkers

Lawyers who represent children in abuse and neglect proceedings will have frequent contact with social workers. It is always advantageous for the client if the lawyer develops a good working relationship with the CPS or DFS caseworker. The caseworker, as a representative of DFS, has legal custody of the child. Since the caseworker is the legal custodian of the child, asking the caseworker to inform the parties that you have the right to access your client's records or other related records, or that you wish to see your client is often quicker and easier than getting a court order for access. Consulting the caseworker at the beginning of the case can get you information that is not reproduced in written reports. You should also periodically speak with the caseworker to stay up to date on the events in your client's life. Frequently, you can often achieve your client's goals just by talking with the caseworker.



Many caseworkers have a heavy caseload and work long hours. It is important to keep this in mind when working with them. Often, they are as frustrated with the system and its lack of resources as you are. Accommodating the caseworker when possible and being aware of the constraints he or she is under can go a long way in developing and achieving your client's goals.

Despite the fact that the caseworker is your client's legal custodian, he or she cannot control your representation of your client. The caseworker cannot dictate when, where, or how often you may see or speak to your client. The caseworker cannot define or limit the scope of your representation. The worker also has the responsibility of informing foster parents that they cannot control your access to your client either and that they are under the same constraints as DFS in regard to allowing you access to your child and any information in their possession or control regarding your client.

Court Appointed Special Advocates (CASA)

N.R.S. § 432B.500 makes provision for the appointment of a guardian *ad litem*, or volunteer CASA, for children involved in abuse and neglect proceedings. According to the statute, the CASA must:

“Represent and protect the best interests of the child until excused by the court; thoroughly research and ascertain relevant facts of each case for which he is appointed, and

ensure that the court receives an independent, objective account of those facts; meet with the child wherever the child is placed as often as is necessary to determine that the child is safe and to ascertain the best interests of the child; participate in the development and negotiation of any plans for and orders regarding the child, and monitor the implementation of those plans and orders to determine whether services are being provided in an appropriate and timely manner; inform the court of the desires of the child, but exercise his independent judgment regarding the best interests of the child;...”⁵⁰



It is a good idea to consult with the CASA about your mutual client for several reasons. First, as between you and the volunteer, the CASA is the one most likely to see the child on a regular, frequent basis and therefore will have the latest information about him to share with you. Second, their increased contact with the child and the child’s foster family or natural family makes CASAs an excellent resource to identify issues that need to be addressed by the attorney. Third, it is good to know what the CASA will say to the court before a hearing: you and the CASA may be able to collaborate and present a unified front before the judge (that is, what the child wants is consistent with the child’s best interests). Finally, the CASA may be able to help you achieve your client’s goals. For example, if the child wants sibling visits but the caseworker cannot work visits into the schedule, the CASA may be able to facilitate the visits by agreeing to transport the child and/or supervise the visitation, if that is necessary.

Foster Care Agencies

There are many private foster care agencies for the placement of children that employ their own caseworkers. Some of the agency caseworkers are very involved in a case, others are more hands off. In theory, the DFS caseworker and the foster care agency caseworker will cooperate with each other. If a child is placed in a therapeutic foster home, the lawyer for the child likely will have more contact with the foster care agency caseworker than the DFS caseworker. However, regardless of placement in a privately licensed foster home, DFS retains custody of the child. There are several different private foster care licensing agencies in Las Vegas: the ones that lawyers for children encounter on a regular basis include: SAFY, Eagle Quest, Olive Crest, Bamboo Sunrise and Apple Grove.

It benefits your client if you will take the time to introduce yourself to the foster parents and the agency that licenses them. Developing rapport with the foster parents so that they are amenable to working with you to resolve your client’s concerns may be one way to advocate for your client.



⁵⁰ N.R.S. § 432B.500 (3)(a)(b)(e)(g).

Therapists and Teachers

Families involved in abuse and neglect proceedings can require a multitude of services. In addition to meeting on a regular basis with the caseworker assigned to the case, various members of the family, including your client, are frequently involved in different family therapy sessions and classes. Occasionally you may find it necessary to contact some of these service providers to resolve a concern voiced by your client. You are free to do so. Having a cordial relationship with these people can result in a free flow of information from the service provider to the lawyer.



Permanency Worker

If the parental rights of the biological parents are relinquished or terminated, the client becomes available for adoption. In addition to their overall duties of achieving permanency for children, a Permanency Worker is responsible for completing the Social Summary that is required before an adoption can be completed. If a case moves to the adoption stage, you should find out who the Permanency Worker is and introduce yourself. You can ensure that the child's placement file does not "fall through the cracks" by periodically checking in with the Permanency Worker.

Before a family will be actively recruited to adopt a child, a Social Summary must be completed. A Social Summary is a lengthy document that attempts to tell the child's history in a clear, cohesive way. The Social Summary contains the social and medical history, including history of medical diseases and disorders, alcohol and drug use, for the natural parents and other family members. It also includes behaviors and incidents involving the child. Increasingly, children are tested for fetal alcohol syndrome and other genetic disorders: the results of these tests are included in the Social Summary. The Social Summary generally takes months to complete and consequently can delay the adoption of a child. If your client wishes to be adopted, you will want to urge the court to order that the Social Summary be completed as soon as possible, even before parental rights are terminated.



Delays in processing adoption paperwork means a child languishes in the foster care system for an indefinite period – as the client ages into adolescence buffeted from placement to placement, he becomes less "desirable" to potential adoptive parents and more difficult to place. A delayed or incomplete Social Summary may lead to a failed adoption as the prospective adoptive parents opt for a younger child. Therefore, when your client wants to be adopted, it is critical that you encourage an early start on the Social Summary so that it is thorough and completed in a timely fashion – preferably at or near the time of the TPR.

Delays in adoption after the TPR has occurred do happen even when adoptive resources were identified and ready to adopt. The Children's Attorneys Project has negotiated with DFS on appropriate timelines and a schedule for implementation of the timelines that was memorialized in an informal "consent decree", in lieu of a class action lawsuit filed on behalf of Clark County's children in foster care. Therefore, if your client's adoption appears to be languishing, contact your mentor at the Children's Attorneys Project for advice and assistance.

CHAPTER ELEVEN

Indian Child Welfare Act (ICWA)



In response to the alarming number of Indian⁵¹ children being removed from their homes, in 1978, the United States Congress passed the Indian Child Welfare Act (ICWA). Congress' intent was to "protect the best interests of Indian children and to promote the stability and security of Indian tribes⁵² and families".⁵³ ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe.

When ICWA applies to a child's case, the child's tribe and family will have an opportunity to be involved in decisions affecting services for the Indian child. A tribe or a parent can also petition to transfer jurisdiction of the case to their own tribal court. ICWA sets out federal requirements regarding removal and placement of Indian children in foster or adoptive homes and allows the child's tribe to intervene in the case. ICWA also applies to status offenses or juvenile delinquency proceedings if any part of the proceedings results in the need for placement of the child in foster care, pre-adoptive or adoptive placements, or termination of parental rights. ICWA does not apply to divorce proceedings, intra-family disputes, or cases under tribal court jurisdiction.

Indian children involved in state child custody proceedings are covered by ICWA. In order for ICWA to apply, the involved child must be an Indian child as defined by the law. ICWA defines an "Indian child" as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe".⁵⁴ Under federal law, individual tribes have the right to determine eligibility, membership, or both. In order for ICWA to apply, the child must be a member of or eligible for membership in a federally recognized tribe.

Tribes must be notified immediately if there is any reason to suspect a child may have tribal affiliation or be eligible for tribal affiliation. Many Indians in Nevada may be members of tribes located outside of Nevada, or members of Indian tribes that are not federally recognized. If the tribe is unknown, the Bureau of Indian Affairs (BIA) must be notified.

⁵¹ The term "Indian" is used in this chapter to conform to the language of the ICWA, and refers to those of Native American heritage.

⁵² The term "tribe" is used in this chapter to refer to all Indian tribes, bands, Alaska Native villages, nations, or other organized groups or communities that are eligible, due to their native status, for services or special programs operated by the federal government.

⁵³ 25 U.S.C. § 1902.

⁵⁴ 25 U.S.C. § 1903.

Bureau of Indian Affairs
U.S. Department of the Interior
MS-4606-MIB
1849 C Street, NW
Washington, D.C. 20240
Tel# (202) 208-5116
Fax# (202) 208-6334
feedback@bia.gov

Eastern Nevada Agency
Bureau of Indian Affairs
2719-4 Argent Avenue
Elko, NV 89801
Tel# (775) 738-5165

Western Nevada Agency
Bureau of Indian Affairs
311 East Washington Street
Carson City, NV 89701
Tel# (775) 887-3500
Fax# (775) 887-3531

A tribe may intervene as a party at any time in any foster care or TPR proceeding involving an Indian child.⁵⁵ When a tribe is a party, the court cannot ignore the tribe's interests in the Indian child, even where the tribe's interests conflict with those of the parents.

Even in cases where the tribe declines involvement, states are required to provide active efforts to families. The definition of active efforts is left open in the Indian Child Welfare Act; however, there are federal guidelines to help clarify the definition of active efforts.⁵⁶ Active efforts are intended primarily to maintain and reunite an Indian child with his family or tribal community and to constitute more than reasonable efforts. Furthermore, active efforts should begin the moment the case or investigation begins.⁵⁷

Under ICWA, the caseworker must make several considerations when handling the case, including:

- Providing active efforts to the family;
- Identifying a placement that follows ICWA's preference provisions: (1) A member of the child's extended family; (2) Other members of the Indian child's tribe; or (3) Other Indian families; and
- Notifying the child's tribe and parents of all proceedings; and

⁵⁵ 25 U.S.C. § 1911(c) and N.R.S. § 432B.425.

⁵⁶ Federal Register, Vol. 80, No. 37, Wednesday, February 25, 2015 (Updated the 1979 Bureau of Indian Affairs – Guidelines for State Courts: Indian Child Custody Proceedings).

⁵⁷ Id.

- Working actively to involve the child's tribe and parents in the proceedings.

ICWA is an integral policy framework on which tribal child welfare programs rely. It provides a structure and requirements for how public and private child welfare agencies and state courts view and conduct their work to serve tribal children and families. It also acknowledges and promotes the role that tribal governments play in supporting tribal families, both on and off tribal lands. However, as is the case with many laws, proper implementation of ICWA requires vigilance, resources, and advocacy. Therefore, it is recommended that if your client may be an Indian child, you should notify the Children's Attorneys Project immediately.

CHAPTER TWELVE

Other Useful Information and Resources

Child Haven

Child Haven is located at 701 N. Pecos Road, Las Vegas, Nevada (on the north end of the Clark County Family Court campus). The cottages and telephone numbers for Child Haven are:

-Main Telephone Number:	455-5390
-Alchu (storage):	No phone
-Agassi (medically fragile):	455-5354 & 455-5355
-Beazer:	455-1816 & 455-1817
-Bigelow (Healthy Minds):	455-5353
-Howard:	455-2936
-Nork:	455-5356 & 455-4357
-Obannon:	455-5350

Clark County Community Resource Centers

In an effort to coordinate programs for children and families and provide easy access to services, child welfare, juvenile justice, children's mental health and early childhood services will eventually be co-located in offices in each of five geographic service areas—referred to as Central, West, South, East and North. To accomplish this, the Nevada Division of Child and Family Services, the Clark County Department of Family Services (DFS), and Clark County Department of Juvenile Justice Services (DJJS) provide five parallel service areas, defined by zip code. To find the DFS office nearest to your client or your client's family, find the applicable zip code below.

West - Persons living in one of the following zip codes:

89004, 89103, 89113, 89117, 89118, 89124, 89128, 89129, 89134, 89135, 89138, 89139, 89141, 89144, 89145, 89146, 89147, 89148, 89149, 89166, 89178, 89179.

West Neighborhood Family Services Center

6171 W. Charleston Bldg. 7
Las Vegas, NV 89146
(702) 486-0000

East - Persons living in one of the following zip codes
89109, 89110, 89119, 89120, 89121, 89142.

East Neighborhood Family Services Center

4180 S. Pecos Road
Las Vegas, NV 89121
(702) 455-8806

North - Persons living in one of the following zip codes:
89030, 89031, 89032, 89081, 89084, 89085, 89086, 89087, 89115, 89130, 89131,
89143, 89156, 89191.

Martin Luther Family Services Center

2424 Martin Luther King
North Las Vegas, NV 89030
(702) 455-0740

South - Persons living in one of the following zip codes:
89005, 89011, 89012, 89014, 89015, 89044, 89074, 89122, 89123, 89052.

South Neighborhood Family Services Center

522 E. Lake Mead Pkwy.
Henderson, NV 89015
(702) 455-7900

Central - Persons living in one of the following zip codes:
89101, 89102, 89104, 89106, 89107, 89108, 89130

Central Neighborhood Family Services Center

121 S. Martin Luther King Blvd.
Las Vegas, NV 89106
(702) 455-7200

Resource Organizations (This is a partial listing only and is not an endorsement intended or implied)

American Bar Association Center on Children & the Law

(202) 662-1720
www.abanet.org/child

Child Welfare League of America

(202) 688-4200
www.cwla.org

Children's Defense Fund

(800) 233-1200
cdfinfo@childrensdefense.org
www.childrensdefense.org

Children's Rights Incorporated

(212) 683-2210
info@childrensrights.org
www.childrensrights.org

National Center for Youth Law

(510) 835-8098
www.youthlaw.org

**National Council of Juvenile and Family Court Judges
Permanency Planning for Children University of Nevada**
(775) 784-6012
contactus@ncjfcj.org
www.ncjfcj.org

Youth Law Center
(415) 543-3379
info@ylc.org
www.ylc.org

Internet Resources (This is a partial list only and not an endorsement intended or implied)

American Bar Association Center on Children and the Law <http://abanet.org/child/>
The mission of the ABA Center on Children and the Law is to improve children's lives through advances in law, justice, knowledge, practice and public policy. Their website provides information on their publications, annual report, periodicals, pro bono work, policies, and lawyer standards. In addition, the website hosts a child protection law reform bulletin board, discussion groups, and useful links.

Child Abuse Prevention Network <http://child.cornell.edu/>
Geared toward professionals in the field of child abuse and neglect, this website provides workers with unique and powerful tools to support the identification, investigation, treatment, adjudication, and prevention of child abuse and neglect.

Child Welfare League of America <http://www.cwla.org/>
The Child Welfare League of America, an association of more than 1,000 public and private nonprofit agencies, is committed to engaging all Americans in promoting the well-being of children, youths, and their families, and protecting every child from harm. Their website provides information of CWLA's programs and publications.

Children's Defense Fund <http://www.childrensdefense.org/>
The mission of the Children's Defense Fund is to Leave No Child Behind and to ensure every child a Healthy Start, a Head Start, a Fair Start, a Safe Start, and a Moral Start in life and successful passage to adulthood with the help of caring families and communities. Their website provides information about CDF's current projects and issues as well as lists their publications.

National Adoption Information Clearinghouse
https://www.childwelfare.gov/pubPDFs/adoption_flyer.pdf
National Adoption Information Clearinghouse, a service of the Children's Bureau, Administration on Children, Youth and Families, Administration for Children and

Families, Department of Health and Human Services, is a comprehensive resource on all aspects of adoption, including infant, intercountry, and special needs adoption. Their website provides information on online databases, online publications, what publications can be ordered from them and related links.

National Association of Counsel for Children <http://www.naccchildlaw.org/>

The National Association of Counsel for children is a non-profit child advocacy and professional membership association dedicated to improving the lives of children and families through legal advocacy. The NACC provides training and technical assistance to attorneys and other professionals, serves as a public information and professional referral center, and engages in public policy and legislative advocacy.

National CASA Association <http://www.casaforchildren.org>

The mission of the National Court Appointed Special Advocate Association is to speak for the best interests of abused and neglected children in the courts by promoting and supporting quality volunteer representation for children to provide each child a safe, permanent, nurturing home. Their website features topical articles as well as their library, forums, and training.

National Council of Juvenile and Family Court Judges <http://www.ncjfcj.org>

NCJFCJ's Permanency Planning for Children's mission is to provide an environment for change by supporting and facilitating dependency court teams and by providing education and technical assistance to enable courts nationwide to meet their goals to improve practice in child abuse and neglect cases. Their website provides information on their publications and how to order them and about their projects.

National Resource Center for Family Centered Practice

<http://www.uiowa.edu/~nrcfcp/new/index.html>

The National Resource Center for Family Centered Practice provides technical assistance, staff training, research and evaluation, and information on Family-based programs and issues to public and private human services agencies in states, counties, and communities across the United States. The Center has worked in child welfare, mental health, juvenile justice, community action, county extension, Head Start, and job training programs. This internet address is to its publications catalog.

National Resource Center for Foster Care and Permanency Planning

<http://www.nrcpfc.org>

The National Resource Center for Foster Care and Permanency Planning (NRCPP) provides information services, training, and technical assistance on permanency planning, kinship foster care, concurrent permanency planning, family group decision making and HIV/ AIDS to ensure that children have safe, caring, and lifetime families in which to grow up. NRCPP's web site describes the type of information, training and technical assistance that the center provides.

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Representing Children in Abuse and Neglect Cases

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APPENDICES TO
THE MANUAL
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ATTORNEYS

TABLE OF CONTENTS

Appendix A – NEVADA STATUTES	1
Chapter 432B – Protection of Children from Abuse and Neglect	2
Chapter 128 – Termination of Parental Rights	51
Chapter 127 – Adoption of Children and Adults.....	60
Chapter 159 – Guardianships.....	81
Chapter 125C – Custody and Visitation.....	123
Appendix B – PLEADINGS, AGREEMENTS, AND FORMS	139
Findings of Fact, Recommendation, and Order for Sibling Visitation	140
Hearing Master Recommendation (Waiver of Right to Object).....	145
Motion for an Order for Sibling Visitation.....	148
Motion for Sibling Visitation and to Incorporate any Visitation Order into Adoption Decree.....	156
Order for Sibling Visitation.....	164
Motion for Child Witness to Testify By Alternative Methods	166
Ex Parte Motion for an Order Shortening Time.....	174
Order Shortening Time	177
Motion to Compel Placement and Request for a Finding for Lack of Reasonable Efforts.....	178
Motion for an Order to Show Cause (Contempt)	186
Objection to Hearing Master’s Recommendations	193
Motion for Findings on the Issue of Special Immigrant Juvenile Status.....	204
Order and Findings of Fact on the Issue of Special Immigrant Juvenile Status	211
Open Adoption Contact Agreement.....	213
Notice and Approval to Reschedule or Reset a Court Date (NARD).....	218
Request for Discovery	219

Appendix C - ATTORNEY'S ROLES AND RESPONSIBILITIES	220
American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases	221
American Bar Association Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings	245
Eighth Judicial District Order of Appointment of Attorney for Certain Children....	268
Nevada Safety Assessment	270
Safety Intervention and Permanency System (SIPS) Chart	284
Appendix D - NEVADA SUPREME COURT AND NINTH CIRCUIT COURT OF APPEALS CASES	288
In re Parental Rights as to A.G., 295 P.3d 589 (Nev. 2013)	289
In re Parental Rights as to A.J.G., 122 Nev. 1418, 148 P.3d 759 (2006)	298
In re Termination of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000) ..	307
Kirkpatrick v. Cty. of Washoe, 792 F.3d 1184 (9th Cir. 2015)	317

APPENDIX A NEVADA STATUTES

Chapter 432B – Protection of Children from Abuse and Neglect

Chapter 128 – Termination of Parental Rights

Chapter 127 – Adoption of Children and Adults

Chapter 159 – Guardianships

Chapter 125C – Custody and Visitation

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CHAPTER 432B - PROTECTION OF CHILDREN FROM ABUSE AND NEGLECT

GENERAL PROVISIONS

NRS 432B.010	Definitions.
NRS 432B.020	“Abuse or neglect of a child” defined.
NRS 432B.030	“Agency which provides child welfare services” defined.
NRS 432B.035	“Central Registry” defined.
NRS 432B.040	“Child” defined.
NRS 432B.042	“Child protective services” defined.
NRS 432B.044	“Child welfare services” defined.
NRS 432B.050	“Court” defined.
NRS 432B.060	“Custodian” defined.
NRS 432B.065	“Division of Child and Family Services” defined.
NRS 432B.067	“Indian child” defined.
NRS 432B.068	“Indian Child Welfare Act” defined.
NRS 432B.069	“Information maintained by an agency which provides child welfare services” defined.
NRS 432B.070	“Mental injury” defined.
NRS 432B.080	“Parent” defined.
NRS 432B.090	“Physical injury” defined.
NRS 432B.100	“Sexual abuse” defined.
NRS 432B.110	“Sexual exploitation” defined.
NRS 432B.121	Definition of when person has “reasonable cause to believe” and when person acts “as soon as reasonably practicable.”
NRS 432B.130	Persons responsible for child’s welfare.
NRS 432B.135	Child in custody of agency which provides child welfare services deemed homeless in certain circumstances.
NRS 432B.140	Negligent treatment or maltreatment.
NRS 432B.150	Excessive corporal punishment may constitute abuse or neglect.
NRS 432B.153	Presumptions concerning custody and visitation when parent of child is convicted of first degree murder of other parent of child.
NRS 432B.157	Presumption concerning custody when court determines that parent or other person seeking custody of child is perpetrator of domestic violence.
NRS 432B.159	Presumption concerning custody and visitation when parent or other person seeking custody of child is perpetrator of any act of abduction against the child.
NRS 432B.160	Immunity from civil or criminal liability; presumption.
NRS 432B.165	Authority of agency which provides child welfare services and other entities to provide information to assist in locating a missing child; information not confidential; report of information received concerning missing child who is in custody of agency.
NRS 432B.170	Authority of agency which provides child welfare services to share information with state or local agencies.
NRS 432B.175	Availability of data or information regarding fatality or near fatality of child who is subject of report of abuse or neglect; limitation on disclosure; regulations.
NRS 432B.178	Director of Department of Health and Human Services authorized to create interagency committee to evaluate child welfare system in this State; appointment of members; submission of written report.

ADMINISTRATION

GENERAL PROVISIONS

NRS 432B.180	Duties of Division of Child and Family Services.
NRS 432B.190	Regulations to be adopted by Division of Child and Family Services.
NRS 432B.195	Agency which provides child welfare services required to provide training to certain employees concerning rights of certain persons responsible for child’s welfare; employees not required or authorized to offer legal advice, legal assistance or legal interpretation of state or federal laws.
NRS 432B.197	Agency which provides child welfare services required to establish policies to ensure that children in custody of agency have access to and safe administration of clinically appropriate psychotropic medication.
NRS 432B.198	Employment with agency which provides child welfare services: Background investigation required; periodic additional investigations.
NRS 432B.199	Employment with agency which provides child welfare services: Termination of employee charged with or convicted of certain crimes; correction of information.
NRS 432B.200	Toll-free telephone number for reports of abuse or neglect.
NRS 432B.210	State, political subdivisions and agencies to cooperate with agencies which provide child welfare services.
NRS 432B.215	Acquisition and use of information concerning probationers and parolees.

CORRECTIVE ACTION, IMPROVEMENT PLANS AND INCENTIVE PAYMENTS

NRS 432B.2155	Corrective action or corrective action plan to be carried out by agency which provides child welfare services when necessary; consequences of failing to carry out action or plan within required period; Division of Child and Family Services to adopt regulations.
NRS 432B.216	Agency which provides child welfare services to submit biennial improvement plan; agency to solicit input regarding

- [NRS 432B.2165](#) plan; requirements of plan; agency to submit annual data to Division of Child and Family Services.
- [NRS 432B.217](#) Division of Child and Family Services to administer program to award incentive payment to agency which provides child welfare services in a county whose population is 100,000 or more; application for incentive payment; approval and denial of incentive payment.
- [NRS 432B.2175](#) Application by agency which provides child welfare services for incentive payment in subsequent years; approval of application; amount of subsequent incentive payment.
- [NRS 432B.218](#) Agency which provides child welfare services that receives incentive payment to submit report to Division of Child and Family Services demonstrating percentage of goal achieved.
- [NRS 432B.2185](#) Annual report to Governor and Legislature concerning achievement of specific performance targets in improvement plans and specific goals established to receive incentive payment.

GRANTS TO AGENCY WHICH PROVIDES CHILD WELFARE SERVICES

- [NRS 432B.2185](#) Block grant awarded to agency which provides child welfare services in county whose population is 100,000 or more; amount and use of block grant.
- [NRS 432B.219](#) Categorical grants for adoption assistance programs; determination of amount; restrictions on use.

REPORTS OF ABUSE OR NEGLECT; REPORTS OF PRENATAL ILLEGAL SUBSTANCE ABUSE

- [NRS 432B.220](#) Persons required to make report; when and to whom reports are required; any person may make report; report and written findings if reasonable cause to believe death of child caused by abuse or neglect; certain persons and entities required to inform reporters of duty to report.
- [NRS 432B.225](#) Attorney prohibited from reporting abuse or neglect of child in certain circumstances.
- [NRS 432B.230](#) Method of making report; contents.
- [NRS 432B.240](#) Penalty for failure to make report.
- [NRS 432B.250](#) Persons required to report prohibited from invoking certain privileges.
- [NRS 432B.255](#) Admissibility of evidence.
- [NRS 432B.260](#) Action upon receipt of report; agency which provides child welfare services required to inform person named in report of allegation of abuse or neglect if report is investigated.
- [NRS 432B.270](#) Interview of child and sibling of child concerning possible abuse or neglect; photographs, X-rays and medical tests.
- [NRS 432B.280](#) Confidentiality of information maintained by an agency which provides child welfare services; exceptions; penalty.
- [NRS 432B.290](#) Maintenance of information by agency which provides child welfare services; authorized release of such information; penalty; fee for release of information; rules, policies or regulations.
- [NRS 432B.300](#) Determinations to be made from investigation of report.
- [NRS 432B.310](#) Report to Central Registry of abuse or neglect required upon completion of investigation; report to Central Registry of prenatal illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure only required if child has been abused or neglected after child was born.
- [NRS 432B.315](#) Written notification of substantiated report to person responsible for child's welfare.
- [NRS 432B.317](#) Administrative appeal of substantiated report; hearing.
- [NRS 432B.320](#) Waiver of full investigation of report.

PROTECTIVE SERVICES AND CUSTODY

- [NRS 432B.325](#) County whose population is 100,000 or more to provide child protective services in county; county whose population is less than 100,000 to provide such services in certain circumstances.
- [NRS 432B.326](#) Payment of assessment for provision of child protective services by county whose population is less than 100,000; exemption.
- [NRS 432B.327](#) Division of Child and Family Services to submit certain reports concerning budgets for child protective services to Governor, certain counties and Legislative Commission.
- [NRS 432B.330](#) Circumstances under which child is or may be in need of protection.
- [NRS 432B.340](#) Determination that child needs protection but is not in imminent danger.
- [NRS 432B.350](#) Teams for protection of child.
- [NRS 432B.360](#) Voluntary placement of child with agency or institution; regulations.
- [NRS 432B.370](#) Determination that child is not in need of protection.
- [NRS 432B.380](#) Referral of case to district attorney for criminal prosecution; recommendation to file petition.
- [NRS 432B.390](#) Placement of child in protective custody.
- [NRS 432B.3905](#) Limitations on transfer and placement of child who is under 6 years of age; notice.
- [NRS 432B.391](#) Agency which provides child welfare services or designee authorized to conduct preliminary Federal Bureau of Investigation name-based check of background of certain adult residents of home in which child will be placed in emergency situation; person investigated to supply fingerprints; exchange of information; removal of child from home upon refusal to supply fingerprints.
- [NRS 432B.393](#) Preservation and reunification of family of child to prevent or eliminate need for removal from home before placement in foster care and to make safe return to home possible; when reasonable efforts are not required; determining whether reasonable efforts have been made.
- [NRS 432B.396](#) Establishment of panel to evaluate extent to which agencies which provide child welfare services are effectively discharging their responsibilities; regulations; civil penalties.
- [NRS 432B.397](#) Inquiry to determine whether child is Indian child; report to court; training regarding requirements of Indian Child Welfare Act.
- [NRS 432B.400](#) Temporary detention of child by physician or person in charge of hospital or similar institution.

CHILD DEATH REVIEW TEAMS

- [NRS 432B.403](#) Purpose of organizing child death review teams.
- [NRS 432B.405](#) Organization of child death review teams.
- [NRS 432B.406](#) Composition of child death review teams.

NRS 432B.407	Information available to child death review teams; sharing of certain information; subpoena to obtain information; confidentiality of information.
NRS 432B.4075	Authority of Administrator to organize multidisciplinary team to oversee review conducted by child death review team; access to information and privileges.
NRS 432B.408	Executive Committee to Review the Death of Children to review report of child death review team.
NRS 432B.409	Establishment, composition and duties of Executive Committee to Review the Death of Children; creation of and use of money in Review of Death of Children Account.
NRS 432B.4095	Civil penalty for disclosure of confidential information; authority to bring action; deposit of money.

CIVIL PROCEEDINGS

GENERAL PROVISIONS

NRS 432B.410	Exclusive original jurisdiction; action does not preclude prosecution.
NRS 432B.420	Right of parent or other responsible person to representation by attorney; authority of court to appoint attorney to represent child; authority and rights of child's attorney; compensation of attorney; appointment of attorney as guardian ad litem.
NRS 432B.425	Notification of tribe if proceedings involve Indian child; transfer of proceedings to Indian child's tribe; exercise of jurisdiction by court.
NRS 432B.430	Restriction on admission of persons to proceedings.
NRS 432B.435	Presentation of evidence of child's previous sexual conduct prohibited; exception.
NRS 432B.440	Assistance by agency which provides child welfare services.
NRS 432B.450	Expert testimony raising presumption of need for protection of child.
NRS 432B.451	Qualified expert witness required in proceeding to place Indian child in foster care.
NRS 432B.455	Determination of appropriate person to take custody of child: Appointment and duties of special master.
NRS 432B.457	Determination of appropriate person to take custody of child: Involvement in and notification of person with special interest in child; testimony by person with special interest in child.
NRS 432B.459	Provision of copy of sound recording or transcript of proceeding to parent or guardian; fees.
NRS 432B.460	Courts not deprived of right to determine custody or guardianship.
NRS 432B.465	Full faith and credit to judicial proceedings of Indian tribe.
NRS 432B.4655	Joinder of governmental entity or other person to certain proceedings to enforce legal obligation of such entity or person.

PERMANENT PLACEMENT WITH GUARDIAN

NRS 432B.466	Petition for appointment of guardian; notice.
NRS 432B.4665	Appointment of guardian; powers and duties of and limitations on guardian; effect of guardianship.
NRS 432B.467	Consideration of evidence in determining whether to appoint guardian; right of visitation to certain persons.
NRS 432B.4675	Effect of entry of final order establishing guardianship.
NRS 432B.468	Enforcement, modification and termination of guardianship; appointment of successor guardian.

PERSON LEGALLY RESPONSIBLE FOR PSYCHIATRIC CARE OF CHILD

NRS 432B.4681	Definitions.
NRS 432B.4682	"Person professionally qualified in the field of psychiatric mental health" defined.
NRS 432B.4683	"Psychiatric care" defined.
NRS 432B.4684	Nomination; person nominated deemed to be person who is legally responsible pending court approval; petition to appoint nominee; persons authorized to be nominated or appointed.
NRS 432B.4685	Persons eligible for court appointment.
NRS 432B.4686	Responsibilities and duties.
NRS 432B.4687	Considerations for approval of administration of psychotropic medication to child; written consent for administration of such medication or notice of denial; other required approval.
NRS 432B.4688	Administration of psychotropic medication to child allowed only in accordance with consent; quarterly review of records of child.
NRS 432B.4689	Administration of psychotropic medication without consent authorized under certain circumstances.
NRS 432B.469	Agency which provides child welfare services retains responsibility for health and well-being of child in its custody.

HEARING ON PROTECTIVE CUSTODY

NRS 432B.470	Hearing required; notice.
NRS 432B.480	Hearing: Court required to advise parties of rights; determinations by court; order to continue custody or release child.
NRS 432B.490	Procedure following hearing or investigation.

HEARING ON NEED OF PROTECTION FOR CHILD

NRS 432B.500	Appointment of guardian ad litem after filing of petition.
NRS 432B.505	Qualifications of special advocate for appointment as guardian ad litem.
NRS 432B.510	Execution and contents of petition; representation of interests of public.
NRS 432B.513	Copy of report or information required to be provided to parent or guardian before certain proceedings.
NRS 432B.515	Electronic filing of certain petitions and reports.
NRS 432B.520	Issuance of summons; authorizing the assumption of custody by court and removal of child from certain conditions; authorizing the attachment of child and placement of child in protective custody.
NRS 432B.530	Adjudicatory hearing on petition; disposition.
NRS 432B.540	Report by agency which provides child welfare services; plan for placement of child.
NRS 432B.550	Determination of custody and placement of child by court; retention of certain rights by parent when child placed other than with parent; determination of whether agency which provides child welfare services has made reasonable efforts required.

- [NRS 432B.553](#) Plan for permanent placement of child.
- [NRS 432B.555](#) Restriction on release of child to custodial parent or guardian who has been convicted of abuse, neglect or endangerment of child.
- [NRS 432B.560](#) Additional orders by court: Treatment; conduct; visitation; support.
- [NRS 432B.570](#) Motion for revocation or modification of order.
- [NRS 432B.580](#) Semiannual review of placement of child; report by agency acting as custodian of child; visitation between child and siblings; hearing to review placement.
- [NRS 432B.585](#) Appointment of panel to conduct semiannual review.
- [NRS 432B.590](#) Annual hearing concerning permanent placement of child; review of plan for permanent placement of child; court to prepare explicit statement of facts; court authorized to review any decision of agency with legal custody of child; when presumption that best interests of child will be served by termination of parental rights arises.

CONTINUATION OF JURISDICTION OF COURT OVER CHILD WHO REACHES 18 YEARS OF AGE WHILE IN CUSTODY OF AGENCY WHICH PROVIDES CHILD WELFARE SERVICES

- [NRS 432B.591](#) "Child" defined.
- [NRS 432B.592](#) Court to refer child to attorney for counsel regarding continuation of jurisdiction.
- [NRS 432B.593](#) Agency which provides child welfare services to meet with child to determine whether child intends to request continuation of jurisdiction; effect of such meeting; child who has independent living agreement not prohibited from requesting continuation of jurisdiction.
- [NRS 432B.594](#) Retention of court's jurisdiction over child; termination of such jurisdiction; written agreement between agency which provides child welfare services and child; resolution of dispute between agency and child; rights of child to services and payments while under jurisdiction of court.
- [NRS 432B.595](#) Written plan to assist child to transition to independent living; duties of agency which provides child welfare services during period that court retains jurisdiction.

LOCAL ADVISORY BOARDS TO EXPEDITE PROCEEDINGS FOR PLACEMENT OF CHILDREN

- [NRS 432B.602](#) Rural Advisory Board to Expedite Proceedings for Placement of Children: Creation; terms; vacancies; members serve without compensation; duties. [Repealed.]
- [NRS 432B.604](#) Creation; members; terms; vacancies; members serve without compensation; duties.
- [NRS 432B.606](#) Referral of case by court to local advisory board.

COURT-ORDERED ADMISSION OF CERTAIN CHILDREN WITH EMOTIONAL DISTURBANCE TO CERTAIN FACILITIES

- [NRS 432B.607](#) Definitions.
- [NRS 432B.6071](#) "Child with an emotional disturbance" defined.
- [NRS 432B.60715](#) "Court-ordered admission of a child" defined.
- [NRS 432B.6072](#) "Facility" defined.
- [NRS 432B.6073](#) "Person professionally qualified in the field of psychiatric mental health" defined.
- [NRS 432B.6074](#) "Treatment" defined.
- [NRS 432B.6075](#) Petition: Filing; certificate or statement of alleged emotional disturbance.
- [NRS 432B.6076](#) Findings and order; alternative courses of treatment.
- [NRS 432B.6077](#) Petition required before child may be placed in facility other than under emergency admission; psychological examination of child required under certain circumstances; placement in less restrictive environment; any person may oppose petition.
- [NRS 432B.6078](#) Provision of information and assistance to child; second examination of child.
- [NRS 432B.6079](#) Considerations for court in issuing or renewing order.
- [NRS 432B.608](#) Expiration and renewal of admission.
- [NRS 432B.6081](#) Plan for continued care, treatment and training of child upon discharge.
- [NRS 432B.6082](#) Personal rights.
- [NRS 432B.6083](#) Conditional release: No liability of State; notice to court and attorney of agency; order to return to facility; judicial review of order to return to facility.
- [NRS 432B.6084](#) Release without further order of court; early release.
- [NRS 432B.6085](#) Children's rights; application of various provisions of [chapters 433](#) and [435](#) of NRS and all of [chapters 433A](#) and [433B](#) of NRS to children in custody of agency which provides child welfare services.

SEXUAL ABUSE OR SEXUAL EXPLOITATION OF CHILDREN UNDER AGE OF 18 YEARS

- [NRS 432B.610](#) Training of certain peace officers for detection and investigation of and response to cases of sexual abuse or sexual exploitation of children; regulations.
- [NRS 432B.620](#) Certification of peace officers who regularly investigate cases of sexual abuse or sexual exploitation of children; regulations.

KINSHIP GUARDIANSHIP ASSISTANCE PROGRAM

- [NRS 432B.621](#) "Program" defined.
- [NRS 432B.622](#) Department to establish and administer Program; agency which provides child welfare services authorized to enter into agreement to provide assistance to relative of child pursuant to Program.
- [NRS 432B.623](#) Qualifications for assistance pursuant to Program; placement of sibling of child who is eligible for assistance.
- [NRS 432B.624](#) Required provisions in agreement for assistance entered into pursuant to Program; eligibility for federal assistance

[NRS 432B.625](#)
[NRS 432B.626](#)

for adoption not affected by such agreement.
Background checks required before entering into agreement with relative for assistance pursuant to Program.
Agency which provides child welfare services to include certain information in case plan of child whose legal guardian receives assistance pursuant to Program.

MISCELLANEOUS PROVISIONS

[NRS 432B.630](#)
[NRS 432B.640](#)

Delivery of newborn child to provider of emergency services.
Assessment of child who may need counseling as result of battery that constitutes domestic violence; provision of evaluation or counseling.

TASK FORCE ON THE PREVENTION OF SEXUAL ABUSE OF CHILDREN

[NRS 432B.700](#)
[NRS 432B.710](#)
[NRS 432B.720](#)
[NRS 432B.730](#)

Creation; membership. [Expired by limitation.]
Election of Chair and Vice Chair; meetings; quorum; compensation; vacancies. [Expired by limitation.]
Recommendations of Task Force. [Expired by limitation.]
Recommendations for legislation; final report. [Expired by limitation.]

NOTE: Section 1.5 of ch. 253, Statutes of Nevada 2013, at page 1085, has been codified as [NRS 439B.227](#).

GENERAL PROVISIONS

NRS 432B.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in [NRS 432B.020](#) to [432B.110](#), inclusive, have the meanings ascribed to them in those sections.
 (Added to NRS by [1985, 1368](#); A [1991, 1920](#); [1993, 2705](#); [1995, 786](#); [2011, 2523](#); [2013, 523, 2877](#))

NRS 432B.020 “Abuse or neglect of a child” defined.

1. “Abuse or neglect of a child” means, except as otherwise provided in subsection 2:
 - (a) Physical or mental injury of a nonaccidental nature;
 - (b) Sexual abuse or sexual exploitation; or
 - (c) Negligent treatment or maltreatment as set forth in [NRS 432B.140](#),
 È of a child caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child’s health or welfare is harmed or threatened with harm.
2. A child is not abused or neglected, nor is the health or welfare of the child harmed or threatened for the sole reason that:
 - (a) The parent of the child delivers the child to a provider of emergency services pursuant to [NRS 432B.630](#), if the parent complies with the requirements of paragraph (a) of subsection 3 of that section; or
 - (b) The parent or guardian of the child, in good faith, selects and depends upon nonmedical remedial treatment for such child, if such treatment is recognized and permitted under the laws of this State in lieu of medical treatment. This paragraph does not limit the court in ensuring that a child receive a medical examination and treatment pursuant to [NRS 62E.280](#).
3. As used in this section, “allow” means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected.
 (Added to NRS by [1985, 1368](#); A [2001, 1255](#); [2003, 1149](#))

NRS 432B.030 “Agency which provides child welfare services” defined. “Agency which provides child welfare services” means:

1. In a county whose population is less than 100,000, the local office of the Division of Child and Family Services; or
2. In a county whose population is 100,000 or more, the agency of the county,
 È which provides or arranges for necessary child welfare services.
 (Added to NRS by [1985, 1369](#); A [1993, 2705](#); [2001 Special Session, 34](#))

NRS 432B.035 “Central Registry” defined. “Central Registry” has the meaning ascribed to it in [NRS 432.0999](#).
 (Added to NRS by [2013, 2875](#))

NRS 432B.040 “Child” defined. “Child” means a person under the age of 18 years or, if in school, until graduation from high school. The term does not include a child who remains under the jurisdiction of the court pursuant to [NRS 432B.594](#).
 (Added to NRS by [1985, 1369](#); A [2011, 252](#))

NRS 432B.042 “Child protective services” defined. “Child protective services” means services for the protection of children, including, without limitation, investigations of abuse or neglect and assessments. The term does not include foster care services or services related to adoption.
 (Added to NRS by [2011, 2522](#))

NRS 432B.044 “Child welfare services” defined. “Child welfare services” includes, without limitation:

1. Child protective services;
2. Foster care services, including, without limitation, maintenance and special services, as defined in [NRS 432.010](#); and
3. Services related to adoption.

(Added to NRS by [2001 Special Session, 34](#); A [2011, 2523](#))

NRS 432B.050 “Court” defined. “Court” has the meaning ascribed to it in [NRS 62A.180](#).

(Added to NRS by [1985, 1369](#); A [1991, 2186](#); [2003, 1149](#))

NRS 432B.060 “Custodian” defined. “Custodian” means a person or a governmental organization, other than a parent or legal guardian, who has been awarded legal custody of a child. The term does not include a person or governmental organization who continues to provide services to a child that remains under the jurisdiction of a court pursuant to [NRS 432B.594](#).

(Added to NRS by [1985, 1369](#); A [2011, 252](#))

NRS 432B.065 “Division of Child and Family Services” defined. “Division of Child and Family Services” means the Division of Child and Family Services of the Department of Health and Human Services.

(Added to NRS by [1993, 2705](#))

NRS 432B.067 “Indian child” defined. “Indian child” has the meaning ascribed to it in 25 U.S.C. § 1903.

(Added to NRS by [1995, 786](#))

NRS 432B.068 “Indian Child Welfare Act” defined. “Indian Child Welfare Act” means the Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901 et seq.).

(Added to NRS by [1995, 786](#))

NRS 432B.069 “Information maintained by an agency which provides child welfare services” defined. “Information maintained by an agency which provides child welfare services” means data or information concerning reports and investigations made pursuant to this chapter, including, without limitation, the name, address, date of birth, social security number and the image or likeness of any child, family member of any child and reporting party or source, whether primary or collateral.

(Added to NRS by [2013, 523](#))

NRS 432B.070 “Mental injury” defined. “Mental injury” means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within a normal range of performance or behavior.

(Added to NRS by [1985, 1369](#))

NRS 432B.080 “Parent” defined. “Parent” means a natural or adoptive parent whose parental rights have not been terminated.

(Added to NRS by [1985, 1369](#))

NRS 432B.090 “Physical injury” defined. “Physical injury” includes, without limitation:

1. A sprain or dislocation;
2. Damage to cartilage;
3. A fracture of a bone or the skull;
4. An intracranial hemorrhage or injury to another internal organ;
5. A burn or scalding;
6. A cut, laceration, puncture or bite;
7. Permanent or temporary disfigurement; or
8. Permanent or temporary loss or impairment of a part or organ of the body.

(Added to NRS by [1985, 1369](#); A [1997, 848](#))

NRS 432B.100 “Sexual abuse” defined. “Sexual abuse” includes acts upon a child constituting:

1. Incest under [NRS 201.180](#);
2. Lewdness with a child under [NRS 201.230](#);
3. Sado-masochistic abuse under [NRS 201.262](#);
4. Sexual assault under [NRS 200.366](#);
5. Statutory sexual seduction under [NRS 200.368](#);
6. Open or gross lewdness under [NRS 201.210](#); and
7. Mutilation of the genitalia of a female child, aiding, abetting, encouraging or participating in the mutilation of the genitalia of a female child, or removal of a female child from this State for the purpose of mutilating the genitalia of the child under [NRS 200.5083](#).

(Added to NRS by [1985, 1369](#); A [1991, 54](#); [1997, 677](#); [2003, 1396](#))

NRS 432B.110 “Sexual exploitation” defined. “Sexual exploitation” includes forcing, allowing or encouraging a child:

1. To solicit for or engage in prostitution;
2. To view a pornographic film or literature; and
3. To engage in:
 - (a) Filming, photographing or recording on videotape; or
 - (b) Posing, modeling, depiction or a live performance before an audience,
 which involves the exhibition of a child’s genitals or any sexual conduct with a child, as defined in [NRS 200.700](#).

(Added to NRS by [1985, 1369](#))

NRS 432B.121 Definition of when person has “reasonable cause to believe” and when person acts “as soon as reasonably practicable.” For the purposes of this chapter, a person:

1. Has “reasonable cause to believe” if, in light of all the surrounding facts and circumstances which are known or which

reasonably should be known to the person at the time, a reasonable person would believe, under those facts and circumstances, that an act, transaction, event, situation or condition exists, is occurring or has occurred.

2. Acts “as soon as reasonably practicable” if, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, a reasonable person would act within approximately the same period under those facts and circumstances.

(Added to NRS by [1999, 3526](#))

NRS 432B.130 Persons responsible for child’s welfare. A person is responsible for a child’s welfare under the provisions of this chapter if the person is the child’s parent, guardian, a stepparent with whom the child lives, an adult person continually or regularly found in the same household as the child, a public or private home, institution or facility where the child actually resides or is receiving care outside of the home for all or a portion of the day, or a person directly responsible or serving as a volunteer for or employed by such a home, institution or facility.

(Added to NRS by [1985, 1370](#); A [1989, 439](#); [2001 Special Session, 34](#); [2015, 387](#))

NRS 432B.135 Child in custody of agency which provides child welfare services deemed homeless in certain circumstances.

1. A child who is in the legal or physical custody of an agency which provides child welfare services and is awaiting foster care placement shall be deemed to be homeless for the purposes of the federal McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. § 11301 et seq., and any regulations adopted pursuant thereto. If a child is legally adopted or ordered by a court of competent jurisdiction to a permanent placement, the child is no longer deemed homeless for the purposes of the federal McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. § 11301 et seq., and any regulations adopted pursuant thereto.

2. For the purpose of this section, “awaiting foster care placement” means the period during which a child is removed from his or her home until he or she is legally adopted or enters a permanent placement.

(Added to NRS by [2013, 523](#))

NRS 432B.140 Negligent treatment or maltreatment. Negligent treatment or maltreatment of a child occurs if a child has been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic, has been abandoned, is without proper care, control or supervision or lacks the subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so.

(Added to NRS by [1985, 1370](#); A [2015, 2245](#))

NRS 432B.150 Excessive corporal punishment may constitute abuse or neglect. Excessive corporal punishment may result in physical or mental injury constituting abuse or neglect of a child under the provisions of this chapter.

(Added to NRS by [1985, 1370](#))

NRS 432B.153 Presumptions concerning custody and visitation when parent of child is convicted of first degree murder of other parent of child.

1. The conviction of the parent of a child for murder of the first degree of the other parent of the child creates a rebuttable presumption that sole or joint custody of the child by the convicted parent is not in the best interest of the child. The rebuttable presumption may be overcome only if:

(a) The court determines that:

- (1) There is no other suitable guardian for the child;
- (2) The convicted parent is a suitable guardian for the child; and
- (3) The health, safety and welfare of the child are not at risk; or

(b) The child is of suitable age to signify his or her assent and assents to the order of the court awarding sole or joint custody of the child to the convicted parent.

2. The conviction of the parent of a child for murder of the first degree of the other parent of the child creates a rebuttable presumption that rights to visitation with the child are not in the best interest of the child and must not be granted if custody is not granted pursuant to subsection 1. The rebuttable presumption may be overcome only if:

(a) The court determines that:

- (1) The health, safety and welfare of the child are not at risk; and
- (2) It will be beneficial for the child to have visitations with the convicted parent; or

(b) The child is of suitable age to signify his or her assent and assents to the order of the court awarding rights to visitation with the child to the convicted parent.

3. Until the court makes a determination pursuant to this section, no person may bring the child into the presence of the convicted parent without the consent of the legal guardian or custodian of the child.

(Added to NRS by [1999, 743](#); A [1999, 2975](#))

NRS 432B.157 Presumption concerning custody when court determines that parent or other person seeking custody of child is perpetrator of domestic violence.

1. Except as otherwise provided in [NRS 125C.210](#) and [432B.153](#), a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody of a child has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that it is not in the best interest of the child for the perpetrator of the domestic violence to have custody of the child. Upon making such a determination, the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of domestic violence occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other victim of domestic violence who resided with the child.

2. If after an evidentiary hearing held pursuant to subsection 1 the court determines that more than one party has engaged in acts of domestic violence, it shall, if possible, determine which person was the primary physical aggressor. In determining which party was the primary physical aggressor for the purposes of this section, the court shall consider:

- (a) All prior acts of domestic violence involving any of the parties;
- (b) The relative severity of the injuries, if any, inflicted upon the persons involved in those prior acts of domestic violence;
- (c) The likelihood of future injury;
- (d) Whether, during the prior acts, one of the parties acted in self-defense; and
- (e) Any other factors that the court deems relevant to the determination.

È In such a case, if it is not possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 1 applies to each of the parties. If it is possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 1 applies only to the party determined by the court to be the primary physical aggressor.

3. A court, agency, institution or other person who places a child in protective custody shall not release a child to the custody of a person who a court has determined pursuant to subsection 1 has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child unless:

- (a) A court determines that it is in the best interest of the child for the perpetrator of the domestic violence to have custody of the child; or
- (b) Pursuant to the provisions of subsection 2, the presumption created pursuant to subsection 1 does not apply to the person to whom the court releases the child.

4. As used in this section, "domestic violence" means the commission of any act described in [NRS 33.018](#).

(Added to NRS by [1999, 743](#))

NRS 432B.159 Presumption concerning custody and visitation when parent or other person seeking custody of child is perpetrator of any act of abduction against the child.

1. A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody of a child has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking custody does not rebut the presumption, the court shall not enter an order for sole or joint custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

- (a) Findings of fact that support the determination that one or more acts of abduction occurred; and
- (b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.

2. For purposes of subsection 1, any of the following acts constitute conclusive evidence that an act of abduction occurred:

(a) A conviction of the defendant of any violation of [NRS 200.310](#) to [200.340](#), inclusive, or [200.359](#) or a law of any other jurisdiction that prohibits the same or similar conduct;

(b) A plea of guilty or nolo contendere by the defendant to any violation of [NRS 200.310](#) to [200.340](#), inclusive, or [200.359](#) or a law of any other jurisdiction that prohibits the same or similar conduct; or

(c) An admission by the defendant to the court of the facts contained in the charging document alleging a violation of [NRS 200.310](#) to [200.340](#), inclusive, or [200.359](#) or a law of any other jurisdiction that prohibits the same or similar conduct.

3. If, after a court enters a final order concerning custody of the child, a magistrate determines there is probable cause to believe that an act of abduction has been committed against the child or any other child and that a person who has been awarded sole or joint custody or unsupervised visitation of the child has committed the act, the court shall, upon a motion to modify the order concerning custody, reconsider the previous order concerning custody pursuant to subsections 1 and 2.

4. A court, agency, institution or other person who places a child in protective custody shall not release a child to the custody of a person who a court has determined pursuant to this section has engaged in one or more acts of abduction against the child or any other child, unless a court determines that it is in the best interest of the child for the perpetrator of the abduction to have custody of the child.

5. As used in this section, "abduction" means the commission of an act described in [NRS 200.310](#) to [200.340](#), inclusive, or [200.359](#) or a law of any other jurisdiction that prohibits the same or similar conduct.

(Added to NRS by [2009, 225](#))

NRS 432B.160 Immunity from civil or criminal liability; presumption.

1. Except as otherwise provided in subsection 2, immunity from civil or criminal liability extends to every person who in good faith:

- (a) Makes a report pursuant to [NRS 432B.220](#);
- (b) Conducts an interview or allows an interview to be taken pursuant to [NRS 432B.270](#);
- (c) Allows or takes photographs or X-rays pursuant to [NRS 432B.270](#);
- (d) Causes a medical test to be performed pursuant to [NRS 432B.270](#);
- (e) Provides a record, or a copy thereof, of a medical test performed pursuant to [NRS 432B.270](#) to an agency which provides child welfare services to the child, a law enforcement agency that participated in the investigation of the report made pursuant to [NRS 432B.220](#) or the prosecuting attorney's office;
- (f) Holds a child pursuant to [NRS 432B.400](#), takes possession of a child pursuant to [NRS 432B.630](#) or places a child in protective custody pursuant to any provision of this chapter;
- (g) Performs any act pursuant to subsection 2 of [NRS 432B.630](#);
- (h) Refers a case or recommends the filing of a petition pursuant to [NRS 432B.380](#); or
- (i) Participates in a judicial proceeding resulting from a referral or recommendation.

2. The provisions of subsection 1 do not confer any immunity from liability for the negligent performance of any act pursuant to paragraph (b) of subsection 2 of [NRS 432B.630](#).

3. In any proceeding to impose liability against a person for:

- (a) Making a report pursuant to [NRS 432B.220](#); or
- (b) Performing any act set forth in paragraphs (b) to (i), inclusive, of subsection 1,

È there is a presumption that the person acted in good faith.

(Added to NRS by [1985, 1378](#); A [1987, 1154](#); [1999, 60, 3526](#); [2001, 1256](#); [2001 Special Session, 34](#); [2005, 2031](#))

NRS 432B.165 Authority of agency which provides child welfare services and other entities to provide information to assist in locating a missing child; information not confidential; report of information received concerning missing child who is in custody of agency.

1. For purposes of assisting in locating a missing child who is the subject of an investigation of abuse or neglect and who is in the protective custody of an agency which provides child welfare services or in the custody of another entity pursuant to an order of the juvenile court, an agency which provides child welfare services may provide the following information to a federal, state or local governmental entity, or an agency of such an entity, that needs access to the information to carry out its legal responsibilities to protect children from abuse or neglect:

- (a) The name of the child;
- (b) The age of the child;
- (c) A physical description of the child; and
- (d) A photograph of the child.

2. Information provided pursuant to subsection 1 is not confidential and may be disclosed to any member of the general public upon request.

3. An agency which provides child welfare services that receives information concerning a child who has been placed in the custody of the agency who is missing, including, without limitation, a child who has run away or has been abducted, shall report the information to the appropriate law enforcement agency as soon as practicable, but not later than 24 hours after receiving such information, for investigation pursuant to [NRS 432.200](#).

(Added to NRS by [2007, 193](#); A [2015, 856](#))

NRS 432B.170 Authority of agency which provides child welfare services to share information with state or local agencies. Nothing in the provisions of this chapter or [NRS 432.0999](#) to [432.130](#), inclusive, prohibits an agency which provides child welfare services from sharing information with other state or local agencies if:

1. The purpose for sharing the information is for the development of a plan for the care, treatment or supervision of a child who has been abused or neglected, or an infant who is born and has been affected by prenatal illegal substance abuse or has withdrawal symptoms resulting from prenatal drug exposure or of a person responsible for the child's or infant's welfare;

2. The other agency has standards for confidentiality equivalent to those of the agency which provides child welfare services; and

3. Proper safeguards are taken to ensure the confidentiality of the information.

(Added to NRS by [1985, 1378](#); A [2001 Special Session, 35](#); [2005, 2031](#))

NRS 432B.175 Availability of data or information regarding fatality or near fatality of child who is subject of report of abuse or neglect; limitation on disclosure; regulations.

1. Data or information concerning reports and investigations thereof made pursuant to this chapter must be made available pursuant to this section to any member of the general public upon request if the child who is the subject of a report of abuse or neglect suffered a fatality or near fatality. Any such data and information which is known must be made available not later than 48 hours after a fatality and not later than 5 business days after a near fatality. Except as otherwise provided in subsection 2, the data or information which must be disclosed includes, without limitation:

- (a) A summary of the report of abuse or neglect and a factual description of the contents of the report;
- (b) The date of birth and gender of the child;
- (c) The date that the child suffered the fatality or near fatality;
- (d) The cause of the fatality or near fatality, if such information has been determined;
- (e) Whether the agency which provides child welfare services had any contact with the child or a member of the child's family or household before the fatality or near fatality and, if so:

(1) The frequency of any contact or communication with the child or a member of the child's family or household before the fatality or near fatality and the date on which the last contact or communication occurred before the fatality or near fatality;

(2) Whether the agency which provides child welfare services provided any child welfare services to the child or to a member of the child's family or household before or at the time of the fatality or near fatality;

(3) Whether the agency which provides child welfare services made any referrals for child welfare services for the child or for a member of the child's family or household before or at the time of the fatality or near fatality;

(4) Whether the agency which provides child welfare services took any other actions concerning the welfare of the child before or at the time of the fatality or near fatality; and

(5) A summary of the status of the child's case at the time of the fatality or near fatality, including, without limitation, whether the child's case was closed by the agency which provides child welfare services before the fatality or near fatality and, if so, the reasons that the case was closed; and

(f) Whether the agency which provides child welfare services, in response to the fatality or near fatality:

(1) Has provided or intends to provide child welfare services to the child or to a member of the child's family or household;

(2) Has made or intends to make a referral for child welfare services for the child or for a member of the child's family or household; and

(3) Has taken or intends to take any other action concerning the welfare and safety of the child or any member of the child's family or household.

2. An agency which provides child welfare services shall not disclose the following data or information pursuant to subsection 1:

(a) Except as otherwise provided in [NRS 432B.290](#), data or information concerning the identity of the person responsible for reporting the abuse or neglect of the child to a public agency;

(b) The name of the child who suffered a near fatality or the name of any member of the family or other person who lives in the household of the child who suffered the fatality or near fatality;

(c) A privileged communication between an attorney and client; and

(d) Information that may undermine a criminal investigation or pending criminal prosecution.

3. The Division of Child and Family Services shall adopt regulations to carry out the provisions of this section.

4. As used in this section, "near fatality" means an act that places a child in serious or critical condition as verified orally or in

writing by a physician, a registered nurse or other licensed provider of health care. Such verification may be given in person or by telephone, mail, electronic mail or facsimile.

(Added to NRS by [2007, 194](#); A [2013, 523](#))

NRS 432B.178 Director of Department of Health and Human Services authorized to create interagency committee to evaluate child welfare system in this State; appointment of members; submission of written report.

1. The Director of the Department of Health and Human Services may create an interagency committee to evaluate the child welfare system in this State. Any such evaluation must include, without limitation, a review of state laws to ensure that the state laws comply with federal law and to ensure that the state laws reflect the current practices of each agency which provides child welfare services and others involved in the child welfare system.

2. The Director may appoint as many members to the interagency committee as the Director deems appropriate except that the members of such a committee must include, without limitation, at least one person to represent:

- (a) Each agency which provides child welfare services;
- (b) The Department of Education;
- (c) The juvenile justice system;
- (d) Law enforcement; and
- (e) Providers of treatment or services for persons in the child welfare system.

3. The interagency committee created pursuant to subsection 1 shall, on or before January 1 of each odd-numbered year after it is created, submit to the Director of the Legislative Counsel Bureau a written report for transmittal to the Chairs of the Assembly and Senate Standing Committees on Judiciary, the Chair of the Assembly Committee on Health and Human Services and the Chair of the Senate Committee on Health and Education.

(Added to NRS by [2009, 221](#); A [2013, 3328](#))

ADMINISTRATION

General Provisions

NRS 432B.180 Duties of Division of Child and Family Services. The Division of Child and Family Services shall:

1. Administer any money granted to the State by the Federal Government.

2. Request appropriations from the Legislature in amounts sufficient to:

(a) Provide block grants to an agency which provides child welfare services in a county whose population is 100,000 or more pursuant to [NRS 432B.2185](#); and

(b) Administer a program to provide additional incentive payments to such an agency pursuant to [NRS 432B.2165](#).

3. Monitor the performance of an agency which provides child welfare services in a county whose population is 100,000 or more through data collection, evaluation of services and the review and approval of agency improvement plans pursuant to [NRS 432B.2165](#).

4. Provide child welfare services directly or arrange for the provision of those services in a county whose population is less than 100,000.

5. Coordinate its activities with and assist the efforts of any law enforcement agency, a court of competent jurisdiction, an agency which provides child welfare services and any public or private organization which provides social services for the prevention, identification and treatment of abuse or neglect of children and for permanent placement of children.

6. Involve communities in the improvement of child welfare services.

7. Evaluate all child welfare services provided throughout the State and, if an agency which provides child welfare services is not in substantial compliance with any federal or state law relating to the provision of child welfare services, regulations adopted pursuant to those laws or statewide plans or policies relating to the provision of child welfare services, require corrective action of the agency which provides child welfare services.

8. Coordinate with and assist:

(a) Each agency which provides child welfare services in recruiting, training and licensing providers of foster care as defined in [NRS 424.017](#);

(b) Each foster care agency licensed pursuant to [NRS 424.093](#) to [424.270](#), inclusive, in screening, recruiting, licensing and training providers of foster care as defined in [NRS 424.017](#); and

(c) A nonprofit or community-based organization in recruiting and training providers of foster care as defined in [NRS 424.017](#) if the Division determines that the organization provides a level of training that is equivalent to the level of training provided by an agency which provides child welfare services.

(Added to NRS by [1985, 1370](#); A [1987, 1439](#); [1993, 2705](#); [2001 Special Session, 35](#); [2007, 543](#), [1501](#); [2009, 1489](#); [2011, 2496](#); [2013, 1453](#))

NRS 432B.190 Regulations to be adopted by Division of Child and Family Services. The Division of Child and Family Services shall, in consultation with each agency which provides child welfare services, adopt:

1. Regulations establishing reasonable and uniform standards for:

(a) Child welfare services provided in this State;

(b) Programs for the prevention of abuse or neglect of a child and the achievement of the permanent placement of a child;

(c) The development of local councils involving public and private organizations;

(d) Reports of abuse or neglect, records of these reports and the response to these reports;

(e) Carrying out the provisions of [NRS 432B.260](#), including, without limitation, the qualifications of persons with whom agencies which provide child welfare services enter into agreements to provide services to children and families;

(f) The management and assessment of reported cases of abuse or neglect;

(g) The protection of the legal rights of parents and children;

(h) Emergency shelter for a child;

(i) The prevention, identification and correction of abuse or neglect of a child in residential institutions;

(j) Developing and distributing to persons who are responsible for a child's welfare a pamphlet that is written in language which is easy to understand, is available in English and in any other language the Division determines is appropriate based on the

demographic characteristics of this State and sets forth:

(1) Contact information regarding persons and governmental entities which provide assistance to persons who are responsible for the welfare of children, including, without limitation, persons and entities which provide assistance to persons who are being investigated for allegedly abusing or neglecting a child;

(2) The procedures for taking a child for placement in protective custody; and

(3) The state and federal legal rights of:

(I) A person who is responsible for a child's welfare and who is the subject of an investigation of alleged abuse or neglect of a child, including, without limitation, the legal rights of such a person at the time an agency which provides child welfare services makes initial contact with the person in the course of the investigation and at the time the agency takes the child for placement in protective custody, and the legal right of such a person to be informed of any allegation of abuse or neglect of a child which is made against the person at the initial time of contact with the person by the agency; and

(II) Persons who are parties to a proceeding held pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive, during all stages of the proceeding; and

(k) Making the necessary inquiries required pursuant to [NRS 432B.397](#) to determine whether a child is an Indian child.

2. Regulations, which are applicable to any person who is authorized to place a child in protective custody without the consent of the person responsible for the child's welfare, setting forth reasonable and uniform standards for establishing whether immediate action is necessary to protect the child from injury, abuse or neglect for the purposes of determining whether to place the child into protective custody pursuant to [NRS 432B.390](#). Such standards must consider the potential harm to the child in remaining in his or her home, including, without limitation:

(a) Circumstances in which a threat of harm suggests that a child is in imminent danger of serious harm.

(b) The conditions or behaviors of the child's family which threaten the safety of the child who is unable to protect himself or herself and who is dependent on others for protection, including, without limitation, conditions or behaviors that are beyond the control of the caregiver of the child and create an imminent threat of serious harm to the child.

È The Division of Child and Family Services shall ensure that the appropriate persons or entities to whom the regulations adopted pursuant to this subsection apply are provided with a copy of such regulations. As used in this subsection, "serious harm" includes the threat or evidence of serious physical injury, sexual abuse, significant pain or mental suffering, extreme fear or terror, extreme impairment or disability, death, substantial impairment or risk of substantial impairment to the child's mental or physical health or development.

3. Regulations establishing procedures for:

(a) Expeditiously locating any missing child who has been placed in the custody of an agency which provides child welfare services;

(b) Determining the primary factors that contributed to a child who has been placed in the custody of an agency which provides child welfare services running away or otherwise being absent from foster care, and to the extent possible and appropriate, responding to those factors in current and subsequent placements; and

(c) Determining the experiences of a child who has been placed in the custody of an agency which provides child welfare services during any period the child was missing, including, without limitation, determining whether the child may be a victim of sexual abuse or sexual exploitation.

4. Such other regulations as are necessary for the administration of [NRS 432B.010](#) to [432B.606](#), inclusive.

(Added to NRS by [1985, 1370](#); [A 1987, 1439](#); [1991, 922](#); [1993, 2706](#); [1995, 787](#); [1997, 2471](#); [2001, 1700, 1839, 1850](#); [2001 Special Session, 36](#); [2003, 236, 251, 650](#); [2005, 2094](#); [2007, 1086, 1502](#); [2011, 2673](#); [2015, 856](#))

NRS 432B.195 Agency which provides child welfare services required to provide training to certain employees concerning rights of certain persons responsible for child's welfare; employees not required or authorized to offer legal advice, legal assistance or legal interpretation of state or federal laws.

1. An agency which provides child welfare services shall provide training to each person who is employed by the agency and who provides child welfare services. Such training must include, without limitation, instruction concerning the applicable state and federal constitutional and statutory rights of a person who is responsible for a child's welfare and who is:

(a) The subject of an investigation of alleged abuse or neglect of a child; or

(b) A party to a proceeding concerning the alleged abuse or neglect of a child pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive.

2. Nothing in this section shall be construed as requiring or authorizing a person who is employed by an agency which provides child welfare services to offer legal advice, legal assistance or legal interpretation of state or federal statutes or laws.

(Added to NRS by [2005, 2093](#))

NRS 432B.197 Agency which provides child welfare services required to establish policies to ensure that children in custody of agency have access to and safe administration of clinically appropriate psychotropic medication. Each agency which provides child welfare services shall establish appropriate policies to ensure that children in the custody of the agency have timely access to and safe administration of clinically appropriate psychotropic medication. The policies must include, without limitation, policies concerning:

1. The use of psychotropic medication in a manner that has not been tested or approved by the United States Food and Drug Administration, including, without limitation, the use of such medication for a child who is of an age that has not been tested or approved or who has a condition for which the use of the medication has not been tested or approved;

2. Prescribing any psychotropic medication for use by a child who is less than 4 years of age;

3. The concurrent use by a child of three or more classes of psychotropic medication;

4. The concurrent use by a child of two psychotropic medications of the same class; and

5. The criteria for nominating persons who are legally responsible for the psychiatric care of children in the custody of agencies which provide child welfare services pursuant to [NRS 432B.4681](#) to [432B.469](#), inclusive, and the policies adopted pursuant to this section.

(Added to NRS by [2009, 410](#); [A 2011, 2675](#))

NRS 432B.198 Employment with agency which provides child welfare services: Background investigation required;

periodic additional investigations.

1. An agency which provides child welfare services shall secure from appropriate law enforcement agencies information on the background and personal history of each applicant for employment with the agency, and each employee of the agency, to determine:

- (a) Whether the applicant or employee has been convicted of:
 - (1) Murder, voluntary manslaughter, involuntary manslaughter or mayhem;
 - (2) Any felony involving the use or threatened use of force or violence or the use of a firearm or other deadly weapon;
 - (3) Assault with intent to kill or to commit sexual assault or mayhem;
 - (4) Battery which results in substantial bodily harm to the victim;
 - (5) Battery that constitutes domestic violence that is punishable as a felony;
 - (6) Battery that constitutes domestic violence, other than a battery described in subparagraph (5), within the immediately preceding 3 years;
 - (7) Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or an offense involving pornography and a minor;
 - (8) A crime involving pandering or prostitution, including, without limitation, a violation of any provision of [NRS 201.295](#) to [201.440](#), inclusive;
 - (9) Abuse or neglect of a child, including, without limitation, a violation of any provision of [NRS 200.508](#) or [200.5083](#) or contributory delinquency;
 - (10) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in [chapter 454](#) of NRS;
 - (11) A violation of any federal or state law prohibiting driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance that is punishable as a felony;
 - (12) A violation of any federal or state law prohibiting driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance, other than a violation described in subparagraph (11), within the immediately preceding 3 years;
 - (13) Abuse, neglect, exploitation, isolation or abandonment of older persons or vulnerable persons, including, without limitation, a violation of any provision of [NRS 200.5091](#) to [200.50995](#), inclusive, or a law of any other jurisdiction that prohibits the same or similar conduct; or
 - (14) Any offense involving arson, fraud, theft, embezzlement, burglary, robbery, fraudulent conversion, misappropriation of property or perjury within the immediately preceding 7 years; or
- (b) Whether there are criminal charges pending against the applicant or employee for a violation of an offense listed in paragraph (a).

2. An agency which provides child welfare services shall request information from:

- (a) The Statewide Central Registry concerning an applicant for employment with the agency, or an employee of the agency, to determine whether there has been a substantiated report of child abuse or neglect made against the applicant or employee; and
- (b) The central registry of information concerning the abuse or neglect of a child established by any other state in which the applicant or employee resided within the immediately preceding 5 years to ensure satisfactory clearance with that registry.

3. Each applicant for employment with an agency which provides child welfare services, and each employee of an agency which provides child welfare services, must submit to the agency:

- (a) A complete set of his or her fingerprints and written authorization to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and
- (b) Written authorization for the agency to obtain any information that may be available from the Statewide Central Registry or the central registry of information concerning the abuse or neglect of a child established by any other state in which the applicant or employee resided within the immediately preceding 5 years.

4. An agency which provides child welfare services may exchange with the Central Repository or the Federal Bureau of Investigation any information concerning the fingerprints submitted pursuant to this section.

5. When a report from the Federal Bureau of Investigation is received by the Central Repository, the Central Repository shall immediately forward a copy of the report to the agency which provides child welfare services for a determination of whether the applicant or employee has criminal charges pending against him or her for a crime listed in paragraph (a) of subsection 1 or has been convicted of a crime listed in paragraph (a) of subsection 1.

6. An agency which provides child welfare services shall conduct an investigation of each employee of the agency pursuant to this section at least once every 5 years after the initial investigation.

7. As used in this section, "Statewide Central Registry" means the Statewide Central Registry for the Collection of Information Concerning the Abuse or Neglect of a Child established by [NRS 432.100](#).

(Added to NRS by [2013, 465](#); A [2015, 836](#))

NRS 432B.199 Employment with agency which provides child welfare services: Termination of employee charged with or convicted of certain crimes; correction of information.

1. If the report from the Federal Bureau of Investigation forwarded to an agency which provides child welfare services pursuant to subsection 5 of [NRS 432B.198](#), the information received by an agency which provides child welfare services pursuant to subsection 2 of [NRS 432B.198](#) or evidence from any other source indicates that an applicant for employment with the agency, or an employee of the agency:

- (a) Has charges pending against him or her for a crime listed in paragraph (a) of subsection 1 of [NRS 432B.198](#), the agency may deny employment to the applicant or terminate the employment of the employee after allowing the applicant or employee time to correct the information as required pursuant to subsection 2 or 3, whichever is applicable; or
- (b) Has been convicted of a crime listed in paragraph (a) of subsection 1 of [NRS 432B.198](#), has had a substantiated report of child abuse or neglect made against him or her or has not been satisfactorily cleared by a central registry described in paragraph (b) of subsection 2 of [NRS 432B.198](#), the agency shall deny employment to the applicant or terminate the employment of the employee after allowing the applicant or employee time to correct the information as required pursuant to subsection 2 or 3, whichever is applicable.

2. If an applicant for employment or an employee believes that the information in the report from the Federal Bureau of Investigation forwarded to the agency which provides child welfare services pursuant to subsection 5 of [NRS 432B.198](#) is

incorrect, the applicant or employee must inform the agency immediately. An agency that provides child welfare services that is so informed shall give the applicant or employee a reasonable amount of time of not less than 30 days to correct the information.

3. If an applicant for employment or an employee believes that the information received by an agency which provides child welfare services pursuant to subsection 2 of [NRS 432B.198](#) is incorrect, the applicant or employee must inform the agency immediately. An agency which provides child welfare services that is so informed shall give the applicant or employee a reasonable amount of time of not less than 60 days to correct the information.

4. During the period in which an applicant or employee seeks to correct information pursuant to subsection 2 or 3, the applicant or employee:

(a) Shall not have contact with a child or a relative or guardian of the child in the course of performing any duties as an employee of the agency which provides child welfare services.

(b) May be placed on leave without pay.

5. The provisions of subsection 4 must not be construed as preventing an agency which provides child welfare services from initiating internal disciplinary procedures against an employee during the period in which an employee seeks to correct information pursuant to subsection 2 or 3.

(Added to NRS by [2013, 466](#))

NRS 432B.200 Toll-free telephone number for reports of abuse or neglect. The Division of Child and Family Services shall establish and maintain a center with a toll-free telephone number to receive reports of abuse or neglect of a child in this State 24 hours a day, 7 days a week. Any reports made to this center must be promptly transmitted to the agency which provides child welfare services in the community where the child is located.

(Added to NRS by [1985, 1371](#); A [1993, 2706](#); [2001 Special Session, 36](#))

NRS 432B.210 State, political subdivisions and agencies to cooperate with agencies which provide child welfare services. An agency which provides child welfare services must receive from the State, any of its political subdivisions or any agency of either, any cooperation, assistance and information it requests in order to fulfill its responsibilities under this chapter and [NRS 432.0999 to 432.130](#), inclusive.

(Added to NRS by [1985, 1379](#); A [2001 Special Session, 36](#))

NRS 432B.215 Acquisition and use of information concerning probationers and parolees.

1. An agency which provides child welfare services may request the Division of Parole and Probation of the Department of Public Safety to provide information concerning a probationer or parolee that may assist the agency in carrying out the provisions of this chapter. The Division of Parole and Probation shall provide such information upon request.

2. The agency which provides child welfare services may use the information obtained pursuant to subsection 1 only for the limited purpose of carrying out the provisions of this chapter.

(Added to NRS by [1997, 835](#); A [2001, 2612](#); [2001 Special Session, 36](#); [2003, 236](#))

Corrective Action, Improvement Plans and Incentive Payments

NRS 432B.2155 Corrective action or corrective action plan to be carried out by agency which provides child welfare services when necessary; consequences of failing to carry out action or plan within required period; Division of Child and Family Services to adopt regulations.

1. When the Division of Child and Family Services determines pursuant to subsection 7 of [NRS 432B.180](#) that corrective action by an agency which provides child welfare services is necessary, the Division shall notify the agency which provides child welfare services of the specific areas in which the agency is in noncompliance with the federal or state laws, regulations adopted pursuant to such laws or statewide plans or policies and inform the agency which provides child welfare services that it must, within 60 days, carry out the corrective action or develop a corrective action plan.

2. The Division of Child and Family Services shall determine whether to approve a corrective action plan submitted pursuant to subsection 1 within 30 days after receipt. If the Division of Child and Family Services does not approve the plan, the Division of Child and Family Services must notify the agency which provides child welfare services of the deficiencies and allow the agency which provides child welfare services 30 days in which to submit a revised corrective action plan for reconsideration. If a revised corrective action plan is not resubmitted within 30 days, the Division may take any of the actions set forth in subsection 4.

3. After the Division of Child and Family Services approves a corrective action plan, the agency which provides child welfare services must carry out the plan within 90 days.

4. If the agency which provides child welfare services fails to take corrective action or to carry out a corrective action plan within the required period, the Division of Child and Family Services may take one or more of the following actions:

(a) Withhold money from the agency which provides child welfare services;

(b) Impose an administrative fine against the agency which provides child welfare services;

(c) Provide the agency which provides child welfare services with direct supervision and recover the cost and expenses incurred by the Division in providing such supervision; and

(d) Require the agency which provides child welfare services to determine whether it is necessary to impose disciplinary action that is consistent with the personnel rules of the agency which provides child welfare services against an employee who substantially contributed to the noncompliance of the agency which provides child welfare services with the federal or state laws, regulations adopted pursuant to such laws or statewide plans or policies, including, without limitation, suspension of the employee without pay, if appropriate.

5. The Division of Child and Family Services shall adopt regulations to carry out the provisions of this section, including, without limitation, regulations which prescribe the circumstances under which action must be taken against an agency which provides child welfare services for failure to take corrective action and which specify that any such action by the Division must not impede the provision of child welfare services.

6. The Division of Child and Family Services shall deposit any money received from the administrative fines imposed pursuant to this section with the State Treasurer for credit to the State General Fund. The State Treasurer shall account separately for the money deposited pursuant to this subsection. The money in the account may only be used by the Division to improve the provision of child welfare services in this State, including, without limitation:

(a) To pay the costs associated with providing training and technical assistance and conducting quality improvement activities for an agency which provides child welfare services to assist the agency in any area in which the agency has failed to take corrective action; and

(b) Hiring a qualified consultant to conduct such training, technical assistance and quality improvement activities.

(Added to NRS by [2011, 2492](#))

NRS 432B.216 Agency which provides child welfare services to submit biennial improvement plan; agency to solicit input regarding plan; requirements of plan; agency to submit annual data to Division of Child and Family Services.

1. Each agency which provides child welfare services shall submit an improvement plan to the Division of Child and Family Services on or before January 1 of each odd-numbered year.

2. Before submitting an improvement plan pursuant to subsection 1, the agency must solicit public input regarding the proposed improvement plan. The agency which provides child welfare services shall submit with the improvement plan an explanation of the manner in which the agency solicited such public input and a summary of any input received.

3. The improvement plan must cover a period of 2 years and include, without limitation:

(a) Specific performance targets for improving the safety, permanency and well-being of the children in the care of the agency which provides child welfare services; and

(b) The approach that the agency which provides child welfare services will take to achieve the specific performance targets, including, without limitation, specific strategies that will be used.

4. On or before December 31 of each year, the agency which provides child welfare services must submit to the Division of Child and Family Services data demonstrating the progress that the agency which provides child welfare services has made towards meeting the specific performance targets set forth in the improvement plan submitted pursuant to subsection 1.

(Added to NRS by [2011, 2493](#))

NRS 432B.2165 Division of Child and Family Services to administer program to award incentive payment to agency which provides child welfare services in a county whose population is 100,000 or more; application for incentive payment; approval and denial of incentive payment.

1. The Division of Child and Family Services shall administer a program to award incentive payments to an agency which provides child welfare services in a county whose population is 100,000 or more.

2. On or before May 1 of each year, an agency which provides child welfare services may submit an application to the Division of Child and Family Services for an incentive payment.

3. The application for an incentive payment must include, without limitation:

(a) A description of the specific goal that the agency which provides child welfare services agrees to achieve by June 30 of the following year if the incentive payment is awarded;

(b) Baseline data to support the need to achieve the specific goal and which will provide a manner in which to measure whether the goal is achieved or to determine the percentage of the goal that is achieved; and

(c) The amount requested by the agency which provides child welfare services as an incentive payment.

4. If the Division of Child and Family Services does not approve the application, the Division must notify the agency which provides child welfare services of the specific deficiencies in the application and allow the agency to resubmit the application within 30 days.

5. If the Division of Child and Family Services approves the application, the Division of Child and Family Services shall, to the extent that money is available for that purpose, award an incentive payment to the agency which provides child welfare services for the fiscal year beginning on July 1 of the year in which the application is submitted.

(Added to NRS by [2011, 2494](#))

NRS 432B.217 Application by agency which provides child welfare services for incentive payment in subsequent years; approval of application; amount of subsequent incentive payment.

1. Each year following the award of an incentive payment pursuant to [NRS 432B.2165](#), the agency which provides child welfare services may submit an application on or before May 1 for an incentive payment to be awarded for the next fiscal year beginning on July 1 following approval of the application.

2. The agency which provides child welfare services shall submit the application in the manner set forth in [NRS 432B.2165](#) and must, in addition to the information required pursuant to [NRS 432B.2165](#), include an estimate of the percentage of the goals established in the prior application that will be achieved by the agency which provides child welfare services by June 30.

3. If the Division of Child and Family Services approves the application, the Division shall, to the extent that money has been made available for that purpose, award an incentive payment to the agency which provides child welfare services for the fiscal year beginning on July 1 of the year in which the application is submitted in an amount not to exceed a percentage of the amount awarded for the current fiscal year as determined pursuant to subsection 4.

4. The amount of an incentive payment that may be awarded for the next fiscal year pursuant to this section must be determined by multiplying the amount awarded for the current fiscal year by the percentage point of completion of the goal established for the current fiscal year, up to a maximum of 100 percent of the amount of the incentive payment awarded for the current fiscal year.

(Added to NRS by [2011, 2494](#))

NRS 432B.2175 Agency which provides child welfare services that receives incentive payment to submit report to Division of Child and Family Services demonstrating percentage of goal achieved.

1. On or before September 1 of the year following the year in which an agency which provides child welfare services is awarded an incentive payment from the program established pursuant to [NRS 432B.2165](#), the agency which provides child welfare services shall submit to the Division of Child and Family Services a report which demonstrates whether the goal established pursuant to [NRS 432B.2165](#) was achieved and, if not, the percentage of the goal that was achieved by June 30 of the fiscal year in which the incentive payment was awarded.

2. If the report submitted pursuant to subsection 1 demonstrates that the agency which provides child welfare services achieved:

(a) A greater percentage of the goal than estimated pursuant to [NRS 432B.217](#), the Division of Child and Family Services shall

increase the incentive payment to the agency which provides child welfare services by an amount equal to the additional amount that should have been awarded pursuant to subsection 4 of [NRS 432B.217](#); or

(b) A lower percentage of the goal than estimated pursuant to [NRS 432B.217](#), the agency which provides child welfare services shall reimburse to the Division an amount equal to the additional amount that should not have been awarded pursuant to subsection 4 of [NRS 432B.217](#).

(Added to NRS by [2011, 2495](#))

NRS 432B.218 Annual report to Governor and Legislature concerning achievement of specific performance targets in improvement plans and specific goals established to receive incentive payment. On or before January 31 of each year, the Division of Child and Family Services shall prepare and submit a report to the Governor and the Legislature which includes, without limitation, information concerning:

1. The progress made by each agency which provides child welfare services in a county whose population is 100,000 or more toward achieving the specific performance targets set forth in an improvement plan submitted by the agency pursuant to [NRS 432B.216](#); and

2. Whether the agency which provides child welfare services in a county whose population is 100,000 or more achieved the specific goal established pursuant to [NRS 432B.2165](#) during the previous fiscal year and, if not, the percentage of the goal that was achieved.

(Added to NRS by [2011, 2495](#))

Grants to Agency Which Provides Child Welfare Services

NRS 432B.2185 Block grant awarded to agency which provides child welfare services in county whose population is 100,000 or more; amount and use of block grant.

1. The Division of Child and Family Services shall award a block grant to each agency which provides child welfare services in a county whose population is 100,000 or more for each fiscal year to the extent that money has been appropriated to the Division for that purpose. The amount of the appropriation to the Division of Child and Family Services must be based on the amount appropriated for the previous biennium. The amount of the block grant must be determined for 2 years beginning on July 1 of each odd-numbered year and allocated each fiscal year.

2. An agency which provides child welfare services that receives a block grant pursuant to subsection 1 may use the money allocated for any costs of providing child welfare services without restriction, the agency which provides child welfare services is not required to return any money remaining from that allocation at the end of the fiscal year, and the money does not revert to the State General Fund.

3. If the board of county commissioners of a county whose population is 100,000 or more appropriates to the agency which provides child welfare services for the county an amount less than the amount appropriated to the agency for the fiscal year beginning on July 1, 2010, the Division of Child and Family Services must reduce the amount of the block grant awarded pursuant to subsection 1 by an equal amount.

(Added to NRS by [2011, 2495](#))

NRS 432B.219 Categorical grants for adoption assistance programs; determination of amount; restrictions on use.

1. The Division of Child and Family Services shall provide a categorical grant to each agency which provides child welfare services for each fiscal year for its adoption assistance program to the extent that money has been appropriated to the Division for that purpose. The amount of the grant must be based upon the estimated cost of the projected growth in the adoption assistance program.

2. The amount of the grant awarded pursuant to subsection 1 must be determined for 2 years beginning on July 1 of each odd-numbered year and allocated each fiscal year.

3. An agency which provides child welfare services that receives a grant pursuant to subsection 1 must use the money allocated only for costs associated with the adoption assistance program. Any money from the grant awarded pursuant to subsection 1 that has not been used or committed for expenditure by the agency which provides child welfare services by the end of the fiscal year reverts to the State General Fund.

(Added to NRS by [2011, 2496](#))

REPORTS OF ABUSE OR NEGLECT; REPORTS OF PRENATAL ILLEGAL SUBSTANCE ABUSE

NRS 432B.220 Persons required to make report; when and to whom reports are required; any person may make report; report and written findings if reasonable cause to believe death of child caused by abuse or neglect; certain persons and entities required to inform reporters of duty to report.

1. Any person who is described in subsection 4 and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that a child has been abused or neglected shall:

(a) Except as otherwise provided in subsection 2, report the abuse or neglect of the child to an agency which provides child welfare services or to a law enforcement agency; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child has been abused or neglected.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse or neglect of the child involves an act or omission of:

(a) A person directly responsible or serving as a volunteer for or an employee of a public or private home, institution or facility where the child is receiving child care outside of the home for a portion of the day, the person shall make the report to a law enforcement agency.

(b) An agency which provides child welfare services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission, and the investigation of the abuse or neglect of the child must be made by an agency other than the one alleged to have committed the act or omission.

3. Any person who is described in paragraph (a) of subsection 4 who delivers or provides medical services to a newborn infant and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that the newborn

infant has been affected by prenatal illegal substance abuse or has withdrawal symptoms resulting from prenatal drug exposure shall, as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the newborn infant is so affected or has such symptoms, notify an agency which provides child welfare services of the condition of the infant and refer each person who is responsible for the welfare of the infant to an agency which provides child welfare services for appropriate counseling, training or other services. A notification and referral to an agency which provides child welfare services pursuant to this subsection shall not be construed to require prosecution for any illegal action.

4. A report must be made pursuant to subsection 1 by the following persons:

- (a) A person providing services licensed or certified in this State pursuant to, without limitation, [chapter 450B](#), [630](#), [630A](#), [631](#), [632](#), [633](#), [634](#), [634A](#), [635](#), [636](#), [637](#), [637B](#), [639](#), [640](#), [640A](#), [640B](#), [640C](#), [640D](#), [640E](#), [641](#), [641A](#), [641B](#) or [641C](#) of NRS.
- (b) Any personnel of a medical facility licensed pursuant to [chapter 449](#) of NRS who are engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of such a medical facility upon notification of suspected abuse or neglect of a child by a member of the staff of the medical facility.
- (c) A coroner.
- (d) A member of the clergy, practitioner of Christian Science or religious healer, unless the person has acquired the knowledge of the abuse or neglect from the offender during a confession.
- (e) A person working in a school who is licensed or endorsed pursuant to [chapter 391](#) or [641B](#) of NRS.
- (f) Any person who maintains or is employed by a facility or establishment that provides care for children, children's camp or other public or private facility, institution or agency furnishing care to a child.
- (g) Any person licensed pursuant to [chapter 424](#) of NRS to conduct a foster home.
- (h) Any officer or employee of a law enforcement agency or an adult or juvenile probation officer.
- (i) Except as otherwise provided in [NRS 432B.225](#), an attorney.
- (j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding abuse or neglect of a child and refers them to persons and agencies where their requests and needs can be met.
- (k) Any person who is employed by or serves as a volunteer for a youth shelter. As used in this paragraph, "youth shelter" has the meaning ascribed to it in [NRS 244.427](#).
- (l) Any adult person who is employed by an entity that provides organized activities for children.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that a child has died as a result of abuse or neglect, the person shall, as soon as reasonably practicable, report this belief to an agency which provides child welfare services or a law enforcement agency. If such a report is made to a law enforcement agency, the law enforcement agency shall notify an agency which provides child welfare services and the appropriate medical examiner or coroner of the report. If such a report is made to an agency which provides child welfare services, the agency which provides child welfare services shall notify the appropriate medical examiner or coroner of the report. The medical examiner or coroner who is notified of a report pursuant to this subsection shall investigate the report and submit his or her written findings to the appropriate agency which provides child welfare services, the appropriate district attorney and a law enforcement agency. The written findings must include, if obtainable, the information required pursuant to the provisions of subsection 2 of [NRS 432B.230](#).

7. The agency, board, bureau, commission, department, division or political subdivision of the State responsible for the licensure, certification or endorsement of a person who is described in subsection 4 and who is required in his or her professional or occupational capacity to be licensed, certified or endorsed in this State shall, at the time of initial licensure, certification or endorsement:

- (a) Inform the person, in writing or by electronic communication, of his or her duty as a mandatory reporter pursuant to this section;
- (b) Obtain a written acknowledgment or electronic record from the person that he or she has been informed of his or her duty pursuant to this section; and
- (c) Maintain a copy of the written acknowledgment or electronic record for as long as the person is licensed, certified or endorsed in this State.

8. The employer of a person who is described in subsection 4 and who is not required in his or her professional or occupational capacity to be licensed, certified or endorsed in this State must, upon initial employment of the person:

- (a) Inform the person, in writing or by electronic communication, of his or her duty as a mandatory reporter pursuant to this section;
- (b) Obtain a written acknowledgment or electronic record from the person that he or she has been informed of his or her duty pursuant to this section; and
- (c) Maintain a copy of the written acknowledgment or electronic record for as long as the person is employed by the employer.

(Added to NRS by [1985, 1371](#); A [1987, 2132, 2220](#); [1989, 439](#); [1993, 2229](#); [1999, 3526](#); [2001, 780, 1150](#); [2001 Special Session, 37](#); [2003, 910, 1211](#); [2005, 2031](#); [2007, 1503, 1853, 3084](#); [2009, 2996](#); [2011, 791, 1097](#); [2013, 957, 1086](#); [2015, 2316](#))

NRS 432B.225 Attorney prohibited from reporting abuse or neglect of child in certain circumstances.

1. Notwithstanding the provisions of [NRS 432B.220](#), an attorney shall not make a report of the abuse or neglect of a child if the attorney acquired knowledge of the abuse or neglect from a client during a privileged communication if the client:

- (a) Has been or may be accused of committing the abuse or neglect; or
- (b) Is the victim of the abuse or neglect, is in foster care and did not give consent to the attorney to report the abuse or neglect.

2. Nothing in this section shall be construed as relieving an attorney from:

- (a) Except as otherwise provided in subsection 1, the duty to report the abuse or neglect of a child pursuant to [NRS 432B.220](#);
- or
- (b) Complying with any ethical duties of attorneys as set forth in the Nevada Rules of Professional Conduct, including, without limitation, any duty to take reasonably necessary actions to protect the client of the attorney if the client is not capable of making adequately considered decisions because of age, mental impairment or any other reason. Such actions may include, without limitation, consulting with other persons who may take actions to protect the client and, when appropriate, seeking the appointment of a guardian ad litem, conservator or guardian.

(Added to NRS by [2013, 1085](#))

NRS 432B.230 Method of making report; contents.

1. A person may make a report pursuant to [NRS 432B.220](#) by telephone or, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, by any other means of oral, written or electronic communication that a reasonable person would believe, under those facts and circumstances, is a reliable and swift means of communicating information to the person who receives the report. If the report is made orally, the person who receives the report must reduce it to writing as soon as reasonably practicable.

2. The report must contain the following information, if obtainable:
- The name, address, age and sex of the child;
 - The name and address of the child's parents or other person responsible for the care of the child;
 - The nature and extent of the abuse or neglect of the child, the effect of prenatal illegal substance abuse on the newborn infant or the nature of the withdrawal symptoms resulting from prenatal drug exposure of the newborn infant;
 - Any evidence of previously known or suspected:
 - Abuse or neglect of the child or the child's siblings; or
 - Effects of prenatal illegal substance abuse on or evidence of withdrawal symptoms resulting from prenatal drug exposure of the newborn infant;
 - The name, address and relationship, if known, of the person who is alleged to have abused or neglected the child; and
 - Any other information known to the person making the report that the agency which provides child welfare services considers necessary.

(Added to NRS by [1985, 1372](#); A [1999, 3528](#); [2001 Special Session, 38](#); [2005, 2033](#))

NRS 432B.240 Penalty for failure to make report. Any person who knowingly and willfully violates the provisions of [NRS 432B.220](#) is guilty of:

- For the first violation, a misdemeanor.
- For each subsequent violation, a gross misdemeanor.

(Added to NRS by [1985, 1373](#); A [2013, 1088](#))

NRS 432B.250 Persons required to report prohibited from invoking certain privileges. Any person who is required to make a report pursuant to [NRS 432B.220](#) may not invoke any of the privileges set forth in [chapter 49](#) of NRS:

- For failure to make a report pursuant to [NRS 432B.220](#);
- In cooperating with an agency which provides child welfare services or a guardian ad litem for a child; or
- In any proceeding held pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive.

(Added to NRS by [1985, 1378](#); A [1999, 3528](#); [2001 Special Session, 38](#); [2003, 590](#))

NRS 432B.255 Admissibility of evidence. In any proceeding resulting from a report made or action taken pursuant to the provisions of [NRS 432B.220](#), [432B.230](#) or [432B.340](#) or in any proceeding where such report or the contents thereof is sought to be introduced in evidence, such report or contents or any other fact or facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter would otherwise be privileged against disclosure under [chapter 49](#) of NRS.

(Added to NRS by [1965, 548](#); A [1971, 804](#))—(Substituted in revision for NRS 200.506)

NRS 432B.260 Action upon receipt of report; agency which provides child welfare services required to inform person named in report of allegation of abuse or neglect if report is investigated.

1. Upon the receipt of a report concerning the possible abuse or neglect of a child, an agency which provides child welfare services or a law enforcement agency shall promptly notify the appropriate licensing authority, if any. A law enforcement agency shall promptly notify an agency which provides child welfare services of any report it receives.

2. Upon receipt of a report concerning the possible abuse or neglect of a child, an agency which provides child welfare services or a law enforcement agency shall immediately initiate an investigation if the report indicates that:

- There is a high risk of serious harm to the child;
- The child has suffered a fatality; or
- The child is living in a household in which another child has died, or the child is seriously injured or has visible signs of physical abuse.

3. Except as otherwise provided in subsection 2, upon receipt of a report concerning the possible abuse or neglect of a child or notification from a law enforcement agency that the law enforcement agency has received such a report, an agency which provides child welfare services shall conduct an evaluation not later than 3 days after the report or notification was received to determine whether an investigation is warranted. For the purposes of this subsection, an investigation is not warranted if:

- The child is not in imminent danger of harm;
- The child is not vulnerable as the result of any untreated injury, illness or other physical, mental or emotional condition that threatens the immediate health or safety of the child;
- The alleged abuse or neglect of the child or the alleged effect of prenatal illegal substance abuse on or the withdrawal symptoms resulting from any prenatal drug exposure of the newborn infant could be eliminated if the child and the family of the child are referred to or participate in social or health services offered in the community, or both; or
- The agency determines that the:
 - Alleged abuse or neglect was the result of the reasonable exercise of discipline by a parent or guardian of the child involving the use of corporal punishment; and
 - Corporal punishment so administered was not so excessive as to constitute abuse or neglect as described in [NRS 432B.150](#).

4. If the agency determines that an investigation is warranted, the agency shall initiate the investigation not later than 3 days after the evaluation is completed.

5. If an agency which provides child welfare services investigates a report of alleged abuse or neglect of a child pursuant to [NRS 432B.010](#) to [432B.400](#), inclusive, the agency shall inform the person responsible for the child's welfare who is named in the report as allegedly causing the abuse or neglect of the child of any allegation which is made against the person at the initial time of contact with the person by the agency. The agency shall not identify the person responsible for reporting the alleged abuse or neglect.

6. Except as otherwise provided in this subsection, if the agency determines that an investigation is not warranted, the agency may, as appropriate:

(a) Provide counseling, training or other services relating to child abuse and neglect to the family of the child, or refer the family to a person who has entered into an agreement with the agency to provide those services; or

(b) Conduct an assessment of the family of the child to determine what services, if any, are needed by the family and, if appropriate, provide any such services or refer the family to a person who has entered into a written agreement with the agency to make such an assessment.

7. If an agency which provides child welfare services enters into an agreement with a person to provide services to a child or the family of the child pursuant to subsection 6, the agency shall require the person to notify the agency if the child or the family refuses or fails to participate in the services, or if the person determines that there is a serious risk to the health or safety of the child.

8. If an agency which provides child welfare services determines pursuant to subsection 3 that an investigation is not warranted, the agency may, at any time, reverse that determination and initiate an investigation.

9. An agency which provides child welfare services and a law enforcement agency shall cooperate in the investigation, if any, of a report of abuse or neglect of a child.

(Added to NRS by [1985, 1373](#); A [1989, 440](#); [1997, 2472](#); [1999, 2910](#); [2001, 1840, 1850](#); [2001 Special Session, 39](#); [2003, 236](#); [2005, 2034, 2095](#); [2007, 1505](#); [2013, 1088, 2877](#))

NRS 432B.270 Interview of child and sibling of child concerning possible abuse or neglect; photographs, X-rays and medical tests.

1. A designee of an agency investigating a report of abuse or neglect of a child may, without the consent of and outside the presence of any person responsible for the child's welfare, interview a child and any sibling of the child, if an interview is deemed appropriate by the designee, concerning any possible abuse or neglect. The child and any sibling of the child may be interviewed, if an interview is deemed appropriate by the designee, at any place where the child or any sibling of the child is found. A designee who conducts an interview pursuant to this subsection must be trained adequately to interview children. The designee shall, immediately after the conclusion of the interview, if reasonably possible, notify a person responsible for the child's welfare that the child or sibling was interviewed, unless the designee determines that such notification would endanger the child or sibling.

2. A designee of an agency investigating a report of abuse or neglect of a child may, without the consent of the person responsible for a child's welfare:

(a) Take or cause to be taken photographs of the child's body, including the areas of trauma; and

(b) If indicated after consultation with a physician, cause X-rays or medical tests to be performed on a child.

3. Upon the taking of any photographs or X-rays or the performance of any medical tests pursuant to subsection 2, the person responsible for the child's welfare must be notified immediately, if reasonably possible, unless the designee determines that the notification would endanger the child. The reasonable cost of these photographs, X-rays or medical tests must be paid by the agency which provides child welfare services if money is not otherwise available.

4. Any photographs or X-rays taken or records of any medical tests performed pursuant to subsection 2, or any medical records relating to the examination or treatment of a child pursuant to this section, or copies thereof, must be sent to the agency which provides child welfare services, the law enforcement agency participating in the investigation of the report and the prosecuting attorney's office. Each photograph, X-ray, result of a medical test or other medical record:

(a) Must be accompanied by a statement or certificate signed by the custodian of medical records of the health care facility where the photograph or X-ray was taken or the treatment, examination or medical test was performed, indicating:

(1) The name of the child;

(2) The name and address of the person who took the photograph or X-ray, performed the medical test, or examined or treated the child; and

(3) The date on which the photograph or X-ray was taken or the treatment, examination or medical test was performed;

(b) Is admissible in any proceeding relating to the abuse or neglect of the child; and

(c) May be given to the child's parent or guardian if the parent or guardian pays the cost of duplicating them.

5. As used in this section, "medical test" means any test performed by or caused to be performed by a provider of health care, including, without limitation, a computerized axial tomography scan and magnetic resonance imaging.

(Added to NRS by [1985, 1373](#); A [1999, 61](#); [2001 Special Session, 39](#); [2007, 1506](#))

NRS 432B.280 Confidentiality of information maintained by an agency which provides child welfare services; exceptions; penalty.

1. Except as otherwise provided in [NRS 239.0115](#), [432B.165](#), [432B.175](#) and [439.538](#) and except as otherwise authorized or required pursuant to [NRS 432B.290](#), information maintained by an agency which provides child welfare services, including, without limitation, reports and investigations made pursuant to this chapter, is confidential.

2. Any person, law enforcement agency or public agency, institution or facility who willfully releases or disseminates such information, except:

(a) Pursuant to a criminal prosecution relating to the abuse or neglect of a child;

(b) As otherwise authorized pursuant to [NRS 432B.165](#) and [432B.175](#);

(c) As otherwise authorized or required pursuant to [NRS 432B.290](#);

(d) As otherwise authorized or required pursuant to [NRS 439.538](#); or

(e) As otherwise required pursuant to [NRS 432B.513](#),

is guilty of a gross misdemeanor.

(Added to NRS by [1985, 1373](#); A [1999, 2032](#); [2001, 1701](#); [2007, 195, 1507, 1980, 2106](#); [2013, 525](#))

NRS 432B.290 Maintenance of information by agency which provides child welfare services; authorized release of such information; penalty; fee for release of information; rules, policies or regulations.

1. Information maintained by an agency which provides child welfare services must be maintained by the agency which provides child welfare services as required by federal law as a condition of the allocation of federal money to this State.

2. Except as otherwise provided in this section and [NRS 432B.165](#), [432B.175](#) and [432B.513](#), information maintained by an

agency which provides child welfare services may, at the discretion of the agency which provides child welfare services, be made available only to:

(a) A physician, if the physician has before him or her a child who the physician has reasonable cause to believe has been abused or neglected;

(b) A person authorized to place a child in protective custody, if the person has before him or her a child who the person has reasonable cause to believe has been abused or neglected and the person requires the information to determine whether to place the child in protective custody;

(c) An agency, including, without limitation, an agency in another jurisdiction, responsible for or authorized to undertake the care, treatment or supervision of:

(1) The child; or

(2) The person responsible for the welfare of the child;

(d) A district attorney or other law enforcement officer who requires the information in connection with an investigation or prosecution of the abuse or neglect of a child;

(e) Except as otherwise provided in paragraph (f), a court other than a juvenile court, for in camera inspection only, unless the court determines that public disclosure of the information is necessary for the determination of an issue before it;

(f) A court as defined in [NRS 159.015](#) to determine whether a guardian or successor guardian of a child should be appointed pursuant to [chapter 159](#) of NRS or [NRS 432B.466](#) to [432B.468](#), inclusive;

(g) A person engaged in bona fide research or an audit, but information identifying the subjects of a report must not be made available to the person;

(h) The attorney and the guardian ad litem of the child, if the information is reasonably necessary to promote the safety, permanency and well-being of the child;

(i) A person who files or intends to file a petition for the appointment of a guardian or successor guardian of a child pursuant to [chapter 159](#) of NRS or [NRS 432B.466](#) to [432B.468](#), inclusive, if the identity of the person responsible for reporting the abuse or neglect of the child to a public agency is kept confidential and the information is reasonably necessary to promote the safety, permanency and well-being of the child;

(j) The proposed guardian or proposed successor guardian of a child over whom a guardianship is sought pursuant to [chapter 159](#) of NRS or [NRS 432B.466](#) to [432B.468](#), inclusive, if the identity of the person responsible for reporting the abuse or neglect of the child to a public agency is kept confidential and the information is reasonably necessary to promote the safety, permanency and well-being of the child;

(k) A grand jury upon its determination that access to these records and the information is necessary in the conduct of its official business;

(l) A federal, state or local governmental entity, or an agency of such an entity, or a juvenile court, that needs access to the information to carry out its legal responsibilities to protect children from abuse and neglect;

(m) A person or an organization that has entered into a written agreement with an agency which provides child welfare services to provide assessments or services and that has been trained to make such assessments or provide such services;

(n) A team organized pursuant to [NRS 432B.350](#) for the protection of a child;

(o) A team organized pursuant to [NRS 432B.405](#) to review the death of a child;

(p) A parent or legal guardian of the child and an attorney of a parent or guardian of the child, including, without limitation, the parent or guardian of a child over whom a guardianship is sought pursuant to [chapter 159](#) of NRS or [NRS 432B.466](#) to [432B.468](#), inclusive, if the identity of the person responsible for reporting the abuse or neglect of the child to a public agency is kept confidential and the information is reasonably necessary to promote the safety, permanency and well-being of the child and is limited to information concerning that parent or guardian;

(q) The child over whom a guardianship is sought pursuant to [chapter 159](#) of NRS or [NRS 432B.466](#) to [432B.468](#), inclusive, if:

(1) The child is 14 years of age or older; and

(2) The identity of the person responsible for reporting the abuse or neglect of the child to a public agency is kept confidential and the information is reasonably necessary to promote the safety, permanency and well-being of the child;

(r) The persons or agent of the persons who are the subject of a report, if the information is reasonably necessary to promote the safety, permanency and well-being of the child and is limited to information concerning those persons;

(s) An agency that is authorized by law to license foster homes or facilities for children or to investigate persons applying for approval to adopt a child, if the agency has before it an application for that license or is investigating an applicant to adopt a child;

(t) Upon written consent of the parent, any officer of this State or a city or county thereof or Legislator authorized by the agency or department having jurisdiction or by the Legislature, acting within its jurisdiction, to investigate the activities or programs of an agency which provides child welfare services if:

(1) The identity of the person making the report is kept confidential; and

(2) The officer, Legislator or a member of the family of the officer or Legislator is not the person alleged to have committed the abuse or neglect;

(u) The Division of Parole and Probation of the Department of Public Safety for use pursuant to [NRS 176.135](#) in making a presentence investigation and report to the district court or pursuant to [NRS 176.151](#) in making a general investigation and report;

(v) Any person who is required pursuant to [NRS 432B.220](#) to make a report to an agency which provides child welfare services or to a law enforcement agency;

(w) A local advisory board to expedite proceedings for the placement of children created pursuant to [NRS 432B.604](#);

(x) The panel established pursuant to [NRS 432B.396](#) to evaluate agencies which provide child welfare services;

(y) An employer in accordance with subsection 3 of [NRS 432.100](#);

(z) A team organized or sponsored pursuant to [NRS 217.475](#) or [228.495](#) to review the death of the victim of a crime that constitutes domestic violence; or

(aa) The Committee to Review Suicide Fatalities created by [NRS 439.5104](#).

3. An agency investigating a report of the abuse or neglect of a child shall, upon request, provide to a person named in the report as allegedly causing the abuse or neglect of the child:

(a) A copy of:

(1) Any statement made in writing to an investigator for the agency by the person named in the report as allegedly causing the abuse or neglect of the child; or

(2) Any recording made by the agency of any statement made orally to an investigator for the agency by the person named

in the report as allegedly causing the abuse or neglect of the child; or

(b) A written summary of the allegations made against the person who is named in the report as allegedly causing the abuse or neglect of the child. The summary must not identify the person responsible for reporting the alleged abuse or neglect or any collateral sources and reporting parties.

4. Except as otherwise provided by subsection 6, before releasing any information maintained by an agency which provides child welfare services pursuant to this section, an agency which provides child welfare services shall take whatever precautions it determines are reasonably necessary to protect the identity and safety of any person who reports child abuse or neglect and to protect any other person if the agency which provides child welfare services reasonably believes that disclosure of the information would cause a specific and material harm to an investigation of the alleged abuse or neglect of a child or the life or safety of any person.

5. The provisions of this section must not be construed to require an agency which provides child welfare services to disclose information maintained by the agency which provides child welfare services if, after consultation with the attorney who represents the agency, the agency determines that such disclosure would cause a specific and material harm to a criminal investigation.

6. A person who is the subject of an unsubstantiated report of child abuse or neglect made pursuant to this chapter and who believes that the report was made in bad faith or with malicious intent may petition a district court to order the agency which provides child welfare services to release information maintained by the agency which provides child welfare services. The petition must specifically set forth the reasons supporting the belief that the report was made in bad faith or with malicious intent. The petitioner shall provide notice to the agency which provides child welfare services so that the agency may participate in the action through its counsel. The district court shall review the information which the petitioner requests to be released and the petitioner shall be allowed to present evidence in support of the petition. If the court determines that there is a reasonable question of fact as to whether the report was made in bad faith or with malicious intent and that the disclosure of the identity of the person who made the report would not be likely to endanger the life or safety of the person who made the report, the court shall provide a copy of the information to the petitioner and the original information is subject to discovery in a subsequent civil action regarding the making of the report.

7. If an agency which provides child welfare services receives any information that is deemed confidential by law, the agency which provides child welfare services shall maintain the confidentiality of the information as prescribed by applicable law.

8. Pursuant to this section, a person may authorize the release of information maintained by an agency which provides child welfare services about himself or herself, but may not waive the confidentiality of such information concerning any other person.

9. An agency which provides child welfare services may provide a summary of the outcome of an investigation of the alleged abuse or neglect of a child to the person who reported the suspected abuse or neglect.

10. Except as otherwise provided in this subsection, any person who is provided with information maintained by an agency which provides child welfare services and who further disseminates the information or makes the information public is guilty of a gross misdemeanor. This subsection does not apply to:

(a) A district attorney or other law enforcement officer who uses the information solely for the purpose of initiating legal proceedings;

(b) An employee of the Division of Parole and Probation of the Department of Public Safety making a presentence investigation and report to the district court pursuant to [NRS 176.135](#) or making a general investigation and report pursuant to [NRS 176.151](#); or

(c) An employee of a juvenile justice agency who provides the information to the juvenile court.

11. An agency which provides child welfare services may charge a fee for processing costs reasonably necessary to prepare information maintained by the agency which provides child welfare services for release pursuant to this section.

12. An agency which provides child welfare services shall adopt rules, policies or regulations to carry out the provisions of this section.

13. As used in this section, "juvenile justice agency" means the Youth Parole Bureau or a director of juvenile services.

(Added to NRS by [1985, 1374](#); A [1993, 2706](#); [1997, 835, 849, 2473, 2476](#); [1999, 559, 561, 1193, 2033, 2035, 2043, 3529, 3531](#); [2001, 269, 1701, 1841, 2612](#); [2001 Special Session, 40](#); [2003, 236, 251](#); [2005, 2035](#); [2007, 195](#); [2011, 737, 861](#); [2013, 369, 525](#); [2015, 377, 1497](#))

NRS 432B.300 Determinations to be made from investigation of report. If an agency which provides child welfare services determines that an investigation of a report concerning the possible abuse or neglect of a child is warranted pursuant to [NRS 432B.260](#), the agency shall determine, without limitation:

1. The composition of the family, household or facility, including the name, address, age, sex and race of each child named in the report, any siblings or other children in the same place or under the care of the same person, the persons responsible for the children's welfare and any other adult living or working in the same household or facility;

2. Whether there is reasonable cause to believe any child is abused or neglected or threatened with abuse or neglect, the nature and extent of existing or previous injuries, abuse or neglect and any evidence thereof, and the person apparently responsible;

3. Whether there is reasonable cause to believe that a child has suffered a fatality as a result of abuse or neglect regardless of whether or not there are any siblings of the child or other children who are residing in the same household as the child who is believed to have suffered a fatality as a result of abuse or neglect;

4. If there is reasonable cause to believe that a child is abused or neglected, the immediate and long-term risk to the child if the child remains in the same environment;

5. The treatment and services which appear necessary to help prevent further abuse or neglect and to improve the environment of the child and the ability of the person responsible for the child's welfare to care adequately for the child; and

6. Whether the report concerning the possible abuse or neglect of a child is substantiated or unsubstantiated.

(Added to NRS by [1985, 1375](#); A [1997, 2475](#); [2001, 1850](#); [2001 Special Session, 42](#); [2003, 236](#); [2007, 1507](#); [2013, 2878](#))

NRS 432B.310 Report to Central Registry of abuse or neglect required upon completion of investigation; report to Central Registry of prenatal illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure only required if child has been abused or neglected after child was born.

1. Except as otherwise provided in subsection 6 of [NRS 432B.260](#), the agency investigating a report of abuse or neglect of a child shall, upon completing the investigation, report to the Central Registry:

(a) Identifying and demographic information on the child alleged to be abused or neglected, the parents of the child, any other

person responsible for the welfare of the child and the person allegedly responsible for the abuse or neglect;

(b) The facts of the alleged abuse or neglect, including the date and type of alleged abuse or neglect, the manner in which the abuse was inflicted, the severity of the injuries and, if applicable, any information concerning the death of the child; and

(c) The disposition of the case.

2. An agency which provides child welfare services shall not report to the Central Registry any information concerning a child identified as being affected by prenatal illegal substance abuse or as having withdrawal symptoms resulting from prenatal drug exposure unless the agency determines that a person has abused or neglected the child after the child was born.

(Added to NRS by [1985, 1375](#); A [1999, 2912](#); [2001, 212](#), [1850](#); [2005, 2037](#), [2096](#); [2007, 1508](#); [2013, 2879](#))

NRS 432B.315 Written notification of substantiated report to person responsible for child's welfare. If an agency which provides child welfare services determines pursuant to [NRS 432B.300](#) that a report made pursuant to [NRS 432B.220](#) is substantiated, the agency shall provide written notification to the person responsible for the child's welfare who is named in the report as allegedly causing the abuse or neglect of the child which includes statements indicating that:

1. The report which was made against the person has been substantiated and the agency which provides child welfare services intends to place the person's name in the Central Registry pursuant to [NRS 432B.310](#); and

2. The person may request an administrative appeal of the substantiation of the report and the agency's intention to place the person's name in the Central Registry by submitting a written request to the agency which provides child welfare services within the time required pursuant to [NRS 432B.317](#).

(Added to NRS by [2013, 2875](#))

NRS 432B.317 Administrative appeal of substantiated report; hearing.

1. A person to whom a written notification is sent pursuant to [NRS 432B.315](#) may request an administrative appeal of the substantiation of the report and the agency's intention to place the person's name in the Central Registry by submitting a written request to the agency which provides child welfare services within 15 days after the date on which the agency sent the written notification as required pursuant to [NRS 432B.315](#).

2. Except as otherwise provided in subsection 3, if an agency which provides child welfare services receives a request for an administrative appeal within 15 days after the agency sent the written notification pursuant to subsection 1, a hearing before a hearing officer must be held in accordance with [chapter 233B](#) of NRS.

3. An administrative appeal is stayed upon the receipt of written notification to the agency which provides child welfare services of a pending adjudicatory hearing pursuant to [NRS 432B.530](#) which arose out of the same incident as the incident upon which the report made pursuant to [NRS 432B.220](#) was premised. The stay of the administrative appeal is lifted when:

(a) A final determination is made in the adjudicatory hearing; or

(b) The adjudicatory hearing is dismissed or terminated if the adjudicatory hearing does not result in a final determination being made.

4. If a request for an administrative appeal is not submitted pursuant to subsection 1, the agency which provides child welfare services shall place the person's name in the Central Registry pursuant to [NRS 432B.310](#).

5. If the hearing officer in a hearing that is held pursuant to this section:

(a) Affirms the substantiation of the report, the agency which provides child welfare services shall place the person's name in the Central Registry pursuant to [NRS 432B.310](#); or

(b) Rejects the substantiation of the report, the agency which provides child welfare services shall not place the person's name in the Central Registry pursuant to [NRS 432B.310](#).

6. A conclusive presumption that the substantiation of the report will be affirmed and the person's name will be placed in the Central Registry pursuant to [NRS 432B.310](#) is established if there is a final determination in an adjudicatory hearing that the child was in need of protection.

7. The decision of a hearing officer in a hearing that is held pursuant to this section is a final decision for the purposes of judicial review.

8. As used in this section, "final determination in an adjudicatory hearing" means a finding made by a court pursuant to subsection 5 of [NRS 432B.530](#) as to whether a child was in need of protection at the time of the removal of the child from the home that is based on the child being subjected to abuse or neglect by the person to whom a written notice was sent pursuant to [NRS 432B.315](#).

(Added to NRS by [2013, 2876](#))

NRS 432B.320 Waiver of full investigation of report.

1. An agency which provides child welfare services may waive a full investigation of a report of abuse or neglect of a child made by another agency or a person if, after assessing the circumstances, it is satisfied that:

(a) The person or other agency who made the report can provide services to meet the needs of the child and the family, and this person or agency agrees to do so; and

(b) The person or other agency agrees in writing to report periodically on the child and to report immediately any threat or harm to the child's welfare.

2. The agency which provides child welfare services shall supervise for a reasonable period the services provided by the person or other agency pursuant to subsection 1.

(Added to NRS by [1985, 1375](#); A [2001 Special Session, 42](#))

PROTECTIVE SERVICES AND CUSTODY

NRS 432B.325 County whose population is 100,000 or more to provide child protective services in county; county whose population is less than 100,000 to provide such services in certain circumstances.

1. Each county whose population is 100,000 or more shall provide child protective services in that county and pay the cost of those services. The services must be provided in accordance with the standards adopted pursuant to [NRS 432B.190](#).

2. A county whose population is less than 100,000 that receives approval to carry out child protective services for the county and an exemption from the assessment imposed pursuant to [NRS 432B.326](#) shall:

(a) Provide child protective services in that county and pay the cost of those services.

(b) Provide the services in accordance with the standards adopted pursuant to [NRS 432B.190](#).

3. A county whose population is less than 100,000 that carries out child protective services for the county shall be deemed to be the agency which provides child welfare services for the purposes of any provisions of this chapter relating to child protective services and any regulations adopted pursuant thereto.

(Added to NRS by [1987, 1439](#); A [2011, 2524](#))

NRS 432B.326 Payment of assessment for provision of child protective services by county whose population is less than 100,000; exemption.

1. Unless an exemption is approved pursuant to subsection 4, each county whose population is less than 100,000 shall pay an assessment each fiscal year to the Division of Child and Family Services in an amount which does not exceed the amount authorized by the Legislature for the provision of child protective services by the Division in the county during that year.

2. The Division shall provide each county whose population is less than 100,000, on or before May 1 of each year, with an estimate of the amount of the assessment. The estimate becomes the amount of the assessment unless the county is notified of a change within 2 weeks after the date on which the county contribution is approved by the Legislature. The county shall pay the assessment:

(a) In full within 30 days after the amount of the assessment becomes final; or

(b) In equal quarterly installments on or before the first day of July, October, January and April, respectively.

3. Money paid by a county pursuant to this section must be deposited by the Division with the State Treasurer, and the Division shall expend the money in accordance with the approved budget of the Division.

4. A county whose population is less than 100,000 may submit a proposal to the Governor for the county to carry out child protective services for the county. If the Governor approves the proposal, the Governor must submit a recommendation to the Interim Finance Committee to exempt the county from the assessment required pursuant to subsection 1. The Interim Finance Committee, upon receiving the recommendation from the Governor, shall consider the proposal and determine whether to approve the exemption. In considering whether to approve the exemption, the Interim Finance Committee shall consider, among other things, the best interests of the State, the effect of the exemption and the intent of the Legislature in requiring the assessment to be paid by the county.

(Added to NRS by [2011, 2523](#))

NRS 432B.327 Division of Child and Family Services to submit certain reports concerning budgets for child protective services to Governor, certain counties and Legislative Commission. The Division of Child and Family Services shall submit:

1. A report on or before December 1 of each year to the Governor and to each county whose population is less than 100,000 that contains a statement of:

(a) The total number of children who received child protective services in each county in the immediately preceding fiscal year; and

(b) The amount and categories of the expenditures made by the Division on child protective services in each county in the immediately preceding fiscal year;

2. To each county whose population is less than 100,000, on or before December 1 of each even-numbered year, the total proposed budget of the Division for that county for the next succeeding biennium, including the projected number of children who will receive child protective services and the projected costs of child protective services attributed to the county; and

3. Such reports to the Legislative Commission as required by the Commission.

(Added to NRS by [2011, 2522](#))

NRS 432B.330 Circumstances under which child is or may be in need of protection.

1. A child is in need of protection if:

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

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

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

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

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

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

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

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

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

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

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

(2) Education as required by law; or

(3) Adequate medical care;

(c) Has been responsible for the neglect of a child who has resided with that person; or

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

3. A child may be in need of protection if the death of a parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to [NRS 33.018](#).

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

5. As used in this section:

(a) "Abuse" means:

- (1) Physical or mental injury of a nonaccidental nature; or
- (2) Sexual abuse or sexual exploitation,

È of a child caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child's health or welfare is harmed or threatened with harm. The term does not include the actions described in subsection 2 of [NRS 432B.020](#).

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

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

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

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

È The term does not include the actions described in subsection 2 of [NRS 432B.020](#).

(Added to NRS by [1985, 1371](#); A [1991, 52](#); [1999, 830](#); [2001, 1256](#); [2005, 2038](#); [2015, 1183](#))

NRS 432B.340 Determination that child needs protection but is not in imminent danger.

1. If the agency which provides child welfare services determines that a child needs protection, but is not in imminent danger from abuse or neglect, it may:

(a) Offer to the parents or guardian a plan for services and inform the parents or guardian that the agency has no legal authority to compel the parents or guardian to accept the plan but that it has the authority to petition the court pursuant to [NRS 432B.490](#) or to refer the case to the district attorney or a law enforcement agency; or

(b) File a petition pursuant to [NRS 432B.490](#) and, if a child is adjudicated in need of protection, request that the child be removed from the custody of the parents or guardian or that the child remain at home with or without the supervision of the court or of any person or agency designated by the court.

2. If the parent or guardian accepts the conditions of the plan offered by the agency pursuant to paragraph (a) of subsection 1, the agency may elect not to file a petition and may arrange for appropriate services, including medical care, care of the child during the day, management of the home or supervision of the child, the parents or guardian.

(Added to NRS by [1985, 1376](#); A [2001 Special Session, 42](#))

NRS 432B.350 Teams for protection of child. An agency which provides child welfare services may organize one or more teams for protection of a child to assist the agency in the evaluation and investigation of reports of abuse or neglect of a child, diagnosis and treatment of abuse or neglect and the coordination of responsibilities. Members of the team serve at the invitation of the agency and must include representatives of other organizations concerned with education, law enforcement or physical or mental health.

(Added to NRS by [1985, 1376](#); A [2001 Special Session, 43](#))

NRS 432B.360 Voluntary placement of child with agency or institution; regulations.

1. A parent or guardian of a child who is in need of protection may place the child with a public agency authorized to care for children or a private institution or agency licensed by the Department of Health and Human Services or a county whose population is 100,000 or more to care for such children if:

(a) Efforts to keep the child in his or her own home have failed; and

(b) The parents or guardian and the agency or institution voluntarily sign a written agreement for placement of the child which sets forth the rights and responsibilities of each of the parties to the agreement.

2. If a child is placed with an agency or institution pursuant to subsection 1, the parent or guardian shall:

(a) If able, contribute to the support of the child during the temporary placement;

(b) Inform the agency or institution of any change in the address or circumstances of the parent or guardian; and

(c) Meet with a representative of the agency or institution and participate in developing and carrying out a plan for the possible return of the child to the custody of the parent or guardian, the placement of the child with a relative or the eventual adoption of the child.

3. A parent or guardian who voluntarily agrees to place a child with an agency or institution pursuant to subsection 1 is entitled to have the child returned to the physical custody of the parent or guardian within 48 hours of a written request to that agency or institution. If that agency or institution determines that it would be detrimental to the best interests of the child to return the child to the custody of the parent or guardian, it shall cause a petition to be filed pursuant to [NRS 432B.490](#).

4. If the child has remained in temporary placement for 6 consecutive months, the agency or institution shall:

(a) Immediately return the child to the physical custody of the parent or guardian; or

(b) Cause a petition to be filed pursuant to [NRS 432B.490](#).

5. The Division of Child and Family Services shall adopt regulations to carry out the provisions of this section.

(Added to NRS by [1985, 1376](#); A [1993, 2707](#); [2001 Special Session, 43](#))

NRS 432B.370 Determination that child is not in need of protection. If an agency which provides child welfare services determines that there is no reasonable cause to believe that a child is in need of protection, it shall proceed no further in that matter.

(Added to NRS by [1985, 1377](#); A [2001 Special Session, 44](#))

NRS 432B.380 Referral of case to district attorney for criminal prosecution; recommendation to file petition. If the agency which provides child welfare services determines that further action is necessary to protect a child who is in need of protection, as well as any other child under the same care who may be in need of protection, it may refer the case to the district attorney for criminal prosecution and may recommend the filing of a petition pursuant to [NRS 432B.490](#).

(Added to NRS by [1985, 1377](#); A [2001 Special Session, 44](#))

NRS 432B.390 Placement of child in protective custody.

1. An agent or officer of a law enforcement agency, an officer of the local juvenile probation department or the local

department of juvenile services, or a designee of an agency which provides child welfare services:

(a) May place a child in protective custody without the consent of the person responsible for the child's welfare if the agent, officer or designee has reasonable cause to believe that immediate action is necessary to protect the child from injury, abuse or neglect.

(b) Shall place a child in protective custody upon the death of a parent of the child, without the consent of the person responsible for the welfare of the child, if the agent, officer or designee has reasonable cause to believe that the death of the parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to [NRS 33.018](#).

2. When an agency which provides child welfare services receives a report pursuant to subsection 2 of [NRS 432B.630](#), a designee of the agency which provides child welfare services shall immediately place the child in protective custody.

3. If there is reasonable cause to believe that the death of a parent of a child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to [NRS 33.018](#), a protective custody hearing must be held pursuant to [NRS 432B.470](#), whether the child was placed in protective custody or with a relative. If an agency other than an agency which provides child welfare services becomes aware that there is reasonable cause to believe that the death of a parent of a child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to [NRS 33.018](#), that agency shall immediately notify the agency which provides child welfare services and a protective custody hearing must be scheduled.

4. An agency which provides child welfare services shall request the assistance of a law enforcement agency in the removal of a child if the agency has reasonable cause to believe that the child or the person placing the child in protective custody may be threatened with harm.

5. Before taking a child for placement in protective custody, the person taking the child shall show his or her identification to any person who is responsible for the child and is present at the time the child is taken. If a person who is responsible for the child is not present at the time the child is taken, the person taking the child shall show his or her identification to any other person upon request. The identification required by this subsection must be a single card that contains a photograph of the person taking the child and identifies the person as a person authorized pursuant to this section to place a child in protective custody.

6. A child placed in protective custody pending an investigation and a hearing held pursuant to [NRS 432B.470](#) must be placed, except as otherwise provided in [NRS 432B.3905](#), in the following order of priority:

(a) In a hospital, if the child needs hospitalization.

(b) With a person who is related within the fifth degree of consanguinity or a fictive kin, and who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative or fictive kin resides within this State.

(c) In a foster home that is licensed pursuant to [chapter 424](#) of NRS.

(d) In any other licensed shelter that provides care to such children.

7. Whenever possible, a child placed pursuant to subsection 6 must be placed together with any siblings of the child. Such a child must not be placed in a jail or other place for detention, incarceration or residential care of persons convicted of a crime or children charged with delinquent acts.

8. A person placing a child in protective custody pursuant to subsection 1 shall:

(a) Immediately take steps to protect all other children remaining in the home or facility, if necessary;

(b) Immediately make a reasonable effort to inform the person responsible for the child's welfare that the child has been placed in protective custody; and

(c) As soon as practicable, inform the agency which provides child welfare services and the appropriate law enforcement agency, except that if the placement violates the provisions of [NRS 432B.3905](#), the person shall immediately provide such notification.

9. If a child is placed with any person who resides outside this State, the placement must be in accordance with [NRS 127.330](#).

10. As used in this section, "fictive kin" means a person who is not related by blood to a child but who has a significant emotional and positive relationship with the child.

(Added to NRS by [1985, 1377](#); A [1989, 268](#); [1991, 1182](#); [1993, 467](#); [1999, 830](#); [2001, 1257](#); [2001 Special Session, 44](#); [2007, 1004](#); [2009, 214](#); [2011, 253](#))

NRS 432B.3905 Limitations on transfer and placement of child who is under 6 years of age; notice.

1. An employee of an agency which provides child welfare services or its designee, an agent or officer of a law enforcement agency, an officer of a local juvenile probation department or the local department of juvenile services or any other person who places a child in protective custody pursuant to this chapter:

(a) Except as otherwise provided in subsection 2, shall not transfer a child who is under the age of 6 years to, or place such a child in, a child care institution unless appropriate foster care is not available at the time of placement in the county in which the child resides; and

(b) Shall make all reasonable efforts to place siblings in the same location.

2. A child under the age of 6 years may be placed in a child care institution:

(a) If the child requires medical services and such medical services could not be provided at any other placement; or

(b) If necessary to avoid separating siblings.

3. If a child is transferred to or placed in a child care institution in violation of subsection 1, the agency which provides child welfare services that is responsible for the child shall immediately notify the Director of the Department of Health and Human Services and shall move the child to another placement as soon as possible.

4. Each agency which provides child welfare services shall develop and implement a written plan to ensure that the provisions of this section are understood and carried out.

5. As used in this section, "child care institution":

(a) Means any type of home or facility that:

(1) Provides care and shelter during the day and night to 16 or more children who are in protective custody of an agency which provides child welfare services; or

(2) Provides care and shelter during the day and night, through the use of caregivers who work in shifts, to children who are in protective custody of an agency which provides child welfare services.

(b) Does not include a home or facility that provides medical services to children.

(Added to NRS by [2007, 1003](#); A [2007, 1007](#); [2011, 1011](#); [2013, 1623](#))

NRS 432B.391 Agency which provides child welfare services or designee authorized to conduct preliminary Federal

Bureau of Investigation name-based check of background of certain adult residents of home in which child will be placed in emergency situation; person investigated to supply fingerprints; exchange of information; removal of child from home upon refusal to supply fingerprints.

1. An agency which provides child welfare services or its approved designee may, in accordance with the procedures set forth in 28 C.F.R. §§ 901 et. seq., conduct a preliminary Federal Bureau of Investigation Interstate Identification Index name-based check of the records of criminal history of a resident who is 18 years of age or older of a home in which the agency which provides child welfare services wishes to place a child in an emergency situation, other than a resident who remains under the jurisdiction of a court pursuant to [NRS 432B.594](#), to determine whether the person investigated has been arrested for or convicted of any crime.

2. Upon request of an agency which provides child welfare services that wishes to place a child in a home in an emergency situation, or upon request of the approved designee of the agency which provides child welfare services, a resident who is 18 years of age or older of the home in which the agency which provides child welfare services wishes to place the child, other than a resident who remains under the jurisdiction of a court pursuant to [NRS 432B.594](#), must submit to the agency which provides child welfare services or its approved designee a complete set of fingerprints and written permission authorizing the agency which provides child welfare services or its approved designee to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report. The agency which provides child welfare services or its approved designee shall forward the fingerprints to the Central Repository for Nevada Records of Criminal History within the time set forth in federal law or regulation.

3. If a resident who is 18 years of age or older of a home in which an agency which provides child welfare services places a child in an emergency situation, other than a resident who remains under the jurisdiction of a court pursuant to [NRS 432B.594](#), refuses to provide a complete set of fingerprints to the agency which provides child welfare services or its approved designee upon request pursuant to subsection 2, the agency which provides child welfare services must immediately remove the child from the home.

(Added to NRS by [2003, 649](#); A [2011, 254](#))

NRS 432B.393 Preservation and reunification of family of child to prevent or eliminate need for removal from home before placement in foster care and to make safe return to home possible; when reasonable efforts are not required; determining whether reasonable efforts have been made.

1. Except as otherwise provided in this section, an agency which provides child welfare services shall make reasonable efforts to preserve and reunify the family of a child:

- (a) Before the placement of the child in foster care, to prevent or eliminate the need to remove the child from the home; and
- (b) To make it possible for the safe return of the child to the home.

2. In determining the reasonable efforts required by subsection 1, the health and safety of the child must be the paramount concern. The agency which provides child welfare services may make reasonable efforts to place the child for adoption or with a legal guardian concurrently with making the reasonable efforts required pursuant to subsection 1. If the court determines that continuation of the reasonable efforts required by subsection 1 is inconsistent with the plan for the permanent placement of the child, the agency which provides child welfare services shall make reasonable efforts to place the child in a timely manner in accordance with that plan and to complete whatever actions are necessary to finalize the permanent placement of the child.

3. An agency which provides child welfare services is not required to make the reasonable efforts required by subsection 1 if the court finds that:

- (a) A parent or other person responsible for the child's welfare has:
 - (1) Committed, aided or abetted in the commission of, or attempted, conspired or solicited to commit murder or voluntary manslaughter;
 - (2) Caused the abuse or neglect of the child, or of another child of the parent or other person responsible for the child's welfare, which resulted in substantial bodily harm to the abused or neglected child;
 - (3) Caused the abuse or neglect of the child, a sibling of the child or another child in the household, and the abuse or neglect was so extreme or repetitious as to indicate that any plan to return the child to the home would result in an unacceptable risk to the health or welfare of the child; or
 - (4) 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;
- (b) A parent of the child has, for the previous 6 months, had the ability to contact or communicate with the child and made no more than token efforts to do so;
- (c) The parental rights of a parent to a sibling of the child have been terminated by a court order upon any basis other than the execution of a voluntary relinquishment of those rights by a natural parent, and the court order is not currently being appealed;
- (d) The child or a sibling of the child was previously removed from the home, adjudicated to have been abused or neglected, returned to the home and subsequently removed from the home as a result of additional abuse or neglect;
- (e) The child is less than 1 year of age, the father of the child is not married to the mother of the child and the father of the child:
 - (1) Has failed within 60 days after learning of the birth of the child, to visit the child, to commence proceedings to establish his paternity of the child or to provide financial support for the child; or
 - (2) Is entitled to seek custody of the child but fails to do so within 60 days after learning that the child was placed in foster care;
- (f) The child was delivered to a provider of emergency services pursuant to [NRS 432B.630](#);
- (g) The child, a sibling of the child or another child in the household has been sexually abused or has been subjected to neglect by pervasive instances of failure to protect the child from sexual abuse; or
- (h) A parent of the child is required to register as a sex offender pursuant to the provisions of [chapter 179D](#) of NRS or the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. §§ 16901 et seq.

4. Except as otherwise provided in subsection 6, for the purposes of this section, unless the context otherwise requires, "reasonable efforts" have been made if an agency which provides child welfare services to children with legal custody of a child has exercised diligence and care in arranging appropriate, accessible and available services that are designed to improve the ability of a family to provide a safe and stable home for each child in the family, with the health and safety of the child as its paramount concerns. The exercise of such diligence and care includes, without limitation, obtaining necessary and appropriate information concerning the child for the purposes of [NRS 127.152](#), [127.410](#) and [424.038](#).

5. 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;
 - (b) Consider any input from the child;
 - (c) Consider the efforts made and the evidence presented since the previous finding of the court concerning reasonable efforts;
 - (d) Consider the diligence and care that the agency is legally authorized and able to exercise;
 - (e) Recognize and take into consideration the legal obligations of the agency to comply with any applicable laws and regulations;
 - (f) Base its determination on the circumstances and facts concerning the particular family or plan for the permanent placement of the child at issue;
 - (g) Consider whether any of the efforts made were contrary to the health and safety of the child;
 - (h) Consider the efforts made, if any, to prevent the need to remove the child from the home and to finalize the plan for the permanent placement of the child;
 - (i) Consider whether the provisions of subsection 6 are applicable; and
 - (j) Consider any other matters the court deems relevant.
6. An agency which provides child welfare services may satisfy the requirement of making reasonable efforts pursuant to this section by taking no action concerning a child or making no effort to provide services to a child if it is reasonable, under the circumstances, to do so.
7. In determining whether reasonable efforts are not required pursuant to subsection 3 or whether reasonable efforts have been made pursuant to subsection 4, the court shall ensure that each determination is:
- (a) Made by the court on a case-by-case basis;
 - (b) Based upon specific evidence; and
 - (c) Expressly stated by the court in its order.
- (Added to NRS by [1999, 2031](#); A [2001, 1258, 1843](#); [2001 Special Session, 45](#); [2003, 236](#); [2013, 243](#))

NRS 432B.396 Establishment of panel to evaluate extent to which agencies which provide child welfare services are effectively discharging their responsibilities; regulations; civil penalties. The Division of Child and Family Services shall:

1. Establish a panel comprised of volunteer members to evaluate the extent to which agencies which provide child welfare services are effectively discharging their responsibilities for the protection of children.
2. Adopt regulations to carry out the provisions of subsection 1 which must include, without limitation, the imposition of appropriate restrictions on the disclosure of information obtained by the panel and civil sanctions for the violation of those restrictions. The civil sanctions may provide for the imposition in appropriate cases of a civil penalty of not more than \$500. The Division may bring an action to recover any civil penalty imposed and shall deposit any money recovered with the State Treasurer for credit to the State General Fund.

(Added to NRS by [1999, 2031](#); A [2001, 1845](#); [2001 Special Session, 46](#); [2003, 236](#))

NRS 432B.397 Inquiry to determine whether child is Indian child; report to court; training regarding requirements of Indian Child Welfare Act.

1. The agency which provides child welfare services for a child that is taken into custody pursuant to this chapter shall make all necessary inquiries to determine whether the child is an Indian child. The agency shall report that determination to the court.
2. An agency which provides child welfare services pursuant to this chapter shall provide training for its personnel regarding the requirements of the Indian Child Welfare Act.

(Added to NRS by [1995, 786](#); A [2001 Special Session, 46](#))

NRS 432B.400 Temporary detention of child by physician or person in charge of hospital or similar institution. A physician treating a child or a person in charge of a hospital or similar institution may hold a child for no more than 24 hours if there is reasonable cause to believe that the child has been abused or neglected or has been affected by prenatal illegal substance abuse or has withdrawal symptoms resulting from prenatal drug exposure and that the child is in danger of further harm if released. The physician or other person shall immediately notify a law enforcement agency or an agency which provides child welfare services that the physician or other person is holding the child.

(Added to NRS by [1985, 1378](#); A [2001 Special Session, 47](#); [2005, 2038](#))

CHILD DEATH REVIEW TEAMS

NRS 432B.403 Purpose of organizing child death review teams. The purpose of organizing multidisciplinary teams to review the deaths of children pursuant to [NRS 432B.403](#) to [432B.4095](#), inclusive, is to:

1. Review the records of selected cases of deaths of children under 18 years of age in this State;
2. Review the records of selected cases of deaths of children under 18 years of age who are residents of Nevada and who die in another state;
3. Assess and analyze such cases;
4. Make recommendations for improvements to laws, policies and practice;
5. Support the safety of children; and
6. Prevent future deaths of children.

(Added to NRS by [2003, 863](#); A [2007, 1508](#))

NRS 432B.405 Organization of child death review teams.

1. The director or other authorized representative of an agency which provides child welfare services:
 - (a) May provisionally appoint and organize one or more multidisciplinary teams to review the death of a child;
 - (b) Shall submit names to the Executive Committee to Review the Death of Children established pursuant to [NRS 432B.409](#) for review and approval of persons whom the director or other authorized representative recommends for appointment to a multidisciplinary team to review the death of a child; and
 - (c) Shall organize one or more multidisciplinary teams to review the death of a child under any of the following circumstances:

- (1) Upon receiving a written request from an adult related to the child within the third degree of consanguinity, if the request is received by the agency within 1 year after the date of death of the child;
 - (2) If the child dies while in the custody of or involved with an agency which provides child welfare services, or if the child's family previously received services from such an agency;
 - (3) If the death is alleged to be from abuse or neglect of the child;
 - (4) If a sibling, household member or day care provider has been the subject of a child abuse and neglect investigation within the previous 12 months, including, without limitation, cases in which the report was unsubstantiated or the investigation is currently pending;
 - (5) If the child was adopted through an agency which provides child welfare services; or
 - (6) If the child died of Sudden Infant Death Syndrome.
2. A review conducted pursuant to subparagraph (2) of paragraph (c) of subsection 1 must occur within 3 months after the issuance of a certificate of death.

(Added to NRS by [1993, 2051](#); A [2001 Special Session, 47](#); [2003, 864](#); [2007, 1508](#))

NRS 432B.406 Composition of child death review teams.

1. A multidisciplinary team to review the death of a child that is organized by an agency which provides child welfare services pursuant to [NRS 432B.405](#) must include, insofar as possible:
 - (a) A representative of any law enforcement agency that is involved with the case under review;
 - (b) Medical personnel;
 - (c) A representative of the district attorney's office in the county where the case is under review;
 - (d) A representative of any school that is involved with the case under review;
 - (e) A representative of any agency which provides child welfare services that is involved with the case under review; and
 - (f) A representative of the coroner's office.
2. A multidisciplinary team may include such other representatives of other organizations concerned with the death of the child as the agency which provides child welfare services deems appropriate for the review.

(Added to NRS by [2003, 863](#))

NRS 432B.407 Information available to child death review teams; sharing of certain information; subpoena to obtain information; confidentiality of information.

1. A multidisciplinary team to review the death of a child is entitled to access to:
 - (a) All investigative information of law enforcement agencies regarding the death;
 - (b) Any autopsy and coroner's investigative records relating to the death;
 - (c) Any medical or mental health records of the child; and
 - (d) Any records of social and rehabilitative services or of any other social service agency which has provided services to the child or the child's family.
2. Each organization represented on a multidisciplinary team to review the death of a child shall share with other members of the team information in its possession concerning the child who is the subject of the review, any siblings of the child, any person who was responsible for the welfare of the child and any other information deemed by the organization to be pertinent to the review.
3. A multidisciplinary team to review the death of a child may, if appropriate, meet and share information with a multidisciplinary team to review the death of the victim of a crime that constitutes domestic violence organized or sponsored pursuant to [NRS 217.475](#) or [228.495](#).
4. A multidisciplinary team to review the death of a child may petition the district court for the issuance of, and the district court may issue, a subpoena to compel the production of any books, records or papers relevant to the cause of any death being investigated by the team. Except as otherwise provided in [NRS 239.0115](#), any books, records or papers received by the team pursuant to the subpoena shall be deemed confidential and privileged and not subject to disclosure.
5. A multidisciplinary team to review the death of a child may use data collected concerning the death of a child for the purpose of research or to prevent future deaths of children if the data is aggregated and does not allow for the identification of any person.
6. Except as otherwise provided in this section, information acquired by, and the records of, a multidisciplinary team to review the death of a child are confidential, must not be disclosed, and are not subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding.

(Added to NRS by [2003, 863](#); A [2007, 2106](#); [2011, 739](#); [2013, 438](#))

NRS 432B.4075 Authority of Administrator to organize multidisciplinary team to oversee review conducted by child death review team; access to information and privileges.

1. The Administrator of the Division of Child and Family Services may organize a multidisciplinary team to oversee any review of the death of a child conducted by a multidisciplinary team that is organized by an agency which provides child welfare services pursuant to [NRS 432B.405](#).
2. A multidisciplinary team organized pursuant to subsection 1 is entitled to the same access and privileges granted to a multidisciplinary team to review the death of a child pursuant to [NRS 432B.407](#).

(Added to NRS by [2007, 1500](#))

NRS 432B.408 Executive Committee to Review the Death of Children to review report of child death review team.

1. The report and recommendations of a multidisciplinary team to review the death of a child must be transmitted for review to the Executive Committee to Review the Death of Children established pursuant to [NRS 432B.409](#).
2. The Executive Committee shall review the report and recommendations and respond in writing to the multidisciplinary team within 90 days after receiving the report.

(Added to NRS by [2003, 864](#); A [2013, 438](#))

NRS 432B.409 Establishment, composition and duties of Executive Committee to Review the Death of Children; creation of and use of money in Review of Death of Children Account.

1. The Administrator of the Division of Child and Family Services shall establish an Executive Committee to Review the Death of Children, consisting of:

(a) Representatives from multidisciplinary teams formed pursuant to paragraph (a) of subsection 1 of [NRS 432B.405](#) and [NRS 432B.406](#), vital statistics, law enforcement, public health and the Office of the Attorney General.

(b) Administrators of agencies which provide child welfare services, and agencies responsible for mental health and public safety, to the extent that such administrators are not already appointed pursuant to paragraph (a). Members of the Executive Committee who are appointed pursuant to this paragraph shall serve as nonvoting members.

2. The Executive Committee shall:

(a) Adopt statewide protocols for the review of the death of a child;

(b) Adopt regulations to carry out the provisions of [NRS 432B.403](#) to [432B.4095](#), inclusive;

(c) Adopt bylaws to govern the management and operation of the Executive Committee;

(d) Appoint one or more multidisciplinary teams to review the death of a child from the names submitted to the Executive Committee pursuant to paragraph (b) of subsection 1 of [NRS 432B.405](#);

(e) Oversee training and development of multidisciplinary teams to review the death of children;

(f) Compile and distribute a statewide annual report, including statistics and recommendations for regulatory and policy changes; and

(g) Carry out the duties specified in [NRS 432B.408](#).

3. The Review of Death of Children Account is hereby created in the State General Fund. The Executive Committee may use money in the Account to carry out the provisions of [NRS 432B.403](#) to [432B.4095](#), inclusive.

(Added to NRS by [2003, 864](#); A [2007, 1509](#); [2013, 439](#))

NRS 432B.4095 Civil penalty for disclosure of confidential information; authority to bring action; deposit of money.

1. Each member of a multidisciplinary team organized pursuant to [NRS 432B.405](#), a multidisciplinary team organized pursuant to [NRS 432B.4075](#) or the Executive Committee to Review the Death of Children established pursuant to [NRS 432B.409](#) who discloses any confidential information concerning the death of a child is personally liable for a civil penalty of not more than \$500.

2. The Administrator of the Division of Child and Family Services:

(a) May bring an action to recover a civil penalty imposed pursuant to subsection 1 against a member of a multidisciplinary team organized pursuant to [NRS 432B.4075](#) or the Executive Committee; and

(b) Shall deposit any money received from the civil penalty with the State Treasurer for credit to the State General Fund.

3. Each director or other authorized representative of an agency which provides child welfare services that organized a multidisciplinary team pursuant to [NRS 432B.405](#):

(a) May bring an action to recover a civil penalty pursuant to subsection 1 against a member of the multidisciplinary team; and

(b) Shall deposit any money received from the civil penalty in the appropriate county treasury.

(Added to NRS by [2007, 1500](#); A [2013, 439](#))

CIVIL PROCEEDINGS

General Provisions

NRS 432B.410 Exclusive original jurisdiction; action does not preclude prosecution.

1. Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act, the court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is a child in need of protection or may be a child in need of protection.

2. Action taken by the court because of the abuse or neglect of a child does not preclude the prosecution and conviction of any person for violation of [NRS 200.508](#) based on the same facts.

(Added to NRS by [1985, 1379](#); A [1991, 2186](#); [1995, 787](#))

NRS 432B.420 Right of parent or other responsible person to representation by attorney; authority of court to appoint attorney to represent child; authority and rights of child's attorney; compensation of attorney; appointment of attorney as guardian ad litem.

1. A parent or other person responsible for the welfare of a child who is alleged to have abused or neglected the child may be represented by an attorney at all stages of any proceedings under [NRS 432B.410](#) to [432B.590](#), inclusive. Except as otherwise provided in subsection 2, if the person is indigent, the court may appoint an attorney to represent the person. The court may, if it finds it appropriate, appoint an attorney to represent the child. The child may be represented by an attorney at all stages of any proceedings held pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive. If the child is represented by an attorney, the attorney has the same authority and rights as an attorney representing a party to the proceedings.

2. If the court determines that the parent of an Indian child for whom protective custody is sought is indigent, the court:

(a) Shall appoint an attorney to represent the parent;

(b) May appoint an attorney to represent the Indian child; and

(c) May apply to the Secretary of the Interior for the payment of the fees and expenses of such an attorney,

È as provided in the Indian Child Welfare Act.

3. Each attorney, other than a public defender, if appointed under the provisions of subsection 1, is entitled to the same compensation and payment for expenses from the county as provided in [NRS 7.125](#) and [7.135](#) for an attorney appointed to represent a person charged with a crime. Except as otherwise provided in [NRS 432B.500](#), an attorney appointed to represent a child may also be appointed as guardian ad litem for the child.

(Added to NRS by [1985, 1379](#); A [1987, 1308](#); [1995, 787](#); [1999, 2037](#); [2001, 1703](#); [2003, 590](#); [2015, 1326](#))

NRS 432B.425 Notification of tribe if proceedings involve Indian child; transfer of proceedings to Indian child's tribe; exercise of jurisdiction by court. If proceedings pursuant to this chapter involve the protection of an Indian child, the court shall:

1. Cause the Indian child's tribe to be notified in writing at the beginning of the proceedings in the manner provided in the Indian Child Welfare Act. If the Indian child is eligible for membership in more than one tribe, each tribe must be notified.
 2. Transfer the proceedings to the Indian child's tribe in accordance with the Indian Child Welfare Act.
 3. If a tribe declines or is unable to exercise jurisdiction, exercise its jurisdiction as provided in the Indian Child Welfare Act.
- (Added to NRS by [1995, 786](#); A [2003, 1149](#))

NRS 432B.430 Restriction on admission of persons to proceedings.

1. Except as otherwise provided in subsections 3 and 4 and [NRS 432B.457](#), in each judicial district that includes a county whose population is 700,000 or more:

(a) Any proceeding held pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive, other than a hearing held pursuant to subsections 1 to 4, inclusive, of [NRS 432B.530](#) or a hearing held pursuant to subsection 5 of [NRS 432B.530](#) when the court proceeds immediately, must be open to the general public unless the judge or master, upon his or her own motion or upon the motion of another person, determines that all or part of the proceeding must be closed to the general public because such closure is in the best interests of the child who is the subject of the proceeding. In determining whether closing all or part of the proceeding is in the best interests of the child who is the subject of the proceeding, the judge or master must consider and give due weight to the desires of that child.

(b) If the judge or master determines pursuant to paragraph (a) that all or part of a proceeding must be closed to the general public:

(1) The judge or master must make specific findings of fact to support such a determination; and

(2) The general public must be excluded and only those persons having a direct interest in the case, as determined by the judge or master, may be admitted to the proceeding.

(c) Any proceeding held pursuant to subsections 1 to 4, inclusive, of [NRS 432B.530](#) and any proceeding held pursuant to subsection 5 of [NRS 432B.530](#) when the court proceeds immediately must be closed to the general public unless the judge or master, upon his or her own motion or upon the motion of another person, determines that all or part of the proceeding must be open to the general public because opening the proceeding in such a manner is in the best interests of the child who is the subject of the proceeding. In determining whether opening all or part of the proceeding is in the best interests of the child who is the subject of the proceeding, the judge or master must consider and give due weight to the desires of that child. If the judge or master determines pursuant to this paragraph that all or part of a proceeding must be open to the general public, the judge or master must make specific findings of fact to support such a determination. Unless the judge or master determines pursuant to this paragraph that all or part of a proceeding described in this paragraph must be open to the general public, the general public must be excluded and only those persons having a direct interest in the case, as determined by the judge or master, may be admitted to the proceeding.

2. Except as otherwise provided in subsections 3 and 4 and [NRS 432B.457](#), in each judicial district that includes a county whose population is less than 700,000:

(a) Any proceeding held pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive, must be closed to the general public unless the judge or master, upon his or her own motion or upon the motion of another person, determines that all or part of the proceeding must be open to the general public because opening the proceeding in such a manner is in the best interests of the child who is the subject of the proceeding. In determining whether opening all or part of the proceeding is in the best interests of the child who is the subject of the proceeding, the judge or master shall consider and give due weight to the desires of that child.

(b) If the judge or master determines pursuant to paragraph (a) that all or part of a proceeding must be open to the general public, the judge or master must make specific findings of fact to support such a determination.

(c) Unless the judge or master determines pursuant to paragraph (a) that all or part of a proceeding must be open to the general public, the general public must be excluded and only those persons having a direct interest in the case, as determined by the judge or master, may be admitted to the proceeding.

3. Except as otherwise provided in subsection 4 and [NRS 432B.457](#), in a proceeding held pursuant to [NRS 432B.470](#), the general public must be excluded and only those persons having a direct interest in the case, as determined by the judge or master, may be admitted to the proceeding.

4. In conducting a proceeding held pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive, a judge or master shall keep information confidential to the extent necessary to obtain federal funds in the maximum amount available to this state.

(Added to NRS by [1985, 1379](#); A [1997, 1345](#); [2003, 591, 3517](#); [2011, 1254, 2675](#))

NRS 432B.435 Presentation of evidence of child's previous sexual conduct prohibited; exception. In any proceeding held pursuant to this chapter, a party may not present evidence of any previous sexual conduct of a child to challenge the child's credibility as a witness unless the attorney for the child has first presented evidence or the child has testified concerning such conduct, or the absence of such conduct, on direct examination by the district attorney or the attorney for the child, in which case the scope of the cross-examination of the child or rebuttal must be limited to the evidence presented by the child's attorney or the child.

(Added to NRS by [2013, 409](#))

NRS 432B.440 Assistance by agency which provides child welfare services. The agency which provides child welfare services shall assist the court during all stages of any proceeding in accordance with [NRS 432B.410](#) to [432B.590](#), inclusive.

(Added to NRS by [1985, 1385](#); A [2001, 1845](#); [2001 Special Session, 47](#); [2003, 236, 591](#); [2005, 2096](#))

NRS 432B.450 Expert testimony raising presumption of need for protection of child. In any civil proceeding had pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive, if there is expert testimony that a physical or mental injury of a child would ordinarily not be sustained or a condition not exist without either negligence or a deliberate but unreasonable act or failure to act by the person responsible for the welfare of the child, the court shall find that the child is in need of protection unless that testimony is rebutted.

(Added to NRS by [1985, 1379](#); A [2003, 591](#))

NRS 432B.451 Qualified expert witness required in proceeding to place Indian child in foster care.

1. Any proceeding to place an Indian child in foster care pursuant to this chapter must include the testimony of at least one

qualified expert witness as provided in the Indian Child Welfare Act.

2. For the purposes of this section, “qualified expert witness” includes, without limitation:

- (a) An Indian person who has personal knowledge about the Indian child’s tribe and its customs related to raising a child and the organization of the family; and
- (b) A person who has:
 - (1) Substantial experience and training regarding the customs of Indian tribes related to raising a child; and
 - (2) Extensive knowledge of the social values and cultural influences of Indian tribes.

(Added to NRS by [1995, 786](#))

NRS 432B.455 Determination of appropriate person to take custody of child: Appointment and duties of special master.

1. If the court determines that a child must be kept in protective custody pursuant to [NRS 432B.480](#) or must be placed in temporary or permanent custody pursuant to [NRS 432B.550](#), the court may, before placing the child in the temporary or permanent custody of a person, order the appointment of a special master from among the members of the State Bar of Nevada to conduct a hearing to identify the person most qualified and suitable to take custody of the child in consideration of the needs of the child for temporary or permanent placement.

2. Not later than 5 calendar days after the hearing, the special master shall prepare and submit to the court a recommendation regarding which person is most qualified and suitable to take custody of the child.

(Added to NRS by [1997, 1344](#))

NRS 432B.457 Determination of appropriate person to take custody of child: Involvement in and notification of person with special interest in child; testimony by person with special interest in child.

1. If the court or a special master appointed pursuant to [NRS 432B.455](#) finds that a person has a special interest in a child, the court or the special master shall:

(a) Except for good cause, ensure that the person is involved in and notified of any plan for the temporary or permanent placement of the child and is allowed to offer recommendations regarding the plan; and

(b) Allow the person to testify at any hearing held pursuant to this chapter to determine any temporary or permanent placement of the child.

2. For the purposes of this section, a person “has a special interest in a child” if:

(a) The person is:

- (1) A parent or other relative of the child;
- (2) A foster parent or other provider of substitute care for the child;
- (3) A provider of care for the medical or mental health of the child; or
- (4) A teacher or other school official who works directly with the child; and

(b) The person:

- (1) Has a personal interest in the well-being of the child; or
- (2) Possesses information that is relevant to the determination of the placement of the child.

(Added to NRS by [1997, 1344](#); A [1999, 2038](#))

NRS 432B.459 Provision of copy of sound recording or transcript of proceeding to parent or guardian; fees.

1. If a proceeding held pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive, is recorded using sound recording equipment or is transcribed, the clerk of the court shall, upon request, provide to a parent or guardian of the child who is the subject of the proceeding and the attorney of the parent or guardian a copy of the sound recording or transcript of the proceeding if:

(a) Such a copy is available or could be made available; and

(b) The parent or guardian or the county in which the proceeding is held, as appropriate, pays the fee for the copy in accordance with subsection 2.

2. Each board of county commissioners shall adopt a sliding scale for determining the amount to be paid for a copy of a sound recording or transcript of a proceeding pursuant to subsection 1 for a proceeding that was held in a court in its county. The sliding scale must be based on the ability of the parent or guardian to pay. The court shall review each case and make a finding as to the reasonableness of the charge in relation to the ability of the parent or guardian to pay. To the extent that the court determines that a parent or guardian is unable to pay for a copy of the recording or transcript pursuant to subsection 1, the cost of providing the copy of the sound recording or transcript is a charge against the county in which the proceeding was held.

(Added to NRS by [2001, 1700](#); A [2003, 591](#))

NRS 432B.460 Courts not deprived of right to determine custody or guardianship. This chapter does not deprive other courts of the right to determine the custody of children upon writs of habeas corpus, or to determine the custody or guardianship of children in cases involving divorce or problems of domestic relations.

(Added to NRS by [1985, 1385](#))

NRS 432B.465 Full faith and credit to judicial proceedings of Indian tribe. Each court in this state which exercises jurisdiction pursuant to this chapter in a case involving an Indian child shall give full faith and credit to the judicial proceedings of an Indian tribe to the same extent that the Indian tribe gives full faith and credit to the judicial proceedings of the courts of this state.

(Added to NRS by [1995, 786](#))

NRS 432B.4655 Joinder of governmental entity or other person to certain proceedings to enforce legal obligation of such entity or person. A court may issue an order to join any governmental entity or other person as a party in any proceeding concerning the protection of the child to enforce a legal obligation of the entity or person to the child if, before issuing the order, the court provides notice and an opportunity to be heard to the governmental entity or person.

(Added to NRS by [2005, 2093](#); A [2007, 100](#))

Permanent Placement With Guardian

NRS 432B.466 Petition for appointment of guardian; notice.

1. If the plan adopted pursuant to [NRS 432B.553](#) for the permanent placement of a child includes a request for the appointment of a guardian for the child pursuant to [NRS 432B.4665](#) to [432B.468](#), inclusive, a governmental agency, a nonprofit corporation or any interested person, including, without limitation, the agency that adopted the plan may petition the court for the appointment of a guardian. The guardian may be appointed at a hearing conducted pursuant to [NRS 432B.590](#) or at a separate hearing.

2. A petition for the appointment of a guardian pursuant to this section:

- (a) May not be filed before the court has determined that the child is in need of protection;
- (b) Must include the information required pursuant to [NRS 159.044](#); and
- (c) Must include a statement explaining why the appointment of a guardian, rather than the adoption of the child or the return of the child to a parent, is in the best interests of the child.

3. In addition to the notice required pursuant to [NRS 432B.590](#), a governmental agency, nonprofit corporation or interested person who files a petition for the appointment of a guardian must serve notice of the petition that includes a copy of the petition and the date, time and location of the hearing on the petition, by registered or certified mail or by personal service:

- (a) To all the persons entitled to notice of the hearing pursuant to [NRS 432B.590](#), the parents of the child, any person or governmental agency having care, custody or control over the child, and, if the child is 14 years of age or older, the child; and
- (b) At least 20 days before the hearing on the petition.

(Added to NRS by [2003, 588](#))

NRS 432B.4665 Appointment of guardian; powers and duties of and limitations on guardian; effect of guardianship.

1. The court may, upon the filing of a petition pursuant to [NRS 432B.466](#), appoint a person as a guardian for a child if:

- (a) The court finds:
 - (1) That the proposed guardian is suitable and is not disqualified from guardianship pursuant to [NRS 159.061](#);
 - (2) That the child has been in the custody of the proposed guardian for 6 months or more pursuant to a determination by a court that the child was in need of protection, unless the court waives this requirement for good cause shown;
 - (3) That the proposed guardian has complied with the requirements of [chapter 159](#) of NRS; and
 - (4) That the burden of proof set forth in [chapter 159](#) of NRS for the appointment of a guardian for a child has been satisfied;

- (b) The child consents to the guardianship, if the child is 14 years of age or older; and
- (c) The court determines that the requirements for filing a petition pursuant to [NRS 432B.466](#) have been satisfied.

2. A guardianship established pursuant to this section:

- (a) Provides the guardian with the powers and duties provided in [NRS 159.079](#), and subjects the guardian to the limitations set forth in [NRS 159.0805](#);
- (b) Is subject to the provisions of [NRS 159.065](#) to [159.076](#), inclusive, and [159.185](#) to [159.199](#), inclusive;
- (c) Provides the guardian with sole legal and physical custody of the child;
- (d) Does not result in the termination of parental rights of a parent of the child; and
- (e) Does not affect any rights of the child to inheritance, a succession or any services or benefits provided by the Federal Government, this state or an agency or political subdivision of this state.

(Added to NRS by [2003, 589](#); A [2015, 2371, 2511](#))

NRS 432B.467 Consideration of evidence in determining whether to appoint guardian; right of visitation to certain persons.

1. In determining whether to grant a petition for the appointment of a guardian filed pursuant to [NRS 432B.466](#), the court may consider all relevant and material evidence that is admissible pursuant to this chapter, including, without limitation, any report submitted by a special advocate appointed as a guardian ad litem for the child pursuant to [NRS 432B.500](#).

2. If a court appoints a guardian for a child pursuant to [NRS 432B.4665](#), the court may order a reasonable right of visitation to any person whose right to custody or visitation of the child was terminated as a result of the appointment of the guardian if the court finds that the visitation is in the best interests of the child.

(Added to NRS by [2003, 589](#))

NRS 432B.4675 Effect of entry of final order establishing guardianship. Upon the entry of a final order by the court establishing a guardianship pursuant to [NRS 432B.4665](#):

- 1. The custody of the child by the agency which has legal custody of the child is terminated;
- 2. The proceedings concerning the child conducted pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive, terminate; and
- 3. Unless subsequently ordered by the court to assist the court, the following agencies and persons are excused from any responsibility to participate in the guardianship case:

- (a) The agency which has legal custody of the child;
- (b) Any counsel or guardian ad litem appointed by the court to assist in the proceedings conducted pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive; and
- (c) Any person nominated or appointed as the person who is legally responsible for the psychiatric care of the child pursuant to [NRS 432B.4684](#) or [432B.4685](#), respectively.

(Added to NRS by [2003, 590](#); A [2011, 2677](#))

NRS 432B.468 Enforcement, modification and termination of guardianship; appointment of successor guardian.

1. The court shall retain jurisdiction to enforce, modify or terminate a guardianship established pursuant to [NRS 432B.4665](#) until the child reaches 18 years of age.

2. Any person having a direct interest in a guardianship established pursuant to [NRS 432B.4665](#) may move to enforce, modify or terminate an order concerning the guardianship.

3. The court shall issue an order directing the appropriate agency which provides child welfare services to file a report and make a recommendation in response to any motion to enforce, modify or terminate a guardianship established pursuant to [NRS 432B.4665](#). The agency must submit the report to the court within 45 days after receiving the order of the court.

4. Any motion to enforce, modify or terminate an order concerning a guardianship established pursuant to [NRS 432B.4665](#)

must comply with the provisions set forth in [chapter 159](#) of NRS for motions to enforce, modify or terminate orders concerning guardianships.

5. A successor guardian may be appointed in accordance with the procedures set forth in [chapter 159](#) of NRS.
(Added to NRS by [2003, 590](#))

Person Legally Responsible for Psychiatric Care of Child

NRS 432B.4681 Definitions. As used in [NRS 432B.4681](#) to [432B.469](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 432B.4682](#) and [432B.4683](#) have the meanings ascribed to them in those sections.
(Added to NRS by [2011, 2669](#))

NRS 432B.4682 “Person professionally qualified in the field of psychiatric mental health” defined. “Person professionally qualified in the field of psychiatric mental health” has the meaning ascribed to it in [NRS 433A.018](#).
(Added to NRS by [2011, 2669](#))

NRS 432B.4683 “Psychiatric care” defined. “Psychiatric care” means the provision of psychiatric services and psychiatric treatment and the administration of psychotropic medication.
(Added to NRS by [2011, 2669](#))

NRS 432B.4684 Nomination; person nominated deemed to be person who is legally responsible pending court approval; petition to appoint nominee; persons authorized to be nominated or appointed.

1. If a child who is in the custody of an agency which provides child welfare services has a prescription for a psychotropic medication upon entering the custody of the agency or if the agency determines that a child may be in need of psychiatric care, the agency shall nominate, pending appointment by a court pursuant to [NRS 432B.4685](#), a person who is legally responsible for the psychiatric care of the child. A person nominated pursuant to this subsection shall be deemed to be the person who is legally responsible for the psychiatric care of the child pending approval by a court pursuant to [NRS 432B.4685](#).

2. Upon nominating a person who is legally responsible for the psychiatric care of a child pursuant to this section, the agency which provides child welfare services shall petition the court with jurisdiction over the child for the appointment of the nominee as the person who is legally responsible for the psychiatric care of the child. A petition filed pursuant to this subsection may be heard by the court at the next hearing of the court conducted pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive, or at a hearing for the express purpose of appointing a person pursuant to [NRS 432B.4685](#).

3. The person who is legally responsible for the psychiatric care of a child may be a parent or legal guardian of the child or, if a parent or legal guardian of the child is not able or willing to act as the person who is legally responsible for the psychiatric care of the child:

- (a) The attorney for the child;
- (b) The guardian ad litem of the child;
- (c) The foster parent or other provider of substitute care for the child;
- (d) An employee of the agency which provides child welfare services; or
- (e) Any other person who a court determines is qualified to carry out the duties and responsibilities prescribed by [NRS 432B.4681](#) to [432B.469](#), inclusive, and any policies adopted pursuant to [NRS 432B.197](#).
(Added to NRS by [2011, 2670](#); A [2013, 3818](#))

NRS 432B.4685 Persons eligible for court appointment. If proceedings pursuant to this chapter involve the protection of a child who requires psychiatric care, including, without limitation, any child who is administered a psychotropic medication, the court shall appoint the parent or legal guardian of the child as the person who is legally responsible for the psychiatric care of the child or, if a parent or legal guardian of the child is not able or willing to act as the person who is legally responsible for the psychiatric care of the child:

1. The person nominated by the agency which provides child welfare services pursuant to [NRS 432B.4684](#); or
2. Any other person who the court determines is qualified to carry out the duties and responsibilities of a person who is legally responsible for the psychiatric care of the child.
(Added to NRS by [2011, 2673](#))

NRS 432B.4686 Responsibilities and duties.

1. A person who is legally responsible for the psychiatric care of a child who is in the custody of an agency which provides child welfare services is responsible for the procurement and oversight of all psychiatric care for the child and shall make all decisions relating to the psychiatric care and related treatment of the child, including, without limitation, the approval of all psychiatric services, psychiatric treatment and psychotropic medication that may be administered to the child.

2. A person who is appointed to be legally responsible for the psychiatric care of a child shall:

- (a) To the extent that such information is available, maintain current information concerning the medical history of the child, including, without limitation:
 - (1) All known allergies of the child;
 - (2) Past and current illnesses and treatments of the child;
 - (3) Past and current psychiatric history and treatments of the child;
 - (4) Past and current psychiatric history of the family of the child; and
 - (5) Any other information which is necessary to make decisions relating to the medical treatment of the child.
- (b) Maintain current information concerning the emotional, behavioral, educational and related needs of the child.
- (c) Attend each visit of the child to receive psychiatric care or be available by telephone to discuss the visit with the person professionally qualified in the field of psychiatric mental health who treats the child.

3. Except as otherwise provided in this subsection, a person who is legally responsible for the psychiatric care of a child shall provide written consent or, in writing, deny consent for each visit of the child with a person professionally qualified in the field of psychiatric mental health who treats the child. Written consent is not required for each visit if the visit is part of the routine care of the child and the written consent approves such routine care. Written consent for routine care may be revoked at any time.

4. Written consent provided pursuant to subsection 3 must include, without limitation:
- The name and address of the person with whom the child currently resides or the name and location of the agency which provides child welfare services where the child currently resides;
 - The name of the person who is legally responsible for the psychiatric care of the child;
 - The name of the person professionally qualified in the field of psychiatric mental health who treats the child;
 - The date, time and location of the visit or, if the consent is for routine visits, the frequency and duration of the routine visits; and
 - If the person who is legally responsible for the psychiatric care of the child does not attend a visit, a written statement that the person is aware of and is available to discuss the visit and the treatment recommended for the child with the person professionally qualified in the field of psychiatric mental health.
5. A person who is legally responsible for the psychiatric care of a child shall, not less than 1 week before each visit of the child with a person professionally qualified in the field of psychiatric mental health who treats the child, notify:
- The agency which provides child welfare services that has custody of the child; and
 - If the person is not the parent or legal guardian of the child, the parent or legal guardian,
- of the date, time and location of each visit of the child with a person professionally qualified in the field of psychiatric mental health who treats the child. Unless a court order prohibits such visitation, a parent or legal guardian of the child may attend each visit of the child with a person professionally qualified in the field of psychiatric mental health who treats the child.
- (Added to NRS by [2011, 2670](#))

NRS 432B.4687 Considerations for approval of administration of psychotropic medication to child; written consent for administration of such medication or notice of denial; other required approval.

1. A person who is legally responsible for the psychiatric care of a child who is in the custody of an agency which provides child welfare services shall approve or deny the administration of a psychotropic medication to the child:
- After considering the purpose, benefits, risks, alternatives, side effects and complications of each psychotropic medication recommended by the person professionally qualified in the field of psychiatric mental health who treats the child;
 - After considering any additional information provided by the person professionally qualified in the field of psychiatric mental health who treats the child;
 - After considering the possible clinical indications to suspend or terminate the psychotropic medication and the potential consequences of such an action; and
 - In accordance with the policies adopted by the agency which provides child welfare services pursuant to [NRS 432B.197](#).
2. If a person who is legally responsible for the psychiatric care of a child:
- Approves the administration of a psychotropic medication to the child, the person shall provide written consent to the person professionally qualified in the field of psychiatric mental health, the agency which provides child welfare services and the foster parent or other provider of substitute care for the child for the administration of the psychotropic medication. The written consent must include:
 - The name of the child;
 - The name, address and telephone number of the person who is legally responsible for the psychiatric care of the child;
 - The name, purpose and expected time frame for improvement for each medication;
 - The dosage, times of administration and, if applicable, the number of units at each administration of the medication which may be administered to the child;
 - The duration of the course of treatment for the administration of the medication;
 - A description of the possible risks, side effects interactions with other medications or foods, and complications of the medication; and
 - If applicable, the specific authorization required by subsection 4.
 - Denies the administration of a psychotropic medication to the child, the person shall provide written notice of the denial to the agency which provides child welfare services.
3. Except as otherwise provided in [NRS 432B.4689](#), the foster parent or other provider of substitute care for a child in the custody of an agency which provides child welfare services shall not administer a psychotropic medication to the child unless:
- The person who is legally responsible for the psychiatric care of the child has consented to the administration of the medication; and
 - The psychotropic medication is administered in accordance with the consent of the person who is legally responsible for the psychiatric care of the child.
4. The person who is legally responsible for the psychiatric care of a child must, in addition to providing written consent for the administration of a psychotropic medication, specifically approve:
- The use of psychotropic medication in a manner that has not been tested or approved by the United States Food and Drug Administration, including, without limitation, the use of such medication for a child who is of an age that has not been tested or approved or who has a condition for which the use of the medication has not been tested or approved;
 - The prescribing of any psychotropic medication for use by a child who is less than 4 years of age;
 - The concurrent use by a child of three or more classes of psychotropic medication; and
 - The concurrent use by a child of two psychotropic medications of the same class.
- (Added to NRS by [2011, 2671](#))

NRS 432B.4688 Administration of psychotropic medication to child allowed only in accordance with consent; quarterly review of records of child.

1. Except as otherwise provided in [NRS 432B.4689](#), an agency which provides child welfare services shall not allow the administration of a psychotropic medication to a child in the custody of the agency unless:
- The person who is legally responsible for the psychiatric care of the child has consented to the administration of the medication; and
 - The psychotropic medication is administered in accordance with the consent of the person who is legally responsible for the psychiatric care of the child.
2. An agency which provides child welfare services shall, at least quarterly, review the records for each child in the custody of

the agency who is administered a psychotropic medication to determine whether the medication is being administered in accordance with [NRS 432B.4681](#) to [432B.469](#), inclusive, and the policies adopted pursuant to [NRS 432B.197](#). The agency may use the results of the quarterly reviews to determine whether the placement of the child should be continued.

(Added to NRS by [2011, 2675](#))—(Substituted in revision for part of NRS 432B.197)

NRS 432B.469 Administration of psychotropic medication without consent authorized under certain circumstances.

1. An agency which provides child welfare services may allow the administration of, and a foster parent or other provider of substitute care for a child in the custody of an agency which provides child welfare services may administer, a psychotropic medication to a child without obtaining consent from a person who is legally responsible for the psychiatric care of the child if:

(a) The child has a prescription for a psychotropic medication upon entering the custody of the agency and the agency continues administering the psychotropic medication in accordance with that prescription; or

(b) A physician determines that an emergency exists which requires the immediate administration of a psychotropic medication before consent may be obtained from the person who is legally responsible for the psychiatric care of the child. The agency which provides child welfare services shall obtain documentation, which may include an incident report or other documentation which demonstrates that an emergency existed, regarding the circumstances surrounding the administration of the psychotropic medication.

2. If a psychotropic medication is administered pursuant to this section, the agency which provides child welfare services shall take reasonable efforts, as soon as practicable, to notify the parent or legal guardian of the child and the person who is legally responsible for the psychiatric care of the child of the administration of the psychotropic medication.

(Added to NRS by [2011, 2673](#))

NRS 432B.469 Agency which provides child welfare services retains responsibility for health and well-being of child in its custody. The provisions of [NRS 432B.4681](#) to [432B.469](#), inclusive, do not relieve an agency which provides child welfare services of any responsibility of the agency relating to the general health and well-being of a child in the custody of the agency.

(Added to NRS by [2011, 2669](#))

Hearing on Protective Custody

NRS 432B.470 Hearing required; notice.

1. A child taken into protective custody pursuant to [NRS 432B.390](#) must be given a hearing, conducted by a judge, master or special master appointed by the judge for that particular hearing, within 72 hours, excluding Saturdays, Sundays and holidays, after being taken into custody, to determine whether the child should remain in protective custody pending further action by the court.

2. Except as otherwise provided in this subsection, notice of the time and place of the hearing must be given to a parent or other person responsible for the child's welfare:

(a) By personal service of a written notice;

(b) Orally; or

(c) If the parent or other person responsible for the child's welfare cannot be located after a reasonable effort, by posting a written notice on the door of the residence of the parent or other person.

Ê If the child was delivered to a provider of emergency services pursuant to [NRS 432B.630](#) and the location of the parent is unknown, the parent shall be deemed to have waived any notice of the hearing conducted pursuant to this section.

3. If notice is given by means of paragraph (b) or (c) of subsection 2, a copy of the notice must be mailed to the person at the last known address of the person within 24 hours after the child is placed in protective custody.

(Added to NRS by [1985, 1380](#); A [2001, 1259](#))

NRS 432B.480 Hearing: Court required to advise parties of rights; determinations by court; order to continue custody or release child.

1. At each hearing conducted pursuant to [NRS 432B.470](#):

(a) At the commencement of the hearing, the court shall advise the parties of their right to be represented by an attorney and of their right to present evidence.

(b) The court shall determine whether there is reasonable cause to believe that it would be:

(1) Contrary to the welfare of the child for the child to reside at his or her home; or

(2) In the best interests of the child to place the child outside of his or her home.

Ê The court shall prepare an explicit statement of the facts upon which each of its determinations is based. If the court makes an affirmative finding regarding either subparagraph (1) or (2), the court shall issue an order keeping the child in protective custody pending a disposition by the court.

(c) The court shall determine whether the child has been placed in a home or facility that complies with the requirements of [NRS 432B.3905](#). If the placement does not comply with the requirements of [NRS 432B.3905](#), the court shall establish a plan with the agency which provides child welfare services for the prompt transfer of the child into a home or facility that complies with the requirements of [NRS 432B.3905](#).

2. If the court issues an order keeping the child in protective custody pending a disposition by the court and it is in the best interests of the child, the court may:

(a) Place the child in the temporary custody of a grandparent, great-grandparent or other person related within the fifth degree of consanguinity to the child who the court finds has established a meaningful relationship with the child, with or without supervision upon such conditions as the court prescribes, regardless of whether the relative resides within this State; or

(b) Grant the grandparent, great-grandparent or other person related within the fifth degree of consanguinity to the child a reasonable right to visit the child while the child is in protective custody.

3. If the court finds that the best interests of the child do not require that the child remain in protective custody, the court shall order the immediate release of the child.

4. If a child is placed with any person who resides outside this State, the placement must be in accordance with [NRS 127.330](#).

(Added to NRS by [1985, 1380](#); A [1987, 1194](#); [1991, 1183](#); [2001, 1845](#); [2007, 1005](#); [2009, 215](#))

NRS 432B.490 Procedure following hearing or investigation.

1. An agency which provides child welfare services:
 - (a) In cases where the death of a parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to [NRS 33.018](#), shall within 10 days after the hearing on protective custody initiate a proceeding in court by filing a petition which meets the requirements set forth in [NRS 432B.510](#);
 - (b) In cases where a court issues an order keeping the child in protective custody pursuant to paragraph (b) of subsection 1 of [NRS 432B.480](#), shall within 10 days after the hearing on protective custody, unless good cause exists, initiate a proceeding in court by filing a petition which meets the requirements set forth in [NRS 432B.510](#) or recommend against any further action in court; or
 - (c) In cases where an investigation is made under [NRS 432B.010](#) to [432B.400](#), inclusive, and a determination is made that the child is in need of protection but is not in imminent danger, may file a petition which meets the requirements set forth in [NRS 432B.510](#).
 2. If the agency recommends against further action, the court may, on its own motion, initiate proceedings when it finds that it is in the best interests of the child.
 3. If a child has been placed in protective custody and if further action in court is taken, an agency which provides child welfare services shall make recommendations to the court concerning whether the child should be returned to the person responsible for the welfare of the child pending further action in court.
 4. If, in a case described in paragraph (b) of subsection 1, an agency which provides child welfare services fails to initiate a proceeding in court by filing a petition which meets the requirements set forth in [NRS 432B.510](#) within 10 days after the hearing on protective custody:
 - (a) The agency may recommend against further action and return the child to the custody of the person responsible for the welfare of the child; or
 - (b) Any party to the proceeding may schedule an additional hearing with the court which must take place before the next scheduled court date to determine whether the child should be returned to the person responsible for the welfare of the child pending further action by the court.
 5. Except as otherwise provided in this subsection, notice of the time and place of a hearing scheduled pursuant to paragraph (b) of subsection 4 must be given to a parent or other person responsible for the welfare of the child:
 - (a) By personal service of a written notice;
 - (b) Orally; or
 - (c) If the parent or other person responsible for the welfare of the child cannot be located after a reasonable effort, by posting a written notice on the door of the residence of the parent or other person.
- È If the child was delivered to a provider of emergency services pursuant to the provisions of [NRS 432B.630](#) and the location of the parent is unknown, the parent shall be deemed to have waived any notice of any hearing conducted pursuant to this section.
6. If notice of a hearing scheduled pursuant to paragraph (b) of subsection 4 is given by means of paragraph (b) or (c) of subsection 5, a copy of the notice must be mailed to the parent or other person responsible for the welfare of the child at his or her last known address within 24 hours after the petition is filed.
 7. The court shall hold a hearing scheduled pursuant to paragraph (b) of subsection 4 to decide whether there remains reasonable cause to believe that it would be:
 - (a) Contrary to the welfare of the child for the child to reside at his or her home; or
 - (b) In the best interests of the child to keep the child outside of his or her home.
 (Added to NRS by [1985, 1380](#); A [1999, 832](#); [2001 Special Session, 47](#); [2011, 2524](#); [2013, 447](#))

Hearing on Need of Protection for Child**NRS 432B.500 Appointment of guardian ad litem after filing of petition.**

1. After a petition is filed that a child is in need of protection pursuant to [NRS 432B.490](#), the court shall appoint a guardian ad litem for the child. The person so appointed:
 - (a) Must meet the requirements of [NRS 432B.505](#) or, if such a person is not available, a representative of an agency which provides child welfare services, a juvenile probation officer, an officer of the court or another volunteer.
 - (b) Must not be a parent or other person responsible for the child's welfare.
2. A guardian ad litem appointed pursuant to this section shall:
 - (a) Represent and protect the best interests of the child until excused by the court;
 - (b) Thoroughly research and ascertain the relevant facts of each case for which the guardian ad litem is appointed, and ensure that the court receives an independent, objective account of those facts;
 - (c) Meet with the child wherever the child is placed as often as is necessary to determine that the child is safe and to ascertain the best interests of the child;
 - (d) Explain to the child the role of the guardian ad litem and, when appropriate, the nature and purpose of each proceeding in the case;
 - (e) Participate in the development and negotiation of any plans for and orders regarding the child, and monitor the implementation of those plans and orders to determine whether services are being provided in an appropriate and timely manner;
 - (f) Appear at all proceedings regarding the child;
 - (g) Inform the court of the desires of the child, but exercise independent judgment regarding the best interests of the child;
 - (h) Present recommendations to the court and provide reasons in support of those recommendations;
 - (i) Request the court to enter orders that are clear, specific and, when appropriate, include periods for compliance;
 - (j) Review the progress of each case for which the guardian ad litem is appointed, and advocate for the expedient completion of the case; and
 - (k) Perform such other duties as the court orders.
 (Added to NRS by [1985, 1379](#); A [1999, 2039](#); [2001 Special Session, 48](#); [2015, 1326](#))

NRS 432B.505 Qualifications of special advocate for appointment as guardian ad litem.

1. To qualify for appointment as a guardian ad litem pursuant to [NRS 432B.500](#) in a judicial district that includes a county whose population is less than 100,000, a special advocate must complete an initial 12 hours of specialized training and, annually

thereafter, complete 6 hours of specialized training. The training must be approved by the court and include information regarding:

- (a) The dynamics of the abuse and neglect of children;
- (b) Factors to consider in determining the best interests of a child, including planning for the permanent placement of the child;
- (c) The interrelationships between the family system, legal process and system of child welfare;
- (d) Skills in mediation and negotiation;
- (e) Federal, state and local laws affecting children;
- (f) Cultural, ethnic and gender-specific issues;
- (g) Domestic violence;
- (h) Resources and services available in the community for children in need of protection;
- (i) Child development;
- (j) Standards for guardians ad litem;
- (k) Confidentiality issues; and
- (l) Such other topics as the court deems appropriate.

2. To qualify for appointment as a guardian ad litem pursuant to [NRS 432B.500](#) in a judicial district that does not include a county whose population is less than 100,000, a special advocate must be qualified pursuant to the standards for training of the National Court Appointed Special Advocate Association or its successor. If such an Association ceases to exist, the court shall determine the standards for training.

(Added to NRS by [1999, 2031](#); A [2015, 1327](#))

NRS 432B.510 Execution and contents of petition; representation of interests of public.

1. A petition alleging that a child is in need of protection may be signed only by:

- (a) A representative of an agency which provides child welfare services;
- (b) A law enforcement officer or probation officer; or
- (c) The district attorney.

2. The district attorney shall countersign every petition alleging need of protection, and shall represent the interests of the public in all proceedings. If the district attorney fails or refuses to countersign the petition, the petitioner may seek a review by the Attorney General. If the Attorney General determines that a petition should be filed, the Attorney General shall countersign the petition and shall represent the interests of the public in all subsequent proceedings.

3. Every petition must be entitled "In the Matter of....., a child," and must be verified by the person who signs it.

4. Every petition must set forth specifically:

- (a) The facts which bring the child within the jurisdiction of the court as indicated in [NRS 432B.410](#).
- (b) The name, date of birth and address of the primary residence of the child at the time of removal.

(c) The names and addresses of the residences of the child's parents and any other person responsible for the child's welfare, and spouse if any. If the parents or other person responsible for the welfare of the child do not reside in this State or cannot be found within the State, or if their addresses are unknown, the petition must state the name of any known adult relative residing within the State or, if there is none, the known adult relative residing nearest to the court.

(d) Whether the child is in protective custody and, if so:

(1) The agency responsible for placing the child in protective custody and the reasons therefor; and

(2) Whether the child has been placed in a home or facility in compliance with the provisions of [NRS 432B.3905](#). If the placement does not comply with the provisions of [NRS 432B.3905](#), the petition must include a plan for transferring the child to a placement which complies with the provisions of [NRS 432B.3905](#).

5. When any of the facts required by subsection 4 are not known, the petition must so state.

(Added to NRS by [1985, 1381](#); A [1997, 2475](#); [2001, 1850](#); [2001 Special Session, 48](#); [2003, 236](#); [2007, 1006](#); [2013, 238](#))

NRS 432B.513 Copy of report or information required to be provided to parent or guardian before certain proceedings.

1. Except as otherwise provided in subsection 3, a person who submits a report or information to the court for consideration in a proceeding held pursuant to [NRS 432B.466](#) to [432B.468](#), inclusive, or [432B.500](#) to [432B.590](#), inclusive, shall provide a copy of the report or information, to the extent that the data or information in the report or information is available pursuant to [NRS 432B.290](#), to each parent or guardian of the child who is the subject of the proceeding and to the attorney of each parent or guardian not later than 72 hours before the proceeding.

2. If a person does not provide a copy of a report or information to a parent or guardian of a child and an attorney of the parent or guardian before a proceeding if required by subsection 1, the court or master:

(a) Shall provide the parent or guardian and the attorney of the parent or guardian an opportunity to review the report or information; and

(b) May grant a continuance of the proceeding until a later date that is agreed upon by all the parties to the proceeding if the parent or guardian or the attorney of the parent or guardian requests that the court grant the continuance so that the parent or guardian and the attorney of the parent or guardian may properly respond to the report or information.

3. If a child was delivered to a provider of emergency services pursuant to [NRS 432B.630](#) and the location of the parent of the child is unknown, a copy of a report or information described in subsection 1 need not be sent to that parent or the attorney of that parent pursuant to subsection 1.

4. As used in this section, "person" includes, without limitation, a government, governmental agency or political subdivision of a government.

(Added to NRS by [2001, 1699](#); A [2003, 592](#))

NRS 432B.515 Electronic filing of certain petitions and reports.

1. A court clerk may allow any of the following documents to be filed electronically:

- (a) A petition signed by the district attorney pursuant to [NRS 432B.510](#); or
- (b) A report prepared pursuant to [NRS 432B.540](#).

2. Any document that is filed electronically pursuant to this section must contain an image of the signature of the person who is filing the document.

(Added to NRS by [1997, 893](#))

NRS 432B.520 Issuance of summons; authorizing the assumption of custody by court and removal of child from certain conditions; authorizing the attachment of child and placement of child in protective custody.

1. After a petition has been filed, the court shall direct the clerk to issue a summons requiring the person who has custody or control of the child to appear personally and bring the child before the court at a time and place stated in the summons. If the person so summoned is other than a parent or guardian of the child, then the parent or guardian, or both, must also be notified by a similar summons of the pendency of the hearing and of the time and place appointed.

2. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the court, is necessary.

3. Each summons must include notice of the right of parties to counsel at the adjudicatory hearing. A copy of the petition must be attached to each summons.

4. Except as provided in subsection 5, the summons must be served by:

- (a) Personal service of a written notice; or
- (b) Registered or certified mail to the last known address of the person.

5. If the child was delivered to a provider of emergency services pursuant to [NRS 432B.630](#) and the location of the parent is unknown, the summons must be served on the parent by publication at least once a week for 3 consecutive weeks in a newspaper published in the county and if no such newspaper is published, then a newspaper published in this state that has a general circulation in the county. The failure of the parent to appear in the action after the service of summons on the parent pursuant to this paragraph shall be deemed to constitute a waiver by the parent of any further notice of the proceedings that would otherwise be required pursuant to this chapter.

6. If it appears that the child is in such condition or surroundings that the welfare of the child requires that custody be immediately assumed by the court, the court may order, by endorsement upon the summons, that the person serving it shall at once deliver the child to an agency which provides child welfare services in whose custody the child must remain until the further order of the court.

7. If the summons cannot be served or the person who has custody or control of the child fails to obey it, or:

(a) In the judge's opinion, the service will be ineffectual or the welfare of the child requires that the child be brought forthwith into the custody of the court; or

(b) A person responsible for the child's welfare has absconded with the child or concealed the child from a representative of an agency which provides child welfare services,

the court may issue a writ for the attachment of the child's person, commanding a law enforcement officer or a representative of an agency which provides child welfare services to place the child in protective custody.

(Added to NRS by [1985, 1381](#); A [1991, 922](#); [2001, 1259](#); [2001 Special Session, 49](#); [2015, 1522](#))

NRS 432B.530 Adjudicatory hearing on petition; disposition.

1. An adjudicatory hearing must be held within 30 days after the filing of the petition, unless good cause is shown or the hearing has been continued until a later date pursuant to [NRS 432B.513](#).

2. At the hearing, the court shall inform the parties of the specific allegations in the petition and give them an opportunity to admit or deny them. If the allegations are denied, the court shall hear evidence on the petition.

3. In adjudicatory hearings, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The parties or their attorney must be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports when reasonably available.

4. The court may require the child to be present in court at the hearing.

5. If the court finds by a preponderance of the evidence that the child was in need of protection at the time of the removal of the child from the home, it shall record its findings of fact and may proceed immediately or at another hearing held within 15 working days, to make a proper disposition of the case. If the court finds that the allegations in the petition have not been established, it shall dismiss the petition and, if the child is in protective custody, order the immediate release of the child.

6. The findings of fact recorded by the court pursuant to subsection 5 and any specific allegations in the petition admitted to by the parties must be included as part of the disposition of the case in the report required to be made to the Central Registry pursuant to [NRS 432B.310](#).

(Added to NRS by [1985, 1382](#); A [2001, 1703](#), [1846](#); [2003, 87](#); [2013, 2879](#))

NRS 432B.540 Report by agency which provides child welfare services; plan for placement of child.

1. If the court finds that the allegations of the petition are true, it shall order that a report be made in writing by an agency which provides child welfare services, concerning:

(a) Except as otherwise provided in paragraph (b), the conditions in the child's place of residence, the child's record in school, the mental, physical and social background of the family of the child, its financial situation and other matters relevant to the case; or

(b) If the child was delivered to a provider of emergency services pursuant to [NRS 432B.630](#), any matters relevant to the case.

2. If the agency believes that it is necessary to remove the child from the physical custody of the child's parents, it must submit with the report a plan designed to achieve a placement of the child in a safe setting as near to the residence of the parent as is consistent with the best interests and special needs of the child. The plan must include, without limitation:

(a) A description of the type, safety and appropriateness of the home or institution in which the child could be placed, including, without limitation, a statement that the home or institution would comply with the provisions of [NRS 432B.3905](#), and a plan for ensuring that the child would receive safe and proper care and a description of the needs of the child;

(b) A description of the services to be provided to the child and to a parent to facilitate the return of the child to the custody of the parent or to ensure the permanent placement of the child;

(c) The appropriateness of the services to be provided under the plan; and

(d) A description of how the order of the court will be carried out.

(Added to NRS by [1985, 1382](#); A [1995, 362](#); [1999, 2039](#); [2001, 1260](#), [1846](#); [2001 Special Session, 50](#); [2003, 236](#); [2007, 1006](#))

NRS 432B.550 Determination of custody and placement of child by court; retention of certain rights by parent when

child placed other than with parent; determination of whether agency which provides child welfare services has made reasonable efforts required.

1. If the court finds that a child is in need of protection, it may, by its order, after receipt and review of the report from the agency which provides child welfare services:

(a) Permit the child to remain in the temporary or permanent custody of the parents of the child or a guardian with or without supervision by the court or a person or agency designated by the court, and with or without retaining jurisdiction of the case, upon such conditions as the court may prescribe;

(b) Place the child in the temporary or permanent custody of a relative, a fictive kin or other person the court finds suitable to receive and care for the child with or without supervision, and with or without retaining jurisdiction of the case, upon such conditions as the court may prescribe; or

(c) Place the child in the temporary custody of a public agency or institution authorized to care for children, the local juvenile probation department, the local department of juvenile services or a private agency or institution licensed by the Department of Health and Human Services or a county whose population is 100,000 or more to care for such a child.

È In carrying out this subsection, the court may, in its sole discretion and in compliance with the requirements of [chapter 159](#) of NRS, consider an application for the guardianship of the child. If the court grants such an application, it may retain jurisdiction of the case or transfer the case to another court of competent jurisdiction.

2. If, pursuant to subsection 1, a child is placed other than with a parent:

(a) The parent retains the right to consent to adoption, to determine the child's religious affiliation and to reasonable visitation, unless restricted by the court. If the custodian of the child interferes with these rights, the parent may petition the court for enforcement of the rights of the parent.

(b) The court shall set forth good cause why the child was placed other than with a parent.

3. If, pursuant to subsection 1, the child is to be placed with a relative or fictive kin, the court may consider, among other factors, whether the child has resided with a particular relative or fictive kin for 3 years or more before the incident which brought the child to the court's attention.

4. Except as otherwise provided in this subsection, a copy of the report prepared for the court by the agency which provides child welfare services must be sent to the custodian and the parent or legal guardian. If the child was delivered to a provider of emergency services pursuant to [NRS 432B.630](#) and the location of the parent is unknown, the report need not be sent to that parent.

5. In determining the placement of a child pursuant to this section, if the child is not permitted to remain in the custody of the parents of the child or guardian:

(a) It must be presumed to be in the best interests of the child to be placed together with the siblings of the child.

(b) Preference must be given to placing the child in the following order:

(1) With any person related within the fifth degree of consanguinity to the child or a fictive kin, and who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative or fictive kin resides within this State.

(2) In a foster home that is licensed pursuant to [chapter 424](#) of NRS.

6. Any search for a relative with whom to place a child pursuant to this section must be completed within 1 year after the initial placement of the child outside of the home of the child. If a child is placed with any person who resides outside of this State, the placement must be in accordance with [NRS 127.330](#).

7. Within 60 days after the removal of a child from the home of the child, the court shall:

(a) Determine whether:

(1) The agency which provides child welfare services has made the reasonable efforts required by paragraph (a) of subsection 1 of [NRS 432B.393](#); or

(2) No such efforts are required in the particular case; and

(b) Prepare an explicit statement of the facts upon which its determination is based.

8. As used in this section, "fictive kin" means a person who is not related by blood to a child but who has a significant emotional and positive relationship with the child.

(Added to NRS by [1985, 1383](#); A [1987, 1195](#); [1991, 1183](#), [1359](#), [1936](#); [1993, 468](#); [1999, 2040](#); [2001, 1261](#), [1847](#); [2001 Special Session, 51](#); [2003, 236](#); [2005, 2096](#); [2005, 22nd Special Session, 47](#); [2009, 216](#); [2011, 255](#))

NRS 432B.553 Plan for permanent placement of child.

1. An agency that obtains legal custody of a child pursuant to [NRS 432B.550](#) shall:

(a) Adopt a plan for the permanent placement of the child for review by the court at a hearing conducted pursuant to [NRS 432B.590](#); and

(b) Make reasonable efforts to finalize the permanent placement of the child in accordance with the plan adopted pursuant to paragraph (a). The provisions of subsections 4, 5 and 6 of [NRS 432B.393](#) shall be deemed to apply to the reasonable efforts required by this paragraph.

2. If the child is not residing in the home of the child and has been in foster care for 14 or more of the immediately preceding 20 months, the agency shall include the termination of parental rights to the child in the plan for the permanent placement of the child, unless the agency determines that:

(a) The child is in the care of a relative;

(b) The plan for the child requires the agency to make reasonable efforts pursuant to [NRS 432B.393](#) to reunify the family of the child, and the agency has not provided to the family, consistently within the period specified in the plan for the child, such services as the agency deems necessary for the safe return of the child to the home of the child; or

(c) There are compelling reasons, which are documented in the plan for the child, for concluding that the filing of a petition to terminate parental rights to the child would not be in the best interests of the child.

(Added to NRS by [2001, 1839](#))

NRS 432B.555 Restriction on release of child to custodial parent or guardian who has been convicted of abuse, neglect or endangerment of child. In any proceeding held pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive, if the court determines that a custodial parent or guardian of a child who has been placed in protective custody has ever been convicted of a violation of [NRS 200.508](#), the court shall not release the child to that custodial parent or guardian unless the court finds by clear and convincing evidence presented at the proceeding that no physical or psychological harm to the child will result from the release of the child to

that parent or guardian.

(Added to NRS by [1995, 805](#); A [2001, 1848](#); [2003, 592](#))

NRS 432B.560 Additional orders by court: Treatment; conduct; visitation; support.

1. The court may also order:
 - (a) The child, a parent or the guardian to undergo such medical, psychiatric, psychological, or other care or treatment as the court considers to be in the best interests of the child.
 - (b) A parent or guardian to refrain from:
 - (1) Any harmful or offensive conduct toward the child, the other parent, the custodian of the child or the person given physical custody of the child; and
 - (2) Visiting the child if the court determines that the visitation is not in the best interest of the child.
 - (c) A reasonable right of visitation for a grandparent of the child if the child is not permitted to remain in the custody of the parents of the child.
2. The court shall order a parent or guardian to pay to the custodian an amount sufficient to support the child while the child is in the care of the custodian pursuant to an order of the court, unless the child was delivered to a provider of emergency services pursuant to [NRS 432B.630](#) and the location of the parent is unknown. Payments for the obligation of support must be determined in accordance with [NRS 125B.070](#) and [125B.080](#), but must not exceed the reasonable cost of the child's care, including food, shelter, clothing, medical care and education. An order for support made pursuant to this subsection must:
 - (a) Require that payments be made to the appropriate agency or office;
 - (b) Provide that the custodian is entitled to a lien on the obligor's property in the event of nonpayment of support; and
 - (c) Provide for the immediate withholding of income for the payment of support unless:
 - (1) All parties enter into an alternative written agreement; or
 - (2) One party demonstrates and the court finds good cause to postpone the withholding.
3. A court that enters an order pursuant to subsection 2 shall ensure that the social security number of the parent or guardian who is the subject of the order is:
 - (a) Provided to the Division of Welfare and Supportive Services of the Department of Health and Human Services.
 - (b) Placed in the records relating to the matter and, except as otherwise required to carry out a specific statute, maintained in a confidential manner.

(Added to NRS by [1985, 1383](#); A [1987, 1196](#); [1991, 1339](#); [1993, 543](#); [1997, 2267](#); [1999, 2685](#); [2001, 1262](#))

NRS 432B.570 Motion for revocation or modification of order.

1. A motion for revocation or modification of an order issued pursuant to [NRS 432B.550](#) or [432B.560](#) may be filed by the custodian of the child, the governmental organization or person responsible for supervising the care of the child, the guardian ad litem of the child or a parent or guardian. Notice of this motion must be given by registered or certified mail to all parties of the adjudicatory hearing, the custodian and the governmental organization or person responsible for supervising the care of the child.
2. The court shall hold a hearing on the motion and may dismiss the motion or revoke or modify any order as it determines is in the best interest of the child.

(Added to NRS by [1985, 1383](#))

NRS 432B.580 Semiannual review of placement of child; report by agency acting as custodian of child; visitation between child and siblings; hearing to review placement.

1. Except as otherwise provided in this section and [NRS 432B.513](#), if a child is placed pursuant to [NRS 432B.550](#) other than with a parent, the placement must be reviewed by the court at least semiannually, and within 90 days after a request by a party to any of the prior proceedings. Unless the parent, guardian or the custodian objects to the referral, the court may enter an order directing that the placement be reviewed by a panel appointed pursuant to [NRS 432B.585](#).
2. An agency acting as the custodian of the child shall, before any hearing for review of the placement of a child, submit a report to the court, or to the panel if it has been designated to review the matter, which includes:
 - (a) An evaluation of the progress of the child and the family of the child and any recommendations for further supervision, treatment or rehabilitation.
 - (b) Information concerning the placement of the child in relation to the child's siblings, including, without limitation:
 - (1) Whether the child was placed together with the siblings;
 - (2) Any efforts made by the agency to have the child placed together with the siblings;
 - (3) Any actions taken by the agency to ensure that the child has contact with the siblings; and
 - (4) If the child is not placed together with the siblings:
 - (I) The reasons why the child is not placed together with the siblings; and
 - (II) A plan for the child to visit the siblings, which must be approved by the court.
 - (c) A copy of an academic plan developed for the child pursuant to [NRS 388.155](#), [388.165](#) or [388.205](#).
 - (d) A copy of any explanations regarding medication that has been prescribed for the child that have been submitted by a foster home pursuant to [NRS 424.0383](#).
3. Except as otherwise provided in this subsection, a copy of the report submitted pursuant to subsection 2 must be given to the parents, the guardian ad litem and the attorney, if any, representing the parent or the child. If the child was delivered to a provider of emergency services pursuant to [NRS 432B.630](#) and the parent has not appeared in the action, the report need not be sent to that parent.
4. After a plan for visitation between a child and the siblings of the child submitted pursuant to subparagraph (4) of paragraph (b) of subsection 2 has been approved by the court, the agency which provides child welfare services must request the court to issue an order requiring the visitation set forth in the plan for visitation. If a person refuses to comply with or disobeys an order issued pursuant to this subsection, the person may be punished as for a contempt of court.
5. The court or the panel shall hold a hearing to review the placement, unless the parent, guardian or custodian files a motion with the court to dispense with the hearing. If the motion is granted, the court or panel may make its determination from any report, statement or other information submitted to it.
6. Except as otherwise provided in this subsection and subsection 5 of [NRS 432B.520](#), notice of the hearing must be given by registered or certified mail to:

- (a) All the parties to any of the prior proceedings;
- (b) Any persons planning to adopt the child;
- (c) A sibling of the child, if known, who has been granted a right to visitation of the child pursuant to [NRS 127.171](#) and his or her attorney, if any; and
- (d) Any other relatives of the child or providers of foster care who are currently providing care to the child.

7. The notice of the hearing required to be given pursuant to subsection 6:

- (a) Must include a statement indicating that if the child is placed for adoption the right to visitation of the child is subject to the provisions of [NRS 127.171](#);
- (b) Must not include any confidential information described in [NRS 127.140](#); and
- (c) Need not be given to a parent whose rights have been terminated pursuant to [chapter 128](#) of NRS or who has voluntarily relinquished the child for adoption pursuant to [NRS 127.040](#).

8. The court or panel may require the presence of the child at the hearing and shall provide to each person to whom notice was given pursuant to subsection 6 a right to be heard at the hearing.

9. The court or panel shall review:

- (a) The continuing necessity for and appropriateness of the placement;
- (b) The extent of compliance with the plan submitted pursuant to subsection 2 of [NRS 432B.540](#);
- (c) Any progress which has been made in alleviating the problem which resulted in the placement of the child; and
- (d) The date the child may be returned to, and safely maintained in, the home or placed for adoption or under a legal guardianship.

10. The provision of notice and a right to be heard pursuant to this section does not cause any person planning to adopt the child, any sibling of the child or any other relative, any adoptive parent of a sibling of the child or a provider of foster care to become a party to the hearing.

(Added to NRS by [1985, 1384](#); A [1991, 1360](#); [1999, 2041](#); [2001, 1263, 1704](#); [2005, 2098](#); [2011, 146, 2665](#); [2013, 239](#); [2015, 1523](#))

NRS 432B.585 Appointment of panel to conduct semiannual review. For the purposes of conducting a review required by [NRS 432B.580](#), the judge or judges of the court may by mutual consent appoint a panel of three or more persons. The persons so appointed shall serve without compensation and at the pleasure of the court.

(Added to NRS by [1991, 1358](#); A [2001, 1705](#))

NRS 432B.590 Annual hearing concerning permanent placement of child; review of plan for permanent placement of child; court to prepare explicit statement of facts; court authorized to review any decision of agency with legal custody of child; when presumption that best interests of child will be served by termination of parental rights arises.

1. Except as otherwise provided in [NRS 432B.513](#), the court shall hold a hearing concerning the permanent placement of a child:

- (a) Not later than 12 months after the initial removal of the child from the home of the child and annually thereafter.
- (b) Within 30 days after making any of the findings set forth in subsection 3 of [NRS 432B.393](#).

Ê Notice of this hearing must be given by registered or certified mail to all the persons to whom notice must be given pursuant to subsection 6 of [NRS 432B.580](#).

2. The court may require the presence of the child at the hearing and shall provide to each person to whom notice was given pursuant to subsection 1 a right to be heard at the hearing.

3. At the hearing, the court shall review any plan for the permanent placement of the child adopted pursuant to [NRS 432B.553](#) and, if the goal of the plan is a permanent living arrangement other than reunification with his or her parents, placement for adoption, placement with a legal guardian or placement with a relative, ask the child about his or her desired permanent living arrangement. After doing so, the court must determine:

(a) Whether the agency with legal custody of the child has made the reasonable efforts required by subsection 1 of [NRS 432B.553](#);

(b) Whether, and if applicable when:

- (1) The child should be returned to the parents of the child or placed with other relatives;
- (2) It is in the best interests of the child to:

(I) Initiate proceedings to terminate parental rights pursuant to [chapter 128](#) of NRS so that the child can be placed for adoption;

(II) Initiate proceedings to establish a guardianship pursuant to [chapter 159](#) of NRS; or

(III) Establish a guardianship in accordance with [NRS 432B.466](#) to [432B.468](#), inclusive; or

(3) The agency with legal custody of the child has produced documentation of its conclusion that there is a compelling reason for the placement of a child who has attained the age of 16 years in another permanent living arrangement;

(c) If the child will not be returned to the parents of the child, whether the agency with legal custody of the child fully considered placement options both within and outside of this State;

(d) If the child has attained the age of 14 years, whether the child will receive the services needed to assist the child in transitioning to independent living; and

(e) If the child has been placed outside of this State, whether the placement outside of this State continues to be appropriate for and in the best interests of the child.

4. The court shall prepare an explicit statement of the facts upon which each of its determinations is based pursuant to subsection 3. If the court determines that it is not in the best interests of the child to be returned to his or her parents, or to be placed for adoption, with a legal guardian or with a relative, the court must include compelling reasons for this determination and an explanation of those reasons in its statement of the facts.

5. If the court determines that it is in the best interests of the child to terminate parental rights, the court shall use its best efforts to ensure that the procedures required by [chapter 128](#) of NRS are completed within 6 months after the date the court makes that determination, including, without limitation, appointing a private attorney to expedite the completion of the procedures.

6. The provisions of this section do not limit the jurisdiction of the court to review any decisions of the agency with legal custody of the child regarding the permanent placement of the child.

7. If a child has been placed outside of the home and has resided outside of the home pursuant to that placement for 14 months of any 20 consecutive months, the best interests of the child must be presumed to be served by the termination of parental rights.

8. This hearing may take the place of the hearing for review required by [NRS 432B.580](#).

9. The provision of notice and a right to be heard pursuant to this section does not cause any person planning to adopt the child, any sibling of the child or any other relative, any adoptive parent of a sibling of the child or a provider of foster care to become a party to the hearing.

(Added to NRS by [1985, 1384](#); A [1991, 1360](#); [1995, 362](#); [1999, 2042](#); [2001, 1705, 1848](#); [2003, 87, 592](#); [2005, 2099](#); [2011, 147](#); [2013, 241](#); [2015, 858](#))

CONTINUATION OF JURISDICTION OF COURT OVER CHILD WHO REACHES 18 YEARS OF AGE WHILE IN CUSTODY OF AGENCY WHICH PROVIDES CHILD WELFARE SERVICES

NRS 432B.591 “Child” defined. As used in [NRS 432B.591](#) to [432B.595](#), inclusive, “child” means a person who is:

1. Under the age of 18 years; and
2. Over the age of 18 years and who remains under the jurisdiction of the court pursuant to [NRS 432B.594](#).

(Added to NRS by [2011, 249](#))

NRS 432B.592 Court to refer child to attorney for counsel regarding continuation of jurisdiction.

1. A court shall refer a child who is in the custody of an agency which provides child welfare services to an attorney in the county who provides legal services without a charge to abused or neglected children if the court determines that the child:

- (a) Has reached the age of 17 years; and
- (b) Is not likely to be returned to the custody of his or her parent before reaching the age of 18 years.

2. The court shall request the attorney to whom such a child is referred to counsel the child regarding the legal consequences of remaining under the jurisdiction of the court after reaching 18 years of age and assist the child in deciding whether to remain under the jurisdiction of the court.

(Added to NRS by [2011, 249](#))

NRS 432B.593 Agency which provides child welfare services to meet with child to determine whether child intends to request continuation of jurisdiction; effect of such meeting; child who has independent living agreement not prohibited from requesting continuation of jurisdiction.

1. At least 120 days before the date on which a child who is in the custody of an agency which provides child welfare services reaches the age of 18 years, the agency which provides child welfare services shall meet with the child to determine whether the child intends to request that the court retain jurisdiction over the child pursuant to [NRS 432B.594](#) after the child reaches the age of 18 years.

2. If the child indicates during the meeting held pursuant to subsection 1 that the child does not intend to request that the court retain jurisdiction over the child, the agency which provides child welfare services shall recommend that the court terminate jurisdiction over the child when the child reaches the age of 18 years.

3. Notwithstanding a determination made by a child during a meeting held pursuant to subsection 1, any time before reaching the age of 18 years, the child may:

(a) Inform the agency which provides child welfare services that the child intends to request that the court continue jurisdiction over the child pursuant to [NRS 432B.594](#), and the agency shall revise its recommendation to the court accordingly; or

(b) Request that the court retain jurisdiction over the child pursuant to [NRS 432B.594](#), and the court shall accept jurisdiction.

4. A child who enters into an agreement with an agency which provides child welfare services before the child reaches the age of 18 years to allow the child to live independently is not prohibited from requesting that the court retain jurisdiction over the child pursuant to [NRS 432B.594](#), and such a child is entitled to the same rights and protections set forth in [NRS 432B.591](#) to [432B.595](#), inclusive, as provided to any other child.

(Added to NRS by [2011, 249](#))

NRS 432B.594 Retention of court’s jurisdiction over child; termination of such jurisdiction; written agreement between agency which provides child welfare services and child; resolution of dispute between agency and child; rights of child to services and payments while under jurisdiction of court.

1. A court which orders a child to be placed other than with a parent and which has jurisdiction over the child when the child reaches the age of 18 years shall retain jurisdiction over the child if the child so requests.

2. Except as otherwise provided in this section, jurisdiction over a child that is retained pursuant to subsection 1 continues until:

(a) The agency which provides child welfare services, the child and the attorney of the child agree to terminate the jurisdiction;

(b) The court determines that:

(1) The child has achieved the goals set forth in the plan developed pursuant to [NRS 432B.595](#);

(2) The child is not making a good faith effort to achieve the goals set forth in the plan developed pursuant to [NRS 432B.595](#); or

(3) The circumstances of the child have changed in such a manner that it is infeasible for the child to achieve the goals set forth in the plan developed pursuant to [NRS 432B.595](#);

(c) The child requests that jurisdiction be terminated; or

(d) The child reaches the age of 21 years,

È whichever occurs first.

3. If the court that retains jurisdiction over a child pursuant to this section transfers jurisdiction to another court in this State, the court which accepts jurisdiction must retain jurisdiction over the case for the period provided pursuant to this section.

4. A child who requests that the court retain jurisdiction over the child pursuant to this section must, upon reaching the age of 18 years, enter into a written agreement with the agency which provides child welfare services. The agreement, which must be filed with the court, must include, without limitation, the following provisions, which must specify that:

- (a) The child voluntarily requested that the court retain jurisdiction over the child;
 - (b) While under the jurisdiction of the court, the child is entitled to continue to receive services from the agency which provides child welfare services and to receive monetary payments directly or to have such payments provided to another entity as designated in the plan developed pursuant to [NRS 432B.595](#) in an amount not to exceed the rate of payment for foster care;
 - (c) While under the jurisdiction of the court, the child will no longer be under the legal custody of the agency which provides child welfare services, and the proceedings concerning the child conducted pursuant to [NRS 432B.410](#) to [432B.590](#), inclusive, will terminate;
 - (d) The child may, at any time, request that jurisdiction over the child be terminated; and
 - (e) If there is an issue concerning the child while under the jurisdiction of the court, the child and the agency which provides child welfare services agree to attempt to resolve the issue before requesting a hearing before the court to address the issue.
5. If an issue arises concerning a child who remains under the jurisdiction of the court, the child, the agency which provides child welfare services or the attorney assigned to the case may request a hearing before the court to address the issue. Before requesting such a hearing, the child and the agency which provides child welfare services must attempt to resolve the issue.
6. If the agency which provides child welfare services wishes to have the court terminate jurisdiction over the child, the agency which provides child welfare services must send a notice to the child and the attorney of the child informing the child and the attorney of the child that the child has 15 days after receipt of the notice in which to request an informal administrative review. If, during the administrative review, a resolution is not reached, the child or the attorney of the child may request a hearing before the court pursuant to subsection 5. If the child and the attorney of the child agree to have jurisdiction terminated or do not request an informal administrative review, the jurisdiction of the court must terminate upon notice to the court by the agency which provides child welfare services.
7. A child, while under the jurisdiction of the court pursuant to this section, is entitled to continue to receive services and monetary payments from the agency which provides child welfare services directly or to have such payments provided to another person or entity as designated in the plan developed pursuant to [NRS 432B.595](#) in an amount not to exceed the rate of payment for foster care.
8. The court may issue any order which it deems appropriate or necessary to ensure:
- (a) That the agency which provides child welfare services provides the services and monetary payments which the child is entitled to receive; and
 - (b) That the child who remains under the jurisdiction of the court is working towards achieving the goals of the plan developed pursuant to [NRS 432B.595](#).
- (Added to NRS by [2011, 250](#))

NRS 432B.595 Written plan to assist child to transition to independent living; duties of agency which provides child welfare services during period that court retains jurisdiction.

1. If the court retains jurisdiction over a child pursuant to [NRS 432B.594](#), the agency which provides child welfare services shall develop a written plan to assist the child in transitioning to independent living. Such a plan must include, without limitation, the following goals:
- (a) That the child save enough money to pay for his or her monthly expenses for at least 3 months;
 - (b) If the child has not graduated from high school or obtained a general equivalency diploma or an equivalent document, that the child remain enrolled in high school or a program to obtain a general equivalency diploma or an equivalent document until graduation or completion of the program;
 - (c) If the child has graduated from high school or obtained a general equivalency diploma or an equivalent document, that the child:
 - (1) Enroll in a program of postsecondary or vocational education;
 - (2) Enroll or participate in a program or activity designed to promote or remove obstacles to employment; or
 - (3) Obtain or actively seek employment which is at least 80 hours per month;
 - (d) That the child secure housing;
 - (e) That the child have adequate income to meet his or her monthly expenses;
 - (f) That the child identify an adult who will be available to provide support to the child;
 - (g) If applicable, that the child have established appropriate supportive services to address any mental health or developmental needs of the child; and
 - (h) If a child is not capable of achieving one or more of the goals set forth in paragraphs (a) to (g), inclusive, that the child have goals which are appropriate for the child based upon the needs of the child.
2. During the period in which the court retains jurisdiction over the child, the agency which provides child welfare services shall:
- (a) Monitor the plan developed pursuant to subsection 1 and adjust the plan as necessary;
 - (b) Contact the child by telephone at least once each month and in person at least quarterly;
 - (c) Ensure that the child meets with a person who will provide guidance to the child and make the child aware of the services which will be available to the child; and
 - (d) Conduct a meeting with the child at least 30 days, but not more than 45 days, before the jurisdiction of the court is terminated to determine whether the child requires any additional guidance.
- (Added to NRS by [2011, 252](#); [A 2013, 3292](#))

LOCAL ADVISORY BOARDS TO EXPEDITE PROCEEDINGS FOR PLACEMENT OF CHILDREN

NRS 432B.602 Rural Advisory Board to Expedite Proceedings for Placement of Children: Creation; terms; vacancies; members serve without compensation; duties. Repealed. (See chapter 100, Statutes of Nevada 2015, at page 381.)

NRS 432B.604 Creation; members; terms; vacancies; members serve without compensation; duties.

1. The district court in each judicial district that includes a county whose population is less than 100,000 shall create a local advisory board to expedite proceedings for the placement of children. The district court shall appoint to the local advisory board:
- (a) One member who is representative of foster parents;
 - (b) One member who is representative of attorneys in public or private practice;

- (c) One member who is employed by the Division of Child and Family Services;
 - (d) One member who is either employed by the public school system and works with children on a regular basis, or works in the field of mental health and works with children on a regular basis; and
 - (e) One member who is a resident of the judicial district in which the local advisory board is created.
2. The district court shall provide for initial terms of each member of the local advisory board so that the terms are staggered. After the initial terms, the members of the local advisory board shall serve terms of 4 years. Any member of the local advisory board may be reappointed. If a vacancy occurs during the term of a member, the district court shall appoint a person similarly qualified to replace that member for the remainder of the unexpired term. The district court may remove a member from the local advisory board if the member neglects his or her duty or commits malfeasance in office.
3. Members of a local advisory board serve without compensation, and necessary travel and per diem expenses may not be reimbursed.
4. The Division of Child and Family Services shall provide each local advisory board with administrative support and shall provide any information requested by a local advisory board to the local advisory board within 10 working days after receiving the request for information.
5. Each local advisory board shall:
- (a) At its first meeting and annually thereafter, elect a chair from among its members.
 - (b) Review each case referred to it pursuant to [NRS 432B.606](#), and provide the referring court and the Office of the Attorney General with any recommendations to expedite the completion of the case.
 - (c) Twice each year, provide a report of its activities and any recommendations to expedite the completion of cases to the district court, the Division of Child and Family Services and the Legislature, or the Legislative Commission when the Legislature is not in regular session.
6. A local advisory board may review other cases as deemed appropriate by the district court.
(Added to NRS by [1999, 2030](#); A [2015, 380](#))

NRS 432B.606 Referral of case by court to local advisory board. If the court has not approved the permanent placement of a child within 12 months after the initial removal of the child from the child's home, it shall refer the case to the local advisory board created pursuant to [NRS 432B.604](#), if such a local advisory board was created for that judicial district, to obtain recommendations from the local advisory board to expedite the completion of the case.
(Added to NRS by [1999, 2031](#))

COURT-ORDERED ADMISSION OF CERTAIN CHILDREN WITH EMOTIONAL DISTURBANCE TO CERTAIN FACILITIES

NRS 432B.607 Definitions. As used in [NRS 432B.607](#) to [432B.6085](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 432B.6071](#) to [432B.6074](#), inclusive, have the meanings ascribed to them in those sections.
(Added to NRS by [2005, 1317](#); A [2009, 410](#))

NRS 432B.6071 "Child with an emotional disturbance" defined. "Child with an emotional disturbance" has the meaning ascribed to it in [NRS 433B.045](#).
(Added to NRS by [2005, 1317](#))

NRS 432B.60715 "Court-ordered admission of a child" defined. "Court-ordered admission of a child" includes, without limitation:

- 1. A child who is in the custody of an agency which provides child welfare services and who is not in a facility whom the court orders to be admitted to a facility; and
- 2. A child who has been placed in a facility under an emergency admission and whom the court orders to be admitted for the purpose of continuing the placement.
(Added to NRS by [2009, 410](#))

NRS 432B.6072 "Facility" defined. "Facility" means a psychiatric hospital or facility which provides residential treatment for mental illness that has a unit in the hospital or facility capable of being locked to prevent a child with an emotional disturbance from leaving the hospital or facility.
(Added to NRS by [2005, 1317](#))

NRS 432B.6073 "Person professionally qualified in the field of psychiatric mental health" defined. "Person professionally qualified in the field of psychiatric mental health" has the meaning ascribed to it in [NRS 433A.018](#).
(Added to NRS by [2005, 1318](#))

NRS 432B.6074 "Treatment" defined. "Treatment" has the meaning ascribed to it in [NRS 433.224](#).
(Added to NRS by [2005, 1318](#))

NRS 432B.6075 Petition: Filing; certificate or statement of alleged emotional disturbance.

1. A proceeding for a court-ordered admission of a child alleged to be a child with an emotional disturbance who is in the custody of an agency which provides child welfare services to a facility may be commenced by the filing of a petition with the clerk of the court which has jurisdiction in proceedings concerning the child. The petition may be filed by the agency which provides child welfare services without the consent of a parent of the child. The petition must be accompanied:

- (a) By a certificate of a physician, psychiatrist or licensed psychologist stating that the physician, psychiatrist or licensed psychologist has examined the child alleged to be a child with an emotional disturbance and has concluded that the child has an emotional disturbance and, because of that condition, is likely to harm himself or herself or others if allowed liberty; or

- (b) By a sworn written statement by the petitioner that:

- (1) The petitioner has, based upon personal observation of the child alleged to be a child with an emotional disturbance, probable cause to believe that the child has an emotional disturbance and, because of that condition, is likely to harm himself or

herself or others if allowed liberty; and

(2) The child alleged to be a child with an emotional disturbance has refused to submit to examination or treatment by a physician, psychiatrist or licensed psychologist.

2. If a petition filed pursuant to this section is to continue the placement of the child after an emergency admission, the petition must be filed not later than 5 days after the emergency admission or the child must be released.

(Added to NRS by [2005, 1318](#); A [2009, 410](#))

NRS 432B.6076 Findings and order; alternative courses of treatment.

1. Except as otherwise provided in [NRS 432B.6077](#), if the court finds, after proceedings for the court-ordered admission of a child alleged to be a child with an emotional disturbance who is in the custody of an agency which provides child welfare services to a facility, including, without limitation, an evidentiary hearing:

(a) That there is not clear and convincing evidence that the child with respect to whom the hearing was held exhibits observable behavior such that the child is likely to harm himself or herself or others if allowed liberty, the court shall enter its finding to that effect and the child must not be admitted to a facility.

(b) That there is clear and convincing evidence that the child with respect to whom the hearing was held is in need of treatment in a facility and is likely to harm himself or herself or others if allowed liberty, the court may order the admission of the child for the most appropriate course of treatment. The order of the court must be interlocutory and must not become final if, within 30 days after the admission, the child is unconditionally released from the facility pursuant to [NRS 432B.6084](#).

2. Before issuing an order for admission or a renewal thereof, the court shall explore other alternative courses of treatment within the least restrictive appropriate environment as suggested by the evaluation team who evaluated the child, or other persons professionally qualified in the field of psychiatric mental health, which the court believes may be in the best interests of the child.

(Added to NRS by [2005, 1318](#); A [2009, 411](#))

NRS 432B.6077 Petition required before child may be placed in facility other than under emergency admission; psychological examination of child required under certain circumstances; placement in less restrictive environment; any person may oppose petition.

1. An agency which provides child welfare services shall not place a child who is in the custody of the agency in a facility, other than under an emergency admission, unless the agency has petitioned the court for the court-ordered admission of the child to a facility pursuant to [NRS 432B.6075](#).

2. If a petition for the court-ordered admission of a child filed pursuant to [NRS 432B.6075](#) is accompanied by the information described in paragraph (b) of subsection 1 of [NRS 432B.6075](#), the court shall order a psychological evaluation of the child.

3. If a court which receives a petition filed pursuant to [NRS 432B.6075](#) for the court-ordered admission to a facility of a child who is in the custody of an agency which provides child welfare services determines pursuant to subsection 2 of [NRS 432B.6076](#) that the child could be treated effectively in a less restrictive appropriate environment than a facility, the court must order the placement of the child in a less restrictive appropriate environment. In making such a determination, the court may consider any information provided to the court, including, without limitation:

(a) Any information provided pursuant to subsection 4;

(b) Any suggestions of psychologists, psychiatrists or other physicians who have evaluated the child concerning the appropriate environment for the child; and

(c) Any suggestions of licensed clinical social workers or other professionals or any adult caretakers who have interacted with the child and have information concerning the appropriate environment for the child.

4. If a petition for the court-ordered admission of a child who is in the custody of an agency which provides child welfare services is filed pursuant to [NRS 432B.6075](#):

(a) Any person, including, without limitation, the child, may oppose the petition for the court-ordered admission of the child by filing a written opposition with the court or stating the opposition in court; and

(b) The agency which provides child welfare services must present information to the court concerning whether:

(1) A facility is the appropriate environment to provide treatment to the child; or

(2) A less restrictive appropriate environment would serve the needs of the child.

(Added to NRS by [2005, 1318](#); A [2009, 411](#))

NRS 432B.6078 Provision of information and assistance to child; second examination of child.

1. Not later than 5 days after a child who is in the custody of an agency which provides child welfare services has been admitted to a facility pursuant to [NRS 432B.6076](#), the agency which provides child welfare services shall inform the child of his or her legal rights and the provisions of [NRS 432B.607](#) to [432B.6085](#), inclusive, [433.456](#) to [433.543](#), inclusive, and [433.545](#) to [433.551](#), inclusive, and [chapters 433A](#) and [433B](#) of NRS and [NRS 435.530](#) to [435.635](#), inclusive, and, if the child or the child's attorney desires, assist the child in requesting the court to authorize a second examination by an evaluation team that includes a physician, psychiatrist or licensed psychologist who are not employed by, connected to or otherwise affiliated with the facility other than a physician, psychiatrist or licensed psychologist who performed an original examination which authorized the court to order the admission of the child to the facility. A second examination must be conducted not later than 5 business days after the court authorizes the examination.

2. If the court authorizes a second examination of the child, the examination must:

(a) Include, without limitation, an evaluation concerning whether the child should remain in the facility and a recommendation concerning the appropriate placement of the child which must be provided to the facility; and

(b) Be paid for by the governmental entity that is responsible for the agency which provides child welfare services, if such payment is not otherwise provided by the State Plan for Medicaid.

(Added to NRS by [2005, 1319](#); A [2009, 412](#); [2013, 3002](#))

NRS 432B.6079 Considerations for court in issuing or renewing order. In determining pursuant to [NRS 432B.6076](#) and [432B.608](#) whether to issue or renew an order for the admission of a child who is in the custody of an agency which provides child welfare services to a facility, the court shall consider:

1. The reports of any examinations or evaluations of a child by any psychologist, psychiatrist or other physician;

2. Any information concerning the child provided to the court by a licensed clinical social worker or other professional or any

adult caretaker who is knowledgeable about the child or a guardian ad litem appointed for the child pursuant to [NRS 432B.500](#);

3. The wishes of the child concerning care, treatment and training and placement in a facility;
4. The best interests of the child, including, without limitation, whether the court believes the child might experience any psychological trauma from court-ordered admission;
5. Any alternative care, treatment or training options; and
6. Any other information the court deems relevant concerning the child.

(Added to NRS by [2005, 1320](#))

NRS 432B.608 Expiration and renewal of admission.

1. If the court issues an order for the admission to a facility of a child who is in the custody of an agency which provides child welfare services pursuant to [NRS 432B.6076](#), the admission automatically expires at the end of 90 days if not terminated previously by the facility as provided for in subsection 2 of [NRS 432B.6084](#).

2. At the end of the court-ordered period of treatment, the agency which provides child welfare services, the Division of Child and Family Services or any facility may petition to renew the admission of the child for additional periods not to exceed 60 days each.

3. For each renewal, the petition must set forth the specific reasons why further treatment in the facility would be in the best interests of the child and the court shall apply the same standards when considering a petition to renew the admission of the child as were applied for the original petition for the court-ordered admission of the child.

(Added to NRS by [2005, 1320](#); A [2009, 413](#))

NRS 432B.6081 Plan for continued care, treatment and training of child upon discharge. A facility which provides care, treatment or training to a child who is in the custody of an agency which provides child welfare services and who is admitted to the facility pursuant to [NRS 432B.6076](#) shall develop a plan, in consultation with the child, for the continued care, treatment and training of the child upon discharge from the facility. The plan must:

1. Be developed not later than 10 days after the child is admitted to the facility;
2. Be submitted to the court after each period of admission ordered by the court pursuant to [NRS 432B.6076](#) in the manner set forth in [NRS 432B.608](#); and
3. Include, without limitation:
 - (a) The anticipated date of discharge of the child from the facility;
 - (b) The name of any psychiatrist or psychologist who will provide care, treatment or training to the child after the child is discharged from the facility, if appropriate;
 - (c) A plan for any appropriate care, treatment or training for the child for at least 30 days after the child is discharged from the facility; and
 - (d) The suggested placement of the child after the child is discharged from the facility.

(Added to NRS by [2005, 1320](#); A [2009, 413](#))

NRS 432B.6082 Personal rights. In addition to the personal rights set forth in [NRS 432B.607](#) to [432B.6085](#), inclusive, [433.456](#) to [433.543](#), inclusive, and [433.545](#) to [433.551](#), inclusive, and [chapters 433A](#) and [433B](#) of NRS, and [NRS 435.530](#) to [435.635](#), inclusive, a child who is in the custody of an agency which provides child welfare services and who is admitted to a facility has the following personal rights, a list of which must be prominently posted in all facilities providing evaluation, treatment or training services to such children and must be otherwise brought to the attention of the child by such additional means as prescribed by regulation:

1. To receive an education as required by law; and
2. To receive an allowance from the agency which provides child welfare services in an amount equivalent to any allowance required to be provided to children who reside in foster homes.

(Added to NRS by [2005, 1321](#); A [2013, 3002](#))

NRS 432B.6083 Conditional release: No liability of State; notice to court and attorney of agency; order to return to facility; judicial review of order to return to facility.

1. Except as otherwise provided in subsection 3, any child who is admitted to a facility by a court pursuant to [NRS 432B.6076](#) may be conditionally released from the facility when, in the judgment of the medical director of the facility, the conditional release is in the best interest of the child and will not be detrimental to the public welfare. The medical director of the facility or the designee of the medical director shall prescribe the period for which the conditional release is effective. The period must not extend beyond the last day of the court-ordered period of treatment specified pursuant to [NRS 432B.608](#).

2. When a child is conditionally released pursuant to subsection 1, the State or a county, or any of its agents or employees, is not liable for any debts or contractual obligations, medical or otherwise, incurred or damages caused by the actions of the child.

3. A child who was admitted by a court because the child was likely to harm others if allowed to remain at liberty may be conditionally released only if, at the time of the release, written notice is given to the court which admitted the child and to the attorney of the agency which provides child welfare services that initiated the proceedings for admission.

4. Except as otherwise provided in subsection 6, the administrative officer of a facility or the designee of the administrative officer shall order a child who is conditionally released from that facility pursuant to this section to return to the facility if a psychiatrist and a member of that child's treatment team who is professionally qualified in the field of psychiatric mental health determine that the conditional release is no longer appropriate because that child presents a clear and present danger of harm to himself or herself or others. Except as otherwise provided in this subsection, the administrative officer or the designee of the administrative officer shall, at least 3 days before the issuance of the order to return, give written notice of the order to the court that admitted the child to the facility. If an emergency exists in which the child presents an imminent threat of danger of harm to himself or herself or others, the order must be submitted to the court not later than 1 business day after the order is issued.

5. The court shall review an order submitted pursuant to subsection 4 and the current condition of the child who was ordered to return to the facility at its next regularly scheduled hearing for the review of petitions for court-ordered admissions, but in no event later than 5 judicial days after the child is returned to the facility. The administrative officer or the designee of the administrative officer shall give written notice to the agency which provides child welfare services, to the child who was ordered to return to the facility and to the child's attorney of the time, date and place of the hearing and of the facts necessitating that child's

return to the facility.

6. The provisions of subsection 4 do not apply if the period of conditional release has expired.
(Added to NRS by [2005, 1321](#))

NRS 432B.6084 Release without further order of court; early release.

1. When a child who is admitted to a facility by a court pursuant to [NRS 432B.6076](#) is released at the end of the court-ordered period of treatment specified pursuant to [NRS 432B.608](#), written notice must be given to the admitting court at least 10 days before the release of the child. The child may then be released without requiring further orders of the court.

2. A child who is admitted to a facility by a court pursuant to [NRS 432B.6076](#) may be unconditionally released before the court-ordered period of treatment specified in [NRS 432B.608](#) when:

(a) An evaluation team, including, without limitation, an evaluation team that conducts an examination pursuant to [NRS 432B.6078](#), or two persons professionally qualified in the field of psychiatric mental health, at least one of them being a physician, determines that the child has recovered from any emotional disturbance or has improved to such an extent that the child is no longer considered to present a clear and present danger of harm to himself or herself or others; and

(b) Under advisement from the evaluation team or two persons professionally qualified in the field of psychiatric mental health, at least one of them being a physician, the medical director of the facility authorizes the release and gives written notice to the admitting court at least 10 days before the release of the child.

(Added to NRS by [2005, 1322](#))

NRS 432B.6085 Children's rights; application of various provisions of chapters 433 and 435 of NRS and all of chapters 433A and 433B of NRS to children in custody of agency which provides child welfare services.

1. Nothing in this chapter purports to deprive any person of any legal rights without due process of law.

2. Unless the context clearly indicates otherwise, the provisions of [NRS 432B.607](#) to [432B.6085](#), inclusive, [433.456](#) to [433.543](#), inclusive, and [433.545](#) to [433.551](#), inclusive, and [chapters 433A](#) and [433B](#) of NRS and [NRS 435.530](#) to [435.635](#), inclusive, apply to all children who are in the custody of an agency which provides child welfare services.

(Added to NRS by [2005, 1322](#); A [2013, 3002](#))

SEXUAL ABUSE OR SEXUAL EXPLOITATION OF CHILDREN UNDER AGE OF 18 YEARS

NRS 432B.610 Training of certain peace officers for detection and investigation of and response to cases of sexual abuse or sexual exploitation of children; regulations.

1. The Peace Officers' Standards and Training Commission shall:

(a) Require each category I peace officer to complete a program of training for the detection and investigation of and response to cases of sexual abuse or sexual exploitation of children under the age of 18 years.

(b) Not certify any person as a category I peace officer unless the person has completed the program of training required pursuant to paragraph (a).

(c) Establish a program to provide the training required pursuant to paragraph (a).

(d) Adopt regulations necessary to carry out the provisions of this section.

2. As used in this section, "category I peace officer" means:

(a) Sheriffs of counties and of metropolitan police departments, their deputies and correctional officers;

(b) Personnel of the Nevada Highway Patrol whose principal duty is to enforce one or more laws of this State, and any person promoted from such a duty to a supervisory position related to such a duty;

(c) Marshals, police officers and correctional officers of cities and towns;

(d) Members of the Police Department of the Nevada System of Higher Education;

(e) Employees of the Division of State Parks of the State Department of Conservation and Natural Resources designated by the Administrator of the Division who exercise police powers specified in [NRS 289.260](#);

(f) The Chief, investigators and agents of the Investigation Division of the Department of Public Safety; and

(g) The personnel of the Department of Wildlife who exercise those powers of enforcement conferred by title 45 and [chapter 488](#) of NRS.

(Added to NRS by [1993, 1335](#); A [1995, 559](#); [1999, 2429](#); [2001, 2614](#); [2003, 1564](#); [2005, 674](#))

NRS 432B.620 Certification of peace officers who regularly investigate cases of sexual abuse or sexual exploitation of children; regulations.

1. A peace officer assigned to investigate regularly cases of sexual abuse or sexual exploitation of children under the age of 18 years must be certified to carry out those duties by the Peace Officers' Standards and Training Commission.

2. The Peace Officers' Standards and Training Commission shall require each peace officer assigned to investigate regularly cases of sexual abuse or sexual exploitation of children under the age of 18 years to complete, within 1 year after the peace officer is assigned to investigate those cases and each year thereafter, a program of training for the detection and investigation of and response to cases of sexual abuse or sexual exploitation of children under the age of 18 years.

3. If a law enforcement agency does not have a peace officer who is certified to investigate cases of sexual abuse or sexual exploitation of children under the age of 18 years pursuant to [NRS 432B.610](#), it may consult with a peace officer of another law enforcement agency who is so certified.

4. The Peace Officers' Standards and Training Commission shall:

(a) Establish the program of training required pursuant to subsection 2.

(b) Adopt regulations necessary to carry out the provisions of this section.

5. The provisions of this section do not prohibit a peace officer who is not certified to investigate cases of sexual abuse or sexual exploitation of children under the age of 18 years pursuant to [NRS 432B.610](#) from testifying or presenting evidence at any proceeding relating to the sexual abuse or sexual exploitation of a child under the age of 18 years.

(Added to NRS by [1993, 1336](#); A [1999, 2430](#))

KINSHIP GUARDIANSHIP ASSISTANCE PROGRAM

NRS 432B.621 “Program” defined. As used in [NRS 432B.621](#) to [432B.626](#), inclusive, unless the context otherwise requires, “Program” means the Kinship Guardianship Assistance Program established and administered by the Department pursuant to [NRS 432B.622](#).

(Added to NRS by [2011, 538](#))

NRS 432B.622 Department to establish and administer Program; agency which provides child welfare services authorized to enter into agreement to provide assistance to relative of child pursuant to Program.

1. The Department, through a division of the Department designated by the Director, shall establish and administer the Kinship Guardianship Assistance Program to provide assistance pursuant to the provisions of [NRS 432B.621](#) to [432B.626](#), inclusive, and 42 U.S.C. §§ 671 and 673.

2. The Department shall adopt a state plan for the administration of the Program.

3. An agency which provides child welfare services may enter into an agreement to provide assistance to a relative of a child pursuant to the Program. Such an agreement may be entered into with a relative who is located outside the State of Nevada. If a guardianship for the child is established in the other state, the agency which provides child welfare services must comply with any order of the court of the state in which the child resides concerning the guardianship.

(Added to NRS by [2011, 538](#))

NRS 432B.623 Qualifications for assistance pursuant to Program; placement of sibling of child who is eligible for assistance.

1. As a condition to the provision of assistance pursuant to the Program:

(a) A child must:

(1) Have been removed from his or her home:

(I) Pursuant to a written agreement voluntarily entered by the parent or guardian of the child and an agency which provides child welfare services; or

(II) By a court which has determined that it is in the best interests of the child for the child to remain in protective custody or to be placed in temporary or permanent custody outside his or her home;

(2) For not less than 6 consecutive months, have been eligible to receive maintenance pursuant to Part E of Title IV of the Social Security Act, 42 U.S.C. §§ 670 et seq., while residing with the relative of the child;

(3) Not have as an option for permanent placement the return to the home or the adoption of the child;

(4) Demonstrate a strong attachment to the relative;

(5) If the child is 14 years of age or older, be consulted regarding the guardianship arrangement; and

(6) Meet any other requirements for eligibility set forth in 42 U.S.C. §§ 671 and 673.

(b) A relative of the child must:

(1) Demonstrate a strong commitment to caring for the child permanently;

(2) Be a provider of foster care as defined in [NRS 424.017](#);

(3) Enter into a written agreement for assistance with an agency which provides child welfare services before the relative is appointed as the legal guardian of the child;

(4) Be appointed as the legal guardian of the child by a court of competent jurisdiction and comply with any requirements imposed by the court; and

(5) Meet any other requirements for eligibility set forth in 42 U.S.C. §§ 671 and 673.

2. If the sibling of a child who is eligible for assistance pursuant to the Program is not eligible for such assistance, the sibling may be placed with the child who is eligible for assistance upon approval of the agency which provides child welfare services and the relative. In such a case, payments may be made for the sibling so placed as if the sibling is eligible for the Program.

(Added to NRS by [2011, 539](#); A [2013, 1454](#))

NRS 432B.624 Required provisions in agreement for assistance entered into pursuant to Program; eligibility for federal assistance for adoption not affected by such agreement.

1. An agreement for assistance entered into pursuant to the Program must include, without limitation:

(a) The amount of assistance provided under the agreement for each eligible child, which must not exceed the amount that the agency which provides child welfare services would provide to a foster parent if the child had been placed in foster care;

(b) The manner in which the assistance will be provided;

(c) The manner in which the agency which provides child welfare services may periodically adjust the amount of assistance, in consultation with the relative, based on the circumstances of the relative and the child;

(d) Any additional services or assistance that the child or relative may be eligible to receive under the agreement and a description of those services or assistance;

(e) The procedure by which the relative may apply for additional services or assistance, as needed; and

(f) Any other requirements set forth in 42 U.S.C. §§ 671 and 673.

2. The agency which provides child welfare services shall provide a copy of the agreement to the relative before he or she is appointed as the legal guardian of the child.

3. An agreement for assistance entered into pursuant to the Program remains in effect even if the relative changes the state of his or her residence.

4. An agreement made pursuant to this section does not affect the eligibility of the child to receive federal assistance for his or her adoption if the child is later adopted.

(Added to NRS by [2011, 539](#))

NRS 432B.625 Background checks required before entering into agreement with relative for assistance pursuant to Program.

1. An agency which provides child welfare services shall, before entering into an agreement for assistance pursuant to the Program, obtain from appropriate law enforcement agencies information on the background and personal history of each relative of a child who seeks assistance pursuant to the Program and each resident of the home of such relative who is 18 years of age or older, to determine whether the person investigated has been arrested for or convicted of any crime.

2. The relative and each resident of the home of such relative must submit to the agency which provides child welfare services

or its approved designee:

(a) A complete set of fingerprints and written permission authorizing the agency or its approved designee to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report to enable the agency or its approved designee to conduct an investigation pursuant to this subsection; and

(b) Written permission to conduct a child abuse and neglect screening.

(Added to NRS by [2011, 540](#))

NRS 432B.626 Agency which provides child welfare services to include certain information in case plan of child whose legal guardian receives assistance pursuant to Program. If a child is appointed a legal guardian who receives assistance pursuant to the Program, an agency which provides child welfare services shall document in the case plan maintained for the child:

1. The steps taken by the agency which provides child welfare services to determine that adoption or returning the child to his or her home is not an appropriate placement for the child.

2. The reason that the child was separated from any siblings during placement, if applicable.

3. The reasons that a permanent placement with a relative is in the best interests of the child.

4. That the child meets the requirements for eligibility set forth in [NRS 432B.623](#).

5. The efforts made by the agency which provides child welfare services to discuss adoption of the child by the relative as an alternative to appointment as the legal guardian of the child and the reason that the relative has chosen not to pursue adoption.

6. The efforts made by the agency which provides child welfare services to discuss with the natural parent of the child the agreement to provide assistance to a relative or the reason that the agency was unable to discuss the agreement with the natural parent of the child, as applicable.

(Added to NRS by [2011, 540](#))

MISCELLANEOUS PROVISIONS

NRS 432B.630 Delivery of newborn child to provider of emergency services.

1. A provider of emergency services shall take immediate possession of a child who is or appears to be not more than 30 days old:

(a) When:

(1) The child is voluntarily delivered to the provider by a parent of the child; and

(2) The parent does not express an intent to return for the child; or

(b) When the child is delivered to the provider by another provider of emergency services pursuant to paragraph (b) of subsection 2.

2. A provider of emergency services who takes possession of a child pursuant to subsection 1 shall:

(a) Whenever possible, inform the parent of the child that:

(1) By allowing the provider to take possession of the child, the parent is presumed to have abandoned the child;

(2) By failing or refusing to provide an address where the parent can be located, the parent waives any notice of the hearing to be conducted pursuant to [NRS 432B.470](#); and

(3) Unless the parent contacts the local agency which provides child welfare services, action will be taken to terminate his or her parental rights regarding the child.

(b) Perform any act necessary to maintain and protect the physical health and safety of the child. If the provider is a public fire-fighting agency, a volunteer fire department, a law enforcement agency or an ambulance service, the provider shall immediately cause the safe delivery of the child to a hospital, an obstetric center or an independent center for emergency medical care licensed pursuant to [chapter 449](#) of NRS.

(c) As soon as reasonably practicable but not later than 24 hours after the provider takes possession of the child, report that possession to an agency which provides child welfare services and, if the provider is not a law enforcement agency, to a law enforcement agency. The law enforcement agency shall notify the Clearinghouse and investigate further, if necessary, using any other resources to determine whether the child has been reported as a missing child. Upon conclusion of the investigation, the law enforcement agency shall inform the agency which provides child welfare services of its determination. The agency which provides child welfare services shall maintain that information for statistical and research purposes.

3. A parent who delivers a child to a provider of emergency services pursuant to paragraph (a) of subsection 1:

(a) Shall leave the child:

(1) In the physical possession of a person who the parent has reasonable cause to believe is an employee of the provider; or

(2) On the property of the provider in a manner and location that the parent has reasonable cause to believe will not threaten the physical health or safety of the child, and immediately contact the provider, through the local emergency telephone number or otherwise, and inform the provider of the delivery and location of the child. A provider of emergency services is not liable for any civil damages as a result of any harm or injury sustained by a child after the child is left on the property of the provider pursuant to this subparagraph and before the provider is informed of the delivery and location of the child pursuant to this subparagraph or the provider takes physical possession of the child, whichever occurs first.

(b) Shall be deemed to have given consent to the performance of all necessary emergency services and care for the child.

(c) Must not be required to provide any background or medical information regarding the child, but may voluntarily do so.

(d) Unless there is reasonable cause to believe that the child has been abused or neglected, excluding the mere fact that the parent has delivered the child to the provider pursuant to subsection 1:

(1) Must not be required to disclose any identifying information, but may voluntarily do so;

(2) Must be allowed to leave at any time; and

(3) Must not be pursued or followed.

4. As used in this section:

(a) "Clearinghouse" has the meaning ascribed to it in [NRS 432.150](#).

(b) "Provider of emergency services" means:

(1) A hospital, an obstetric center or an independent center for emergency medical care licensed pursuant to [chapter 449](#) of

NRS;

(2) A public fire-fighting agency, including, without limitation, a volunteer fire department;

(3) A law enforcement agency; or

(4) An ambulance service that holds a permit issued pursuant to the provisions of [chapter 450B](#) of NRS.

(Added to NRS by [2001, 1254](#); A [2001 Special Session, 56](#); [2003, 236](#); [2011, 1932](#); [2013, 1090](#))

NRS 432B.640 Assessment of child who may need counseling as result of battery that constitutes domestic violence; provision of evaluation or counseling.

1. Upon receiving a referral from a court pursuant to subsection 7 of [NRS 200.485](#), an agency which provides child welfare services may, as appropriate, conduct an assessment to determine whether a psychological evaluation or counseling is needed by a child.

2. If an agency which provides child welfare services conducts an assessment pursuant to subsection 1 and determines that a psychological evaluation or counseling would benefit the child, the agency may, with the approval of the parent or legal guardian of the child:

(a) Conduct the evaluation or counseling; or

(b) Refer the child to a person that has entered into an agreement with the agency to provide those services.

(Added to NRS by [2001, 2487](#); A [2009, 97](#))

TASK FORCE ON THE PREVENTION OF SEXUAL ABUSE OF CHILDREN

NRS 432B.700 Creation; membership. Expired by limitation. (See chapter 260, Statutes of Nevada 2013, at page 1153.)

NRS 432B.710 Election of Chair and Vice Chair; meetings; quorum; compensation; vacancies. Expired by limitation. (See chapter 260, Statutes of Nevada 2013, at page 1153.)

NRS 432B.720 Recommendations of Task Force. Expired by limitation. (See chapter 260, Statutes of Nevada 2013, at page 1153.)

NRS 432B.730 Recommendations for legislation; final report. Expired by limitation. (See chapter 260, Statutes of Nevada 2013, at page 1153.)

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CHAPTER 128 - TERMINATION OF PARENTAL RIGHTS

NRS 128.005	Legislative declaration and findings.
NRS 128.010	Definitions.
NRS 128.011	“Abandoned mother” defined.
NRS 128.012	“Abandonment of a child” defined.
NRS 128.0122	“Agency which provides child welfare services” defined.
NRS 128.0124	“Child” defined.
NRS 128.0126	“Failure of parental adjustment” defined.
NRS 128.0128	“Indian child” defined.
NRS 128.0129	“Indian Child Welfare Act” defined.
NRS 128.013	“Injury” defined.
NRS 128.0137	“Mental injury” defined.
NRS 128.014	“Neglected child” defined.
NRS 128.015	“Parent and child relationship” and “parent” defined.
NRS 128.0155	“Plan” defined.
NRS 128.016	“Putative father” defined.
NRS 128.018	“Unfit parent” defined.
NRS 128.020	Jurisdiction of district courts.
NRS 128.023	Proceedings to terminate parental rights of parent of Indian child: Powers and duties of court; appointment of attorney.
NRS 128.027	Extent to which court must give full faith and credit to judicial proceedings of Indian tribe.
NRS 128.030	Place for filing petition.
NRS 128.040	Who may file petition; investigation.
NRS 128.050	Entitlement of proceedings; contents of verified petition.
NRS 128.055	Proceedings to be completed within 6 months after filing of petition.
NRS 128.060	Notice of hearing: Contents; personal service to certain persons; petitioner to mail notice to Department of Health and Human Services if petitioner or child is receiving public assistance.
NRS 128.070	Service of notice of hearing by publication.
NRS 128.080	Form of notice.
NRS 128.085	Petition by mother of unborn child: Notice to father or putative father; time of hearing.
NRS 128.090	Hearing: Time; procedure; evidence; postponement; closed court.
NRS 128.091	Evidence of previous sexual conduct inadmissible to challenge child’s credibility; exceptions.
NRS 128.093	Testimony of qualified expert witness required in proceedings to terminate parental rights of parent of Indian child.
NRS 128.095	When putative father presumed to have intended to abandon child.
NRS 128.097	Presumption of abandonment of child by parent.
NRS 128.100	Appointment of attorney to represent child in proceeding concerning termination or restoration of parental rights; appointment of attorney to represent parent; compensation of attorney.
NRS 128.105	Grounds for terminating parental rights: Considerations; required findings.
NRS 128.106	Specific considerations in determining neglect by or unfitness of parent.
NRS 128.107	Specific considerations where child is not in physical custody of parent.
NRS 128.108	Specific considerations where child has been placed in foster home.
NRS 128.109	Determination of conduct of parent; presumptions.
NRS 128.110	Order terminating parental rights; preference for placement of child with certain relatives and siblings of child; period for completion of search for relative.
NRS 128.120	Effect of order.
NRS 128.130	Notice to produce; warrant of arrest; contempts.
NRS 128.140	Expenses to be county charges.
NRS 128.150	Termination of parental rights of father when child becomes subject of adoption.
NRS 128.160	Best interest of child in determining consideration in action to set aside termination of parental rights after adoption has been granted; presumption.
NRS 128.170	Restoration of parental rights: Petition; consent of natural parent required.
NRS 128.180	Restoration of parental rights: Notice of hearing; persons required to be personally served with notice; right of such persons to present testimony and evidence.
NRS 128.190	Restoration of parental rights: Hearing; required findings to grant petition; effect of order restoring parental rights.

NRS 128.005 Legislative declaration and findings.

1. The Legislature declares that the preservation and strengthening of family life is a part of the public policy of this State.
 2. The Legislature finds that:
 - (a) Severance of the parent and child relationship is a matter of such importance in order to safeguard the rights of parent and child as to require judicial determination.
 - (b) Judicial selection of the person or agency to be entrusted with the custody and control of a child after such severance promotes the welfare of the parties and of this State.
 - (c) The continuing needs of a child for proper physical, mental and emotional growth and development are the decisive considerations in proceedings for termination of parental rights.
- (Added to NRS by [1975, 963](#); A [1981, 1752](#))

NRS 128.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in

[NRS 128.011](#) to [128.018](#), inclusive, have the meanings ascribed to them in those sections.

[1:161:1953]—(NRS A [1965, 335](#); [1975, 965](#); [1977, 185](#); [1987, 173](#); [1995, 783](#); [2001 Special Session, 14](#))

NRS 128.011 “Abandoned mother” defined. A mother is “abandoned” if the father or putative father has not provided for her support during her pregnancy or has not communicated with her for a period beginning no later than 3 months after conception and extending to the birth of the child.

(Added to NRS by [1975, 964](#))

NRS 128.012 “Abandonment of a child” defined.

1. “Abandonment of a child” means any conduct of one or both parents of a child which evinces a settled purpose on the part of one or both parents to forego all parental custody and relinquish all claims to the child.

2. If a parent or parents of a child leave the child in the care and custody of another without provision for the child’s support and without communication for a period of 6 months, or if the child is left under such circumstances that the identity of the parents is unknown and cannot be ascertained despite diligent searching, and the parents do not come forward to claim the child within 3 months after the child is found, the parent or parents are presumed to have intended to abandon the child.

(Added to NRS by [1975, 963](#); A [1981, 1753](#))

NRS 128.0122 “Agency which provides child welfare services” defined. “Agency which provides child welfare services” has the meaning ascribed to it in [NRS 432B.030](#).

(Added to NRS by [2001 Special Session, 14](#))

NRS 128.0124 “Child” defined. “Child” means a person under the age of 18 years.

(Added to NRS by [1981, 1750](#))

NRS 128.0126 “Failure of parental adjustment” defined. “Failure of parental adjustment” occurs when a parent or parents are unable or unwilling within a reasonable time to correct substantially the circumstances, conduct or conditions which led to the placement of their child outside of their home, notwithstanding reasonable and appropriate efforts made by the State or a private person or agency to return the child to his or her home.

(Added to NRS by [1987, 172](#))

NRS 128.0128 “Indian child” defined. “Indian child” has the meaning ascribed to it in 25 U.S.C. § 1903.

(Added to NRS by [1995, 782](#))

NRS 128.0129 “Indian Child Welfare Act” defined. “Indian Child Welfare Act” means the Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901 et seq.).

(Added to NRS by [1995, 782](#))

NRS 128.013 “Injury” defined.

1. “Injury” to a child’s health or welfare occurs when the parent, guardian or custodian:

(a) Inflicts or allows to be inflicted upon the child, physical, mental or emotional injury, including injuries sustained as a result of excessive corporal punishment;

(b) Commits or allows to be committed against the child, sexual abuse as defined in [NRS 432B.100](#);

(c) Neglects or refuses to provide for the child proper or necessary subsistence, education or medical or surgical care, although he or she is financially able to do so or has been offered financial or other reasonable means to do so; or

(d) Fails, by specific acts or omissions, to provide the child with adequate care, supervision or guardianship under circumstances requiring the intervention of:

(1) An agency which provides child welfare services; or

(2) The juvenile or family court itself.

2. A child’s health or welfare is not considered injured solely because the child’s parent or guardian, in the practice of his or her religious beliefs, selects and depends upon nonmedical remedial treatment for the child, if such treatment is recognized and permitted under the laws of this State.

(Added to NRS by [1981, 1750](#); A [1985, 1397](#); [1991, 2180](#); [1993, 2690](#); [2001 Special Session, 14](#))

NRS 128.0137 “Mental injury” defined. “Mental injury” means an injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in the child’s ability to function within his or her normal range of performance and behavior.

(Added to NRS by [1981, 1751](#))

NRS 128.014 “Neglected child” defined. “Neglected child” includes a child:

1. Who lacks the proper parental care by reason of the fault or habits of his or her parent, guardian or custodian;

2. Whose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for the child’s health, morals or well-being;

3. Whose parent, guardian or custodian neglects or refuses to provide the special care made necessary by the child’s physical or mental condition;

4. Who is found in a disreputable place, or who is permitted to associate with vagrants or vicious or immoral persons; or

5. Who engages or is in a situation dangerous to life or limb, or injurious to health or morals of the child or others,

and the parent’s neglect need not be willful.

(Added to NRS by [1975, 964](#); A [1981, 1753](#))

NRS 128.015 “Parent and child relationship” and “parent” defined.

1. “Parent and child relationship” includes all rights, privileges and obligations existing between parent and child.

2. As used in this section, “parent” includes an adoptive parent.
(Added to NRS by [1975, 964](#); A [2011, 142](#))

NRS 128.0155 “Plan” defined. “Plan” means:

1. A written agreement between the parents of a child who is subject to the jurisdiction of the juvenile court or family court pursuant to title 5 of NRS or [chapter 432B](#) of NRS and the agency having custody of the child; or

2. Written conditions and obligations imposed upon the parents directly by the juvenile or family court, which have a primary objective of reuniting the family or, if the parents neglect or refuse to comply with the terms and conditions of the case plan, freeing the child for adoption.

(Added to NRS by [1981, 1750](#); A [1985, 1397](#); [1991, 2180](#); [2003, 1116](#))

NRS 128.016 “Putative father” defined. “Putative father” means a person who is or is alleged or reputed to be the father of an illegitimate child.

(Added to NRS by [1975, 964](#))

NRS 128.018 “Unfit parent” defined. “Unfit parent” is any parent of a child who, by reason of the parent’s fault or habit or conduct toward the child or other persons, fails to provide such child with proper care, guidance and support.

(Added to NRS by [1975, 964](#); A [1981, 1753](#))

NRS 128.020 Jurisdiction of district courts. Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act, the district courts have jurisdiction in all cases and proceedings under this chapter. The jurisdiction of the district courts extends to any child who should be declared free from the custody and control of either or both of his or her parents.

[2:161:1953]—(NRS A [1975, 965](#); [1981, 1753](#); [1995, 783](#))

NRS 128.023 Proceedings to terminate parental rights of parent of Indian child: Powers and duties of court; appointment of attorney.

1. If proceedings pursuant to this chapter involve the termination of parental rights of the parent of an Indian child, the court shall:

(a) Cause the Indian child’s tribe to be notified in writing in the manner provided in the Indian Child Welfare Act. If the Indian child is eligible for membership in more than one tribe, each tribe must be notified.

(b) Transfer the proceedings to the Indian child’s tribe in accordance with the Indian Child Welfare Act.

(c) If a tribe declines or is unable to exercise jurisdiction, exercise its jurisdiction as provided in the Indian Child Welfare Act.

2. If the court determines that the parent of an Indian child for whom termination of parental rights is sought is indigent, the court:

(a) Shall appoint an attorney to represent the parent;

(b) May appoint an attorney to represent the Indian child; and

(c) May apply to the Secretary of the Interior for the payment of the fees and expenses of such an attorney,

as provided in the Indian Child Welfare Act.

(Added to NRS by [1995, 782](#); A [2003, 1116](#))

NRS 128.027 Extent to which court must give full faith and credit to judicial proceedings of Indian tribe. Each court in this state which exercises jurisdiction pursuant to this chapter in a case involving an Indian child shall give full faith and credit to the judicial proceedings of an Indian tribe to the same extent that the Indian tribe gives full faith and credit to the judicial proceedings of the courts of this state.

(Added to NRS by [1995, 782](#))

NRS 128.030 Place for filing petition. A petition alleging that there is or resides within the county a child who should be declared free from the custody and control of his or her parent or parents may be filed at the election of the petitioner in:

1. The county in which the child is found;

2. The county in which the acts complained of occurred; or

3. The county in which the child resides.

[3:161:1953]—(NRS A [1975, 966](#); [1981, 1754](#))

NRS 128.040 Who may file petition; investigation. The agency which provides child welfare services, the probation officer, or any other person, including the mother of an unborn child, may file with the clerk of the court a petition under the terms of this chapter. The probation officer of that county or any agency or person designated by the court shall make such investigations at any stage of the proceedings as the court may order or direct.

[4:161:1953]—(NRS A [1963, 892](#); [1967, 1151](#); [1973, 1406](#); [1975, 966](#); [1993, 2690](#); [2001 Special Session, 14](#))

NRS 128.050 Entitlement of proceedings; contents of verified petition.

1. The proceedings must be entitled, “In the matter of the parental rights as to, a minor.”

2. A petition must be verified and may be upon information and belief. It must set forth plainly:

(a) The facts which bring the child within the purview of this chapter.

(b) The name, age and residence of the child.

(c) The names and residences of the parents of the child.

(d) The name and residence of the person or persons having physical custody or control of the child.

(e) The name and residence of the child’s legal guardian, if there is one.

(f) The name and residence of the child’s nearest known relative residing within the State, if no parent or guardian can be found.

(g) Whether the child is known to be an Indian child.

3. If any of the facts required by subsection 2 are not known by the petitioner, the petition must so state.
 4. If the petitioner is a mother filing with respect to her unborn child, the petition must so state and must contain the name and residence of the father or putative father, if known.
 5. If the petitioner or the child is receiving public assistance, the petition must so state.
- [5:161:1953]—(NRS A [1975, 966](#); [1981, 1754](#); [1995, 783, 2420](#))

NRS 128.055 Proceedings to be completed within 6 months after filing of petition. Except as otherwise required by specific statute, the court shall use its best efforts to ensure that proceedings conducted pursuant to this chapter are completed within 6 months after the petition is filed.
(Added to NRS by [1999, 2027](#))

NRS 128.060 Notice of hearing: Contents; personal service to certain persons; petitioner to mail notice to Department of Health and Human Services if petitioner or child is receiving public assistance.

1. After a petition has been filed, unless the party or parties to be served voluntarily appear and consent to the hearing, the court shall direct the clerk to issue a notice, reciting briefly the substance of the petition and stating the date set for the hearing thereof, and requiring the person served therewith to appear before the court at the time and place if that person desires to oppose the petition.
 2. The following persons must be personally served with the notice:
 - (a) The father or mother of the minor person, if residing within this State, and if his or her place of residence is known to the petitioner, or, if there is no parent so residing, or if the place of residence of the father or mother is not known to the petitioner, then the nearest known relative of that person, if there is any residing within the State, and if his or her residence and relationship are known to the petitioner; and
 - (b) The minor's legal custodian or guardian, if residing within this State and if his or her place of residence is known to the petitioner.
 3. If the petitioner or the child is receiving public assistance, the petitioner shall mail a copy of the notice of hearing and a copy of the petition to the Chief of the Child Enforcement Program of the Division of Welfare and Supportive Services of the Department of Health and Human Services by registered or certified mail return receipt requested at least 45 days before the hearing.
- [6:161:1953]—(NRS A [1987, 119](#); [1995, 2420](#))

NRS 128.070 Service of notice of hearing by publication.

1. When the father or mother of a minor child or the child's legal custodian or guardian resides out of the State, has departed from the State, or cannot, after due diligence, be found within the State, or conceals himself or herself to avoid the service of the notice of hearing, and the fact appears, by affidavit, to the satisfaction of the court thereof, and it appears, either by affidavit or by a verified petition on file, that the named father or mother or custodian or guardian is a necessary or proper party to the proceedings, the court may grant an order that the service be made by the publication of the notice of hearing. When the affidavit is based on the fact that the father or mother or custodian or guardian resides out of the State, and his or her present address is unknown, it is a sufficient showing of that fact if the affiant states generally in the affidavit that:
 - (a) At a previous time the person resided out of this State in a certain place (naming the place and stating the latest date known to the affiant when the person so resided there);
 - (b) That place is the last place in which the person resided to the knowledge of the affiant;
 - (c) The person no longer resides at that place;
 - (d) The affiant does not know the present place of residence of the person or where the person can be found; and
 - (e) The affiant does not know and has never been informed and has no reason to believe that the person now resides in this State.

È In such case, it shall be presumed that the person still resides and remains out of the State, and the affidavit shall be deemed to be a sufficient showing of due diligence to find the father or mother or custodian or guardian.
2. The order must direct the publication to be made in a newspaper, to be designated by the court, for a period of 4 weeks, and at least once a week during that time. In case of publication, where the residence of a nonresident or absent father or mother or custodian or guardian is known, the court shall also direct a copy of the notice of hearing and petition to be deposited in the post office, directed to the person to be served at his or her place of residence. When publication is ordered, personal service of a copy of the notice of hearing and petition, out of the State, is equivalent to completed service by publication and deposit in the post office, and the person so served has 20 days after the service to appear and answer or otherwise plead. The service of the notice of hearing shall be deemed complete in cases of publication at the expiration of 4 weeks from the first publication, and in cases when a deposit of a copy of the notice of hearing and petition in the post office is also required, at the expiration of 4 weeks from the deposit.
3. Personal service outside the State upon a father or mother over the age of 18 years or upon the minor's legal custodian or guardian may be made in any action where the person served is a resident of this State. When the facts appear, by affidavit, to the satisfaction of the court, and it appears, either by affidavit or by a verified petition on file, that the person in respect to whom the service is to be made is a necessary or proper party to the proceedings, the court may grant an order that the service be made by personal service outside the State. The service must be made by delivering a copy of the notice of hearing together with a copy of the petition in person to the person served. The methods of service are cumulative, and may be utilized with, after or independently of other methods of service.
4. Whenever personal service cannot be made, the court may require, before ordering service by publication or by publication and mailing, such further and additional search to determine the whereabouts of the person to be served as may be warranted by the facts stated in the affidavit of the petitioner to the end that actual notice be given whenever possible.
5. If one or both of the parents of the minor is unknown, or if the name of either or both of the parents of the minor is uncertain, then those facts must be set forth in the affidavit and the court shall order the notice to be directed and addressed to either the father or the mother of the person, and to all persons claiming to be the father or mother of the person. The notice, after the caption, must be addressed substantially as follows: "To the father and mother of the above-named person, and to all persons claiming to be the father or mother of that person."

[7:161:1953]—(NRS A [1967, 355](#); [1969, 16](#); [1987, 120](#))

NRS 128.080 Form of notice. The notice must be in substantially the following form:

In the Judicial District Court of the State of Nevada,
in and for the County of

In the matter of parental rights
as to, a minor.

Notice

To, the father or, the mother of the above-named person; or, to the father and mother of the above-named person, and to all persons claiming to be the father or mother of this person; or, to, related to the above-named minor as; and, to, the legal custodian or guardian of the above-named minor:

You are hereby notified that there has been filed in the above-entitled court a petition praying for the termination of parental rights over the above-named minor person, and that the petition has been set for hearing before this court, at the courtroom thereof, at, in the County of, on the day of the month of of the year at o'clock m., at which time and place you are required to be present if you desire to oppose the petition.

Dated (month) (day) (year)

.....
Clerk of Court

(SEAL)

By.....
Deputy

[8:161:1953]—(NRS A [1981, 126](#); [1987, 121](#); [2001, 34](#))

NRS 128.085 Petition by mother of unborn child: Notice to father or putative father; time of hearing. When the mother of an unborn child files a petition for termination of the father’s parental rights, the father or putative father, if known, shall be served with notice of the hearing in the manner provided for in [NRS 128.060](#), [128.070](#) and [128.080](#). The hearing shall not be held until the birth of the child or 6 months after the filing of the petition, whichever is later.

(Added to NRS by [1975, 965](#))

NRS 128.090 Hearing: Time; procedure; evidence; postponement; closed court.

1. At the time stated in the notice, or at the earliest time thereafter to which the hearing may be postponed, the court shall proceed to hear the petition.

2. The proceedings are civil in nature and are governed by the Nevada Rules of Civil Procedure. The court shall in all cases require the petitioner to establish the facts by clear and convincing evidence and shall give full and careful consideration to all of the evidence presented, with regard to the rights and claims of the parent of the child and to any and all ties of blood or affection, but with a dominant purpose of serving the best interests of the child.

3. Information contained in a report filed pursuant to [NRS 432.0999](#) to [432.130](#), inclusive, or [chapter 432B](#) of NRS may not be excluded from the proceeding by the invoking of any privilege.

4. In the event of postponement, all persons served, who are not present or represented in court at the time of the postponement, must be notified thereof in the manner provided by the Nevada Rules of Civil Procedure.

5. Any hearing held pursuant to this section must be held in closed court without admittance of any person other than those necessary to the action or proceeding, unless the court determines that holding such a hearing in open court will not be detrimental to the child.

[9:161:1953]—(NRS A [1969, 95](#); [1981, 1754](#); [1985, 128](#), [1398](#); [1991, 199](#))

NRS 128.091 Evidence of previous sexual conduct inadmissible to challenge child’s credibility; exceptions. In any proceeding held pursuant to this chapter involving a child who has been the subject of a proceeding pursuant to [chapter 432B](#) of NRS, a party may not present evidence of any previous sexual conduct of a child to challenge the child’s credibility as a witness unless the attorney for the child has first presented evidence or the child has testified concerning such conduct, or the absence of such conduct, on direct examination by the district attorney or the attorney for the child, in which case the scope of the cross-examination of the child or rebuttal must be limited to the evidence presented by the child’s attorney or the child.

(Added to NRS by [2013, 409](#))

NRS 128.093 Testimony of qualified expert witness required in proceedings to terminate parental rights of parent of Indian child.

1. Any proceedings to terminate the parental rights of the parent of an Indian child pursuant to this chapter must include the testimony of at least one qualified expert witness as provided in the Indian Child Welfare Act.

2. As used in this section, “qualified expert witness” includes, without limitation:

(a) An Indian person who has personal knowledge about the Indian child’s tribe and its customs related to raising a child and the organization of the family; and

(b) A person who has:

- (1) Substantial experience and training regarding the customs of Indian tribes related to raising a child; and
- (2) Extensive knowledge of the social values and cultural influences of Indian tribes.

(Added to NRS by [1995, 782](#))

NRS 128.095 When putative father presumed to have intended to abandon child. If the putative father of a child fails to acknowledge the child or petition to have his parental rights established in a court of competent jurisdiction before a hearing on a petition to terminate his parental rights, he is presumed to have intended to abandon the child.

(Added to NRS by [1975, 964](#); A [1979, 1284](#))

NRS 128.097 Presumption of abandonment of child by parent. If a parent of a child:

1. Engages in conduct that violates any provision of [NRS 200.463](#), [200.4631](#), [200.464](#) or [200.465](#); or
2. Voluntarily delivers a child to a provider of emergency services pursuant to [NRS 432B.630](#),

the parent is presumed to have abandoned the child.

(Added to NRS by [1989, 1186](#); A [2001, 1264](#); [2005, 89](#); [2013, 1856](#))

NRS 128.100 Appointment of attorney to represent child in proceeding concerning termination or restoration of parental rights; appointment of attorney to represent parent; compensation of attorney.

1. In any proceeding for terminating parental rights, or any rehearing or appeal thereon, or any proceeding for restoring parental rights, the court may appoint an attorney to represent the child as his or her counsel and, if the child does not have a guardian ad litem appointed pursuant to [NRS 432B.500](#), as his or her guardian ad litem. The child may be represented by an attorney at all stages of any proceedings for terminating parental rights. If the child is represented by an attorney, the attorney has the same authority and rights as an attorney representing a party to the proceedings.

2. If the parent or parents of the child desire to be represented by counsel, but are indigent, the court may appoint an attorney for them.

3. Each attorney appointed under the provisions of this section is entitled to the same compensation and expenses from the county as provided in [NRS 7.125](#) and [7.135](#) for attorneys appointed to represent persons charged with crimes.

[10:161:1953]—(NRS A [1981, 1755](#); [1987, 1301](#); [1999, 2027](#); [2001, 1708](#); [2007, 91](#))

NRS 128.105 Grounds for terminating parental rights: Considerations; required findings.

1. The primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination. An order of the court for the termination of parental rights must be made in light of the considerations set forth in this section and [NRS 128.106](#) to [128.109](#), inclusive, and based on evidence and include a finding that:

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

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

(1) Abandonment of the child;

(2) Neglect of the child;

(3) Unfitness of the parent;

(4) Failure of parental adjustment;

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

(6) Only token efforts by the parent or parents:

(I) To support or communicate with the child;

(II) To prevent neglect of the child;

(III) To avoid being an unfit parent; or

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

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

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

(a) The placement options for the child;

(b) The age of the child; and

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

(Added to NRS by [1975, 964](#); A [1981, 1755](#); [1985, 244](#); [1987, 173, 210](#); [1995, 215](#); [1999, 2027](#); [2015, 1184](#))

NRS 128.106 Specific considerations in determining neglect by or unfitness of parent.

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

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

(b) Conduct toward a child of a physically, emotionally or sexually cruel or abusive nature.

(c) Conduct that violates any provision of [NRS 200.463](#), [200.4631](#), [200.464](#) or [200.465](#).

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

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

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

(g) Whether the child, a sibling of the child or another child in the care of the parent suffered a physical injury resulting in substantial bodily harm, a near fatality or fatality for which the parent has no reasonable explanation and for which there is

evidence that such physical injury or death would not have occurred absent abuse or neglect of the child by the parent.

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

2. As used in this section, “near fatality” has the meaning ascribed to it in [NRS 432B.175](#).
(Added to NRS by [1981, 1751](#); A [1989, 1187](#); [1995, 361](#); [2005, 89](#); [2013, 1856](#); [2015, 1185](#))

NRS 128.107 Specific considerations where child is not in physical custody of parent. If a child is not in the physical custody of the parent or parents, the court, in determining whether parental rights should be terminated, shall consider, without limitation:

1. The services provided or offered to the parent or parents to facilitate a reunion with the child.
2. The physical, mental or emotional condition and needs of the child and the child’s desires regarding the termination, if the court determines the child is of sufficient capacity to express his or her desires.
3. The effort the parent or parents have made to adjust their circumstances, conduct or conditions to make it in the child’s best interest to return the child to his or her home after a reasonable length of time, including but not limited to:
 - (a) The payment of a reasonable portion of substitute physical care and maintenance, if financially able;
 - (b) The maintenance of regular visitation or other contact with the child which was designed and carried out in a plan to reunite the child with the parent or parents; and
 - (c) The maintenance of regular contact and communication with the custodian of the child.
4. Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent or parents within a predictable period.

È For purposes of this section, the court shall disregard incidental conduct, contributions, contacts and communications.

(Added to NRS by [1981, 1751](#); A [1987, 173](#))

NRS 128.108 Specific considerations where child has been placed in foster home. If a child is in the custody of a public or private agency and has been placed and resides in a foster home and the custodial agency institutes proceedings pursuant to this chapter regarding the child, with an ultimate goal of having the child’s foster parent or parents adopt the child, the court shall consider whether the child has become integrated into the foster family to the extent that the child’s familial identity is with that family, and whether the foster family is able and willing permanently to treat the child as a member of the family. The court shall consider, without limitation:

1. The love, affection and other emotional ties existing between the child and the parents, and the child’s ties with the foster family.
2. The capacity and disposition of the child’s parents from whom the child was removed as compared with that of the foster family to give the child love, affection and guidance and to continue the education of the child.
3. The capacity and disposition of the parents from whom the child was removed as compared with that of the foster family to provide the child with food, clothing and medical care and to meet other physical, mental and emotional needs of the child.
4. The length of time the child has lived in a stable, satisfactory foster home and the desirability of the child continuing to live in that environment.
5. The permanence as a family unit of the foster family.
6. The moral fitness, physical and mental health of the parents from whom the child was removed as compared with that of the foster family.
7. The experiences of the child in the home, school and community, both when with the parents from whom the child was removed and when with the foster family.
8. Any other factor considered by the court to be relevant to a particular placement of the child.

(Added to NRS by [1981, 1752](#))

NRS 128.109 Determination of conduct of parent; presumptions.

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

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

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

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

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

(Added to NRS by [1987, 172](#); A [1993, 2690](#); [1995, 361](#); [1999, 2028](#); [2015, 1185](#))

NRS 128.110 Order terminating parental rights; preference for placement of child with certain relatives and siblings of child; period for completion of search for relative.

1. Whenever the procedure described in this chapter has been followed, and upon finding grounds for the termination of parental rights pursuant to [NRS 128.105](#) at a hearing upon the petition, the court shall make a written order, signed by the judge presiding in the court, judicially depriving the parent or parents of the custody and control of, and terminating the parental rights of the parent or parents with respect to the child, and declaring the child to be free from such custody or control, and placing the custody and control of the child in some person or agency qualified by the laws of this State to provide services and care to children, or to receive any children for placement. The termination of parental rights pursuant to this section does not terminate the right of the child to inherit from his or her parent or parents, except that the right to inherit terminates if the child is adopted as provided in [NRS 127.160](#).

2. If the child is placed in the custody and control of a person or agency qualified by the laws of this State to receive children for placement, the person or agency, in seeking to place the child:

(a) May give preference to the placement of the child with any person related within the fifth degree of consanguinity to the child whom the person or agency finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

(b) Shall, if practicable, give preference to the placement of the child together with his or her siblings.

Ê Any search for a relative with whom to place a child pursuant to this subsection must be completed within 1 year after the initial placement of the child outside of his or her home.

[11:161:1953]—(NRS A [1975, 966](#); [1981, 1755](#); [1991, 1177](#); [1999, 2028](#); [2009, 220](#); [2011, 142](#))

NRS 128.120 Effect of order. Any order made and entered by the court under the provisions of [NRS 128.110](#) is conclusive and binding upon the person declared to be free from the custody and control of his or her parent or parents, and upon all other persons who have been served with notice by publication or otherwise, as provided by this chapter. After the making of the order, except as otherwise provided in [NRS 128.190](#), the court has no power to set aside, change or modify it, but nothing in this chapter impairs the right of appeal.

[12:161:1953]—(NRS A [1981, 1756](#); [2007, 92](#))

NRS 128.130 Notice to produce; warrant of arrest; contempts. At any time after the filing of the petition, notice may issue requiring any person having the custody or control of such minor person, or the person with whom such person is, to appear with such person at a time and place stated in the notice. In case such notice cannot be served, or the party served fails, without reasonable cause, to obey it, a warrant of arrest shall issue on the order of the court against the person so cited, or against the minor himself or herself, or against both; or, if there is no party to be served with such notice, a warrant of arrest may be issued against the minor person. If any party noticed, as provided for in this section, fails without reasonable cause to appear and abide by the order of the court, or to bring such minor person, such failure shall constitute a contempt of court.

[13:161:1953]

NRS 128.140 Expenses to be county charges. All expenses incurred in complying with the provisions of this chapter shall be a county charge if so ordered by the court.

[14:161:1953]—(NRS A [1975, 967](#))

NRS 128.150 Termination of parental rights of father when child becomes subject of adoption.

1. If a mother relinquishes or proposes to relinquish for adoption a child who has:

(a) A presumed father pursuant to [NRS 126.051](#);

(b) A father whose relationship to the child has been determined by a court; or

(c) A father as to whom the child is a legitimate child under [chapter 126](#) of NRS, under prior law of this State or under the law of another jurisdiction,

Ê and the father has not consented to the adoption of the child or relinquished the child for adoption, a proceeding must be brought pursuant to this chapter and a determination made of whether a parent and child relationship exists and, if so, if it should be terminated.

2. If a mother relinquishes or proposes to relinquish for adoption a child who does not have:

(a) A presumed father pursuant to [NRS 126.051](#);

(b) A father whose relationship to the child has been determined by a court;

(c) A father as to whom the child is a legitimate child under [chapter 126](#) of NRS, under prior law of this State or under the law of another jurisdiction; or

(d) A father who can be identified in any other way,

Ê or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by a court.

3. In an effort to identify and protect the interests of the natural father, the court which is conducting a proceeding pursuant to this chapter shall cause inquiry to be made of the mother and any other appropriate person. The inquiry must include the following:

(a) Whether the mother was married at the time of conception of the child or at any time thereafter.

(b) Whether the mother was cohabiting with a man at the time of conception or birth of the child.

(c) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy.

(d) Whether any man has formally or informally acknowledged or declared his possible paternity of the child.

4. If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each must be given notice of the proceeding in accordance with subsection 6 or with this chapter, as applicable. If any of them fails to appear or, if appearing, fails to claim custodial rights, such failure constitutes abandonment of the child. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.

5. If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child. Subject to the disposition of any appeal, upon the expiration of 6 months after an order terminating parental rights is issued under this subsection, or this chapter, the order cannot be questioned by any person in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice or lack of jurisdiction of the parties or of the subject matter.

6. Notice of the proceeding must be given to every person identified as the natural father or a possible natural father in the manner provided by law and the Nevada Rules of Civil Procedure for the service of process in a civil action, or in any manner the court directs. Proof of giving the notice must be filed with the court before the petition is heard.

(Added to NRS by [1979, 1277](#); A [2007, 1526](#))

NRS 128.160 Best interest of child in determining consideration in action to set aside termination of parental rights after adoption has been granted; presumption.

1. In any action commenced by the natural parent of a child to set aside a court order terminating the parental rights of the natural parent after a petition for adoption has been granted, the best interests of the child must be the primary and determining consideration of the court.

2. After a petition for adoption has been granted, there is a presumption for the purposes of this chapter that remaining in the home of the adopting parent is in the child's best interest.

(Added to NRS by [1995, 735](#))

NRS 128.170 Restoration of parental rights: Petition; consent of natural parent required.

1. A child who has not been adopted and whose natural parent or parents have had their parental rights terminated or have relinquished their parental rights, or the legal custodian or guardian of such a child, may petition a court for the restoration of the parental rights of the natural parent or parents of the child.

2. The natural parent or parents for whom restoration of parental rights is sought to be restored must consent in writing to the petition.

(Added to NRS by [2007, 90](#))

NRS 128.180 Restoration of parental rights: Notice of hearing; persons required to be personally served with notice; right of such persons to present testimony and evidence.

1. Before a hearing is held on a petition that is filed pursuant to [NRS 128.170](#), the court shall direct the clerk to issue a notice, reciting briefly the substance of the petition and stating the date set for the hearing thereof, and requiring the person served therewith to appear before the court at the time and place if that person desires to provide testimony or evidence concerning the petition.

2. The following persons must be personally served with the notice:

(a) The natural parent or parents for whom parental rights are sought to be restored;

(b) The legal custodian and the legal guardian of the child who is the subject of the petition;

(c) If the parental rights of the natural parent or parents for whom parental rights are sought to be restored were terminated, the person or governmental entity that petitioned for the termination if different from the persons notified pursuant to paragraph (b); and

(d) The attorney of record of the child who is the subject of the petition or, if none, the child.

3. The persons who are served with notice pursuant to subsection 2 must be provided an opportunity to present testimony and evidence during the hearing.

(Added to NRS by [2007, 90](#))

NRS 128.190 Restoration of parental rights: Hearing; required findings to grant petition; effect of order restoring parental rights.

1. If a valid petition is filed pursuant to [NRS 128.170](#), the court shall hold a hearing to determine whether to restore the parental rights of the natural parent or parents.

2. Before granting a petition for the restoration of parental rights, the court must find that:

(a) If any child who is the subject of the petition is 14 years of age or older, the child consents to the restoration of parental rights.

(b) The natural parent or parents for whom restoration of parental rights is sought have been informed of the legal obligations, rights and consequences of the restoration of parental rights and that the natural parent or parents are willing and able to accept such obligations, rights and consequences.

3. If the court finds the necessary facts pursuant to subsection 2, the court shall order the restoration of parental rights if the court further finds by a preponderance of the evidence that:

(a) The child is not likely to be adopted; and

(b) Restoration of parental rights of the natural parent or parents is in the best interests of the child.

4. If the court restores the parental rights of the natural parent or parents of a child who is less than 14 years of age, the court shall specify in its order the factual basis for its findings that it is in the best interests of the child to restore the parental rights of the natural parent or parents.

5. Upon the entry of an order for the restoration of parental rights issued pursuant to this section, any child who is the subject of the petition becomes the legal child of the natural parent or parents whose rights have been restored, and they shall become the child's legal parents on that date with all the rights and duties of parents.

(Added to NRS by [2007, 91](#))

[Rev. 5/20/2016 2:50:06 PM--2015]

CHAPTER 127 - ADOPTION OF CHILDREN AND ADULTS

GENERAL PROVISIONS

NRS 127.003	Definitions.
NRS 127.005	Applicability.
NRS 127.007	State Register for Adoptions: Establishment; contents; release of information.
NRS 127.008	State Register of Children with Special Needs.
NRS 127.009	Booklet on adoption: Preparation; contents; annual revision; distribution; acceptance of gifts and grants to assist production and distribution.

ADOPTION OF CHILDREN

NRS 127.010	Jurisdiction of district courts.
NRS 127.013	Transfer of proceedings to Indian tribe.
NRS 127.017	Extent to which court must give full faith and credit to judicial proceedings of Indian tribe.
NRS 127.020	Adoption of minor children; ages and consent.
NRS 127.030	Who may petition; consent of spouse required under certain circumstances.
NRS 127.040	Written consent to adoption or for relinquishment to authorized agency: Acknowledgment; when consent required.
NRS 127.043	Consent to adoption required before placement in adoptive home; exception.
NRS 127.045	Release for or consent to adoption and investigation required before appointment of guardian for child to be adopted; exception.
NRS 127.050	Agencies which may accept relinquishments and consent to adoption; reimbursement for certain costs.
NRS 127.051	Agency responsible for care of child and entitled to custody; termination of placement.
NRS 127.052	Agency to determine whether child is Indian child; notification of child's tribe.
NRS 127.053	Consent to adoption: Requisites.
NRS 127.055	Consent to adoption: Attesting witnesses may make self-proving affidavits to be attached to consent.
NRS 127.057	Consent to adoption: Copy to be furnished to agency which provides child welfare services within 48 hours; recommendations; confidentiality of information; unlawful acts.
NRS 127.058	Consent to adoption: Person to whom consent is given has legal custody of child until hearing on petition for adoption.
NRS 127.060	Residence of petitioners: Adoption of two or more children; exception.
NRS 127.070	Validity of releases for and consents to adoption.
NRS 127.080	Consent to specific adoption or relinquishment for adoption cannot be revoked or nullified; exceptions.
NRS 127.090	When consent unnecessary.
NRS 127.100	Entitlement of petitions, reports and orders.
NRS 127.110	When petition may be filed; contents of petition; limitation on entry of adoption order.
NRS 127.120	Petition to be filed in duplicate; investigation, report and recommendation; court may order independent investigation; costs.
NRS 127.123	Notice of filing of petition to be provided legal custodian or guardian of child.
NRS 127.127	Affidavit setting forth fees, donations and expenses required to be filed; waiver.
NRS 127.130	Confidentiality of reports; petitioner may rebut adverse report.
NRS 127.140	Confidentiality of hearings, files and records.
NRS 127.145	Attendance of prospective adoptive parents at hearing by telephone.
NRS 127.150	Order of adoption or return of child; presumption of child's best interest after adoption is granted.
NRS 127.152	Adopting parents to be provided with report which includes medical records and other information concerning child; regulations.
NRS 127.155	Validation of certain orders and decrees.
NRS 127.157	Report of adoption, amendment or annulment of adoption to State Registrar.
NRS 127.160	Rights and duties of adopted child and adoptive parents.
NRS 127.165	When action to set aside adoption may be brought; presumption of child's best interest after adoption is granted.
NRS 127.171	Right to visitation of child by sibling and other relatives; limitations.
NRS 127.180	Appeals from orders, judgments or decrees.
NRS 127.186	Adoption of child with special needs; financial assistance to adoptive parents under certain circumstances; waiver of court costs of adoptive parents; regulations.

AGREEMENTS FOR POSTADOPTIVE CONTACT

NRS 127.187	Requirements; court to retain jurisdiction; no effect on rights of adoptive parent as legal parent.
NRS 127.1875	Notice of agreement to court.
NRS 127.188	Inquiry by court before entering order or decree of adoption; incorporation of agreement into such order or decree.
NRS 127.1885	Petitions to court by natural parents and adoptive parents.
NRS 127.189	Failure to comply; action to enforce terms.
NRS 127.1895	Modification or termination: Conditions; presumptions and considerations; scope.

ADOPTION OF ADULTS

NRS 127.190	Adoption of adults: Ages; agreement of adoption.
NRS 127.200	Adoption of adults: Consent required.
NRS 127.210	Petition for approval of agreement of adoption; notice, investigation and hearing; decree of adoption.

PLACEMENT OF CHILDREN FOR ADOPTION AND PERMANENT FREE CARE

NRS 127.220	Definitions.
NRS 127.230	Standards for and regulation of child-placing agencies; regulation of agencies which provide child welfare services; regulation of adoption or placement of children.
NRS 127.240	License: Requirement; exceptions.
NRS 127.250	License: Application; issuance; renewal.
NRS 127.270	License: Refusal to issue or renew; notice and hearing; appeals.
NRS 127.275	Fees for services provided by agency which provides child welfare services.
NRS 127.280	Requirements for placement of child in home of prospective parents for trial period; verification of intent of natural parents.
NRS 127.2805	Investigation of prospective adoptive parents.
NRS 127.281	Search for criminal record of prospective adoptive parent.
NRS 127.2815	Placement of child during investigation; notice and placement of child upon completion of investigation.
NRS 127.2817	Criteria for determination of suitability of prospective adoptive home; opportunity for prospective adoptive parents to review and respond to unfavorable investigation.
NRS 127.282	Petition for order to restrain and enjoin violation or threatened violation of chapter; investigation of unreported adoption or permanent free care of unrelated child.
NRS 127.2825	Child-placing agency required to give preference to placement of child with siblings of child.
NRS 127.2827	Orders for visitation with sibling of child in custody of agency which provides child welfare services: Previous orders of such visitation to be provided to court during adoption proceedings; hearing required; participation of interested parties; best interest of child sole consideration.
NRS 127.283	Publication or broadcast of information concerning child.
NRS 127.285	Limitation on participation of attorneys in adoption proceedings; reporting of violation to bar association; criminal penalty.
NRS 127.287	Payment to or acceptance by natural parent of compensation in return for placement for or consent to adoption of child.
NRS 127.288	Penalty for unlawful payment to or acceptance by natural parent of compensation.
NRS 127.290	Acceptance of fees or compensation for placing or arranging placement of child.
NRS 127.300	Penalty for receipt of compensation by unlicensed person for placing or arranging placement of child.
NRS 127.310	Unlawful placement or advertising; penalty.

INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

NRS 127.320	Enactment.
NRS 127.330	Text of compact.
NRS 127.340	Administrator of compact: Service at pleasure of Governor; cooperation with all departments, agencies and officers.
NRS 127.350	Supplementary agreements.

INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

NRS 127.400	Enactment.
NRS 127.410	Text of compact.
NRS 127.420	Administrator of compact: Service at pleasure of Governor; cooperation with all departments, agencies and officers.

GENERAL PROVISIONS

- NRS 127.003 Definitions.** As used in this chapter, unless the context otherwise requires:
1. "Agency which provides child welfare services" has the meaning ascribed to it in [NRS 432B.030](#).
 2. "Division" means the Division of Child and Family Services of the Department of Health and Human Services.
 3. "Indian child" has the meaning ascribed to it in 25 U.S.C. § 1903.
 4. "Indian Child Welfare Act" means the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et seq.
- (Added to NRS by [1993, 2678](#); A [1995, 780](#); [2001 Special Session, 3](#))

NRS 127.005 Applicability. The provisions of [NRS 127.010](#) to [127.1895](#), inclusive, govern the adoption of minor children, and the provisions of [NRS 127.190](#), [127.200](#) and [127.210](#) and the provisions of [NRS 127.010](#) to [127.1895](#), inclusive, where not inconsistent with the provisions of [NRS 127.190](#), [127.200](#) and [127.210](#), govern the adoption of adults.

(Added to NRS by 1959, 606; A [1987, 2049](#); [1995, 781](#); [2005, 1682](#); [2009, 1354](#); [2011, 144](#))

- NRS 127.007 State Register for Adoptions: Establishment; contents; release of information.**
1. The Division shall maintain the State Register for Adoptions, which is hereby established, in its central office to provide information to identify adults who were adopted and persons related to them within the third degree of consanguinity.
 2. The State Register for Adoptions consists of:
 - (a) Names and other information, which the Administrator of the Division deems to be necessary for the operation of the Register, relating to persons who have released a child for adoption or have consented to the adoption of a child, or whose parental

rights have been terminated by a court of competent jurisdiction, and who have submitted the information voluntarily to the Division;

(b) Names and other necessary information of persons who are 18 years of age or older, who were adopted and who have submitted the information voluntarily to the Division; and

(c) Names and other necessary information of persons who are related within the third degree of consanguinity to adopted persons, and who have submitted the information voluntarily to the Division.

È Any person whose name appears in the Register may withdraw it by requesting in writing that it be withdrawn. The Division shall immediately withdraw a name upon receiving a request to do so, and may not thereafter release any information to identify that person, including the information that such a name was ever in the Register.

3. Except as otherwise provided in subsection 4, the Division may release information:

(a) About a person related within the third degree of consanguinity to an adopted person; or

(b) About an adopted person to a person related within the third degree of consanguinity,

Ê if the names and information about both persons are contained in the Register and written consent for the release of such information is given by the natural parent.

4. An adopted person may, by submitting a written request to the Division, restrict the release of any information concerning himself or herself to one or more categories of relatives within the third degree of consanguinity.

(Added to NRS by [1979, 1282](#); A [1991, 947](#); [1993, 37, 2679, 2729](#))

NRS 127.008 State Register of Children with Special Needs.

1. The Division shall establish a Register of Children with Special Needs. The Register must include descriptive information on every child with special needs for whom a prospective adoptive parent is not identified within 3 months after the child becomes available for adoption, but must not include any personal information which reveals the identity of the child or the child's parents. A copy of the Register must be made available for review by prospective adoptive parents at each office of the Division.

2. As used in this section, "child with special needs" means a child for whom placement with an adoptive parent is, in the opinion of the Administrator of the Division or his or her designee, made more difficult because of the child's age, race or number of siblings, or because the child suffers from a severe or chronic medical, physical, mental or emotional condition.

(Added to NRS by [1991, 1865](#); A [1993, 2679](#))

NRS 127.009 Booklet on adoption: Preparation; contents; annual revision; distribution; acceptance of gifts and grants to assist production and distribution.

1. The Division shall prepare a booklet on adoption in this state which includes the following information:

(a) The legal basis of adoption;

(b) The purpose of adoption;

(c) The process of adoption;

(d) The number of children who are waiting to be adopted, including statistical information regarding:

(1) The gender and ethnic background of the children who are waiting to be adopted;

(2) The number of children placed in foster homes who are waiting to be adopted;

(3) The number of children with special needs who are waiting to be adopted; and

(4) The number of siblings who are waiting to be adopted;

(e) The name and location of agencies in Nevada that place children with adoptive parents;

(f) The number of prospective adoptive parents;

(g) A comparison of Nevada to the surrounding states regarding the placement of children with adoptive parents;

(h) A comparison of the Division to other agencies located in Nevada regarding the placement of children with adoptive parents; and

(i) Any subsidies, assistance and other services that may be available to adoptive parents and prospective adoptive parents, including, without limitation, services for children with special needs.

2. The Division shall:

(a) Revise the information in the booklet annually.

(b) Distribute the booklet to persons and organizations whose patients or clients are likely to become involved with the process of adoption in this state. The booklet must also be distributed to prospective adoptive parents and natural parents giving children up for adoption.

3. The Division may accept gifts and grants to assist in the production and distribution of the booklet.

(Added to NRS by [1991, 1864](#); A [1993, 79, 2680, 2730](#); [2001, 1110](#))

ADOPTION OF CHILDREN

NRS 127.010 Jurisdiction of district courts. Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act, the district courts of this State have original jurisdiction in adoption proceedings.

[1:332:1953]—(NRS A [1995, 781](#))

NRS 127.013 Transfer of proceedings to Indian tribe.

1. If proceedings pursuant to this chapter involve the relinquishment of an Indian child who is a ward of a tribal court, resides on a reservation or is domiciled on a reservation, the court shall transfer the proceedings to the Indian child's tribe in accordance with the Indian Child Welfare Act.

2. For the purposes of this section, the domicile of an Indian child must be determined according to federal common law.

(Added to NRS by [1995, 780](#))

NRS 127.017 Extent to which court must give full faith and credit to judicial proceedings of Indian tribe. Each court in this state which exercises jurisdiction pursuant to this chapter in a case involving an Indian child shall give full faith and credit to the judicial proceedings of an Indian tribe to the same extent that the Indian tribe gives full faith and credit to the judicial proceedings of the courts of this state.

(Added to NRS by [1995, 780](#))

NRS 127.020 Adoption of minor children; ages and consent.

1. Except as otherwise provided in subsection 2:
 - (a) A minor child may be adopted by an adult person in the cases and subject to the rules prescribed in this chapter.
 - (b) A person adopting a child must be at least 10 years older than the person adopted, and the consent of the child, if over the age of 14 years, is necessary to its adoption.
2. A court may approve the adoption of a child without regard to the age of the child and the ages of the prospective adoptive parents if:
 - (a) The child is being adopted by a stepparent, sister, brother, aunt, uncle or first cousin and, if the prospective adoptive parent is married, also by the spouse of the prospective adoptive parent; and
 - (b) The court is satisfied that it is in the best interest of the child and in the interest of the public.

[2:332:1953]—(NRS A [2015, 420](#))

NRS 127.030 Who may petition; consent of spouse required under certain circumstances.

1. Any adult person or any two persons married to each other may petition the district court of any county in this state for leave to adopt a child.
2. Except as otherwise provided in subsection 5, a married person not lawfully separated from his or her spouse may not adopt a child without the consent of his or her spouse, if such spouse is capable of giving such consent.
3. If a spouse consents to an adoption as described in subsection 2, such consent does not establish any parental rights or responsibilities on the part of the spouse unless he or she:
 - (a) Has, in a writing filed with the court, specifically consented to:
 - (1) Adopting the child; and
 - (2) Establishing parental rights and responsibilities; and
 - (b) Is named as an adoptive parent in the order or decree of adoption.
4. The court shall not name a spouse who consents to an adoption as described in subsection 2 as an adoptive parent in an order or decree of adoption unless:
 - (a) The spouse has filed a writing with the court as described in paragraph (a) of subsection 3; and
 - (b) The home of the spouse is suitable for the child as determined by an investigation conducted pursuant to [NRS 127.120](#) or [127.2805](#).
5. The court may dispense with the requirement for the consent of a spouse who cannot be located after a diligent search or who is determined by the court to lack the capacity to consent. A spouse for whom the requirement was dispensed pursuant to this subsection must not be named as an adoptive parent in an order or decree of adoption.

[3:332:1953]—(NRS A [2015, 420](#))

NRS 127.040 Written consent to adoption or for relinquishment to authorized agency: Acknowledgment; when consent required.

1. Except as provided in [NRS 127.090](#), written consent to the specific adoption proposed by the petition or for relinquishment to an agency authorized to accept relinquishments acknowledged by the person or persons consenting, is required from:
 - (a) Both parents if both are living;
 - (b) One parent if the other is dead; or
 - (c) The guardian of the person of a child appointed by a court of competent jurisdiction.
2. Consent is not required of a parent who has been adjudged insane for 2 years if the court is satisfied by proof that such insanity is incurable.

[4:332:1953]—(NRS A 1957, 11; [1971, 835](#); [1979, 1282](#))

NRS 127.043 Consent to adoption required before placement in adoptive home; exception.

1. Except as otherwise provided in subsection 2, a child must not be placed in an adoptive home until a valid release for or consent to adoption is executed by the mother as provided by [NRS 127.070](#).
2. The provisions of this section do not apply if one petitioner or the spouse of a petitioner is related to the child within the third degree of consanguinity.

(Added to NRS by [1989, 530](#))

NRS 127.045 Release for or consent to adoption and investigation required before appointment of guardian for child to be adopted; exception.

1. Except as otherwise provided in subsection 2, until a valid release for or consent to adoption is executed by the mother as provided by [NRS 127.070](#) and the investigation required by [NRS 127.2805](#) is completed, no person may:
 - (a) Petition any court for the appointment of a guardian; or
 - (b) Be appointed the temporary guardian, guardian, or guardian in lieu of parent of the person of the child to be adopted.
2. The provisions of subsection 1 do not apply to any person who is related or whose spouse is related to the child within the third degree of consanguinity.

(Added to NRS by [1989, 530](#); A [1993, 70](#))

NRS 127.050 Agencies which may accept relinquishments and consent to adoption; reimbursement for certain costs.

1. The following agencies may accept relinquishments for the adoption of children from parents and guardians in this State:
 - (a) An agency which provides child welfare services in its own capacity or on behalf of a child-placing agency authorized under the laws of another state to accept relinquishments and make placements; or
 - (b) A child-placing agency licensed by the Division.
2. The following agencies may consent to the adoption of children in this State:
 - (a) An agency which provides child welfare services to which the child has been relinquished for adoption;

Subscribed and sworn to before me
this day of the month of of the year

Notary Public

(Added to NRS by 1961, 736; A [1985, 1211](#); [2001, 33](#))

NRS 127.057 Consent to adoption: Copy to be furnished to agency which provides child welfare services within 48 hours; recommendations; confidentiality of information; unlawful acts.

1. Any person to whom a consent to adoption executed in this State or executed outside this State for use in this State is delivered shall, within 48 hours after receipt of the executed consent to adoption, furnish a true copy of the consent, together with a report of the permanent address of the person in whose favor the consent was executed to the agency which provides child welfare services.

2. Any person recommending in his or her professional or occupational capacity, the placement of a child for adoption in this State shall immediately notify the agency which provides child welfare services of the impending adoption.

3. Except as otherwise provided in [NRS 239.0115](#), all information received by the agency which provides child welfare services pursuant to the provisions of this section is confidential and must be protected from disclosure in the same manner that information is protected under [NRS 432.035](#).

4. Any person who violates any of the provisions of this section is guilty of a misdemeanor.

(Added to NRS by 1961, 737; A 1963, 890; [1967, 1147](#); [1973, 1406, 1588](#); [1987, 2050](#); [1993, 2681](#); [2001 Special Session, 4](#); [2007, 2074](#))

NRS 127.058 Consent to adoption: Person to whom consent is given has legal custody of child until hearing on petition for adoption. A person to whom consent to adopt a child is given for a specific adoption pursuant to [NRS 127.053](#) has, at the time the consent is executed, legal custody over the child and is legally responsible for the child until a court holds a hearing to enter an order or decree of adoption or to deny the petition pursuant to the laws of this State or another state.

(Added to NRS by [2009, 1354](#))

NRS 127.060 Residence of petitioners: Adoption of two or more children; exception.

1. Except as otherwise provided in subsection 3, the petition for adoption shall not be granted unless the petitioners have resided in the State of Nevada for a period of 6 months prior to the granting of the petition.

2. The same petitioners may, in one petition, petition for the adoption of two or more children, if the children be brothers or sisters or brother and sister.

3. The provisions of subsection 1 do not apply if the petition for adoption is filed for the adoption of a child who is in the custody of an agency which provides child welfare services or a child-placing agency licensed by the Division pursuant to this chapter.

[6:332:1953]—(NRS A 1961, 737; [2011, 144](#))

NRS 127.070 Validity of releases for and consents to adoption.

1. All releases for and consents to adoption executed in this state by the mother before the birth of a child or within 72 hours after the birth of a child are invalid.

2. A release for or consent to adoption may be executed by the father before the birth of the child if the father is not married to the mother. A release executed by the father becomes invalid if:

(a) The father of the child marries the mother of the child before the child is born;

(b) The mother of the child does not execute a release for or consent to adoption of the child within 6 months after the birth of the child; or

(c) No petition for adoption of the child has been filed within 2 years after the birth of the child.

[7:332:1953]—(NRS A [1979, 1283](#); [1987, 2050](#); [1989, 531](#))

NRS 127.080 Consent to specific adoption or relinquishment for adoption cannot be revoked or nullified; exceptions.

1. Except as otherwise provided in [NRS 127.070](#), [127.2815](#) and [127.282](#), a written consent to a specific adoption pursuant to this chapter cannot be revoked or nullified.

2. Except as otherwise provided in [NRS 127.070](#), a relinquishment for adoption pursuant to this chapter cannot be revoked or nullified.

3. A minor parent may execute a relinquishment for adoption and cannot revoke it upon coming of age.

[8:332:1953]—(NRS A [1967, 984](#); [1979, 1283](#); [1981, 718](#); [1993, 70](#))

NRS 127.090 When consent unnecessary. Consent of a parent to an adoption shall not be necessary where parental rights have been terminated by an order of a court of competent jurisdiction.

[9:332:1953; A 1955, 192]

NRS 127.100 Entitlement of petitions, reports and orders. All petitions, reports and orders in adoption proceedings shall be entitled only in the names of the adopting parties.

[10:332:1953]

NRS 127.110 When petition may be filed; contents of petition; limitation on entry of adoption order.

1. A petition for adoption of a child who currently resides in the home of the petitioners may be filed at any time after the child has lived in the home for 30 days.

2. The petition for adoption must state, in substance, the following:

(a) The full name and age of the petitioners and, unless the petition is a petition for adoption described in subsection 3 of [NRS 127.060](#), the period the petitioners have resided in the State of Nevada before the filing of the petition.

(b) The age of the child sought to be adopted and the period that the child has lived in the home of petitioners before the filing of the petition.

(c) That it is the desire of the petitioners that the relationship of parent and child be established between them and the child.

(d) Their desire that the name of the child be changed, together with the new name desired.

(e) That the petitioners are fit and proper persons to have the care and custody of the child.

(f) That they are financially able to provide for the child.

(g) That there has been a full compliance with the law in regard to consent to adoption.

(h) That there has been a full compliance with [NRS 127.220](#) to [127.310](#), inclusive.

(i) Whether the child is known to be an Indian child.

3. No order of adoption may be entered unless there has been full compliance with the provisions of [NRS 127.220](#) to [127.310](#), inclusive.

[11:332:1953]—(NRS A 1961, 738; [1965, 1320](#); [1987, 2051](#); [1995, 781](#); [2011, 144](#))

NRS 127.120 Petition to be filed in duplicate; investigation, report and recommendation; court may order independent investigation; costs.

1. A petition for adoption of a child must be filed in duplicate with the county clerk. The county clerk shall send one copy of the petition to the agency which provides child welfare services.

2. The agency which provides child welfare services shall make an investigation and report as provided in this section. If one petitioner or the spouse of a petitioner is related to the child within the third degree of consanguinity, the court may, in its discretion, waive the investigation by the agency which provides child welfare services. A copy of the order waiving the investigation must be sent to the nearest office of the agency which provides child welfare services by the petitioners within 7 days after the order is issued.

3. The agency which provides child welfare services or a licensed child-placing agency designated to do so by the court shall:

(a) Verify the allegations of the petition;

(b) Investigate the condition of the child, including, without limitation, whether the child is an Indian child; and

(c) Make proper inquiry to determine whether the proposed adopting parents are suitable for the child.

4. The agency which provides child welfare services or the designated child-placing agency shall, before the date on which the child has lived for a period of 6 months in the home of the petitioners or within 30 days after receiving the copy of the petition for adoption, whichever is later, submit to the court a full written report of its findings pursuant to subsection 3, which must contain, without limitation, a specific recommendation for or against approval of the petition and a statement of whether the child is known to be an Indian child, and shall furnish to the court any other information regarding the child or proposed home which the court requires. The court, on good cause shown, may extend the time, designating a time certain, within which to submit the report.

5. If the court is dissatisfied with the report submitted by the agency which provides child welfare services or the designated child-placing agency, the court may order an independent investigation to be conducted and a report submitted by an agency or person selected by the court. The costs of the investigation and report may be assessed against the petitioner or charged against the county in which the adoption proceeding is pending.

[12:332:1953]—(NRS A 1961, 738; 1963, 890, 1301; [1967, 1147](#); [1973, 1406](#); [1989, 1133](#); [1993, 2682](#); [1995, 734, 781](#); [2001 Special Session, 4](#))

NRS 127.123 Notice of filing of petition to be provided legal custodian or guardian of child. Notice of the filing of a petition for the adoption of a child must be provided to the legal custodian or guardian of the child if that custodian or guardian is a person other than the natural parent of the child.

(Added to NRS by [1987, 2049](#))

NRS 127.127 Affidavit setting forth fees, donations and expenses required to be filed; waiver. The petitioners shall file with the court, within 15 days after the petition is filed or 5 months after the child begins to live in their home, whichever is later, an affidavit executed by them and their attorney setting forth all fees, donations and expenses paid by them in furtherance of the adoption. A copy of the affidavit must be sent to the agency which provides child welfare services. If one petitioner or the spouse of a petitioner is related to the child within the third degree of consanguinity, the court may waive the filing of the affidavit.

(Added to NRS by [1987, 2049](#); A [1993, 2682](#); [2001 Special Session, 5](#))

NRS 127.130 Confidentiality of reports; petitioner may rebut adverse report. The report of either the agency which provides child welfare services or the licensed child-placing agency designated by the court must not be made a matter of public record, but must be given in writing and in confidence to the district judge before whom the matter is pending. If the recommendation of the agency which provides child welfare services or the designated agency is adverse, the district judge, before denying the petition, shall give the petitioner an opportunity to rebut the findings and recommendation of the report of the agency which provides child welfare services or the designated agency.

[13:332:1953]—(NRS A 1963, 891; [1965, 36](#); [1967, 1148](#); [1973, 1406](#); [1993, 2682](#); [2001 Special Session, 5](#))

NRS 127.140 Confidentiality of hearings, files and records.

1. Except as otherwise provided in [NRS 239.0115](#), all hearings held in proceedings under this chapter are confidential and must be held in closed court, without admittance of any person other than the petitioners, their witnesses, the director of an agency, or their authorized representatives, attorneys and persons entitled to notice by this chapter, except by order of the court.

2. The files and records of the court in adoption proceedings are not open to inspection by any person except:

(a) Upon an order of the court expressly so permitting pursuant to a petition setting forth the reasons therefor;

(b) If a natural parent and the child are eligible to receive information from the State Register for Adoptions; or

(c) As provided pursuant to subsections 3, 4 and 5.

3. An adoptive parent who intends to file a petition pursuant to [NRS 127.1885](#) or [127.1895](#) to enforce, modify or terminate an agreement that provides for postadoptive contact may inspect only the portions of the files and records of the court concerning the agreement for postadoptive contact.

4. A natural parent who intends to file a petition pursuant to [NRS 127.1885](#) to prove the existence of or to enforce an agreement that provides for postadoptive contact or to file an action pursuant to [NRS 41.509](#) may inspect only the portions of the files or records of the court concerning the agreement for postadoptive contact.

5. The portions of the files and records which are made available for inspection by an adoptive parent or natural parent pursuant to subsection 3 or 4 must not include any confidential information, including, without limitation, any information that identifies or would lead to the identification of a natural parent if the identity of the natural parent is not included in the agreement for postadoptive contact.

[14:332:1953]—(NRS A [1979, 1283; 2005, 1682; 2007, 2074](#))

NRS 127.145 Attendance of prospective adoptive parents at hearing by telephone.

1. The prospective adoptive parents may attend by telephone, in lieu of attending in person, any hearings held by the court concerning the petition for adoption if:

- (a) The prospective adoptive parents reside in another state or jurisdiction;
- (b) The petition for adoption is filed for the adoption of a child who is in the custody of an agency which provides child welfare services or a child-placing agency licensed by the Division pursuant to this chapter; and
- (c) A representative of the agency responsible for supervising the child in the state where the child will be placed appears at the hearing by telephone.

2. The appearance of the prospective adoptive parents and the representative of the agency described in paragraph (c) of subsection 1 must occur at the office of the agency or at the home of the prospective adoptive parents, as determined by the agency.

3. If the prospective adoptive parents are attending a hearing by telephone pursuant to subsection 1, the court shall place the telephone call to a telephone number known to be a telephone number of the agency described in paragraph (c) of subsection 1 or of the prospective adoptive parents.

(Added to NRS by [2011, 144](#))

NRS 127.150 Order of adoption or return of child; presumption of child's best interest after adoption is granted.

1. If the court finds that the best interests of the child warrant the granting of the petition, an order or decree of adoption must be made and filed, ordering that henceforth the child is the child of the petitioners. When determining whether the best interests of the child warrant the granting of a petition that is filed by a foster parent, the court shall give strong consideration to the emotional bond between the child and the foster parent. A copy of the order or decree must be sent to the nearest office of the agency which provides child welfare services by the petitioners within 7 days after the order or decree is issued. In the decree the court may change the name of the child, if desired.

2. Except as otherwise provided in this subsection, an order or decree of adoption may not be made until after the child has lived for 6 months in the home of the petitioners. This subsection does not apply if one of the petitioners is the stepparent of the child or is related to the child within the third degree of consanguinity.

3. If the court is not satisfied that the proposed adoption is in the best interests of the child, the court shall deny the petition and may order the child returned to the custody of the person or agency legally vested with custody.

4. After a petition for adoption has been granted, there is a presumption that remaining in the home of the adopting parent is in the child's best interest.

[15:332:1953]—(NRS A 1961, 739; [1989, 1134; 1993, 2683; 1995, 734; 1999, 2026; 2001 Special Session, 5; 2015, 420](#))

NRS 127.152 Adopting parents to be provided with report which includes medical records and other information concerning child; regulations.

1. Except as otherwise provided in subsection 3, the agency which provides child welfare services or a licensed child-placing agency shall provide the adopting parents of a child with a report which includes:

(a) A copy of any medical records of the child which are in the possession of the agency which provides child welfare services or licensed child-placing agency.

(b) Any information obtained by the agency which provides child welfare services or licensed child-placing agency during interviews of the natural parent regarding:

(1) The medical and sociological history of the child and the natural parents of the child; and

(2) Any behavioral, emotional or psychological problems that the child may have. Information regarding any behavioral, emotional or psychological problems that the child may have must be discussed in accordance with policies established by an agency which provides child welfare services and a child-placing agency pursuant to regulations adopted by the Division for the disclosure of such information.

(c) Written information regarding any subsidies, assistance and other services that may be available to the child if it is determined pursuant to [NRS 127.186](#) that the child has any special needs.

2. The agency which provides child welfare services or child-placing agency shall obtain from the adopting parents written confirmation that the adopting parents have received the report required pursuant to subsection 1.

3. The report required pursuant to subsection 1 must exclude any information that would lead to the identification of the natural parent.

4. The Division shall adopt regulations specifying the procedure and format for the provision of information pursuant to this section, which may include the provision of a summary of certain information. If a summary is provided pursuant to this section, the adopting parents of the child may also obtain the information set forth in subsection 1.

(Added to NRS by [1995, 733; A 1999, 148; 2001, 1111, 1849, 1850; 2001 Special Session, 6; 2003, 236](#))

NRS 127.155 Validation of certain orders and decrees. Any order or decree of adoption entered after July 1, 1963, and before July 1, 1965, by a court of competent jurisdiction where there has not been a complete compliance with [NRS 127.220 to 127.310](#), inclusive, is hereby declared valid.

(Added to NRS by [1965, 1320](#))

NRS 127.157 Report of adoption, amendment or annulment of adoption to State Registrar.

1. After an order or decree of adoption has been entered, the court shall direct the petitioner or his or her attorney to prepare a report of adoption on a form prescribed and furnished by the State Registrar of Vital Statistics. The report must:

- (a) Identify the original certificate of birth of the person adopted;
- (b) Provide sufficient information to prepare a new certificate of birth for the person adopted;
- (c) Identify the order or decree of adoption; and
- (d) Be certified by the clerk of the court.

2. The agency which provides child welfare services shall provide the petitioner or his or her attorney with any factual information which will assist in the preparation of the report required in subsection 1.

3. If an order or decree of adoption is amended or annulled, the petitioner or his or her attorney shall prepare a report to the State Registrar of Vital Statistics, which includes sufficient information to identify the original order or decree of adoption and the provisions of that decree which were amended or annulled.

4. The petitioner or his or her attorney shall forward all reports required by the provisions of this section to the State Registrar of Vital Statistics not later than the 10th day of the month next following the month in which the order or decree was entered, or more frequently if requested by the State Registrar, together with any related material the State Registrar may require.

(Added to NRS by [1977, 1348](#); A [1993, 2683](#); [2001 Special Session, 6](#))

NRS 127.160 Rights and duties of adopted child and adoptive parents. Upon the entry of an order of adoption, the child shall become the legal child of the persons adopting the child, and they shall become the child's legal parents with all the rights and duties between them of natural parents and legitimate child. By virtue of such adoption the child shall inherit from his or her adoptive parents or their relatives the same as though the child were the legitimate child of such parents, and in case of the death of the child intestate the adoptive parents and their relatives shall inherit the child's estate as if they had been the child's natural parents and relatives in fact. After a decree of adoption is entered, the natural parents of an adopted child shall be relieved of all parental responsibilities for such child, and they shall not exercise or have any rights over such adopted child or the property of such adopted child. The child shall not owe his or her natural parents or their relatives any legal duty nor shall the child inherit from his or her natural parents or kindred. Notwithstanding any other provisions to the contrary in this section, the adoption of a child by his or her stepparent shall not in any way change the status of the relationship between the child and his or her natural parent who is the spouse of the petitioning stepparent.

[16:332:1953]

NRS 127.165 When action to set aside adoption may be brought; presumption of child's best interest after adoption is granted.

1. The natural parent of a child may not bring an action to set aside an adoption after a petition for adoption has been granted, unless a court of competent jurisdiction has previously, in a separate action:

- (a) Set aside the consent to the adoption;
- (b) Set aside the relinquishment of the child for adoption; or
- (c) Reversed an order terminating the parental rights of the natural parent.

2. After a petition for adoption has been granted, there is a presumption for the purposes of this chapter that remaining in the home of the adopting parent is in the child's best interest.

(Added to NRS by [1995, 733](#))

NRS 127.171 Right to visitation of child by sibling and other relatives; limitations.

1. Except as otherwise provided in [NRS 127.187](#) to [127.1895](#), inclusive, in a proceeding for the adoption of a child, the court may grant a reasonable right to visit to:

(a) A sibling of the child if the child is in the custody of an agency which provides child welfare services and a similar right has been granted previously pursuant to [NRS 432B.580](#); and

(b) Certain relatives of the child only if a similar right had been granted previously pursuant to [NRS 125C.050](#).

2. The agency which provides child welfare services shall provide the court which is conducting the adoption proceedings with a copy of any order for visitation with a sibling of the child that was issued pursuant to [NRS 432B.580](#).

3. The court may not grant a right to visit the child to any person other than as specified in subsection 1.

(Added to NRS by [1987, 2049](#); A [2005, 1682](#); [2011, 145](#))

NRS 127.180 Appeals from orders, judgments or decrees. Any person against whom any order, judgment or decree is made or who is affected thereby may appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to [Section 4 of Article 6](#) of the Nevada Constitution from any order, judgment or decree of the district court made under the provisions of this chapter, in the same manner as in other civil proceedings.

[18:332:1953]—(NRS A [2013, 1748](#))

NRS 127.186 Adoption of child with special needs; financial assistance to adoptive parents under certain circumstances; waiver of court costs of adoptive parents; regulations.

1. The agency which provides child welfare services or a child-placing agency licensed by the Division pursuant to this chapter may consent to the adoption of a child under 18 years of age with special needs due to race, age or physical or mental problems who is in the custody of the agency which provides child welfare services or the licensed agency by proposed adoptive parents when, in the judgment of the agency which provides child welfare services or the child-placing agency, it would be in the best interests of the child to be placed in that adoptive home.

2. The agency which provides child welfare services or child-placing agency, whichever has custody of the child, shall in a timely and diligent manner:

(a) Schedule any evaluations necessary to identify any special needs the child may have.

(b) If it determines that the child has any special needs:

(1) Notify the proposed adoptive parents:

(I) That they may be eligible for a grant of financial assistance pursuant to this section; and

(II) The manner in which to apply for such financial assistance; and

(2) Assist the proposed adoptive parents in applying for and satisfying any other prerequisites necessary to obtain a grant of financial assistance pursuant to this section and any other relevant subsidies and services which may be available.

3. The agency which provides child welfare services may grant financial assistance for attorney's fees in the adoption

proceeding, for maintenance and for preexisting physical or mental conditions to the adoptive parents of a child with special needs out of money provided for that purpose if the head of the agency which provides child welfare services or his or her designee has reviewed and approved in writing the grant of financial assistance.

4. The grant of financial assistance must be limited, both as to amount and duration, by agreement in writing between the agency which provides child welfare services and the adoptive parents. Such an agreement must not become effective before the entry of the order of adoption.

5. Any grant of financial assistance must be reviewed and evaluated at least once annually by the agency which provides child welfare services. The evaluation must be presented for approval to the head of the agency which provides child welfare services or his or her designee. Financial assistance must be discontinued immediately upon written notification to the adoptive parents by the agency which provides child welfare services that continued assistance is denied.

6. All financial assistance provided under this section ceases immediately when the child attains majority, becomes self-supporting, is emancipated or dies, whichever occurs first.

7. Neither a grant of financial assistance pursuant to this section nor any discontinuance of such assistance affects the legal status or respective obligations of any party to the adoption.

8. A court shall waive all court costs of the proposed adoptive parents in an adoption proceeding for a child with special needs if the agency which provides child welfare services or child-placing agency consents to the adoption of such a child pursuant to this section.

9. The Division, in consultation with each agency which provides child welfare services, shall adopt regulations regarding eligibility for and the procedures for applying for a grant of financial assistance pursuant to this section.

(Added to NRS by [1971, 851](#); A [1973, 1406](#); [1979, 1283](#); [1981, 718](#); [1993, 2683, 2880](#); [1995, 729, 734](#); [2001, 686, 1111](#); [2001 Special Session, 7](#); [2011, 3](#))

AGREEMENTS FOR POSTADOPTIVE CONTACT

NRS 127.187 Requirements; court to retain jurisdiction; no effect on rights of adoptive parent as legal parent.

1. The natural parent or parents and the prospective adoptive parent or parents of a child to be adopted may enter into an enforceable agreement that provides for postadoptive contact between:

- (a) The child and his or her natural parent or parents;
- (b) The adoptive parent or parents and the natural parent or parents; or
- (c) Any combination thereof.

2. An agreement that provides for postadoptive contact is enforceable if the agreement:

- (a) Is in writing and signed by the parties; and
- (b) Is incorporated into an order or decree of adoption.

3. The identity of a natural parent is not required to be included in an agreement that provides for postadoptive contact. If such information is withheld, an agent who may receive service of process for the natural parent must be provided in the agreement.

4. A court that enters an order or decree of adoption which incorporates an agreement that provides for postadoptive contact shall retain jurisdiction to enforce, modify or terminate the agreement that provides for postadoptive contact until:

- (a) The child reaches 18 years of age;
- (b) The child becomes emancipated; or
- (c) The agreement is terminated.

5. The establishment of an agreement that provides for postadoptive contact does not affect the rights of an adoptive parent as the legal parent of the child as set forth in [NRS 127.160](#).

(Added to NRS by [2005, 1679](#))

NRS 127.1875 Notice of agreement to court.

1. Each prospective adoptive parent of a child to be adopted who enters into an agreement that provides for postadoptive contact pursuant to [NRS 127.187](#) shall notify the court responsible for entering the order or decree of adoption of the child of the existence of the agreement as soon as practicable after the agreement is established, but not later than the time at which the court enters the order or decree of adoption of the child.

2. Each:

(a) Director or other authorized representative of the agency which provides child welfare services or the licensed child-placing agency involved in the adoption proceedings concerning the child; and

(b) Attorney representing a prospective adoptive parent, the child, the agency which provides child welfare services or the licensed child-placing agency in the adoption proceedings concerning the child,

shall, as soon as practicable after obtaining actual knowledge that the prospective adoptive parent or parents of the child and the natural parent or parents of the child have entered into an agreement that provides for postadoptive contact pursuant to [NRS 127.187](#), notify the court responsible for entering the order or decree of adoption of the child of the existence of the agreement.

(Added to NRS by [2005, 1680](#))

NRS 127.188 Inquiry by court before entering order or decree of adoption; incorporation of agreement into such order or decree.

1. Before a court may enter an order or decree of adoption of a child, the court must address in person:

(a) Except as otherwise provided in subsection 2, each prospective adoptive parent of the child to be adopted;

(b) Each director or other authorized representative of the agency which provides child welfare services or the licensed child-placing agency involved in the adoption proceedings concerning the child; and

(c) Each attorney representing a prospective adoptive parent, the child, the agency which provides child welfare services or the licensed child-placing agency in the adoption proceedings concerning the child,

and inquire whether the person has actual knowledge that the prospective adoptive parent or parents of the child and natural parent or parents of the child have entered into an agreement that provides for postadoptive contact pursuant to [NRS 127.187](#).

2. The court may for purposes of subsection 1 address a prospective adoptive parent described in [NRS 127.145](#) by telephone.

3. If the court determines that the prospective adoptive parent or parents and the natural parent or parents have entered into an agreement that provides for postadoptive contact, the court shall:

- (a) Order the prospective adoptive parent or parents to provide a copy of the agreement to the court; and
 - (b) Incorporate the agreement into the order or decree of adoption.
- (Added to NRS by [2005, 1680](#); A [2011, 145](#))

NRS 127.1885 Petitions to court by natural parents and adoptive parents.

1. A natural parent who has entered into an agreement that provides for postadoptive contact pursuant to [NRS 127.187](#) may, for good cause shown:

- (a) Petition the court that entered the order or decree of adoption of the child to prove the existence of the agreement that provides for postadoptive contact and to request that the agreement be incorporated into the order or decree of adoption; and
- (b) During the period set forth in subsection 2 of [NRS 127.189](#), petition the court that entered the order or decree of adoption of the child to enforce the terms of the agreement that provides for postadoptive contact if the agreement complies with the requirements of subsection 2 of [NRS 127.187](#).

2. An adoptive parent who has entered into an agreement that provides for postadoptive contact pursuant to [NRS 127.187](#) may:

- (a) During the period set forth in subsection 2 of [NRS 127.189](#), petition the court that entered the order or decree of adoption of the child to enforce the terms of the agreement that provides for postadoptive contact if the agreement complies with the requirements of subsection 2 of [NRS 127.187](#); and
- (b) Petition the court that entered the order or decree of adoption of the child to modify or terminate the agreement that provides for postadoptive contact in the manner set forth in [NRS 127.1895](#).

(Added to NRS by [2005, 1680](#))

NRS 127.189 Failure to comply; action to enforce terms.

1. Failure to comply with the terms of an agreement that provides for postadoptive contact entered into pursuant to [NRS 127.187](#) may not be used as a ground to:

- (a) Set aside an order or decree of adoption;
- (b) Revoke, nullify or set aside a valid release for or consent to an adoption or a relinquishment for adoption; or
- (c) Except as otherwise provided in [NRS 41.509](#), award any civil damages to a party to the agreement.

2. Any action to enforce the terms of an agreement that provides for postadoptive contact must be commenced not later than 120 days after the date on which the agreement was breached.

(Added to NRS by [2005, 1681](#))

NRS 127.1895 Modification or termination: Conditions; presumptions and considerations; scope.

1. An agreement that provides for postadoptive contact entered into pursuant to [NRS 127.187](#) may only be modified or terminated by an adoptive parent petitioning the court that entered the order or decree which included the agreement. The court may grant a request to modify or terminate the agreement only if:

- (a) The adoptive parent petitioning the court for the modification or termination establishes that:
 - (1) A change in circumstances warrants the modification or termination; and
 - (2) The contact provided for in the agreement is no longer in the best interests of the child; or
- (b) Each party to the agreement consents to the modification or termination.

2. If an adoptive parent petitions the court for a modification or termination of an agreement pursuant to this section:

- (a) There is a presumption that the modification or termination is in the best interests of the child; and
- (b) The court may consider the wishes of the child involved in the agreement.

3. Any order issued pursuant to this section to modify an agreement that provides postadoptive contact:

- (a) May limit, restrict, condition or decrease contact between the parties involved in the agreement; and
- (b) May not expand or increase the contact between the parties involved in the agreement or place any new obligation on an adoptive parent.

(Added to NRS by [2005, 1681](#))

ADOPTION OF ADULTS

NRS 127.190 Adoption of adults: Ages; agreement of adoption.

1. Notwithstanding any other provision of law, any adult person may adopt any other adult person younger than himself or herself, except the spouse of the adopting person, by an agreement of adoption approved by a decree of adoption of the district court in the county in which either the person adopting or the person adopted resides.

2. The agreement of adoption shall be in writing and shall be executed by the person adopting and the person to be adopted, and shall set forth that the parties agree to assume toward each other the legal relation of parent and child, and to have all of the rights and be subject to all of the duties and responsibilities of that relation.

(Added to NRS by 1959, 606)

NRS 127.200 Adoption of adults: Consent required.

1. A married person not lawfully separated from his or her spouse may not adopt an adult person without the consent of the spouse of the adopting person, if such spouse is capable of giving such consent.

2. A married person not lawfully separated from his or her spouse may not be adopted without the consent of the spouse of the person to be adopted, if such spouse is capable of giving such consent.

3. Neither the consent of the natural parent or parents of the person to be adopted, nor of the Division, nor of any other person is required.

(Added to NRS by 1959, 606; A 1963, 891; [1967, 1148](#); [1973, 1406](#); [1993, 2684](#))

NRS 127.210 Petition for approval of agreement of adoption; notice, investigation and hearing; decree of adoption.

1. The adopting person and the person to be adopted may file in the district court in the county in which either resides a

petition praying for approval of the agreement of adoption by the issuance of a decree of adoption.

2. The court shall fix a time and place for hearing on the petition, and both the person adopting and the person to be adopted shall appear at the hearing in person, but if such appearance is impossible or impractical, appearance may be made for either or both of such persons by counsel empowered in writing to make such appearance.

3. The court may require notice of the time and place of the hearing to be served on other interested persons, and any such interested person may appear and object to the proposed adoption.

4. No investigation or report to the court by any public officer is required, but the court may require the Division to investigate the circumstances and report thereon, with recommendations, to the court before the hearing.

5. At the hearing the court shall examine the parties, or the counsel of any party not present in person. If the court is satisfied that the adoption will be for the best interests of the parties and in the public interest, and that there is no reason why the petition should not be granted, the court shall approve the agreement of adoption, and enter a decree of adoption declaring that the person adopted is the child of the person adopting him or her. Otherwise, the court shall withhold approval of the agreement and deny the prayer of the petition.

(Added to NRS by 1959, 606; A 1963, 892; [1967, 1148](#); [1973, 1406](#); [1993, 2684](#))

PLACEMENT OF CHILDREN FOR ADOPTION AND PERMANENT FREE CARE

NRS 127.220 Definitions. As used in [NRS 127.220](#) to [127.310](#), inclusive, unless the context otherwise requires:

1. "Agency which provides child welfare services" has the meaning ascribed to it in [NRS 432B.030](#).
2. "Arrange the placement of a child" means to make preparations for or bring about any agreement or understanding concerning the adoption of a child.
3. "Child-placing agency" means a nonprofit corporation organized pursuant to [chapter 82](#) of NRS, and licensed by the Division to place children for adoption or permanent free care.
4. "Person" includes a hospital.
5. "Recommend the placement of a child" means to suggest to a child-placing agency that a prospective adoptive parent be allowed to adopt a specific child, born or in utero.

(Added to NRS by 1963, 1298; A [1981, 719](#); [1985, 508](#); [1987, 2051](#); [1989, 531](#); [1991, 1310](#); [1993, 71, 2685, 2734](#); [1999, 2026](#); [2001 Special Session, 8](#))

NRS 127.230 Standards for and regulation of child-placing agencies; regulation of agencies which provide child welfare services; regulation of adoption or placement of children.

1. The Division shall:
 - (a) Establish reasonable minimum standards for child-placing agencies.
 - (b) In consultation with each agency which provides child welfare services, adopt:
 - (1) Regulations concerning the operation of an agency which provides child welfare services and child-placing agencies.
 - (2) Regulations establishing the procedure to be used by an agency which provides child welfare services and a child-placing agency in placing children for adoption, which must allow the natural parent or parents and the prospective adoptive parent or parents to determine, by mutual consent, the amount of identifying information that will be communicated concerning each of them.
 - (3) Any other regulations necessary to carry out its powers and duties regarding the adoption of children or the placement of children for adoption or permanent free care, including, without limitation, such regulations necessary to ensure compliance with the provisions of this chapter and any regulations adopted pursuant thereto.

2. Each agency which provides child welfare services and child-placing agency shall conform to the standards established and the regulations adopted pursuant to subsection 1.

(Added to NRS by 1963, 1298; A [1967, 1149](#); [1973, 1406](#); [1987, 2051](#); [1993, 108, 2685, 2737](#); [2001 Special Session, 8](#))

NRS 127.240 License: Requirement; exceptions.

1. Except as otherwise provided in this section, no person may place, arrange the placement of, or assist in placing or in arranging the placement of, any child for adoption or permanent free care without securing and having in full force a license to operate a child-placing agency issued by the Division. This subsection applies to agents, servants, physicians and attorneys of parents or guardians, as well as to other persons.

2. This section does not prohibit a parent or guardian from placing, arranging the placement of, or assisting in placing or in arranging the placement of, any child for adoption or permanent free care if the placement is made pursuant to the provisions of [NRS 127.280](#), [127.2805](#) and [127.2815](#).

3. This section does not prohibit an agency which provides child welfare services from placing, arranging the placement of, or assisting in placing or in arranging the placement of, any child for adoption or permanent free care.

4. This section does not prohibit a person, including a person acting in his or her professional capacity, from sharing information regarding an adoption if no money or other valuable consideration is paid:

- (a) For such information; or
- (b) For any other service related to the adoption that is performed after sharing information.

(Added to NRS by 1963, 1298; A [1965, 1321](#); [1973, 1406](#); [1979, 236](#); [1989, 531](#); [1991, 1865](#); [1993, 71, 2685, 2734](#); [2001 Special Session, 9](#))

NRS 127.250 License: Application; issuance; renewal.

1. The application for a license to operate a child-placing agency must be in a form prescribed by the Division. The license must state to whom it is issued and the fact that it is effective for 1 year from the date of its issuance.

2. The issuance by the Division of a license to operate a child-placing agency must be based upon reasonable and satisfactory assurance to the Division that the applicant for such license will conform to the standards established and the regulations adopted by the Division as provided in [NRS 127.230](#).

3. When the Division is satisfied that a licensee is conforming to such standards and regulations, it shall renew his or her license, and the license so renewed continues in force for 1 year from the date of renewal.

(Added to NRS by 1963, 1298; A [1973, 1406](#); [1993, 108, 2686, 2737](#))

NRS 127.270 License: Refusal to issue or renew; notice and hearing; appeals.

1. After notice and hearing, the Division may:
 - (a) Refuse to issue a license if the Division finds that the applicant does not meet the standards established and the rules prescribed by the Division for child-placing agencies.
 - (b) Refuse to renew a license or may revoke a license if the Division finds that the child-placing agency has refused or failed to meet any of the established standards or has violated any of the rules prescribed by the Division for child-placing agencies.
2. A notice of the time and place of the hearing must be mailed to the last known address of the applicant or licensee at least 15 days before the date fixed for the hearing.
3. When an order of the Division is appealed to the district court, the trial may be de novo.
(Added to NRS by 1963, 1300; A [1967, 1149](#); [1973, 1406](#); [1979, 237](#); [1993, 2686](#))

NRS 127.275 Fees for services provided by agency which provides child welfare services.

1. Except as otherwise provided in this section:
 - (a) In a county whose population is less than 100,000, the Division shall, in accordance with [NRS 432.014](#); and
 - (b) In a county whose population is 100,000 or more, the board of county commissioners of the county shall, by ordinance, charge reasonable fees for the services provided by an agency which provides child welfare services in placing, arranging the placement of or assisting in placing or arranging the placement of any child for adoption, and for conducting any investigation required by [NRS 127.2805](#).
2. The fees charged for those services must vary based on criteria developed by the Division and board of county commissioners but must not exceed the usual and customary fees that child-placing agencies in the area where the services are provided, or in a similar geographic area, would charge for those services. The Division and board of county commissioners shall not discriminate between adoptions made through an agency and specific adoptions in setting their fees.
3. A fee must not be charged for services related to the adoption of a child with special needs.
4. An agency which provides child welfare services may waive or reduce any fee charged pursuant to this section if the agency which provides child welfare services determines that the adoptive parents are not able to pay the fee or the needs of the child require a waiver or reduction of the fee.
5. Any money collected by an agency which provides child welfare services in a county whose population is less than 100,000 pursuant to this section must be accounted for in the appropriate account of the Division and may be used only to pay for the costs of any adoptive or postadoptive services provided by any agency which provides child welfare services in a county whose population is less than 100,000.
6. Any money collected by an agency which provides child welfare services in a county whose population is 100,000 or more pursuant to this section must be deposited in the county treasury for the credit of the agency which provides child welfare services and may be used only to pay for the costs of any adoption or postadoptive services provided by the agency which provides child welfare services.
(Added to NRS by [1993, 2678](#); A [1993, 2726](#); [1999, 149](#); [2001 Special Session, 9](#); [2005, 22nd Special Session, 48](#))

NRS 127.280 Requirements for placement of child in home of prospective parents for trial period; verification of intent of natural parents.

1. A child may not be placed in the home of prospective adoptive parents for the 30-day residence in that home which is required before the filing of a petition for adoption, except where a child and one of the prospective adoptive parents are related within the third degree of consanguinity, unless:
 - (a) The agency which provides child welfare services or a child-placing agency first receives written notice of the proposed placement from:
 - (1) The prospective adoptive parents of the child;
 - (2) The person recommending the placement; or
 - (3) A natural parent;
 - (b) The investigation required by the provisions of [NRS 127.2805](#) has been completed; and
 - (c) In the case of a specific adoption, the natural parent placing the child for adoption has had an opportunity to review the report on the investigation of the home, if possible.
2. Upon receipt of written notice from any person other than the natural parent, the agency which provides child welfare services or child-placing agency shall communicate with the natural parent to confirm the natural parent's intention to place the child for adoption with the prospective adoptive parents identified in the written notice.
(Added to NRS by 1963, 1299; A [1965, 1321](#); [1967, 1150](#); [1973, 1406](#), [1589](#); [1979, 237](#); [1981, 719](#); [1987, 2052](#); [1989, 531](#); [1991, 949](#); [1993, 71](#), [2686](#), [2734](#); [2001 Special Session, 10](#))

NRS 127.2805 Investigation of prospective adoptive parents.

1. The agency which provides child welfare services or a child-placing agency shall, within 60 days after receipt of confirmation of the natural parents' intent to place the child for adoption and a completed application for adoption from the prospective adoptive parents, complete an investigation of the medical, mental, financial and moral backgrounds of the prospective adoptive parents to determine the suitability of the home for placement of the child for adoption. The investigation must also embrace any other relevant factor relating to the qualifications of the prospective adoptive parents and may be a substitute for the investigation required to be conducted by the agency which provides child welfare services on behalf of the court when a petition for adoption is pending, if the petition for adoption is filed within 6 months after the completion of the investigation required by this subsection. If a child-placing agency undertakes the investigation, it shall provide progress reports to the agency which provides child welfare services in such a format and at such times as the agency which provides child welfare services requires to ensure that the investigation will be completed within the 60-day period. If, at any time, the agency which provides child welfare services determines that it is unlikely that the investigation will be completed in a timely manner, the agency which provides child welfare services shall take over the investigation and complete it within the 60-day period or as soon thereafter as practicable.
2. If the placement is to be made in a home outside of this state, the agency which provides child welfare services or child-placing agency must receive a copy of a report, completed by the appropriate authority, of an investigation of the home and the medical, mental, financial and moral backgrounds of the prospective adoptive parents to determine the suitability of the home for

placement of the child for adoption, unless the child and one of the prospective adoptive parents are related within the third degree of consanguinity.

(Added to NRS by [1993, 68](#); A [1993, 2732](#); [2001 Special Session, 10](#))

NRS 127.281 Search for criminal record of prospective adoptive parent.

1. A prospective adoptive parent who is subject to an investigation by the agency which provides child welfare services or a child-placing agency must submit as part of the investigation a complete set of his or her fingerprints and written permission authorizing the agency which provides child welfare services or child-placing agency to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation.

2. The agency which provides child welfare services or child-placing agency may exchange with the Central Repository or the Federal Bureau of Investigation any information respecting the fingerprints submitted.

3. When a report from the Federal Bureau of Investigation is received by the Central Repository, it shall immediately forward a copy of the report to the agency which provides child welfare services or child-placing agency that submitted the fingerprints.

4. Any fees for fingerprinting and submission to the Central Repository and the Federal Bureau of Investigation must be paid by the prospective adoptive parent, except that:

(a) In a county whose population is less than 100,000, the Division may adopt regulations providing for the payment of those fees by the Division; or

(b) In a county whose population is 100,000 or more, the board of county commissioners may provide by ordinance for the payment of those fees by the agency which provides child welfare services.

(Added to NRS by [1989, 530](#); A [1991, 951](#); [1993, 2688](#); [2001 Special Session, 11](#))

NRS 127.2815 Placement of child during investigation; notice and placement of child upon completion of investigation.

1. Pending completion of the required investigation, the child must be:

(a) Retained by the natural parent; or

(b) Placed by the natural parent with the agency which provides child welfare services or child-placing agency and placed by the agency which provides child welfare services or child-placing agency in a foster home licensed pursuant to [NRS 424.030](#),
 È until a determination is made concerning the suitability of the prospective adoptive parents.

2. Upon completion of the investigation, the agency which provides child welfare services or child-placing agency shall forthwith inform the natural parent, the person recommending the placement and the prospective adoptive parents of the decision to approve or deny the placement. If the prospective adoptive home is found:

(a) Suitable, the natural parent may execute a consent to a specific adoption pursuant to [NRS 127.053](#), if not previously executed, and then the child may be placed in the home of the prospective adoptive parents for the purposes of adoption.

(b) Unsuitable or detrimental to the interest of the child, the agency which provides child welfare services or child-placing agency shall file an application in the district court for an order prohibiting the placement. If the court determines that the placement should be prohibited, the court may nullify the written consent to the specific adoption and order the return of the child to the care and control of the parent who executed the consent, but if the parental rights of the parent have been terminated by a relinquishment or a final order of a court of competent jurisdiction or if the parent does not wish to accept the child, then the court may order the placement of the child with the agency which provides child welfare services or a child-placing agency for adoption.

(Added to NRS by [1993, 69](#); A [1993, 2732](#); [2001 Special Session, 11](#); [2003, 236](#))

NRS 127.2817 Criteria for determination of suitability of prospective adoptive home; opportunity for prospective adoptive parents to review and respond to unfavorable investigation.

1. The Division, in consultation with each agency which provides child welfare services, shall adopt regulations setting forth the criteria to be used by an agency which provides child welfare services or a child-placing agency for determining whether a prospective adoptive home is suitable or unsuitable for the placement of a child for adoption.

2. Upon the completion of an investigation conducted by an agency which provides child welfare services or a child-placing agency pursuant to [NRS 127.120](#) or [127.2805](#), the agency which provides child welfare services or child-placing agency shall inform the prospective adoptive parent or parents of the results of the investigation. If, pursuant to the investigation, a determination is made that a prospective adoptive home is unsuitable for placement or detrimental to the interest of the child, the agency which provides child welfare services or child-placing agency shall provide the prospective adoptive parent or parents with an opportunity to review and respond to the investigation with the agency which provides child welfare services or child-placing agency before the issuance of the results of the investigation. Except as otherwise provided in [NRS 239.0115](#), the identity of those persons who are interviewed or submit information concerning the investigation must remain confidential.

(Added to NRS by [1993, 238](#); A [1993, 2731](#); [2001, 1112](#); [2001 Special Session, 12](#); [2007, 2075](#))

NRS 127.282 Petition for order to restrain and enjoin violation or threatened violation of chapter; investigation of unreported adoption or permanent free care of unrelated child.

1. Whenever the agency which provides child welfare services believes that anyone has violated or is about to violate any of the provisions of this chapter, in addition to any other penalty or remedy provided:

(a) The agency which provides child welfare services may petition the appropriate district court for an order to restrain and enjoin the violation or threatened violation of any of the provisions of this chapter, or to compel compliance with the provisions of this chapter; and

(b) The court shall, if a child has been or was about to be placed in a prospective adoptive home in violation of the provisions of this chapter:

(1) Prohibit the placement if the child was about to be so placed, or order the removal of the child if the child was so placed within 6 months before the filing of the petition by the agency which provides child welfare services and proceed pursuant to paragraph (b) of subsection 2 of [NRS 127.2815](#); or

(2) Proceed pursuant to paragraph (b) of subsection 2 of [NRS 127.2815](#) in all other cases if the court determines that it is in the best interest of the child that the child should be removed.

2. Whenever the agency which provides child welfare services believes that a person has received for the purposes of

adoption or permanent free care a child not related by blood, and the required written notice has not been given, if the agency which provides child welfare services does not proceed pursuant to subsection 1, it shall make an investigation. Upon completion of the investigation, if the home is found suitable for the child, the prospective adoptive parents must be allowed 6 months from the date of completion of the investigation to file a petition for adoption. If a petition for adoption is not filed within that time a license as a foster home must thereafter be issued pursuant to [NRS 424.030](#) if the home meets established standards. If, in the opinion of the agency which provides child welfare services, the placement is detrimental to the interest of the child, the agency which provides child welfare services shall file an application with the district court for an order for the removal of the child from the home. If the court determines that the child should be removed, the court shall proceed pursuant to paragraph (b) of subsection 2 of [NRS 127.2815](#).

(Added to NRS by [1993, 69](#); A [1993, 2733](#); [2001 Special Session, 12](#))

NRS 127.2825 Child-placing agency required to give preference to placement of child with siblings of child. A child-placing agency shall, to the extent practicable, give preference to the placement of a child for adoption or permanent free care together with his or her siblings.

(Added to NRS by [1999, 2026](#))

NRS 127.2827 Orders for visitation with sibling of child in custody of agency which provides child welfare services; Previous orders of such visitation to be provided to court during adoption proceedings; hearing required; participation of interested parties; best interest of child sole consideration.

1. If a child who is in the custody of an agency which provides child welfare services is placed for adoption, the agency must provide the court which is conducting the adoption proceedings with a copy of any order for visitation with a sibling of the child that was issued pursuant to [NRS 432B.580](#) and the court must conduct a hearing to determine whether to include an order for visitation with a sibling in the decree of adoption.

2. Any interested party in the adoption, including, without limitation, the adoptive parent, the adoptive child, a sibling of the adoptive child, the agency which provides child welfare services or a licensed child-placing agency may petition the court to participate in the determination of whether to include an order of visitation with a sibling in the decree of adoption.

3. The sole consideration of the court in making a determination concerning visitation with a sibling pursuant to this section is the best interest of the child.

(Added to NRS by [2009, 413](#))

NRS 127.283 Publication or broadcast of information concerning child.

1. An agency which provides child welfare services or any child-placing agency may publish in any newspaper published in this state or broadcast by television a photograph of and relevant personal information concerning any child who is difficult to place for adoption.

2. A child-placing agency shall not publish or broadcast:

(a) Any personal information which reveals the identity of the child or his or her parents; or

(b) A photograph or personal information for a child without the prior approval of the agency having actual custody of the child.

(Added to NRS by [1977, 664](#); A [1993, 2689](#); [2001 Special Session, 13](#))

NRS 127.285 Limitation on participation of attorneys in adoption proceedings; reporting of violation to bar association; criminal penalty.

1. Any attorney licensed to practice in this state or in any other state:

(a) May not receive compensation for:

(1) Taking part in finding children for adoption; or

(2) Finding parents to adopt children.

(b) May receive a reasonable compensation for legal services provided in relation to adoption proceedings.

2. An agency which provides child welfare services shall report any violation of subsection 1 to the State Bar of Nevada if the alleged violator is licensed to practice in this state, or to the bar association of the state in which the alleged violator is licensed to practice.

3. Any person who violates the provisions of subsection 1 is guilty of a misdemeanor.

(Added to NRS by [1965, 1336](#); A [1993, 459, 2738](#); [2001 Special Session, 13](#))

NRS 127.287 Payment to or acceptance by natural parent of compensation in return for placement for or consent to adoption of child.

1. Except as otherwise provided in subsection 3, it is unlawful for any person to pay or offer to pay money or anything of value to the natural parent of a child in return for the natural parent's placement of the child for adoption or consent to or cooperation in the adoption of the child.

2. It is unlawful for any person to receive payment for medical and other necessary expenses related to the birth of a child from a prospective adoptive parent with the intent of not consenting to or completing the adoption of the child.

3. A person may pay the medical and other necessary living expenses related to the birth of a child of another as an act of charity so long as the payment is not contingent upon the natural parent's placement of the child for adoption or consent to or cooperation in the adoption of the child.

4. This section does not prohibit a natural parent from refusing to place a child for adoption after its birth.

5. The provisions of this section do not apply if a woman enters into a lawful contract to act as a gestational carrier, as defined in [NRS 126.580](#).

(Added to NRS by [1987, 2049](#); A [2013, 812](#))

NRS 127.288 Penalty for unlawful payment to or acceptance by natural parent of compensation. A person who violates the provisions of:

1. Subsection 1 of [NRS 127.287](#) is guilty of a category D felony and shall be punished as provided in [NRS 193.130](#).

2. Subsection 2 of [NRS 127.287](#) is guilty of a gross misdemeanor.

(Added to NRS by [1987, 2049](#); A [1995, 1244](#))

NRS 127.290 Acceptance of fees or compensation for placing or arranging placement of child.

1. Except as otherwise provided in [NRS 127.275](#) and [127.285](#), no person who does not have in full force a license to operate a child-placing agency may request or accept, directly or indirectly, any compensation or thing of value for placing, arranging the placement of, or assisting in placing or arranging the placement of, any child for adoption or permanent free care.

2. A licensed child-placing agency may accept fees for operational expenses.

(Added to NRS by 1963, 1299; A [1965, 1336](#); [1979, 239](#); [1987, 621](#); [1993, 2689](#))

NRS 127.300 Penalty for receipt of compensation by unlicensed person for placing or arranging placement of child.

1. Except as otherwise provided in [NRS 127.275](#), [127.285](#), [200.463](#), [200.4631](#), [200.464](#) and [200.465](#), a person who, without holding a valid license to operate a child-placing agency issued by the Division, requests or receives, directly or indirectly, any compensation or thing of value for placing, arranging the placement of, or assisting in placing or arranging the placement of any child for adoption or permanent free care is guilty of a category D felony and shall be punished as provided in [NRS 193.130](#).

2. The natural parents and the adopting parents are not accomplices for the purpose of this section.

(Added to NRS by 1963, 1300; A [1965, 1336](#); [1967, 531](#), [1151](#); [1973, 1406](#); [1979, 239](#), [1460](#); [1987, 621](#); [1989, 1186](#); [1993, 2689](#); [1995, 1244](#); [2005, 89](#); [2013, 1856](#))

NRS 127.310 Unlawful placement or advertising; penalty.

1. Except as otherwise provided in [NRS 127.240](#), [127.283](#) and [127.285](#), any person or organization other than an agency which provides child welfare services who, without holding a valid unrevoked license to place children for adoption issued by the Division:

(a) Places, arranges the placement of, or assists in placing or in arranging the placement of, any child for adoption or permanent free care; or

(b) Advertises that he or she will place children for adoption or permanent free care, or accept, supply, provide or obtain children for adoption or permanent free care, or causes any advertisement to be disseminated soliciting, requesting or asking for any child or children for adoption or permanent free care,

is guilty of a misdemeanor.

2. Any person who places, accepts placement of, or aids, abets or counsels the placement of any child in violation of [NRS 127.280](#), [127.2805](#) and [127.2815](#) is guilty of a misdemeanor.

3. A periodical, newspaper, radio station, Internet website or other public medium is not subject to any criminal penalty or civil liability for disseminating an advertisement that violates the provisions of this section.

4. A child-placing agency shall include in any advertisement concerning its services a statement which:

(a) Confirms that the child-placing agency holds a valid, unrevoked license issued by the Division; and

(b) Indicates any license number issued to the child-placing agency by the Division.

5. As used in this section:

(a) "Advertise" or "advertisement" means a communication that originates within this State by any public medium, including, without limitation, a newspaper, periodical, telephone book listing, outdoor advertising, sign, radio, television or a computerized communication system, including, without limitation, electronic mail, an Internet website or an Internet account.

(b) "Internet account" means an account created within a bounded system established by an Internet-based service that requires a user to input or store information in an electronic device in order to view, create, use or edit the account information, profile, display, communications or stored data of the user.

(Added to NRS by 1961, 752; A 1963, 891, 1301; [1965, 1336](#); [1967, 1151](#); [1973, 1406](#); [1979, 239](#); [1993, 73, 459, 2689, 2737, 2738](#); [2001 Special Session, 13](#); [2009, 1355](#); [2015, 2015](#))

INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

NRS 127.320 Enactment. The Interstate Compact on the Placement of Children, set forth in [NRS 127.330](#), is hereby enacted into law and entered into with all other jurisdictions substantially joining therein.

(Added to NRS by [1985, 602](#))

NRS 127.330 Text of compact. The Interstate Compact on the Placement of Children is as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement receives the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children are promoted.

ARTICLE II. Definitions

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental control, guardianship or similar control.

(b) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to another party state.

ARTICLE III. Conditions for Placement

(a) A sending agency shall not send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency complies with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring or place the child in the receiving state. The notice must contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.

(4) A full statement of the reasons for the proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and is entitled to receive therefrom, such supporting or additional information as it considers necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child must not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. Penalty for Illegal Placement

The sending, bringing or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact is a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such a violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, the violation constitutes full and sufficient grounds for the suspension or revocation of any license, permit or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

ARTICLE V. Retention of Jurisdiction

(a) The sending agency retains such jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child as it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. That jurisdiction also includes the power to effect or cause the return of the child or the transfer of the child to another location and custody pursuant to law. The sending agency continues to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained in this article defeats a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state to provide one or more services to the child as the agent for the sending agency.

(c) Nothing in this compact prevents a private charitable agency authorized to place children in the receiving state from performing services or acting as the agent in that state for a private charitable agency of the sending state, or to prevent the agency in the receiving state from discharging its financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a).

ARTICLE VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement may be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to the child being sent to the other party jurisdiction for institutional care and the court finds that:

(a) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(b) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer to act as the administrator and general coordinator of activities under this compact in his or her jurisdiction and who, acting jointly with like officers of other party jurisdictions, may adopt regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. Limitations

This compact does not apply to:

- (a) The sending or bringing of a child into a receiving state by his or her parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt or his or her guardian and leaving the child with any such relative or nonagency guardian in the receiving state.
- (b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are parties, or to any other agreement between the states which has the force of law.

ARTICLE IX. Enactment and Withdrawal

This compact is open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It becomes effective with respect to any jurisdiction when the jurisdiction has enacted it into law. Withdrawal from this compact must be by the enactment of a statute repealing it, but does not take effect until 2 years after the effective date of the statute and until written notice of the withdrawal has been given by the withdrawing jurisdiction to the executive head of each other party jurisdiction. Withdrawal of a party jurisdiction does not affect the rights, duties and obligations under this compact of any sending agency in that jurisdiction with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. Construction and Severability

The provisions of this compact must be liberally construed to effectuate the purposes thereof. The provisions of this compact are severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance are not affected thereby. If this compact is held contrary to the constitution of any state party thereto, the compact remains in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(Added to NRS by [1985, 602](#))

NRS 127.340 Administrator of compact: Service at pleasure of Governor; cooperation with all departments, agencies and officers. The administrator of the compact shall serve at the pleasure of the Governor. The administrator shall cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state under the compact.

(Added to NRS by [1985, 606](#))

NRS 127.350 Supplementary agreements. The administrator of the compact shall enter into supplementary agreements with appropriate officials of other states pursuant to the compact. If a supplementary agreement requires or contemplates the use of any institution or facility of this state or the provision of any service by this state, the supplementary agreement has no force or effect until approved by the head of the department or agency under whose jurisdiction the institution or facility is operated or whose department or agency will be charged with the rendering of the service.

(Added to NRS by [1985, 606](#))

INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

NRS 127.400 Enactment. The Interstate Compact on Adoption and Medical Assistance, set forth in [NRS 127.410](#), is hereby enacted into law and entered into with all other jurisdictions substantially joining therein.

(Added to NRS by [1987, 303](#))

NRS 127.410 Text of compact. The Interstate Compact on Adoption and Medical Assistance is as follows:

INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

ARTICLE I. FINDINGS

The states which are parties to this compact find that:

(a) In order to obtain adoptive families for children with special needs, states must assure prospective adoptive parents of substantial assistance (usually on a continuing basis) in meeting the high costs of supporting and providing for the special needs and the services required by such children.

(b) The states have a fundamental interest in promoting adoption for children with special needs because the care, emotional stability, and general support and encouragement required by such children can be best, and often only, obtained in family homes with a normal parent-child relationship.

(c) The states obtain fiscal advantages from providing adoption assistance because the alternative is for the states to bear the higher cost of meeting all the needs of children while in foster care.

(d) The necessary assurances of adoption assistance for children with special needs, in those instances where children and adoptive parents live in states other than the one undertaking to provide the assistance, include the establishment and maintenance of suitable substantive guarantees and workable procedures for interstate cooperation and payments to assist with the necessary costs of child maintenance, the procurement of services, and the provision of medical assistance.

ARTICLE II. PURPOSES

The purposes of this compact are to:

- (a) Strengthen protections for the interests of children with special needs on behalf of whom adoption assistance is committed

to be paid, when such children are in or move to states other than the one committed to provide adoption assistance.

(b) Provide substantive assurances and operating procedures which will promote the delivery of medical and other services to children on an interstate basis through programs of adoption assistance established by the laws of the states which are parties to this compact.

ARTICLE III. DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

(a) "Child with special needs" means a minor who has not yet attained the age at which the state normally discontinues children's services, or a child who has not yet reached the age of 21 where the state determines that the child's mental or physical handicaps warrant the continuation of assistance beyond the age of majority, for whom the state has determined the following:

(1) That the child cannot or should not be returned to the home of his or her parents;

(2) That there exists with respect to the child a specific factor or condition (such as his or her ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical condition or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance; or

(3) That, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in their care as a foster child, a reasonable but unsuccessful effort has been made to place the child with appropriate adoptive parents without providing adoption assistance.

(b) "Adoption assistance" means the payment or payments for the maintenance of a child which are made or committed to be made pursuant to the program of adoption assistance established by the laws of a party state.

(c) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of the United States.

(d) "Adoption assistance state" means the state that is signatory to an agreement of adoption assistance in a particular case.

(e) "Residence state" means the state in which the child is a resident by virtue of the residence of the adoptive parents.

(f) "Parents" means either the singular or plural of the word "parent."

ARTICLE IV. ADOPTION ASSISTANCE

(a) Each state shall determine the amounts of adoption assistance and other aid which it will give to children with special needs and their adoptive parents in accordance with its own laws and programs. The adoption assistance and other aid may be made subject to periodic reevaluation of eligibility by the adoption assistance state in accordance with its laws.

(b) The adoption assistance, medical assistance, and other services and benefits to which this compact applies are those provided to children with special needs and their adoptive parents from the effective date of the agreement for adoption assistance.

(c) Every case of adoption assistance must include a written agreement for adoption assistance between the adoptive parents and the appropriate agency of the state undertaking to provide the adoption assistance. Every such agreement must contain provisions for the fixing of actual or potential interstate aspects of the assistance so provided as follows:

(1) An express commitment that the assistance so provided must be payable without regard for the state of residence of the adoptive parents, both at the outset of the agreement and at all times during its continuance;

(2) A provision setting forth with particularity the types of care and services toward which the adoption assistance state will make payments;

(3) A commitment to make medical assistance available to the child in accordance with Article V of this compact;

(4) An express declaration that the agreement is for the benefit of the child, the adoptive parents and the state and that it is enforceable by any or all of them; and

(5) The date or dates upon which each payment or other benefit provided thereunder is to commence, but in no event prior to the effective date of the agreement for adoption assistance.

(d) Any services or benefits provided for a child by the residence state and the adoption assistance state may be facilitated by the party states on each other's behalf. To this end, the personnel of the child welfare agencies of the party states will assist each other, as well as the beneficiaries of agreements for adoption assistance, in assuring prompt and full access to all benefits expressly included in such agreements. It is further recognized and agreed that, in general, all children to whom agreements for adoption assistance apply will be eligible for benefits under the child welfare, education, rehabilitation, mental health, and other programs of their state of residence on the same basis as other resident children.

(e) Payments for adoption assistance on behalf of a child in another state shall be made on the same basis and in the same amounts as they would be made if the child were living in the state making the payments, except that the laws of the adoption assistance state may provide for the payment of higher amounts.

ARTICLE V. MEDICAL ASSISTANCE

(a) Children for whom a party state is committed, in accordance with the terms of an agreement of adoption assistance to provide federally aided medical assistance under Title XIX of the Social Security Act, are eligible for such medical assistance during the entire period for which the agreement is in effect. Upon application therefor, the adoptive parents of a child who is the subject of an agreement of adoption assistance must receive a document of identification for medical assistance made out in the child's name. The identification must be issued by the program of medical assistance of the residence state and must entitle the child to the same benefits, pursuant to the same procedures, as any other child who is covered by the program of medical assistance in that state, whether or not the adoptive parents are themselves eligible for medical assistance.

(b) The document of identification must bear no indication that an agreement of adoption assistance with another state is the basis for its issuance. However, if the document of identification is issued pursuant to an agreement for adoption assistance, the records of the issuing state and the adoption assistance state must show the fact, and must contain a copy of the agreement for adoption assistance and any amendment or replacement thereof, as well as all other pertinent information. The adoption assistance and programs of medical assistance of the adoption assistance state shall be notified of the issuance of such identification.

(c) A state which has issued a document of identification for medical assistance pursuant to this compact, which identification is valid and currently in force, shall accept, process and pay claims for medical assistance thereon as it would with other claims for

medical assistance by eligible residents.

(d) The federally aided medical assistance provided by a party state pursuant to this compact must be in accordance with paragraphs (a) through (c) of this Article. In addition, when a child who is covered by an agreement of adoption assistance is living in another party state, payment or reimbursement for any medical services and benefits specified under the terms of the agreement of adoption assistance, which are not available to the child under the Title XIX program of medical assistance of the residence state, must be made by the adoption assistance state as required by its law. Any payments so provided must be of the same kind and at the same rates as provided for children who are living in the adoption assistance state. However, where the payment rate authorized for a covered service under the program of medical assistance of the adoption assistance state exceeds the rate authorized by the residence state for that service, the adoption assistance state shall not be required to pay the additional amounts for the services or benefits covered by the residence state.

(e) A child referred to in paragraph (a) of this Article, whose residence is changed from one party state to another party state is eligible for federally aided medical assistance under the program of medical assistance of the new state of residence.

ARTICLE VI. COMPACT ADMINISTRATION

(a) In accordance with its own laws and procedures, each state which is a party to this compact shall designate an administrator of the compact and such deputy administrators of the compact as it deems necessary. The administrator of the compact shall coordinate all activities under this compact within his or her state. The administrator of the compact shall also be the principal contact for officials and agencies within and without the state for the facilitation of interstate relations involving this compact and the protection of benefits and services provided pursuant thereto. In this capacity, the administrator of the compact will be responsible for assisting the personnel of the child welfare agencies from other party states and adoptive families receiving adoption and medical assistance on an interstate basis.

(b) Acting jointly, the administrators of the compact shall develop uniform forms and administrative procedures for the interstate monitoring and delivery of adoption and medical assistance benefits and services pursuant to this compact. The forms and procedures so developed may deal with such matters as:

- (1) Documentation of continuing eligibility for adoption assistance;
- (2) Interstate payments and reimbursements; and
- (3) Any and all other matters arising pursuant to this compact.

(c) (1) Some or all of the parties to this compact may enter into supplementary agreements for the provision of or payment for additional medical benefits and services, as provided in Article V(d); for interstate service delivery, pursuant to Article IV(d); or for matters related thereto. Such agreements must not be inconsistent with this compact, nor may they relieve the party states of any obligation to provide adoption and medical assistance in accordance with applicable state and federal law and the terms of this compact.

(2) Administrative procedures or forms implementing the supplementary agreements referred to in paragraph (c)(1) of this Article may be developed by joint action of the administrators of the compact of those states which are party to such supplementary agreements.

(d) It shall be the responsibility of the administrator of the compact to ascertain whether and to what extent additional legislation may be necessary in his or her own state to carry out the provisions of this Article or Article IV or any supplementary agreements pursuant to this compact.

ARTICLE VII. JOINDER AND WITHDRAWAL

(a) This compact must be open to joinder by any state. It must enter into force as to a state when its duly constituted and empowered authority has executed it.

(b) In order that the provisions of this compact may be accessible to and known by the general public, and so that they may be implemented as law in each of the party states, the authority which has executed the compact in each party state shall cause the full text of the compact and a notice of its execution to be published in his or her state. The executing authority in any party state shall also provide copies of the compact upon request.

(c) Withdrawal from this compact must be by written notice, sent by the authority which executed it, to the appropriate officials of all other party states, but no such notice may take effect until one year after it is given in accordance with the requirements of this paragraph.

(d) All agreements for adoption assistance outstanding and to which a party state is a signatory at the time when its withdrawal from this compact takes effect continue to have the effects given to them pursuant to this compact until they expire or are terminated in accordance with their provisions. Until such expiration or termination, all beneficiaries of the agreements involved shall continue to have all rights and obligations conferred or imposed by this compact, and the withdrawing state shall continue to administer the compact to the extent necessary to accord and implement fully the rights and protections preserved hereby.

ARTICLE VIII. CONSTRUCTION AND SEVERABILITY

The provisions of this compact must be liberally construed to effectuate the purposes thereof. The provisions of this compact must be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of the United States or of any party state, or where the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance must not be affected thereby. If this compact is held contrary to the Constitution of any state party thereto, the compact may remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(Added to NRS by [1987, 303](#))

NRS 127.420 Administrator of compact: Service at pleasure of Governor; cooperation with all departments, agencies and officers. The administrator of the compact shall serve at the pleasure of the Governor. The administrator shall cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state under the compact.

(Added to NRS by [1987, 309](#))

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CHAPTER 159 - GUARDIANSHIPS

GENERAL PROVISIONS

NRS 159.013	Definitions.
NRS 159.014	“Care provider” defined.
NRS 159.0145	“Citation” defined.
NRS 159.015	“Court” defined.
NRS 159.017	“Guardian” defined.
NRS 159.018	“Home state” defined.
NRS 159.019	“Incompetent” defined.
NRS 159.022	“Limited capacity” defined.
NRS 159.023	“Minor” defined.
NRS 159.024	“Private professional guardian” defined.
NRS 159.025	“Proposed ward” defined.
NRS 159.0255	“Secured residential long-term care facility” defined.
NRS 159.026	“Special guardian” defined.
NRS 159.0265	“State” defined.
NRS 159.027	“Ward” defined.
NRS 159.028	Terms: “Writing” or “written.”
NRS 159.033	Application to guardians ad litem.

PROCEDURE IN GUARDIANSHIP PROCEEDINGS

NRS 159.034	Notice by petitioner: To whom required; manner for providing; waiver of requirement; proof of giving filed with court.
NRS 159.0345	Court authorized to alter requirements concerning publication of notice or citation.
NRS 159.0355	Facsimile of certain papers may be filed with court.
NRS 159.036	Giving of notices and issuance of citations by clerk of court.
NRS 159.037	Venue for appointment of guardian.
NRS 159.039	Proceedings commenced in more than one county.
NRS 159.041	Transfer of proceedings to another county.
NRS 159.043	Titles of petitions; captions of petitions and other documents.
NRS 159.044	Petition for appointment of guardian: Who may submit; content; needs assessment required for proposed adult ward.
NRS 159.0455	Appointment, duties and compensation of guardians ad litem.
NRS 159.046	Appointment, duties and compensation of investigators.
NRS 159.047	Issuance of citation upon filing of petition for appointment of guardian; persons required to be served.
NRS 159.0475	Manner of serving citation.
NRS 159.048	Contents of citation.
NRS 159.0483	Attorney for minor ward or proposed minor ward.
NRS 159.0485	Proposed adult ward advised of right to counsel; appointment, duties and compensation of attorney for adult ward or proposed adult ward.
NRS 159.0486	Finding of vexatious litigant; sanctions.

APPOINTMENT OF GUARDIANS

NRS 159.0487	Types of guardians.
NRS 159.049	Appointment without issuance of citation.
NRS 159.052	Temporary guardian for minor ward who is unable to respond to substantial and immediate risk of physical harm or to need for immediate medical attention: Petition for appointment; conditions; required notice; extension; limited powers.
NRS 159.0523	Temporary guardian for adult ward who is unable to respond to substantial and immediate risk of physical harm or to need for immediate medical attention: Petition for appointment; conditions; required notice; extension; limited powers.
NRS 159.0525	Temporary guardian for ward who is unable to respond to substantial and immediate risk of financial loss: Petition for appointment; conditions; required notice; extension; limited powers.
NRS 159.0535	Attendance of proposed ward at hearing.
NRS 159.054	Finding and order of court upon petition: Dismissal of petition; appointment of special or general guardian.
NRS 159.055	Burden of proof; order appointing guardian; notice of entry of order.
NRS 159.057	Guardian for two or more wards.
NRS 159.059	Qualifications of guardian. [Repealed.]
NRS 159.0592	Court may require guardian to complete training.
NRS 159.0593	Determination of whether proposed ward is prohibited from possessing firearm under federal law.
NRS 159.0594	Determination of whether proposed ward lacks mental capacity to vote.
NRS 159.0595	Private professional guardians.
NRS 159.061	Minor wards: Preference for appointment of parent; other considerations in determining qualifications and suitability of guardian.

NRS 159.0613	Adult wards: Preference for appointment of certain persons; other considerations in determining qualifications and suitability of guardian; appointment of nonresident guardian under certain circumstances; appointment of other persons; disqualifications.
NRS 159.0615	Appointment of master of court or special master to identify person most qualified and suitable to serve as guardian; hearing; recommendation.
NRS 159.0617	Court or master of court or special master authorized to allow certain persons to testify at hearing to determine person most qualified and suitable to serve as guardian.
NRS 159.062	Guardian nominated by will.
NRS 159.065	Bond: General requirements; approval by clerk; liability of sureties; not required under certain circumstances.
NRS 159.067	Bond: Court may require increase, decrease or other change; exoneration of former sureties.
NRS 159.069	Bond: Filing; remedy for breach.
NRS 159.071	Bond: Limitations on action.
NRS 159.073	Taking oath of office; filing appropriate documents and verified acknowledgment; contents of acknowledgment; acknowledgment not required under certain circumstances.
NRS 159.074	Copy of order of appointment to be served upon ward; notice of entry of order to be filed with court.
NRS 159.075	Letters of guardianship.

ADMINISTRATION OF SMALLER ESTATES

NRS 159.0755	Disposition of estate having value not exceeding by more than \$10,000 aggregate amount of unpaid expenses of and claims against estate.
NRS 159.076	Summary administration.

POWERS AND DUTIES OF GUARDIANS

NRS 159.077	General functions of guardian of person and estate.
NRS 159.078	Petition by guardian or other interested person for order authorizing or directing guardian to take certain actions.
NRS 159.079	General functions of guardian of person; establishment or change of ward's residence by guardian.
NRS 159.0795	Supervisory authority and powers of special guardian.
NRS 159.0801	Special guardian of person of limited capacity: Approval of court generally required before commencing act relating to person; grant of certain powers by court.
NRS 159.0805	Approval of court required before guardian may consent to certain treatment of or experiment on ward; conditions for approval.
NRS 159.081	Reports by guardian of person.
NRS 159.083	General functions of guardian of estate.
NRS 159.085	Inventory, supplemental inventory and appraisal of property of ward.
NRS 159.086	Guardian of estate to cause appraisal or valuation of assets of guardianship estate; record or statement in lieu of appraisal.
NRS 159.0865	Certification of appraiser, certified public accountant or expert in valuation; form of appraisal or valuation; purchase by appraiser, certified public accountant or expert in valuation without disclosure prohibited; penalties.
NRS 159.087	Recording letters of guardianship.
NRS 159.089	Possession of and title to property of ward; guardian to secure certain documents.
NRS 159.0893	Access to account or other assets of ward.
NRS 159.0895	Assets retained to pay expenses of funeral and disposal of remains of ward: Amount exempt from all claims; placement in account or trust; reversion of excess to estate of ward.
NRS 159.091	Discovery of debts or property.
NRS 159.093	Collecting obligations due ward.
NRS 159.095	Representing ward in legal proceedings.
NRS 159.097	Voidable contracts and transactions of ward.
NRS 159.099	Liability of guardian of estate on contracts for ward.
NRS 159.101	Exercising rights under stock ownership of ward.
NRS 159.103	Claims against estate of ward.
NRS 159.105	Payment of claims of guardian, claims arising from contracts of guardian and claims for attorney's fees; report of claims and payment.
NRS 159.107	Presentment and verification of claims.
NRS 159.109	Examination and allowance or rejection of claims by guardian.
NRS 159.111	Recourse of claimant when claim rejected or not acted upon.

MANAGEMENT OF ESTATE

NRS 159.113	Guardian required to petition court before taking certain actions; guardian may petition court before taking certain other actions; content of petition.
NRS 159.115	Notice of hearing of petition or account.
NRS 159.117	Court approval required to make certain investments, loans and to exercise certain options; certain investments authorized without prior approval; investing property of two or more wards.
NRS 159.119	Continuing business of ward.
NRS 159.121	Borrowing money for ward.
NRS 159.123	Contracts of ward.
NRS 159.125	Gifts from estate of ward; expenditures for relatives of ward.

TRANSACTIONS INVOLVING REAL AND PERSONAL PROPERTY

GENERAL PROVISIONS

[NRS 159.127](#) Purposes for which property of ward may be sold, leased or placed in trust.
[NRS 159.132](#) Property of ward subject to sale.

SALE OF REAL PROPERTY

[NRS 159.134](#) Selling real property of ward.
[NRS 159.136](#) Order requiring guardian to sell real property of estate.
[NRS 159.1365](#) Application of money from sale of real property of ward that is subject to mortgage or other lien.
[NRS 159.1375](#) Sale of real property of ward to holder of mortgage or lien on such property.
[NRS 159.138](#) Sale of equity of estate in real property of ward that is subject to mortgage or lien and of property that is subject to mortgage or lien.
[NRS 159.1385](#) Contract for sale of real property of ward authorized; limitation on commission; liability of guardian and estate.
[NRS 159.1415](#) Presentation of offer to purchase real property to court for confirmation; division of commission for sale of such property.
[NRS 159.142](#) Sale of interest of ward in real property owned jointly with one or more persons.
[NRS 159.1425](#) Notice of sale of real property of ward: When required; manner of providing; waiver; content.
[NRS 159.1435](#) Public auction for sale of real property: Where held; postponement.
[NRS 159.144](#) Sale of real property of guardianship estate at private sale: Requirements for establishing date; manner of making offers.
[NRS 159.1455](#) Confirmation by court of sale of real property of guardianship estate at private sale.
[NRS 159.146](#) Hearing to confirm sale of real property: Considerations; conditions for confirmation; actions of court if sale is not confirmed; continuance; successive bids if court does not accept offer or bid.
[NRS 159.1465](#) Conveyance of real property of guardianship estate to purchaser upon confirmation of sale by court.
[NRS 159.1475](#) Sale of real property made upon credit.
[NRS 159.148](#) Neglect or refusal of purchaser of real property to comply with terms of sale.
[NRS 159.1495](#) Fraudulent sale of real property of ward by guardian.
[NRS 159.1505](#) Periods of limitation for actions to recover or set aside sale of real property.

SALE OF PERSONAL PROPERTY

[NRS 159.1515](#) Sale of personal property of ward by guardian without notice.
[NRS 159.152](#) Sale of security of ward by guardian.
[NRS 159.1535](#) Notice of sale of personal property of ward: When required; manner of providing content.
[NRS 159.154](#) Place and manner of sale of personal property of ward.
[NRS 159.156](#) Sale of interest in partnership, interest in personal property pledged to ward and choses in action of estate of ward.

LEASE OF PROPERTY

[NRS 159.157](#) Lease of property of ward.
[NRS 159.159](#) Contract with broker to secure lessee.
[NRS 159.161](#) Petition for approval of lease: Content; conditions for approval.
[NRS 159.163](#) Agreement for rental or bailment of personal property.
[NRS 159.165](#) Lease of mining claim or mineral rights; option to purchase.

AGREEMENT TO SELL OR GIVE OPTION TO PURCHASE MINING CLAIM

[NRS 159.1653](#) Petition to enter into agreement; setting date of hearing; notice.
[NRS 159.1657](#) Hearing on petition; court order; recording of court order.
[NRS 159.166](#) Bond and actions required upon court order to enter into agreement.
[NRS 159.1663](#) Neglect or refusal of purchaser of mining claim or of option holder to comply with terms of agreement.
[NRS 159.1667](#) Petition for confirmation of proceedings concerning agreement: When required; notice; hearing.

MISCELLANEOUS PROVISIONS

[NRS 159.167](#) Special sale of property of ward or surrender of interest therein.
[NRS 159.169](#) Advice, instructions and approval of acts of guardian.
[NRS 159.171](#) Executing and recording legal documents.
[NRS 159.173](#) Transfer of property of ward not ademption.
[NRS 159.175](#) Exchange or partition of property of ward.

ACCOUNTINGS

[NRS 159.176](#) Review of guardianship by court.
[NRS 159.177](#) Time for filing account.
[NRS 159.179](#) Contents of account; retention of receipts or vouchers for all expenditures; proving payment when receipt or voucher is lost.
[NRS 159.181](#) Hearing of account.
[NRS 159.183](#) Compensation and expenses of guardian.
[NRS 159.184](#) Accounting by certain care providers.

REMOVAL OR RESIGNATION OF GUARDIAN; TERMINATION OF GUARDIANSHIP

REMOVAL OF GUARDIAN

[NRS 159.185](#) Conditions for removal.
[NRS 159.1852](#) Duty of guardian to notify court if no longer qualified to serve as guardian; appointment of successor guardian.

- [NRS 159.1853](#) **Petition for removal.**
- [NRS 159.1855](#) **Issuance and service of citation concerning filing of petition for removal; actions of court if ward or estate may suffer loss or injury during time required for service.**
- [NRS 159.1857](#) **Actions of court when petition to remove guardian is deemed sufficient and guardian fails to appear.**
- [NRS 159.186](#) **Additional limitation governing removal of guardian of minor; considerations for court in determining best interests of minor; removal of guardian of minor.**
- [NRS 159.187](#) **Successor guardians.**

RESIGNATION OF GUARDIAN

- [NRS 159.1873](#) **Petition tendering resignation.**
- [NRS 159.1875](#) **Approval of resignation of guardian of person.**
- [NRS 159.1877](#) **Resignation of guardian of estate: Accounting required before approval; sanctions for failure to file accounting; acceptance when estate has more than one guardian; court order.**

TERMINATION OF GUARDIANSHIP

- [NRS 159.1905](#) **Petition for termination or modification; appointment of attorney to represent ward; burden of proof; issuance of citation; penalties for not filing petition in good faith.**
- [NRS 159.191](#) **Termination of guardianship of person, estate or person and estate; procedure upon death of ward.**
- [NRS 159.192](#) **Termination of temporary guardianship.**
- [NRS 159.193](#) **Winding up affairs.**
- [NRS 159.195](#) **Disposition of claims of creditor after termination of guardianship by death of ward.**
- [NRS 159.197](#) **Delivery of physical possession of property of ward; petition to modify title to such property; handling property of deceased ward.**
- [NRS 159.199](#) **Discharge of guardian; exoneration of bond; order of discharge.**

MAINTENANCE OF RECORDS

- [NRS 159.19905](#) **Time period for which certain records are required to be maintained.**

ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION (UNIFORM ACT)

GENERAL PROVISIONS

- [NRS 159.1991](#) **Short title.**
- [NRS 159.1993](#) **International application of Act.**
- [NRS 159.1994](#) **Communication with other courts.**
- [NRS 159.1995](#) **Cooperation with other courts.**
- [NRS 159.1997](#) **Taking testimony in another state.**

JURISDICTION

- [NRS 159.1998](#) **General provisions governing jurisdiction and special jurisdiction.**
- [NRS 159.1999](#) **Declination of jurisdiction generally.**
- [NRS 159.202](#) **Declination of jurisdiction by reason of conduct.**
- [NRS 159.2021](#) **Proceedings in more than one state.**
- [NRS 159.2023](#) **Transfer of jurisdiction of guardianship to another state.**
- [NRS 159.2024](#) **Transfer of jurisdiction of guardianship or conservatorship from another state to this State.**

REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

- [NRS 159.2025](#) **Registration of guardianship orders issued in another state.**
- [NRS 159.2027](#) **Effect of registration of guardianship orders issued in another state.**

MISCELLANEOUS PROVISIONS

- [NRS 159.2029](#) **Uniformity of application and construction.**

TRANSACTIONS WITHOUT GUARDIANSHIP IN NEVADA

- [NRS 159.203](#) **Delivering property or paying obligations to foreign guardian.**

APPOINTMENT OF GUARDIAN OF MINOR WITHOUT APPROVAL OF COURT

- [NRS 159.205](#) **Appointment of short-term guardianship for minor child by parent: When authorized; content of written instrument; term; termination.**
- [NRS 159.215](#) **Guardian of person of minor child of member of Armed Forces.**

ACTS AGAINST OR AFFECTING WARD OR PROPOSED WARD

- [NRS 159.305](#) **Petition alleging that person disposed of money of ward or has evidence of interest of ward in or to property.**
- [NRS 159.315](#) **Order of court upon findings concerning allegations that person disposed of money of ward or has evidence of**

interest of ward in or to property; nonappearance or noncompliance by person cited; effect of order.

APPEALS

[NRS 159.325](#) Appeals to appellate court of competent jurisdiction.

GENERAL PROVISIONS

NRS 159.013 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in [NRS 159.014](#) to [159.027](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by [1969, 412](#); A [1981, 1933](#); [2003, 1770](#); [2005, 815](#); [2009, 1644, 2519](#))

NRS 159.014 “Care provider” defined. “Care provider” includes any public or private institution located within or outside this state which provides facilities for the care or maintenance of incompetents, persons of limited capacity or minors.

(Added to NRS by [1969, 412](#); A [1981, 1933](#); [2003, 1771](#)) — (Substituted in revision for NRS 159.021)

NRS 159.0145 “Citation” defined. “Citation” means a document issued by the clerk of the court, as authorized by statute or ordered by the court, requiring a person to appear, directing a person to act or conduct himself or herself in a specified way, or notifying a person of a hearing.

(Added to NRS by [2003, 1757](#))

NRS 159.015 “Court” defined. “Court” means any court or judge having jurisdiction of the persons and estates of minors, incompetent persons, or persons of limited capacity.

(Added to NRS by [1969, 412](#); A [1981, 1933](#))

NRS 159.017 “Guardian” defined. “Guardian” means any person appointed under this chapter as guardian of the person, of the estate, or of the person and estate for any other person, and includes an organization under [NRS 662.245](#) and joint appointees. The term includes, without limitation, a special guardian or, if the context so requires, a person appointed in another state who serves in the same capacity as a guardian in this State.

(Added to NRS by [1969, 412](#); A [1971, 1010](#); [1981, 1933](#); [1999, 849](#); [2009, 1644](#))

NRS 159.018 “Home state” defined. “Home state” means the state in which the proposed ward was physically present for at least 6 consecutive months, including any temporary absence from the state, immediately before the filing of a petition for the appointment of a guardian.

(Added to NRS by [2009, 1639](#))

NRS 159.019 “Incompetent” defined. “Incompetent” means an adult person who, by reason of mental illness, mental deficiency, disease, weakness of mind or any other cause, is unable, without assistance, properly to manage and take care of himself or herself or his or her property, or both. The term includes a person who is mentally incapacitated.

(Added to NRS by [1969, 412](#); A [1999, 1396](#); [2003, 1770](#))

NRS 159.022 “Limited capacity” defined. A person is of “limited capacity” if:

1. The person is able to make independently some but not all of the decisions necessary for the person’s own care and the management of the person’s property; and

2. The person is not a minor.

(Added to NRS by [1981, 1931](#); A [1999, 1396](#); [2003, 1771](#))

NRS 159.023 “Minor” defined. “Minor” means any person who is:

1. Less than 18 years of age; or

2. Less than 19 years of age if the guardianship is continued until the person reaches the age of 19 years pursuant to [NRS 159.191](#).

(Added to NRS by [1969, 412](#); A [2003, 1771](#))

NRS 159.024 “Private professional guardian” defined.

1. “Private professional guardian” means a person who receives compensation for services as a guardian to three or more wards who are not related to the guardian by blood or marriage.

2. For the purposes of this chapter, the term includes:

(a) A person who serves as a private professional guardian and who is required to have a license issued pursuant to [chapter 628B](#) of NRS.

(b) A person who serves as a private professional guardian but who is exempt pursuant to [NRS 159.0595](#) or [628B.110](#) from the requirement to have a license issued pursuant to [chapter 628B](#) of NRS.

3. The term does not include:

(a) A governmental agency.

(b) A public guardian appointed or designated pursuant to the provisions of [chapter 253](#) of NRS.

(Added to NRS by [2005, 814](#); A [2009, 1644](#); [2015, 2365](#))

NRS 159.025 “Proposed ward” defined. “Proposed ward” means any person for whom proceedings for the appointment of a guardian have been initiated in this State or, if the context so requires, for whom similar proceedings have been initiated in

another state.

(Added to NRS by [1969, 412](#); A [2009, 1644](#))

NRS 159.0255 “Secured residential long-term care facility” defined.

1. “Secured residential long-term care facility” means a residential facility providing long-term care that is designed to restrict a resident of the facility from leaving the facility, a part of the facility or the grounds of the facility through the use of locks or other mechanical means unless the resident is accompanied by a staff member of the facility or another person authorized by the facility or the guardian.

2. The term does not include a residential facility providing long-term care which uses procedures or mechanisms only to track the location or actions of a resident or to assist a resident to perform the normal activities of daily living.

(Added to NRS by [2009, 2519](#))

NRS 159.026 “Special guardian” defined. “Special guardian” means a guardian of a person of limited capacity, including, without limitation, such a guardian who is appointed because a person of limited capacity has voluntarily petitioned for the appointment and the court has determined that the person has the requisite capacity to make such a petition.

(Added to NRS by [1981, 1931](#); A [2003, 1771](#))

NRS 159.0265 “State” defined. “State” means any state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(Added to NRS by [2009, 1639](#))

NRS 159.027 “Ward” defined. “Ward” means any person for whom a guardian has been appointed.

(Added to NRS by [1969, 412](#))

NRS 159.028 Terms: “Writing” or “written.” As used in this chapter, unless the context otherwise requires, when the term “writing” or “written” is used in reference to a will or instrument, the term includes an electronic will as defined in [NRS 132.119](#) and an electronic trust as defined in [NRS 163.0015](#).

(Added to NRS by [2001, 2350](#))

NRS 159.033 Application to guardians ad litem. Except as otherwise provided in this chapter, the provisions of this chapter do not apply to guardians ad litem.

(Added to NRS by [1969, 412](#); A [2003, 1771](#))

PROCEDURE IN GUARDIANSHIP PROCEEDINGS

NRS 159.034 Notice by petitioner: To whom required; manner for providing; waiver of requirement; proof of giving filed with court.

1. Except as otherwise provided in this section, by specific statute or as ordered by the court, a petitioner in a guardianship proceeding shall give notice of the time and place of the hearing on any petition filed in the guardianship proceeding to:

- (a) Any minor ward who is 14 years of age or older.
- (b) The parent or legal guardian of any minor ward who is less than 14 years of age.
- (c) The spouse of the ward and all other known relatives of the ward who are within the second degree of consanguinity.
- (d) Any other interested person or the person’s attorney who has filed a request for notice in the guardianship proceedings and has served a copy of the request upon the guardian. The request for notice must state the interest of the person filing the request and the person’s name and address, or that of his or her attorney.
- (e) The guardian, if the petitioner is not the guardian.
- (f) Any person or care provider who is providing care for the ward, except that if the person or care provider is not related to the ward, such person or care provider must not receive copies of any inventory or accounting.
- (g) Any office of the Department of Veterans Affairs in this State if the ward is receiving any payments or benefits through the Department of Veterans Affairs.
- (h) The Director of the Department of Health and Human Services if the ward has received or is receiving benefits from Medicaid.
- (i) Those persons entitled to notice if a proceeding were brought in the ward’s home state.

2. The petitioner shall give notice not later than 10 days before the date set for the hearing:

- (a) By mailing a copy of the notice by certified, registered or ordinary first-class mail to the residence, office or post office address of each person required to be notified pursuant to this section;
- (b) By personal service; or
- (c) In any other manner ordered by the court, upon a showing of good cause.

3. Except as otherwise provided in this subsection, if none of the persons entitled to notice of a hearing on a petition pursuant to this section can, after due diligence, be served by certified mail or personal service and this fact is proven by affidavit to the satisfaction of the court, service of the notice must be made by publication in the manner provided by [N.R.C.P. 4\(e\)](#). In all such cases, the notice must be published not later than 10 days before the date set for the hearing. If, after the appointment of a guardian, a search for relatives of the ward listed in paragraph (c) of subsection 1 fails to find any such relative, the court may waive the notice by publication required by this subsection.

4. For good cause shown, the court may waive the requirement of giving notice.

5. A person entitled to notice pursuant to this section may waive such notice. Such a waiver must be in writing and filed with the court.

6. On or before the date set for the hearing, the petitioner shall file with the court proof of giving notice to each person entitled to notice pursuant to this section.

(Added to NRS by [2003, 1768](#); A [2009, 1644](#); [2013, 905](#))

NRS 159.0345 Court authorized to alter requirements concerning publication of notice or citation. If publication of a notice or citation is required pursuant to this chapter, the court may, for good cause shown:

1. Allow fewer publications to be made within the time for publication; and
2. Extend or shorten the time in which the publications must be made.

(Added to NRS by [2003, 1769](#); A [2013, 906](#))

NRS 159.0355 Facsimile of certain papers may be filed with court. If a petition, notice, objection, consent, waiver or other paper may be filed, a true and correct facsimile of it may be filed, if the original is filed within a reasonable time or at such time prescribed by the court.

(Added to NRS by [2003, 1769](#))

NRS 159.036 Giving of notices and issuance of citations by clerk of court. All notices required to be given by this chapter may be given by the clerk of the court without an order from the court, and when so given, for the time and in the manner required by law, they are legal and valid as though made upon an order from the court. If use of a citation is authorized or required by statute, the citation may be issued by the clerk of the court on the request of a party or the party's attorney without a court order, unless an order is expressly required by statute.

(Added to NRS by [2003, 1769](#))

NRS 159.037 Venue for appointment of guardian.

1. The venue for the appointment of a guardian when the ward's home state is this State must be the county where the proposed ward resides.

2. If the proper venue may be in two or more counties, the county in which the proceeding is first commenced is the proper county in which to continue the proceedings.

3. Upon the filing of a petition showing that the proper venue is inconvenient, a venue other than that provided in subsection 1 may accept the proceeding.

(Added to NRS by [1969, 413](#); A [2003, 1771](#); [2009, 1645](#))

NRS 159.039 Proceedings commenced in more than one county.

1. If proceedings for the appointment of a guardian for the same proposed ward are commenced in more than one county in this State, and the ward's home state is this State, they shall be stayed, except in the county where first commenced, until final determination of venue in that county. If the proper venue is finally determined to be in another county, the court shall cause a transcript of the proceedings and all original papers filed therein, all certified by the clerk of the court, to be sent to the clerk of the court of the proper county.

2. A proceeding is considered commenced by the filing of a petition.

3. The proceedings first legally commenced for the appointment of a guardian of the estate or of the person and estate extends to all the property of the proposed ward which is in this state.

(Added to NRS by [1969, 413](#); A [2009, 1645](#))

NRS 159.041 Transfer of proceedings to another county. A court having before it any guardianship matter for a ward whose home state is this State may transfer the matter to another county in the interest of the ward or, if not contrary to the interest of the ward, for the convenience of the guardian. A petition for the transfer, setting forth the reasons therefor, may be filed in the guardianship proceeding. If the court is satisfied that the transfer is in the interest of the ward or, if not contrary to the interest of the ward, for the convenience of the guardian, the court shall make an order of transfer and cause a transcript of the proceedings in the matter, all original papers filed in such proceedings and the original bond filed by the guardian, to be certified by the clerk of the court originally hearing the matter and sent to the clerk of the court of the other county. Upon receipt of the transcript, papers and bond, and the filing of them for record, the court of the other county has complete jurisdiction of the matter, and thereafter all proceedings shall be as though they were commenced in that court.

(Added to NRS by [1969, 413](#); A [2009, 1645](#))

NRS 159.043 Titles of petitions; captions of petitions and other documents.

1. All petitions filed in any guardianship proceeding must bear the title of the court and cause.

2. The caption of all petitions and other documents filed in a guardianship proceeding must read, "In The Matter of the Guardianship of (the person, the estate, or the person and estate), (the legal name of the person), (adult or minor)."

(Added to NRS by [1969, 413](#); A [1981, 1934](#); [2003, 1772](#))

NRS 159.044 Petition for appointment of guardian: Who may submit; content; needs assessment required for proposed adult ward.

1. Except as otherwise provided in [NRS 127.045](#), a proposed ward, a governmental agency, a nonprofit corporation or any interested person may petition the court for the appointment of a guardian.

2. To the extent the petitioner knows or reasonably may ascertain or obtain, the petition must include, without limitation:

- (a) The name and address of the petitioner.
- (b) The name, date of birth and current address of the proposed ward.

(c) A copy of one of the following forms of identification of the proposed ward which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in [NRS 239.0115](#) or as otherwise required to carry out a specific statute, maintained in a confidential manner:

- (1) A social security number;
- (2) A taxpayer identification number;
- (3) A valid driver's license number;
- (4) A valid identification card number; or
- (5) A valid passport number.

È If the information required pursuant to this paragraph is not included with the petition, the information must be provided to the court not later than 120 days after the appointment of a guardian or as otherwise ordered by the court.

- (d) If the proposed ward is a minor, the date on which the proposed ward will attain the age of majority and:
 - (1) Whether there is a current order concerning custody and, if so, the state in which the order was issued; and
 - (2) Whether the petitioner anticipates that the proposed ward will need guardianship after attaining the age of majority.
- (e) Whether the proposed ward is a resident or nonresident of this State.
- (f) The names and addresses of the spouse of the proposed ward and the relatives of the proposed ward who are within the second degree of consanguinity.
- (g) The name, date of birth and current address of the proposed guardian. If the proposed guardian is a private professional guardian, the petition must include proof that the guardian meets the requirements of [NRS 159.0595](#). If the proposed guardian is not a private professional guardian, the petition must include a statement that the guardian currently is not receiving compensation for services as a guardian to more than one ward who is not related to the person by blood or marriage.
- (h) A copy of one of the following forms of identification of the proposed guardian which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in [NRS 239.0115](#) or as otherwise required to carry out a specific statute, maintained in a confidential manner:
 - (1) A social security number;
 - (2) A taxpayer identification number;
 - (3) A valid driver's license number;
 - (4) A valid identification card number; or
 - (5) A valid passport number.
- (i) Whether the proposed guardian has ever been convicted of a felony and, if so, information concerning the crime for which the proposed guardian was convicted and whether the proposed guardian was placed on probation or parole.
- (j) A summary of the reasons why a guardian is needed and recent documentation demonstrating the need for a guardianship. If the proposed ward is an adult, the documentation must include, without limitation:
 - (1) A certificate signed by a physician who is licensed to practice medicine in this State or who is employed by the Department of Veterans Affairs, a letter signed by any governmental agency in this State which conducts investigations or a certificate signed by any other person whom the court finds qualified to execute a certificate, stating:
 - (I) The need for a guardian;
 - (II) Whether the proposed ward presents a danger to himself or herself or others;
 - (III) Whether the proposed ward's attendance at a hearing would be detrimental to the proposed ward;
 - (IV) Whether the proposed ward would comprehend the reason for a hearing or contribute to the proceeding; and
 - (V) Whether the proposed ward is capable of living independently with or without assistance; and
 - (2) If the proposed ward is determined to have the limited capacity to consent to the appointment of a special guardian, a written consent to the appointment of a special guardian from the ward.
- (k) Whether the appointment of a general or a special guardian is sought.
- (l) A general description and the probable value of the property of the proposed ward and any income to which the proposed ward is or will be entitled, if the petition is for the appointment of a guardian of the estate or a special guardian. If any money is paid or is payable to the proposed ward by the United States through the Department of Veterans Affairs, the petition must so state.
- (m) The name and address of any person or care provider having the care, custody or control of the proposed ward.
- (n) If the petitioner is not the spouse or natural child of the proposed ward, a declaration explaining the relationship of the petitioner to the proposed ward or to the proposed ward's family or friends, if any, and the interest, if any, of the petitioner in the appointment.
- (o) Requests for any of the specific powers set forth in [NRS 159.117](#) to [159.175](#), inclusive, necessary to enable the guardian to carry out the duties of the guardianship.
- (p) If the guardianship is sought as the result of an investigation of a report of abuse, neglect, exploitation, isolation or abandonment of the proposed ward, whether the referral was from a law enforcement agency or a state or county agency.
- (q) Whether the proposed ward or the proposed guardian is a party to any pending criminal or civil litigation.
- (r) Whether the guardianship is sought for the purpose of initiating litigation.
- (s) Whether the proposed ward has executed a durable power of attorney for health care, a durable power of attorney for financial matters or a written nomination of guardian and, if so, who the named agents are for each document.
- (t) Whether the proposed guardian has filed for or received protection under the federal bankruptcy laws within the immediately preceding 7 years.

3. Before the court makes a finding pursuant to [NRS 159.054](#), a petitioner seeking a guardian for a proposed adult ward must provide the court with an assessment of the needs of the proposed adult ward completed by a licensed physician which identifies the limitations of capacity of the proposed adult ward and how such limitations affect the ability of the proposed adult ward to maintain his or her safety and basic needs. The court may prescribe the form in which the assessment of the needs of the proposed adult ward must be filed.

(Added to NRS by [1981, 1931](#); [A 1989, 533](#); [1995, 1076, 2771](#); [1997, 1343](#); [1999, 1396](#); [2001 Special Session, 15](#); [2003, 1772](#); [2005, 815](#); [2007, 2025, 2075](#); [2009, 1646, 2519](#); [2013, 906](#); [2015, 818](#))

NRS 159.0455 Appointment, duties and compensation of guardians ad litem.

- 1. On or after the date of the filing of a petition to appoint a guardian:
 - (a) The court may appoint a person to represent the ward or proposed ward as a guardian ad litem; and
 - (b) The guardian ad litem must represent the ward or proposed ward as a guardian ad litem until relieved of that duty by court order.
- 2. Upon the appointment of the guardian ad litem, the court shall set forth in the order of appointment the duties of the guardian ad litem.
- 3. The guardian ad litem is entitled to reasonable compensation from the estate of the ward or proposed ward. If the court finds that a person has unnecessarily or unreasonably caused the appointment of a guardian ad litem, the court may order the person to pay to the estate of the ward or proposed ward all or part of the expenses associated with the appointment of the guardian ad litem.

(Added to NRS by [2003, 1758](#))

NRS 159.046 Appointment, duties and compensation of investigators.

1. Upon filing of the petition, or any time thereafter, the court may appoint one or more investigators to:
 - (a) Locate persons who perform services needed by the proposed ward and other public and private resources available to the proposed ward.
 - (b) Determine any competing interests in the appointment of a guardian.
 - (c) Investigate allegations or claims which affect a ward or proposed ward.
2. An investigator may be an employee of a social service agency, family service officer of the court, public guardian, physician or other qualified person.
3. An investigator shall file with the court and parties a report concerning the scope of the appointment of the guardian and any special powers which a guardian would need to assist the proposed ward.
4. An investigator who is appointed pursuant to this section is entitled to reasonable compensation from the estate of the proposed ward. If the court finds that a person has unnecessarily or unreasonably caused the investigation, the court may order the person to pay to the estate of the proposed ward all or part of the expenses associated with the investigation.

(Added to NRS by [1981, 1932](#); A [2003, 1773](#))

NRS 159.047 Issuance of citation upon filing of petition for appointment of guardian; persons required to be served.

1. Except as otherwise provided in [NRS 159.0475](#) and [159.049](#) to [159.0525](#), inclusive, upon the filing of a petition under [NRS 159.044](#), the clerk shall issue a citation setting forth a time and place for the hearing and directing the persons or care provider referred to in subsection 2 to appear and show cause why a guardian should not be appointed for the proposed ward.
2. A citation issued under subsection 1 must be served upon:
 - (a) A proposed ward who is 14 years of age or older;
 - (b) The spouse of the proposed ward and all other known relatives of the proposed ward who are:
 - (1) Fourteen years of age or older; and
 - (2) Within the second degree of consanguinity;
 - (c) The parents and custodian of the proposed ward;
 - (d) Any person or officer of a care provider having the care, custody or control of the proposed ward;
 - (e) The proposed guardian, if the petitioner is not the proposed guardian;
 - (f) Any office of the Department of Veterans Affairs in this State if the proposed ward is receiving any payments or benefits through the Department of Veterans Affairs; and
 - (g) The Director of the Department of Health and Human Services if the proposed ward has received or is receiving any benefits from Medicaid.

(Added to NRS by [1969, 414](#); A [1981, 1934](#); [1999, 1397](#); [2001, 870](#); [2003, 1774](#); [2013, 909](#))

NRS 159.0475 Manner of serving citation.

1. A copy of the citation issued pursuant to [NRS 159.047](#) must be served by:
 - (a) Certified mail, with a return receipt requested, on each person required to be served pursuant to [NRS 159.047](#) at least 20 days before the hearing; or
 - (b) Personal service in the manner provided pursuant to [N.R.C.P. 4\(d\)](#) at least 10 days before the date set for the hearing on each person required to be served pursuant to [NRS 159.047](#).
2. If none of the persons on whom the citation is to be served can, after due diligence, be served by certified mail or personal service and this fact is proven, by affidavit, to the satisfaction of the court, service of the citation must be made by publication in the manner provided by [N.R.C.P. 4\(e\)](#). In all such cases, the citation must be published at least 20 days before the date set for the hearing.
3. A citation need not be served on a person or an officer of the care provider who has signed the petition or a written waiver of service of citation or who makes a general appearance.
4. The court may find that notice is sufficient if:
 - (a) The citation has been served by certified mail, with a return receipt requested, or by personal service on the proposed ward, care provider or public guardian required to be served pursuant to [NRS 159.047](#); and
 - (b) At least one relative of the proposed ward who is required to be served pursuant to [NRS 159.047](#) has been served, as evidenced by the return receipt or the certificate of service. If the court finds that at least one relative of the proposed ward has not received notice that is sufficient, the court will require the citation to be published pursuant to subsection 2.

(Added to NRS by [1969, 414](#); A [1981, 1935](#); [1995, 1077](#); [2003, 1775](#); [2013, 909](#))

NRS 159.048 Contents of citation. The citation issued pursuant to [NRS 159.047](#) must state that the:

1. Proposed ward may be adjudged to be incompetent or of limited capacity and a guardian may be appointed for the proposed ward;
2. Proposed ward's rights may be affected as specified in the petition;
3. Proposed ward has the right to appear at the hearing and to oppose the petition; and
4. Proposed ward has the right to be represented by an attorney, who may be appointed for the proposed ward by the court if the proposed ward is unable to retain one.

(Added to NRS by [1981, 1931](#); A [2003, 1775](#))

NRS 159.0483 Attorney for minor ward or proposed minor ward. A minor ward or proposed minor ward who is the subject of proceedings held pursuant to this chapter may be represented by an attorney at all stages of the proceedings. If the minor ward or proposed minor ward is represented by an attorney, the attorney has the same authority and rights as an attorney representing a party to the proceedings.

(Added to NRS by [2001, 1708](#))

NRS 159.0485 Proposed adult ward advised of right to counsel; appointment, duties and compensation of attorney for adult ward or proposed adult ward.

1. At the first hearing for the appointment of a guardian for a proposed adult ward, the court shall advise the proposed adult ward who is in attendance at the hearing or who is appearing by videoconference at the hearing of his or her right to counsel and determine whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding. If the proposed adult ward is not in attendance at the hearing because the proposed adult ward has been excused pursuant to [NRS 159.0535](#) and is not appearing by videoconference at the hearing, the proposed adult ward must be advised of his or her right to counsel pursuant to subsection 2 of [NRS 159.0535](#).

2. If an adult ward or proposed adult ward is unable to retain legal counsel and requests the appointment of counsel at any stage in a guardianship proceeding and whether or not the adult ward or proposed adult ward lacks or appears to lack capacity, the court shall, at or before the time of the next hearing, appoint an attorney who works for legal aid services, if available, or a private attorney to represent the adult ward or proposed adult ward. The appointed attorney shall represent the adult ward or proposed adult ward until relieved of the duty by court order.

3. Subject to the discretion and approval of the court, the attorney for the adult ward or proposed adult ward is entitled to reasonable compensation and expenses. Unless the court determines that the adult ward or proposed adult ward does not have the ability to pay such compensation and expenses or the court shifts the responsibility of payment to a third party, the compensation and expenses must be paid from the estate of the adult ward or proposed adult ward, unless the compensation and expenses are provided for or paid by another person or entity. If the court finds that a person has unnecessarily or unreasonably caused the appointment of an attorney, the court may order the person to pay to the estate of the adult ward or proposed adult ward all or part of the expenses associated with the appointment of the attorney.

(Added to NRS by [1999, 1396](#); A [2003, 1776](#); [2009, 2521](#); [2013, 910](#))

NRS 159.0486 Finding of vexatious litigant; sanctions.

1. A court may find that a petitioner is a vexatious litigant if a person, other than the ward:

- (a) Files a petition which is without merit or intended to harass or annoy the guardian; and
- (b) Has previously filed pleadings in a guardianship proceeding that were without merit or intended to harass or annoy the guardian.

2. If a court finds a person is a vexatious litigant pursuant to subsection 1, the court may impose sanctions on the petitioner in an amount sufficient to reimburse the estate of the ward for all or part of the expenses incurred by the estate of the ward to defend the petition, to respond to the petition and for any other pecuniary losses which are associated with the petition.

(Added to NRS by [2009, 1639](#))

APPOINTMENT OF GUARDIANS

NRS 159.0487 Types of guardians. Any court of competent jurisdiction may appoint:

1. Guardians of the person, of the estate, or of the person and estate for incompetents or minors whose home state is this State.
2. Guardians of the person or of the person and estate for incompetents or minors who, although not residents of this State, are physically present in this State and whose welfare requires such an appointment.
3. Guardians of the estate for nonresident incompetents or nonresident minors who have property within this State.
4. Special guardians.
5. Guardians ad litem.

(Added to NRS by [1969, 412](#); A [1981, 1934](#); [2003, 1771](#); [2009, 1648](#)) — (Substituted in revision for NRS 159.035)

NRS 159.049 Appointment without issuance of citation. The court may, without issuing a citation, appoint a guardian for the proposed ward if the petitioner is a parent who has sole legal and physical custody of the proposed ward as evidenced by a valid court order or birth certificate and who is seeking the appointment of a guardian for the minor child of the parent. If the proposed ward is a minor who is 14 years of age or older:

1. The petition must be accompanied by the written consent of the minor to the appointment of the guardian; or
2. The minor must consent to the appointment of the guardian in open court.

(Added to NRS by [1969, 414](#); A [1981, 1934](#); [1997, 1194](#); [2003, 1776](#); [2009, 1648](#))

NRS 159.052 Temporary guardian for minor ward who is unable to respond to substantial and immediate risk of physical harm or to need for immediate medical attention: Petition for appointment; conditions; required notice; extension; limited powers.

1. A petitioner may request the court to appoint a temporary guardian for a ward who is a minor and who is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention. To support the request, the petitioner must set forth in a petition and present to the court under oath:

(a) Documentation which shows that the proposed ward faces a substantial and immediate risk of physical harm or needs immediate medical attention and lacks capacity to respond to the risk of harm or obtain the necessary medical attention. Such documentation must include, without limitation:

- (1) A copy of the birth certificate of the proposed ward or other documentation verifying the age of the proposed ward; and
- (2) A letter signed by any governmental agency in this State which conducts investigations or a police report indicating whether the proposed ward presents a danger to himself or herself or others, or whether the proposed ward is or has been subjected to abuse, neglect or exploitation; and

(b) Facts which show that:

- (1) The petitioner has tried in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#) by telephone or in writing before the filing of the petition;
- (2) The proposed ward would be exposed to an immediate risk of physical harm if the petitioner were to provide notice to the persons entitled to notice pursuant to [NRS 159.047](#) before the court determines whether to appoint a temporary guardian; or
- (3) Giving notice to the persons entitled to notice pursuant to [NRS 159.047](#) is not feasible under the circumstances.

2. The court may appoint a temporary guardian to serve for 10 days if the court:

(a) Finds reasonable cause to believe that the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention based on the age of the proposed ward and other factors deemed relevant by the court; and

(b) Is satisfied that the petitioner has tried in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#) or that giving notice to those persons is not feasible under the circumstances, or determines that such notice is not required pursuant to subparagraph (2) of paragraph (b) of subsection 1.

3. Except as otherwise provided in subsection 4, after the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#), including, without limitation, notice of any hearing to extend the temporary guardianship. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.

4. If, before the appointment of a temporary guardian, the court determined that advance notice was not required pursuant to subparagraph (2) of paragraph (b) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to [NRS 159.047](#) without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after the petitioner discovers the existence, identity and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

5. Not later than 10 days after the date of the appointment of a temporary guardian pursuant to subsection 2, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 7, if the court finds by clear and convincing evidence that the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention, the court may extend the temporary guardianship until a general or special guardian is appointed pursuant to subsection 8.

6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall limit the powers of the temporary guardian to those necessary to respond to the substantial and immediate risk of physical harm or to a need for immediate medical attention.

7. The court may not extend a temporary guardianship pursuant to subsection 5 beyond the initial period of 10 days unless the petitioner demonstrates that:

- (a) The provisions of [NRS 159.0475](#) have been satisfied; or
- (b) Notice by publication pursuant to [N.R.C.P. 4\(e\)](#) is currently being undertaken.

8. The court may extend the temporary guardianship, for good cause shown, for not more than two successive 60-day periods, except that the court shall not cause the temporary guardianship to continue longer than 5 months unless extraordinary circumstances are shown.

(Added to NRS by [1981, 1932](#); A [1997, 1194](#); [1999, 1397](#); [2001, 871](#); [2003, 1776](#); [2007, 2026](#); [2009, 1649](#); [2013, 910](#))

NRS 159.0523 Temporary guardian for adult ward who is unable to respond to substantial and immediate risk of physical harm or to need for immediate medical attention: Petition for appointment; conditions; required notice; extension; limited powers.

1. A petitioner may request the court to appoint a temporary guardian for a ward who is an adult and who is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention. To support the request, the petitioner must set forth in a petition and present to the court under oath:

(a) Documentation which shows the proposed ward faces a substantial and immediate risk of physical harm or needs immediate medical attention and lacks capacity to respond to the risk of harm or obtain the necessary medical attention. Such documentation must include, without limitation, a certificate signed by a physician who is licensed to practice medicine in this State or who is employed by the Department of Veterans Affairs, a letter signed by any governmental agency in this State which conducts investigations or a police report indicating:

(1) That the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention;

(2) Whether the proposed ward presents a danger to himself or herself or others; and

(3) Whether the proposed ward is or has been subjected to abuse, neglect, exploitation, isolation or abandonment; and

(b) Facts which show that:

(1) The petitioner has tried in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#) by telephone or in writing before the filing of the petition;

(2) The proposed ward would be exposed to an immediate risk of physical harm if the petitioner were to provide notice to the persons entitled to notice pursuant to [NRS 159.047](#) before the court determines whether to appoint a temporary guardian; or

(3) Giving notice to the persons entitled to notice pursuant to [NRS 159.047](#) is not feasible under the circumstances.

2. The court may appoint a temporary guardian to serve for 10 days if the court:

(a) Finds reasonable cause to believe that the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention; and

(b) Is satisfied that the petitioner has tried in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#) or that giving notice to those persons is not feasible under the circumstances, or determines that such notice is not required pursuant to subparagraph (2) of paragraph (b) of subsection 1.

3. Except as otherwise provided in subsection 4, after the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#), including, without limitation, notice of any hearing to extend the temporary guardianship. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.

4. If, before the appointment of a temporary guardian, the court determined that advance notice was not required pursuant to subparagraph (2) of paragraph (b) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to [NRS 159.047](#) without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after the petitioner discovers the existence, identity and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

5. Not later than 10 days after the date of the appointment of a temporary guardian pursuant to subsection 2, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 7, the court may extend the temporary guardianship until a general or special guardian is appointed pursuant to subsection 8 if:

(a) The court finds by clear and convincing evidence that the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention; and

(b) The extension of the temporary guardianship is necessary and in the best interests of the proposed ward.

6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall

limit the powers of the temporary guardian to those necessary to respond to the substantial and immediate risk of physical harm or to a need for immediate medical attention.

7. The court may not extend a temporary guardianship pursuant to subsection 5 beyond the initial period of 10 days unless the petitioner demonstrates that:

- (a) The provisions of [NRS 159.0475](#) have been satisfied; or
- (b) Notice by publication pursuant to [N.R.C.P. 4\(e\)](#) is currently being undertaken.

8. The court may extend the temporary guardianship, for good cause shown, for not more than two successive 60-day periods, except that the court shall not cause the temporary guardianship to continue longer than 5 months unless extraordinary circumstances are shown.

(Added to NRS by [2001, 867](#); A [2003, 1778](#); [2007, 2028](#); [2009, 1650](#); [2013, 912](#); [2015, 820](#))

NRS 159.0525 Temporary guardian for ward who is unable to respond to substantial and immediate risk of financial loss: Petition for appointment; conditions; required notice; extension; limited powers.

1. A petitioner may request the court to appoint a temporary guardian for a ward who is unable to respond to a substantial and immediate risk of financial loss. To support the request, the petitioner must set forth in a petition and present to the court under oath:

(a) Documentation which shows that the proposed ward faces a substantial and immediate risk of financial loss and lacks capacity to respond to the risk of loss. Such documentation must include, without limitation, a certificate signed by a physician who is licensed to practice medicine in this State or who is employed by the Department of Veterans Affairs, a letter signed by any governmental agency in this State which conducts investigations or a police report indicating:

- (1) That the proposed ward is unable to respond to a substantial and immediate risk of financial loss;
- (2) Whether the proposed ward can live independently with or without assistance or services; and
- (3) Whether the proposed ward is or has been subjected to abuse, neglect, exploitation, isolation or abandonment;

(b) A detailed explanation of what risks the proposed ward faces, including, without limitation, termination of utilities or other services because of nonpayment, initiation of eviction or foreclosure proceedings, exploitation or loss of assets as the result of fraud, coercion or undue influence; and

(c) Facts which show that:

(1) The petitioner has tried in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#) by telephone or in writing before the filing of the petition;

(2) The proposed ward would be exposed to an immediate risk of financial loss if the petitioner were to provide notice to the persons entitled to notice pursuant to [NRS 159.047](#) before the court determines whether to appoint a temporary guardian; or

- (3) Giving notice to the persons entitled to notice pursuant to [NRS 159.047](#) is not feasible under the circumstances.

2. The court may appoint a temporary guardian to serve for 10 days if the court:

(a) Finds reasonable cause to believe that the proposed ward is unable to respond to a substantial and immediate risk of financial loss; and

(b) Is satisfied that the petitioner has tried in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#) or that giving notice to those persons is not feasible under the circumstances, or determines that such notice is not required pursuant to subparagraph (2) of paragraph (c) of subsection 1.

3. Except as otherwise provided in subsection 4, after the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#), including, without limitation, notice of any hearing to extend the temporary guardianship. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.

4. If, before the appointment of a temporary guardian, the court determined that advance notice was not required pursuant to subparagraph (2) of paragraph (c) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to [NRS 159.047](#) without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after the petitioner discovers the existence, identity and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

5. Not later than 10 days after the date of the appointment of a temporary guardian pursuant to subsection 2, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 7, the court may extend the temporary guardianship until a general or special guardian is appointed pursuant to subsection 8 if:

(a) The court finds by clear and convincing evidence that the proposed ward is unable to respond to a substantial and immediate risk of financial loss; and

(b) The extension of the temporary guardianship is necessary and in the best interests of the proposed ward.

6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall limit the powers of the temporary guardian to those necessary to respond to the substantial and immediate risk of financial loss, specifically limiting the temporary guardian's authority to take possession of, close or have access to any accounts of the ward or to sell or dispose of tangible personal property of the ward to only that authority as needed to provide for the ward's basic living expenses until a general or special guardian can be appointed. The court may freeze any or all of the ward's accounts to protect such accounts from loss.

7. The court may not extend a temporary guardianship pursuant to subsection 5 beyond the initial period of 10 days unless the petitioner demonstrates that:

- (a) The provisions of [NRS 159.0475](#) have been satisfied; or
- (b) Notice by publication pursuant to [N.R.C.P. 4\(e\)](#) is currently being undertaken.

8. The court may extend the temporary guardianship, for good cause shown, for not more than two successive 60-day periods, except that the court shall not cause the temporary guardianship to continue longer than 5 months unless extraordinary circumstances are shown.

(Added to NRS by [2001, 869](#); A [2003, 1779](#); [2007, 2029](#); [2009, 1652](#); [2013, 914](#); [2015, 822](#))

NRS 159.0535 Attendance of proposed ward at hearing.

1. A proposed ward who is found in this State must attend the hearing for the appointment of a guardian unless:

(a) A certificate signed by a physician or psychiatrist who is licensed to practice in this State or who is employed by the Department of Veterans Affairs specifically states the condition of the proposed ward, the reasons why the proposed ward is unable

to appear in court and whether the proposed ward's attendance at the hearing would be detrimental to the physical or mental health of the proposed ward; or

(b) A certificate signed by any other person the court finds qualified to execute a certificate states the condition of the proposed ward, the reasons why the proposed ward is unable to appear in court and whether the proposed ward's attendance at the hearing would be detrimental to the physical or mental health of the proposed ward.

2. A proposed ward found in this State who cannot attend the hearing for the appointment of a general or special guardian as set forth in a certificate pursuant to subsection 1 may appear by videoconference. If the proposed ward is an adult and cannot attend by videoconference, the person who signs the certificate described in subsection 1 or any other person the court finds qualified shall:

(a) Inform the proposed adult ward that the petitioner is requesting that the court appoint a guardian for the proposed adult ward;

(b) Ask the proposed adult ward for a response to the guardianship petition;

(c) Inform the proposed adult ward of his or her right to counsel and ask whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding; and

(d) Ask the preferences of the proposed adult ward for the appointment of a particular person as the guardian of the proposed adult ward.

3. If the proposed ward is an adult, the person who informs the proposed adult ward of the rights of the proposed adult ward pursuant to subsection 2 shall state in a certificate signed by that person:

(a) That the proposed adult ward has been advised of his or her right to counsel and asked whether he or she wishes to be represented by counsel in the guardianship proceeding;

(b) The responses of the proposed adult ward to the questions asked pursuant to subsection 2; and

(c) Any conditions that the person believes may have limited the responses by the proposed adult ward.

4. The court may prescribe the form in which a certificate required by this section must be filed. If the certificate consists of separate parts, each part must be signed by the person who is required to sign the certificate.

5. If the proposed ward is not in this State, the proposed ward must attend the hearing only if the court determines that the attendance of the proposed ward is necessary in the interests of justice.

(Added to NRS by [1981, 1932](#); A [2003, 1781](#); [2009, 2522](#); [2013, 915](#))

NRS 159.054 Finding and order of court upon petition: Dismissal of petition; appointment of special or general guardian.

1. If the court finds the proposed ward competent and not in need of a guardian, the court shall dismiss the petition.

2. If the court finds the proposed ward to be of limited capacity and in need of a special guardian, the court shall enter an order accordingly and specify the powers and duties of the special guardian.

3. If the court finds that appointment of a general guardian is required, the court shall appoint a general guardian of the ward's person, estate, or person and estate.

(Added to NRS by [1981, 1932](#); A [2003, 1781](#))

NRS 159.055 Burden of proof; order appointing guardian; notice of entry of order.

1. The petitioner has the burden of proving by clear and convincing evidence that the appointment of a guardian of the person, of the estate, or of the person and estate is necessary.

2. If it appears to the court that the allegations of the petition are sufficient and that a guardian should be appointed for the proposed ward, the court shall enter an order appointing a guardian. The order must:

(a) Specify whether the guardian appointed is guardian of the person, of the estate, of the person and estate or a special guardian;

(b) Specify whether the ward is a resident or nonresident of this State;

(c) Specify the amount of the bond to be executed and filed by the guardian; and

(d) Designate the names and addresses, so far as may be determined, of:

(1) The relatives of the proposed ward upon whom notice must be served pursuant to [NRS 159.047](#); and

(2) Any other interested person.

3. A notice of entry of the court order must be sent to:

(a) The relatives of the proposed ward upon whom notice must be served pursuant to [NRS 159.047](#); and

(b) Any other interested person.

(Added to NRS by [1969, 415](#); A [1981, 1936](#); [2003, 1781](#))

NRS 159.057 Guardian for two or more wards.

1. Where the appointment of a guardian is sought for two or more proposed wards who are children of a common parent, parent and child or husband and wife, it is not necessary that separate petitions, bonds and other papers be filed with respect to each proposed ward or wards.

2. If a guardian is appointed for such wards, the guardian:

(a) Shall keep separate accounts of the estate of each ward;

(b) May make investments for each ward;

(c) May compromise and settle claims against one or more wards; and

(d) May sell, lease, mortgage or otherwise manage the property of one or more wards.

3. The guardianship may be terminated with respect to less than all the wards in the same manner as provided by law with respect to a guardianship of a single ward.

(Added to NRS by [1969, 415](#); A [2003, 1782](#))

NRS 159.059 Qualifications of guardian. Repealed. (See chapter 409, Statutes of Nevada 2015, at page 2371, and chapter 437, Statutes of Nevada 2015, at page 2512.)

NRS 159.0592 Court may require guardian to complete training. As a condition of the appointment of a guardian, the court may require the guardian to complete any available training concerning guardianships that the court determines appropriate.

(Added to NRS by [2013, 904](#))

NRS 159.0593 Determination of whether proposed ward is prohibited from possessing firearm under federal law.

1. If the court orders a general guardian appointed for a proposed ward, the court shall determine, by clear and convincing evidence, whether the proposed ward is a person with a mental defect who is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(d)(4) or (g)(4). If a court makes a finding pursuant to this section that the proposed ward is a person with a mental defect, the court shall include the finding in the order appointing the guardian and cause, within 5 business days after issuing the order, a record of the order to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

2. As used in this section:

(a) “National Instant Criminal Background Check System” has the meaning ascribed to it in [NRS 179A.062](#).

(b) “Person with a mental defect” means a person who, as a result of marked subnormal intelligence, mental illness, incompetence, condition or disease, is:

(1) A danger to himself or herself or others; or

(2) Lacks the capacity to contract or manage his or her own affairs.

(Added to NRS by [2009, 2490](#); [A 2015, 1805](#))

NRS 159.0594 Determination of whether proposed ward lacks mental capacity to vote.

1. A ward retains his or her right to vote unless the court specifically finds by clear and convincing evidence that the ward lacks the mental capacity to vote because he or she cannot communicate, with or without accommodations, a specific desire to participate in the voting process.

2. If the court makes a finding pursuant to subsection 1, the court must include the finding in a court order and provide a certified copy of the order to the county clerk or the registrar of voters, as applicable, of the county in which the ward resides and to the Office of the Secretary of State, in the manner set forth in [NRS 293.542](#).

(Added to NRS by [2013, 60](#))

NRS 159.0595 Private professional guardians.

1. In order for a person to serve as a private professional guardian, the person must be:

(a) Qualified to serve as a guardian pursuant to [NRS 159.0613](#) if the ward is an adult or [NRS 159.061](#) if the ward is a minor; and

(b) A guardian who has a license issued pursuant to [chapter 628B](#) of NRS or a certified guardian who is not required to have such a license pursuant to subsection 3.

2. In order for an entity to serve as a private professional guardian, the entity must:

(a) Be qualified to serve as a guardian pursuant to [NRS 159.0613](#) if the ward is an adult;

(b) Have a license issued pursuant to [chapter 628B](#) of NRS unless the entity is not required to have such a license pursuant to subsection 3; and

(c) Have a guardian who has a license issued pursuant to [chapter 628B](#) of NRS or a certified guardian who is not required to have such a license pursuant to subsection 3 involved in the day-to-day operation or management of the entity.

3. In order for a person or entity to serve as a private professional guardian, the person or entity is not required to have a license issued pursuant to [chapter 628B](#) of NRS if the person or entity is exempt from the requirement to have such a license pursuant to [NRS 628B.110](#) and the person or entity:

(a) Is a banking corporation as defined in [NRS 657.016](#);

(b) Is an organization permitted to act as a fiduciary pursuant to [NRS 662.245](#);

(c) Is a trust company as defined in [NRS 669.070](#);

(d) Is acting in the performance of his or her duties as an attorney at law;

(e) Acts as a trustee under a deed of trust; or

(f) Acts as a fiduciary under a court trust.

4. As used in this section:

(a) “Certified guardian” means a person who is certified by the Center for Guardianship Certification or any successor organization.

(b) “Entity” includes, without limitation, a corporation, whether or not for profit, a limited-liability company and a partnership.

(c) “Person” means a natural person.

(Added to NRS by [2005, 814](#); [A 2009, 1655](#); [2011, 997](#); [2015, 2365, 2507](#))

NRS 159.061 Minor wards: Preference for appointment of parent; other considerations in determining qualifications and suitability of guardian.

1. The parents of a minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the minor. The appointment of a parent as guardian for the minor must not conflict with a valid order for custody of the minor.

2. In determining whether the parents of a minor, or either parent, or any other person who seeks appointment as guardian for the minor is qualified and suitable, the court shall consider, if applicable and without limitation:

(a) Which parent has physical custody of the minor;

(b) The ability of the parents, parent or other person to provide for the basic needs of the minor, including, without limitation, food, shelter, clothing and medical care;

(c) Whether the parents, parent or other person has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months, except the use of marijuana in accordance with the provisions of [chapter 453A](#) of NRS;

(d) Whether the parents, parent or other person has been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the abuse, neglect, exploitation, isolation or abandonment of a child, his or her spouse, his or her parent or any other adult; and

(e) Whether the parents, parent or other person has been convicted in this State or any other jurisdiction of a felony.

3. Subject to the preference set forth in subsection 1, the court shall appoint as guardian the qualified person who is most suitable and is willing to serve.

4. In determining which qualified person is most suitable, the court shall, in addition to considering any applicable factors set forth in subsection 2, give consideration, among other factors, to:

- (a) Any nomination of a guardian for the minor contained in a will or other written instrument executed by a parent of the minor.
- (b) Any request made by the minor, if he or she is 14 years of age or older, for the appointment of a person as guardian for the minor.
- (c) The relationship by blood or adoption of the proposed guardian to the minor. In considering preferences of appointment, the court may consider relatives of the half blood equally with those of the whole blood. The court may consider relatives in the following order of preference:
 - (1) Parent.
 - (2) Adult sibling.
 - (3) Grandparent.
 - (4) Uncle or aunt.
- (d) Any recommendation made by a master of the court or special master pursuant to [NRS 159.0615](#).
- (e) Any recommendation made by:
 - (1) An agency which provides child welfare services, an agency which provides child protective services or a similar agency; or
 - (2) A guardian ad litem or court appointed special advocate who represents the minor.
- (f) Any request for the appointment of any other interested person that the court deems appropriate.

5. As used in this section, "agency which provides child welfare services" has the meaning ascribed to it in [NRS 432B.030](#). (Added to NRS by [1969, 416](#); A [1981, 1936](#); [1997, 1344](#); [1999, 142](#); [2001, 3072](#); [2003, 1783](#); [2005, 817](#); [2015, 2366, 2508](#))

NRS 159.0613 Adult wards: Preference for appointment of certain persons; other considerations in determining qualifications and suitability of guardian; appointment of nonresident guardian under certain circumstances; appointment of other persons; disqualifications.

1. Except as otherwise provided in subsection 3, in a proceeding to appoint a guardian for an adult, the court shall give preference to a nominated person or relative, in that order of preference:

- (a) Whether or not the nominated person or relative is a resident of this State; and
- (b) If the court determines that the nominated person or relative is qualified and suitable to be appointed as guardian for the adult.

2. In determining whether any nominated person, relative or other person listed in subsection 4 is qualified and suitable to be appointed as guardian for an adult, the court shall consider, if applicable and without limitation:

- (a) The ability of the nominated person, relative or other person to provide for the basic needs of the adult, including, without limitation, food, shelter, clothing and medical care;
- (b) Whether the nominated person, relative or other person has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months, except the use of marijuana in accordance with the provisions of [chapter 453A](#) of NRS;
- (c) Whether the nominated person, relative or other person has been judicially determined to have committed abuse, neglect, exploitation, isolation or abandonment of a child, his or her spouse, his or her parent or any other adult, unless the court finds that it is in the best interests of the ward to appoint the person as guardian for the adult;
- (d) Whether the nominated person, relative or other person is incompetent or has a disability; and
- (e) Whether the nominated person, relative or other person has been convicted in this State or any other jurisdiction of a felony, unless the court determines that any such conviction should not disqualify the person from serving as guardian for the adult.

3. If the court finds that two or more nominated persons are qualified and suitable to be appointed as guardian for an adult, the court may appoint two or more nominated persons as co-guardians or shall give preference among them in the following order of preference:

- (a) A person whom the adult nominated for the appointment as guardian for the adult in a will, trust or other written instrument that is part of the adult's established estate plan and was executed by the adult while competent.
- (b) A person whom the adult requested for the appointment as guardian for the adult in a written instrument that is not part of the adult's established estate plan and was executed by the adult while competent.

4. Subject to the preferences set forth in subsections 1 and 3, the court shall appoint as guardian the qualified person who is most suitable and is willing to serve. In determining which qualified person is most suitable, the court shall, in addition to considering any applicable factors set forth in subsection 2, give consideration, among other factors, to:

- (a) Any nomination or request for the appointment as guardian by the adult.
- (b) Any nomination or request for the appointment as guardian by a relative.
- (c) The relationship by blood, adoption, marriage or domestic partnership of the proposed guardian to the adult. In considering preferences of appointment, the court may consider relatives of the half blood equally with those of the whole blood. The court may consider any relative in the following order of preference:
 - (1) A spouse or domestic partner.
 - (2) A child.
 - (3) A parent.
 - (4) Any relative with whom the adult has resided for more than 6 months before the filing of the petition or any relative who has a power of attorney executed by the adult while competent.
 - (5) Any relative currently acting as agent.
 - (6) A sibling.
 - (7) A grandparent or grandchild.
 - (8) An uncle, aunt, niece, nephew or cousin.
 - (9) Any other person recognized to be in a familial relationship with the adult.
- (d) Any recommendation made by a master of the court or special master pursuant to [NRS 159.0615](#).
- (e) Any request for the appointment of any other interested person that the court deems appropriate, including, without limitation, a person who is not a relative and who has a power of attorney executed by the adult while competent.

5. The court may appoint as guardian any nominated person, relative or other person listed in subsection 4 who is not a resident of this State. The court shall not give preference to a resident of this State over a nonresident if the court determines that:

- (a) The nonresident is more qualified and suitable to serve as guardian; and
- (b) The distance from the proposed guardian's place of residence and the adult's place of residence will not affect the quality of the guardianship or the ability of the proposed guardian to make decisions and respond quickly to the needs of the adult because:
 - (1) A person or care provider in this State is providing continuing care and supervision for the adult;
 - (2) The adult is in a secured residential long-term care facility in this State; or
 - (3) Within 30 days after the appointment of the proposed guardian, the proposed guardian will move to this State or the adult will move to the proposed guardian's state of residence.
- 6. If the court appoints a nonresident as guardian for the adult:
 - (a) The jurisdictional requirements of [NRS 159.1991](#) to [159.2029](#), inclusive, must be met;
 - (b) The court shall order the guardian to designate a registered agent in this State in the same manner as a represented entity pursuant to [chapter 77](#) of NRS; and
 - (c) The court may require the guardian to complete any available training concerning guardianships pursuant to [NRS 159.0592](#), in this State or in the state of residence of the guardian, regarding:
 - (1) The legal duties and responsibilities of the guardian pursuant to this chapter;
 - (2) The preparation of records and the filing of annual reports regarding the finances and well-being of the adult required pursuant to [NRS 159.073](#);
 - (3) The rights of the adult;
 - (4) The availability of local resources to aid the adult; and
 - (5) Any other matter the court deems necessary or prudent.
- 7. If the court finds that there is not any suitable nominated person, relative or other person listed in subsection 4 to appoint as guardian, the court may appoint as guardian:
 - (a) The public guardian of the county where the adult resides if:
 - (1) There is a public guardian in the county where the adult resides; and
 - (2) The adult qualifies for a public guardian pursuant to [chapter 253](#) of NRS;
 - (b) A private fiduciary who may obtain a bond in this State and who is a resident of this State, if the court finds that the interests of the adult will be served appropriately by the appointment of a private fiduciary; or
 - (c) A private professional guardian who meets the requirements of [NRS 159.0595](#).
- 8. A person is not qualified to be appointed as guardian for an adult if the person has been suspended for misconduct or disbarred from any of the professions listed in this subsection, but the disqualification applies only during the period of the suspension or disbarment. This subsection applies to:
 - (a) The practice of law;
 - (b) The practice of accounting; or
 - (c) Any other profession that:
 - (1) Involves or may involve the management or sale of money, investments, securities or real property; and
 - (2) Requires licensure in this State or any other state in which the person practices his or her profession.
- 9. As used in this section:
 - (a) "Adult" means a person who is a ward or a proposed ward and who is not a minor.
 - (b) "Domestic partner" means a person in a domestic partnership.
 - (c) "Domestic partnership" means:
 - (1) A domestic partnership as defined in [NRS 122A.040](#); or
 - (2) A domestic partnership which was validly formed in another jurisdiction and which is substantially equivalent to a domestic partnership as defined in [NRS 122A.040](#), regardless of whether it bears the name of a domestic partnership or is registered in this State.
 - (d) "Nominated person" means a person, whether or not a relative, whom an adult:
 - (1) Nominates for the appointment as guardian for the adult in a will, trust or other written instrument that is part of the adult's established estate plan and was executed by the adult while competent.
 - (2) Requests for the appointment as guardian for the adult in a written instrument that is not part of the adult's established estate plan and was executed by the adult while competent.
 - (e) "Relative" means a person who is 18 years of age or older and who is related to the adult by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity.

(Added to NRS by [2015, 2362, 2504](#))

NRS 159.0615 Appointment of master of court or special master to identify person most qualified and suitable to serve as guardian; hearing; recommendation.

1. If the court determines that a person may be in need of a guardian, the court may order the appointment of a master of the court or a special master from among the members of the State Bar of Nevada to conduct a hearing to identify the person most qualified and suitable to serve as guardian for the proposed ward.

2. Not later than 5 calendar days after the date of the hearing, the master of the court or special master shall prepare and submit to the court a recommendation regarding which person is most qualified and suitable to serve as guardian for the proposed ward.

(Added to NRS by [1997, 1342](#); A [2003, 1784](#))

NRS 159.0617 Court or master of court or special master authorized to allow certain persons to testify at hearing to determine person most qualified and suitable to serve as guardian. If the court or a master of the court or special master appointed pursuant to [NRS 159.0615](#) finds that a parent or other relative, teacher, friend or neighbor of a proposed ward or any other interested person:

1. Has a personal interest in the well-being of the proposed ward; or

2. Possesses information that is relevant to the determination of who should serve as guardian for the proposed ward,

the court or a master of the court or special master appointed pursuant to [NRS 159.0615](#) may allow the person to testify at any hearing held pursuant to this chapter to determine the person most qualified and suitable to serve as guardian for the proposed ward.

(Added to NRS by [1997, 1343](#); A [2003, 1784](#))

NRS 159.062 Guardian nominated by will. A parent or spouse of an incompetent, minor or person of limited capacity may by will nominate a guardian. The person nominated must file a petition and obtain an appointment from the court before exercising the powers of a guardian.

(Added to NRS by [1981, 1933](#))

NRS 159.065 Bond: General requirements; approval by clerk; liability of sureties; not required under certain circumstances.

1. Except as otherwise provided by law, every guardian shall, before entering upon his or her duties as guardian, execute and file in the guardianship proceeding a bond, with sufficient surety or sureties, in such amount as the court determines necessary for the protection of the ward and the estate of the ward, and conditioned upon the faithful discharge by the guardian of his or her authority and duties according to law. The bond must be approved by the clerk. Sureties must be jointly and severally liable with the guardian and with each other.

2. If a banking corporation, as defined in [NRS 657.016](#), doing business in this state, is appointed guardian of the estate of a ward, no bond is required of the guardian, unless specifically required by the court.

3. Joint guardians may unite in a bond to the ward or wards, or each may give a separate bond.

4. If there are no assets of the ward, no bond is required of the guardian.

5. If a person has been nominated to be guardian in a will, power of attorney or other written instrument that has been acknowledged before two disinterested witnesses or acknowledged before a notary public and the will, power of attorney or other written instrument provides that no bond is to be required of the guardian, the court may direct letters of guardianship to issue to the guardian after the guardian:

(a) Takes and subscribes the oath of office; and

(b) Files the appropriate documents which contain the full legal name and address of the guardian.

6. In lieu of executing and filing a bond, the guardian may request that access to certain assets be blocked. The court may grant the request and order letters of guardianship to issue to the guardian if sufficient evidence is filed with the court to establish that such assets are being held in a manner that prevents the guardian from accessing the assets without a specific court order.

(Added to NRS by [1969, 416](#); [A 1971, 1010](#); [1973, 386](#); [2003, 1784](#); [2011, 1464](#))

NRS 159.067 Bond: Court may require increase, decrease or other change; exoneration of former sureties.

1. The court may at any time, for good cause and after notice to the guardian, increase or decrease the amount of the bond required of a guardian.

2. The court may at any time, where the bond or the sureties are determined to be insufficient or for other good cause, require a guardian to execute and file a new or additional bond. The court may exonerate the sureties on a former bond from any liabilities thereunder arising from the acts or omissions of their principal after such exoneration.

(Added to NRS by [1969, 417](#))

NRS 159.069 Bond: Filing; remedy for breach. Every bond given by a guardian shall be filed and preserved in the office of the clerk of the district court of the county in which the guardianship proceeding is conducted. In case of the breach of any condition of such bond, an action may be maintained in behalf of the ward or wards jointly if all are interested, or of any person interested in the estate, and such bond shall not be void on the first recovery. If the action on the bond is in behalf of one ward on a bond given to more than one ward, the other wards mentioned in the bond need not be united in or made parties to such action.

(Added to NRS by [1969, 417](#))

NRS 159.071 Bond: Limitations on action. No action may be maintained against the sureties on any bond given by a guardian unless it is commenced within 3 years from the time the guardian is discharged, unless at the time of such discharge the person entitled to bring the action is under any legal disability to sue, in which case the action may be brought at any time within 3 years after the disability is removed.

(Added to NRS by [1969, 417](#))

NRS 159.073 Taking oath of office; filing appropriate documents and verified acknowledgment; contents of acknowledgment; acknowledgment not required under certain circumstances.

1. Every guardian, before entering upon his or her duties as guardian and before letters of guardianship may issue, shall:

(a) Take and subscribe the official oath which must:

(1) Be endorsed on the letters of guardianship; and

(2) State that the guardian will well and faithfully perform the duties of guardian according to law.

(b) File in the proceeding the appropriate documents which include, without limitation, the full legal name of the guardian and the residence and post office addresses of the guardian.

(c) Except as otherwise required in subsection 2, make and file in the proceeding a verified acknowledgment of the duties and responsibilities of a guardian. The acknowledgment must set forth:

(1) A summary of the duties, functions and responsibilities of a guardian, including, without limitation, the duty to:

(I) Act in the best interest of the ward at all times.

(II) Provide the ward with medical, surgical, dental, psychiatric, psychological, hygienic or other care and treatment as needed, with adequate food and clothing and with safe and appropriate housing.

(III) Protect, preserve and manage the income, assets and estate of the ward and utilize the income, assets and estate of the ward solely for the benefit of the ward.

(IV) Maintain the assets of the ward in the name of the ward or the name of the guardianship. Except when the spouse of the ward is also his or her guardian, the assets of the ward must not be commingled with the assets of any third party.

(V) Notify the court, all interested parties, the trustee, and named executor or appointed personal representative of the estate of the ward of the death of the ward within 30 days after the death.

(2) A summary of the statutes, regulations, rules and standards governing the duties of a guardian.

(3) A list of actions regarding the ward that require the prior approval of the court.

(4) A statement of the need for accurate recordkeeping and the filing of annual reports with the court regarding the finances and well-being of the ward.

2. The court may exempt a public guardian or private professional guardian from filing an acknowledgment in each case and, in lieu thereof, require the public guardian or private professional guardian to file a general acknowledgment covering all guardianships to which the guardian may be appointed by the court.

(Added to NRS by [1969, 417](#); A [1999, 1399](#); [2003, 1785](#); [2011, 998](#); [2013, 916](#))

NRS 159.074 Copy of order of appointment to be served upon ward; notice of entry of order to be filed with court.

1. A copy of the order appointing the guardian must be served personally or by mail upon the ward not later than 5 days after the date of the appointment of the guardian.

2. The order must contain the names, addresses and telephone numbers of the guardian, the ward’s attorney, if any, and the investigator.

3. A notice of entry of the order must be filed with the court.

(Added to NRS by [1981, 1932](#); A [2003, 1785](#))

NRS 159.075 Letters of guardianship. When a guardian has taken the official oath and filed a bond as provided in this chapter, the court shall order letters of guardianship to issue to the guardian. Letters of guardianship may be in the following form:

State of Nevada }
 County of..... } ss.

On (month) (day) (year) the Judicial District Court, County, State of Nevada, appointed..... (name of guardian)(guardian of the person or estate or person and estate or special guardian) for (name of ward) a(n) (minor or adult) that the named guardian has qualified and has the authority and shall perform the duties of (guardian of the person or estate or person and estate or special guardian) for the named ward as provided by law.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the court at my office on (month) (day) (year).

.....
 Clerk

(SEAL)

.....
 Deputy Clerk

(Added to NRS by [1969, 417](#); A [1981, 1936](#); [2001, 35](#); [2003, 1785](#))

ADMINISTRATION OF SMALLER ESTATES

NRS 159.0755 Disposition of estate having value not exceeding by more than \$10,000 aggregate amount of unpaid expenses of and claims against estate. If, at the time of the appointment of the guardian or thereafter, the estate of a ward consists of personal property having a value not exceeding by more than \$10,000 the aggregate amount of unpaid expenses of administration of the guardianship estate and claims against the estate, the guardian of the estate, with prior approval of the court by order, may pay those expenses and claims from the estate and deliver all the remaining personal property to such person as the court may designate in the order, to be held, invested or used as ordered by the court. The recipient of the property so delivered shall give a receipt therefor to the guardian. The receipt is a release and acquittance to the guardian as to the property so delivered. The guardian shall file in the proceeding proper receipts or other evidence satisfactory to the court showing the delivery, and the guardian is released from his or her trust and the bond of the guardian is exonerated.

(Added to NRS by [1969, 432](#); A [1999, 1400](#); [2009, 1656](#)) — (Substituted in revision for NRS 159.189)

NRS 159.076 Summary administration.

1. The court may grant a summary administration if, at any time, it appears to the court that after payment of all claims and expenses of the guardianship the value of the ward’s property does not exceed \$10,000.

2. If the court grants a summary administration, the court may:

(a) Authorize the guardian of the estate or special guardian who is authorized to manage the ward’s property to convert the property to cash and sell any of the property, with or without notice, as the court may direct. After the payment of all claims and the expenses of the guardianship, the guardian shall deposit the money in savings accounts or invest the money as provided in [NRS 159.117](#), and hold the investment and all interest, issues, dividends and profits for the benefit of the ward. The court may dispense with annual accountings and all other proceedings required by this chapter.

(b) If the ward is a minor, terminate the guardianship of the estate and direct the guardian to deliver the ward’s property to the custodial parent or parents, guardian or custodian of the minor to hold, invest or use as the court may order.

3. Whether the court grants a summary administration at the time the guardianship is established or at any other time, the guardian shall file an inventory and record of value with the court.

4. If, at any time, the net value of the estate of the ward exceeds \$10,000:

(a) The guardian shall file an amended inventory and accounting with the court;

(b) The guardian shall file annual accountings; and

(c) The court may require the guardian to post a bond.

(Added to NRS by [1969, 433](#); A [1981, 1938](#); [1999, 1401](#); [2003, 1801](#); [2009, 1656](#)) — (Substituted in revision for NRS 159.201)

POWERS AND DUTIES OF GUARDIANS

NRS 159.077 General functions of guardian of person and estate. A guardian of the person and estate has the authority and shall perform the duties as provided by law for a guardian of the person and a guardian of the estate.
(Added to NRS by [1969, 418](#))

NRS 159.078 Petition by guardian or other interested person for order authorizing or directing guardian to take certain actions.

1. Before taking any of the following actions, the guardian shall petition the court for an order authorizing the guardian to:
 - (a) Make or change the last will and testament of the ward.
 - (b) Except as otherwise provided in this paragraph, make or change the designation of a beneficiary in a will, trust, insurance policy, bank account or any other type of asset of the ward which includes the designation of a beneficiary. The guardian is not required to petition the court for an order authorizing the guardian to utilize an asset which has a designated beneficiary, including the closure or discontinuance of the asset, for the benefit of a ward if:
 - (1) The asset is the only liquid asset available with which to pay for the proper care, maintenance, education and support of the ward;
 - (2) The asset, or the aggregate amount of all the assets if there is more than one type of asset, has a value that does not exceed \$5,000; or
 - (3) The asset is a bank account, investment fund or insurance policy and is required to be closed or discontinued in order for the ward to qualify for a federal program of public assistance.
 - (c) Create for the benefit of the ward or others a revocable or irrevocable trust of the property of the estate.
 - (d) Except as otherwise provided in this paragraph, exercise the right of the ward to revoke or modify a revocable trust or to surrender the right to revoke or modify a revocable trust. The court shall not authorize or require the guardian to exercise the right to revoke or modify a revocable trust if the instrument governing the trust:
 - (1) Evidences an intent of the ward to reserve the right of revocation or modification exclusively to the ward;
 - (2) Provides expressly that a guardian may not revoke or modify the trust; or
 - (3) Otherwise evidences an intent that would be inconsistent with authorizing or requiring the guardian to exercise the right to revoke or modify the trust.
 2. Any other interested person may also petition the court for an order authorizing or directing the guardian to take any action described in subsection 1.
 3. The court may authorize the guardian to take any action described in subsection 1 if, after notice to any person who is adversely affected by the proposed action and an opportunity for a hearing, the court finds by clear and convincing evidence that:
 - (a) A reasonably prudent person or the ward, if competent, would take the proposed action and that a person has committed or is about to commit any act, practice or course of conduct which operates or would operate as a fraud or act of exploitation upon the ward or estate of the ward and that person:
 - (1) Is designated as a beneficiary in or otherwise stands to gain from an instrument which was executed by or on behalf of the ward; or
 - (2) Will benefit from the lack of such an instrument; or
 - (b) The proposed action is otherwise in the best interests of the ward for any other reason not listed in this section.
 4. The petition must contain, to the extent known by the petitioner:
 - (a) The name, date of birth and current address of the ward;
 - (b) A concise statement as to the condition of the ward's estate; and
 - (c) A concise statement as to the necessity for the proposed action.
 5. As used in this section:
 - (a) "Exploitation" means any act taken by a person who has the trust and confidence of a ward or any use of the power of attorney of a ward to:
 - (1) Obtain control, through deception, intimidation or undue influence, over the money, assets or property of the ward with the intention of permanently depriving the ward of the ownership, use, benefit or possession of the ward's money, assets or property.
 - (2) Convert money, assets or property of the ward with the intention of permanently depriving the ward of the ownership, use, benefit or possession of the ward's money, assets or property.
 E As used in this paragraph, "undue influence" does not include the normal influence that one member of a family has over another.
 - (b) "Fraud" means an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive the ward of the ward's rights or property or to otherwise injure the ward.
 - (c) "Interested person" has the meaning ascribed to it in [NRS 132.185](#) and also includes a named beneficiary under a trust or other instrument if the validity of the trust or other instrument may be in question.
- (Added to NRS by [2003, 1769](#); A [2007, 2031](#); [2009, 783](#))

NRS 159.079 General functions of guardian of person; establishment or change of ward's residence by guardian.

1. Except as otherwise ordered by the court, a guardian of the person has the care, custody and control of the person of the ward, and has the authority and, subject to subsection 2, shall perform the duties necessary for the proper care, maintenance, education and support of the ward, including, without limitation, the following:
 - (a) Supplying the ward with food, clothing, shelter and all incidental necessities, including locating an appropriate residence for the ward.
 - (b) Authorizing medical, surgical, dental, psychiatric, psychological, hygienic or other remedial care and treatment for the ward.
 - (c) Seeing that the ward is properly trained and educated and that the ward has the opportunity to learn a trade, occupation or profession.
2. In the performance of the duties enumerated in subsection 1 by a guardian of the person, due regard must be given to the extent of the estate of the ward. A guardian of the person is not required to incur expenses on behalf of the ward except to the extent that the estate of the ward is sufficient to reimburse the guardian.
3. A guardian of the person is the ward's personal representative for purposes of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and any applicable regulations. The guardian of the person has authority to

obtain information from any government agency, medical provider, business, creditor or third party who may have information pertaining to the ward's health care or health insurance.

4. Except as otherwise provided in subsection 6, a guardian of the person may establish and change the residence of the ward at any place within this State without the permission of the court. The guardian shall select the least restrictive appropriate residence which is available and necessary to meet the needs of the ward and which is financially feasible.

5. Except as otherwise provided in subsection 6, a guardian of the person shall petition the court for an order authorizing the guardian to change the residence of the ward to a location outside of this State. The guardian must show that the placement outside of this State is in the best interest of the ward or that there is no appropriate residence available for the ward in this State. The court shall retain jurisdiction over the guardianship unless the guardian files for termination of the guardianship pursuant to [NRS 159.1905](#) or [159.191](#) or the jurisdiction of the guardianship is transferred to the other state.

6. A guardian of the person must file a petition with the court requesting authorization to move a ward to or place a ward in a secured residential long-term care facility unless:

(a) The court has previously granted the guardian authority to move the ward to or place the ward in such a facility based on findings made when the court appointed the guardian; or

(b) The move or placement is made pursuant to a written recommendation by a licensed physician, a physician employed by the Department of Veterans Affairs, a licensed social worker or an employee of a county or state office for protective services.

7. This section does not relieve a parent or other person of any duty required by law to provide for the care, support and maintenance of any dependent.

8. As used in this section "protective services" has the meaning ascribed to it in [NRS 200.5092](#).

(Added to NRS by [1969, 418](#); [A 1999, 1399](#); [2003, 1786](#); [2009, 1656](#); [2013, 917](#))

NRS 159.0795 Supervisory authority and powers of special guardian.

1. A special guardian shall exercise supervisory authority over the ward in a manner which is least restrictive of the ward's personal freedom and which is consistent with the ward's need for supervision and protection.

2. A special guardian has the powers set forth in the order appointing the special guardian and any other powers given to the special guardian in an emergency which are necessary and consistent to resolve the emergency or protect the ward from imminent harm.

(Added to NRS by [1981, 1933](#); [A 2003, 1786](#))

NRS 159.0801 Special guardian of person of limited capacity: Approval of court generally required before commencing act relating to person; grant of certain powers by court.

1. Except when responding to an emergency, a special guardian of a person of limited capacity shall apply to the court for instruction or approval before commencing any act relating to the person of limited capacity.

2. The court may grant a special guardian of a person of limited capacity the power to manage and dispose of the estate of the ward pursuant to [NRS 159.117](#) to [159.175](#), inclusive, and perform any other act relating to the ward upon specific instructions or approval of the court.

(Added to NRS by [1981, 1933](#); [A 2003, 1786](#))

NRS 159.0805 Approval of court required before guardian may consent to certain treatment of or experiment on ward; conditions for approval.

1. Except as otherwise provided in subsection 2, a guardian shall not consent to:

(a) The experimental medical, biomedical or behavioral treatment of a ward;

(b) The sterilization of a ward; or

(c) The participation of a ward in any biomedical or behavioral experiment.

2. The guardian may consent to and commence any treatment or experiment described in subsection 1 if the guardian applies to and obtains from the court authority to consent to and commence the treatment or experiment.

3. The court may authorize the guardian to consent to and commence any treatment or experiment described in subsection 1 only if the treatment or experiment:

(a) Is of direct benefit to, and intended to preserve the life of or prevent serious impairment to the mental or physical health of, the ward; or

(b) Is intended to assist the ward to develop or regain the ward's abilities.

(Added to NRS by [1981, 1933](#); [A 1999, 1400](#); [2003, 1786](#); [2007, 2032](#))

NRS 159.081 Reports by guardian of person.

1. A guardian of the person shall make and file in the guardianship proceeding for review of the court a written report on the condition of the ward and the exercise of authority and performance of duties by the guardian:

(a) Annually, not later than 60 days after the anniversary date of the appointment of the guardian;

(b) Within 10 days of moving a ward to a secured residential long-term care facility; and

(c) At such other times as the court may order.

2. A report filed pursuant to paragraph (b) of subsection 1 must:

(a) Include a copy of the written recommendation upon which the transfer was made; and

(b) Be served, without limitation, on the attorney for the ward, if any.

3. The court may prescribe the form and contents for filing a report described in subsection 1.

4. The guardian of the person shall give to the guardian of the estate, if any, a copy of each report not later than 30 days after the date the report is filed with the court.

5. The court is not required to hold a hearing or enter an order regarding the report.

(Added to NRS by [1969, 418](#); [A 2003, 1787](#); [2009, 2522](#))

NRS 159.083 General functions of guardian of estate. A guardian of the estate shall:

1. Protect, preserve, manage and dispose of the estate of the ward according to law and for the best interests of the ward.

2. Apply the estate of the ward for the proper care, maintenance, education and support of the ward and any person to whom the ward owes a legal duty of support, having due regard for other income or property available to support the ward or any person

to whom the ward owes a legal duty of support.

3. Have such other authority and perform such other duties as are provided by law.
(Added to NRS by [1969, 418](#))

NRS 159.085 Inventory, supplemental inventory and appraisal of property of ward.

1. Not later than 60 days after the date of the appointment of a general or special guardian of the estate or, if necessary, such further time as the court may allow, the guardian shall make and file in the guardianship proceeding a verified inventory of all of the property of the ward which comes to the possession or knowledge of the guardian.

2. A temporary guardian of the estate who is not appointed as the general or special guardian shall file an inventory with the court by not later than the date on which the temporary guardian files a final accounting as required pursuant to [NRS 159.177](#).

3. The guardian shall take and subscribe an oath, which must be endorsed or attached to the inventory, before any person authorized to administer oaths, that the inventory contains a true statement of:

- (a) All of the estate of the ward which has come into the possession of the guardian;
- (b) All of the money that belongs to the ward; and
- (c) All of the just claims of the ward against the guardian.

4. Whenever any property of the ward not mentioned in the inventory comes to the possession or knowledge of a guardian of the estate, the guardian shall:

(a) Make and file in the proceeding a verified supplemental inventory not later than 30 days after the date the property comes to the possession or knowledge of the guardian; or

- (b) Include the property in the next accounting.

5. The court may order which of the two methods described in subsection 4 the guardian shall follow.

6. The court may order all or any part of the property of the ward appraised as provided in [NRS 159.0865](#) and [159.305](#).

7. If the guardian neglects or refuses to file the inventory within the time required pursuant to subsection 1, the court may, for good cause shown and upon such notice as the court deems appropriate:

(a) Revoke the letters of guardianship and the guardian shall be liable on the bond for any loss or injury to the estate caused by the neglect of the guardian; or

- (b) Enter a judgment for any loss or injury to the estate caused by the neglect of the guardian.

(Added to NRS by [1969, 419](#); A [1997, 1494](#); [1999, 1400](#); [2003, 1787](#))

NRS 159.086 Guardian of estate to cause appraisal or valuation of assets of guardianship estate; record or statement in lieu of appraisal.

1. Except as otherwise provided in subsection 2, the guardian of an estate shall cause an appraisal or valuation of any asset of a guardianship estate to be conducted by a disinterested appraiser, certified public accountant or expert in valuation and file the appraisal or valuation with the court.

2. In lieu of an appraisal, the guardian may file:

(a) A verified record of value of an asset where the value of the asset can be determined with reasonable certainty, including, without limitation:

- (1) Money, deposits in banks, bonds, policies of life insurance or securities for money, when equal in value to cash; and

(2) Personal property, including, without limitation, household goods, if the combined value of the personal property does not exceed \$5,000.

(b) A statement of the assessed value of real property as determined by the county assessor for tax purposes, except that if the real property is to be sold, the guardian must file an appraisal.

(Added to NRS by [2003, 1758](#))

NRS 159.0865 Certification of appraiser, certified public accountant or expert in valuation; form of appraisal or valuation; purchase by appraiser, certified public accountant or expert in valuation without disclosure prohibited; penalties.

1. Before appraising or valuing any asset of the guardianship estate, each appraiser, certified public accountant or expert in valuation shall certify that the appraiser, accountant or expert will truthfully, honestly and impartially appraise or value the property according to the best of his or her knowledge and ability. The certification must be included in the appraisal or valuation and filed with the court.

2. The appraisal or valuation must list each asset that has a value of more than \$100 separately with a statement of the value of the asset opposite the asset.

3. An appraiser, certified public accountant or expert in valuation who performs an appraisal or valuation of a guardianship estate is entitled to reasonable compensation for the appraisal or valuation and may be paid by the guardian out of the estate at any time after the appraisal or valuation is completed.

4. An appraiser, certified public accountant or expert in valuation who directly or indirectly purchases any asset of an estate without full disclosure to and approval by the court is guilty of a misdemeanor. A sale made in violation of the provisions of this subsection is void, and the asset sold may be recovered by the guardian, ward or proposed ward.

(Added to NRS by [2003, 1758](#))

NRS 159.087 Recording letters of guardianship.

1. Not later than 60 days after the date of the appointment of a guardian of the estate, the guardian shall record, or cause to be recorded, in the office of the recorder of each county in which real property of the ward is located, a copy, certified by the clerk of the court, of the letters of guardianship.

2. The guardian shall attach, or cause to be attached, to the copy of the letters of guardianship recorded pursuant to subsection 1 a cover sheet containing:

- (a) The name, address and telephone number of the guardian;
- (b) The assessor's parcel number and the address of the real property of the ward; and
- (c) If the estate of the ward includes a manufactured home or mobile home, the location and serial number of the manufactured home or mobile home.

3. As used in this section:

- (a) “Manufactured home” has the meaning ascribed to it in [NRS 489.113](#).
 - (b) “Mobile home” has the meaning ascribed to it in [NRS 489.120](#).
- (Added to NRS by [1969, 419](#); A [2003, 1788](#); [2011, 2410](#))

NRS 159.089 Possession of and title to property of ward; guardian to secure certain documents.

1. A guardian of the estate shall take possession of:
 - (a) All of the property of substantial value of the ward;
 - (b) Rents, income, issues and profits from the property, whether accruing before or after the appointment of the guardian; and
 - (c) The proceeds from the sale, mortgage, lease or other disposition of the property.
 2. The guardian may permit the ward to have possession and control of the personal property and funds as are appropriate to the needs and capacities of the ward.
 3. The title to all property of the ward is in the ward and not in the guardian.
 4. A guardian shall secure originals, when available, or copies of any:
 - (a) Contract executed by the ward;
 - (b) Power of attorney executed by the ward;
 - (c) Estate planning document prepared by the ward, including, without limitation, a last will and testament, durable power of attorney and revocable trust of the ward;
 - (d) Revocable or irrevocable trust in which the ward has a vested interest as a beneficiary; and
 - (e) Writing evidencing a present or future vested interest in any real or intangible property.
- (Added to NRS by [1969, 419](#); A [2003, 1788](#))

NRS 159.0893 Access to account or other assets of ward.

1. A guardian shall present a copy of the court order appointing the guardian and letters of guardianship to a bank or other financial institution that holds any account or other assets of the ward before the guardian may access the account or other assets.
 2. The bank or other financial institution shall accept the copy of the court order appointing the guardian and letters of guardianship as proof of guardianship and allow the guardian access to the account or other assets of the ward, subject to any limitations set forth in the court order.
 3. Unless the bank or other financial institution is a party to the guardianship proceeding, the bank or other financial institution is not entitled to a copy of any:
 - (a) Competency evaluation of the ward or any other confidential information concerning the medical condition or the placement of the ward; or
 - (b) Inventory or accounting of the estate of the ward.
- (Added to NRS by [2013, 904](#))

NRS 159.0895 Assets retained to pay expenses of funeral and disposal of remains of ward: Amount exempt from all claims; placement in account or trust; reversion of excess to estate of ward.

1. The guardian may retain assets for the anticipated expense of the ward’s funeral and the disposal of his or her remains. Of the amount so retained, \$3,000 is exempt from all claims, including those of this state.
 2. The guardian may place assets so retained in a pooled account or trust. If the assets are invested in a savings account or other financial account, they are not subject to disposition as unclaimed property during the lifetime of the ward.
 3. Assets so retained may be disbursed for the ward’s funeral or the disposal of his or her remains without prior authorization of the court. An amount not so disbursed becomes part of the ward’s estate.
- (Added to NRS by [1999, 1396](#); A [2009, 1657](#))

NRS 159.091 Discovery of debts or property. Upon the filing of a petition in the guardianship proceeding by the guardian, the ward or any other interested person, alleging that any person is indebted to the ward, has or is suspected of having concealed, embezzled, converted or disposed of any property of the ward or has possession or knowledge of any such property or of any writing relating to such property, the court may require the person to appear and answer under oath concerning the matter.

(Added to NRS by [1969, 419](#); A [2003, 1788](#))

NRS 159.093 Collecting obligations due ward.

1. A guardian of the estate:
 - (a) Shall demand all debts and other choses in action due to the ward; and
 - (b) With prior approval of the court, may sue for and receive all debts and other choses in action due to the ward.
 2. A guardian of the estate, with prior approval of the court by order, may compound or compromise any debt or other chose in action due to the ward and give a release and discharge to the debtor or other obligor.
- (Added to NRS by [1969, 419](#); A [2003, 1789](#))

NRS 159.095 Representing ward in legal proceedings.

1. A guardian of the estate shall appear for and represent the ward in all actions, suits or proceedings to which the ward is a party, unless the court finds that the interests of the guardian conflict with the interests of the ward or it is otherwise appropriate to appoint a guardian ad litem in the action, suit or proceeding.
 2. Upon final resolution of the action, suit or proceeding, the guardian of the estate or the guardian ad litem shall notify the court of the outcome of the action, suit or proceeding.
 3. If the person of the ward would be affected by the outcome of any action, suit or proceeding, the guardian of the person, if any, should be joined to represent the ward in the action, suit or proceeding.
- (Added to NRS by [1969, 419](#); A [2003, 1789](#); [2013, 918](#))

NRS 159.097 Voidable contracts and transactions of ward. Any contract, except to the extent of the reasonable value of necessities, and any transaction with respect to the property of a ward made by the ward are voidable by the guardian of the estate if such contract or transaction was made at any time by the ward while an incompetent or a minor.

(Added to NRS by [1969, 419](#))

NRS 159.099 Liability of guardian of estate on contracts for ward. A guardian of the estate shall not be personally liable on any written or oral contract entered into for or on behalf of the ward where the guardian is acting within his or her authority as such guardian. Any action, suit or proceeding on any such contract shall be brought against the guardian in his or her fiduciary capacity only, and any judgment or decree obtained in such action, suit or proceeding shall be satisfied only from property of the ward.

(Added to NRS by [1969, 420](#))

NRS 159.101 Exercising rights under stock ownership of ward.

1. A guardian of the estate may exercise the ward's rights which accrue pursuant to the ward's ownership of common or preferred stock, including, but not limited to, the right to:

- (a) Vote for officers or directors;
- (b) Approve or disapprove mergers or consolidations;
- (c) Exercise stock options;
- (d) Appoint proxies;
- (e) Consent to dissolutions; and
- (f) Exercise all rights which the ward might exercise, if legally qualified, regarding the management of the corporation.

È If the stock owned by the ward in a corporation exceeds 20 percent of the total issued and outstanding stock having voting rights, the guardian must have prior approval of the court to consent to any merger, consolidation or dissolution of the corporation or the sale or encumbrance of its assets where the consent of the stockholders is required by law.

2. Whenever the estate of a ward includes corporate stock, the guardian may hold it in the name of a nominee without mention of the guardianship in the stock certificate, if any, or the stock registration books, if:

- (a) The guardian's records and all reports or accounts rendered by the guardian clearly show the ownership of the stock by the ward's estate and the facts regarding its holding; and
- (b) The nominee deposits with the guardian a signed statement showing ownership of the stock by the ward's estate, endorses any stock certificate in blank and does not have possession of the stock certificate or access to the certificate except under the immediate supervision of the guardian.

3. The guardian is personally liable for any loss to the ward's estate resulting from any act of the nominee in connection with stock held pursuant to subsection 2.

(Added to NRS by [1969, 420](#); A [1987, 586](#))

NRS 159.103 Claims against estate of ward. A guardian of the estate shall pay from the guardianship estate pursuant to [NRS 159.105](#), [159.107](#) and [159.109](#) all just claims against the ward, the estate or the guardian as such, whether accruing before or after the appointment of the guardian and whether arising in contract, in tort or otherwise.

(Added to NRS by [1969, 420](#))

NRS 159.105 Payment of claims of guardian, claims arising from contracts of guardian and claims for attorney's fees; report of claims and payment.

1. Other than claims for attorney's fees that are subject to the provisions of subsection 3, a guardian of the estate may pay from the guardianship estate the following claims without complying with the provisions of this section and [NRS 159.107](#) and [159.109](#):

- (a) The guardian's claims against the ward or the estate; and
- (b) Any claims accruing after the appointment of the guardian which arise from contracts entered into by the guardian on behalf of the ward.

2. The guardian shall report all claims and the payment of claims made pursuant to subsection 1 in the account that the guardian makes and files in the guardianship proceeding following each payment.

3. Claims for attorney's fees which are associated with the commencement and administration of the guardianship of the estate:

- (a) May be made at the time of the appointment of the guardian of the estate or any time thereafter; and
- (b) May not be paid from the guardianship estate unless the payment is made in compliance with the provisions of this section and [NRS 159.107](#) and [159.109](#).

(Added to NRS by [1969, 420](#); A [2003, 1789](#))

NRS 159.107 Presentment and verification of claims. Except as provided in [NRS 159.105](#), all claims against the ward, the guardianship estate or the guardian of the estate as such shall be presented to the guardian of the estate. Each such claim shall be in writing, shall describe the nature and the amount of the claim, if ascertainable, and shall be accompanied by the affidavit of the claimant, or someone on behalf of the claimant, who has personal knowledge of the fact. The affidavit shall state that within the knowledge of the affiant the amount claimed is justly due, no payments have been made thereon which are not credited and there is no counterclaim thereto, except as stated in the affidavit. If such claim is founded on a written instrument, the original or a copy thereof with all endorsements shall be attached to the claim. The original instrument shall be exhibited to the guardian or the court, upon demand, unless it is lost or destroyed, in which case the fact of its loss or destruction shall be stated in the claim.

(Added to NRS by [1969, 421](#))

NRS 159.109 Examination and allowance or rejection of claims by guardian.

1. A guardian of the estate shall examine each claim presented to the guardian for payment. If the guardian is satisfied that the claim is appropriate and just, the guardian shall:

- (a) Endorse upon the claim the words "examined and allowed" and the date;
- (b) Officially subscribe the notation; and
- (c) Pay the claim from the guardianship estate.

2. If the guardian is not satisfied that the claim is just, the guardian shall:

- (a) Endorse upon the claim the words "examined and rejected" and the date;
- (b) Officially subscribe the notation; and

(c) Not later than 60 days after the date the claim was presented to the guardian, notify the claimant by personal service or by mailing a notice by registered or certified mail that the claim was rejected.
(Added to NRS by [1969, 421](#); A [2003, 1790](#))

NRS 159.111 Recourse of claimant when claim rejected or not acted upon.

1. If, not later than 60 days after the date the claim was presented to the guardian, a rejected claim is returned to the claimant or the guardian of the estate fails to approve or reject and return a claim, the claimant, before the claim is barred by the statute of limitations, may:

(a) File a petition for approval of the rejected claim in the guardianship proceeding for summary determination by the court; or
(b) Commence an action or suit on the claim against the guardian in the guardian's fiduciary capacity and any judgment or decree obtained must be satisfied only from property of the ward.

2. If a claimant files a request for approval of a rejected claim or a like claim in the guardianship proceeding for summary determination, the claimant shall serve notice that he or she has filed such a request on the guardian.

3. Not later than 20 days after the date of service, the guardian may serve notice of objection to summary determination on the claimant. If the guardian serves the claimant with notice and files a copy of the notice with the court, the court shall not enter a summary determination and the claimant may commence an action or suit on the claim against the guardian in the guardian's fiduciary capacity as provided in subsection 1.

4. If the guardian fails to serve the claimant with notice of objection to summary determination or file a copy of the notice with the court, the court shall:

(a) Hear the matter and determine the claim or like claim in a summary manner; and
(b) Enter an order allowing or rejecting the claim, either in whole or in part. No appeal may be taken from the order.
(Added to NRS by [1969, 421](#); A [2003, 1790](#))

MANAGEMENT OF ESTATE

NRS 159.113 Guardian required to petition court before taking certain actions; guardian may petition court before taking certain other actions; content of petition.

1. Before taking any of the following actions, the guardian of the estate shall petition the court for an order authorizing the guardian to:

(a) Invest the property of the ward pursuant to [NRS 159.117](#).
(b) Continue the business of the ward pursuant to [NRS 159.119](#).
(c) Borrow money for the ward pursuant to [NRS 159.121](#).
(d) Except as otherwise provided in [NRS 159.079](#), enter into contracts for the ward or complete the performance of contracts of the ward pursuant to [NRS 159.123](#).
(e) Make gifts from the ward's estate or make expenditures for the ward's relatives pursuant to [NRS 159.125](#).
(f) Sell, lease or place in trust any property of the ward pursuant to [NRS 159.127](#).
(g) Exchange or partition the ward's property pursuant to [NRS 159.175](#).
(h) Release the power of the ward as trustee, personal representative or custodian for a minor or guardian.
(i) Exercise or release the power of the ward as a donee of a power of appointment.
(j) Exercise the right of the ward to take under or against a will.
(k) Transfer to a trust created by the ward any property unintentionally omitted from the trust.
(l) Submit a revocable trust to the jurisdiction of the court if:
(1) The ward or the spouse of the ward, or both, are the grantors and sole beneficiaries of the income of the trust; or
(2) The trust was created by the court.
(m) Pay any claim by the Department of Health and Human Services to recover benefits for Medicaid correctly paid to or on behalf of the ward.
(n) Transfer money in a minor ward's blocked account to the Nevada Higher Education Prepaid Tuition Trust Fund created pursuant to [NRS 353B.140](#).

2. Before taking any of the following actions, unless the guardian has been otherwise ordered by the court to petition the court for permission to take specified actions or make specified decisions in addition to those described in subsection 1, the guardian may petition the court for an order authorizing the guardian to:

(a) Obtain advice, instructions and approval of any other proposed act of the guardian relating to the ward's property.
(b) Take any other action which the guardian deems would be in the best interests of the ward.

3. The petition must be signed by the guardian and contain:

(a) The name, age, residence and address of the ward.
(b) A concise statement as to the condition of the ward's estate.
(c) A concise statement as to the advantage to the ward of or the necessity for the proposed action.
(d) The terms and conditions of any proposed sale, lease, partition, trust, exchange or investment, and a specific description of any property involved.

4. Any of the matters set forth in subsection 1 may be consolidated in one petition, and the court may enter one order authorizing or directing the guardian to do one or more of those acts.

5. A petition filed pursuant to paragraphs (b) and (d) of subsection 1 may be consolidated in and filed with the petition for the appointment of the guardian, and if the guardian is appointed, the court may enter additional orders authorizing the guardian to continue the business of the ward, enter contracts for the ward or complete contracts of the ward.

(Added to NRS by [1969, 421](#); A [1979, 589](#); [2003, 1791](#); [2007, 2033](#), [2396](#); [2009, 1657](#), [2523](#); [2013, 918](#))

NRS 159.115 Notice of hearing of petition or account.

1. Upon the filing of any petition under [NRS 159.078](#) or [159.113](#), or any account, notice must be given in the manner prescribed by [NRS 159.034](#).

2. The notice must:

(a) Give the name of the ward.
(b) Give the name of the petitioner.

- (c) Give the date, time and place of the hearing.
- (d) State the nature of the petition.
- (e) Refer to the petition for further particulars, and notify all persons interested to appear at the time and place mentioned in the notice and show cause why the court order should not be made.

(Added to NRS by [1969, 422](#); A [1979, 789](#); [1995, 1077](#); [2003, 1791](#); [2007, 2397](#); [2009, 1659](#); [2013, 920](#))

NRS 159.117 Court approval required to make certain investments, loans and to exercise certain options; certain investments authorized without prior approval; investing property of two or more wards.

1. Upon approval of the court by order, a guardian of the estate may:
 - (a) Invest the property of the ward, make loans and accept security therefor, in the manner and to the extent authorized by the court.
 - (b) Exercise options of the ward to purchase or exchange securities or other property.
2. A guardian of the estate may, without securing the prior approval of the court, invest the property of the ward in the following:
 - (a) Savings accounts in any bank, credit union or savings and loan association in this State, to the extent that the deposits are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to [NRS 678.755](#).
 - (b) Interest-bearing obligations of or fully guaranteed by the United States.
 - (c) Interest-bearing obligations of the United States Postal Service.
 - (d) Interest-bearing obligations of the Federal National Mortgage Association.
 - (e) Interest-bearing general obligations of this State.
 - (f) Interest-bearing general obligations of any county, city or school district of this State.
 - (g) Money market mutual funds which are invested only in those instruments listed in paragraphs (a) to (f), inclusive.
3. A guardian of the estate for two or more wards may invest the property of two or more of the wards in property in which each ward whose property is so invested has an undivided interest. The guardian shall keep a separate record showing the interest of each ward in the investment and in the income, profits or proceeds therefrom.
4. Upon approval of the court, for a period authorized by the court, a guardian of the estate may maintain the assets of the ward in the manner in which the ward had invested the assets before the ward's incapacity.
5. A guardian of the estate may access or manage a guardianship account via the Internet on a secured website established by the bank, credit union or broker holding the account.

(Added to NRS by [1969, 423](#); A [1971, 268](#); [1979, 590](#); [1993, 2771](#); [1995, 892](#); [1999, 1458](#); [2003, 1792](#); [2009, 1660](#))

NRS 159.119 Continuing business of ward. A guardian of the estate, with prior approval of the court by order, may continue any business of the ward. The order may provide for any one or more of the following:

1. The conduct or reorganization of the business solely by the guardian, jointly by the guardian with one or more of the ward's partners, shareholders, members, or joint venturers or as a corporation or limited-liability company of which the ward is or becomes a shareholder or member.
2. The extent to which the guardian may incur liability of the estate of the ward for obligations arising from the continuation of the business.
3. Whether liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate of the ward allocated for use in the business or to the estate as a whole.
4. The period of time during which the business may be conducted.
5. Any other conditions, restrictions, regulations and requirements as the court considers proper.

(Added to NRS by [1969, 423](#); A [2003, 1793](#))

NRS 159.121 Borrowing money for ward.

1. A guardian of the estate, with prior approval of the court by order, may borrow money for the account of the ward when necessary:
 - (a) To continue any business of the ward.
 - (b) To pay claims against the ward, the guardianship estate or the guardian of the estate as such.
 - (c) To provide for the proper care, maintenance, education and support of the ward and any person to whom the ward owes a legal duty of support.
 - (d) For any other purpose that is in the best interests of the ward.
2. If the court determines that the borrowing is necessary or proper, the court shall make an order approving the borrowing and may authorize one or more separate loans. The order shall prescribe the maximum amount of each loan, the maximum rate of interest and the date of final maturity of each loan, and may authorize the guardian to secure any loan by mortgage, deed of trust, pledge or other security transaction authorized by the laws of this state. The order shall describe the property, if any, to be given as security for each loan.

(Added to NRS by [1969, 423](#))

NRS 159.123 Contracts of ward. If a ward for whom a guardian of the estate is appointed was, at the time of the appointment, a party to a contract which has not been fully performed, and which was made by the ward while not under any legal disability, the guardian of the estate, with prior approval of the court by order, may complete the performance of such contract. If such contract requires the conveyance of any real or personal property, or any interest in such property, the court may authorize the guardian to convey the interest and estate of the ward in the property, and the effect of such conveyance shall be the same as though made by the ward while not under legal disability. If the contract requires a sale, no notice of sale is required under this section unless otherwise ordered by the court.

(Added to NRS by [1969, 424](#); A [2009, 1660](#))

NRS 159.125 Gifts from estate of ward; expenditures for relatives of ward.

1. A guardian of the estate, with prior approval of the court by order, may, from the estate of the ward which is not necessary for the proper care, maintenance, education and support of the ward and of persons to whom the ward owes a legal duty of support:

- (a) Make reasonable gifts directly, or into a trust, on behalf of the ward.
 - (b) Provide for or contribute to the care, maintenance, education or support of persons who are or have been related to the ward by blood, adoption or marriage.
 - (c) Pay or contribute to the payment of reasonable expenses of remedial care and treatment for and the funeral and burial of persons who are or have been related to the ward by blood, adoption or marriage.
2. Any petition filed by a guardian pursuant to this section must state whether:
- (a) The purpose of the guardian in seeking approval to make the gift, payment or contribution is to dispose of assets to make the ward eligible for Medicaid; and
 - (b) Making the gift, payment or contribution will cause the ward to become eligible for Medicaid.
- (Added to NRS by [1969, 424](#); A [1979, 591](#); [2003, 1793](#))

TRANSACTIONS INVOLVING REAL AND PERSONAL PROPERTY

General Provisions

NRS 159.127 Purposes for which property of ward may be sold, leased or placed in trust. A guardian of the estate, with prior approval of the court by order, may sell, lease or place in trust any of the property of the ward:

- 1. For the purpose of paying claims against the ward, the guardianship estate or the guardian of the estate.
 - 2. For the purpose of providing for the proper care, maintenance, education and support of the ward and any person to whom the ward owes a legal duty of support.
 - 3. For the purpose of investing the proceeds.
 - 4. To obtain income through rentals or royalties.
 - 5. For any other purpose that is in the best interests of the ward.
- (Added to NRS by [1969, 424](#); A [1979, 591](#))

NRS 159.132 Property of ward subject to sale.

- 1. Any interest of a ward in real or personal property, including interests in contracts and choses in action, may be sold pursuant to this chapter.
 - 2. The interest of a ward in a partnership or limited-liability company may be sold as personal property, and another partner or member may be the purchaser.
- (Added to NRS by [1979, 788](#); A [2003, 1794](#))

Sale of Real Property

NRS 159.134 Selling real property of ward.

- 1. All sales of real property of a ward must be:
 - (a) Reported to the court; and
 - (b) Confirmed by the court before the title to the real property passes to the purchaser.
 - 2. The report and a petition for confirmation of the sale must be filed with the court not later than 30 days after the date of each sale.
 - 3. The court shall set the date of the hearing and give notice of the hearing in the manner required pursuant to [NRS 159.115](#) or as the court may order.
 - 4. An interested person may file written objections to the confirmation of the sale. If such objections are filed, the court shall conduct a hearing regarding those objections during which the interested person may offer witnesses in support of the objections.
 - 5. Before the court confirms a sale, the court must find that notice of the sale was given in the manner required pursuant to [NRS 159.1425](#), [159.1435](#) and [159.144](#), unless the sale was exempt from notice pursuant to [NRS 159.123](#).
- (Added to NRS by [1979, 788](#); A [2003, 1794](#); [2009, 1660](#))

NRS 159.136 Order requiring guardian to sell real property of estate. If the guardian neglects or refuses to sell any real property of the estate when it is necessary or in the best interests of the ward, an interested person may petition the court for an order requiring the guardian to sell the property. The court shall set the petition for a hearing, and the petitioner shall serve notice on the guardian at least 10 days before the hearing.

(Added to NRS by [2003, 1759](#))

NRS 159.1365 Application of money from sale of real property of ward that is subject to mortgage or other lien. If real property of the estate of a ward is sold that is subject to a mortgage or other lien which is a valid claim against the estate, the money from the sale must be applied in the following order:

- 1. To pay the necessary expenses of the sale.
 - 2. To satisfy the mortgage or other lien, including, without limitation, payment of interest and any other lawful costs and charges. If the mortgagee or other lienholder cannot be found, the money from the sale may be paid as ordered by the court and the mortgage or other lien shall be deemed to be satisfied.
 - 3. To the estate of the ward, unless the court orders otherwise.
- (Added to NRS by [2003, 1760](#))

NRS 159.1375 Sale of real property of ward to holder of mortgage or lien on such property. At a sale of real property that is subject to a mortgage or lien, the holder of the mortgage or lien may become the purchaser. The receipt for the amount owed to the holder from the proceeds of the sale is a payment pro tanto.

(Added to NRS by [2003, 1760](#))

NRS 159.138 Sale of equity of estate in real property of ward that is subject to mortgage or lien and of property that is subject to mortgage or lien.

- 1. In the manner required by this chapter for the sale of like property, a guardian may sell:

- (a) The equity of the estate in any real property that is subject to a mortgage or lien; and
 - (b) The property that is subject to the mortgage or lien.
2. If a claim has been filed upon the debt secured by the mortgage or lien, the court shall not confirm the sale unless the holder of the claim files a signed and acknowledged document which releases the estate from all liability upon the claim.
(Added to NRS by [2003, 1760](#))

NRS 159.1385 Contract for sale of real property of ward authorized; limitation on commission; liability of guardian and estate.

1. A guardian may enter into a written contract with any bona fide agent, broker or multiple agents or brokers to secure a purchaser for any real property of the estate. Such a contract may grant an exclusive right to sell the property to the agent, broker or multiple agents or brokers.
2. The guardian shall provide for the payment of a commission upon the sale of the real property which:
- (a) Must be paid from the proceeds of the sale;
 - (b) Must be fixed in an amount not to exceed:
 - (1) Ten percent for unimproved real property; or
 - (2) Seven percent for improved real property; and
 - (c) Must be authorized by the court by confirmation of the sale.
3. Upon confirmation of the sale by the court, the contract for the sale becomes binding and enforceable against the estate.
4. A guardian may not be held personally liable and the estate is not liable for the payment of any commission set forth in a contract entered into with an agent or broker pursuant to this section until the sale is confirmed by the court, and then is liable only for the amount set forth in the contract.
(Added to NRS by [2003, 1760](#))

NRS 159.1415 Presentation of offer to purchase real property to court for confirmation; division of commission for sale of such property.

1. When an offer to purchase real property of a guardianship estate is presented to the court for confirmation:
- (a) Other persons may submit higher bids to the court; and
 - (b) The court may confirm the highest bid.
2. Upon confirmation of a sale of real property by the court, the commission for the sale must be divided between the listing agent or broker and the agent or broker who secured the purchaser to whom the sale was confirmed, if any, in accordance with the contract with the listing agent or broker.
(Added to NRS by [2003, 1760](#))

NRS 159.142 Sale of interest of ward in real property owned jointly with one or more persons.

1. If a ward owns real property jointly with one or more other persons, the interest owned by the ward may be sold to one or more joint owners of the property only if:
- (a) The guardian files a petition with the court to confirm the sale pursuant to [NRS 159.134](#); and
 - (b) The court confirms the sale.
2. The court shall confirm the sale only if:
- (a) The net amount of the proceeds from the sale to the estate of the ward is not less than 90 percent of the fair market value of the portion of the property to be sold; and
 - (b) Upon confirmation, the estate of the ward will be released from all liability for any mortgage or lien on the property.
(Added to NRS by [2003, 1761](#))

NRS 159.1425 Notice of sale of real property of ward: When required; manner of providing; waiver; content.

1. Except as otherwise provided in this section and except for a sale pursuant to [NRS 159.123](#) or [159.142](#), a guardian may sell the real property of a ward only after notice of the sale is published in:
- (a) A newspaper that is published in the county in which the property, or some portion of the property, is located; or
 - (b) If a newspaper is not published in that county:
 - (1) In a newspaper of general circulation in the county; or
 - (2) In such other newspaper as the court orders.
2. Except as otherwise provided in this section and except for a sale of real property pursuant to [NRS 159.123](#) or [159.142](#):
- (a) The notice of a public auction for the sale of real property must be published not less than three times before the date of the sale, over a period of 14 days and 7 days apart.
 - (b) The notice of a private sale must be published not less than three times before the date on which offers will be accepted, over a period of 14 days and 7 days apart.
3. For good cause shown, the court may order fewer publications and shorten the time of notice, but must not shorten the time of notice to less than 8 days.
4. The court may waive the requirement of publication pursuant to this section if:
- (a) The guardian is the sole devisee or heir of the estate; or
 - (b) All devisees or heirs of the estate consent to the waiver in writing.
5. Publication for the sale of real property is not required pursuant to this section if the property to be sold is reasonably believed to have a value of \$10,000 or less. In lieu of publication, the guardian shall post notice of the sale in three of the most public places in the county in which the property, or some portion of the property, is located for at least 14 days before:
- (a) The date of the sale at public auction; or
 - (b) The date on which offers will be accepted for a private sale.
6. Any notice published or posted pursuant to this section must include, without limitation:
- (a) For a public auction:
 - (1) A description of the real property which reasonably identifies the property to be sold; and
 - (2) The date, time and location of the auction.
 - (b) For a private sale:
 - (1) A description of the real property which reasonably identifies the property to be sold; and

(2) The date, time and location that offers will be accepted.

(Added to NRS by [2003, 1761](#); A [2009, 1661](#))

NRS 159.1435 Public auction for sale of real property: Where held; postponement.

1. Except for a sale pursuant to [NRS 159.123](#) or [159.142](#), a public auction for the sale of real property must be held:

- (a) In the county in which the property is located or, if the real property is located in two or more counties, in either county;
- (b) Between the hours of 9 a.m. and 5 p.m.; and
- (c) On the date specified in the notice, unless the sale is postponed.

2. If, on or before the date and time set for the public auction, the guardian determines that the auction should be postponed:

(a) The auction may be postponed for not more than 3 months after the date first set for the auction; and

(b) Notice of the postponement must be given by a public declaration at the place first set for the sale on the date and time that was set for the sale.

(Added to NRS by [2003, 1762](#); A [2009, 1662](#))

NRS 159.144 Sale of real property of guardianship estate at private sale: Requirements for establishing date; manner of making offers.

1. Except for the sale of real property pursuant to [NRS 159.123](#) or [159.142](#), a sale of real property of a guardianship estate at a private sale:

(a) Must not occur before the date stated in the notice.

(b) Except as otherwise provided in this paragraph, must not occur sooner than 14 days after the date of the first publication or posting of the notice. For good cause shown, the court may shorten the time in which the sale may occur to not sooner than 8 days after the date of the first publication or posting of the notice. If the court so orders, the notice of the sale and the sale may be made to correspond with the court order.

(c) Must occur not later than 1 year after the date stated in the notice.

2. The offers made in a private sale:

(a) Must be in writing; and

(b) May be delivered to the place designated in the notice or to the guardian at any time:

(1) After the date of the first publication or posting of the notice; and

(2) Before the date on which the sale is to occur.

(Added to NRS by [2003, 1762](#); A [2009, 1662](#))

NRS 159.1455 Confirmation by court of sale of real property of guardianship estate at private sale.

1. Except as otherwise provided in subsection 2, the court shall not confirm a sale of real property of a guardianship estate at a private sale unless:

(a) The court is satisfied that the amount offered represents the fair market value of the property to be sold; and

(b) Except for a sale of real property pursuant to [NRS 159.123](#), the real property has been appraised within 1 year before the date of the sale. If the real property has not been appraised within this period, a new appraisal must be conducted pursuant to [NRS 159.086](#) and [159.0865](#) at any time before the sale or confirmation by the court of the sale.

2. The court may waive the requirement of an appraisal and allow the guardian to rely on the assessed value of the real property for purposes of taxation in obtaining confirmation by the court of the sale.

(Added to NRS by [2003, 1762](#); A [2009, 1662](#))

NRS 159.146 Hearing to confirm sale of real property: Considerations; conditions for confirmation; actions of court if sale is not confirmed; continuance; successive bids if court does not accept offer or bid.

1. At the hearing to confirm the sale of real property, the court shall:

(a) Consider whether the sale is necessary or in the best interest of the estate of the ward; and

(b) Examine the return on the investment and the evidence submitted in relation to the sale.

2. The court shall confirm the sale and order conveyances to be executed if it appears to the court that:

(a) Good reason existed for the sale;

(b) The sale was conducted in a legal and fair manner;

(c) The amount of the offer or bid is not disproportionate to the value of the property; and

(d) It is unlikely that an offer or bid would be made which exceeds the original offer or bid:

(1) By at least 5 percent if the offer or bid is less than \$100,000; or

(2) By at least \$5,000 if the offer or bid is \$100,000 or more.

3. The court shall not confirm the sale if the conditions in this section are not satisfied.

4. If the court does not confirm the sale, the court:

(a) May order a new sale;

(b) May conduct a public auction in open court; or

(c) May accept a written offer or bid from a responsible person and confirm the sale to the person if the written offer complies with the laws of this state and exceeds the original bid:

(1) By at least 5 percent if the bid is less than \$100,000; or

(2) By at least \$5,000 if the bid is \$100,000 or more.

5. If the court does not confirm the sale and orders a new sale:

(a) Notice must be given in the manner set forth in [NRS 159.1425](#); and

(b) The sale must be conducted in all other respects as though no previous sale has taken place.

6. If a higher offer or bid is received by the court during the hearing to confirm the sale, the court may continue the hearing rather than accept the offer or bid as set forth in paragraph (c) of subsection 4 if the court determines that the person who made the original offer or bid was not notified of the hearing and that the person who made the original offer or bid may wish to increase his or her bid. This subsection does not grant a right to a person to have a continuance granted and may not be used as a ground to set aside an order confirming a sale.

7. Except as otherwise provided in this subsection, if a higher offer or bid is received by the court during the hearing to confirm the sale and the court does not accept that offer or bid, each successive bid must be for not less than:

- (a) An additional \$5,000, if the original offer is for \$100,000 or more; or
 - (b) An additional \$250 if the original offer is less than \$100,000.
- È Upon the request of the guardian during the hearing to confirm the sale, the court may set other incremental bid amounts.
(Added to NRS by [2003, 1762](#); A [2013, 921](#))

NRS 159.1465 Conveyance of real property of guardianship estate to purchaser upon confirmation of sale by court.

1. If the court confirms a sale of real property of a guardianship estate, the guardian shall execute a conveyance of the property to the purchaser.
2. The conveyance must include a reference to the court order confirming the sale, and a certified copy of the court order must be recorded in the office of the recorder of the county in which the property, or any portion of the property, is located.
3. A conveyance conveys all the right, title and interest of the ward in the property on the date of the sale, and if, before the date of the sale, by operation of law or otherwise, the ward has acquired any right, title or interest in the property other than or in addition to that of the ward at the time of the sale, that right, title or interest also passes by the conveyance.
(Added to NRS by [2003, 1763](#))

NRS 159.1475 Sale of real property made upon credit.

1. If a sale of real property is made upon credit, the guardian shall take:
 - (a) The note or notes of the purchaser for the unpaid portion of the sale; and
 - (b) A mortgage on the property to secure the payment of the notes.
2. The mortgage may contain a provision for release of any part of the property if the court approves the provision.
(Added to NRS by [2003, 1763](#))

NRS 159.148 Neglect or refusal of purchaser of real property to comply with terms of sale.

1. After confirmation of the sale of real property, if the purchaser neglects or refuses to comply with the terms of the sale, the court may set aside the order of confirmation and order the property to be resold:
 - (a) On motion of the guardian; and
 - (b) After notice is given to the purchaser.
2. If the amount realized on the resale of the property is insufficient to cover the bid and the expenses of the previous sale, the original purchaser is liable to the estate of the ward for the deficiency.
(Added to NRS by [2003, 1763](#))

NRS 159.1495 Fraudulent sale of real property of ward by guardian. A guardian who fraudulently sells any real property of a ward in a manner inconsistent with the provisions of this chapter is liable for double the value of the property sold, as liquidated damages, to be recovered in an action by or on behalf of the ward.
(Added to NRS by [2003, 1764](#))

- NRS 159.1505 Periods of limitation for actions to recover or set aside sale of real property.** The periods of limitation prescribed in [NRS 11.260](#) apply to all actions:
1. For the recovery of real property sold by a guardian in accordance with the provisions of this chapter; and
 2. To set aside a sale of real property.
(Added to NRS by [2003, 1764](#))

Sale of Personal Property

NRS 159.1515 Sale of personal property of ward by guardian without notice.

1. A guardian may sell perishable property and other personal property of the ward without notice, and title to the property passes without confirmation by the court if the property:
 - (a) Will depreciate in value if not disposed of promptly; or
 - (b) Will incur loss or expense by being kept.
2. The guardian is responsible for the actual value of the personal property unless the guardian obtains confirmation by the court of the sale.
(Added to NRS by [2003, 1764](#))

NRS 159.152 Sale of security of ward by guardian. A guardian may sell any security of the ward if:

1. The guardian petitions the court for confirmation of the sale;
2. The clerk sets the date of the hearing;
3. The guardian gives notice in the manner required pursuant to [NRS 159.034](#) unless, for good cause shown, the court shortens the period within which notice must be given or dispenses with notice; and
4. The court confirms the sale.
(Added to NRS by [2003, 1764](#))

NRS 159.1535 Notice of sale of personal property of ward: When required; manner of providing content.

1. Except as otherwise provided in [NRS 159.1515](#) and [159.152](#), a guardian may sell the personal property of the ward only after notice of the sale is published in:
 - (a) A newspaper that is published in the county in which the property, or some portion of the property, is located; or
 - (b) If a newspaper is not published in that county:
 - (1) In a newspaper of general circulation in the county; or
 - (2) In such other newspaper as the court orders.
2. Except as otherwise provided in this section:
 - (a) The notice of a public sale must be published not less than three times before the date of the sale, over a period of 14 days and 7 days apart.

(b) The notice of a private sale must be published not less than three times before the date on which offers will be accepted, over a period of 14 days and 7 days apart.

3. For good cause shown, the court may order fewer publications and shorten the time of notice, but must not shorten the time of notice to less than 8 days.

4. The notice must include, without limitation:

(a) For a public sale:

- (1) A description of the personal property to be sold; and
- (2) The date, time and location of the sale.

(b) For a private sale:

- (1) A description of the personal property to be sold; and
- (2) The date, time and location that offers will be accepted.

(c) For a sale on an appropriate auction website on the Internet:

- (1) A description of the personal property to be sold;
- (2) The date the personal property will be listed; and
- (3) The Internet address of the website on which the sale will be posted.

(Added to NRS by [2003, 1764](#); A [2009, 1663](#))

NRS 159.154 Place and manner of sale of personal property of ward.

1. The guardian may sell the personal property of a ward by public sale at:

- (a) The residence of the ward; or
- (b) Any other location designated by the guardian.

2. The guardian may sell the personal property by public sale only if the property is made available for inspection at the time of the sale or photographs of the personal property are posted on an appropriate auction website on the Internet.

3. Personal property may be sold at a public or private sale for cash or upon credit.

(Added to NRS by [2003, 1765](#); A [2009, 1663](#))

NRS 159.156 Sale of interest in partnership, interest in personal property pledged to ward and choses in action of estate of ward. The following interests of the estate of the ward may be sold in the same manner as other personal property:

1. An interest in a partnership;
2. An interest in personal property that has been pledged to the ward; and
3. Choses in action.

(Added to NRS by [2003, 1765](#))

Lease of Property

NRS 159.157 Lease of property of ward. A guardian of the estate may lease any real property of the ward or any interest in real property:

1. Without securing prior court approval, where the tenancy is from month to month or for a term not to exceed 1 year and the reasonable fixed rental for the property or the ward's proportionate interest in such rental does not exceed \$250 per month.

2. With prior approval of the court by order, for such period of time as may be authorized by the court, not exceeding any time limitation prescribed by law, and upon such terms and conditions as the court may approve. Such lease may extend beyond the period of minority of a minor ward.

(Added to NRS by [1969, 428](#))

NRS 159.159 Contract with broker to secure lessee. The court may authorize the guardian to enter into a written contract with one or more licensed real estate brokers to secure a lessee of the ward's property, which contract may provide for the payment of a commission, not exceeding 5 percent of the fixed rental for the first 2 years, to be paid out of the proceeds of any such lease.

(Added to NRS by [1969, 428](#))

NRS 159.161 Petition for approval of lease: Content; conditions for approval.

1. Petitions to secure court approval of any lease:

- (a) Must include the parcel number assigned to the property to be leased and the physical address of the property, if any; and
- (b) Must set forth the proposed fixed rental, the duration of the lease and a brief description of the duties of the proposed lessor and lessee.

2. Upon the hearing of a petition pursuant to subsection 1, if the court is satisfied that the lease is for the best interests of the ward and the estate of the ward, the court shall enter an order authorizing the guardian to enter into the lease.

(Added to NRS by [1969, 428](#); A [2003, 1794](#))

NRS 159.163 Agreement for rental or bailment of personal property. A guardian of the estate, with prior approval of the court by order, may enter into agreements providing for the rental or bailment of the ward's personal property. All proceedings to obtain such a court order shall be the same as required for the lease of real property.

(Added to NRS by [1969, 428](#))

NRS 159.165 Lease of mining claim or mineral rights; option to purchase.

1. If the property to be leased consists of mining claims, an interest in the mining claims, property worked as a mine or lands containing oil, gas, steam, gravel or any minerals, the court may authorize the guardian to enter into a lease which provides for payment by the lessee of a royalty, in money or in kind, in lieu of a fixed rental. The court may also authorize the guardian to enter into a lease which provides for a pooling agreement or authorizes the lessee to enter into pooling or other cooperative agreements with lessees, operators or owners of other lands and minerals for the purpose of bringing about the cooperative development and operation of any mine, oil field or other unit of which the ward's property is a part.

2. If the proposed lease contains an option to purchase, and the property to be sold under the option consists of mining claims, property worked as a mine, or interests in oil, gas, steam, gravel or any mineral, which has a speculative or undefined market value,

the court may authorize the guardian to enter into such a lease and sales agreement or give an option to purchase without requiring the property to be sold at public auction or by private sale in the manner required by this chapter for sales of other real property.

3. If the petition filed pursuant to this section requests authority to enter into a lease with an option to purchase, in addition to the notice required by [NRS 159.034](#), the guardian shall publish a copy of the notice at least twice, the first publication to be at least 10 days prior to the date set for the hearing and the second publication to be not earlier than 7 days after the date of the first publication. The notice must be published in:

- (a) A newspaper that is published in the county where the property is located; or
- (b) If no newspaper is published in the county where the property is located, a newspaper of general circulation in that county which is designated by the court.

(Added to NRS by [1969, 429](#); A [2003, 1794](#))

Agreement to Sell or Give Option to Purchase Mining Claim

NRS 159.1653 Petition to enter into agreement; setting date of hearing; notice.

1. To enter into an agreement to sell or to give an option to purchase a mining claim or real property worked as a mine which belongs to the estate of the ward, the guardian or an interested person shall file a petition with the court that:

- (a) Describes the property or claim;
- (b) States the terms and general conditions of the agreement;
- (c) Shows any advantage that may accrue to the estate of the ward from entering into the agreement; and
- (d) Requests confirmation by the court of the agreement.

2. The court shall set the date of the hearing on the petition.

3. The petitioner shall give notice in the manner provided in [NRS 159.034](#).

(Added to NRS by [2003, 1765](#))

NRS 159.1657 Hearing on petition; court order; recording of court order.

1. At the time appointed and if the court finds that due notice of the hearing concerning an agreement has been given, the court shall hear a petition filed pursuant to [NRS 159.1653](#) and any objection to the petition that is filed or presented.

2. After the hearing, if the court is satisfied that the agreement will be to the advantage of the estate of the ward, the court:

- (a) Shall order the guardian to enter into the agreement; and
- (b) May prescribe in the order the terms and conditions of the agreement.

3. A certified copy of the court order must be recorded in the office of the county recorder of each county in which the property affected by the agreement, or any portion of the property, is located.

(Added to NRS by [2003, 1765](#))

NRS 159.166 Bond and actions required upon court order to enter into agreement.

1. If the court orders the guardian to enter into the agreement pursuant to [NRS 159.1657](#), the court shall order the guardian to provide an additional bond and specify the amount of the bond in the court order.

2. The guardian is not entitled to receive any of the proceeds from the agreement until the guardian provides the bond and the court approves the bond.

3. When the court order is entered, the guardian shall execute, acknowledge and deliver an agreement which:

- (a) Contains the conditions specified in the court order;
- (b) States that the agreement or option is approved by court order; and
- (c) Provides the date of the court order.

(Added to NRS by [2003, 1765](#))

NRS 159.1663 Neglect or refusal of purchaser of mining claim or of option holder to comply with terms of agreement.

1. If the purchaser or option holder neglects or refuses to comply with the terms of the agreement approved by the court pursuant to [NRS 159.1657](#), the guardian may petition the court to cancel the agreement. The court shall cancel the agreement after notice is given to the purchaser or option holder.

2. The cancellation of an agreement pursuant to this section does not affect any liability created by the agreement.

(Added to NRS by [2003, 1766](#))

NRS 159.1667 Petition for confirmation of proceedings concerning agreement: When required; notice; hearing.

1. If the purchaser or option holder complies with the terms of an agreement approved by the court pursuant to [NRS 159.1657](#) and has made all payments according to the terms of the agreement, the guardian shall:

- (a) Make a return to the court of the proceedings; and
- (b) Petition the court for confirmation of the proceedings.

2. Notice must be given to the purchaser or option holder regarding the petition for confirmation.

3. The court:

- (a) Shall hold a hearing regarding the petition for confirmation; and
- (b) May order or deny confirmation of the proceedings and execution of the conveyances in the same manner and with the same effect as when the court orders or denies a confirmation of a sale of real property.

(Added to NRS by [2003, 1766](#))

Miscellaneous Provisions

NRS 159.167 Special sale of property of ward or surrender of interest therein.

1. A guardian of the estate, with prior approval of the court, may accept an offer for the purchase of the interest or estate of the ward, in real or personal property or both real and personal property, where it appears from the petition and the court determines that:

- (a) The interest or estate of the ward in such property is an interest in a partnership, joint venture or closely held corporation, in which the offeror or offerors own the remaining interests in the partnership, joint venture or closely held corporation, or are offering

to purchase such remaining interests.

(b) The interest or estate of the ward in such property is an undivided interest in property in which the offeror or offerors own the remaining interests in such property or are offering to purchase such remaining interests.

(c) The interest or estate of the ward to be sold or granted is an easement in or creates a servitude upon the ward's property.

2. A guardian of the estate, with prior approval of the court, may accept an offer to surrender the interest or estate of the ward in real or personal property or both real and personal property, where it appears from the petition and the court determines that:

(a) The interest or estate of the ward is contingent or dubious.

(b) The interest or estate of the ward in such property is a servitude upon the property of another.

(Added to NRS by [1969, 429](#))

NRS 159.169 Advice, instructions and approval of acts of guardian.

1. A guardian of the estate may petition the court for advice and instructions in any matter concerning:

(a) The administration of the ward's estate;

(b) The priority of paying claims;

(c) The propriety of making any proposed disbursement of funds;

(d) Elections for or on behalf of the ward to take under the will of a deceased spouse;

(e) Exercising for or on behalf of the ward:

(1) Any options or other rights under any policy of insurance or annuity; and

(2) The right to take under a will, trust or other devise;

(f) The propriety of exercising any right exercisable by owners of property; and

(g) Matters of a similar nature.

2. Any act done by a guardian of the estate after securing court approval or instructions with reference to the matters set forth in subsection 1 is binding upon the ward or those claiming through the ward, and the guardian is not personally liable for performing any such act.

3. If any interested person may be adversely affected by the proposed act of the guardian, the court shall direct the issuance of a citation to that interested person, to be served upon the person at least 20 days before the hearing on the petition. The citation must be served in the same manner that summons is served in a civil action and must direct the interested person to appear and show cause why the proposed act of the guardian should not be authorized or approved. All interested persons so served are bound by the order of the court which is final and conclusive, subject to any right of appeal.

(Added to NRS by [1969, 430](#); A [1979, 591](#); [2003, 1795](#))

NRS 159.171 Executing and recording legal documents.

1. A guardian of the estate shall record a certified copy of any court order authorizing the sale, mortgage, lease, surrender or conveyance of real property in the office of the county recorder of the county in which any portion of the land is located.

2. To carry out effectively any transaction affecting the ward's property as authorized by this chapter, the court may authorize the guardian to execute any promissory note, mortgage, deed of trust, deed, lease, security agreement or other legal document or instrument which is reasonably necessary to carry out such transaction.

(Added to NRS by [1969, 430](#))

NRS 159.173 Transfer of property of ward not ademption. If a guardian of the estate sells or transfers any real or personal property that is specifically devised or bequeathed by the ward or which is held by the ward as a joint tenancy, designated as being held by the ward in trust for another person or held by the ward as a revocable trust and the ward was competent to make a will or create the interest at the time the will or interest was created, but was not competent to make a will or create the interest at the time of the sale or transfer and never executed a valid later will or changed the manner in which the ward held the interest, the devisee, beneficiary or legatee may elect to take the proceeds of the sale or other transfer of the interest, specific devise or bequest.

(Added to NRS by [1969, 430](#); A [2003, 1796](#))

NRS 159.175 Exchange or partition of property of ward.

1. A guardian of the estate, with prior approval of the court by order, where it appears from the petition and the court determines that the best interests of the ward are served by such action, may:

(a) Accept an offer to exchange all or any interest of the ward in real or personal property or both real and personal property for real or personal property or both real and personal property of another, and pay or receive any cash or other consideration to equalize the values on such exchange; or

(b) Effect a voluntary partition of real or personal property or both real and personal property in which the ward owns an undivided interest.

2. Upon hearing the petition, the court shall inquire into the value of the property to be exchanged or partitioned, the rental or income therefrom, and the use for which the property is best suited.

(Added to NRS by [1969, 430](#))

ACCOUNTINGS

NRS 159.176 Review of guardianship by court. Every guardianship established pursuant to this chapter must be reviewed by the court annually.

(Added to NRS by [1981, 1933](#); A [2003, 594](#))

NRS 159.177 Time for filing account. A guardian of the estate or special guardian who is authorized to manage the ward's property shall make and file a verified account in the guardianship proceeding:

1. Annually, not later than 60 days after the anniversary date of the appointment of the guardian, unless the court orders such an account to be made and filed at a different interval upon a showing of good cause and with the appropriate protection of the interests of the ward.

2. Upon filing a petition to resign and before the resignation is accepted by the court.

3. Within 30 days after the date of his or her removal, unless the court authorizes a longer period.

4. Within 90 days after the date of termination of the guardianship or the death of the ward, unless the court authorizes a longer period.

5. At any other time as required by law or as the court may order.

(Added to NRS by [1969, 431](#); A [1981, 1937](#); [2003, 1796](#))

NRS 159.179 Contents of account; retention of receipts or vouchers for all expenditures; proving payment when receipt or voucher is lost.

1. An account made and filed by a guardian of the estate or special guardian who is authorized to manage the ward's property must include, without limitation, the following information:

- (a) The period covered by the account.
- (b) All cash receipts and disbursements during the period covered by the account.
- (c) All claims filed and the action taken regarding the account.

(d) Any changes in the ward's property due to sales, exchanges, investments, acquisitions, gifts, mortgages or other transactions which have increased, decreased or altered the ward's property holdings as reported in the original inventory or the preceding account.

(e) Any other information the guardian considers necessary to show the condition of the affairs of the ward.

2. If the account is for the estates of two or more wards, it must show the interest of each ward in the receipts, disbursements and property.

3. Receipts or vouchers for all expenditures must be retained by the guardian for examination by the court or an interested person. Unless ordered by the court, the guardian is not required to file such receipts or vouchers with the court.

4. On the court's own motion or on ex parte application by an interested person which demonstrates good cause, the court may:

- (a) Order production of the receipts or vouchers that support the account; and
- (b) Examine or audit the receipts or vouchers that support the account.

5. If a receipt or voucher is lost or for good reason cannot be produced on settlement of an account, payment may be proved by the oath of at least one competent witness. The guardian must be allowed expenditures if it is proven that:

(a) The receipt or voucher for any disbursement has been lost or destroyed so that it is impossible to obtain a duplicate of the receipt or voucher; and

(b) Expenses were paid in good faith and were valid charges against the estate.

(Added to NRS by [1969, 431](#); A [1981, 1937](#); [1999, 2365](#); [2003, 1796](#))

NRS 159.181 Hearing of account.

1. Any interested person may appear at the hearing and object to the account or file written objections to the account prior to the hearing.

2. If there are no objections to the account or if the court overrules any objections, the court may enter an order allowing and confirming the account.

3. Except as otherwise provided in this subsection, the order settling and allowing the account is a final order and is conclusive against all persons interested in the guardianship proceeding, including, without limitation, heirs and assigns. The order is not final against a ward who requests an examination of any account after the ward's legal disability is removed.

4. If the court finds that an interested person who objected to the account did not object in good faith or in furtherance of the best interests of the ward, the court may order the interested person to pay to the estate of the ward all or part of the expenses associated with the objection.

(Added to NRS by [1969, 431](#); A [2003, 1797](#))

NRS 159.183 Compensation and expenses of guardian.

1. Subject to the discretion and approval of the court and except as otherwise provided in subsection 4, a guardian must be allowed:

- (a) Reasonable compensation for the guardian's services;
- (b) Necessary and reasonable expenses incurred in exercising the authority and performing the duties of a guardian; and
- (c) Reasonable expenses incurred in retaining accountants, attorneys, appraisers or other professional services.

2. Reasonable compensation and services must be based upon similar services performed for persons who are not under a legal disability. In determining whether compensation is reasonable, the court may consider:

- (a) The nature of the guardianship;
- (b) The type, duration and complexity of the services required; and
- (c) Any other relevant factors.

3. In the absence of an order of the court pursuant to this chapter shifting the responsibility of the payment of compensation and expenses, the payment of compensation and expenses must be paid from the estate of the ward. In evaluating the ability of a ward to pay such compensation and expenses, the court may consider:

- (a) The nature, extent and liquidity of the ward's assets;
- (b) The disposable net income of the ward;
- (c) Any foreseeable expenses; and
- (d) Any other factors that are relevant to the duties of the guardian pursuant to [NRS 159.079](#) or [159.083](#).

4. A private professional guardian is not allowed compensation or expenses for services incurred by the private professional guardian as a result of a petition to have him or her removed as guardian if the court removes the private professional guardian pursuant to the provisions of paragraph (b), (d), (e), (f) or (h) of subsection 1 of [NRS 159.185](#).

(Added to NRS by [1969, 431](#); A [2003, 1797](#); [2005, 818](#); [2011, 999](#))

NRS 159.184 Accounting by certain care providers. If a ward resides with a care provider that is an institution or facility, the care provider shall furnish to the guardian an itemized accounting of all financial activity pertaining to the ward:

1. On a quarterly basis; and
2. At any other time, upon the request of the guardian.

(Added to NRS by [2009, 1640](#))

REMOVAL OR RESIGNATION OF GUARDIAN; TERMINATION OF GUARDIANSHIP**Removal of Guardian****NRS 159.185 Conditions for removal.**

1. The court may remove a guardian if the court determines that:
 - (a) The guardian has become mentally incompetent, unsuitable or otherwise incapable of exercising the authority and performing the duties of a guardian as provided by law;
 - (b) The guardian is no longer qualified to act as a guardian pursuant to [NRS 159.0613](#) if the ward is an adult or [NRS 159.061](#) if the ward is a minor;
 - (c) The guardian has filed for bankruptcy within the previous 5 years;
 - (d) The guardian of the estate has mismanaged the estate of the ward;
 - (e) The guardian has negligently failed to perform any duty as provided by law or by any order of the court and:
 - (1) The negligence resulted in injury to the ward or the estate of the ward; or
 - (2) There was a substantial likelihood that the negligence would result in injury to the ward or the estate of the ward;
 - (f) The guardian has intentionally failed to perform any duty as provided by law or by any lawful order of the court, regardless of injury;
 - (g) The best interests of the ward will be served by the appointment of another person as guardian; or
 - (h) The guardian is a private professional guardian who is no longer qualified as a private professional guardian pursuant to [NRS 159.0595](#).
2. A guardian may not be removed if the sole reason for removal is the lack of money to pay the compensation and expenses of the guardian.
(Added to NRS by [1969, 432](#); A [2003, 1798](#); [2005, 819](#); [2011, 999](#); [2015, 2367](#), [2509](#))

NRS 159.1852 Duty of guardian to notify court if no longer qualified to serve as guardian; appointment of successor guardian. A guardian who, after appointment:

1. Is convicted of a gross misdemeanor or felony in any state;
 2. Files for or receives protection as an individual or as a principal of any entity under the federal bankruptcy laws;
 3. Has a driver's license suspended, revoked or cancelled for nonpayment of child support;
 4. Is suspended for misconduct or disbarred from:
 - (a) The practice of law;
 - (b) The practice of accounting; or
 - (c) Any other profession which:
 - (1) Involves or may involve the management or sale of money, investments, securities or real property; or
 - (2) Requires licensure in this State or any other state; or
 5. Has a judgment entered against him or her for misappropriation of funds or assets from any person or entity in any state,
- Ê shall immediately inform the court of the circumstances of those events. The court may remove the guardian and appoint a successor guardian, unless the court finds that it is in the best interest of the ward to allow the guardian to continue in his or her appointment.
(Added to NRS by [2013, 904](#))

NRS 159.1853 Petition for removal.

1. The following persons may petition the court to have a guardian removed:
 - (a) The ward;
 - (b) The spouse of the ward;
 - (c) Any relative who is within the second degree of consanguinity to the ward;
 - (d) A public guardian; or
 - (e) Any other interested person.
 2. The petition must:
 - (a) State with particularity the reasons for removing the guardian; and
 - (b) Show cause for the removal.
 3. If the court denies the petition for removal, the petitioner shall not file a subsequent petition unless a material change of circumstances warrants a subsequent petition.
 4. If the court finds that the petitioner did not file a petition for removal in good faith or in furtherance of the best interests of the ward, the court may:
 - (a) Disallow the petitioner from petitioning the court for attorney's fees from the estate of the ward; and
 - (b) Impose sanctions on the petitioner in an amount sufficient to reimburse the estate of the ward for all or part of the expenses incurred by the estate of the ward in responding to the petition and for any other pecuniary losses which are associated with the petition.
- (Added to NRS by [2003, 1766](#))

NRS 159.1855 Issuance and service of citation concerning filing of petition for removal; actions of court if ward or estate may suffer loss or injury during time required for service.

1. If a petition to have a guardian removed is filed with the court, the court shall issue and serve a citation on the guardian and on all other interested persons.
2. The citation must require the guardian to appear and show cause why the court should not remove the guardian.
3. If it appears that the ward or estate may suffer loss or injury during the time required for service of the citation on the guardian, on the court's own motion or on petition, the court may:
 - (a) Suspend the powers of the guardian by issuing a 30-day temporary restraining order or an injunction;
 - (b) Compel the guardian to surrender the ward to a temporary guardian for not more than 30 days; and
 - (c) Compel the guardian to surrender the assets of the estate to a temporary guardian or to the public guardian until the date set

for the hearing.

(Added to NRS by [2003, 1766](#))

NRS 159.1857 Actions of court when petition to remove guardian is deemed sufficient and guardian fails to appear.

If a petition to remove a guardian is deemed sufficient and the guardian fails to appear before the court, the court may:

1. Hold the guardian in contempt of court.
2. Require the guardian to appear at a date and time set by the court.
3. Issue a bench warrant for the arrest and appearance of the guardian.
4. Find that the guardian caused harm to the ward or the estate of the ward and issue an order accordingly.

(Added to NRS by [2003, 1767](#))

NRS 159.186 Additional limitation governing removal of guardian of minor; considerations for court in determining best interests of minor; removal of guardian of minor.

1. Notwithstanding any other provision of law, if a guardian is appointed for a minor, except as otherwise provided in subsection 3, the court shall not remove the guardian or appoint another person as guardian unless the court finds that removal of the guardian or appointment of another person as guardian is in the best interests of the minor.

2. For the purposes of this section in determining the best interests of the minor, the court shall consider, without limitation:

(a) The ability of the present guardian to provide for the basic needs of the minor, including, without limitation, food, shelter, clothing and medical care;

(b) The safety of the home in which the minor is residing;

(c) The length of time that the minor has been in the care of the present guardian;

(d) The current well being of the minor, including whether the minor is prospering in the environment being provided by the present guardian;

(e) The emotional bond existing between the present guardian and the minor;

(f) If the person petitioning the court to replace the present guardian was previously removed from the care, custody or guardianship of the minor:

(1) The level of participation before the petition was filed by the petitioner in the welfare of the minor; and

(2) If applicable, whether the petitioner has received instruction in parenting, participated in a program of rehabilitation or undergone counseling for any problem or conduct that the court, in appointing the present guardian, considered as an indication of the previous unfitness of the petitioner; and

(g) The mental and physical health of the present guardian.

3. The court may remove the guardian of a minor or appoint another person as guardian if the guardian files a petition to resign his or her position as guardian.

(Added to NRS by [1997, 1343](#); A [1999, 143](#))

NRS 159.187 Successor guardians.

1. When a guardian dies or is removed by order of the court, the court, upon the court's own motion or upon a petition filed by any interested person, may appoint another guardian in the same manner and subject to the same requirements as are provided by law for an original appointment of a guardian.

2. If a guardian of the person is appointed for a ward pursuant to this section, the ward must be served with the petition. If the ward does not object to the appointment, the ward is not required to attend the hearing.

(Added to NRS by [1969, 432](#); A [2003, 1798](#))

Resignation of Guardian

NRS 159.1873 Petition tendering resignation.

1. A guardian of the person, of the estate, or of the person and the estate, may file with the court a petition tendering the resignation of the guardian.

2. If the guardian files a petition to resign, the court shall serve notice upon any person entitled to notice pursuant to [NRS 159.047](#).

(Added to NRS by [2003, 1767](#))

NRS 159.1875 Approval of resignation of guardian of person.

1. Before the court approves the resignation of a guardian of the person and discharges the guardian, the court shall appoint a successor guardian.

2. If a ward has more than one guardian, the court may approve the resignation of one of the guardians if the remaining guardian or guardians are qualified to act alone.

(Added to NRS by [2003, 1767](#))

NRS 159.1877 Resignation of guardian of estate: Accounting required before approval; sanctions for failure to file accounting; acceptance when estate has more than one guardian; court order.

1. Before the court approves the resignation of a guardian of the estate and discharges the guardian, the court shall require the guardian to submit, on the date set for the hearing, an accounting of the estate through the end of the term.

2. If the guardian fails to file such an accounting, the court may impose sanctions upon the guardian.

3. If an estate has more than one guardian, the court may accept the resignation of one of the guardians if the remaining guardian or guardians are qualified to act alone. The court may waive the requirement of filing the accounting if the remaining guardian or guardians are:

(a) Required to file the annual accounting, if applicable; and

(b) Responsible for any discrepancies in the accounting.

4. Upon approval of the accounting, if any is required, and appointment of a successor guardian, the court may approve the resignation of a guardian and order the discharge of his or her duties.

(Added to NRS by [2003, 1767](#))

Termination of Guardianship

NRS 159.1905 Petition for termination or modification; appointment of attorney to represent ward; burden of proof; issuance of citation; penalties for not filing petition in good faith.

1. A ward, the guardian or another person may petition the court for the termination or modification of a guardianship. The petition must state or contain:

- (a) The name and address of the petitioner.
- (b) The relationship of the petitioner to the ward.
- (c) The name, age and address of the ward, if the ward is not the petitioner, or the date of death of the ward if the ward is deceased.
- (d) The name and address of the guardian, if the guardian is not the petitioner.
- (e) The reason for termination or modification.
- (f) Whether the termination or modification is sought for a guardianship of the person, of the estate, or of the person and estate.
- (g) A general description and the value of the remaining property of the ward and the proposed disposition of that property.

2. Upon the filing of the petition, the court may appoint an attorney to represent the ward if:

- (a) The ward is unable to retain an attorney; and
- (b) The court determines that the appointment is necessary to protect the interests of the ward.

3. The petitioner has the burden of proof to show by clear and convincing evidence that the termination or modification of the guardianship of the person, of the estate, or of the person and estate is in the best interests of the ward.

4. The court shall issue a citation to the guardian and all interested persons requiring them to appear and show cause why termination or modification of the guardianship should not be granted.

5. If the court finds that the petitioner did not file a petition for termination or modification in good faith or in furtherance of the best interests of the ward, the court may:

- (a) Disallow the petitioner from petitioning the court for attorney's fees from the estate of the ward; and
- (b) Impose sanctions on the petitioner in an amount sufficient to reimburse the estate of the ward for all or part of the expenses and for any other pecuniary losses which are incurred by the estate of the ward and associated with the petition.

(Added to NRS by [1981, 1933](#); A [1999, 1401](#); [2003, 1798](#))

NRS 159.191 Termination of guardianship of person, estate or person and estate; procedure upon death of ward.

1. A guardianship of the person is terminated:

- (a) By the death of the ward;
- (b) Upon the ward's change of domicile to a place outside this state and the transfer of jurisdiction to the court having jurisdiction in the new domicile;
- (c) Upon order of the court, if the court determines that the guardianship no longer is necessary; or
- (d) If the ward is a minor:
 - (1) On the date on which the ward reaches 18 years of age; or
 - (2) On the date on which the ward graduates from high school or becomes 19 years of age, whichever occurs sooner, if:
 - (I) The ward will be older than 18 years of age upon graduation from high school; and
 - (II) The ward and the guardian consent to continue the guardianship and the consent is filed with the court at least 14 days before the date on which the ward will become 18 years of age.

2. A guardianship of the estate is terminated:

- (a) If the court removes the guardian or accepts the resignation of the guardian and does not appoint a successor guardian;
- (b) If the court determines that the guardianship is not necessary and orders the guardianship terminated; or
- (c) By the death of the ward, subject to the provisions of [NRS 159.193](#).

3. If the guardianship is of the person and estate, the court may order the guardianship terminated as to the person, the estate, or the person and estate.

4. The guardian shall notify the court, all interested parties, the trustee, and the named executor or appointed personal representative of the estate of the ward of the death of the ward within 30 days after the death.

5. Immediately upon the death of the ward:

- (a) The guardian of the estate shall have no authority to act for the ward except to wind up the affairs of the guardianship pursuant to [NRS 159.193](#), and to distribute the property of the ward as provided in [NRS 159.195](#) and [159.197](#); and
 - (b) No person has standing to file a petition pursuant to [NRS 159.078](#).
- (Added to NRS by [1969, 432](#); A [1999, 1401](#); [2003, 1799](#); [2013, 922](#))

NRS 159.192 Termination of temporary guardianship.

1. If a temporary guardianship is terminated and a petition for a general or special guardianship has not been filed:

- (a) The temporary guardian shall immediately turn over all of the ward's property to the ward; or
- (b) If the temporary guardian is awaiting certification from the appropriate authority acknowledging that the guardian has no further liability for taxes on the estate, the temporary guardian shall seek approval from the court to maintain possession of all or a portion of the ward's property.

2. If a temporary guardianship is terminated and a petition for general or special guardianship has been filed, the temporary guardian of the estate may:

- (a) Continue possessing the ward's property; and
- (b) Perform the duties of guardian for not more than 90 days after the temporary guardianship is terminated or until the court appoints another temporary, general or special guardian.

3. If the death of a ward causes the termination of a temporary guardianship before the hearing on a general or special guardianship:

- (a) The temporary guardian of the estate may:
 - (1) Continue possessing the ward's property; and
 - (2) Except as otherwise provided in this paragraph, perform the duties of guardian for not more than 90 days after the date of the termination of the temporary guardianship or until the court appoints a personal representative of the estate, if any. If the temporary guardian is awaiting certification from the appropriate authority acknowledging that the guardian has no further liability

for taxes on the estate and it will take longer than 90 days after the date of the termination of the temporary guardianship to receive such certification, the temporary guardian must seek approval from the court to maintain possession of all or a portion of the ward's property until certification is received.

(b) If no personal representative has been appointed pursuant to [chapter 138](#) or [139](#) of NRS, the temporary guardian shall pay all of the final expenses and outstanding debts of the ward to the extent possible using the assets in the possession of the temporary guardian.

(Added to NRS by [2003, 1767](#))

NRS 159.193 Winding up affairs.

1. The guardian of the estate is entitled to retain possession of the ward's property already in the control of the guardian and is authorized to perform the duties of the guardian to wind up the affairs of the guardianship:

(a) Except as otherwise provided in paragraph (b), (c) or (d), for not more than 180 days or a period that is reasonable and necessary as determined by the court after the termination of the guardianship;

(b) Except as otherwise provided in paragraph (d), for not more than 90 days after the date of the appointment of a personal representative of the estate of a deceased ward;

(c) Except as otherwise provided in paragraph (d), for not more than 90 days after the date of the appointment of a successor trustee of a trust of the deceased ward and upon request by the trustee; or

(d) Upon approval of the court, for more than 180 days or 90 days, as applicable, if the guardian is awaiting certification from the appropriate authority acknowledging that the guardian has no further liability for taxes on the estate.

2. To wind up the affairs of the guardianship, the guardian shall:

(a) Pay all expenses of administration of the guardianship estate, including those incurred in winding up the affairs of the guardianship.

(b) Complete the performance of any contractual obligations incurred by the guardianship estate.

(c) With prior approval of the court, continue any activity that:

(1) The guardian believes is appropriate and necessary; or

(2) Was commenced before the termination of the guardianship.

(d) If the guardianship is terminated for a reason other than the death of the ward, examine and allow and pay, or reject, all claims presented to the guardian prior to the termination of the guardianship for obligations incurred prior to the termination.

3. If the assets are transferred to a personal representative or a successor trustee as provided for in paragraphs (b) and (c) of subsection 1, the court may authorize the guardian to retain sufficient assets to pay any anticipated expenses and taxes of the guardianship estate.

(Added to NRS by [1969, 432](#); A [2003, 1800](#); [2007, 2034](#); [2013, 922](#))

NRS 159.195 Disposition of claims of creditor after termination of guardianship by death of ward.

1. If the guardianship is terminated by reason of the death of the ward:

(a) Except as otherwise provided in [NRS 159.197](#), the guardian shall report to the personal representative claims which are presented to the guardian, or which have been presented to the guardian but have not been paid, except those incurred in paying the expenses of administration of the guardianship estate and in winding up the affairs of the guardianship estate.

(b) Claims which have been allowed by the guardian, but not paid, shall be paid by the personal representative in the course of probate in the priority provided by law for payment of claims against a decedent, and shall have the same effect and priority as a judgment against a decedent.

(c) Claims which have been presented and not allowed or rejected shall be acted upon by the personal representative in the same manner as other claims against a decedent.

2. The personal representative shall be substituted as the party in interest for the guardian in any action commenced or which may be commenced by the creditor pursuant to [NRS 159.107](#), including summary determination, on any claim rejected by the guardian.

(Added to NRS by [1969, 433](#); A [2003, 1800](#))

NRS 159.197 Delivery of physical possession of property of ward; petition to modify title to such property; handling property of deceased ward.

1. After the winding up of the affairs of the guardianship, the guardian shall deliver physical possession of all of the ward's property to the ward, the personal representative or the successor guardian, as the case may be, and obtain a receipt of the delivery of the property.

2. Before the guardian delivers physical possession of the ward's property to the personal representative and upon sufficient evidence of prior title, the guardian may petition the court to have the title to the property modified, on a pro rata basis, to reflect the manner in which title was held before the guardianship was established so that the property is distributed to the intended beneficiary or former joint owner of the property.

3. If the guardianship has terminated by reason of the death of the ward, the court, by order, may authorize the guardian to handle the deceased ward's property in the same manner as authorized by [NRS 146.070](#) or [146.080](#), if the gross value of the property, less encumbrances, and less fees, costs and expenses that are approved by the court, remaining in the hands of the guardian does not exceed the amount authorized pursuant to [NRS 146.070](#) or [146.080](#).

(Added to NRS by [1969, 433](#); A [1971, 157](#); [1973, 432](#); [1975, 1780](#); [1979, 479](#); [1983, 196](#); [1997, 1495](#); [2003, 1801, 2514](#))

NRS 159.199 Discharge of guardian; exoneration of bond; order of discharge.

1. Upon the filing of receipts and vouchers showing compliance with the orders of the court in winding up the affairs of the guardianship, the court shall enter an order discharging the guardian and exonerating the bond of the guardian.

2. A guardian is not relieved of liability for his or her term as guardian until an order of discharge is entered and filed with the court.

(Added to NRS by [1969, 433](#); A [2003, 1801](#))

Maintenance of Records

NRS 159.19905 Time period for which certain records are required to be maintained. A guardian shall maintain all records and documents for each ward whom the guardian has authority over for a period of not less than 7 years after the court terminates the guardianship and shall maintain all financial records related to the guardianship for a period of not less than 7 years after the date of the last financial transaction.

(Added to NRS by [2009, 1639](#))

ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION (UNIFORM ACT)

General Provisions

NRS 159.1991 Short title. [NRS 159.1991](#) to [159.2029](#), inclusive, may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

(Added to NRS by [2009, 1640](#))

NRS 159.1993 International application of Act. A court of this State may treat a foreign country as if it were a state for the purpose of applying [NRS 159.1991](#) to [159.2029](#), inclusive.

(Added to NRS by [2009, 1640](#))

NRS 159.1994 Communication with other courts.

1. A court of this State may communicate with a court of another state concerning a proceeding arising under [NRS 159.1991](#) to [159.2029](#), inclusive. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection 2, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

2. Courts may communicate concerning schedules, calendars, court records and other administrative matters without making a record.

(Added to NRS by [2009, 1640](#))

NRS 159.1995 Cooperation with other courts.

1. In a guardianship proceeding in this State, a court of this State may request the appropriate court of another state to do any of the following:

(a) Hold an evidentiary hearing;

(b) Order a person in that state to produce evidence or give testimony pursuant to the procedures of that state;

(c) Order that an evaluation or assessment be made of the ward;

(d) Order any appropriate investigation of a person involved in a proceeding;

(e) Forward to the court of this State a certified copy of the transcript or other record of a hearing under paragraph (a) or any other proceeding, any evidence otherwise produced under paragraph (b), and any evaluation or assessment prepared in compliance with an order under paragraph (c) or (d);

(f) Issue any order necessary to ensure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the proposed ward, the ward or the incompetent; and

(g) Issue an order authorizing the release of medical, financial, criminal or other relevant information in that state relating to the ward or proposed ward, including protected health information as defined in 45 C.F.R. § 160.103.

2. If a court of another state in which a guardianship or conservatorship proceeding is pending requests assistance of the kind provided in subsection 1, a court of this State has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

(Added to NRS by [2009, 1640](#))

NRS 159.1997 Taking testimony in another state.

1. In a guardianship proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

2. In a guardianship proceeding, a court of this State may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this State shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

3. Documentary evidence transmitted from a court of another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on [NRS 52.235](#).

(Added to NRS by [2009, 1640](#))

Jurisdiction

NRS 159.1998 General provisions governing jurisdiction and special jurisdiction.

1. A court of this State has jurisdiction to appoint a guardian if:

(a) This State is the proposed ward's home state;

(b) The proposed ward holds property within this State and a court of the proposed ward's home state has declined to exercise jurisdiction because this State is a more appropriate forum;

(c) The proposed ward has a significant connection with this State and a court of the proposed ward's home state has declined to exercise jurisdiction because this State is a more appropriate forum; or

(d) The proposed ward does not have a home state.

2. A court of this State lacking jurisdiction under subsection 1 has special jurisdiction to appoint a temporary guardian for a ward:

(a) To facilitate transfer of the guardianship proceedings from another state pursuant to [NRS 159.1991](#) to [159.2029](#), inclusive.

(b) In an emergency if the ward is physically present in this State, and such temporary guardianship will be terminated at the

request of a court of the ward's home state before or after the emergency appointment.

3. Except as otherwise provided in this section, a court that has appointed a guardian consistent with [NRS 159.1991](#) to [159.2029](#), inclusive, has exclusive and continuing jurisdiction over the proceedings until it is terminated by the court pursuant to [NRS 159.1905](#) or [159.191](#).

(Added to NRS by [2009, 1641](#))

NRS 159.1999 Declination of jurisdiction generally.

1. A court of this State having jurisdiction to appoint a guardian may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

2. If a court of this State declines to exercise its jurisdiction under subsection 1, it shall either dismiss or stay the proceedings. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian be filed promptly in another state.

3. In determining whether it is an appropriate forum, the court shall consider all relevant factors, including, without limitation:

- (a) Any expressed preference of the ward;
- (b) Whether abuse, neglect, exploitation, isolation or abandonment of the ward has occurred or is likely to occur and which state could best protect the ward from the abuse, neglect, exploitation, isolation or abandonment;
- (c) The length of time the ward was physically present in or was a legal resident of this State or another state;
- (d) The distance of the ward from the court in each state;
- (e) The financial circumstances of the ward's estate;
- (f) The nature and location of the evidence;
- (g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- (h) The familiarity of the court of each state with the facts and issues in the proceeding; and
- (i) If an appointment were made, the court's ability to monitor the conduct of the guardian.

(Added to NRS by [2009, 1641](#); A [2015, 824](#))

NRS 159.202 Declination of jurisdiction by reason of conduct.

1. If at any time a court of this State determines that it acquired jurisdiction to appoint a guardian because of unjustifiable conduct by the guardian or the petitioner, the court may:

- (a) Decline to exercise jurisdiction;
- (b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety and welfare of the ward or the protection of the ward's property or to prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian is filed in a court of another state having jurisdiction; or
- (c) Continue to exercise jurisdiction after considering:

(1) The extent to which the ward and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(2) Whether it is a more appropriate forum than the court of any other state; and

(3) Whether the court of any other state would have jurisdiction under factual circumstance in substantial conformity with the jurisdictional standard.

2. If a court of this State determines that it acquired jurisdiction to appoint a guardian because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, the court may assess against that party necessary and reasonable expenses, including, without limitation, attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses.

(Added to NRS by [2009, 1642](#))

NRS 159.2021 Proceedings in more than one state. Except for a petition for the appointment of a guardian in an emergency, if a petition for the appointment of a guardian is filed in this State and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

1. If the court of this State has jurisdiction under [NRS 159.1991](#) to [159.2029](#), inclusive, it may proceed with the case unless a court of another state acquires jurisdiction under provisions similar to [NRS 159.1991](#) to [159.2029](#), inclusive, before the appointment.

2. If the court of this State does not have jurisdiction under [NRS 159.1991](#) to [159.2029](#), inclusive, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court of the other state. If the court of the other state has jurisdiction, the court of this State shall dismiss the petition unless the court of the other state determines that the court of this State is a more appropriate forum.

(Added to NRS by [2009, 1642](#))

NRS 159.2023 Transfer of jurisdiction of guardianship to another state.

1. A guardian appointed in this State may petition the court to transfer the jurisdiction of the guardianship to another state. Notice of the petition must be given to the persons that would be entitled to notice of a petition in this State for the appointment of a guardian.

2. The court shall issue an order provisionally granting the petition to transfer a guardianship and shall direct the guardian or other interested party to petition for guardianship in the other state if the court finds that:

- (a) The ward is physically present in, or is reasonably expected to move permanently to, the other state;
- (b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the ward; and
- (c) The plans for care and services for the ward in the other state are reasonable and sufficient.

3. The court shall issue a final order confirming the transfer and terminating the guardianship upon a petition for termination pursuant to [NRS 159.1905](#) or [159.191](#) and filing of a provisional order accepting the proceeding from the court to which the proceeding is to be transferred.

(Added to NRS by [2009, 1642](#))

NRS 159.2024 Transfer of jurisdiction of guardianship or conservatorship from another state to this State.

1. To transfer jurisdiction of a guardianship or conservatorship to this State, the guardian, conservator or other interested party must petition the court of this State for guardianship pursuant to [NRS 159.1991](#) to [159.2029](#), inclusive, to accept guardianship in this State. The petition must include a certified copy of the other state's provisional order of transfer and proof that the ward is physically present in, or is reasonably expected to move permanently to, this State.

2. The court shall issue a provisional order granting a petition filed under subsection 1, unless:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the ward; or

(b) The guardian or petitioner is not qualified for appointment as a guardian in this State pursuant to [NRS 159.0613](#) if the ward is an adult or [NRS 159.061](#) if the ward is a minor.

3. The court shall issue a final order granting guardianship upon filing of a final order issued by the other state terminating proceedings in that state and transferring the proceedings to this State.

4. Not later than 90 days after the issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the laws of this State.

5. In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the ward's incapacity and the appointment of the guardian or conservator.

(Added to NRS by [2009, 1643](#); A [2015, 2368, 2510](#))

Registration and Recognition of Orders From Other States

NRS 159.2025 Registration of guardianship orders issued in another state. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this State, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register and the reason for registration, may register the guardianship order in this State by filing as a foreign judgment in a court, in any appropriate county of this State:

1. Certified copies of the order and letters of office; and

2. A copy of the guardian's driver's license, passport or other valid photo identification card in a sealed envelope.

(Added to NRS by [2009, 1643](#))

NRS 159.2027 Effect of registration of guardianship orders issued in another state.

1. Upon registration of a guardianship, the guardian may exercise in this State all powers authorized in the order of appointment except as prohibited under the laws of this State, including maintaining actions and proceedings in this State and, if the guardian is not a resident of this State, subject to any conditions imposed upon nonresident parties.

2. A court of this State may grant any relief available under [NRS 159.1991](#) to [159.2029](#), inclusive, and other law of this State to enforce a registered order.

(Added to NRS by [2009, 1643](#))

Miscellaneous Provisions

NRS 159.2029 Uniformity of application and construction. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act must be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(Added to NRS by [2009, 1644](#))

TRANSACTIONS WITHOUT GUARDIANSHIP IN NEVADA

NRS 159.203 Delivering property or paying obligations to foreign guardian.

1. Where a guardian of the estate for a nonresident has not been appointed in this state, but the nonresident has a foreign guardian and a person within this state is indebted to such nonresident or such nonresident has property within this state that is capable of being removed and which is on deposit with or in the possession of a resident of this state, and such property is not subject to a mortgage, pledge, lien or other encumbrance restricting removal of the property from this state, the person in possession of the property may deliver such property or the person indebted may pay such debt, to the foreign guardian. The delivery of such property or the payment of such debt is, to the extent of such delivery or payment, a release and discharge with respect to such property or debt.

2. The court may require such foreign guardian to post a bond in the same manner as required of a resident guardian and may enter such orders as are necessary to protect secured creditors of the ward and unsecured creditors of the ward who are residents of this state.

(Added to NRS by [1969, 434](#))

APPOINTMENT OF GUARDIAN OF MINOR WITHOUT APPROVAL OF COURT

NRS 159.205 Appointment of short-term guardianship for minor child by parent: When authorized; content of written instrument; term; termination.

1. Except as otherwise provided in this section or [NRS 127.045](#), a parent, without the approval of a court, may appoint in writing a short-term guardianship for an unmarried minor child if the parent has legal custody of the minor child.

2. The appointment of a short-term guardianship is effective for a minor who is 14 years of age or older only if the minor provides written consent to the guardianship.

3. The appointment of a short-term guardian does not affect the rights of the other parent of the minor.

4. A parent shall not appoint a short-term guardian for a minor child if the minor child has another parent:

(a) Whose parental rights have not been terminated;

(b) Whose whereabouts are known; and

(c) Who is willing and able to make and carry out daily child care decisions concerning the minor,

Ê unless the other parent of the minor child provides written consent to the appointment.

5. The written instrument appointing a short-term guardian becomes effective immediately upon execution and must include, without limitation:

- (a) The date on which the guardian is appointed;
- (b) The name of the parent who appointed the guardian, the name of the minor child for whom the guardian is appointed and the name of the person who is appointed as the guardian; and
- (c) The signature of the parent and the guardian in the presence of a notary public acknowledging the appointment of the guardian. The parent and guardian are not required to sign and acknowledge the instrument in the presence of the other.

6. The short-term guardian appointed pursuant to this section serves as guardian of the minor for 6 months, unless the written instrument appointing the guardian specifies a shorter term or specifies that the guardianship is to terminate upon the happening of an event that occurs sooner than 6 months.

7. Only one written instrument appointing a short-term guardian for the minor child may be effective at any given time.

8. The appointment of a short-term guardian pursuant to this section:

(a) May be terminated by an instrument in writing signed by either parent if that parent has not been deprived of the legal custody of the minor.

(b) Is terminated by any order of a court of competent jurisdiction that appoints a guardian.

(Added to NRS by [1969, 194](#); A [1969, 434](#); [1989, 534](#); [2003, 1802](#))

NRS 159.215 Guardian of person of minor child of member of Armed Forces.

1. A member of the Armed Forces of the United States, a reserve component thereof or the National Guard may, by written instrument and without the approval of a court, appoint any competent adult residing in this State as the guardian of the person of a minor child who is a dependent of that member. The instrument must be:

(a) Executed by both parents if living, not divorced and having legal custody of the child, otherwise by the parent having legal custody; and

(b) Acknowledged in the same manner as a deed.

Ê If both parents do not execute the instrument, the executing parent shall send by certified mail, return receipt requested, to the other parent at his or her last known address, a copy of the instrument and a notice of the provisions of subsection 3.

2. The instrument must contain a provision setting forth the:

(a) Branch of the Armed Forces;

(b) Unit of current assignment;

(c) Current rank or grade; and

(d) Social security number or service number,

Ê of the parent who is the member.

3. The appointment of a guardian pursuant to this section:

(a) May be terminated by a written instrument signed by either parent of the child if that parent has not been deprived of his or her parental rights to the child; and

(b) Is terminated by any order of a court.

(Added to NRS by [1985, 1075](#))

ACTS AGAINST OR AFFECTING WARD OR PROPOSED WARD

NRS 159.305 Petition alleging that person disposed of money of ward or has evidence of interest of ward in or to property.

1. If a guardian, interested person, ward or proposed ward petitions the court upon oath alleging:

(a) That a person has or is suspected to have concealed, converted to his or her own use, conveyed away or otherwise disposed of any money, good, chattel or effect of the ward; or

(b) That the person has in his or her possession or knowledge any deed, conveyance, bond, contract or other writing which contains evidence of, or tends to disclose the right, title or interest of the ward or proposed ward in or to, any real or personal property, or any claim or demand,

Ê the judge may cause the person to be cited to appear before the district court to answer, upon oath, upon the matter of the petition.

2. If the person cited does not reside in the county where letters of guardianship have been issued pursuant to [NRS 159.075](#), the person may be cited and examined before the district court of the county where the person resides, or before the court that issued the citation. Each party to the petition may produce witnesses, and such witnesses may be examined by either party.

(Added to NRS by [2003, 1759](#))

NRS 159.315 Order of court upon findings concerning allegations that person disposed of money of ward or has evidence of interest of ward in or to property; nonappearance or noncompliance by person cited; effect of order.

1. If the court finds, after examination of a person cited pursuant to [NRS 159.305](#), that the person has committed an act:

(a) Set forth in paragraph (a) of subsection 1 of [NRS 159.305](#), the court may order the person to return the asset or the value of the asset to the guardian of the estate; or

(b) Set forth in paragraph (b) of subsection 1 of [NRS 159.305](#), the court may order the person to return the asset or provide information concerning the location of the asset to the guardian of the estate.

2. The court may hold a person who is cited pursuant to [NRS 159.305](#) in contempt of court and deal with the person accordingly if the person:

(a) Refuses to appear and submit to examination or to testify regarding the matter complained of in the petition; or

(b) Fails to comply with an order of the court issued pursuant to subsection 1.

3. An order of the court pursuant to subsection 1 is prima facie evidence of the right of the proposed ward or the estate of the ward to the asset described in the order in any action that may be brought for the recovery thereof, and any judgment recovered therein must be double the value of the asset, and damages in addition thereof equal to the value of such property.

4. If the person who is cited pursuant to [NRS 159.305](#) appears and, upon consideration of the petition, the court finds that the person is not liable or responsible to the estate of the ward or proposed ward, the court may order:

(a) The estate of the ward or proposed ward to pay the attorney's fees and costs of the respondent; or

(b) If the court finds that the petitioner unnecessarily or unreasonably filed the petition, the petitioner personally to pay the attorney's fees and costs of the respondent.
(Added to NRS by [2003, 1759](#))

APPEALS

NRS 159.325 Appeals to appellate court of competent jurisdiction. In addition to any order from which an appeal is expressly authorized pursuant to this chapter, an appeal may be taken to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to [Section 4 of Article 6](#) of the Nevada Constitution within 30 days after its notice of entry from an order:

1. Granting or revoking letters of guardianship.
2. Directing or authorizing the sale or conveyance, or confirming the sale, of property of the estate of a ward.
3. Settling an account.
4. Ordering or authorizing a guardian to act pursuant to [NRS 159.113](#).
5. Ordering or authorizing the payment of a debt, claim, devise, guardian's fees or attorney's fees.
6. Determining ownership interests in property.
7. Granting or denying a petition to enforce the liability of a surety.
8. Granting or denying a petition for modification or termination of a guardianship.
9. Granting or denying a petition for removal of a guardian or appointment of a successor guardian.

(Added to NRS by [2003, 1769](#); A [2013, 1749](#))

[Rev. 5/20/2016 2:49:21 PM--2015]

CHAPTER 125C - CUSTODY AND VISITATION

CUSTODY OF CHILDREN

NRS 125C.001	State policy.
NRS 125C.0015	Parents have joint custody until otherwise ordered by court.
NRS 125C.002	Joint legal custody.
NRS 125C.0025	Joint physical custody.
NRS 125C.003	Best interests of child: Primary physical custody; presumptions; child born out of wedlock.
NRS 125C.0035	Best interests of child: Joint physical custody; preferences; presumptions when court determines parent or person seeking custody is perpetrator of domestic violence or has committed act of abduction against child or any other child.
NRS 125C.004	Award of custody to person other than parent.
NRS 125C.0045	Court orders; modification or termination of orders; form for orders; court may order parent to post bond if parent resides in or has significant commitments in foreign country.
NRS 125C.005	Plan for carrying out court's order; access to child's records.
NRS 125C.0055	Order for production of child before court; determinations concerning physical custody of child.
NRS 125C.006	Consent required from noncustodial parent to relocate child when primary physical custody established; petition for permission from court; attorney's fees and costs.
NRS 125C.0065	Consent required from non-relocating parent to relocate child when joint physical custody established; petition for primary physical custody; attorney's fees and costs.
NRS 125C.007	Petition for permission to relocate; factors to be weighed by court.
NRS 125C.0075	Unlawful relocation with child; attorney's fees and costs.

VISITATION

NRS 125C.010	Order awarding visitation rights must define rights with particularity and specify habitual residence of child.
NRS 125C.020	Rights of noncustodial parent: Additional visits to compensate for wrongful deprivation of right to visit.
NRS 125C.030	Imprisonment for contempt for failure to comply with judgment ordering additional visit.
NRS 125C.040	Imprisonment for contempt: Violation of condition; failure to return when required.
NRS 125C.050	Petition for right of visitation for certain relatives and other persons.

UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT (UNIFORM ACT)

GENERAL PROVISIONS

NRS 125C.0601	Short title.
NRS 125C.0603	Definitions.
NRS 125C.0605	"Adult" defined.
NRS 125C.0607	"Caretaking authority" defined.
NRS 125C.0609	"Child" defined.
NRS 125C.0611	"Close and substantial relationship" defined.
NRS 125C.0613	"Court" defined.
NRS 125C.0615	"Custodial responsibility" defined.
NRS 125C.0617	"Decision-making authority" defined.
NRS 125C.0619	"Deploying parent" defined.
NRS 125C.0621	"Deployment" defined.
NRS 125C.0623	"Family member" defined.
NRS 125C.0625	"Limited contact" defined.
NRS 125C.0627	"Nonparent" defined.
NRS 125C.0629	"Other parent" defined.
NRS 125C.0631	"Record" defined.
NRS 125C.0633	"Return from deployment" defined.
NRS 125C.0635	"Service member" defined.
NRS 125C.0637	"State" defined.
NRS 125C.0639	"Uniformed service" defined.
NRS 125C.0641	Jurisdiction.
NRS 125C.0643	Notice required of deploying parent.
NRS 125C.0645	Duty to notify of change of address.
NRS 125C.0647	General considerations in custody proceeding of parent's military service.

AGREEMENT ADDRESSING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

NRS 125C.0649	Form of agreement.
NRS 125C.0651	Nature of authority created by agreement.
NRS 125C.0653	Modification of agreement.
NRS 125C.0655	Power of attorney.

[NRS 125C.0657](#) Filing agreement or power of attorney with court.

JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

[NRS 125C.0659](#) Proceeding for temporary custody order.
[NRS 125C.0661](#) Expedited hearing.
[NRS 125C.0663](#) Testimony by electronic means.
[NRS 125C.0665](#) Effect of prior judicial decree or agreement.
[NRS 125C.0667](#) Grant of caretaking or decision-making authority to nonparent.
[NRS 125C.0669](#) Grant of limited contact.
[NRS 125C.0671](#) Nature of authority created by order.
[NRS 125C.0673](#) Content of temporary custody order.
[NRS 125C.0675](#) Order for child support.
[NRS 125C.0677](#) Modifying or terminating grant of custodial responsibility to nonparent.

RETURN FROM DEPLOYMENT

[NRS 125C.0679](#) Procedure for terminating temporary grant of custodial responsibility established by agreement.
[NRS 125C.0681](#) Consent procedure.
[NRS 125C.0683](#) Visitation before termination of temporary grant of custodial responsibility.
[NRS 125C.0685](#) Termination by operation of law of temporary grant of custodial responsibility established by court order.
[NRS 125C.0687](#) Court may hold expedited hearing upon motion alleging immediate danger of irreparable harm.

MISCELLANEOUS PROVISIONS

[NRS 125C.0689](#) Costs and attorney's fees.
[NRS 125C.0691](#) Uniformity of application and construction.
[NRS 125C.0693](#) Relation to Electronic Signatures in Global and National Commerce Act.

CUSTODY AND VISITATION ORDERS CONCERNING CHILDREN OF MEMBERS OF MILITARY

[NRS 125C.100](#) Definitions. [Repealed.]
[NRS 125C.105](#) "Custody or visitation order" defined. [Repealed.]
[NRS 125C.110](#) "Deployment" defined. [Repealed.]
[NRS 125C.115](#) "Member of the military" defined. [Repealed.]
[NRS 125C.120](#) "Parent" defined. [Repealed.]
[NRS 125C.125](#) "Parent who received orders for deployment" defined. [Repealed.]
[NRS 125C.130](#) "Temporary duty" defined. [Repealed.]
[NRS 125C.135](#) Provisions not applicable to order for protection against domestic violence. [Repealed.]
[NRS 125C.140](#) Jurisdiction retained during deployment of parent; deployment not basis to assert inconvenient forum. [Repealed.]
[NRS 125C.145](#) Court to hold expedited hearing or allow alternative means of presenting testimony and evidence in certain circumstances. [Repealed.]
[NRS 125C.150](#) Deployment does not warrant permanent modification of order. [Repealed.]
[NRS 125C.155](#) Expedited hearing to issue temporary order. [Repealed.]
[NRS 125C.160](#) Temporary modification of order to accommodate deployment of parent; requirements of temporary order. [Repealed.]
[NRS 125C.165](#) Expiration of temporary order upon completion of parent's deployment; exception. [Repealed.]
[NRS 125C.170](#) Delegation of visitation rights to family member of parent to be deployed; termination of such rights; effect on ability of family member to seek separate visitation order. [Repealed.]
[NRS 125C.175](#) Limitation on issuance of final order modifying terms of existing order when parent receives mandatory order for deployment. [Repealed.]
[NRS 125C.180](#) Costs and attorney's fees. [Repealed.]
[NRS 125C.185](#) Requirement for parents to cooperate and provide information to each other. [Repealed.]

MISCELLANEOUS PROVISIONS

[NRS 125C.200](#) Consent required from noncustodial parent to remove child from State; permission from court; change of custody. [Replaced in revision by [NRS 125C.006](#).]
[NRS 125C.210](#) Child conceived as result of sexual assault: Rights of natural father convicted of sexual assault; rights when father is spouse of victim; rebuttable presumption upon divorce.
[NRS 125C.220](#) Presumptions concerning custody and visitation when parent of child is convicted of first degree murder of other parent of child.
[NRS 125C.230](#) Presumption concerning custody when court determines that parent or other person seeking custody of child is perpetrator of domestic violence.
[NRS 125C.240](#) Presumption concerning custody when court determines that parent or other person seeking custody of child has committed act of abduction against child or any other child.
[NRS 125C.250](#) Attorney's fees and costs.

CUSTODY OF CHILDREN

NRS 125C.001 State policy. The Legislature declares that it is the policy of this State:

1. To ensure that minor children have frequent associations and a continuing relationship with both parents after the parents

have ended their relationship, become separated or dissolved their marriage;

2. To encourage such parents to share the rights and responsibilities of child rearing; and
3. To establish that such parents have an equivalent duty to provide their minor children with necessary maintenance, health care, education and financial support. As used in this subsection, "equivalent" must not be construed to mean that both parents are responsible for providing the same amount of financial support to their children.

(Added to NRS by [2015, 2581](#))

NRS 125C.0015 Parents have joint custody until otherwise ordered by court.

1. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

2. If a court has not made a determination regarding the custody of a child, each parent has joint legal custody and joint physical custody of the child until otherwise ordered by a court of competent jurisdiction.

(Added to NRS by [2015, 2582](#))

NRS 125C.002 Joint legal custody.

1. When a court is making a determination regarding the legal custody of a child, there is a presumption, affecting the burden of proof, that joint legal custody would be in the best interest of a minor child if:

(a) The parents have agreed to an award of joint legal custody or so agree in open court at a hearing for the purpose of determining the legal custody of the minor child; or

(b) A parent has demonstrated, or has attempted to demonstrate but has had his or her efforts frustrated by the other parent, an intent to establish a meaningful relationship with the minor child.

2. The court may award joint legal custody without awarding joint physical custody.

(Added to NRS by [2015, 2582](#))

NRS 125C.0025 Joint physical custody.

1. When a court is making a determination regarding the physical custody of a child, there is a preference that joint physical custody would be in the best interest of a minor child if:

(a) The parents have agreed to an award of joint physical custody or so agree in open court at a hearing for the purpose of determining the physical custody of the minor child; or

(b) A parent has demonstrated, or has attempted to demonstrate but has had his or her efforts frustrated by the other parent, an intent to establish a meaningful relationship with the minor child.

2. For assistance in determining whether an award of joint physical custody is appropriate, the court may direct that an investigation be conducted.

(Added to NRS by [2015, 2582](#))

NRS 125C.003 Best interests of child: Primary physical custody; presumptions; child born out of wedlock.

1. A court may award primary physical custody to a parent if the court determines that joint physical custody is not in the best interest of a child. An award of joint physical custody is presumed not to be in the best interest of the child if:

(a) The court determines by substantial evidence that a parent is unable to adequately care for a minor child for at least 146 days of the year;

(b) A child is born out of wedlock and the provisions of subsection 2 are applicable; or

(c) Except as otherwise provided in subsection 6 of [NRS 125C.0035](#) or [NRS 125C.210](#), there has been a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that a parent has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child. The presumption created by this paragraph is a rebuttable presumption.

2. A court may award primary physical custody of a child born out of wedlock to:

(a) The mother of the child if:

(1) The mother has not married the father of the child;

(2) A judgment or order of a court, or a judgment or order entered pursuant to an expedited process, determining the paternity of the child has not been entered; and

(3) The father of the child:

(I) Is not subject to any presumption of paternity under [NRS 126.051](#);

(II) Has never acknowledged paternity pursuant to [NRS 126.053](#); or

(III) Has had actual knowledge of his paternity but has abandoned the child.

(b) The father of the child if:

(1) The mother has abandoned the child; and

(2) The father has provided sole care and custody of the child in her absence.

3. As used in this section:

(a) "Abandoned" means that a mother or father has:

(1) Failed, for a continuous period of not less than 6 months, to provide substantial personal and economic support to the child; or

(2) Knowingly declined, for a continuous period of not less than 6 months, to have any meaningful relationship with the child.

(b) "Expedited process" has the meaning ascribed to it in [NRS 126.161](#).

(Added to NRS by [2015, 2582](#))

NRS 125C.0035 Best interests of child: Joint physical custody; preferences; presumptions when court determines parent or person seeking custody is perpetrator of domestic violence or has committed act of abduction against child or any other child.

1. In any action for determining physical custody of a minor child, the sole consideration of the court is the best interest of the child. If it appears to the court that joint physical custody would be in the best interest of the child, the court may grant physical custody to the parties jointly.

2. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.
3. The court shall award physical custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:
 - (a) To both parents jointly pursuant to [NRS 125C.0025](#) or to either parent pursuant to [NRS 125C.003](#). If the court does not enter an order awarding joint physical custody of a child after either parent has applied for joint physical custody, the court shall state in its decision the reason for its denial of the parent's application.
 - (b) To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.
 - (c) To any person related within the fifth degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.
 - (d) To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.
4. In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things:
 - (a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody.
 - (b) Any nomination of a guardian for the child by a parent.
 - (c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.
 - (d) The level of conflict between the parents.
 - (e) The ability of the parents to cooperate to meet the needs of the child.
 - (f) The mental and physical health of the parents.
 - (g) The physical, developmental and emotional needs of the child.
 - (h) The nature of the relationship of the child with each parent.
 - (i) The ability of the child to maintain a relationship with any sibling.
 - (j) Any history of parental abuse or neglect of the child or a sibling of the child.
 - (k) Whether either parent or any other person seeking physical custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.
 - (l) Whether either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child.
5. Except as otherwise provided in subsection 6 or [NRS 125C.210](#), a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint physical custody of the child by the perpetrator of the domestic violence is not in the best interest of the child. Upon making such a determination, the court shall set forth:
 - (a) Findings of fact that support the determination that one or more acts of domestic violence occurred; and
 - (b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other victim of domestic violence who resided with the child.
6. If after an evidentiary hearing held pursuant to subsection 5 the court determines that each party has engaged in acts of domestic violence, it shall, if possible, then determine which person was the primary physical aggressor. In determining which party was the primary physical aggressor for the purposes of this section, the court shall consider:
 - (a) All prior acts of domestic violence involving either party;
 - (b) The relative severity of the injuries, if any, inflicted upon the persons involved in those prior acts of domestic violence;
 - (c) The likelihood of future injury;
 - (d) Whether, during the prior acts, one of the parties acted in self-defense; and
 - (e) Any other factors which the court deems relevant to the determination.
- Ê In such a case, if it is not possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 5 applies to both parties. If it is possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 5 applies only to the party determined by the court to be the primary physical aggressor.
7. A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking physical custody does not rebut the presumption, the court shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:
 - (a) Findings of fact that support the determination that one or more acts of abduction occurred; and
 - (b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.
8. For the purposes of subsection 7, any of the following acts constitute conclusive evidence that an act of abduction occurred:
 - (a) A conviction of the defendant of any violation of [NRS 200.310](#) to [200.340](#), inclusive, or [200.359](#) or a law of any other jurisdiction that prohibits the same or similar conduct;
 - (b) A plea of guilty or nolo contendere by the defendant to any violation of [NRS 200.310](#) to [200.340](#), inclusive, or [200.359](#) or a law of any other jurisdiction that prohibits the same or similar conduct; or
 - (c) An admission by the defendant to the court of the facts contained in the charging document alleging a violation of [NRS 200.310](#) to [200.340](#), inclusive, or [200.359](#) or a law of any other jurisdiction that prohibits the same or similar conduct.
9. If, after a court enters a final order concerning physical custody of the child, a magistrate determines there is probable cause to believe that an act of abduction has been committed against the child or any other child and that a person who has been awarded sole or joint physical custody or unsupervised visitation of the child has committed the act, the court shall, upon a motion to modify the order concerning physical custody, reconsider the previous order concerning physical custody pursuant to subsections 7 and 8.
10. As used in this section:

(a) “Abduction” means the commission of an act described in [NRS 200.310](#) to [200.340](#), inclusive, or [200.359](#) or a law of any other jurisdiction that prohibits the same or similar conduct.

(b) “Domestic violence” means the commission of any act described in [NRS 33.018](#).

(Added to NRS by [2015, 2583](#))

NRS 125C.004 Award of custody to person other than parent.

1. Before the court makes an order awarding custody to any person other than a parent, without the consent of the parents, it shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interest of the child.

2. No allegation that parental custody would be detrimental to the child, other than a statement of that ultimate fact, may appear in the pleadings.

3. The court may exclude the public from any hearing on this issue.

(Added to NRS by [2015, 2585](#))

NRS 125C.0045 Court orders; modification or termination of orders; form for orders; court may order parent to post bond if parent resides in or has significant commitments in foreign country.

1. In any action for determining the custody of a minor child, the court may, except as otherwise provided in this section and [NRS 125C.0601](#) to [125C.0693](#), inclusive, and [chapter 130](#) of NRS:

(a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of the child, make such an order for the custody, care, education, maintenance and support of the minor child as appears in his or her best interest; and

(b) At any time modify or vacate its order, even if custody was determined pursuant to an action for divorce and the divorce was obtained by default without an appearance in the action by one of the parties.

È The party seeking such an order shall submit to the jurisdiction of the court for the purposes of this subsection. The court may make such an order upon the application of one of the parties or the legal guardian of the minor.

2. Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents or on the court’s own motion if it is shown that the best interest of the child requires the modification or termination. The court shall state in its decision the reasons for the order of modification or termination if either parent opposes it.

3. Any order for custody of a minor child entered by a court of another state may, subject to the provisions of [NRS 125C.0601](#) to [125C.0693](#), inclusive, and to the jurisdictional requirements in [chapter 125A](#) of NRS, be modified at any time to an order of joint custody.

4. A party may proceed pursuant to this section without counsel.

5. Any order awarding a party a limited right of custody to a child must define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved. The order must include all specific times and other terms of the limited right of custody. As used in this subsection, “sufficient particularity” means a statement of the rights in absolute terms and not by the use of the term “reasonable” or other similar term which is susceptible to different interpretations by the parties.

6. All orders authorized by this section must be made in accordance with the provisions of [chapter 125A](#) of NRS and [NRS 125C.0601](#) to [125C.0693](#), inclusive, and must contain the following language:

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN [NRS 193.130](#). [NRS 200.359](#) provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in [NRS 193.130](#).

7. In addition to the language required pursuant to subsection 6, all orders authorized by this section must specify that the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign country.

8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the court shall include in the order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in subsection 7.

(b) Upon motion of one of the parties, the court may order the parent to post a bond if the court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the court and may be used only to pay for the cost of locating the child and returning the child to his or her habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

9. Except where a contract providing otherwise has been executed pursuant to [NRS 123.080](#), the obligation for care, education, maintenance and support of any minor child created by any order entered pursuant to this section ceases:

(a) Upon the death of the person to whom the order was directed; or

(b) When the child reaches 18 years of age if the child is no longer enrolled in high school, otherwise, when the child reaches 19 years of age.

10. As used in this section, a parent has “significant commitments in a foreign country” if the parent:

(a) Is a citizen of a foreign country;

(b) Possesses a passport in his or her name from a foreign country;

(c) Became a citizen of the United States after marrying the other parent of the child; or

(d) Frequently travels to a foreign country.

(Added to NRS by [2015, 2586](#))

NRS 125C.005 Plan for carrying out court's order; access to child's records.

1. The court may, when appropriate, require the parents to submit to the court a plan for carrying out the court's order concerning custody.

2. Access to records and other information pertaining to a minor child, including, without limitation, medical, dental and school records, must not be denied to a parent for the reason that the parent is not the child's custodial parent.

(Added to NRS by [2015, 2587](#))

NRS 125C.0055 Order for production of child before court; determinations concerning physical custody of child.

1. If, during any action for determining the custody of a minor child, either before or after the entry of a final order concerning the custody of a minor child, it appears to the court that any minor child of either party has been, or is likely to be, taken or removed out of this State or concealed within this State, the court shall forthwith order such child to be produced before it and make such disposition of the child's custody as appears most advantageous to and in the best interest of the child and most likely to secure to him or her the benefit of the final order or the modification or termination of the final order to be made in his or her behalf.

2. If, during any action for determining the custody of a minor child, either before or after the entry of a final order concerning the custody of a minor child, the court finds that it would be in the best interest of the minor child, the court may enter an order providing that a party may, with the assistance of the appropriate law enforcement agency, obtain physical custody of the child from the party having physical custody of the child. The order must provide that if the party obtains physical custody of the child, the child must be produced before the court as soon as practicable to allow the court to make such disposition of the child's custody as appears most advantageous to and in the best interest of the child and most likely to secure to him or her the benefit of the final order or the modification or termination of the final order to be made in his or her behalf.

3. If the court enters an order pursuant to subsection 2 providing that a party may obtain physical custody of a child, the court shall order that party to give the party having physical custody of the child notice at least 24 hours before the time at which he or she intends to obtain physical custody of the child, unless the court deems that requiring the notice would likely defeat the purpose of the order.

4. All orders for a party to appear with a child issued pursuant to this section may be enforced by issuing a warrant of arrest against that party to secure his or her appearance with the child.

5. A proceeding under this section must be given priority on the court calendar.

(Added to NRS by [2015, 2587](#))

NRS 125C.006 Consent required from noncustodial parent to relocate child when primary physical custody established; petition for permission from court; attorney's fees and costs.

1. If primary physical custody has been established pursuant to an order, judgment or decree of a court and the custodial parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the custodial parent desires to take the child with him or her, the custodial parent shall, before relocating:

(a) Attempt to obtain the written consent of the noncustodial parent to relocate with the child; and

(b) If the noncustodial parent refuses to give that consent, petition the court for permission to relocate with the child.

2. The court may award reasonable attorney's fees and costs to the custodial parent if the court finds that the noncustodial parent refused to consent to the custodial parent's relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the custodial parent.

3. A parent who relocates with a child pursuant to this section without the written consent of the noncustodial parent or the permission of the court is subject to the provisions of [NRS 200.359](#).

(Added to NRS by [1987, 1444](#); A [1999, 737](#); [2015, 2589](#))—(Substituted in revision for NRS 125C.200)

NRS 125C.0065 Consent required from non-relocating parent to relocate child when joint physical custody established; petition for primary physical custody; attorney's fees and costs.

1. If joint physical custody has been established pursuant to an order, judgment or decree of a court and one parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with him or her, the relocating parent shall, before relocating:

(a) Attempt to obtain the written consent of the non-relocating parent to relocate with the child; and

(b) If the non-relocating parent refuses to give that consent, petition the court for primary physical custody for the purpose of relocating.

2. The court may award reasonable attorney's fees and costs to the relocating parent if the court finds that the non-relocating parent refused to consent to the relocating parent's relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the relocating parent.

3. A parent who relocates with a child pursuant to this section before the court enters an order granting the parent primary physical custody of the child and permission to relocate with the child is subject to the provisions of [NRS 200.359](#).

(Added to NRS by [2015, 2588](#))

NRS 125C.007 Petition for permission to relocate; factors to be weighed by court.

1. In every instance of a petition for permission to relocate with a child that is filed pursuant to [NRS 125C.006](#) or [125C.0065](#), the relocating parent must demonstrate to the court that:

(a) There exists a sensible, good-faith reason for the move, and the move is not intended to deprive the non-relocating parent of his or her parenting time;

(b) The best interests of the child are served by allowing the relocating parent to relocate with the child; and

(c) The child and the relocating parent will benefit from an actual advantage as a result of the relocation.

2. If a relocating parent demonstrates to the court the provisions set forth in subsection 1, the court must then weigh the following factors and the impact of each on the child, the relocating parent and the non-relocating parent, including, without

limitation, the extent to which the compelling interests of the child, the relocating parent and the non-relocating parent are accommodated:

- (a) The extent to which the relocation is likely to improve the quality of life for the child and the relocating parent;
- (b) Whether the motives of the relocating parent are honorable and not designed to frustrate or defeat any visitation rights accorded to the non-relocating parent;
- (c) Whether the relocating parent will comply with any substitute visitation orders issued by the court if permission to relocate is granted;
- (d) Whether the motives of the non-relocating parent are honorable in resisting the petition for permission to relocate or to what extent any opposition to the petition for permission to relocate is intended to secure a financial advantage in the form of ongoing support obligations or otherwise;
- (e) Whether there will be a realistic opportunity for the non-relocating parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship between the child and the non-relocating parent if permission to relocate is granted; and
- (f) Any other factor necessary to assist the court in determining whether to grant permission to relocate.

3. A parent who desires to relocate with a child pursuant to [NRS 125C.006](#) or [125C.0065](#) has the burden of proving that relocating with the child is in the best interest of the child.

(Added to NRS by [2015, 2588](#))

NRS 125C.0075 Unlawful relocation with child; attorney's fees and costs. If a parent with primary physical custody or joint physical custody relocates with a child in violation of [NRS 200.359](#):

1. The court shall not consider any post-relocation facts or circumstances regarding the welfare of the child or the relocating parent in making any determination.

2. If the non-relocating parent files an action in response to the violation, the non-relocating parent is entitled to recover reasonable attorney's fees and costs incurred as a result of the violation.

(Added to NRS by [2015, 2589](#))

VISITATION

NRS 125C.010 Order awarding visitation rights must define rights with particularity and specify habitual residence of child.

1. Any order awarding a party a right of visitation of a minor child must:

(a) Define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved; and

(b) Specify that the State of Nevada or the state where the child resides within the United States of America is the habitual residence of the child.

È The order must include all specific times and other terms of the right of visitation.

2. As used in this section, "sufficient particularity" means a statement of the rights in absolute terms and not by the use of the term "reasonable" or other similar term which is susceptible to different interpretations by the parties.

(Added to NRS by [1993, 2137](#); A [1995, 1493, 2289](#))—(Substituted in revision for NRS 125A.290)

NRS 125C.020 Rights of noncustodial parent: Additional visits to compensate for wrongful deprivation of right to visit.

1. In a dispute concerning the rights of a noncustodial parent to visit his or her child, the court may, if it finds that the noncustodial parent is being wrongfully deprived of his or her right to visit, enter a judgment ordering the custodial parent to permit additional visits to compensate for the visit of which the noncustodial parent was deprived.

2. An additional visit must be:

(a) Of the same type and duration as the wrongfully denied visit;

(b) Taken within 1 year after the wrongfully denied visit; and

(c) At a time chosen by the noncustodial parent.

3. The noncustodial parent must give the court and the custodial parent written notice of his or her intention to make the additional visit at least 7 days before the proposed visit if it is to be on a weekday or weekend and at least 30 days before the proposed visit if it is to be on a holiday or vacation.

(Added to NRS by [1985, 1892](#))—(Substituted in revision for NRS 125A.300)

NRS 125C.030 Imprisonment for contempt for failure to comply with judgment ordering additional visit.

1. A custodial parent who fails to comply with a judgment ordering an additional visit may, upon a judgment of the court, be found guilty of contempt and sentenced to imprisonment in the county jail. During the period of imprisonment, the court may authorize his or her temporary release from confinement during such hours and under such supervision as the court determines are necessary to allow the custodial parent to go to and return from his or her place of employment.

2. A custodial parent imprisoned for contempt pursuant to subsection 1 must be released from the jail if the court has reasonable cause to believe that the custodial parent will comply with the order for the additional visit.

(Added to NRS by [1985, 1892](#))—(Substituted in revision for NRS 125A.310)

NRS 125C.040 Imprisonment for contempt: Violation of condition; failure to return when required.

1. If a custodial parent is imprisoned for contempt pursuant to [NRS 125C.030](#) and violates any condition of that imprisonment, the court may:

(a) Require that the custodial parent be confined to the county jail for the remaining period of his or her sentence; and

(b) Deny the custodial parent the privilege of a temporary release from confinement for his or her employment.

2. A custodial parent, imprisoned for contempt, who fails to return to the jail at the time required by the court after being temporarily released from confinement for his or her employment, may be deemed to have escaped from custody and, if so, the custodial parent is guilty of a misdemeanor.

(Added to NRS by [1985, 1892](#))—(Substituted in revision for NRS 125A.320)

NRS 125C.050 Petition for right of visitation for certain relatives and other persons.

1. Except as otherwise provided in this section, if a parent of an unmarried minor child:
 - (a) Is deceased;
 - (b) Is divorced or separated from the parent who has custody of the child;
 - (c) Has never been legally married to the other parent of the child, but cohabitated with the other parent and is deceased or is separated from the other parent; or
 - (d) Has relinquished his or her parental rights or his or her parental rights have been terminated,
 the district court in the county in which the child resides may grant to the great-grandparents and grandparents of the child and to other children of either parent of the child a reasonable right to visit the child during the child's minority.
2. If the child has resided with a person with whom the child has established a meaningful relationship, the district court in the county in which the child resides also may grant to that person a reasonable right to visit the child during the child's minority, regardless of whether the person is related to the child.
3. A party may seek a reasonable right to visit the child during the child's minority pursuant to subsection 1 or 2 only if a parent of the child has denied or unreasonably restricted visits with the child.
4. If a parent of the child has denied or unreasonably restricted visits with the child, there is a rebuttable presumption that the granting of a right to visitation to a party seeking visitation is not in the best interests of the child. To rebut this presumption, the party seeking visitation must prove by clear and convincing evidence that it is in the best interests of the child to grant visitation.
5. The court may grant a party seeking visitation pursuant to subsection 1 or 2 a reasonable right to visit the child during the child's minority only if the court finds that the party seeking visitation has rebutted the presumption established in subsection 4.
6. In determining whether the party seeking visitation has rebutted the presumption established in subsection 4, the court shall consider:
 - (a) The love, affection and other emotional ties existing between the party seeking visitation and the child.
 - (b) The capacity and disposition of the party seeking visitation to:
 - (1) Give the child love, affection and guidance and serve as a role model to the child;
 - (2) Cooperate in providing the child with food, clothing and other material needs during visitation; and
 - (3) Cooperate in providing the child with health care or alternative care recognized and permitted under the laws of this State in lieu of health care.
 - (c) The prior relationship between the child and the party seeking visitation, including, without limitation, whether the child resided with the party seeking visitation and whether the child was included in holidays and family gatherings with the party seeking visitation.
 - (d) The moral fitness of the party seeking visitation.
 - (e) The mental and physical health of the party seeking visitation.
 - (f) The reasonable preference of the child, if the child has a preference, and if the child is determined to be of sufficient maturity to express a preference.
 - (g) The willingness and ability of the party seeking visitation to facilitate and encourage a close and continuing relationship between the child and the parent or parents of the child as well as with other relatives of the child.
 - (h) The medical and other needs of the child related to health as affected by the visitation.
 - (i) The support provided by the party seeking visitation, including, without limitation, whether the party has contributed to the financial support of the child.
 - (j) Any other factor arising solely from the facts and circumstances of the particular dispute that specifically pertains to the need for granting a right to visitation pursuant to subsection 1 or 2 against the wishes of a parent of the child.
7. If the parental rights of either or both natural parents of a child are relinquished or terminated, and the child is placed in the custody of a public agency or a private agency licensed to place children in homes, the district court in the county in which the child resides may grant to the great-grandparents and grandparents of the child and to other children of either parent of the child a reasonable right to visit the child during the child's minority if a petition therefor is filed with the court before the date on which the parental rights are relinquished or terminated. In determining whether to grant this right to a party seeking visitation, the court must find, by a preponderance of the evidence, that the visits would be in the best interests of the child in light of the considerations set forth in paragraphs (a) to (j), inclusive, of subsection 6.
 8. Rights to visit a child may be granted:
 - (a) In a divorce decree;
 - (b) In an order of separate maintenance; or
 - (c) Upon a petition filed by an eligible person:
 - (1) After a divorce or separation or after the death of a parent, or upon the relinquishment or termination of a parental right;
 - (2) If the parents of the child were not legally married and were cohabitating, after the death of a parent or after the separation of the parents of the child; or
 - (3) If the petition is based on the provisions of subsection 2, after the eligible person ceases to reside with the child.
9. If a court terminates the parental rights of a parent who is divorced or separated, any rights previously granted pursuant to subsection 1 also must be terminated, unless the court finds, by a preponderance of the evidence, that visits by those persons would be in the best interests of the child.
10. For the purposes of this section, "separation" means:
 - (a) A legal separation or any other separation of a married couple if the couple has lived separate and apart for 30 days or more and has no present intention of resuming a marital relationship; or
 - (b) If a couple was not legally married but cohabitating, a separation of the couple if the couple has lived separate and apart for 30 days or more and has no present intention of resuming cohabitation or entering into a marital relationship.

(Added to NRS by [1979, 326](#); [A 1985, 586](#); [1987, 1193](#); [1991, 1176](#); [1999, 726](#); [2001, 2712](#))

UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT (UNIFORM ACT)

General Provisions

NRS 125C.0601 Short title. [NRS 125C.0601](#) to [125C.0693](#), inclusive, may be cited as the Uniform Deployed Parents Custody and Visitation Act.
(Added to NRS by [2013, 762](#))

NRS 125C.0603 Definitions. As used in [NRS 125C.0601](#) to [125C.0693](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 125C.0605](#) to [125C.0639](#), inclusive, have the meanings ascribed to them in those sections.
(Added to NRS by [2013, 762](#))

NRS 125C.0605 “Adult” defined. “Adult” means a person who is at least 18 years of age or an emancipated minor.
(Added to NRS by [2013, 762](#))

NRS 125C.0607 “Caretaking authority” defined. “Caretaking authority” means the right to live with and care for a child on a day-to-day basis, including physical custody, parenting time, right to access and visitation.
(Added to NRS by [2013, 763](#))

NRS 125C.0609 “Child” defined. “Child” means:

1. An unemancipated minor who has not attained 18 years of age; or
2. An adult son or daughter by birth or adoption, or under the laws of this State other than [NRS 125C.0601](#) to [125C.0693](#), inclusive, who is the subject of an existing court order concerning custodial responsibility.

(Added to NRS by [2013, 763](#))

NRS 125C.0611 “Close and substantial relationship” defined. “Close and substantial relationship” means a relationship in which a significant bond exists between a child and a nonparent.
(Added to NRS by [2013, 763](#))

NRS 125C.0613 “Court” defined. “Court” means an entity authorized under the laws of this State other than [NRS 125C.0601](#) to [125C.0693](#), inclusive, to establish, enforce or modify a decision regarding custodial responsibility.
(Added to NRS by [2013, 763](#))

NRS 125C.0615 “Custodial responsibility” defined. “Custodial responsibility” is a comprehensive term that includes any and all powers and duties relating to caretaking authority and decision-making authority for a child. The term includes custody, physical custody, legal custody, parenting time, right to access, visitation and the authority to designate limited contact with a child.
(Added to NRS by [2013, 763](#))

NRS 125C.0617 “Decision-making authority” defined. “Decision-making authority” means the power to make important decisions regarding a child, including decisions regarding the child’s education, religious training, health care, extracurricular activities and travel. The term does not include day-to-day decisions that necessarily accompany a grant of caretaking authority.
(Added to NRS by [2013, 763](#))

NRS 125C.0619 “Deploying parent” defined. “Deploying parent” means a service member, who is deployed or has been notified of impending deployment, and is:

1. A parent of a child under the laws of this State other than [NRS 125C.0601](#) to [125C.0693](#), inclusive; or
2. A person other than a parent who has custodial responsibility of a child under the laws of this State other than [NRS 125C.0601](#) to [125C.0693](#), inclusive.

(Added to NRS by [2013, 763](#))

NRS 125C.0621 “Deployment” defined. “Deployment” means the movement or mobilization of a service member to a location for more than 90 days but less than 18 months pursuant to an official order that:

1. Is designated as unaccompanied;
2. Does not authorize dependent travel; or
3. Otherwise does not permit the movement of family members to that location.

(Added to NRS by [2013, 763](#))

NRS 125C.0623 “Family member” defined. “Family member” includes a sibling, aunt, uncle, cousin, stepparent or grandparent of a child, and a person recognized to be in a familial relationship with a child under the laws of this State other than [NRS 125C.0601](#) to [125C.0693](#), inclusive.
(Added to NRS by [2013, 763](#))

NRS 125C.0625 “Limited contact” defined. “Limited contact” means the opportunity for a nonparent to visit with a child for a limited period of time. The term includes authority to take the child to a place other than the residence of the child.
(Added to NRS by [2013, 763](#))

NRS 125C.0627 “Nonparent” defined. “Nonparent” means a person other than a deploying parent or other parent.
(Added to NRS by [2013, 763](#))

NRS 125C.0629 “Other parent” defined. “Other parent” means a person who, in common with a deploying parent, is:

1. The parent of a child under the laws of this State other than [NRS 125C.0601](#) to [125C.0693](#), inclusive; or
2. A person other than a parent with custodial responsibility of a child under the laws of this State other than [NRS 125C.0601](#) to [125C.0693](#), inclusive.

(Added to NRS by [2013, 763](#))

NRS 125C.0631 “Record” defined. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
(Added to NRS by [2013, 764](#))

NRS 125C.0633 “Return from deployment” defined. “Return from deployment” means the conclusion of a service member’s deployment as specified in uniformed service orders.
(Added to NRS by [2013, 764](#))

NRS 125C.0635 “Service member” defined. “Service member” means a member of a uniformed service.
(Added to NRS by [2013, 764](#))

NRS 125C.0637 “State” defined. “State” means a state of the United States, the District of Columbia, Puerto Rico and the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
(Added to NRS by [2013, 764](#))

NRS 125C.0639 “Uniformed service” defined. “Uniformed service” means:

1. Active and reserve components of the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States;
2. The Merchant Marine, the Commissioned Corps of the Public Health Service or the Commissioned Corps of the National Oceanic and Atmospheric Administration of the United States; or
3. The National Guard.

(Added to NRS by [2013, 764](#))

NRS 125C.0641 Jurisdiction.

1. A court may issue an order regarding custodial responsibility under [NRS 125C.0601](#) to [125C.0693](#), inclusive, only if the court has jurisdiction pursuant to [chapter 125A](#) of NRS. If the court has issued a temporary order regarding custodial responsibility pursuant to [NRS 125C.0659](#) to [125C.0677](#), inclusive, the residence of the deploying parent is not changed by reason of the deployment for the purposes of [chapter 125A](#) of NRS during the deployment.
2. If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to [NRS 125C.0649](#) to [125C.0657](#), inclusive, the residence of the deploying parent is not changed by reason of the deployment for the purposes of [chapter 125A](#) of NRS.
3. If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for the purposes of [chapter 125A](#) of NRS.
4. This section does not prohibit the exercise of temporary emergency jurisdiction by a court under [chapter 125A](#) of NRS.
(Added to NRS by [2013, 764](#))

NRS 125C.0643 Notice required of deploying parent.

1. Except as otherwise provided in subsection 4, and subject to subsection 3, a deploying parent shall notify in a record the other parent of a pending deployment not later than 7 days after receiving notice of deployment unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent such notification within 7 days, such notification must be made as soon as reasonably possible thereafter.
2. Except as otherwise provided in subsection 4, and subject to subsection 3, each parent shall in a record provide the other parent with a plan for fulfilling that parent’s share of custodial responsibility during deployment as soon as reasonably possible after receiving notice of deployment under subsection 1.
3. If an existing court order prohibits disclosure of the address or contact information of the other parent, a notification of deployment under subsection 1, or notification of a plan for custodial responsibility during deployment under subsection 2, may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.
4. Notice in a record is not required if the parents are living in the same residence and there is actual notice of the deployment or plan.
5. In a proceeding regarding custodial responsibility between parents, a court may consider the reasonableness of a parent’s efforts to comply with this section.
(Added to NRS by [2013, 764](#))

NRS 125C.0645 Duty to notify of change of address.

1. Except as otherwise provided in subsection 2, a person to whom custodial responsibility has been assigned or granted during deployment pursuant to [NRS 125C.0649](#) to [125C.0677](#), inclusive, shall notify the deploying parent and any other person with custodial responsibility of any change of mailing address or residence until the assignment or grant is terminated. The person shall provide the notice to any court that has issued an existing custody or child support order concerning the child.
2. If an existing court order prohibits disclosure of the address or contact information of a person to whom custodial responsibility has been assigned or granted, a notification of change of mailing address or residence under subsection 1 may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the person to whom custodial responsibility has been assigned or granted.
(Added to NRS by [2013, 765](#))

NRS 125C.0647 General considerations in custody proceeding of parent’s military service. In a proceeding for custodial responsibility of a child of a service member, a court may not consider a parent’s past deployment or possible future deployment in itself in determining the best interest of the child, but may consider any significant impact on the best interest of the child of the parent’s past or possible future deployment.
(Added to NRS by [2013, 765](#))

Agreement Addressing Custodial Responsibility During Deployment

NRS 125C.0649 Form of agreement.

1. The parents of a child may enter into a temporary agreement granting custodial responsibility during deployment.
 2. An agreement under subsection 1 must be:
 - (a) In writing; and
 - (b) Signed by both parents and any nonparent to whom custodial responsibility is granted.
 3. An agreement under subsection 1 may:
 - (a) Identify to the extent feasible the destination, duration and conditions of the deployment that is the basis for the agreement;
 - (b) Specify the allocation of caretaking authority among the deploying parent, the other parent and any nonparent, if applicable;
 - (c) Specify any decision-making authority that accompanies a grant of caretaking authority;
 - (d) Specify any grant of limited contact to a nonparent;
 - (e) If the agreement shares custodial responsibility between the other parent and a nonparent, or between two nonparents, provide a process to resolve any dispute that may arise;
 - (f) Specify the frequency, duration and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact and allocation of any costs of communications;
 - (g) Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;
 - (h) Acknowledge that any party's existing child support obligation cannot be modified by the agreement and that changing the terms of the obligation during deployment requires modification in the appropriate court;
 - (i) Provide that the agreement terminates following the deploying parent's return from deployment according to the procedures under [NRS 125C.0679](#) to [125C.0685](#), inclusive; and
 - (j) If the agreement must be filed pursuant to [NRS 125C.0657](#), specify which parent shall file the agreement.
- (Added to NRS by [2013, 765](#))

NRS 125C.0651 Nature of authority created by agreement.

1. An agreement under [NRS 125C.0649](#) to [125C.0657](#), inclusive, is temporary and terminates pursuant to [NRS 125C.0679](#) to [125C.0685](#), inclusive, following the return from deployment of the deployed parent, unless the agreement has been terminated before that time by court order or modification of the agreement under [NRS 125C.0653](#). The agreement derives from the parents' custodial responsibility and does not create an independent, continuing right to caretaking authority, decision-making authority or limited contact in a person to whom custodial responsibility is given.
 2. A nonparent given caretaking authority, decision-making authority or limited contact by an agreement under [NRS 125C.0649](#) to [125C.0657](#), inclusive, has standing to enforce the agreement until it has been terminated pursuant to an agreement of the parents under [NRS 125C.0653](#), under [NRS 125C.0679](#) to [125C.0685](#), inclusive, or by court order.
- (Added to NRS by [2013, 766](#))

NRS 125C.0653 Modification of agreement.

1. The parents may modify an agreement regarding custodial responsibility made pursuant to [NRS 125C.0649](#) to [125C.0657](#), inclusive, by mutual consent.
 2. If an agreement is modified under subsection 1 before deployment of a deploying parent, the modification must be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.
 3. If an agreement is modified under subsection 1 during deployment of a deploying parent, the modification must be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.
- (Added to NRS by [2013, 766](#))

NRS 125C.0655 Power of attorney. If no other parent possesses custodial responsibility under the laws of this State other than [NRS 125C.0601](#) to [125C.0693](#), inclusive, or if an existing court order prohibits contact between the child and the other parent, a deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment. The power of attorney is revocable by the deploying parent through a revocation of the power of attorney signed by the deploying parent.

(Added to NRS by [2013, 766](#))

NRS 125C.0657 Filing agreement or power of attorney with court. An agreement or power of attorney made under [NRS 125C.0649](#) to [125C.0655](#), inclusive, must be filed within a reasonable period of time with any court that has entered an existing order on custodial responsibility or child support concerning the child. The case number and heading of the existing case concerning custodial responsibility or child support must be provided to the court with the agreement or power of attorney.

(Added to NRS by [2013, 766](#))

Judicial Procedure for Granting Custodial Responsibility During Deployment**NRS 125C.0659 Proceeding for temporary custody order.**

1. After a deploying parent receives notice of deployment and during the deployment, a court may issue a temporary order granting custodial responsibility unless prohibited by the Servicemembers Civil Relief Act, 50 U.S.C. Appx. §§ 521-522. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.
 2. At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion must be filed in an existing proceeding for custodial responsibility of the child with jurisdiction under [NRS 125C.0641](#) or, if there is no existing proceeding in a court with jurisdiction under [NRS 125C.0641](#), in a new action for granting custodial responsibility during deployment.
- (Added to NRS by [2013, 766](#))

NRS 125C.0661 Expedited hearing. If a motion to grant custodial responsibility is filed before a deploying parent deploys, the court shall conduct an expedited hearing.

(Added to NRS by [2013, 767](#))

NRS 125C.0663 Testimony by electronic means. In a proceeding brought under [NRS 125C.0659](#) to [125C.0677](#), inclusive, a party or witness who is not reasonably available to appear personally may appear and provide testimony and present evidence by electronic means unless the court finds good cause to require a personal appearance.

(Added to NRS by [2013, 767](#))

NRS 125C.0665 Effect of prior judicial decree or agreement. In a proceeding for a grant of custodial responsibility pursuant to [NRS 125C.0659](#) to [125C.0677](#), inclusive, the following rules apply:

1. A prior judicial order designating custodial responsibility of a child in the event of deployment is binding on the court unless the circumstances meet the requirements of the laws of this State other than [NRS 125C.0601](#) to [125C.0693](#), inclusive, for modifying a judicial order regarding custodial responsibility.

2. The court shall enforce a prior written agreement between the parents for designating custodial responsibility of a child in the event of deployment, including a prior written agreement executed under [NRS 125C.0649](#) to [125C.0657](#), inclusive, unless the court finds the agreement contrary to the best interest of the child.

(Added to NRS by [2013, 767](#))

NRS 125C.0667 Grant of caretaking or decision-making authority to nonparent.

1. On the motion of a deploying parent and in accordance with the laws of this State other than [NRS 125C.0601](#) to [125C.0693](#), inclusive, a court may grant caretaking authority of a child to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship if it is in the best interest of the child.

2. In determining whether to grant caretaking authority of a child to a nonparent pursuant to subsection 1, the court shall consider the following factors:

(a) The love, affection and other emotional ties existing between the nonparent and the child.

(b) The capacity and disposition of the nonparent to:

(1) Give the child love, affection and guidance and serve as a role model to the child;

(2) Provide the child with food, clothing and other material needs; and

(3) Provide the child with health care or alternative health care which is recognized and authorized pursuant to the laws of this State.

(c) The prior relationship between the nonparent and the child, including, without limitation, whether the child has previously resided with the nonparent and whether the child was previously included in holidays or family gatherings with the nonparent.

(d) The moral fitness of the nonparent.

(e) The mental and physical health of the nonparent.

(f) The reasonable preference of the child if the child has a preference and if the court determines that the child is of sufficient maturity to express a preference.

(g) The willingness and ability of the nonparent to facilitate and encourage a close and substantial relationship between the child and his or her deploying parent, other parent and family members.

(h) The medical and other health needs of the child which are affected by the grant of caretaking authority.

(i) The support provided by the nonparent, including, without limitation, whether the nonparent has contributed to the financial support of the child.

(j) Any objection by the other parent to the grant of caretaking authority to a nonparent. In the case of an objection by the other parent, there is a rebuttable presumption that the grant of caretaking authority to a nonparent is not in the best interest of the child. To rebut this presumption, the deploying parent must prove by clear and convincing evidence that the grant of caretaking authority to the nonparent is in the best interest of the child.

3. Unless the grant of caretaking authority to a nonparent under subsection 1 is agreed to by the other parent, the grant is limited to an amount of time not greater than:

(a) The time granted to the deploying parent in an existing permanent custody order, except that the court may add unusual travel time necessary to transport the child; or

(b) In the absence of an existing permanent custody order, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, except that the court may add unusual travel time necessary to transport the child.

4. A court may grant part of the deploying parent's decision-making authority for a child to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship if the deploying parent is unable to exercise that authority. When a court grants the authority to a nonparent, the court shall specify the decision-making powers that will and will not be granted, including applicable health, educational and religious decisions.

(Added to NRS by [2013, 767](#))

NRS 125C.0669 Grant of limited contact. On the motion of a deploying parent and in accordance with the laws of this State other than [NRS 125C.0601](#) to [125C.0693](#), inclusive, a court shall grant limited contact with a child to a nonparent who is either a family member of the child or a person with whom the child has a close and substantial relationship, unless the court finds that the contact would be contrary to the best interest of the child.

(Added to NRS by [2013, 768](#))

NRS 125C.0671 Nature of authority created by order.

1. A grant made pursuant to [NRS 125C.0659](#) to [125C.0677](#), inclusive, is temporary and terminates pursuant to [NRS 125C.0679](#) to [125C.0685](#), inclusive, following the return from deployment of the deployed parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decision-making authority or limited contact in a person to whom it is granted.

2. A nonparent granted caretaking authority, decision-making authority or limited contact under [NRS 125C.0659](#) to [125C.0677](#), inclusive, has standing to enforce the grant until it is terminated under [NRS 125C.0679](#) to [125C.0685](#), inclusive, or by court order.

(Added to NRS by [2013, 768](#))

NRS 125C.0673 Content of temporary custody order.

1. An order granting custodial responsibility under [NRS 125C.0659](#) to [125C.0677](#), inclusive, must:

- (a) Designate the order as temporary; and
 - (b) Identify to the extent feasible the destination, duration and conditions of the deployment.
2. If applicable, a temporary order for custodial responsibility must:
- (a) Specify the allocation of caretaking authority, decision-making authority or limited contact among the deploying parent, the other parent and any nonparent;
 - (b) If the order divides caretaking or decision-making authority between persons, or grants caretaking authority to one person and limited contact to another, provide a process to resolve any significant dispute that may arise;
 - (c) Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications;
 - (d) Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or is otherwise available, unless contrary to the best interest of the child;
 - (e) Provide for reasonable contact between the deploying parent and the child following return from deployment until the temporary order is terminated, which may include more time than the deploying parent spent with the child before entry of the temporary order; and
 - (f) Provide that the order will terminate following return from deployment according to the procedures under [NRS 125C.0679](#) to [125C.0685](#), inclusive.
- (Added to NRS by [2013, 769](#))

NRS 125C.0675 Order for child support. If a court has issued an order granting caretaking authority under [NRS 125C.0659](#) to [125C.0677](#), inclusive, or an agreement granting caretaking authority has been executed under [NRS 125C.0649](#) to [125C.0657](#), inclusive, the court may enter a temporary order for child support consistent with the laws of this State other than [NRS 125C.0601](#) to [125C.0693](#), inclusive, if the court has jurisdiction under [NRS 130.0902](#) to [130.802](#), inclusive.

(Added to NRS by [2013, 769](#))

NRS 125C.0677 Modifying or terminating grant of custodial responsibility to nonparent.

1. Except for an order in accordance with [NRS 125C.0665](#) or as otherwise provided in subsection 2, and consistent with the Servicemembers Civil Relief Act, 50 U.S.C. Appx. §§ 521-522, on the motion of a deploying or other parent or any nonparent to whom caretaking authority, decision-making authority or limited contact has been granted, the court may modify or terminate a grant of caretaking authority, decision-making authority or limited contact made pursuant to [NRS 125C.0601](#) to [125C.0693](#), inclusive, if the modification or termination is consistent with [NRS 125C.0659](#) to [125C.0677](#), inclusive, and the court finds it is in the best interest of the child. Any modification must be temporary and terminates following the conclusion of deployment of the deployed parent according to the procedures under [NRS 125C.0679](#) to [125C.0685](#), inclusive, unless the grant has been terminated before that time by court order.
 2. On the motion of a deploying parent, the court shall terminate a grant of limited contact.
- (Added to NRS by [2013, 769](#))

Return From Deployment

NRS 125C.0679 Procedure for terminating temporary grant of custodial responsibility established by agreement.

1. At any time following return from deployment, a temporary agreement granting custodial responsibility under [NRS 125C.0649](#) to [125C.0657](#), inclusive, may be terminated by an agreement to terminate signed by the deploying parent and the other parent.
 2. The temporary agreement granting custodial responsibility terminates:
 - (a) If the agreement to terminate specifies a date for termination, on that date; or
 - (b) If the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by both parents.
 3. In the absence of an agreement to terminate, the temporary agreement granting custodial responsibility terminates 60 days after the date of the deploying parent's giving notice to the other parent of having returned from deployment.
 4. If the temporary agreement granting custodial responsibility was filed with a court pursuant to [NRS 125C.0657](#), an agreement to terminate the temporary agreement must also be filed with that court within a reasonable period of time after the signing of the agreement. The case number and heading of the existing custodial responsibility or child support case must be provided to the court with the agreement to terminate.
- (Added to NRS by [2013, 770](#))

NRS 125C.0681 Consent procedure. At any time following return from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility issued under [NRS 125C.0659](#) to [125C.0677](#), inclusive. After an agreement has been filed, the court shall issue an order terminating the temporary order on the date specified in the agreement. If no date is specified, the court shall issue the order immediately.

(Added to NRS by [2013, 770](#))

NRS 125C.0683 Visitation before termination of temporary grant of custodial responsibility. Following return from deployment of a deploying parent until a temporary agreement or order for custodial responsibility established under [NRS 125C.0649](#) to [125C.0677](#), inclusive, is terminated, the court shall enter a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child, even if the time exceeds the time the deploying parent spent with the child before deployment.

(Added to NRS by [2013, 770](#))

NRS 125C.0685 Termination by operation of law of temporary grant of custodial responsibility established by court order.

1. A temporary order for custodial responsibility issued under [NRS 125C.0659](#) to [125C.0677](#), inclusive, shall terminate, if no agreement between the parties to terminate a temporary order for custodial responsibility has been filed, 60 days after the date of the deploying parent's giving notice of having returned from deployment to the other parent and any nonparent granted custodial responsibility.

2. Any proceedings seeking to prevent termination of a temporary order for custodial responsibility are governed by the laws of this State other than [NRS 125C.0601](#) to [125C.0693](#), inclusive.
(Added to NRS by [2013, 770](#))

NRS 125C.0687 Court may hold expedited hearing upon motion alleging immediate danger of irreparable harm. The court may, upon a motion alleging immediate danger of irreparable harm to the child, hold an expedited hearing concerning custody or visitation following the deploying parent's return from deployment.
(Added to NRS by [2013, 770](#))

Miscellaneous Provisions

NRS 125C.0689 Costs and attorney's fees. In addition to other relief provided by the laws of this State other than [NRS 125C.0601](#) to [125C.0693](#), inclusive, if a court finds that a party to a proceeding under [NRS 125C.0601](#) to [125C.0693](#), inclusive, has acted in bad faith or intentionally failed to comply with [NRS 125C.0601](#) to [125C.0693](#), inclusive, or a court order issued under [NRS 125C.0601](#) to [125C.0693](#), inclusive, the court may assess reasonable attorney's fees and costs of the opposing party and order other appropriate relief.
(Added to NRS by [2013, 770](#))

NRS 125C.0691 Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.
(Added to NRS by [2013, 771](#))

NRS 125C.0693 Relation to Electronic Signatures in Global and National Commerce Act. This act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede § 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that act, 15 U.S.C. § 7003(b).
(Added to NRS by [2013, 771](#))

CUSTODY AND VISITATION ORDERS CONCERNING CHILDREN OF MEMBERS OF MILITARY

NRS 125C.100 Definitions. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.105 "Custody or visitation order" defined. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.110 "Deployment" defined. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.115 "Member of the military" defined. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.120 "Parent" defined. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.125 "Parent who received orders for deployment" defined. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.130 "Temporary duty" defined. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.135 Provisions not applicable to order for protection against domestic violence. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.140 Jurisdiction retained during deployment of parent; deployment not basis to assert inconvenient forum. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.145 Court to hold expedited hearing or allow alternative means of presenting testimony and evidence in certain circumstances. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.150 Deployment does not warrant permanent modification of order. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.155 Expedited hearing to issue temporary order. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.160 Temporary modification of order to accommodate deployment of parent; requirements of temporary order. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.165 Expiration of temporary order upon completion of parent's deployment; exception. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.170 Delegation of visitation rights to family member of parent to be deployed; termination of such rights; effect on ability of family member to seek separate visitation order. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.175 Limitation on issuance of final order modifying terms of existing order when parent receives

mandatory order for deployment. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.180 Costs and attorney's fees. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

NRS 125C.185 Requirement for parents to cooperate and provide information to each other. Repealed. (See chapter 204, Statutes of Nevada 2013, at page 771.)

MISCELLANEOUS PROVISIONS

NRS 125C.200 Consent required from noncustodial parent to remove child from State; permission from court; change of custody. [Replaced in revision by [NRS 125C.006](#).]

NRS 125C.210 Child conceived as result of sexual assault: Rights of natural father convicted of sexual assault; rights when father is spouse of victim; rebuttable presumption upon divorce.

1. Except as otherwise provided in subsection 2, if a child is conceived as the result of a sexual assault and the person convicted of the sexual assault is the natural father of the child, the person has no right to custody of or visitation with the child unless the natural mother or legal guardian consents thereto and it is in the best interest of the child.

2. The provisions of subsection 1 do not apply if the person convicted of the sexual assault is the spouse of the victim at the time of the sexual assault. If the persons later divorce, the conviction of sexual assault creates a rebuttable presumption that sole or joint custody of the child by the perpetrator of the sexual assault is not in the best interest of the child. The court shall set forth findings that any custody or visitation arrangement ordered by the court adequately protects the child and the victim of the sexual assault.

(Added to NRS by [1993, 105](#); A [1995, 331](#))—(Substituted in revision for NRS 125A.360)

NRS 125C.220 Presumptions concerning custody and visitation when parent of child is convicted of first degree murder of other parent of child.

1. The conviction of the parent of a child for murder of the first degree of the other parent of the child creates a rebuttable presumption that sole or joint custody of the child by the convicted parent is not in the best interest of the child. The rebuttable presumption may be overcome only if:

(a) The court determines that:

- (1) There is no other suitable guardian for the child;
- (2) The convicted parent is a suitable guardian for the child; and
- (3) The health, safety and welfare of the child are not at risk; or

(b) The child is of suitable age to signify his or her assent and assents to the order of the court awarding sole or joint custody of the child to the convicted parent.

2. The conviction of the parent of a child for murder of the first degree of the other parent of the child creates a rebuttable presumption that rights to visitation with the child are not in the best interest of the child and must not be granted if custody is not granted pursuant to subsection 1. The rebuttable presumption may be overcome only if:

(a) The court determines that:

- (1) The health, safety and welfare of the child are not at risk; and
- (2) It will be beneficial for the child to have visitations with the convicted parent; or

(b) The child is of suitable age to signify his or her assent and assents to the order of the court awarding rights to visitation with the child to the convicted parent.

3. Until the court makes a determination pursuant to this section, no person may bring the child into the presence of the convicted parent without the consent of the legal guardian or custodian of the child.

(Added to NRS by [1999, 742](#); A [1999, 2975](#))

NRS 125C.230 Presumption concerning custody when court determines that parent or other person seeking custody of child is perpetrator of domestic violence.

1. Except as otherwise provided in [NRS 125C.210](#) and [125C.220](#), a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody of a child has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child. Upon making such a determination, the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of domestic violence occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other victim of domestic violence who resided with the child.

2. If after an evidentiary hearing held pursuant to subsection 1 the court determines that more than one party has engaged in acts of domestic violence, it shall, if possible, determine which person was the primary physical aggressor. In determining which party was the primary physical aggressor for the purposes of this section, the court shall consider:

(a) All prior acts of domestic violence involving any of the parties;

(b) The relative severity of the injuries, if any, inflicted upon the persons involved in those prior acts of domestic violence;

(c) The likelihood of future injury;

(d) Whether, during the prior acts, one of the parties acted in self-defense; and

(e) Any other factors that the court deems relevant to the determination.

Ê In such a case, if it is not possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 1 applies to each of the parties. If it is possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 1 applies only to the party determined by the court to be the primary physical aggressor.

3. As used in this section, “domestic violence” means the commission of any act described in [NRS 33.018](#).

(Added to NRS by [1999, 742](#))

NRS 125C.240 Presumption concerning custody when court determines that parent or other person seeking custody of child has committed act of abduction against child or any other child.

1. A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody of a child has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking custody does not rebut the presumption, the court shall not enter an order for sole or joint custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of abduction occurred; and
 (b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.

2. For purposes of subsection 1, any of the following acts constitute conclusive evidence that an act of abduction occurred:

(a) A conviction of the defendant of any violation of [NRS 200.310](#) to [200.340](#), inclusive, or [200.359](#) or a law of any other jurisdiction that prohibits the same or similar conduct;

(b) A plea of guilty or nolo contendere by the defendant to any violation of [NRS 200.310](#) to [200.340](#), inclusive, or [200.359](#) or a law of any other jurisdiction that prohibits the same or similar conduct; or

(c) An admission by the defendant to the court of the facts contained in the charging document alleging a violation of [NRS 200.310](#) to [200.340](#), inclusive, or [200.359](#) or a law of any other jurisdiction that prohibits the same or similar conduct.

3. If, after a court enters a final order concerning custody of the child, a magistrate determines there is probable cause to believe that an act of abduction has been committed against the child or any other child and that a person who has been awarded sole or joint custody or unsupervised visitation of the child has committed the act, the court shall, upon a motion to modify the order concerning custody, reconsider the previous order concerning custody pursuant to subsections 1 and 2.

4. As used in this section, "abduction" means the commission of an act described in [NRS 200.310](#) to [200.340](#), inclusive, or [200.359](#) or a law of any other jurisdiction that prohibits the same or similar conduct.

(Added to NRS by [2009, 225](#))

NRS 125C.250 Attorney's fees and costs. Except as otherwise provided in [NRS 125C.0689](#), in an action to determine legal custody, physical custody or visitation with respect to a child, the court may order reasonable fees of counsel and experts and other costs of the proceeding to be paid in proportions and at times determined by the court.

(Added to NRS by [2013, 2956](#))

APPENDIX B PLEADINGS, AGREEMENTS, AND FORMS

Findings of Fact, Recommendation, and Order for Sibling Visitation

Hearing Master Recommendation (Waiver of Right to Object)

Motion for an Order for Sibling Visitation

Motion for Sibling Visitation and to Incorporate any Visitation Order into Adoption Decree

Order for Sibling Visitation

Motion for Child Witness to Testify By Alternative Methods

Ex Parte Motion for an Order Shortening Time

Order Shortening Time

Motion to Compel Placement and Request for a Finding for Lack of Reasonable Efforts

Motion for an Order to Show Cause (Contempt)

Objection to Hearing Master's Recommendations

Motion for Findings on the Issue of Special Immigrant Juvenile Status

Order and Findings of Fact on the Issue of Special Immigrant Juvenile Status

AGREEMENTS

Open Adoption Contact Agreement

FORMS

Notice and Approval to Reschedule or Reset a Court Date (NARD)

Request for Discovery

FFRO

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:)
)
_____,)
DOB:)
AGE: ____ YEARS OF AGE)
)
_____,)
DOB:)
AGE: ____ YEARS OF AGE)
)
Minors.)
_____)

Case No.:
Dept. No.:
Courtroom:

**FINDINGS OF FACT, RECOMMENDATION, AND ORDER
FOR SIBLING VISITATION**

This matter having come before the above-entitled Court, on October 14, 2014, with _____, Esq., Deputy District Attorney, Juvenile Family Court, Department of Family Services (DFS), by and through Case Manager _____, _____, Esq., as attorney of record for natural mother, _____, and _____, Esq., of FIRM, as attorney of record for minors, _____ and _____. The Court having read the papers and pleadings on file and heard oral arguments makes the following:

FINDINGS:

1. That the Court has complete jurisdiction in the premises, both as to the subject matter and the parties hereto; and that all individuals referenced herein and now have been wards of Clark County, Nevada.
2. _____ and _____ have been under the jurisdiction of the Juvenile Court.
3. _____ is the natural mother to _____ and _____.

4. The permanency plan adopted by this Court is Termination of Parental Rights and adoption for these children.
5. _____ is currently placed with maternal family. They are an adoptive resource.
6. _____ is currently placed in a foster home.
7. N.R.S. 432B.580 requires a court approved sibling visitation plan when siblings are not placed together.
8. It is in _____ and _____'s best interest to preserve the sibling bond through regularly scheduled visitation.

IT IS HEREBY ORDERED that:

1. In accordance with N.R.S. 432B.580, _____ and _____ will visit with one another in-person at least twice a month for at least two hours. Any and all in-person visits shall take into account the siblings' school, social, and vacation dates.
2. If a planned in-person visit cannot take place as scheduled, the parties shall communicate as soon as the need for the change in scheduling becomes apparent, and shall arrange for an alternate date and time, if possible.
3. In the event that any of the siblings relocate from Clark County, Nevada, the parties will meet and confer as to an alternative visitation and contact arrangement.
4. Until case closure, the Department of Family Services, or a party designated by the caseworker, shall be responsible for the transportation of _____ and _____ to and from all visits unless otherwise arranged by the mutual agreement of all interested parties.
5. After case closure, the custodian or parents of the children shall be responsible for the transportation of _____ and _____ to and from all visits unless otherwise arranged by the mutual agreement of all interested parties.
6. The children shall be permitted to correspond by letter and/or have telephone contact, including the ability to Face time, if applicable, and Skype, with each

other that is reasonable and does not interfere with the children's routine when they become old enough to utilize the mail and telephone.

7. The above mentioned visitation shall occur at a time and place agreed upon by the Department of Family Services or by mutual agreement of all interested parties. Such visitation shall commence upon the entry of this ORDER and shall continue until such time that _____ and _____ reach the age of majority or until further order of this Court.
8. In accordance with N.R.S 127.171, the Department of Family Services shall provide the Court which is conducting the adoption proceedings with this sibling visitation to ensure that this ORDER shall be incorporated into any future adoption so as to ensure that the children's rights to visitation shall remain in effect.

DATED this _____ day of November, 2014.

JUVENILE HEARING MASTER

**NOTICE OF RIGHT TO FILE AN OBJECTION TO HEARING MASTER'S
RECOMMENDATIONS**

Objections to Hearing Master's Recommendations are governed by EDCR 1.46. No Recommendations by the Hearing Master will become effective until expressly approved by the Presiding Juvenile District Court Judge. The Applicant has five (5) days after service of this Hearing Master's Recommendations to Apply to the Presiding Juvenile District Court Judge for a hearing. Failure to properly file an Application for Hearing shall result in An Order of Approval being entered by the District Court.

CERTIFICATE OF FACSIMILE

I HEREBY CERTIFY that on the _____ day of November, 2014, I served a copy of the Recommendation and Order and Notice of Right to Appeal via facsimile to the following:

ORDER OF APPROVAL

The Court having reviewed the above foregoing Master's Recommendation and there being no timely objection having been filed thereto; or having received the objection thereto, as well as any other papers, testimony and argument related thereto and good cause appearing, the above Findings of Fact and Recommendation's of the Hearing Master are hereby approved and such Findings of Fact and Recommendation's are hereby made an Order of the Eighth Judicial District Court of Nevada, Juvenile Division.

DATED this _____ day of November, 2014.

DISTRICT COURT JUDGE

Submitted by:

By:_____

CERTIFICATE OF MAILING

I hereby certify that I served the following document: ***FINDINGS OF FACT, RECOMMENDATION, AND ORDER FOR SIBLING VISITATION***. I served the above-named document by the following means to the persons as listed below:

- a. United States mail, postage fully prepaid, as the party is not registered for electronic service, on November _____, 2014, to the following:**

An employee of
FIRM

ORDER

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:	)	Case No.:
	)	Dept. No.:
_____ ,	)	Courtroom:
DOB: _____)	
AGE: ____ YEARS OF AGE)	
)	
_____ ,)	
DOB: _____)	
AGE: ____ YEARS OF AGE)	
)	
Minors.)	
_____)	

HEARING MASTER RECOMMENDATION AND ORDER FROM HEARING
ON JANUARY 26, 2016

This matter was scheduled for a status check on January 26, 2016, in courtroom __ in front of Hearing Master _____ with the following persons present for said hearing: _____, Case Manager for the Department of Family Services; _____, Esq., Deputy District Attorney representing the Department of Family Services; and _____, Esq., of FIRM, representing the subject minors, _____ and _____, who were not present.

Having considered the statements of those present, the Court made the following recommendations:

IT IS HEREBY RECOMMENDED that the Department of Family Services shall identify and ensure these siblings are placed together in a foster home.

DATED this ____ day of February, 2016.

JUVENILE HEARING MASTER

**NOTICE OF WAIVER TO FILE AN OBJECTION TO HEARING MASTER'S
RECOMMENDATIONS**

Objections to Hearing Master's Recommendations are governed by EDCR 1.46. No Recommendations by the Hearing Master will become effective until expressly approved by the Presiding Juvenile District Court Judge. The Applicant has five (5) days after service of this Hearing Master's Recommendations to Apply to the Presiding Juvenile District Court Judge for a hearing. Failure to properly file an Application for Hearing shall result in An Order of Approval being entered by the District Court.

In this case, all parties are in agreement as to the hearing master's recommendations, and thereby waive the right to object and affirm they have received a copy of the instant HEARING MASTER RECOMMENDATION AND ORDER FROM HEARING ON JANUARY 26, 2016

By: _____
_____, ESQ.
Nevada Bar No.

By: _____
_____, ESQ.
Nevada Bar No.
Deputy District Attorney Juvenile
601 N. Pecos Road, Room 470
Las Vegas, Nevada 89101
Attorney for DFS

ORDER OF APPROVAL

The Court having reviewed the above foregoing Master's Recommendations and there being agreement as to the recommendations and waiver of filing of objections, there is good cause to make the above Hearing Master's Recommendations an Order of the Eighth Judicial District Court of Nevada, Juvenile Division.

DATED this ____ day of February, 2016.

DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the _____ day of January, 2016, I placed a true and correct copy of the foregoing **HEARING MASTER RECOMMENDATION**, First-Class postage prepaid, in the United States Postal Service at Las Vegas, Nevada, and addressed as follows:

An employee of
FIRM

MOT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:) Case No.:
)
DOB:) Department No.:
Age:)
) MOTION FOR AN ORDER FOR
A Minor.) SIBLING VISITATION

COMES NOW, _____, by and through [his/her] attorney, _____, of FIRM, and moves this Court for an Order for Sibling Visitation. This Motion is based upon the following Memorandum of Points and Authorities, the records and files in this case, and such additional documentary and oral evidence as may be presented at the hearing on this Motion.

Dated this _____ day of _____, 20____

By: _____

Nevada Bar No.:

NOTICE OF MOTION

TO: ; and

TO:

PLEASE TAKE NOTICE that a hearing on this Motion for relief will be held before the Eighth Judicial District Court located on the first floor of the Family Courts and Services Center located at 601 N. Pecos Road Las Vegas, Nevada 89101, on the day of , 20 in Department at .m.

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING.

Dated this day of , 20 —

By: _____

Nevada Bar No.:

I.
STATEMENT OF FACTS

Relevant facts include:

1. Names and ages of client and his/her siblings, identification of natural parents and circumstances that brought them within DFS custody. Particular emphasis on the length of the relationship and/or facts indicating that the sibling seeking visitation has acted as caretaker for any or all siblings with whom visitation is sought.
2. Current location of the siblings
3. Facts demonstrating the Case Worker's refusal to provide a visitation plan, if any.
4. Facts demonstrating foster parents' refusal to cooperate/allow visitation.

II.

MEMORANDUM OF POINTS AND AUTHORITIES

A. **This Court Has Original and Exclusive Jurisdiction Over This Matter.**

Original jurisdiction over this matter is vested in this Court:

“NRS 3.223 Jurisdiction of family courts.

1. Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et seq., in each judicial district in which it is established, the family court has original, exclusive jurisdiction in any proceeding:

(a) Brought pursuant to title 5 of NRS or chapter 31A, 123, 125, 125A, 125B, 125C, 126, 127, 128, 129, 130, 159, 425 or 432B of NRS, except to the extent that a specific statute authorizes the use of any other judicial or administrative procedure to facilitate the collection of an obligation for support.”

N.R.S. § 432B.410 (1) further provides that: “Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act, the court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is a child in need of protection or may be a child in need of protection.” Having taken [redacted] and his/her siblings into protective custody, pursuant to a Petition –Abuse/Neglect filed by the Clark County Department of Family Services under N.R.S. § 432B.470, this Court acquired subject matter jurisdiction over this case, and personal jurisdiction over [redacted], a minor.

B. **Nevada Law Requires That The Department of Family Services Place Siblings Together.**

Since 1985, Nevada law has protected children from abuse and neglect by their parents or legal guardians, authorizing their placement into the protective custody of the State or County.

Children wrenched from the home of parents/guardians rely heavily on a continued association with the only family left to them – their siblings – for the sense of love, belonging and stability that all children need. Recognizing this, the Nevada Legislature amended N.R.S. §

432B.550 (Determination of custody of child by court) in 1999 to add a preference for the co-placement of siblings taken into the protective custody of the County or State:

“5. In determining the placement of a child ... , if the child is not permitted to remain in the custody of his parents or guardian, preference must be given to *placing the child*:

(a) *With* any person related within the third degree of consanguinity¹ to the child who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this state.

(b) *If practicable, together with his siblings.*”²

In 2005, the Nevada Legislature replaced this weaker “preference” for sibling co-placement with a **mandatory presumption**, through an amendment to N.R.S. § 432B.550:

5. In determining the placement of a child pursuant to this section, if the child is not permitted to remain in the custody of his parents or guardian ~~[, preference]~~ :

(a) *It must be presumed to be in the best interests of the child to be placed together with his siblings.*

(b) ~~Preference~~ must be given to placing the child ~~[-~~

(a) ~~With~~ *with* any person related within the third degree of consanguinity to the child who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

~~[(b) If practicable, together with his siblings.]~~³

Here, the Department of Family Services (the “Department”) has failed or refused to satisfy this legislative mandate: resides with , separated from [his/her] sibling[s].

1. In 2009, this was expanded to allow placement within the fifth degree of consanguinity.

2. 70th Legislative Session, Nevada Assembly Bill 158, strikethrough signifies deletions, italics signifies newly added language.

³ 73rd Legislative Session, Nevada Assembly Bill 42, strikethrough signifies deletions, italics signifies newly added language.

3. 73rd Legislative Session, Nevada Assembly Bill 42, deletions in red, amendatory language in blue, italicized and emboldened.

Legislative history gleaned from the Hearing on A.B. 42 before the Assembly Committee on Health and Human Services, 73rd Legislative Session (March 7, 2005), indicates that this amendment was:

“...an important step in helping...to ensure that children in the foster care system maintain a very important connection. Setting expectations for child welfare agencies to facilitate the maintenance of these relationships during a serious family disruption is important. Sibling ties represent a special support system, one that is reflected in its uniqueness by being the longest-lasting relationship that a person may have. Splitting siblings in foster care interrupts the sole connection a child may have to his or her family of origin. The loss can negatively impact the child through his or her lifetime.”

C. If The Department of Family Services Is Unable To Keep Siblings Together, It Must Develop A Plan For Visitation Among The Separated Siblings.

At the same time the Legislature clarified its intention that siblings in protective custody be placed together, the Legislature also amended N.R.S. § 432B.580 (Semiannual review by court of placement of child), to include the following requirement:

- “2. An agency acting as the custodian of the child shall, before any hearing for review of the placement of a child, submit a report to the court, or to the panel if it has been designated to review the matter, which includes ~~[an]~~ :
- (a) An evaluation of the progress of the child and his family and any recommendations for further supervision, treatment or rehabilitation ~~[]~~; and
 - (b) Information concerning the placement of the child in relation to his siblings, including, without limitation:
 - (1) Whether the child was placed together with his siblings;
 - (2) Any efforts made by the agency to have the child placed together with his siblings;
 - (3) Any actions taken by the agency to ensure that the child has contact with his siblings; and
 - (4) If the child is not placed together with his siblings:
 - (I) The reasons why the child is not placed together with his siblings; and
 - (II) A plan for the child to visit his siblings, which must be approved by the court.”⁴

The language of the statute is not conditional: the obligation to develop a visitation plan is not made optional for the Department, nor is it made to depend upon a written request to the Department or a petition to this Court by . Unless the Department provides this Court with evidence to overcome the presumption that co-placement and, absent that, visitation with siblings is not in ’s best interests, this Court should not allow the Department to shirk its responsibility to and must allow [him/her] to maintain his relationship with [his/her] siblings.⁵

⁵ Where the child welfare agency fails in its responsibility to develop a sibling visitation plan for approval by the Court, a child may be able to petition the Court for a visitation order under the Nevada statute relating to child custody and visitation (N.R.S. § 125C.050), as occurred in this case. However, the availability of this petition right, also available to noncustodial parents, grandparents and fictive kin, among others, in no way relieves the child welfare agency of its responsibility to comply with the express requirements of N.R.S. § 432B.880 or dilutes the statutorily-created right of sibling visitation contained therein. Given the small percentage of children in State/County custody who have access to any independent legal representation, the rights granted these children by

It is the express public policy of this State to **presume** that co-placement with siblings is in the best interests of a child, and that there is an *affirmative duty* on State and County child welfare agencies to keep sibling groups intact and, failing that, to **ensure** that a child continues to have visitation with his siblings to maintain the family bond. At each hearing to review a child's placement apart from his brothers or sisters, the child care agency must justify to the Court why it has been unable to keep siblings together, and, having failed in this primary duty, provide the Court with a visitation plan to sustain the sibling relationship during the children's protective custody. This approved visitation plan is memorialized by a Court order for sibling visitation.

Since the Department has failed or refused to place [redacted] with [his/her] siblings, now seeks an Order from this Court, directing the Department to immediately develop a plan for visitation for [redacted] and [his/her] siblings, and present it to this Court for approval, within fourteen (14) days from the date of the hearing on this Motion.

III.

CONCLUSION

When children are taken from their parents and placed in the protective custody of the State or County, Nevada law presumes that keeping them together is in their best interests. A child welfare agency has the affirmative obligation to either place siblings together or, failing this, provide a plan for visitation that will preserve their sibling relationship. This plan must be approved by a Court and memorialized in a sibling visitation order. In so doing, the Court should consider only what is in the best interests of the children: mere inconvenience to a foster caretaker or Department caseworker is not sufficient to overcome the child's right to preserve the love and mutual support system engendered and maintained through a sibling relationship.

Accordingly, [redacted] respectfully requests that this Court Order The Clark County Department of Family Services to develop a plan for visitation for [redacted] and [his/her] siblings,

the Legislature would be wholly illusory if it could be exercised only by requiring a *minor child* to petition a Court for a visitation order.

and present it to this Court for approval, in the form of an Order For Sibling Visitation, within fourteen (14) days from the date of the hearing on this Motion.

Respectfully Submitted this _____ day of _____, 20____.

By: _____

Nevada Bar No.:

MOT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:	)	Case No.:
	)	Dept. No.:
_____,	)	Courtroom:
DOB:)	
AGE: __ YEARS OLD)	
)	
_____,)	
DOB:)	
AGE: __ YEARS OLD)	
)	
_____,)	
DOB:)	
AGE: __ YEARS OLD)	
)	
_____)	
Minors.)	

MOTION FOR SIBLING VISITATION AND TO INCORPORATE ANY VISITATION ORDER INTO ADOPTION DECREE

NOW COMES the minor children, _____, _____, and _____, by and through their attorney, _____, ESQ., of FIRM, and hereby files this MOTION FOR SIBLING VISITATION AND TO INCORPORATE ANY VISITATION ORDER INTO THE ADOPTION DECREE. This Motion is based upon the following Memorandum of Points and Authorities and any oral argument allowed at the time of the hearing of this matter.

Dated this _____ day of July, 2014.

By: _____

NOTICE OF MOTION

TO: _____, ESQ., DEPUTY DISTRICT ATTORNEY, JUVENILE DIVISION;

TO: _____, DEPARTMENT OF FAMILY SERVICES;

TO: ADOPTION WORKER, DEPARTMENT OF FAMILY SERVICES;

TO: _____, ESQ., ATTORNEY FOR NATURAL MOTHER.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION on for hearing before the above-entitled Court on the _____ day of _____, 2014 at ____:____.m.

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING.

DATED this _____ day of July, 2014.

By: _____

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND STATEMENT

This case originally involved four children who share a natural mother in common. The natural mother is _____.

_____, 12 years old, _____, 10 years old, and _____, 6 years old, are siblings. They were made wards of the Juvenile Court and placed in the custody of Clark County Department of Family Services (hereinafter “DFS”) beginning on May 11, 2012. Their half sibling, _____, was also made a ward of the court at that time.

Prior to coming into custody, _____, _____, _____, and _____ grew up together and lived in the same home. After coming into care, they were placed in a number of homes in various configurations.

Currently, _____, _____, and _____ are placed together in a foster home. _____, however, was able to reunite with her natural father. Wardship as to _____ was terminated on April 22, 2014 and full custody was returned to her father.

Even with all of the transitions that have occurred, _____, _____, and _____ still maintain a close relationship with their sister _____. They currently speak on the telephone frequently and meet to spend time together.

A termination of parental rights trial is scheduled for July 24, 2014. DFS and the State are requesting to terminate parental rights as to _____, _____ and _____. This Motion for Sibling Visitation Order and Inclusion in Any Adoption Decree is being filed to request that the Court protect and preserve this sibling group’s relationship.

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II. LEGAL ARGUMENT

1. NEVADA SUPPORTS VISITATION AND PRESERVATION OF SIBLING RELATIONSHIPS.

The State of Nevada has long recognized the existence and the importance of maintaining sibling relationships especially for youth in foster care. It is for these reasons, the Nevada Legislature has passed legislation requiring a presumption that sibling groups should be placed together. The Legislature also mandated that visitation be encouraged during the time siblings are in separate homes if this presumption is rebutted. Furthermore during the legislative session of 2009, the statute was again amended to require that courts conduct hearings to determine whether to include visitation orders for siblings in the final adoption decrees. The only consideration for the courts in determining visitation is the best interests of the child.

In 1999, the Legislature added subparagraph (b) to subsection 5 of NRS 432B.550. Subparagraph (b) and created a preference that a child, in need of protection and not permitted to remain in parental custody, be placed together with siblings, if practicable. In 2005, the Legislature, again recognized the importance of sibling relationships, and enacted Assembly Bill 42 which amended the language of NRS 432B.550 to change the preference for siblings to be placed together to a presumption that it is in their best interest to be placed together.¹

NRS 432B.550(5) read as follows:

5. In determining the placement of a child pursuant to this section, if the child is not permitted to remain in the custody of his parents or guardian:
 - a) It must be presumed to be in the best interests of the child to be placed together with his siblings
 - b) Preference must be given to placing the child with any person related within the third degree of consanguinity to the child who is suitable and able to

¹ Hearing on A.B. 42 before the Assembly Comm. on Health and Human Serv., 73rd Leg. (Nev., March 7, 2005).

provide proper care and guidance for the child, regardless of whether the relative resides within the State.²

In amending 432B.550(5), the Legislature understood that Assembly Bill 42 was recognized:

As an important step in helping . . . to ensure that children in the foster care system maintain a very important connection. Setting expectations for child welfare agencies to facilitate the maintenance of these relationships during a serious family disruption is important. Sibling ties represent a special support system, one that is reflected in its uniqueness by being the longest-lasting relationship that a person may have. Splitting siblings in foster care interrupts the sole connection a child may have to his or her family origin. The loss can negatively impact the child through his or her lifetime.³

Another statutory amendment made by the Legislature during the 2005 session reflects the Legislature's focus on the significant relationship which exists between dependent children and their siblings.⁴ NRS 432B.580 was amended to require that specific information regarding siblings be provided to the Court semiannually; specifically, whether siblings are placed to ether, what efforts were made to place them together, what actions were taken to ensure sibling contact, and a complete plan for sibling visitation.⁵ Additionally, subsection (4) to NRS 432B.580 was added in 2005, which requires that,

After a plan for visitation between a child and his siblings submitted pursuant to subparagraph (4) of paragraph (b) of subsection 2 has been approved by the court, the agency which provides child welfare services must request the court to issue an order requiring the visitation set forth in the plan for visitation. If a

² In 2009, this was expanded to allow placement within the fifth degree of consanguinity.

³ Hearing on A.B. 42 before the Assembly Comm. On Health and Human Serv., 73rd Leg. (Nev., March 7, 2005).

⁴ A.B. 42, 73rd Leg. (Nev. 2005).

⁵ NRS 432B.580(2). This provision reads as follows:

2. An agency acting as the custodian of the child shall, before any hearing for review of the placement of a child, submit a report to the court, or to the panel if it has been designated to review the matter, which includes:

- (a) An evaluation of the progress of the child and his family and any recommendations for further supervision, treatment or rehabilitation; and
- (b) Information concerning the placement of the child in relation to his siblings, including, without limitation:
 - (1) Whether the child was placed together with his siblings;
 - (2) Any efforts made by the agency to have the child place together with his siblings;
 - (3) Any action taken by the agency to ensure that the child has contact with his siblings; and
 - (4) If the child is not placed together with his siblings:
 - (I) The reason why the child was not placed together with his siblings; and
 - (II) A plan for the child to visit his siblings, which must be approved by the court.

person refuses to comply with or disobey an order issued pursuant to this subsection, he may be punished as for a contempt of court.⁶

At the 2009 session of the Nevada Legislature, Chapter 127 of the NRS was again amended by adding a new section 10 to read as follows:

1. If a child who is in the custody of an agency which provides child welfare services is placed for adoption, the agency must provide the court which is conducting the adoption proceedings with a copy of an order for visitation with a sibling of the child that was issued pursuant to NRS 432B.580 and the order for visitation with a sibling in the decree of adoption.
2. Any interested party in the adoption, including, without limitation, the adoptive parent, the adoptive child, a sibling of the adoptive child, the agency which provides child welfare services, or a licensed child-placing agency may petition the court to participate in the determination of whether to include an order of visitation with a sibling in the decree of adoption.
3. The sole consideration of the court in making a determination concerning visitation with a sibling pursuant to this section is the best interest of the child.

This consistent pattern of legislation clearly evidences a concern, favor and mandate of the Nevada Legislature to protect sibling relationships. The statutory provisions require that the courts actively assist children in the foster care system to maintain their important sibling bonds, both while they are in the dependency system, and afterwards if they are adopted. Why else would Legislature amend the statute and add a new section that specifically requires the court to determine if the best interests of the child dictates that an order of visitation be included in the final adoption decree?

In this case, _____, _____, and _____ have been placed in a foster home. Their sister, who had originally been in foster care with them, was fortunate and able to reunite with her father. All of the children share a deep bond and wish to continue to have contact with one another. They grew up together and lived together until they were separated during the foster care process.

⁶ NRS 432B.580(4)

These children have all expressed their wishes to have a continued sibling relationship with one another. Additionally, the law presumes that it is in their best interests to continue visiting and communicating with each other, even in the event that termination of parental rights is granted and/or they are adopted.

III. **CONCLUSION**

_____, _____, _____, and _____'s requests are exceedingly modest. They ask simply to continue to be able to visit with one another, once or twice a month for two (2) to four (4) hours, to be allowed to call each other on the telephone, and to exchange cards, letters gifts, and pictures. The parent, custodian, and/or legal guardian of these children can allow more contact if time and conditions allow. The Nevada Legislature and statutes will allow nothing less.

Dated this _____ day of July, 2014.

By: _____

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the _____ day of July, 2014, I placed a true and correct copy of the foregoing ***MOTION FOR SIBLING VISITATION AND TO INCORPORATE, ANY VISITATION ORDER INTO ADOPTION DECREE*** postage fully prepaid, in the United States Mail addressed as follows:

_____, Esq.
Deputy District Attorney Juvenile
Family Court
601 N. Pecos Road, Room 470
Las Vegas, Nevada 89101
Attorney for Department of Family Services

_____, Case Manager
Department of Family Services
701 N. Pecos Road, Bldg. K
Las Vegas, Nevada 89101

ADOPTION WORKER
Department of Family Services
701 N. Pecos Road, Bldg. K
Las Vegas, Nevada 89101

An employee of
FIRM

ORDER

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:	)	Case No.:
	)	Dept. No.:
_____ ,	)	Courtroom:
DOB: _____)	
AGE: __ YEARS OLD)	
)	
_____ ,)	
DOB: _____)	
AGE: __ YEARS OLD)	
)	
Minors.)	
_____))	

ORDER FOR SIBLING VISITATION

This matter having come before this Honorable Court for hearing on the ____ day of August, 2014, the Department of Family Services appearing through Case Manager _____, and through Deputy District Attorney, _____, the Office of the Clark County District Attorney being present; _____, appearing on behalf of subject minors, _____ and _____, appearing; _____ and _____ appearing; and this Court having reviewed all papers and pleadings on file herein and having heard oral arguments from counsel and the Parties;

IT IS HEREBY ORDERED that:

1. In accordance with NRS 432B.580, _____ and _____ shall have visitation with their siblings; _____ and _____, once or twice a month for two (2) to four (4) hours each visit.
2. _____ and _____ shall be allowed to call their siblings _____ and _____ on the telephone once a week.
3. _____, _____, _____ and _____ are allowed to exchange cards, letters and pictures.

4. Both adoptive and foster parents can allow more contact if time and conditions allow.
5. This ORDER FOR VISITATION shall be incorporated into any future Adoption Decree.

DATED this _____ day of _____, 2014.

DISTRICT COURT JUDGE

Respectfully Submitted:

By: _____

MOT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:)
)
_____,)
DOB:)
AGE: __ YEARS OLD)
)
_____,)
DOB:)
AGE: __ YEARS OLD)
)
_____,)
DOB:)
AGE: __ YEARS OLD)
)
Minors.)
_____)

Case No.:
Dept. No.:
Courtroom:

MOTION FOR CHILD WITNESS TO TESTIFY BY ALTERNATIVE METHODS

COMES NOW, _____, by and through his attorney of record, _____, Esq. of FIRM, and brings this Motion for an Order to Allow _____ to Testify by Alternative Means. This Motion is made pursuant to NRS 50.570 et seq., and is further based upon the Affidavit(s) and Exhibit(s) attached hereto and any other such documentary or oral evidence as may be presented at the hearing set for this Motion.

DATED this _____ day of June, 2011.

By: _____

NOTICE OF MOTION

TO: _____, ESQ., DEPUTY DISTRICT ATTORNEY, JUVENILE DIVISION

TO: _____, CASE MANAGER, DEPARTMENT OF FAMILY SERVICES

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION on for hearing before the above-entitled Court on the _____ day of _____, 2011 at ____ a.m./p.m.

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING.

DATED this _____ day of June, 2011.

By: _____

—

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

This matter is set for a contested hearing on the allegations set forth in the Abuse/Neglect petition against _____’s father _____ (“_____”) before Hearing Master Femiano in Courtroom 22, Department O, on July 8, 2011 at 9:00 a.m. The Deputy District Attorney prosecuting the case has indicated she will be calling _____, a minor, to testify at the hearing. As is set forth in the attached Letter from _____, _____’s therapist, hereinafter referred to as “Exhibit A,” _____ has indicated to his counselor that testifying in the presence of his father would cause him severe anxiety and distress.

_____’s therapist has indicated that if he is forced to testify while facing his father it is very possible that his mental state would regress and he would be unable to effectively give testimony. *See* “Exhibit A,” attached hereto. _____ indicates in her letter that when _____ is asked about his father he becomes very anxious, fidgety, and unfocused and has trouble calming himself down.¹ _____ has also told _____ that he fears for both his own safety and that of his mother, “whenever he is in his father’s presence.”²

In recognition of _____’s opinion that _____ will be caused further trauma if forced to testify before his father regarding the domestic violence he suffered and witnessed at the hands of his father, it is respectfully requested that _____ be allowed to testify by alternative means in accordance with the statutory provisions set forth below.

II. LEGAL ARGUMENT

NRS 50.570 grants this Court discretion to conduct a hearing to determine if a child witness should be allowed to testify by an alternative method. To make that determination, NRS 50.580 provides in pertinent part, “[S]tandards for determining whether a child witness may testify by alternative method,”:

¹ See Exhibit A.

² *Id.*

2. In a noncriminal proceeding, the presiding officer may allow a child witness to testify by an alternative method if the presiding officer finds by a preponderance of the evidence that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making this finding, the presiding officer shall consider:

- (a) The nature of the proceeding;
- (b) The age and maturity of the child;
- (c) The relationship of the child to the parties in the proceeding;
- (d) The nature and degrees of emotional trauma that the child may suffer in testifying; and
- (e) Any other relevant factor.

NRS 50.590 further sets forth factors for the Court to consider in deciding whether or not a child witness should be permitted to testify by alternative means, including the relative availability of alternative methods; whether there is a means or mechanism of reducing the trauma endured by the child in testifying short of alternative methods; the nature of the case and the allegations; the relative rights and interests of the parties; the importance of the child's testimony to resolution of the case, and the severity and duration of the emotional trauma that the child will suffer if not permitted to testify by alternative means.

In the instant case, the facts support permitting _____ to testify outside the presence of his father by an alternative method in order to forestall any further harm to this young boy. _____ is six ("6") years old and currently resides with foster parents; his mother, _____ ("_____") was also charged in the instant petition due to her persistent drug abuse. _____ has entered a "No Contest" plea and has voluntarily enrolled herself in drug detoxification treatment at Westcare. Since _____ has been residing with his foster family he has experienced growing trepidation at the prospect of being called to testify regarding the violence he has experienced and witnessed.

The allegations set forth in the petition are related almost entirely to the actions of _____'s father and his volatile relationship with _____'s mother, _____. The petition details numerous acts of domestic violence that _____ perpetrated against _____ and the children and also recounts numerous occasions when _____ neglected to appropriately care for and feed her children due to being under the influence of marijuana, methamphetamine, and

alcohol, among other substances. In the last hearing related to this case, _____’s father again reiterated his intention to seek a trial on these allegations and sought to have the “No Contact” order imposed by the court rescinded so that he could resume visiting with his children. At that time, _____ again stated through counsel the discomfort he felt when he was in the same room with his father and that he had yet to feel as if he, his mother, or his younger siblings are safe from the aggression of his father.

_____ has expressed many times to counsel the intense anxiety he feels just thinking about having to testify in front of his father. _____ has asked counsel many times to inquire if he will be permitted to speak with the judge privately about the allegations in the petition because he is unsure if she will be able to maintain his composure with him in the room staring angrily or disapprovingly at him. Furthermore, _____’s therapist has written a letter to the Court indicating that she believes if _____ is forced to testify before his abusive father, he will likely backslide and much of the therapeutic progress that has been made may well be squandered. _____wrote, “due to _____’s high level of anxiety and fearfulness, an alternate way of testifying such as remote or taped testimony may be more fruitful.”³

Due to the private nature of the allegations contained in the petition, _____’s young age, and the salience of his testimony with regard to proving the allegations, NRS 50.580 supports the Court allowing _____ to testify by alternative means. Further, all requirements delineated in NRS 50.590 are satisfied, including the requirement that there be reliable alternative methods available by which to obtain the needed testimony from the child. Here, _____ can testify privately to Hearing Master Femiano in her chambers with only attorneys present while his father is permitted to view the testimony from another location. In sum, the facts and law both support allowing _____ to testify by alternative means because permitting the same is readily achievable and will do no unfair prejudice to the defendant.

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///

³ See Exhibit A.

III. CONCLUSION

NRS 50.570, et seq., entrusts to this Honorable Court the power to prevent the enduring of unnecessary trauma by a child witness by permitting the witness to testify by alternative means when certain enumerated conditions are met. As set forth in the preceding Motion and accompanying Exhibit(s), each and every condition required for permitting alternative means of testifying are met in this matter. Therefore, it is respectfully requested that this Court issue an order allowing _____ to testify by an alternative method.

By: _____

AFFIDAVIT OF COUNSEL

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

I, _____, after being first duly sworn, deposes and says:

1. I am a licensed practicing attorney, admitted in the State of Nevada and an attorney with FIRM appointed to represent the subject minor, _____.
2. I have personal knowledge of the facts alleged herein or the assertions are based on information and belief.
3. I have met with _____, age 6.
4. _____ has expressed great anxiety, distress, and some trepidation about the prospect of testifying in the presence of his father regarding the domestic violence allegations contained in the petition.
5. Upon information and belief, the experience of testifying before his father will cause _____ an increased likelihood of long-term emotional damage and make more traumatic an already devastating task.

By: _____, Esq.

SUBSCRIBED AND SWORN to before me
this ____ day of June, 2011, by _____.

NOTARY PUBLIC in and for
County of Clark, State of Nevada

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of June, 2011, I placed a true and correct copy of the forgoing ***MOTION FOR CHILD WITNESS TO TESTIFY BY ALTERNATIVE METHODS***, First-Class postage prepaid, in the United States Postal Service at Las Vegas, Nevada and via facsimile as follows:

_____, ESQ.
Deputy District Attorney, Juvenile Division
Family Court
601 N. Pecos Road, Room 470
Las Vegas, Nevada 89101
Facsimile: 702-455-2289

_____, Case Manager
Department of Family Services
701 North Pecos Road, Building K
Las Vegas, Nevada 89101
Facsimile: 702-647-5478

An Employee of
FIRM

MOT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

In the Matter of:	)	Case No.:
	)	Dept. No.:
_____ ,	)	Courtroom:
DOB: _____)	
AGE: ___ YEARS OLD)	
)	
)	
A Minor.)	
_____)	

EX PARTE MOTION FOR AN ORDER SHORTENING TIME

COMES NOW, _____, Esq., of _____, by and on behalf of _____, a minor, and pursuant to EDCR 2.26¹, hereby requests that this Court shorten the time in which to hear _____'S MOTION FOR CHILD WITNESS TO TESTIFY BY ALTERNATIVE METHODS.

This application is based upon the pleadings and papers on file and the Affidavit of Counsel attached to this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

Rule 2.26 of the Eighth Judicial District Court Rules states, in full, as follows:

Ex parte motions to shorten time may not be granted except upon an unsworn declaration under penalty of perjury or affidavit of counsel describing the circumstances claimed to constitute good cause and justify shortening of time. If a motion to shorten time is granted, it must be served upon all parties promptly. An order which shortens the notice of a hearing to less than 10 days may not be served by mail. In no event may the notice of the hearing of a motion be shortened to less than 1 full judicial day. A courtesy copy shall be delivered by the movant to the appropriate department, if a motion is filed on an order shortening time and noticed on less than 10 days' notice.

¹ EDCR 5.31 pertains to motions to shortening time for Family Division matters. EDCR 5.31 refers to EDCR 2.26 as governing motions to shorten time in the Family Division.

Good cause for setting the Motion is set forth in the Affidavit of Counsel attached to this Motion. Accordingly, it is respectfully requested that the hearing on the Motion be set at the Court's earliest available date.

DATED this _____ day of June, 2011.

AFFIDAVIT OF COUNSEL

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

I, _____, after first being duly sworn, deposes and says:

1. I am a licensed practicing attorney with FIRM appointed to represent subject minor, _____.
2. I entered my appearance in this case on May 25, 2011.
2. An adjudicatory trial is scheduled to be heard on July 8, 2011, regarding the Petition filed on or about May 3, 2011, that alleges abuse and/or neglect by natural mother, _____ and natural father, _____.
4. The District Attorney, _____, has notified Counsel and intends on subpoenaing _____ to testify at the trial.
5. According to therapist, _____, it will be a traumatic experience for _____ if he must testify in the presence of his father.
6. In order to resolve the important matter raised in the foregoing Motion and due to the trial quickly approaching, it is requested that this Ex Parte Motion to hear _____'S Motion to Testify by Alternative Methods be heard as soon as reasonable possible, on an Order Shortening Time.

By: _____

SUBSCRIBED AND SWORN to before me
this ___day of June, 2011 by .

NOTARY PUBLIC in and for said
County and State

MOT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:	)	Case No.:
	)	Dept. No.:
_____ ,	)	Courtroom:
DOB: _____)	
AGE: __ YEARS OLD)	
)	
_____ ,)	
DOB: _____)	
AGE: __ YEARS OLD)	
)	
Minors.)	
_____)	

MOTION TO COMPEL PLACEMENT AND REQUEST FOR A FINDING OF A LACK OF REASONABLE EFFORTS FOR FAILURE TO ACHIEVE PERMENANCY

COMES NOW, _____, Esq., of FIRM, by and on behalf of _____ (“_____”) and _____ (“_____”), the above named minors, and hereby respectfully submits this Motion to Compel Placement and requests that this Court find that the Department of Family Services (“The Department”) has failed to make reasonable efforts to achieve permanency for _____ and _____.

This Motion is based upon the attached Memorandum of Points and Authorities, the affidavit attached hereto, the exhibits attached hereto, the papers and pleadings on file and other such documentary and oral evidence as may be presented at the hearing of this Motion.

DATED this _____ day of April, 2014.

By: _____

MEMORANDUM OF POINT AND AUTHORITIES

I. STATEMENT OF FACTS

_____ and _____ came to the attention of the Department on June 28, 2012 due to domestic violence between their parents. They have been wards of the state since August 14, 2012. _____ and _____'s parents failed to complete their case plan and as a result their parental rights were terminated January 28, 2014.

While in care _____ and _____ lived in various foster homes. In August 2012 they were moved to the foster home of _____ (“_____”). During their time in _____'s home, she indicated multiple times to the Department that she was willing to adopt the children if their parents' rights were ever terminated. However, the children were removed from _____'s in August 2013 due to concerns about their interactions with another foster child in her care.

Since their removal from _____'s home and the termination of their parents' rights, the children have remained in a non-adoptive foster home. Both _____ and _____ want to be adopted by _____ and continue to ask about her. _____ has indicated that she is still willing to adopt the children and was working with the Department to ensure the children would be placed with her. In order to meet Department standards, _____ bought bunk beds so each of the children would have their own bed. She also recently bought an SUV to accommodate _____ and _____.

Although _____ has gone to great lengths to become the adoptive foster parent of _____ and _____, the Department will not place the children in her care because of the bunk beds in her home. The Department's safety standards require a child to be eight-years-old to sleep in the top bunk. Although _____ will be eight-years-old in four months, the Department is not willing to waive the requirement and place the children in _____'s home. They are also not willing to place the children in the home without waiving the requirement because they would lose Title IV-E funding.

II. LEGAL ARGUMENT

A. This Court Has Original and Exclusive Jurisdiction Over this Matter.

The Court has original jurisdiction over this matter pursuant to N.R.S. 432B.410. N.R.S. 432B.410(1) states:

Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act, the court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is a child in need of protection or may be a child in need of protection.

The Indian Child Welfare Act does not apply in this case. _____ and _____ are children living within the county and were found in need of protection pursuant to a Petition of Abuse/Neglect filed by Clark County Department of Family Services and the termination of their parents' rights on January 28, 2014.

B. The Department Has Failed to Make Reasonable Efforts to Place the Children with and Adoptive Resource.

The Department has failed to make reasonable efforts to achieve permanency for _____ and _____ by failing to place them in an adoptive home. Under Nevada law, a Court has broad discretion in placement decisions but must always keep the best interests of the child as its paramount consideration.¹ N.R.S. 432B.553(1)(b) states that an agency that obtains legal custody of a child shall: “make reasonable efforts to finalize the permanent placement of the child in accordance with the plan adopted pursuant to paragraph (a).” To determine whether DFS has made reasonable efforts, N.R.S. 432B.393 states that the court shall:

- (a) Evaluate the evidence and make findings based on whether a reasonable person would conclude that reasonable efforts were made;
- (b) Consider any input from the child;
- (c) Consider the efforts made and the evidence presented since the previous finding of the court concerning reasonable efforts;
- (d) Consider the diligence and care that the agency is legally authorized and able to exercise;
- (e) Recognize and take into consideration the legal obligations of the agency to comply with any applicable laws and regulations;

¹ See *In re J.H.*, 2009 WL 1471277 2, (Nev. 2009) (paraphrasing NRS 432B.590(3)(b)).

- (f) Base its determination on the circumstances and facts concerning the particular family or plan for the permanent placement of the child at issue;
- (g) Consider whether any of the efforts made were contrary to the health and safety of the child;
- (h) Consider the efforts made, if any, to prevent the need to remove the child from the home and to finalize the plan for the permanent placement of the child;
- (i) Consider whether the provisions of subsection 6 are applicable; and
- (j) Consider any other matters the court deems relevant.

The Department's failure to place _____ and _____ in an adoptive foster home is not in the children's best interest and is unreasonable. The Department will not place _____ and _____ in _____'s home because of N.A.C. 424.375(8) which states:

"Unless an exception is approved by the licensing authority, bunk beds with more than two bunks are prohibited. If bunk beds are used, the upper bunk must have a guardrail. Upper bunks must not be used by children under 8 years of age." (emphasis added).

The Department has stated that due to this requirement _____ and _____ cannot be placed in the adoptive home. The language "unless an exception is approved by the licensing authority" indicates that the Department, as the licensing authority, has the ability to waive this standard to allow the children to live in _____'s home. If the home does not meet the Department's safety standards, they are not eligible for Title IV-E benefits. The failure to place _____ and _____ in an adoptive home as soon as possible illustrates a lack of reasonable efforts and a failure to consider the best interest of the children.

The failure to waive the requirement of N.A.C. 424.375(8) is unreasonable. It is within the Department's discretion to waive the requirement and instead they are choosing not to obtain permanency for _____ and _____ as soon as possible. The decision not to waive the standard becomes even more unreasonable when taking into consideration the lengths _____ has gone through to reunite with the children, as well as the children's desire to live with her.

Even if the Department could not waive this safety standard, failing to place _____ and _____ with _____ still illustrates a lack of reasonable efforts. Failing to place children with an adoptive resource because the children would become ineligible for Title IV-E benefits is unacceptable and unreasonable. Especially

considering that the children would only be ineligible for Title IV-E funding during the period of time the safety standard was not met.² In this case, the safety standard would be met again once _____ turns eight-years-old, which is in four months.

The Department will spend essentially the same amount placing the children in a non-adoptive foster home, as it would placing them in _____'s home without Title IV-E benefits. The Department pays \$682.94 per month for each child in foster care. The federal government reimburses \$401.98 per month for each child. While _____'s home is ineligible for Title IV-E benefits the Department would pay \$5,460.52 for both children to live with her. While the Department may indicate that they cannot afford to pay \$5,460.52 for the children to live in the home while it is ineligible for Title IV-E benefits, the cost of placing them in a non-adoptive foster home is almost the same in the long run. The children would be eligible for adoption just two months after _____'s home would meet the safety standards. Delaying the children's placement with _____ for four months means the department will have to pay for foster care for ten (10) months versus six (6) months.³ Even with the Title IV-E benefits the state will end up paying \$5611.20 for _____ and _____ while they are not placed with _____ versus \$6582.56 for the six months in _____'s home until they can be adopted. It is unreasonable and contrary to the mental and emotional health of _____ and _____ to keep them out of an adoptive home for any amount of money, let alone \$971.36.

///
///
///
///

² "If compliance with safety requirements is lost sometime during the month, the child's title IV-E eligibility ends from that day forward until the requirement is met." U.S. Department of Health and Human Services, *Title IV-E Foster Care Eligibility Review Guide*, at 53. (December 2012).

³ The ten month figure comes from the four months the children would not be eligible for Title IV-E benefits if in _____'s care, plus the six month placement requirement before adoption required by N.R.S. 127.150.

III. Conclusion

The Department is choosing fiscal concerns over the needs and best interests of the children in violation of federal and state laws which mandate they achieve permanency and act in the best interest of the children. _____ and _____ have missed out on months of being in an adoptive home with a foster parent who loves them. They have remained in a foster home that is not an adoptive resource. Due to the Departments' actions, _____ and _____ will have to wait longer for the permanency they wish to achieve.

Therefore, it is respectfully requested that the Court compel the Department to place _____ and _____ with _____. It is also requested that the Court find that the Department lacked reasonable efforts in achieving permanency for _____ and _____.

DATED this _____ day of April, 2014.

By: _____

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the _____ day of April, 2014, I placed a true and correct copy of the foregoing Motion to Compel Placement and Request for a Finding of Lack of Reasonable Efforts for Failure to Achieve Permanency, postage fully prepaid, in the United States Mail addressed as follows:

_____, Esq.
Deputy District Attorney Juvenile
Family Court
601 N. Pecos Road, Room 470
Las Vegas, Nevada 89101
Attorney for Department of Family Services

_____, Case Manager
Department of Family Services
701 N. Pecos Road, Bldg. K
Las Vegas, Nevada 89101

An employee of
FIRM

MOT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:	)	Case No.:
,)	
DOB:	)	Department No.:
Age:)	
	)	MOTION FOR AN ORDER TO SHOW
A Minor.	)	CAUSE
)	
)	

COMES NOW, _____, by and through [his/her] attorney, _____, of FIRM, and respectfully requests that this Court order _____ to appear and show cause, if any, why should not be adjudicated guilty of contempt of court and punished according to law, for failing or refusing to obey a lawful order of this Court, as further described in the attached Memorandum of Points and Authorities attached to this Motion.

This motion is made and based upon the Affidavit of _____ filed with this Motion, the records and pleadings on file in this case, the attached Memorandum of Points and Authorities, and such additional documentary and oral evidence as may be presented at the hearing on this Motion.

Dated this _____ day of _____, 20 ____

By: _____

Nevada Bar No.:

NOTICE OF MOTION

TO: ; and

TO:

PLEASE TAKE NOTICE that a hearing on this Motion for relief will be held before the Eighth Judicial District Court located on the first floor of the Family Courts and Services Center located at 601 N. Pecos Road Las Vegas, Nevada 89101, on the day of , 20 in Department at .m.

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING.

Dated this day of , 20 —

By: _____

Nevada Bar No.:

I.
STATEMENT OF FACTS

Relevant facts include:

1. Names and ages of client and his/her siblings, identification of natural parents and circumstances that brought them within DFS custody and their current location.
2. Date the Order was signed, its contents, and proof that the written order was served upon the person alleged to be in contempt, or that they were physically present to orally receive the court's order.
3. Facts demonstrating the case worker's/foster parents'/adoptive parents' refusal to abide by the Court's Order contained in an Affidavit.

II.

MEMORANDUM OF POINTS AND AUTHORITIES

A. This Court Has Original and Exclusive Jurisdiction Over This Matter.

Original jurisdiction over this matter is vested in this Court:

“NRS 3.223 Jurisdiction of family courts.

1. Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et seq., in each judicial district in which it is established, the family court has original, exclusive jurisdiction in any proceeding:

(a) Brought pursuant to title 5 of NRS or chapter 31A, 123, 125, 125A, 125B, 125C, 126, 127, 128, 129, 130, 159, 425 or 432B of NRS, except to the extent that a specific statute authorizes the use of any other judicial or administrative procedure to facilitate the collection of an obligation for support.”

N.R.S. § 432B.410 (1) further provides that: “Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act, the court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is a child in need of protection or may be a child in need of protection.” Having taken [redacted] into protective custody, pursuant to a Petition –Abuse/Neglect filed by the Clark County Department of Family Services under N.R.S. § 432B.470, this Court acquired subject matter jurisdiction over this case, and personal jurisdiction over [redacted], a minor.

B. This Court Has The Power To Compel Obedience To Its Orders.

Without the power to enforce its Orders, a grant of jurisdiction over a case would be meaningless. Accordingly, Nevada statutes grant a court the power to punish persons or entities who fail or refuse to comply with a lawful court order, through the power to find them in contempt of court. N.R.S. § 22.010 (3) defines acts of contempt to include: “Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.” N.R.S. § 22.030 provides the Court with the express authority to punish such contempt, even

though committed outside the view and presence of the court: “2. If a contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit must be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the masters or arbitrators.”¹

The Affidavit of _____ attached to this Motion, provides ample evidence of failure/ refusal to comply with a lawful order for _____ issued by this Court on _____.

C. This Court Should Impose Multiple Penalties Upon _____ For The Contempt, Both As Punishment And To Deter Future Disregard Of This Court’s Orders.

N.R.S. § 22.100 (2) sets forth the permissible penalties for contempt: “Except as otherwise provided in NRS 22.110, if a person is found guilty of contempt, a fine may be imposed on the person not exceeding \$500 or the person may be imprisoned not exceeding 25 days, or both.” Where the contempt stems from a failure or refusal to follow a court order, N.R.S. § 22.100 (3) provides that “the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney’s fees, incurred by the party as a result of the contempt.” Finally where, as here, the contempt constitutes a failure or refusal to perform an act (_____) that is yet within the power or a person to perform, “the person may be imprisoned until the person performs it. The required act must be specified in the warrant of commitment.”²

¹ N.R.S. 22.030 also allows this Court to hear Motions for Orders To Show Cause in cases such as this:

“Except as otherwise provided in this subsection, if a contempt is not committed in the immediate view and presence of the court, the judge of the court in whose contempt the person is alleged to be shall not preside at the trial of the contempt over the objection of the person. The provisions of this subsection do not apply in:

...
(b) Any proceeding described in subsection 1 of NRS 3.223, whether or not a family court has been established in the judicial district.

² N.R.S. 22.110.

III.

CONCLUSION

Unless this Court imposes significant, painful, and meaningful penalties for the defiance of this Court's orders, its orders will continue to be disregarded.

Accordingly, _____ hereby requests that all penalties available to this Court under NRS § 22.100 should be imposed upon _____ including:

1. A fine in the amount of \$500;
2. An award of attorneys fees in the amount set forth in the attached Affidavit of _____ ; and
3. A brief period of imprisonment for _____ until such time as _____ complies with the orders of this Court.

Respectfully Submitted this _____ day of _____, 20____.

By: _____

Nevada Bar No.:

ADD AFFIDAVIT

OBJ

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:)
)
)
_____,)
DOB:)
AGE: __ YEARS OLD)
)
_____,)
DOB:)
AGE: __ YEARS OLD)
)
_____,)
DOB:)
AGE: __ YEARS OLD)
)
_____,)
DOB:)
AGE: __ YEARS OLD)
)
_____)
Minors.)

Case No.:
Dept. No.:
Courtroom:

OBJECTION TO HEARING MASTER’S RECOMMENDATIONS

COME NOW, _____, _____, and _____,
by and through their counsel, _____, Esq., of FIRM, and hereby object to the
Recommendations of Hearing Master _____.

This Objection is made and based upon the following Memorandum of Points and
Authorities, the affidavits attached hereto, the exhibits attached hereto, the papers and
pleadings on file herein, and such other documentary and oral evidence as may be presented
at the hearing of this Motion.

DATED this _____ day of April, 2012.

By:_____

NOTICE OF MOTION

TO: _____, ESQ, DEPUTY DISTRICT ATTORNEY-JUVENILE
DIVISION, FAMILY COURT

TO: _____, CASE MANAGER, AND DEPARTMENT OF
FAMILY SERVICES

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the above-entitled Objection on for hearing before Department O of the Eighth Judicial District Court, Family Division, 601 North Pecos, Las Vegas, Nevada, on the ___ day of _____, 2012 at _____ a.m./p.m., or as soon thereafter as counsel may be heard.

DATED this _____ day of _____, 2012

Submitted by:

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

On or about July 27, 2004, siblings _____ (“_____”),
_____ (“_____”) and _____
_____ (“_____”), were first declared wards of the Court as a result of their mother’s unstable mental health condition, their mother’s inability to provide for the children, and their father’s incarceration. The children were placed together in the home of their paternal grandmother, and she was given guardianship over the children on November 10, 2004. The guardianship was terminated on December 11, 2006 following allegations of physical abuse inflicted upon the children’s oldest sister _____.

_____, _____, and _____ were placed together in a higher level of care foster home through the Apple Grove agency. _____ and _____ still

live together in the Apple Grove home at the present time. Following admissions to mental health facilities, the Department of Family Services (“DFS”) decided that an even higher level of care foster home would be appropriate for _____. This additional treatment was not intended to permanently separate _____ from his siblings. _____ was then moved to St. Jude’s Ranch for Children, pending an opening at the Oasis On-Campus Treatment Home (“Oasis”). _____ then moved into Oasis on April 12, 2010. Since their separation, _____ and his siblings have continually inquired about when they would be reunited and voiced their lifelong desires to be placed together once again.

Following placement for over one (1) year at Oasis, _____ moved into a Desert Regional Center (“DRC”) home on August 15, 2012. Since that time, _____’s behaviors have stabilized greatly. During _____’s residence in the DRC home, an incident occurred in which there was a sexual encounter between a reportedly sexually-reactive sixteen (16) year old male co-resident and _____, who was nine (9) years old at the time of the incident. Even though the DRC home was aware of the sexually-reactive teenager, lack of supervision at the DRC home led to _____’s victimization. The staff member on duty at the time of the incident was terminated, and remedial measures including alarm installations were taken to ensure safety in the home. _____’s treating therapist maintained that “due to the nature of the incident and the age differential _____ would be considered a victim and not a perpetrator.”¹ On February 6, 2012, DRC staff conveyed an opinion that _____ was ready to be placed in an adoptive home based upon his progress.

Just as _____ has not been hospitalized since residing in the DRC home, _____ has also not been placed in a mental health facility since July 27, 2011. In its Report for Permanency and Placement Review, filed on March 1, 2012, DFS stated that “_____ has made a complete turn around [sic]. It appears that his

¹ Letter from Therapist _____, dated 3/23/12, attached hereto as “Exhibit A.”

surroundings play a large part in his behavior. His current placement has allowed _____ to be normal child [sic].”² According to _____’s DFS caseworker, he “recently was at _____’s school and one of her teachers talked to this worker about what a wonderful student _____ is. It was reported that _____ is always in a good mood and a great student to have in class.”³ The caseworker further maintained that _____ “continues to open up” and “is coming into her own.”⁴ _____ does not exhibit behavioral problems, and she does not pose a threat of any kind to her siblings when placed with them.

The treating individual therapist for both _____ and _____ is _____ (“_____”) and not the DRC psychologist _____ (“_____”). Although it was the opinion of the DRC psychologist that _____ ought to be placed in an adoptive home alone, she is ultimately not his treating individual therapist or in a position to opine knowledgeably about the best interests of his sisters. She also did not possess any firsthand knowledge of _____’s sisters. _____ was not in the position of _____, an individual therapist with a great deal of quality time invested in working with both _____ and _____. When _____ asserted that the needs of the _____ children would be greater than any parents could handle, no empirical data supported her comments. Hearing Master _____ ultimately did not hear from the children’s treating individual therapist when deciding that the siblings should never be placed together again.

The treating individual therapist _____, who does individual therapy for both _____ and _____, stated the following in a letter regarding sibling placement dated March 23, 2012:

Based on the information and knowledge I have of _____ and

² DFS Report for Permanency and Placement Review, filed 3/1/12, p. 9, attached as “Exhibit B.”

³ *Id.* at p. 5.

⁴ *Id.* at p. 6.

they _____ at this time I would recommend *without reservation* that they be afforded the opportunity to be placed together.⁵

Although at the review hearing on March 6, 2012 Hearing Master _____ initially considered setting a status check to consider the opinion of treating therapist _____, he ultimately chose to disregard this crucial therapeutic opinion regarding placement of the children. Hearing Master _____ stated that he believed the DRC psychologist _____ to be “in the best position to determine the best interest of _____.” In error, Hearing Master _____ rendered a decision to separate the bonded siblings forever without first hearing from the children’s current and longtime individual therapist, _____.

II. LEGAL ARGUMENT

A. The Court Should Reverse Hearing Master _____’ Recommendation That The Nix Siblings Should Be Adopted Separately Because Hearing Master _____ Erroneously Disregarded The Opinion Of The Children’s Treating Therapist _____.

E.D.C.R. Rule 1.46 provides in pertinent part:

(g) Within 10 days after the evidence is closed, the master must present to the presiding judge all papers relating to the case, written findings of fact and recommendations.

1. Within the above time period, the master must serve upon the parties or their attorney of record and, if no attorney of record, the minor's parent or guardian or person responsible for the child's custodial placement, a written copy of the master's findings and recommendations and must also furnish a written explanation of the right of parties to seek review of the recommendations by the presiding judge.

...

5. At any time prior to the expiration of 5 days after the service of a written copy of the findings and recommendations of a master, a party, a minor's attorney or guardian or person responsible for the child's custodial placement may file an objection motion to the supervising district court judge for the division represented by the master for a hearing. Said motion must state the grounds on which the objection is based and shall be accompanied by a memorandum of points and authorities.

6. A supervising district judge may, after a review of the record provided by the requesting party and any party in opposition to the review, grant or deny such objection motion. The court may make its decision on the pleadings submitted or after a hearing on the merits. In the absence of a timely objection

⁵ Letter from Therapist _____, dated 3/23/12, attached hereto as “Exhibit A” (emphasis added).

motion, the findings and recommendation of the master, when confirmed or modified by an order of the supervising district court judge, become an order of the court.

7. All objection motion hearings of matters initially heard before a master will be before the supervising district judge who may at his or her discretion conduct a trial de novo. The court will review the transcript of the master's hearing, unless another official record is pre-approved by the reviewing judge, and (1) make a decision to affirm, modify, or remand with instructions to the master or (2) conduct a trial on all or a portion of the issues.

8. A supervising district court judge may, on the court's own motion, order that a rehearing of any matter be heard before a master.

9. No recommendation of a master or disposition of a juvenile case will become effective until expressly approved by the supervising district court judge.

On behalf of _____, _____, and _____, Counsel respectfully submits that it was erroneous for Hearing Master _____ to determine that the sibling presumption listed in NRS 432B.550(5)(a) was rebutted, in light of the fact that Hearing Master _____ dismissed Counsel's request for the court to consider the therapeutic opinion of treating therapist _____. Hearing Master _____ made the crucial determination to permanently split the siblings into separate adoptive homes without hearing from _____, the therapist for _____ and _____.

During the review hearing on March 6, 2012, Hearing Master _____ was informed by Court Appointed Special Advocate ("CASA") _____ that the children's treating individual therapist _____ had personally communicated her favorable opinion on the placement of the children together. Hearing Master _____ initially indicated that he would permit _____ to address the court at a status check to be set out ninety (90) days before rendering a decision to split the children up forever. However, Hearing Master _____ then erroneously ruled on the presumption without permitting the therapist to communicate her vital opinion to the court.

The recommendation to forever separate _____ from his sisters was made by Hearing Master _____ after hearing from only one service provider, DRC psychologist _____, who is not the treating therapist of any of the children. Dr. Shannon is employed as a psychologist by DRC and has never treated _____ or _____. _____ has no basis on which to comment on what is in the best

interests of _____ and _____. On the other hand, _____ in her own words has “been providing weekly clinical services to _____ and _____ for approximately a year and a half.”⁶ To disregard the therapeutic opinion of the treating individual therapist, _____, is clearly erroneous. It is precisely this erroneous omission that warrants a reversal of Hearing Master _____’ ultimate conclusion regarding the sibling presumption. In light of the dire life-altering consequences inherent in the separation of siblings into separate adoptive homes and the legal presumption in NRS 432B.550(5)(a) governing sibling placement, this decision by Hearing Master _____ to rule on the matter without first hearing from _____ was clearly erroneous.

In her letter regarding placement of the children, _____ referred to the “one singular incident of inappropriate sexual behavior” involving _____ which occurred at the DRC home.⁷ _____ stated as follows:

Due to the nature of the incident and the age differential _____ would be considered a victim and not a perpetrator. A significant part of his therapeutic work has been addressing his history of sexual trauma and identifying appropriate boundaries for which he has responded very well.⁸

Whereas the DRC psychologist based her opinion that _____ should be adopted alone on the premise that _____’s history of sexual behaviors would put other children at risk, _____’s own treating therapist maintained that _____ was merely a victim rather than a perpetrator in the DRC home. Furthermore, _____’s treating therapist stated that _____ has been successfully addressing his history in therapy.

_____ also commented on _____’s desire to be placed with his sisters. _____ stated as follows:

⁶ *Id.*

⁷ See Letter from Therapist _____, dated 3/23/12, attached hereto as “Exhibit A.”

⁸ *Id.*

_____ has a strong desire to be reunited with his sisters. In fact, he inquires weekly with this intern if his behavior has improved enough for him to be placed with his sisters. Should _____ not be given the opportunity to be placed with his siblings I believe it would be detrimental to his overall mental well being and functioning.⁹

In her letter, _____ also commented on the history of sexual victimization of her patient _____. _____ stated that during the time she has treated _____, there have been “no incidents of sexualized behavior other than normal, age/developmentally appropriate behaviors.”¹⁰ _____ similarly commented on _____’s desire to reunify with _____. _____ stated that _____ remains hopeful that she will reunite with _____.¹¹ _____ also stated that she believed “it would negatively impact her emotional well being should being placed together be ruled out as an option.”¹² _____ concluded that she would recommend *without reservation* that the children be afforded the opportunity to be placed together.¹³ When Hearing Master _____ hastily concluded that _____ should never again be placed with his siblings, he erroneously did so without consideration of _____’s crucial therapeutic opinions.

B. In Accordance With The Best Interest Presumption In NRS 432B.550(5)(a), _____, _____, And _____ Should Be Afforded The Opportunity To Be Placed Together.

NRS 432B.550(5)(a) specifically mandates as follows:

5. In determining the placement of a child pursuant to this section, if the child is not permitted to remain in the custody of the parents of the child or guardian:

(a) It must be presumed to be in the best interests of the child to be placed together with the siblings of the child.

⁹ *Id.*

¹⁰ *See Id.*

¹¹ *See Id.*

¹² *Id.*

¹³ *See Id.*

Sibling relationships are too important to ignore or dismiss. Recognizing this, the Nevada Legislature amended NRS 432B.550 in 1999 to add a preference for the co-placement of siblings taken into the protective custody of the County or State.¹⁴ In 2005, the Nevada Legislature replaced this weaker “preference” for sibling co-placement with a *mandatory presumption*, through an amendment to NRS 432B.550.¹⁵ It became the express public policy of this State to *presume* that co-placement with siblings is in the best interests of a child, and that there is an *affirmative duty* on State and County child welfare agencies to keep sibling groups intact. It was clearly erroneous for Hearing Master _____ to find that DFS no longer has a duty to keep the Nix siblings together without considering the opinion of the children’s treating individual therapist.

C. The Court Should Reverse Hearing Master _____’ Recommendation Because The Presumption That Siblings Must Be Placed Together Has Not Been Rebutted And It Is In The Best Interest Of The Nix Siblings To Be Placed In The Same Adoptive Home.

¹⁴ The original language in 1999 stated as follows: “In determining the placement of a child ... , if the child is not permitted to remain in the custody of his parents or guardian, preference must be given to *placing the child:*

(a) *With* any person related within the third degree of consanguinity¹⁴ to the child who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this state.

(b) *If practicable, together with his siblings.*”

70th Legislative Session, Nevada Assembly Bill 158, strikethrough signifies deletions, italics signifies newly added language.

¹⁵ The amended language is stated as follows:

5. In determining the placement of a child pursuant to this section, if the child is not permitted to remain in the custody of his parents or guardian ~~[preference]~~ :

(a) *It must be presumed to be in the best interests of the child to be placed together with his siblings.*

(b) *Preference* must be given to placing the child ~~[~~

(a) ~~With~~ *with* any person related within the third degree of consanguinity to the child who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

—~~[(b) If practicable, together with his siblings.]~~

III. CONCLUSION

Based upon the above and foregoing, Counsel respectfully requests this Honorable Court to grant the following relief:

1. Review Hearing Master _____' Recommendations, and
2. Order that DFS make reasonable efforts to place the children together in a single adoptive home.

Respectfully submitted this _____ day of April, 2012.

By: _____

MOT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:	)	Case No.:
	)	Dept.:
_____ ,	)	Courtroom:
DOB:)	
AGE: __ YEARS OLD)	
)	
_____ Minor.)	

**MOTION FOR FINDINGS ON THE ISSUE OF
SPECIAL IMMIGRANT JUVENILE STATUS**

COMES NOW, _____, ESQ., of FIRM, by and on behalf of _____, a minor, and submits this Motion for Findings on the Issue of Special Immigrant Juvenile Status, and requests this Court to make the requisite findings to allow United States Citizenship and Immigration Services (“USCIS” formerly “INS”) to consider _____ for a Special Immigrant Juvenile Status (“SIJS”) pursuant to 8 U.S.C. §1101(a)(27)(J).

This Motion is made and based upon the following Memorandum of Points and Authorities, the affidavits attached hereto, the exhibits attached hereto, the papers and pleadings of file herein, and such other documentary and oral evidence as may be presented at the hearing of this Motion.

DATED this _____ day of July, 2015.

By: _____

NOTICE OF MOTION

TO: _____, ESQ., DEPUTY DISTRICT ATTORNEY-JUVENILE
DIVISION, ATTORNEY FOR THE DEPARTMENT OF FAMILY
SERVICES;

TO: _____, CASE MANAGER, DEPARTMENT OF FAMILY SERVICES

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned
will bring the foregoing MOTION on for hearing before the above-entitled Court on the
_____ day of _____, 2015, at the hour of _____ a.m./p.m. in
Department _ of the District Court, Family Division.

DATED this _____ day of July, 2015.

By: _____

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Memorandum of Points and Authorities is submitted in support of _____'s request for an order making the necessary factual findings to enable her to petition the United States Citizenship and Immigration Services ("USCIS" formerly "INS") for SIJS pursuant to 8 U.S.C. §1101(a)(27)(J) and 8 C.F.R. §204.11.

II. STATEMENT OF FACTS

_____ is a 16-year-old minor who was born near Mexico City, Mexico. _____ was brought to the United States by her father when she was approximately seven years old. She has continuously lived in the United States since she was brought here. _____'s mother resides in Mexico, but _____ has not seen her since she was approximately three years old and does not know why she stopped caring for _____. _____ is currently a full-time student at Desert Pines High School in Las Vegas, Nevada. The court declared _____ a ward of the court on February 1, 2012.

In 2011, _____'s father, _____, was arrested on the charges of physical abuse of _____. He is currently incarcerated at Clark County Detention Center awaiting sentencing on _____. He also has an immigration hold so even were he to get probation, he would likely be deported. _____'s natural mother has never participated in these proceedings and _____'s stepmother rejected _____ and moved with her two natural children out of state.

_____ has been in the United States since she was about seven years old. She has been attending school since she arrived, and hopes to go to college. If _____ was sent back to Mexico, she would have no place to live. The requested findings of the court would make it possible for _____ to apply to USCIS for Special Immigrant Juvenile Status and become eligible for legal permanent residency, employment authorization, a social security card, financial aid for higher education once she graduates from high school, and the freedom to live in the United States without fear of removal.

III. LEGAL ARGUMENT

Through the Immigration Act of 1990, Congress created the classification of Special Immigrant Juvenile to provide immigration relief for certain undocumented children in foster care, guardianship, or adoption situations whose parents were unable to provide for the child's care or protection. *See* 8 U.S.C. §1101(a)(27)(J).

For purposes of immigration law, a juvenile court is defined as a "court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. §204.11(a). This Court qualifies as a juvenile court for federal immigration purposes because it is authorized to make such determinations in Nevada.

As a prerequisite for a child present in the United States to establish eligibility for Special Immigrant Juvenile Status, a juvenile court must make the following findings:

- (1) The child has been declared dependent on a juvenile court.
- (2) The child's reunification with one or both of her parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.
- (3) The child's best interest would not be served by being returned to her country of origin.

8 U.S.C. §1101(a)(27)(J).

The juvenile court, however, does not make an immigration decision. Specifically, the juvenile court does not determine whether the child is eligible for Special Immigrant Juvenile Status. Rather, the requested findings are preliminary factual determinations which are prerequisites to the filing of an application for immigration relief from USCIS. *See* 8 C.F.R. §204.11(c)(6). Once the juvenile court issues these findings, the juvenile can apply to USCIS for Special Immigrant Juvenile Status and legal permanent residency. Without the requested findings, however, an undocumented child like _____ cannot petition for possible recognition as a Special Immigrant Juvenile by USCIS and will be unable to obtain the associated benefits of legal immigration status.

///

A. _____ is dependent on a juvenile court based on orders from this Court

Under the first prong of the SIJ provision, the subject minor must be declared dependent on a juvenile court, or whom such court has legally committed to, *or* placed under the custody of, an agency or department of a State or juvenile court located in the United States. 8 U.S.C. §1101(a)(27)(J)(i).

For purposes of immigration law, _____ meets the first prong and has been declared dependent on this juvenile court. In a Foster Care Order signed February 1, 2015, she was declared a ward of the Family Court as a child in need of protection. (A copy of the Order is attached as Exhibit 1). In addition, in the same Order, this Court gave legal custody of _____ to the Department of Family Services for out of home placement. *Id.* Therefore, _____ is dependent on this juvenile court for immigration purposes.

B. _____’s reunification with one or both of her parents is not viable due to abuse, neglect abandonment, or a similar basis found under State law.

Eligibility for Special Immigrant Juvenile Status requires a finding that “reunification with one or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” 8 U.S.C. §1101(a)(27)(J)(i). In 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act (“TVPRA”) amended portions of the Immigration and Nationality Act pertaining to Special Immigrant Juveniles. Prior to the 2008 amendment, the statute required a juvenile court to deem a juvenile eligible for long term foster care due to abuse, neglect, or abandonment. However, the TVPRA 2008 amendment removed the language that a juvenile court must deem a juvenile eligible for long-term foster care and replaced it with the requirement that reunification with one or both parents is not viable. Donald Neufeld, Acting Associate Director of USCIS, *Memorandum: Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions* (Mar. 24, 2009).

Here, reunification with one or both parents is currently not a viable option for _____. _____’s reunification with her mother is not a viable option because _____ has not seen her since she was approximately 3 years old. In addition, _____’s

mother has never contacted the Department of Family Services, and has not made any attempt to see _____ for years. _____'s current plan is not reunification, but rather Other Planned Permanent Living Arrangement with Independent Living. _____'s reunification with her father is also not a viable option because he is currently incarcerated and is subject to deportation. Therefore, reunification with one or both parents is not viable due to abuse, neglect, abandonment, or similar basis under State law.

C. It is not in _____'s best interest to be returned to her country of origin.

Eligibility for Special Immigrant Juvenile Status requires a finding that it is not in _____'s best interest to be returned to her "previous country of nationality or country of last habitual residence" 8 U.S.C. §1101(a)(27)(J)(ii). This Court is not required to "make a determination as to whether the minor child would be at risk of harm if returned to the country of origin; [this] Court needs to find that return would not be in the child's best interest." *In re E.G.*, 4 Misc. 3d 1238(A), 899 N.Y.S.2d 59 (Fam. Ct. 2009). Thus, this is a factual determination about the child's situation that must be made by the juvenile court, not an immigration decision.

It is not in _____'s best interest to return to Mexico, her previous country of nationality. Although born outside of the United States, _____ was brought to this country when she was only about seven years old. She has attended school in the United States since arriving, and has plans to go to college. _____ was brought to the United States at such a young age. Accordingly, it is in _____'s best interest not to be returned to Mexico.

IV. CONCLUSION

Factual findings by this Court will enable _____ to petition USCIS for Special Immigrant Juvenile Status and legal permanent residency. Without such findings, _____ will remain undocumented, and her prospects of obtaining legal immigration status will be greatly reduced.

WHEREFORE, the petitioner respectfully requests the Court find and order the following:

1. That _____, has been declared dependent upon the juvenile court;
2. That reunification with one or both of _____'s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
3. That it is not in _____'s best interest to be returned to her country of origin; and
4. Any other relief this court deems just and proper.

Respectfully submitted this _____ day of July, 2015.

By: _____

ORDER

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:	)	Case No.:
	)	Dept.:
_____ ,	)	Courtroom:
DOB: _____)	
AGE: __ YEARS OLD)	
)	
_____ Minor.)	

**ORDER AND FINDINGS OF FACT ON THE ISSUE OF SPECIAL IMMIGRANT
JUVENILE STATUS FOR _____**

This matter having come on for hearing before the Honorable District Court Judge _____ on June 2, 2015, with _____, Esq., of FIRM, appearing on behalf of the subject minor, _____, Deputy District Attorney _____, Esq. of Clark County District Attorney’s Office, appearing on behalf of the Clark County Department of Family Services, which was represented by _____, Case Manager, the Court having reviewed the Minor’s motion, and noting no opposition thereto:

THIS COURT FINDS, in accordance with 8 U.S.C. §1101(a)(27)(J), that:

1. _____ has been in foster care in Clark County, Nevada since August 2012, and, as a result, is a resident and ward of the State of Nevada, and dependent on this juvenile court;
2. The reunification of _____ with her father, _____, is not viable due to abuse, neglect, abandonment, or a similar basis found under State law, as a result of the physical abuse that _____ suffered at the hands of her father and his failure to make behavioral changes which would allow him to provide for the health, safety and welfare of _____;
3. The reunification of _____ with her mother, _____, is not viable due to abuse, neglect, abandonment, or a similar basis found under State law, as a result of the mother’s failure to be involved in her

daughter's life, as well as her failure to make behavioral changes which would allow her to provide for the health, safety and welfare of _____;
and

3. It is not in the best interest of _____ to be returned to Mexico, her country of origin, in that she has maintained a stable residence in the State of Nevada, developed bonds within her current community, and is engaged in educational, social and extracurricular activities in Nevada.

DATED this _____ day of July, 2015.

DISTRICT COURT JUDGE

Respectfully Submitted:

OPEN ADOPTION CONTACT AGREEMENT

THIS AGREEMENT is made and entered into between the biological mother, JANE DOE (hereinafter “JANE”) and the prospective adoptive parents, ADAM SMITH and EVE SMITH (hereinafter “the Smiths”) regarding JANE’s biological child, JOHN DOE, date of birth, _____.

JANE DOE at this time will consent to have her child adopted by ADAM and EVE SMITH. JANE’s consent is given not because she does not love her child and does not want to be with him, but is done for the best interests of JOHN. JANE has done everything she can to provide for her child but feels it is in his best interests to be raised by the Smiths.

A. JANE understands that the law views adoption as the irrevocable severance of all parental rights of the birth parents with respect to the adopted child.

B. JANE and the Smiths understand that to all legal purposes the adopted child shall be the child of the Smiths, the same as if born to them.

C. JANE and the Smiths are committed to a relationship which is supportive of the child’s needs, now and in the future.

AGREEMENT

Recognizing the above, and in recognition of the birth mother’s freely given relinquishment for adoption, the parties agree as follows:

1. VISITATION: JANE shall be allowed visitation with JOHN as long as JOHN is available and JANE gives advance notice to the Smiths. The dates, times, and locations of such visitation shall be upon agreement of the parties. Such visitation shall be supervised:

a. JOHN’s birthday, _____.

b. JANE’s birthday, _____.

c. Thanksgiving holiday.

d. Christmas holiday.

2. OTHER visitations may be granted upon agreement of parties.

3. PHOTOGRAPHS: The parties agree that JANE and JOHN shall be allowed to send and receive pictures twice per year. In order to facilitate this exchange, the parties shall

keep each other informed of current mailing addresses and telephone numbers. Should either party's contact information change, they shall notify the other party within ten (10) business days of said change.

4. MODIFICATIONS: The parties understand that they can make changes in these plans should all parties agree. All parties are encouraged to revise this Agreement through a cooperative process as the child's needs change over the years.

5. EFFECTIVE DATE: This Agreement will become effective when all parties have signed below or when the child is placed for adoption whichever comes later. This is dependent upon the Smiths adoption being approved by the Court. All parties have been advised to have this Agreement reviewed by their independent counsel prior to signing this Agreement.

ENFORCEMENT OF AGREEMENT

A. By signing this Agreement, the parties confirm that they have read this Agreement, that they understand its provisions, and that each agrees, individually, to be bound by its terms. The parties hereto agree that all other agreements heretofore made between them, whether oral or written, shall be null or void upon the execution of this Agreement.

B. That should the Smiths fail to abide by the terms of this Agreement, JANE DOE may petition the Court for enforcement of the terms of agreement.

C. That this agreement shall be executed and shall be filed in the Adoption proceeding incorporated into and made a part of the adoption order. To that extent, all parties further agree to execute any and all instruments, pursuant to Nevada Revised Statutes, §127.187-189. The Court entering the Decree of Adoption must address, in person, each adoptive parent, child welfare agency, and attorney and ask if any of these individuals have actual knowledge of an Open Adoption Agreement. Upon discovering such a contract exists, the Court shall require that a copy be produced and incorporated into the Decree of Adoption. The Court entering the Decree of Adoption must allow the natural parent to petition the court to

show that there was an Agreement, and to request it be incorporated into the Decree of Adoption, and within one hundred twenty (120) days after breach of such contract, to enforce the agreement. It also allows the adoptive parent to petition the Court to modify or terminate the Agreement. Modification or termination of the Agreement is only possible if: it is established that a change of circumstances has made such modification in the best interest of the child and the contact is no longer in the best interest of the child; or that each party consents to the modification or termination, such modifications or terminations are presumed to be in the best interests and the Court may consider the child's wishes.

D. That this agreement contains the full agreement of the parties and no oral representations not contained herein are part of this agreement. It is further understood and agreed that the terms and conditions of this Open Adoption Agreement shall remain confidential and that such confidentiality is a material element of this Open Adoption Agreement. This party hereto warrants and agrees that they, their agents and attorneys will not hereafter intentionally publicize or cause to be publicized any of the terms and conditions of this Open Adoption Agreement.

E. This Agreement has been prepared by FIRM, counsel for natural mother, JANE DOE. The parties agree that no inferences can be drawn against another party due to the fact that this Agreement was prepared by FIRM, nor shall the document be construed in favor of any party due to the fact it has been drafted by FIRM.

F. That the parties acknowledge that this agreement has no effect on the validity of the relinquishment, which is considered final and irrevocable. JANE acknowledges that should there be a breach of this Agreement, then her sole remedy would be to petition the Court to enforce the contractual agreement and to request compensatory contact with the child. Under no circumstances would JANE be entitled to set aside the relinquishment of parental right for adoption.

///

///

///

G. This Agreement is enforceable under the laws of the State of Nevada as set out in the Nevada Revised Statutes.

JANE DOE
Birth Mother

DATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this ____ day of _____, 2012, personally appeared before me, a Notary Public, JANE DOE, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged that she executed the above instrument for the purposes stated herein.

NOTARY PUBLIC in for said County and State.

ADAM SMITH - Adoptive Father

DATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this ____ day of _____, 2012, personally appeared before me, a Notary Public, ADAM SMITH, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the above instrument for the purposes stated herein.

NOTARY PUBLIC in for said County and State.

EVE SMITH - Adoptive Mother

DATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____ day of _____, 2012, personally appeared before me, a Notary Public, EVE SMITH, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the above instrument for the purposes stated herein.

NOTARY PUBLIC in for said County and State.

NARD

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

In the Matter of: CLIENT(s)
Date of Birth: xx/xx/xx
A Minor, x Years of Age.
Case No: J x
Dept. No: x
Courtroom: x
Unit:
NOTICE AND APPROVAL TO RESCHEDULE OR RESET A COURT DATE

VACATE Type of Hearing: Current Date: HM/Judge:
RESET Type of Hearing: Current Date: HM/Judge:
New Date: HM/Judge:
ADD Type of Hearing: Status Check Date Requested/Granted: xx/xx/xx Time: x:xx am/pm
(Please pick only one - vacate, reset or add) HM/Judge: xx

Reason for Request (state in detail): xx

Request Made By: xx Title/Agency: DA SPD CAP OTHER: Phone # xx

With my signature below, I affirm that all parties necessary to determine this matter have been notified as indicated by an X.

Assigned DA: x xx SPD: x (if applicable) DFS: x xx CAP:
CASA: x (if applicable) Parent: x (if applicable) Parent: x (if applicable) Private Counsel: x (if applicable)

SO REQUESTED this xx day of xx, 20 xx. REQUESTOR'S SIGNATURE

SO APPROVED this day of, 20. HEARING MASTER/FAMILY COURT JUDGE

SO DENIED reason: HEARING MASTER/FAMILY COURT JUDGE

Settings or changes must be submitted by 12:00 (noon) two (2) business days prior to the above noted hearing date.
This form may not be used to set issues on calendar which require a written motion.

DISTRIBUTION: WHITE - CLERK BLUE - CLERK GREEN - RECORDS CANARY - DA PINK - SPD GOLDENROD - WORKER



OFFICE OF THE DISTRICT ATTORNEY
CLARK COUNTY, NEVADA
JUVENILE DIVISION/CHILD WELFARE ONLY
REQUEST FOR DISCOVERY

CASE INFORMATION

Date Requested: xx/xx/xx Client Name: CLIENT
Case No: J# (also D# if applicable) Client's Association to Case: Minor Child
CPS Site Assigned: (look at the petition) Next Court Date: xx/xx/xx
Unity No.: (look at the petition) Plea / CEOP / R&D / AH / Review / TPR Trial
(circle one)
 All discoverable items Case notes only from _____ to _____

REQUESTING PARTY INFORMATION

Pro Per Respondent Special Public Defender Appointed Conflict Attorney
 Retained Attorney Child's Attorney/Pro Bono CASA
Name: XX Bar #: XX Phone: XX
E-mail address: XX
Signature: _____ Date: _____

PROMISE OF RECIPROCAL DISCOVERY: I am the attorney for the named Respondent and I am entitled to the information requested pursuant to NRS 432B.280 and 432B.290. In executing this request for discovery, I acknowledge receipt of the discovery provided by the District Attorney's Office and the District Attorney's request for discovery and promise to comply with all requirements of NRS 432B.513 by providing reciprocal discovery no later than three days prior to the scheduled hearing.

INTERNAL USE ONLY

e-pages @\$.25 ea _____ Date/Int. Logged: _____ / _____
hard pages @ \$.50 ea _____ Date/Int. E-discovery sent: _____ / _____
photo pages @ \$1.00 ea _____ Date/Int. paper disc. picked up: _____ / _____
Video/CD/Disk @ \$25.00 ea _____

Payment For Copies: Make all checks payable to: CLARK COUNTY TREASURER

Remit To: District Attorney's Office, 200 Lewis Ave 3rd Floor, ATTN: Discovery, Las Vegas, NV 89155-2212. Upon signing and/or receipt of e-discovery, in consideration of the copying services provided, Attorney agrees to be liable for the above costs from Respondent or Third Parties. Attorneys who do not accept this liability must make arrangements to pre-pay or copy discovery at the Office of the District Attorney under supervision upon their own portable copiers.

Discovery Provided by District Attorney: The District Attorney has provided documents or other evidence which are within the possession or custody of the prosecuting attorney at the time discovery was produced. Additional discovery will be provided when available pursuant to NRS 432B.513. Prior to any trial, it is the responsibility of defense counsel to make an appointment with the Deputy District Attorney assigned to prosecute this case to verify that all available discovery materials have been provided. The parties agree that the attached documents constitute service and filing of the notices of witnesses pursuant to NRCP 16.1. Please note that the address of any witness employed by LVMPD is 400 S. Martin Luther King Blvd., LV, NV 89101. The address of any witness employed by DFS is 701 N. Pecos Rd., LV, NV 89101.

APPENDIX C ATTORNEY'S ROLES AND RESPONSIBILITIES

American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases

American Bar Association Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings

Eighth Judicial District Order of Appointment of Attorney for Certain Children

Nevada Safety Assessment

Safety Intervention and Permanency System (SIPS) Chart



**AMERICAN BAR ASSOCIATION
STANDARDS OF PRACTICE FOR LAWYERS
WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES**
Approved by the American Bar Association House of Delegates, February 5, 1996

PREFACE

All children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as the court jurisdiction continues. These Abuse and Neglect Standards are meant to apply when a lawyer is appointed for a child in any legal action based on: (a) a petition filed for protection of the child; (b) a request to a court to change legal custody, visitation, or guardianship based on allegations of child abuse or neglect based on sufficient cause; or (c) an action to terminate parental rights.

These Standards apply only to lawyers and take the position that although a lawyer *may* accept appointment in the dual capacity of a "lawyer/guardian ad litem," the lawyer's primary duty must still be focused on the protection of the legal rights of the child client. The lawyer/guardian ad litem should therefore perform all the functions of a "child's attorney," except as otherwise noted.

These Standards build upon the ABA-approved JUVENILE JUSTICE STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES (1979) which include important directions for lawyers representing children in juvenile court matters generally, but do not contain sufficient guidance to aid lawyers representing children in abuse and neglect cases. These Abuse and Neglect Standards are also intended to help implement a series of ABA-approved policy resolutions (in Appendix) on the importance of legal representation and the improvement of lawyer practice in child protection cases.

In support of having lawyers play an active role in child abuse and neglect cases, in August 1995 the ABA endorsed a set of RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES produced by the National Council of Juvenile and Family Court Judges. The RESOURCE GUIDELINES stress the importance of quality representation provided by competent and diligent lawyers by supporting: 1) the approach of vigorous representation of child clients; and 2) the actions that courts should take to help assure such representation.

These Standards contain two parts. Part I addresses the specific roles and responsibilities of a lawyer appointed to represent a child in an abuse and neglect case. Part II provides a set of standards for judicial administrators and trial judges to assure high quality legal representation.

PART I— STANDARDS FOR THE CHILD'S ATTORNEY

A. DEFINITIONS

A-1. The Child's Attorney. The term "child's attorney" means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

Commentary

These Standards explicitly recognize that the child is a separate individual with potentially discrete and independent views. To ensure that the child's independent voice is heard, the child's attorney must advocate the child's articulated position. Consequently, the child's attorney owes traditional duties to the child as client consistent with ER 1.14(a) of the Model Rules of Professional Conduct. In all but the exceptional case, such as with a preverbal child, the child's attorney will maintain this traditional relationship with the child/client. As with any client, the child's attorney may counsel against the pursuit of a particular position sought by the child. The child's attorney should recognize that the child may be more susceptible to intimidation and manipulation than some adult clients. Therefore, the child's attorney should ensure that the decision the child ultimately makes reflects his or her actual position.

A-2. Lawyer Appointed as Guardian Ad Litem. A lawyer appointed as "guardian ad litem" for a child is an officer of the court appointed to protect the child's interests without being bound by the child's expressed preferences.

Commentary

In some jurisdictions the lawyer may be appointed as guardian ad litem. These Standards, however, express a clear preference for the appointment as the "child's attorney." These Standards address the lawyer's obligations to the child as client.

A lawyer appointed as guardian ad litem is almost inevitably expected to perform legal functions on behalf of the child. Where the local law permits, the lawyer is expected to act in the dual role of guardian ad litem and lawyer of record. The chief distinguishing factor between the roles is the manner and method to be followed in determining the legal position to be advocated. While a guardian ad litem should take the child's point of view into account, the child's preferences are not binding, irrespective of the child's age and the ability or willingness of the child to express preferences. Moreover, in many states, a guardian ad litem may be required by statute or custom to perform specific tasks, such as submitting a report or testifying as a fact or expert witness. These tasks are not part of functioning as a "lawyer."

These Standards do not apply to nonlawyers when such persons are appointed as guardians ad litem or as "court appointed special advocates" (CASA). The nonlawyer guardian ad litem cannot and should not be expected to perform any legal functions on behalf of a child.

A-3. Developmentally Appropriate. "Developmentally appropriate" means that the child's attorney should ensure the child's ability to provide client-based directions by structuring all communications to account for the individual child's age, level of education, cultural context, and degree of language acquisition.

Commentary

The lawyer has an obligation to explain clearly, precisely, and in terms the client can understand the meaning and consequences of action. See DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977). A child client may not understand the legal terminology and for a variety of reasons may choose a particular course of action without fully appreciating the implications. With a child the potential for not understanding may be even greater. Therefore, the child's attorney has additional obligations based on the child's age, level of education, and degree of language acquisition. There is also the possibility that because of a particular child's developmental limitations, the lawyer may not completely understand the child's responses. Therefore, the child's attorney must learn how to ask developmentally appropriate questions and how to interpret the child's responses. See ANNE GRAFFAM WALKER, HANDBOOK ON QUESTIONING CHILDREN: A LINGUISTIC PERSPECTIVE (ABA Center on Children and the Law 1994). The child's attorney may work with social workers or other professionals to assess a child's developmental abilities and to facilitate communication.

B. GENERAL AUTHORITY AND DUTIES

B-1. Basic Obligations. The child's attorney should:

- (1) Obtain copies of all pleadings and relevant notices;
- (2) Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;
- (3) Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;
- (4) Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
- (5) Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;
- (6) Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and
- (7) Identify appropriate family and professional resources for the child.

Commentary

The child's attorney should not be merely a fact-finder, but rather, should zealously advocate a position on behalf of the child. (The same is true for the guardian ad litem, although the position to be advocated may be different). In furtherance of that advocacy, the child's attorney must be adequately prepared prior to hearings. The lawyer's presence at and active participation in all hearings is absolutely critical. See, RESOURCE GUIDELINES, at 23.

Although the child's position may overlap with the position of one or both parents, third-party caretakers, or a state agency, the child's attorney should be prepared to participate fully in any proceedings and not merely defer to the other parties. Any identity of position should be based on the merits of the position, and not a mere endorsement of another party's position.

While subsection (4) recognizes that delays are usually harmful, there may be some circumstances when delay may be beneficial. Section (7) contemplates that the child's attorney will identify counseling, educational and health services, substance abuse programs for the child and other family members, housing and other forms of material assistance for which the child may qualify under law. The lawyer can also identify family members, friends, neighbors, or teachers with whom the child feels it is important to maintain contact; mentoring programs, such as Big Brother/Big Sister; recreational opportunities that develop social skills and self-esteem; educational support programs; and volunteer opportunities which can enhance a child's self-esteem.

B-2. Conflict Situations. (1) If a lawyer appointed as guardian ad litem determines that there is a conflict caused by performing both roles of guardian ad litem and child's attorney, the lawyer should continue to perform as the child's attorney and withdraw as guardian ad litem. The lawyer should request appointment of a guardian ad litem without revealing the basis for the request.

(2) If a lawyer is appointed as a "child's attorney" for siblings, there may also be a conflict which could require that the lawyer decline representation or withdraw from representing all of the children.

Commentary

The primary conflict that arises between the two roles is when the child's expressed preferences differ from what the lawyer deems to be in the child's best interests. As a practical matter, when the lawyer has established a trusting relationship with the child, most conflicts can be avoided. While the lawyer should be careful not to apply undue pressure to a child, the lawyer's advice and guidance can often persuade the child to change an imprudent position or to identify alternative choices if the child's first choice is denied by the court.

The lawyer-client role involves a confidential relationship with privileged communications, while a

guardian ad litem-client role may not be confidential. Compare Alaska Bar Assoc. Ethics Op. #854 (1985) (lawyer-client privilege does not apply when the lawyer is appointed to be child's guardian ad litem) with Bentley v. Bentley, 448 N.Y.S.2d 559 (App. Div. 1982) (communication between minor children and guardian ad litem in divorce custody case is entitled to lawyer-client privilege). Because the child has a right to confidentiality and advocacy of his or her position, the child's attorney can never abandon this role. Once a lawyer has a lawyer-client relationship with a minor, he or she cannot and should not assume any other role for the child, especially as guardian ad litem. When the roles cannot be reconciled, another person must assume the guardian ad litem role. See Arizona State Bar Committee on Rules of Professional Conduct, Opinion No. 86-13 (1986).

B-3. Client Under Disability. The child's attorney should determine whether the child is "under a disability" pursuant to the Model Rules of Professional Conduct or the Model Code of Professional Responsibility with respect to each issue in which the child is called upon to direct the representation.

Commentary

These Standards do not accept the idea that children of certain ages are "impaired," "disabled," "incompetent," or lack capacity to determine their position in litigation. Further, these Standards reject the concept that any disability must be globally determined.

Rather, disability is contextual, incremental, and may be intermittent. The child's ability to contribute to a determination of his or her position is functional, depending upon the particular position and the circumstances prevailing at the time the position must be determined. Therefore, a child may be able to determine some positions in the case but not others. Similarly, a child may be able to direct the lawyer with respect to a particular issue at one time but not at another. This Standard relies on empirical knowledge about competencies with respect to both adults and children. See, e.g., ALLEN E. BUCHANAN & DAN W. BROCK, DECIDING FOR OTHERS: THE ETHICS OF SURROGATE DECISION MAKING 217 (1989).

B-4. Client Preferences. The child's attorney should elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child's attorney should represent the child's expressed preferences and follow the child's direction throughout the course of litigation.

Commentary

The lawyer has a duty to explain to the child in a developmentally appropriate way such information as will assist the child in having maximum input in determination of the particular position at issue. The lawyer should inform the child of the relevant facts and applicable laws and the ramifications of taking various positions, which may include the impact of such decisions on other family members or on future legal proceedings. The lawyer may express an opinion concerning the likelihood of the court or other parties accepting particular positions. The lawyer may inform the child of an expert's recommendations germane to the issue.

As in any other lawyer/client relationship, the lawyer may express his or her assessment of the case, the best position for the child to take, and the reasons underlying such recommendation. A child, however, may agree with the lawyer for inappropriate reasons. A lawyer must remain aware of the power dynamics inherent in adult/child relationships. Therefore, the lawyer needs to understand what the child knows and what factors are influencing the child's decision. The lawyer should attempt to determine from the child's opinion and reasoning what factors have been most influential or have been confusing or glided over by the child when deciding the best time to express his or her assessment of the case.

Consistent with the rules of confidentiality and with sensitivity to the child's privacy, the lawyer should consult with the child's therapist and other experts and obtain appropriate records. For example, a child's therapist may help the child to understand why an expressed position is dangerous, foolish, or not in the child's best interests. The therapist might also assist the lawyer in understanding the child's perspective, priorities, and individual needs. Similarly, significant persons in the child's life may educate the lawyer about the child's needs, priorities, and previous experiences.

The lawyer for the child has dual fiduciary duties to the child which must be balanced. On one hand, the lawyer has a duty to ensure that the child client is given the information necessary to make an informed decision, including advice and guidance. On the other hand, the lawyer has a duty not to overbear the will of the child. While the lawyer may attempt to persuade the child to accept a particular position, the lawyer may not advocate a position contrary to the child's expressed position except as provided by these Abuse and Neglect Standards or the Code of Professional Responsibility.

While the child is entitled to determine the overall objectives to be pursued, the child's attorney, as any adult's lawyer, may make certain decisions with respect to the manner of achieving those objectives, particularly with respect to procedural matters. These Abuse and Neglect Standards do not require the lawyer to consult with the child on matters which would not require consultation with an adult client. Further, the Standards do not require the child's attorney to discuss with the child issues for which it is not feasible to obtain the child's direction because of the child's developmental limitations, as with an infant or preverbal child.

- (1) To the extent that a child cannot express a preference, the child's attorney shall make a good faith effort to determine the child's wishes and advocate accordingly or request appointment of a guardian ad litem.

Commentary

There are circumstances in which a child is unable to express a position, as in the case of a preverbal child, or may not be capable of understanding the legal or factual issues involved. Under such circumstances, the child's attorney should continue to represent the child's legal interests and request appointment of a guardian ad litem. This limitation distinguishes the scope of independent decision-making of the child's attorney and a person acting as guardian ad litem.

- (2) To the extent that a child does not or will not express a preference about particular issues, the child's attorney should determine and advocate the child's legal interests.

Commentary

The child's failure to express a position is distinguishable from a directive that the lawyer not take a position with respect to certain issues. The child may have no opinion with respect to a particular issue, or may delegate the decision-making authority. For example, the child may not want to assume the responsibility of expressing a position because of loyalty conflicts or the desire not to hurt one of the other parties. The lawyer should clarify with the child whether the child wants the lawyer to take a position or remain silent with respect to that issue or wants the preference expressed only if the parent or other party is out of the courtroom. The lawyer is then bound by the child's directive. The position taken by the lawyer should not contradict or undermine other issues about which the child has expressed a preference.

- (3) If the child's attorney determines that the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer's opinion of what would be in the child's interests), the lawyer may request appointment of a separate guardian ad litem and continue to represent the child's expressed preference, unless the child's position is prohibited by law or without any factual foundation. The child's attorney shall not reveal the basis of the request for appointment of a guardian ad litem which would compromise the child's position.

Commentary

One of the most difficult ethical issues for lawyers representing children occurs when the child is able to express a position and does so, but the lawyer believes that the position chosen is wholly inappropriate or could result in serious injury to the child. This is particularly likely to happen with respect to an abused child whose home is unsafe, but who desires to remain or return home. A child may desire to live in a dangerous situation because it is all he or she knows, because of a feeling of blame or of responsibility to take care of the parents, or because of threats. The child may choose to deal with a known situation rather than risk the unknown world of a

foster home or other out-of-home placement.

In most cases the ethical conflict involved in asserting a position which would seriously endanger the child, especially by disclosure of privileged information, can be resolved through the lawyer's counseling function. If the lawyer has taken the time to establish rapport with the child and gain that child's trust, it is likely that the lawyer will be able to persuade the child to abandon a dangerous position or at least identify an alternate course.

If the child cannot be persuaded, the lawyer has a duty to safeguard the child's interests by requesting appointment of a guardian ad litem, who will be charged with advocating the child's best interests without being bound by the child's direction. As a practical matter, this may not adequately protect the child if the danger to the child was revealed only in a confidential disclosure to the lawyer, because the guardian ad litem may never learn of the disclosed danger.

Confidentiality is abrogated for various professionals by mandatory child abuse reporting laws. Some states abrogate lawyer-client privilege by mandating reports. States which do not abrogate the privilege may permit reports notwithstanding professional privileges. The policy considerations underlying abrogation apply to lawyers where there is a substantial danger of serious injury or death. Under such circumstances, the lawyer must take the minimum steps which would be necessary to ensure the child's safety, respecting and following the child's direction to the greatest extent possible consistent with the child's safety and ethical rules.

The lawyer may never counsel a client or assist a client in conduct the lawyer knows is criminal or fraudulent. See ER 1.2(d), Model Rules of Professional Conduct, DR 7-102(A)(7), Model Code of Professional Responsibility. Further, existing ethical rules requires the lawyer to disclose confidential information to the extent necessary to prevent the client from committing a criminal act likely to result in death or substantial bodily harm, see ER 1.6(b), Model Rules of Professional Conduct, and permits the lawyer to reveal the intention of the client to commit a crime. See ER 1.6(c), Model Rules of Professional Conduct, DR 4-101(C)(3), Model Code of Professional Responsibility. While child abuse, including sexual abuse, are crimes, the child is presumably the victim, rather than the perpetrator of those crimes. Therefore, disclosure of confidences is designed to protect the client, rather than to protect a third party from the client. Where the child is in grave danger of serious injury or death, the child's safety must be the paramount concern.

The lawyer is not bound to pursue the client's objectives through means not permitted by law and ethical rules. See DR-7-101(A)(1), Model Code of Professional Responsibility. Further, lawyers may be subject personally to sanctions for taking positions that are not well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

B-5. Child's Interests. The determination of the child's legal interests should be based on objective criteria as set forth in the law that are related to the purposes of the proceedings. The criteria should address the child's specific needs and preferences, the goal of expeditious resolution of the case so the child can remain or return home or be placed in a safe, nurturing, and permanent environment, and the use of the least restrictive or detrimental alternatives available.

Commentary

A lawyer who is required to determine the child's interests is functioning in a nontraditional role by determining the position to be advocated independently of the client. The lawyer should base the position, however, on objective criteria concerning the child's needs and interests, and not merely on the lawyer's personal values, philosophies, and experiences. The child's various needs and interests may be in conflict and must be weighed against each other. Even nonverbal children can communicate their needs and interests through their behaviors and developmental levels. See generally JAMES GARBARINO & FRANCES M. STOTT, WHAT CHILDREN CAN TELL US: ELICITING, INTERPRETING, AND EVALUATING CRITICAL INFORMATION FROM CHILDREN (1992). The lawyer may seek the advice and consultation of experts and other knowledgeable people in both determining and weighing such needs and interests.

A child's legal interests may include basic physical and emotional needs, such as safety, shelter, food, and clothing. Such needs should be assessed in light of the child's vulnerability, dependence upon others, available external resources, and the degree of risk. A child needs family affiliation and stability of placement. The child's developmental level, including his or her sense of time, is relevant to an assessment of need. For example, a very young child may be less able to tolerate separation from a primary caretaker than an older child, and if separation is necessary, more frequent visitation than is ordinarily provided may be necessary.

In general, a child prefers to live with known people, to continue normal activities, and to avoid moving. To that end, the child's attorney should determine whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources. The lawyer must determine the child's feelings about the proposed caretaker, however, because familiarity does not automatically confer positive regard. Further, the lawyer may need to balance competing stability interests, such as living with a relative in another town versus living in a foster home in the same neighborhood. The individual child's needs will influence this balancing task.

In general, a child needs decisions about the custodial environment to be made quickly. Therefore, if the child must be removed from the home, it is generally in the child's best interests to have rehabilitative or reunification services offered to the family quickly. On the other hand, if it appears that reunification will be unlikely, it is generally in the child's best interests to move quickly toward an alternative permanent plan. Delay and indecision are rarely in a child's best interests.

In addition to the general needs and interests of children, individual children have particular needs, and the lawyer must determine the child client's individual needs. There are few rules which apply across the board to all children under all circumstances.

C. ACTIONS TO BE TAKEN

C-1. Meet With Child. Establishing and maintaining a relationship with a child is the foundation of representation. Therefore, irrespective of the child's age, the child's attorney should visit with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child.

Commentary

Meeting with the child is important before court hearings and case reviews. In addition, changes in placement, school suspensions, in-patient hospitalizations, and other similar changes warrant meeting again with the child. Such in-person meetings allow the lawyer to explain to the child what is happening, what alternatives might be available, and what will happen next. This also allows the lawyer to assess the child's circumstances, often leading to a greater understanding of the case, which may lead to more creative solutions in the child's interest. A lawyer can learn a great deal from meeting with child clients, including a preverbal child. See, e.g., JAMES GARBARINO, ET AL, WHAT CHILDREN CAN TELL US: ELICITING, INTERPRETING, AND EVALUATING CRITICAL INFORMATION FROM CHILDREN (1992).

C-2. Investigate. To support the client's position, the child's attorney should conduct thorough, continuing, and independent investigations and discovery which may include, but should not be limited to:

- (1) Reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case;

Commentary

Thorough, independent investigation of cases, at every stage of the proceedings, is a key aspect of providing competent representation to children. See, RESOURCE GUIDELINES, AT 23. The lawyer may need to use subpoenas or other discovery or motion procedures to obtain the relevant records, especially those records which

pertain to the other parties. In some jurisdictions the statute or the order appointing the lawyer for the child includes provision for obtaining certain records.

- (2) Reviewing the court files of the child and siblings, case-related records of the social service agency and other service providers;

Commentary

Another key aspect of representing children is the review of all documents submitted to the court as well as relevant agency case files and law enforcement reports. See, RESOURCE GUIDELINES, at 23. Other relevant files that should be reviewed include those concerning child protective services, developmental disabilities, juvenile delinquency, mental health, and educational agencies. These records can provide a more complete context for the current problems of the child and family. Information in the files may suggest additional professionals and lay witnesses who should be contacted and may reveal alternate potential placements and services.

- (3) Contacting lawyers for other parties and nonlawyer guardians ad litem or court-appointed special advocates (CASA) for background information;

Commentary

The other parties' lawyers may have information not included in any of the available records. Further, they can provide information on their respective clients' perspectives. The CASA is typically charged with performing an independent factual investigation, getting to know the child, and speaking up to the court on the child's "best interests." Volunteer CASAs may have more time to perform their functions than the child's attorney and can often provide a great deal of information to assist the child's attorney. Where there appears to be role conflict or confusion over the involvement of both a child's attorney and CASA in the same case, there should be joint efforts to clarify and define mutual responsibilities. See, RESOURCE GUIDELINES, at 24.

- (4) Contacting and meeting with the parents/legal guardians/caretakers of the child, with permission of their lawyer;

Commentary

Such contact generally should include visiting the home, which will give the lawyer additional information about the child's custodial circumstances.

- (5) Obtaining necessary authorizations for the release of information;

Commentary

If the relevant statute or order appointing the lawyer for the child does not provide explicit authorization for the lawyer's obtaining necessary records, the lawyer should attempt to obtain authorizations for release of information from the agency and from the parents, with their lawyer's consent. Even if it is not required, an older child should be asked to sign authorizations for release of his or her own records, because such a request demonstrates the lawyer's respect for the client's authority over information.

- (6) Interviewing individuals involved with the child, including school personnel, child welfare case workers, foster parents and other caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;

Commentary

In some jurisdictions the child's attorney is permitted free access to agency case workers. In others, contact with the case worker must be arranged through the agency's lawyer.

- (7) Reviewing relevant photographs, video or audio tapes and other evidence; and

Commentary

It is essential that the lawyer review the evidence personally, rather than relying on other parties' or counsel's descriptions and characterizations of the evidence.

- (8) Attending treatment, placement, administrative hearings, other proceedings involving legal issues, and school case conferences or staffings concerning the child as needed.

Commentary

While some courts will not authorize compensation for the child's attorney to attend such collateral meetings, such attendance is often very important. The child's attorney can present the child's perspective at such meetings, as well as gather information necessary to proper representation. In some cases the child's attorney can be pivotal in achieving a negotiated settlement of all or some issues. The child's attorney may not need to attend collateral meetings if another person involved in the case, such as a social worker who works the lawyer, can get the information or present the child's perspective.

C-3. File Pleadings. The child's attorney should file petitions, motions, responses or objections as necessary to represent the child. Relief requested may include, but is not limited to:

- (1) A mental or physical examination of a party or the child;
- (2) A parenting, custody or visitation evaluation;
- (3) An increase, decrease, or termination of contact or visitation;
- (4) Restraining or enjoining a change of placement;
- (5) Contempt for non-compliance with a court order;
- (6) Termination of the parent-child relationship;
- (7) Child support;
- (8) A protective order concerning the child's privileged communications or tangible or intangible property;
- (9) Request services for child or family; and
- (10) Dismissal of petitions or motions.

Commentary

Filing and arguing necessary motions is an essential part of the role of a child's attorney. See, RESOURCE GUIDELINES, at 23. Unless the lawyer is serving in a role which explicitly precludes the filing of pleadings, the lawyer should file any appropriate pleadings on behalf of the child, including responses to the pleadings of the other parties. The filing of such pleadings can ensure that appropriate issues are properly before the court and can expedite the court's consideration of issues important to the child's interests. In some jurisdictions, guardians ad litem are not permitted to file pleadings, in which case it should be clear to the lawyer that he or she is not the "child's attorney" as defined in these Standards.

C-4. Request Services. Consistent with the child's wishes, the child's attorney should seek appropriate services (by court order if necessary) to access entitlements, to protect the child's interests and to implement a service plan. These services may include, but not be limited to:

- (1) Family preservation-related prevention or reunification services;
- (2) Sibling and family visitation;
- (3) Child support;
- (4) Domestic violence prevention, intervention, and treatment;
- (5) Medical and mental health care;
- (6) Drug and alcohol treatment;
- (7) Parenting education;
- (8) Semi-independent and independent living services;

- (9) Long-term foster care;
- (10) Termination of parental rights action;
- (11) Adoption services;
- (12) Education;
- (13) Recreational or social services; and
- (14) Housing.

Commentary

The lawyer should request appropriate services even if there is no hearing scheduled. Such requests may be made to the agency or treatment providers, or if such informal methods are unsuccessful, the lawyer should file a motion to bring the matter before the court. In some cases the child's attorney should file collateral actions, such as petitions for termination of parental rights, if such an action would advance the child's interest and is legally permitted and justified. Different resources are available in different localities.

C-5. Child With Special Needs. Consistent with the child's wishes, the child's attorney should assure that a child with special needs receives appropriate services to address the physical, mental, or developmental disabilities. These services may include, but should not be limited to:

- (1) Special education and related services;
- (2) Supplemental security income (SSI) to help support needed services;
- (3) Therapeutic foster or group home care; and
- (4) Residential/in-patient and out-patient psychiatric treatment.

Commentary

There are many services available from extra-judicial, as well as judicial, sources for children with special needs. The child's attorney should be familiar with these other services and how to assure their availability for the client. See generally, THOMAS A. JACOBS, CHILDREN & THE LAW: RIGHTS & OBLIGATIONS (1995); LEGAL RIGHTS OF CHILDREN (2d ed. Donald T. Kramer, ed., 1994).

C-6. Negotiate Settlements. The child's attorney should participate in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child. The child's attorney should use suitable mediation resources.

Commentary

Particularly in contentious cases, the child's attorney may effectively assist negotiations of the parties and their lawyers by focusing on the needs of the child. If a parent is legally represented, it is unethical for the child's attorney to negotiate with a parent directly without the consent of the parent's lawyer. Because the court is likely to resolve at least some parts of the dispute in question based on the best interests of the child, the child's attorney is in a pivotal position in negotiation.

Settlement frequently obtains at least short term relief for all parties involved and is often the best resolution of a case. The child's attorney, however, should not become merely a facilitator to the parties' reaching a negotiated settlement. As developmentally appropriate, the child's attorney should consult the child prior to any settlement becoming binding.

D. HEARINGS

D-1. Court Appearances. The child's attorney should attend all hearings and participate in all telephone or other conferences with the court unless a particular hearing involves issues completely unrelated to the child.

D-2. Client Explanation. The child's attorney should explain to the client, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.

D-3. Motions and Objections. The child's attorney should make appropriate motions, including motions *in limine* and evidentiary objections, to advance the child's position at trial or during other hearings. If necessary, the child's attorney should file briefs in support of evidentiary issues. Further, during all hearings, the child's attorney should preserve legal issues for appeal, as appropriate.

D-4. Presentation of Evidence. The child's attorney should present and cross examine witnesses, offer exhibits, and provide independent evidence as necessary.

Commentary

The child's position may overlap with the positions of one or both parents, third-party caretakers, or a child protection agency. Nevertheless, the child's attorney should be prepared to participate fully in every hearing and not merely defer to the other parties. Any identity of position should be based on the merits of the position (consistent with Standard B-6), and not a mere endorsement of another party's position.

D-5. Child at Hearing. In most circumstances, the child should be present at significant court hearings, regardless of whether the child will testify.

Commentary

A child has the right to meaningful participation in the case, which generally includes the child's presence at significant court hearings. Further, the child's presence underscores for the judge that the child is a real party in interest in the case. It may be necessary to obtain a court order or writ of habeas corpus ad testificandum to secure the child's attendance at the hearing.

A decision to exclude the child from the hearing should be made based on a particularized determination that the child does not want to attend, is too young to sit through the hearing, would be severely traumatized by such attendance, or for other good reason would be better served by nonattendance. There may be other extraordinary reasons for the child's non-attendance. The lawyer should consult the child, therapist, caretaker, or any other knowledgeable person in determining the effect on the child of being present at the hearing. In some jurisdictions the court requires an affirmative waiver of the child's presence if the child will not attend. Even a child who is too young to sit through the hearing may benefit from seeing the courtroom and meeting, or at least seeing, the judge who will be making the decisions. The lawyer should provide the court with any required notice that the child will be present. Concerns about the child being exposed to certain parts of the evidence may be addressed by the child's temporary exclusion from the court room during the taking of that evidence, rather than by excluding the child from the entire hearing.

The lawyer should ensure that the state/ custodian meets its obligation to transport the child to and from the hearing. Similarly, the lawyer should ensure the presence of someone to accompany the child any time the child is temporarily absent from the hearing.

D-6. Whether Child Should Testify. The child's attorney should decide whether to call the child as a witness. The decision should include consideration of the child's need or desire to testify, any repercussions of testifying, the necessity of the child's direct testimony, the availability of other evidence or hearsay exceptions which may substitute for direct testimony by the child, and the child's developmental ability to provide direct testimony and

withstand possible cross-examination. Ultimately, the child's attorney is bound by the child's direction concerning testifying.

Commentary

There are no blanket rules regarding a child's testimony. While testifying is undoubtedly traumatic for many children, it is therapeutic and empowering for others. Therefore, the decision about the child's testifying should be made individually, based on the circumstances of the individual child and the individual case. The child's therapist, if any, should be consulted both with respect to the decision itself and assistance with preparation. In the absence of compelling reasons, a child who has a strong desire to testify should be called to do so. See ANN M. HARALAMBIE, THE CHILD'S LAWYER: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES ch. 4 (1993). If the child should not wish to testify or would be harmed by being forced to testify, the lawyer should seek a stipulation of the parties not to call the child as a witness or seek a protective order from the court. If the child is compelled to testify, the lawyer should seek to minimize the adverse consequences by seeking any appropriate accommodations permitted by local law, such as having the testimony taken informally, in chambers, without presence of the parents. See JOHN E.B. MYERS, 2 EVIDENCE IN CHILD ABUSE AND NEGLECT CASES ch. 8 (1992). The child should know whether the in-chambers testimony will be shared with others, such as parents who might be excluded from chambers, before agreeing to this forum. The lawyer should also prepare the child for the possibility that the judge may render a decision against the child's wishes which will not be the child's fault.

D-7. Child Witness. The child's attorney should prepare the child to testify. This should include familiarizing the child with the courtroom, court procedures, and what to expect during direct and cross-examination and ensuring that testifying will cause minimum harm to the child.

Commentary

The lawyer's preparation of the child to testify should include attention to the child's developmental needs and abilities as well as to accommodations which should be made by the court and other lawyers. The lawyer should seek any necessary assistance from the court, including location of the testimony (in chambers, at a small table etc.), determination of who will be present, and restrictions on the manner and phrasing of questions posed to the child.

The accuracy of children's testimony is enhanced when they feel comfortable. See, generally, Karen Saywitz, Children in Court: Principles of Child Development for Judicial Application, in A JUDICIAL PRIMER ON CHILD SEXUAL ABUSE 15 (Josephine Bulkley & Claire Sandt, eds., 1994). Courts have permitted support persons to be present in the courtroom, sometimes even with the child sitting on the person's lap to testify. Because child abuse and neglect cases are often closed to the public, special permission may be necessary to enable such persons to be present during hearings. Further, where the rule sequestering witnesses has been invoked, the order of witnesses may need to be changed or an exemption granted where the support person also will be a witness. The child should be asked whether he or she would like someone to be present, and if so, whom the child prefers. Typical support persons include parents, relatives, therapists, Court Appointed Special Advocates (CASA), social workers, victim-witness advocates, and members of the clergy. For some, presence of the child's attorney provides sufficient support.

D-8. Questioning the Child. The child's attorney should seek to ensure that questions to the child are phrased in a syntactically and linguistically appropriate manner.

Commentary

The phrasing of questions should take into consideration the law and research regarding children's testimony, memory, and suggestibility. See generally, Karen Saywitz, supra D -7; CHILD VICTIMS, CHILD WITNESSES: UNDERSTANDING AND IMPROVING TESTIMONY (Gail S. Goodman & Bette L. Bottoms, eds. 1993); ANN HARALAMBIE, 2 HANDLING CHILD CUSTODY, ABUSE, AND ADOPTION CASES 24.09v24.22 (2nd ed. 1993); MYERS,

supra D-6, at Vol. 1, ch 2; Ellen Matthews & Karen Saywitz, *Child Victim Witness Manual*, 12/1 C.J.E.R.J. 40 (1992).

The information a child gives in interviews and during testimony is often misleading because the adults have not understood how to ask children developmentally appropriate questions and how to interpret their answers properly. See WALKER, SUPRA, A-3 Commentary. The child's attorney must become skilled at recognizing the child's developmental limitations. It may be appropriate to present expert testimony on the issue and even to have an expert present during a young child's testimony to point out any developmentally inappropriate phrasing.

D-9. Challenges to Child's Testimony/Statements. The child's competency to testify, or the reliability of the child's testimony or out-of-court statements, may be called into question. The child's attorney should be familiar with the current law and empirical knowledge about children's competency, memory, and suggestibility and, where appropriate, attempt to establish the competency and reliability of the child.

Commentary

*Many jurisdictions have abolished presumptive ages of competency. See HARALAMBIE, SUPRA D-8 AT 24.17. The jurisdictions which have rejected presumptive ages for testimonial competency have applied more flexible, case-by-case analyses. See Louis I. Parley, *Representing Children in Custody Litigation*, 11 J. AM. ACAD. MATRIM. LAW. 45, 48 (Winter 1993). Competency to testify involves the abilities to perceive and relate.*

If necessary, the child's attorney should present expert testimony to establish competency or reliability or to rehabilitate any impeachment of the child on those bases. See generally, Karen Saywitz, supra D-8 at 15; CHILD VICTIMS, SUPRA D-8; Haralambie, supra D-8; J. MYERS, SUPRA D-8; Matthews & Saywitz, supra D-8.

D-10. Jury Selection. In those states in which a jury trial is possible, the child's attorney should participate in jury selection and drafting jury instructions.

D-11. Conclusion of Hearing. If appropriate, the child's attorney should make a closing argument, and provide proposed findings of fact and conclusions of law. The child's attorney should ensure that a written order is entered.

Commentary

One of the values of having a trained child's attorney is such a lawyer can often present creative alternative solutions to the court. Further, the child's attorney is able to argue the child's interests from the child's perspective, keeping the case focused on the child's needs and the effect of various dispositions on the child.

D-12. Expanded Scope of Representation. The child's attorney may request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment. For example:

- (1) Child support;
- (2) Delinquency or status offender matters;
- (3) SSI and other public benefits;
- (4) Custody;
- (5) Guardianship;
- (6) Paternity;
- (7) Personal injury;
- (8) School/education issues, especially for a child with disabilities;
- (9) Mental health proceedings;
- (10) Termination of parental rights; and

(11) Adoption.

Commentary

The child's interests may be served through proceedings not connected with the case in which the child's attorney is participating. In such cases the lawyer may be able to secure assistance for the child by filing or participating in other actions. See, e.g., In re Appeal in Pima County Juvenile Action No. S-113432, 872 P.2d 1240 (Ariz. Ct. App. 1994). With an older child or a child with involved parents, the child's attorney may not need court authority to pursue other services. For instance, federal law allows the parent to control special education. A Unified Child and Family Court Model would allow for consistency of representation between related court proceedings, such as mental health or juvenile justice.

D-13. Obligations after Disposition. The child's attorney should seek to ensure continued representation of the child at all further hearings, including at administrative or judicial actions that result in changes to the child's placement or services, so long as the court maintains its jurisdiction.

Commentary

Representing a child should reflect the passage of time and the changing needs of the child. The bulk of the child's attorney's work often comes after the initial hearing, including ongoing permanency planning issues, six month reviews, case plan reviews, issues of termination, and so forth. The average length of stay in foster care is over five years in some jurisdictions. Often a child's case workers, therapists, other service providers or even placements change while the case is still pending. Different judges may hear various phases of the case. The child's attorney may be the only source of continuity for the child. Such continuity not only provides the child with a stable point of contact, but also may represent the institutional memory of case facts and procedural history for the agency and court. The child's attorney should stay in touch with the child, third party caretakers, case workers, and service providers throughout the term of appointment to ensure that the child's needs are met and that the case moves quickly to an appropriate resolution.

Generally it is preferable for the lawyer to remain involved so long as the case is pending to enable the child's interest to be addressed from the child's perspective at all stages. Like the JUVENILE JUSTICE STANDARDS, these ABUSE AND NEGLECT STANDARDS require ongoing appointment and active representation as long as the court retains jurisdiction over the child. To the extent that these are separate proceedings in some jurisdictions, the child's attorney should seek reappointment. Where reappointment is not feasible, the child's attorney should provide records and information about the case and cooperate with the successor to ensure continuity of representation.

E. POST-HEARING

E-1. Review of Court's Order. The child's attorney should review all written orders to ensure that they conform with the court's verbal orders and statutorily required findings and notices.

E-2. Communicate Order to Child. The child's attorney should discuss the order and its consequences with the child.

Commentary

The child is entitled to understand what the court has done and what that means to the child, at least with respect to those portions of the order that directly affect the child. Children may assume that orders are final and not subject to change. Therefore, the lawyer should explain whether the order may be modified at another hearing, or whether the actions of the parties may affect how the order is carried out. For example, an order may permit the agency to return the child to the parent if certain goals are accomplished.

E-3. Implementation. The child's attorney should monitor the implementation of the court's orders and communicate

to the responsible agency and, if necessary, the court, any non-compliance.

Commentary

The lawyer should ensure that services are provided and that the court's orders are implemented in a complete and timely fashion. In order to address problems with implementation, the lawyer should stay in touch with the child, case worker, third party caretakers, and service providers between review hearings. The lawyer should consider filing any necessary motions, including those for civil or criminal contempt, to compel implementation. See, RESOURCE GUIDELINES, at 23.

F. APPEAL

F-1. Decision to Appeal. The child's attorney should consider and discuss with the child, as developmentally appropriate, the possibility of an appeal. If after such consultation, the child wishes to appeal the order, and the appeal has merit, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the child during the pendency of the appeal.

Commentary

The lawyer should explain to the child not only the legal possibility of an appeal, but also the ramifications of filing an appeal, including the potential for delaying implementation of services or placement options. The lawyer should also explain whether the trial court's orders will be stayed pending appeal and what the agency and trial court may do pending a final decision.

F-2. Withdrawal. If the child's attorney determines that an appeal would be frivolous or that he or she lacks the necessary experience or expertise to handle the appeal, the lawyer should notify the court and seek to be discharged or replaced.

F-3. Participation in Appeal. The child's attorney should participate in an appeal filed by another party unless discharged.

Commentary

The child's attorney should take a position in any appeal filed by the parent, agency, or other party. In some jurisdictions, the lawyer's appointment does not include representation on appeal. If the child's interests are affected by the issues raised in the appeal, the lawyer should seek an appointment on appeal or seek appointment of appellate counsel to represent the child's position in the appeal.

F-4. Conclusion of Appeal. When the decision is received, the child's attorney should explain the outcome of the case to the child.

Commentary

As with other court decisions, the lawyer should explain in terms the child can understand the nature and consequences of the appellate decision. In addition, the lawyer should explain whether there are further appellate remedies and what more, if anything, will be done in the trial court following the decision.

F-5. Cessation of Representation. The child's attorney should discuss the end of the legal representation and determine what contacts, if any, the child's attorney and the child will continue to have.

Commentary

When the representation ends, the child's lawyer should explain in a developmentally appropriate manner why the representation is ending and how the child can obtain assistance in the future should it become necessary. It is important for there to be closure between the child and the lawyer.

PART II– ENHANCING THE JUDICIAL ROLE IN CHILD REPRESENTATION

PREFACE

Enhancing the legal representation provided by court-appointed lawyers for children has long been a special concern of the American Bar Association [see, e.g., JUVENILE JUSTICE STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES (1979); ABA Policy Resolutions on Representation of Children (Appendix)]. Yet, no matter how carefully a bar association, legislature, or court defines the duties of lawyers representing children, practice will only improve if judicial administrators and trial judges play a stronger role in the selection, training, oversight, and prompt payment of court-appointed lawyers in child abuse/neglect and child custody/visitation cases.

The importance of the court's role in helping assure competent representation of children is noted in the JUVENILE JUSTICE STANDARDS RELATING TO COURT ORGANIZATION AND ADMINISTRATION (1980) which state in the Commentary to 3.4D that effective representation of parties is "essential" and that the presiding judge of a court "might need to use his or her position to achieve" it. In its RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES (1995), the National Council of Juvenile and Family Court Judges stated, "Juvenile and family courts should take active steps to ensure that the parties in child abuse and neglect cases have access to competent representation. . . ." In jurisdictions which engage nonlawyers to represent a child's interests, the court should ensure they have access to legal representation.

These Abuse and Neglect Standards, like the RESOURCE GUIDELINES, recognize that the courts have a great ability to influence positively the quality of counsel through setting judicial prerequisites for lawyer appointments including requirements for experience and training, imposing sanctions for violation of standards (such as terminating a lawyer's appointment to represent a specific child, denying further appointments, or even fines or referrals to the state bar committee for professional responsibility). The following Standards are intended to assist the judiciary in using its authority to accomplish the goal of quality representation for all children before the court in abuse/neglect related proceedings.

G. THE COURT'S ROLE IN STRUCTURING CHILD REPRESENTATION

G-1. Assuring Independence of the Child's Attorney. The child's attorney should be independent from the court, court services, the parties, and the state.

Commentary

To help assure that the child's attorney is not compromised in his or her independent action, these Standards propose that the child's lawyer be independent from other participants in the litigation. "Independence" does not mean that a lawyer may not receive payment from a court, a government entity (e.g., program funding from social services or justice agencies), or even from a parent, relative, or other adult so long as the lawyer retains the full authority for independent action. For ethical conflict reasons, however, lawyers should never accept compensation as retained counsel for the child from a parent accused of abusing or neglecting the child. The child's attorney should not prejudge the case. The concept of independence includes being free from prejudice and other limitations to uncompromised representation.

JUVENILE JUSTICE STANDARD 2.1(d) states that plans for providing counsel for children "must be designed to guarantee the professional independence of counsel and the integrity of the lawyer-client relationship." The Commentary strongly asserts there is "no justification for . . . judicial preference" to compromise a lawyer's relationship with the child client and notes the "willingness of some judges to direct lawyers' performance and thereby compromise their independence."

G-2. Establishing Uniform Representation Rules. The administrative office for the state trial, family, or juvenile court system should cause to be published and disseminated to all relevant courts a set of uniform,

written rules and procedures for court-appointed lawyers for minor children.

Commentary

Although uniform rules of court to govern the processing of various types of child-related judicial proceedings have become common, it is still rare for those rules to address comprehensively the manner and scope of representation for children. Many lawyers representing children are unclear as to the court's expectations. Courts in different communities, or even judges within the same court, may have differing views regarding the manner of child representation. These Standards promote statewide uniformity by calling for written publication and distribution of state rules and procedures for the child's attorney.

G-3. Enhancing Lawyer Relationships with Other Court Connected Personnel. Courts that operate or utilize Court Appointed Special Advocate (CASA) and other nonlawyer guardians ad litem, and courts that administer nonjudicial foster care review bodies, should assure that these programs and the individuals performing those roles are trained to understand the role of the child's attorney. There needs to be effective coordination of their efforts with the activities of the child's attorney, and they need to involve the child's attorney in their work. The court should require that reports from agencies be prepared and presented to the parties in a timely fashion.

Commentary

Many courts now regularly involve nonlawyer advocates for children in various capacities. Some courts also operate programs that, outside of the courtroom, review the status of children in foster care or other out-of-home placements. It is critical that these activities are appropriately linked to the work of the child's attorney, and that the court through training, policies, and protocols helps assure that those performing the nonlegal tasks (1) understand the importance and elements of the role of the child's attorney, and (2) work cooperatively with such lawyers. The court should keep abreast of all the different representatives involved with the child, the attorney, social worker for government or private agency, CASA volunteer, guardian ad litem, school mediator, counselors, etc.

H. THE COURT'S ROLE IN APPOINTING THE CHILD'S ATTORNEY

H-1. Timing of Appointments. The child's attorney should be appointed immediately after the earliest of:

- (1) The involuntary removal of the child for placement due to allegations of neglect, abuse or abandonment;
- (2) The filing of a petition alleging child abuse and neglect, for review of foster care placement, or for termination of parental rights; or
- (3) Allegations of child maltreatment, based upon sufficient cause, are made by a party in the context of proceedings that were not originally initiated by a petition alleging child maltreatment.

Commentary

These ABUSE AND NEGLECT STANDARDS take the position that courts must assure the appointment of a lawyer for a child as soon as practical (ideally, on the day the court first has jurisdiction over the case, and hopefully, no later than the next business day). The three situations are described separately because:

(1) A court may authorize, or otherwise learn of, a child's removal from home prior to the time a formal petition is instituted. Lawyer representation of (and, ideally, contact with) the child prior to the initial court hearing following removal (which in some cases may be several days) is important to protect the child's interests;

(2) Once a petition has been filed by a government agency (or, where authorized, by a hospital or other agency with child protection responsibilities), for any reason related to a child's need for protection, the child should have prompt access to a lawyer; and

(3) There are cases (such as custody, visitation, and guardianship disputes and family-related abductions of children) where allegations, with sufficient cause, of serious physical abuse, sexual molestation, or severe neglect of a child are presented to the court not by a government agency (i.e., child protective services) but by a parent, guardian, or other relative. The need of a child for competent, independent representation by a lawyer is just as great in situation (3) as with cases in areas (1) and (2).

H-2. Entry of Compensation Orders. At the time the court appoints a child's attorney, it should enter a written order addressing compensation and expense costs for that lawyer, unless these are otherwise formally provided for by agreement or contract with the court, or through another government agency.

Commentary

Compensation and expense reimbursement of individual lawyers should be addressed in a specific written court order is based on a need for all lawyers representing maltreated children to have a uniform understanding of how they will be paid. Commentary to Section 2.1(b) of the JUVENILE JUSTICE STANDARDS observes that it is common for court-appointed lawyers to be confused about the availability of reimbursement of expenses for case-related work.

H-3. Immediate Provision of Access. Unless otherwise provided for, the court should upon appointment of a child's attorney, enter an order authorizing that lawyer access between the child and the lawyer and to all privileged information regarding the child, without the necessity of a further release. The authorization should include, but not be limited to: social services, psychiatric, psychological treatment, drug and alcohol treatment, medical, evaluation, law enforcement, and school records.

Commentary

Because many service providers do not understand or recognize the nature of the role of the lawyer for the child or that person's importance in the court proceeding, these Standards call for the routine use of a written court order that clarifies the lawyers right to contact with their child client and perusal of child-related records. Parents, other caretakers, or government social service agencies should not unreasonably interfere with a lawyer's ability to have face-to-face contact with the child client nor to obtain relevant information about the child's social services, education, mental health, etc. Such interference disrupts the lawyer's ability to control the representation and undermines his or her independence as the child's legal representative.

H-4. Lawyer Eligibility for and Method of Appointment. Where the court makes individual appointment of counsel, unless impractical, before making the appointment, the court should determine that the lawyer has been trained in representation of children and skilled in litigation (or is working under the supervision of an lawyer who is skilled in litigation). Whenever possible, the trial judge should ensure that the child's attorney has had sufficient training in child advocacy and is familiar with these Standards. The trial judge should also ensure that (unless there is specific reason to appoint a specific lawyer because of their special qualifications related to the case, or where a lawyer's current caseload would prevent them from adequately handling the case) individual lawyers are appointed from the ranks of eligible members of the bar under a fair, systematic, and sequential appointment plan.

Commentary

The JUVENILE JUSTICE STANDARDS 2.2(c) provides that where counsel is assigned by the court, this lawyer should be drawn from "an adequate pool of competent attorneys." In general, such competency can only be gained through relevant continuing legal education and practice-related experience. Those Standards also promote the use of a rational court appointment process drawing from the ranks of qualified lawyers. The Abuse and Neglect Standards reject the concept of ad hoc appointments of counsel that are made without regard to prior training or practice.

H-5. Permitting Child to Retain a Lawyer. The court should permit the child to be represented by a retained private lawyer if it determines that this lawyer is the child's independent choice, and such counsel should be substituted for the appointed lawyer. A person with a legitimate interest in the child's welfare may retain private counsel for the child and/or pay for such representation, and that person should be permitted to serve as the child's attorney, subject to approval of the court. Such approval should not be given if the child opposes the lawyer's representation or if the court determines that there will be a conflict of interest. The court should make it clear that the person paying for the retained lawyer does not have the right to direct the representation of the child or to receive privileged information about the case from the lawyer.

Commentary

Although such representation is rare, there are situations where a child, or someone acting on a child's behalf, seeks out legal representation and wishes that this lawyer, rather than one appointed by the court under the normal appointment process, be recognized as the sole legal representative of the child. Sometimes, judges have refused to accept the formal appearances filed by such retained lawyers. These Standards propose to permit, under carefully scrutinized conditions, the substitution of a court-appointed lawyer with the retained counsel for a child.

I. THE COURT'S ROLE IN LAWYER TRAINING

I-1. Judicial Involvement in Lawyer Training. Trial judges who are regularly involved in child-related matters should participate in training for the child's attorney conducted by the courts, the bar, or any other group.

Commentary

JUVENILE JUSTICE STANDARDS 2.1 indicates that it is the responsibility of the courts (among others) to ensure that competent counsel are available to represent children before the courts. That Standard further suggests that lawyers should "be encouraged" to qualify themselves for participation in child-related cases "through formal training." The Abuse and Neglect Standards go further by suggesting that judges should personally take part in educational programs, whether or not the court conducts them. The National Council of Juvenile and Family Court Judges has suggested that courts can play an important role in training lawyers in child abuse and neglect cases, and that judges and judicial officers can volunteer to provide training and publications for continuing legal education seminars. See, RESOURCE GUIDELINES, at 22.

I-2. Content of Lawyer Training. The appropriate state administrative office of the trial, family, or juvenile courts should provide educational programs, live or on tape, on the role of a child's attorney. At a minimum, the requisite training should include:

- (1) Information about relevant federal and state laws and agency regulations;
- (2) Information about relevant court decisions and court rules;
- (3) Overview of the court process and key personnel in child-related litigation;
- (4) Description of applicable guidelines and standards for representation;
- (5) Focus on child development, needs, and abilities;
- (6) Information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in his or her home;
- (7) Information concerning family dynamics and dysfunction including substance abuse, and the use of kinship care;
- (8) Information on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services; the structure of agencies providing such services as well as provisions and constraints related to agency payment for services; and
- (9) Provision of written material (e.g., representation manuals, checklists, sample forms), including

listings of useful material available from other sources.

Commentary

The ABUSE AND NEGLECT STANDARDS take the position that it is not enough that judges mandate the training of lawyers, or that judges participate in such training. Rather, they call upon the courts to play a key role in training by actually sponsoring (e.g., funding) training opportunities. The pivotal nature of the judiciary's role in educating lawyers means that courts may, on appropriate occasions, stop the hearing of cases on days when training is held so that both lawyers and judges may freely attend without docket conflicts. The required elements of training are based on a review of well-regarded lawyer training offered throughout the country, RESOURCE GUIDELINES, and many existing manuals that help guide lawyers in representing children.

I-3. Continuing Training for Lawyers. The court system should also assure that there are periodic opportunities for lawyers who have taken the "basic" training to receive continuing and "new developments" training.

Commentary

Many courts and judicial organizations recognize that rapid changes occur because of new federal and state legislation, appellate court decisions, systemic reforms, and responses to professional literature. Continuing education opportunities are critical to maintain a high level of performance. These Standards call for courts to afford these "advanced" or "periodic" training to lawyers who represent children in abuse and neglect related cases.

I-4. Provision of Mentorship Opportunities. Courts should provide individual court-appointed lawyers who are new to child representation the opportunity to practice under the guidance of a senior lawyer mentor.

Commentary

In addition to training, particularly for lawyers who work as sole practitioners or in firms that do not specialize in child representation, courts can provide a useful mechanism to help educate new lawyers for children by pairing them with more experienced advocates. One specific thing courts can do is to provide lawyers new to representing children with the opportunity to be assisted by more experienced lawyers in their jurisdiction. Some courts actually require lawyers to "second chair" cases before taking an appointment to a child abuse or neglect case. See, RESOURCE GUIDELINES, at 22.

J. THE COURT'S ROLE IN LAWYER COMPENSATION

J-1. Assuring Adequate Compensation. A child's attorney should receive adequate and timely compensation throughout the term of appointment that reflects the complexity of the case and includes both in court and out-of-court preparation, participation in case reviews and post-dispositional hearings, and involvement in appeals. To the extent that the court arranges for child representation through contract or agreement with a program in which lawyers represent children, the court should assure that the rate of payment for these legal services is commensurate with the fees paid to equivalently experienced individual court-appointed lawyers who have similar qualifications and responsibilities.

Commentary

JUVENILE JUSTICE STANDARDS 2.1(b) recognize that lawyers for children should be entitled to reasonable compensation for both time and services performed "according to prevailing professional standards," which takes into account the "skill required to perform...properly," and which considers the need for the lawyer to perform both counseling and resource identification/evaluation activities. The RESOURCE GUIDELINES, at 22, state that it is "necessary to provide reasonable compensation" for improved lawyer representation of children and that where necessary judges should "urge state legislatures and local governing bodies to provide sufficient funding" for quality legal representation.

Because some courts currently compensate lawyers only for time spent in court at the adjudicative or initial disposition stage of cases, these Standards clarify that compensation is to be provided for out-of-court preparation time, as well as for the lawyer's involvement in case reviews and appeals. "Out-of-court preparation" may include, for example, a lawyer's participation in social services or school case conferences relating to the client.

These Standards also call for the level of compensation where lawyers are working under contract with the court to provide child representation to be comparable with what experienced individual counsel would receive from the court. Although courts may, and are encouraged to, seek high quality child representation through enlistment of special children's law offices, law firms, and other programs, the motive should not be a significantly different (i.e., lower) level of financial compensation for the lawyers who provide the representation.

J-2. Supporting Associated Costs. The child's attorney should have access to (or be provided with reimbursement for experts, investigative services, paralegals, research costs, and other services, such as copying medical records, long distance phone calls, service of process, and transcripts of hearings as requested.

Commentary

The ABUSE AND NEGLECT STANDARDS expand upon JUVENILE JUSTICE STANDARDS 2.1(c) which recognizes that a child's attorney should have access to "investigatory, expert and other nonlegal services" as a fundamental part of providing competent representation.

J-3. Reviewing Payment Requests. The trial judge should review requests for compensation for reasonableness based upon the complexity of the case and the hours expended.

Commentary

These Standards implicitly reject the practice of judges arbitrarily "cutting down" the size of lawyer requests for compensation and would limit a judge's ability to reduce the amount of a per/case payment request from a child's attorney unless the request is deemed unreasonable based upon two factors: case complexity and time spent.

J-4. Keeping Compensation Levels Uniform. Each state should set a uniform level of compensation for lawyers appointed by the courts to represent children. Any per/hour level of compensation should be the same for all representation of children in all types of child abuse and neglect-related proceedings.

Commentary

These Standards implicitly reject the concept (and practice) of different courts within a state paying different levels of compensation for lawyers representing children. They call for a uniform approach, established on a statewide basis, towards the setting of payment guidelines.

K. THE COURT'S ROLE IN RECORD ACCESS BY LAWYERS

K-1. Authorizing Lawyer Access. The court should enter an order in child abuse and neglect cases authorizing the child's attorney access to all privileged information regarding the child, without the necessity for a further release.

Commentary

This Standard requires uniform judicial assistance to remove a common barrier to effective representation, i.e., administrative denial of access to significant records concerning the child. The language supports the universal issuance of broadly-worded court orders that grant a child's attorney full access to information (from individuals) or records (from agencies) concerning the child.

K-2. Providing Broad Scope Orders. The authorization order granting the child's attorney access to records should include social services, psychiatric, psychological treatment, drug and alcohol treatment, medical, evaluation, law enforcement, school, and other records relevant to the case.

Commentary

This Standard further elaborates upon the universal application that the court's access order should be given, by listing examples of the most common agency records that should be covered by the court order.

L. THE COURT'S ROLE IN ASSURING REASONABLE LAWYER CASELOADS

L-1. Controlling Lawyer Caseloads. Trial court judges should control the size of court-appointed caseloads of individual lawyers representing children, the caseloads of government agency-funded lawyers for children, or court contracts/agreements with lawyers for such representation. Courts should take steps to assure that lawyers appointed to represent children, or lawyers otherwise providing such representation, do not have such a large open number of cases that they are unable to abide by Part I of these Standards.

Commentary

THE ABUSE AND NEGLECT STANDARDS go further than JUVENILE JUSTICE STANDARD 2.2(b) which recognize the "responsibility of every defender office to ensure that its personnel can offer prompt, full, and effective counseling and representation to each (child) client" and that it "should not accept more assignments than its staff can adequately discharge" by specifically calling upon the courts to help keep lawyer caseloads from getting out of control. The Commentary to 2.2.(b) indicates that: Caseloads must not be exceeded where to do so would "compel lawyers to forego the extensive fact investigation required in both contested and uncontested cases, or to be less than scrupulously careful in preparation for trial, or to forego legal research necessary to develop a theory of representation." We would add: "...or to monitor the implementation of court orders and agency case plans in order to help assure permanency for the child."

L-2. Taking Supportive Caseload Actions. If judges or court administrators become aware that individual lawyers are close to, or exceeding, the levels suggested in these Standards, they should take one or more of the following steps:

- (1) Expand, with the aid of the bar and children's advocacy groups, the size of the list from which appointments are made;
- (2) Alert relevant government or private agency administrators that their lawyers have an excessive caseload problem;
- (3) Recruit law firms or special child advocacy law programs to engage in child representation;
- (4) Review any court contracts/agreements for child representation and amend them accordingly, so that additional lawyers can be compensated for case representation time; and
- (5) Alert state judicial, executive, and legislative branch leaders that excessive caseloads jeopardize the ability of lawyers to competently represent children pursuant to state-approved guidelines, and seek funds for increasing the number of lawyers available to represent children.

Commentary

This Standard provides courts with a range of possible actions when individual lawyer caseloads appear to be inappropriately high.

APPENDIX

Previous American Bar Association Policies Related to Legal Representation of Abused and Neglected Children

GUARDIANS AD LITEM

FEBRUARY 1992

BE IT RESOLVED, that the American Bar Association urges:

(1) Every state and territory to meet the full intent of the Federal Child Abuse Prevention and Treatment Act, whereby every child in the United States who is the subject of a civil child protection related judicial proceedings will be represented at all stages of these proceedings by a fully-trained, monitored, and evaluated guardian ad litem in addition to appointed legal counsel.

(2) That state, territory and local bar associations and law schools become involved in setting standards of practice for such guardians ad litem, clarify the ethical responsibilities of these individuals and establish minimum ethical performance requirements for their work, and provide comprehensive multidisciplinary training for all who serve as such guardians ad litem.

(3) That in every state and territory, where judges are given discretion to appoint a guardian ad litem in private child custody and visitation related proceedings, the bench and bar jointly develop guidelines to aid judges in determining when such an appointment is necessary to protect the best interests of the child.

COURT-APPOINTED SPECIAL ADVOCATES

AUGUST 1989

BE IT RESOLVED, that the American Bar Association endorses the concept of utilizing carefully selected, well trained lay volunteers, Court Appointed Special Advocates, in addition to providing attorney representation, in dependency proceedings to assist the court in determining what is in the best interests of abused and neglected children.

BE IT FURTHER RESOLVED, that the American Bar Association encourages its members to support the development of CASA programs in their communities.

COUNSEL FOR CHILDREN ENHANCEMENT

FEBRUARY 1987

BE IT RESOLVED, that the American Bar Association requests State and local bar associations to determine the extent to which statutory law and court rules in their States guarantee the right to counsel for children in juvenile court proceedings; and

BE IT FURTHER RESOLVED, that State and local bar associations are urged to actively participate and support amendments to the statutory law and court rules in their State to bring them in to compliance with the Institute of Judicial Administration/American Bar Association Standards Relating to Counsel for Private Parties; and

BE IT FURTHER RESOLVED, that State and local bar associations are requested to ascertain the extent to which, irrespective of the language in their State statutory laws and court rules, counsel is in fact provided for children in juvenile court proceedings and the extent to which the quality of representation is consistent with the standards and policies of the American Bar Association; and

BE IT FURTHER RESOLVED, that State and local bar associations are urged to actively support programs of training and education to ensure that lawyers practicing in juvenile court are aware of the American Bar Association's standards relating to representation of children and provide advocacy which meets those standards.

BAR ASSOCIATION AND ATTORNEY ACTION
FEBRUARY 1984

BE IT RESOLVED, that the American Bar Association urges the members of the legal profession, as well as state and local bar associations, to respond to the needs of children by directing attention to issues affecting children including, but not limited to: ... (7) establishment of guardian ad litem programs.

BAR AND ATTORNEY INVOLVEMENT IN CHILD PROTECTION CASES
AUGUST 1981

BE IT RESOLVED, that the American Bar Association encourages individual attorneys and state and local bar organizations to work more actively to improve the handling of cases involving abused and neglected children as well as children in foster care. Specifically, attorneys should form appropriate committees and groups within the bar to ... work to assure quality legal representation for children....

JUVENILE JUSTICE STANDARDS
FEBRUARY 1979

BE IT RESOLVED, that the American Bar Association adopt (the volume of the) Standards for Juvenile Justice (entitled) Counsel for Private Parties...

**AMERICAN BAR ASSOCIATION
SECTION OF LITIGATION**

**SECTION OF FAMILY LAW
CRIMINAL JUSTICE SECTION
COMMISSION ON HOMELESSNESS AND POVERTY
COMMISSION ON YOUTH AT RISK**

**GENERAL PRACTICE, SOLO AND SMALL FIRM DIVISION
STEERING COMMITTEE ON LEGAL AID AND INDIGENT DEFENSE**

JUDICIAL DIVISION

**PHILADELPHIA BAR ASSOCIATION
LOS ANGELES COUNTY BAR ASSOCIATION
LOUISIANA STATE BAR ASSOCIATION
YOUNG LAWYERS DIVISION**

**INDIVIDUAL RIGHTS AND RESPONSIBILITIES
GOVERNMENT AND PUBLIC SECTOR LAWYERS**

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1
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8
9 **RESOLVED**, That the American Bar Association adopts the *Model Act Governing the*
10 *Representation of Children in Abuse, Neglect, and Dependency Proceedings*, dated August,
11 2011.

1 **ABA Model Act Governing the Representation of Children in**
2 **Abuse, Neglect, and Dependency Proceedings**¹

3
4 **SECTION 1. DEFINITIONS. In this [act]:**

5 **(a) “Abuse and neglect proceeding” means a court proceeding under [cite state**
6 **statute] for protection of a child from abuse or neglect or a court proceeding under [cite**
7 **state statute] in which termination of parental rights is at issue.**² **These proceedings**
8 **include:**

9 **(1) abuse;**

10 **(2) neglect;**

11 **(3) dependency;**

12 **(4) child in voluntary placement in state care;**

13 **(5) termination of parental rights;**

14 **(6) permanency hearings; and**

15 **(7) post termination of parental rights through adoption or other**
16 **permanency proceeding.**

17 **(b) A child is:**

18 **(1) an individual under the age of 18; or**

19 **(2) an individual under the age of 22 who remains under the jurisdiction of**
20 **the juvenile court.**

21 **(c) “Child’s lawyer” (or “lawyer for children”) means a lawyer who provides legal**
22 **services for a child and who owes the same duties, including undivided loyalty,**
23 **confidentiality and competent representation, to the child as is due an adult client, subject**
24 **to Section 7 of this Act.**³

25 **(d) “Best interest advocate” means an individual, not functioning or intended to**
26 **function as the child’s lawyer, appointed by the court to assist the court in determining the**
27 **best interests of the child.**

¹ This Model Act was drafted under the auspices of the ABA Section of Litigation Children’s Rights Litigation Committee with the assistance of the Bar-Youth Empowerment Program of the ABA Center on Children and the Law and First Star. The Act incorporates some language from the provisions of the NCCUSL Representation of Children in Abuse, Neglect, and Custody Proceedings Act.

² NCCUSL, 2006 *Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings*, Sec. 2(2) [Hereinafter NCCUSL Act]

³ *Id.*, Sec. 2(6); American Bar Association, *Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases*, Part I, Sec A-1, 29 Fam. L. Q. 375 (1995). The standards were formally adopted by the ABA House of Delegates in 1996. [Hereinafter ABA Standards].

101A

28 (e) “Developmental level” is a measure of the ability to communicate and
29 understand others, taking into account such factors as age, mental capacity, level of
30 education, cultural background, and degree of language acquisition.⁴
31

32 *Legislative Note: States should implement a mechanism to bring children into court*
33 *when they have been voluntarily placed into state care, if such procedures do not already exist.*
34 *Court action should be triggered after a specific number of days in voluntary care (not fewer*
35 *than 30 days, but not more than 90 days).*
36

37 *Commentary:*
38

39 Under the Act, a “child’s lawyer” is a client-directed lawyer in a traditional attorney-client
40 relationship with the child. A “best interests advocate” does not function as the child’s lawyer
41 and is not bound by the child’s expressed wishes in determining what to advocate, although the
42 best interests advocate should consider those wishes.
43

44 The best interest advocate may be a lawyer or a lay person, such as a court-appointed special
45 advocate, or CASA. The best interests advocate assists the court in determining the best
46 interests of a child and will therefore perform many of the functions formerly attributable to
47 guardians *ad litem*, but best interests advocates are not to function as the child’s lawyer. A
48 lawyer appointed as a best interest advocate shall function as otherwise set forth in state law.
49

50 SECTION 2. APPLICABILITY AND RELATIONSHIP TO OTHER LAW.

51 (a) This [act] applies to an abuse and neglect proceeding pending or commenced on
52 or after [the effective date of this act].
53

54 (b) The child in these proceedings is a party.
55

56 SECTION 3. APPOINTMENT IN ABUSE OR NEGLECT PROCEEDING.

57 (a) The court shall appoint a child’s lawyer for each child who is the subject of a
58 petition in an abuse and neglect proceeding. The appointment of a child’s lawyer must be
59 made as soon as practicable to ensure effective representation of the child and, in any
60 event, before the first court hearing.

61 (b) In addition to the appointment of a child’s lawyer, the court may appoint a best
62 interest advocate to assist the court in determining the child’s best interests.

63 (c) The court may appoint one child’s lawyer to represent siblings if there is no
64 conflict of interest as defined under the applicable rules of professional conduct.⁵ The

⁴ ABA Standards, Part I, Sec A-3.

⁵ NCCUSL Act, Sec. 4(c); *see also* ABA Standards, Part I, Sec B-1

65 court may appoint additional counsel to represent individual siblings at a child's lawyer's
66 request due to a conflict of interest between or among the siblings.

67 (d) The applicable rules of professional conduct and any law governing the
68 obligations of lawyers to their clients shall apply to such appointed lawyers for children.

69 (e) The appointed child's lawyer shall represent the child at all stages of the
70 proceedings, unless otherwise discharged by order of court.⁶

71 (f) A child's right to counsel may not be waived at any court proceeding.

72

73 *Commentary:*

74

75 This act recognizes the right of every child to have quality legal representation and a voice in
76 any abuse, neglect, dependency, or termination of parental rights proceeding, regardless of
77 developmental level. Nothing in this Act precludes a child from retaining a lawyer. States
78 should provide a lawyer to a child who has been placed into state custody through a voluntary
79 placement arrangement. The fact that the child is in the state's custody through the parent's
80 voluntary decision should not diminish the child's entitlement to a lawyer.

81

82 A best interest advocate does not replace the appointment of a lawyer for the child. A best
83 interest advocate serves to provide guidance to the court with respect to the child's best interest
84 and does not establish a lawyer-client relationship with the child. Nothing in this Act restricts a
85 court's ability to appoint a best interest advocate in any proceeding. Because this Act deals
86 specifically with lawyers for children, it will not further address the role of the best interest
87 advocate.

88

89 The child is entitled to conflict-free representation and the applicable rules of professional
90 conduct must be applied in the same manner as they would be applied for lawyers for adults. A
91 lawyer representing siblings should maintain the same lawyer-client relationship with respect to
92 each child.

93

94 SECTION 4. QUALIFICATIONS OF THE CHILD'S LAWYER.

95 (a) The court shall appoint as the child's lawyer an individual who is qualified
96 through training and experience, according to standards established by [insert reference to
97 source of standards].

98 (b) Lawyers for children shall receive initial training and annual continuing legal
99 education that is specific to child welfare law. Lawyers for children shall be familiar with
100 all relevant federal, state, and local applicable laws.

101 (c) Lawyers for children shall not be appointed to new cases when their present

⁶ ABA Standards, Sec D-13; F-1-5; *see generally* La. Sup. Ct. R. XXXIII, Standard 1; *see generally* Ariz. R. Proc. Juv. Ct. R. 39(b).

101A

caseload exceeds more than a reasonable number given the jurisdiction, the percent of the lawyer's practice spent on abuse and neglect cases, the complexity of the case, and other relevant factors.

Legislative Note: States that adopt training standards and standards of practice for children's lawyers should include the bracketed portion of this section and insert a reference to the state laws, court rules, or administrative guidelines containing those standards.⁷

Jurisdictions are urged to specify a case limit at the time of passage of this Act.

Commentary:

States should establish minimum training requirements for lawyers who represent children. Such training should focus on applicable law, skills needed to develop a meaningful lawyer-client relationship with child-clients, techniques to assess capacity in children, as well as the many interdisciplinary issues that arise in child welfare cases.

The lawyer needs to spend enough time on each abuse and neglect case to establish a lawyer-client relationship and zealously advocate for the client. A lawyer's caseload must allow realistic performance of functions assigned to the lawyer under the [Act]. The amount of time and the number of children a lawyer can represent effectively will differ based on a number of factors, including type of case, the demands of the jurisdiction, whether the lawyer is affiliated with a children's law office, whether the lawyer is assisted by investigators or other child welfare professionals, and the percent of the lawyer's practice spent on abuse and neglect cases. States are encouraged to conduct caseload analyses to determine guidelines for lawyers representing children in abuse and neglect cases.

SECTION 5. ORDER OF APPOINTMENT.

(a) Subject to subsection (b), an order of appointment of a child's lawyer shall be in writing and on the record, identify the lawyer who will act in that capacity, and clearly set forth the terms of the appointment, including the reasons for the appointment, rights of access as provided under Section 8, and applicable terms of compensation as provided under Section 12.

(b) In an order of appointment issued under subsection (a), the court may identify a private organization, law school clinical program or governmental program through which a child's lawyer will be provided. The organization or program shall designate the lawyer who will act in that capacity and notify the parties and the court of the name of the assigned lawyer as soon as practicable.⁸ Additionally, the organization or program shall notify the parties and the court of any changes in the individual assignment.

⁷ ABA Standards, Part II, Sec L-1-2.

⁸ NCCUSL Act, Sec. 9

141 **SECTION 6. DURATION OF APPOINTMENT.**

142 **Unless otherwise provided by a court order, an appointment of a child’s lawyer in**
 143 **an abuse and neglect proceeding continues in effect until the lawyer is discharged by court**
 144 **order or the case is dismissed.⁹ The appointment includes all stages thereof, from removal**
 145 **from the home or initial appointment through all available appellate proceedings. With**
 146 **the permission of the court, the lawyer may arrange for supplemental or separate counsel**
 147 **to handle proceedings at an appellate stage.¹⁰**

148 *Commentary:*

149 As long as the child remains in state custody, even if the state custody is long-term or permanent,
 150 the child should retain the right to counsel so that the child’s lawyer can deal with the issues that
 151 may arise while the child is in custody but the case is not before the court.

152

153 **SECTION 7. DUTIES OF CHILD’S LAWYER AND SCOPE OF**
 154 **REPRESENTATION.**

155 **(a) A child’s lawyer shall participate in any proceeding concerning the child with**
 156 **the same rights and obligations as any other lawyer for a party to the proceeding.**

157 **(b) The duties of a child’s lawyer include, but are not limited to:**

158 **(1) taking all steps reasonably necessary to represent the client in the**
 159 **proceeding, including but not limited to: interviewing and counseling the client, preparing**
 160 **a case theory and strategy, preparing for and participating in negotiations and hearings,**
 161 **drafting and submitting motions, memoranda and orders, and such other steps as**
 162 **established by the applicable standards of practice for lawyers acting on behalf of children**
 163 **in this jurisdiction;**

164 **(2) reviewing and accepting or declining, after consultation with the client,**
 165 **any proposed stipulation for an order affecting the child and explaining to the court the**
 166 **basis for any opposition;**

167 **(3) taking action the lawyer considers appropriate to expedite the proceeding**
 168 **and the resolution of contested issues;**

169 **(4) where appropriate, after consultation with the client, discussing the**
 170 **possibility of settlement or the use of alternative forms of dispute resolution and**
 171 **participating in such processes to the extent permitted under the law of this state;¹¹**

172 **(5) meeting with the child prior to each hearing and for at least one in-person**
 173 **meeting every quarter;**

⁹ *Id.*, Sec. 10(a)

¹⁰ ABA Standards, Part I, Sec D-13; F-1-5; *see generally* La. Sup. Ct. R. XXXIII, Standard 1.; *see generally* Ariz. R. Proc. Juv. Ct. R. 39(b).

¹¹ NCCUSL Act, Sec. 11 Alternative A..

101A

174 (6) where appropriate and consistent with both confidentiality and the child's
175 legal interests, consulting with the best interests advocate;

176 (7) prior to every hearing, investigating and taking necessary legal action
177 regarding the child's medical, mental health, social, education, and overall well-being;

178 (8) visiting the home, residence, or any prospective residence of the child,
179 including each time the placement is changed;

180 (9) seeking court orders or taking any other necessary steps in accordance
181 with the child's direction to ensure that the child's health, mental health, educational,
182 developmental, cultural and placement needs are met; and

183 (10) representing the child in all proceedings affecting the issues before the
184 court, including hearings on appeal or referring the child's case to the appropriate
185 appellate counsel as provided for by/mandated by [insert local rule/law etc.].

186
187 *Commentary:*

188
189 The national standards mentioned in (b)(1) include the *ABA Standards of Practice for Lawyers*
190 *who Represent Children in Abuse and Neglect Cases*.

191
192 In order to comply with the duties outlined in this section, lawyers must have caseloads that
193 allow realistic performance of these functions.

194
195 The child's lawyer may request authority from the court to pursue issues on behalf of the child,
196 administratively or judicially, even if those issues do not specifically arise from the court
197 appointment.¹² Such ancillary matters include special education, school discipline hearings,
198 mental health treatment, delinquency or criminal issues, status offender matters, guardianship,
199 adoption, paternity, probate, immigration matters, medical care coverage, SSI eligibility, youth
200 transitioning out of care issues, postsecondary education opportunity qualification, and tort
201 actions for injury, as appropriate.¹³ The lawyer should make every effort to ensure that the child
202 is represented by legal counsel in all ancillary legal proceedings, either personally, when the
203 lawyer is competent to do so, or through referral or collaboration. Having one lawyer represent
204 the child across multiple proceedings is valuable because the lawyer is better able to understand
205 and fully appreciate the various issues as they arise and how those issues may affect other
206 proceedings.

207
208 (c) When the child is capable of directing the representation by expressing his or her
209 objectives, the child's lawyer shall maintain a normal client-lawyer relationship with the
210 child in accordance with the rules of professional conduct. In a developmentally
211 appropriate manner, the lawyer shall elicit the child's wishes and advise the child as to

¹² ABA Standards, Part I, Section D-12.

¹³ *Id.*

212 **options.**

213

214 *Commentary:*

215

216 The lawyer-client relationship for the child's lawyer is fundamentally indistinguishable from the
 217 lawyer-client relationship in any other situation and includes duties of client direction,¹⁴
 218 confidentiality,¹⁵ diligence,¹⁶ competence,¹⁷ loyalty,¹⁸ communication,¹⁹ and the duty to provide
 219 independent advice.²⁰ Client direction requires the lawyer to abide by the client's decision about
 220 the objectives of the representation. In order for the child to have an independent voice in abuse
 221 and neglect proceedings, the lawyer shall advocate for the child's counseled and expressed
 222 wishes.²¹ Moreover, providing the child with an independent and client-directed lawyer ensures
 223 that the child's legal rights and interests are adequately protected.

224

225 The child's lawyer needs to explain his or her role to the client and, if applicable, explain in what
 226 strictly limited circumstances the lawyer cannot advocate for the client's expressed wishes and in
 227 what circumstances the lawyer may be required to reveal confidential information. This
 228 explanation should occur during the first meeting so the client understands the terms of the
 229 relationship.

230

231 In addition to explaining the role of the child's lawyer, the lawyer should explain the legal
 232 process to the child in a developmentally appropriate manner as required by Rule 1.4 of the ABA
 233 Model Rules of Professional Conduct or its equivalent.²² This explanation can and will change
 234 based on age, cognitive ability, and emotional maturity of the child. The lawyer needs to take the
 235 time to explain thoroughly and in a way that allows and encourages the child to ask questions
 236 and that ensures the child's understanding. The lawyer should also facilitate the child's
 237 participation in the proceeding (See Section 9).

238

239 In order to determine the objectives of the representation of the child, the child's lawyer should
 240 develop a relationship with the client. The lawyer should achieve a thorough knowledge of the
 241 child's circumstances and needs. The lawyer should visit the child in the child's home, school,
 242 or other appropriate place where the child is comfortable. The lawyer should observe the child's
 243 interactions with parents, foster parents, and other caregivers. The lawyer should maintain
 244 regular and ongoing contact with the child throughout the case.

245

246 The child's lawyer helps to make the child's wishes and voice heard but is not merely the child's

¹⁴ ABA Model Rules of Professional Responsibility (hereinafter M.R.) 1.2

¹⁵ M.R. 1.6

¹⁶ M.R. 1.3

¹⁷ M.R. 1.1

¹⁸ M.R. 1.7

¹⁹ M.R. 1.4

²⁰ M.R. 2.1

²¹ ABA Standards, commentary A-1

²² M.R. 1.4

101A

247 mouthpiece. As with any lawyer, a child’s lawyer is both an advocate and a counselor for the
248 client. Without unduly influencing the child, the lawyer should advise the child by providing
249 options and information to assist the child in making decisions. The lawyer should explain the
250 practical effects of taking various positions, the likelihood that a court will accept particular
251 arguments, and the impact of such decisions on the child, other family members, and future legal
252 proceedings.²³ The lawyer should investigate the relevant facts, interview persons with
253 significant knowledge of the child’s history, review relevant records, and work with others in the
254 case.

255

256 **(d) The child’s lawyer shall determine whether the child has diminished capacity**
257 **pursuant to the Model Rules of Professional Conduct. {STATES MAY CONSIDER**
258 **INSERTING THE FOLLOWING TWO SENTENCES:} [Under this subsection a child**
259 **shall be presumed to be capable of directing representation at the age of _____. The**
260 **presumption of diminished capacity is rebutted if, in the sole discretion of the lawyer, the**
261 **child is deemed capable of directing representation.] In making the determination, the**
262 **lawyer should consult the child and may consult other individuals or entities that can**
263 **provide the child’s lawyer with the information and assistance necessary to determine the**
264 **child’s ability to direct the representation.**

265 **When a child client has diminished capacity, the child’s lawyer shall make a good**
266 **faith effort to determine the child’s needs and wishes. The lawyer shall, as far as**
267 **reasonably possible, maintain a normal client-lawyer relationship with the client and fulfill**
268 **the duties as outlined in Section 7(b) of this Act. During a temporary period or on a**
269 **particular issue where a normal client-lawyer relationship is not reasonably possible to**
270 **maintain, the child’s lawyer shall make a substituted judgment determination. A**
271 **substituted judgment determination includes determining what the child would decide if he**
272 **or she were capable of making an adequately considered decision, and representing the**
273 **child in accordance with that determination. The lawyer should take direction from the**
274 **child as the child develops the capacity to direct the lawyer. The lawyer shall advise the**
275 **court of the determination of capacity and any subsequent change in that determination.**
276

277

278 *Commentary:*

279

280 A determination of incapacity may be incremental and issue-specific, thus enabling the child’s
281 lawyer to continue to function as a client-directed lawyer as to major questions in the
282 proceeding. Determination of diminished capacity requires ongoing re-assessment. A child may
283 be able to direct the lawyer with respect to a particular issue at one time but not another.
284 Similarly, a child may be able to determine some positions in the case, but not others. For
285 guidance in assessing diminished capacity, see the commentary to Section (e). The lawyer shall
286 advise the court of the determination of capacity and any subsequent change in that

²³ M.R. 2.1

287 determination.

288

289 In making a substituted judgment determination, the child's lawyer may wish to seek guidance
290 from appropriate professionals and others with knowledge of the child, including the advice of
291 an expert. A substituted judgment determination is not the same as determining the child's best
292 interests; determination of a child's best interests remains solely the province of the court.

293 Rather, it involves determining what the child would decide if he or she were able to make an
294 adequately considered decision.²⁴ A lawyer should determine the child's position based on
295 objective facts and information, not personal beliefs. To assess the needs and interests of *this*
296 child, the lawyer should observe the child in his or her environment, and consult with experts.²⁵

297

298 In formulating a substituted judgment position, the child's lawyer's advocacy should be child-
299 centered, research-informed, permanency-driven, and holistic.²⁶ The child's needs and interests,
300 not the adults' or professionals' interests, must be the center of all advocacy. For example,
301 lawyers representing very young children must truly *see* the world through the child's eyes and
302 formulate their approach from that perspective, gathering information and gaining insight into
303 the child's experiences to inform advocacy related to placement, services, treatment and
304 permanency.²⁷ The child's lawyer should be proactive and seek out opportunities to observe and
305 interact with the very young child client. It is also essential that lawyers for very young children
306 have a firm working knowledge of child development and special entitlements for children under
307 age five.²⁸

308

309 When determining a substituted judgment position, the lawyer shall take into consideration the
310 child's legal interests based on objective criteria as set forth in the laws applicable to the
311 proceeding, the goal of expeditious resolution of the case and the use of the least restrictive or
312 detrimental alternatives available. The child's lawyer should seek to speed the legal process,
313 while also maintaining the child's critical relationships.

314

315 The child's lawyer should not confuse inability to express a preference with unwillingness to
316 express a preference. If an otherwise competent child chooses not to express a preference on a
317 particular matter, the child's lawyer should determine if the child wishes the lawyer to take no
318 position in the proceeding, or if the child wishes the lawyer or someone else to make the decision
319 for him or her. In either case, the lawyer is bound to follow the client's direction. A child may
320 be able to direct the lawyer with respect to a particular issue at one time but not at another. A
321 child may be able to determine some positions in the case but not others.

²⁴ Massachusetts Committee For Public Counsel Services, *Performance Standards Governing The Representation Of Children And Parents in Child Welfare Cases*, Chapter Four: Performance Standards and Complaint Procedures 4-1, Section 1.6(c) (2004).

²⁵ Candice L. Maze, JD, *Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation*, ABA Center on Children and the Law, October, 2010.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

101A

322

323 (e) When the child’s lawyer reasonably believes that the client has diminished
324 capacity, is at risk of substantial physical, financial or other harm unless action is taken,
325 and cannot adequately act in the client's own interest, the lawyer may take reasonably
326 necessary protective action, including consulting with individuals or entities that have the
327 ability to take action to protect the client and, in appropriate cases, seeking the
328 appointment of a best interest advocate or investigator to make an independent
329 recommendation to the court with respect to the best interests of the child.

330 When taking protective action, the lawyer is impliedly authorized under Model Rule
331 1.6(a) to reveal information about the child, but only to the extent reasonably necessary to
332 protect the child’s interests.²⁹ Information relating to the representation of a child with
333 diminished capacity is protected by Rule 1.6 and Rule 1.14 of the ABA Model Rules of
334 Professional Conduct. [OR ENTER STATE RULE CITATION]

335
336 *Commentary:*

337
338 Consistent with Rule 1.14, ABA Model Rules of Professional Conduct (2004), the child’s lawyer
339 should determine whether the child has sufficient maturity to understand and form an attorney-
340 client relationship and whether the child is capable of making reasoned judgments and engaging
341 in meaningful communication. It is the responsibility of the child’s lawyer to determine
342 whether the child suffers from diminished capacity. This decision shall be made after sufficient
343 contact and regular communication with the client. Determination about capacity should be
344 grounded in insights from child development science and should focus on the child’s decision-
345 making process rather than the child’s choices themselves. Lawyers should be careful not to
346 conclude that the child suffers diminished capacity from a client’s insistence upon a course of
347 action that the lawyer considers unwise or at variance with lawyer’s view.³⁰

348
349 When determining the child’s capacity the lawyer should elicit the child’s expressed wishes in a
350 developmentally appropriate manner. The lawyer should not expect the child to convey
351 information in the same way as an adult client. A child’s age is not determinative of diminished
352 capacity. For example, even very young children are regarded as having opinions that are
353 entitled to weight in legal proceedings concerning their custody.³¹

354
355 Criteria for determining diminished capacity include the child’s developmental stage, cognitive
356 ability, emotional and mental development, ability to communicate, ability to understand
357 consequences, consistency of the child’s decisions, strength of wishes and the opinions of others,
358 including social workers, therapists, teachers, family members or a hired expert.³² To assist in

²⁹ M.R. 1.14(c)

³⁰ Restatement (Third) of the Law Governing Lawyers Sec. 24 c. c (2000).

³¹ M.R. 1.14 cmt. 1

³² M.R. 1.14, cmt. 1

359 the assessment, the lawyer should ask questions in developmentally appropriate language to
 360 determine whether the child understands the nature and purpose of the proceeding and the risks
 361 and benefits of a desired position.³³ A child may have the ability to make certain decisions, but
 362 not others. A child with diminished capacity often has the ability to understand, deliberate upon,
 363 and reach conclusions about matters affecting the child's own well-being such as sibling visits,
 364 kinship visits and school choice and should continue to direct counsel in those areas in which he
 365 or she does have capacity. The lawyer should continue to assess the child's capacity as it may
 366 change over time.

367
 368 When the lawyer determines that the child has diminished capacity, the child is at risk of
 369 substantial harm, the child cannot adequately act in his or her own interest, and the use of the
 370 lawyer's counseling role is unsuccessful, the lawyer may take protective action. Substantial harm
 371 includes physical, sexual and psychological harm. Protective action includes consultation with
 372 family members, or professionals who work with the child. Lawyers may also utilize a period of
 373 reconsideration to allow for an improvement or clarification of circumstances or to allow for an
 374 improvement in the child's capacity.³⁴ This rule reminds lawyers that, among other things, they
 375 should ultimately be guided by the wishes and values of the child to the extent they can be
 376 determined.³⁵

377
 378 "Information relating to the representation is protected by Model Rule 1.6. Therefore, unless
 379 authorized to do so, the lawyer may not disclose such information. When taking protective
 380 action pursuant to this section, the lawyer is impliedly authorized to make necessary disclosures,
 381 even when the client directs the lawyer to the contrary."³⁶ However the lawyer should make
 382 every effort to avoid disclosures if at all possible. Where disclosures are unavoidable, the lawyer
 383 must limit the disclosures as much as possible. Prior to any consultation, the lawyer should
 384 consider the impact on the client's position, and whether the individual is a party who might use
 385 the information to further his or her own interests. "At the very least, the lawyer should
 386 determine whether it is likely that the person or entity consulted with will act adversely to the
 387 client's interests before discussing matters related to the client."³⁷ If any disclosure by the
 388 lawyer will have a negative impact on the client's case or the lawyer-client relationship, the
 389 lawyer must consider whether representation can continue and whether the lawyer-client
 390 relationship can be re-established. "The lawyer's position in such cases is an unavoidably
 391 difficult one."³⁸

392
 393 A request made for the appointment of a best interest advocate to make an independent
 394 recommendation to the court with respect to the best interests of the child should be reserved for

³³ Anne Graffam Walker, Ph.D. *Handbook on Questioning Children: A Linguistic Perspective* 2nd Edition ABA Center on Children and the Law Copyright 1999 by ABA.

³⁴ M.R. 1.14 cmt. 5

³⁵ M.R. 1.14 cmt. 5

³⁶ M.R. 1.14, cmt. 8

³⁷ M.R. 1.14, cmt. 8

³⁸ M.R. 1.14, cmt 8

101A

395 extreme cases, i.e. where the child is at risk of substantial physical harm, cannot act in his or her
396 own interest and all protective action remedies have been exhausted. Requesting the judge to
397 appoint a best interest advocate may undermine the relationship the lawyer has established with
398 the child. It also potentially compromises confidential information the child may have revealed
399 to the lawyer. The lawyer cannot ever become the best interest advocate, in part due to
400 confidential information that the lawyer receives in the course of representation. Nothing in this
401 section restricts a court from independently appointing a best interest advocate when it deems the
402 appointment appropriate.

403

404 SECTION 8. ACCESS TO CHILD AND INFORMATION RELATING TO THE 405 CHILD.

406 (a) Subject to subsections (b) and (c), when the court appoints the child’s lawyer, it
407 shall issue an order, with notice to all parties, authorizing the child’s lawyer to have access
408 to:

409 (1) the child; and

410 (2) confidential information regarding the child, including the child's
411 educational, medical, and mental health records, social services agency files, court records
412 including court files involving allegations of abuse or neglect of the child, any delinquency
413 records involving the child, and other information relevant to the issues in the proceeding,
414 and reports that form the basis of any recommendation made to the court.

415 (b) A child’s record that is privileged or confidential under law other than this [act]
416 may be released to a child’s lawyer appointed under this [act] only in accordance with that
417 law, including any requirements in that law for notice and opportunity to object to release
418 of records. Nothing in this act shall diminish or otherwise change the attorney-client
419 privilege of the child, nor shall the child have any lesser rights than any other party in
420 regard to this or any other evidentiary privilege. Information that is privileged under the
421 lawyer-client relationship may not be disclosed except as otherwise permitted by law of this
422 state other than this [act].

423 (c) An order issued pursuant to subsection (a) shall require that a child’s lawyer
424 maintain the confidentiality of information released pursuant to Model Rule 1.6. The court
425 may impose any other condition or limitation on an order of access which is required by
426 law, rules of professional conduct, the child’s needs, or the circumstances of the
427 proceeding.

428 (d) The custodian of any record regarding the child shall provide access to the
429 record to an individual authorized access by order issued pursuant to subsection (a).

430 (e) Subject to subsection (b), an order issued pursuant to subsection (a) takes effect
431 upon issuance.³⁹

³⁹ NCCUSL Act, Sec. 15

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SECTION 9. PARTICIPATION IN PROCEEDINGS.

(a) Each child who is the subject of an abuse and neglect proceeding has the right to attend and fully participate in all hearings related to his or her case.

(b) Each child shall receive notice from the child welfare agency worker and the child's lawyer of his or her right to attend the court hearings.

(c) If the child is not present at the hearing, the court shall determine whether the child was properly notified of his or her right to attend the hearing, whether the child wished to attend the hearing, whether the child had the means (transportation) to attend, and the reasons for the non-appearance.

(d) If the child wished to attend and was not transported to court the matter shall be continued.

(e) The child's presence shall only be excused after the lawyer for the child has consulted with the child and, with informed consent, the child has waived his or her right to attend.

(f) A child's lawyer appointed under this [act] is entitled to:

(1) receive a copy of each pleading or other record filed with the court in the proceeding;

(2) receive notice of and attend each hearing in the proceeding [and participate and receive copies of all records in any appeal that may be filed in the proceeding];

(3) receive notice of and participate in any case staffing or case management conference regarding the child in an abuse and neglect proceeding; and

(4) receive notice of any intent to change the child's placement. In the case of an emergency change, the lawyer shall receive notice as soon as possible but no later than 48 hours following the change of placement.

(g) A child's lawyer appointed under this [act] may not engage in ex parte contact with the court except as authorized by the applicable rules of professional conduct, court order, or other law.

(h) Subject to court approval, a party may call any best interest advocate as a witness for the purpose of cross-examination regarding the advocate's report, even if the advocate is not listed as a witness by a party.

[i] In a jury trial, disclosure to the jury of the contents of a best interest advocate's report is subject to this state's rules of evidence.]⁴⁰

⁴⁰ NCCUSL Act, Sec. 16

101A

467 *Commentary:*

468

469 Courts need to provide the child with notification of each hearing. The Court should enforce the
470 child's right to attend and fully participate in all hearings related to his or her abuse and neglect
471 proceeding.⁴¹ Having the child in court emphasizes for the judge and all parties that this hearing
472 is about the child. Factors to consider regarding the child's presence at court and participation in
473 the proceedings include: whether the child wants to attend, the child's age, the child's
474 developmental ability, the child's emotional maturity, the purpose of the hearing and whether the
475 child would be severely traumatized by such attendance.

476

477 Lawyers should consider the following options in determining how to provide the most
478 meaningful experience for the child to participate: allowing the child to be present throughout
479 the entire hearing, presenting the child's testimony in chambers adhering to all applicable rules
480 of evidence, arranging for the child to visit the courtroom in advance, video or teleconferencing
481 the child into the hearing, allowing the child to be present only when the child's input is
482 required, excluding the child during harmful testimony, and presenting the child's statements in
483 court adhering to all applicable rules of evidence.

484

485 Courts should reasonably accommodate the child to ensure the hearing is a meaningful
486 experience for the child. The court should consider: scheduling hearing dates and times when the
487 child is available and least likely to disrupt the child's routine, setting specific hearing times to
488 prevent the child from having to wait, making courtroom waiting areas child friendly, and
489 ensuring the child will be transported to and from each hearing.

490

491 The lawyer for the child plays an important role in the child's court participation. The lawyer
492 shall ensure that the child is properly prepared for the hearing. The lawyer should meet the child
493 in advance to let the child know what to expect at the hearing, who will be present, what their
494 roles are, what will be discussed, and what decisions will be made. If the child would like to
495 address the court, the lawyer should counsel with the child on what to say and how to say it.
496 After the hearing, the lawyer should explain the judge's ruling and allow the child to ask
497 questions about the proceeding.

498

499 Because of the wide range of roles assumed by best interest advocates in different jurisdictions,
500 the question of whether a best interest advocate may be called as a witness should be left to the
501 discretion of the court.

502

503 **SECTION 10. LAWYER WORK PRODUCT AND TESTIMONY.**

504 **(a) Except as authorized by [insert reference to this state's rules of professional**
505 **conduct] or court rule, a child's lawyer may not:**

⁴¹ American Bar Association Youth Transitioning from Foster Care August 2007; American Bar Association Foster Care Reform Act August 2005

- 506 (1) be compelled to produce work product developed during the
507 appointment;
- 508 (2) be required to disclose the source of information obtained as a result of
509 the appointment;
- 510 (3) introduce into evidence any report or analysis prepared by the child's
511 lawyer; or
- 512 (4) provide any testimony that is subject to the attorney-client privilege or
513 any other testimony unless ordered by the court.

514
515 *Commentary:*

516
517 Nothing in this act shall diminish or otherwise change the lawyer-work product or attorney-client
518 privilege protection for the child, nor shall the child have any lesser rights than any other party
519 with respect to these protections.

520 If a state requires lawyers to report abuse or neglect under a mandated reporting statute, the state
521 should list that statute under this section.

522

523 **SECTION 11. CHILD'S RIGHT OF ACTION.**

524 (a) The child's lawyer may be liable for malpractice to the same extent as a lawyer
525 for any other client.

526 (b) Only the child has a right of action for money damages against the child's
527 lawyer for inaction or action taken in the capacity of child's lawyer.

528

529 **SECTION 12. FEES AND EXPENSES IN ABUSE OR NEGLECT**
530 **PROCEEDINGS.**

531 (a) In an abuse or neglect proceeding, a child's lawyer appointed pursuant to this
532 [act] is entitled to reasonable and timely fees and expenses in an amount set by [court or
533 state agency to be paid from (authorized public funds)].⁴²

534 (b) To receive payment under this section, the payee shall complete and submit a
535 written claim for payment, whether interim or final, justifying the fees and expenses
536 charged.

537 (c) If after a hearing the court determines that a party whose conduct gave rise to a
538 finding of abuse or neglect is able to defray all or part of the fees and expenses set pursuant
539 to subsection (a), the court shall enter a judgment in favor of [the state, state agency, or

⁴² N.C. Gen. Stat. Ann. § 7B-603.

101A

540 political subdivision] against the party in an amount the court determines is reasonable.⁴³

541

542

SECTION 13. EFFECTIVE DATE. This [act] takes effect on _____.

⁴³ NCCUSL Act, Sec. 19.

Report

“The participation of counsel on behalf of **all** parties subject to juvenile and family court proceedings is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of those proceedings.” IJA/ABA, *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Std. 1.1, at 11 (1980)(emphasis added).

Courts in abuse and neglect cases dramatically shape a child’s entire future in that the court decides where a child lives, with whom the child will live and whether the child’s parental rights will be terminated. No other legal proceeding that pertains to children has such a major effect on their lives. While the outcome of an abuse and neglect case has drastic implications for both the parents and the children involved, only children’s physical liberty is threatened. An abuse and neglect case that results in removal of the child from the home may immediately or ultimately result in the child being thrust into an array of confusing and frightening situations wherein the State moves the child from placement to placement with total strangers, puts the child in a group home, commits the child to an institution, or even locks the child up in detention for running away or otherwise violating a court order. Our notion of basic civil rights, and ABA Policy and Standards, demand that children and youth have a trained legal advocate to speak on their behalf and to protect their legal rights. There would be no question about legal representation for a child who was facing a month in juvenile detention, so why is there an issue for a child in an abuse and neglect case, where State intervention may last up to 18 years? The trauma faced by children in these proceedings has been recognized by at least one federal court which held that foster children have a constitutional right to adequate legal representation.¹

Despite the gravity of these cases, the extent to which a child is entitled to legal representation varies not only from state to state, but from case to case, and all too often, from hearing to hearing. The root of these inconsistencies lies in the lack of a mandate for legal representation for children in abuse and neglect cases, and the lack of uniform standards for the legal representation of children, coupled with the lack of sufficient training necessary for attorneys to provide adequate representation to their child clients.

In 1996 the ABA adopted the ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (hereinafter “ABA Abuse and Neglect Standards”) calling for a lawyer for every child subject to abuse and neglect proceedings.² The ABA Abuse and Neglect standards state that “All children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as the court jurisdiction continue.” In 2005, the ABA unanimously passed policy that calls upon Congress, the States, and territories to ensure that “all dependent youth . . . be

¹ *Kenny A. v. Perdue*, 356 F. Supp. 2d 1353 (2005).

² American Bar Association, *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (1996) at preface.

on equal footing with other parties in the dependency proceeding and have the right to quality legal representation, not simply an appointed lay guardian *ad litem* or lay volunteer advocate with no legal training, acting on their behalf in this court process.”

The proposed *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* (hereinafter “Model Act”) focuses on the representation of children in abuse and neglect cases to ensure that states have a model of ethical representation for children that is consistent with the ABA Abuse and Neglect Standards,³ ABA Policy, and the ABA Model Rules of Professional Conduct (hereinafter “ABA Model Rules”).

Although many states require that a lawyer be appointed for a child in an abuse and neglect proceeding, some require that the child’s lawyer be “client directed” and others require the lawyer to act as a guardian *ad litem* whereby the attorney is charged with the duty of protecting and serving the “best interests” of the child. Often there is not “careful delineation of the distinctions between the ethical responsibilities of a lawyer to the client and the professional obligations of the lay guardian *ad litem* as a best interests witness for the court.”⁴ The states’ use of different statutory language and mandated roles for child representation has led to much confusion within the field.

The proposed Model Act conforms to the clearly stated preference in the ABA Abuse and Neglect Standards for a client-directed lawyer for each child. Similarly, the proposed Model Act is consistent with the ABA Model Rules. The Model Act states that the child’s lawyer should form an attorney-client relationship which is “fundamentally indistinguishable from the attorney-client relationship in any other situation and which includes duties of client direction, confidentiality, diligence, competence, loyalty, communication, and the duty to advise.”⁵

Consonant with the ABA Model Rules, the drafters of the Model Act started from the premise that all child clients have the capacity to form an attorney-client relationship. An attorney must enter into representation of a child treating the child client as he or she would any other client to every extent possible. The attorney should give the child frank advice on what he or she thinks is the best legal remedy to achieve the child’s expressed wishes. This decision should not be based on the attorney’s mores or personal opinions; rather it should focus on the attorney’s knowledge of the situation, the law, options

³ American Bar Association, *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (1996) The Standards can be found at <http://www.abanet.org/leadership/2006/annual/onehundredfourteen.doc>

⁴ *Uniform Representation of Children in Abuse and Neglect, and Custody Proceedings Act* (hereinafter “NCCUSL Act”), National Conference of Commissioners of Uniform State Law. Prefatory Note (2007); the text of the final act can be found at http://www.law.upenn.edu/bll/archives/ulc/rarccda/2007_final.htm. See Atwood, *supra* note 1, at 188-91; Howard A. Davidson, *Child Protection Policy and Practice at Century’s End*, 33 FAM. L. Q. 765, 768-69 (1999). For information about different state practices see *Representing Children Worldwide 2005* (www.law.yale.edu/rcw) or *A Child’s Right to Counsel. First Star’s National Report Card on Legal Representation for Children 2007*.

⁵ ABA Model Act, Commentary to Section 7(c) which refers to ABA Model Rules 1.2, 1.6, 1.3, 1.1, 1.7, 1.4 and 2.1.

available and the child's wishes. The proposed Model Act also provides specific guidance for lawyers charged with representing those child clients with diminished capacity. Some children (including infants, pre-verbal children, and children who are mentally or developmentally challenged) do not have the capacity to form a lawyer-client relationship. These child clients should be considered the exception, not the rule, and the structure of representation for children as a whole should be based upon a theory of competence and capacity.

Providing children in abuse and neglect cases with a client-directed 'traditional' lawyer is consistent with the thinking of national children's law experts. A conference on the representation of children was held at Fordham Law School in 1995 entitled *Ethical Issues in the Legal Representation of Children*. The conference examined the principles set out in the then-proposed (later adopted) ABA Abuse and Neglect Standards and conferees clearly recommended that lawyers for children should act as lawyers, not as guardians *ad litem*.⁶ The co-sponsors and participants at the Fordham conference included national children's law organizations and many ABA entities.⁷

Ten years later in 2006, children's law experts gathered again at a conference at the University of Nevada, Las Vegas (UNLV), to review the state of legal representation of children. Like the Fordham Conference, the UNLV participants produced a set of recommendations.⁸ The UNLV Recommendations encourage lawyers to seek to empower children by helping them develop decision-making capacity. Regarding the role of the lawyer, the UNLV Recommendations strongly support client-directed representation for children capable of making considered decisions.⁹ Again, the list of co-sponsors and participants included nationally respected children's law organizations and many ABA entities.¹⁰

⁶ *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 1301 (1996) (Fordham Recommendations) (attorney must follow child's expressed preferences and attempt to discern wishes in context in developmentally appropriate way if child is incapable of expressing viewpoint).

⁷ Co-sponsors included the Administration for Children, Youth and Families, U.S. Department of Health and Human Services; ABA Center on Children and the Law, Young Lawyers Division; ABA Center for Professional Responsibility, ABA Section of Criminal Justice, Juvenile Justice Committee; ABA Section of Family Law; ABA Section of Individual Rights and Responsibilities; ABA Section of Litigation Task Force on Children; ABA Steering Committee on the Unmet Legal Needs of Children; Juvenile Law Center; National Association of Counsel for Children; National Center for Youth Law; National Counsel of Juvenile and Family Court Judges; Stein Center for Ethics and Public Interest Law, Fordham University School of Law.

⁸ See *Recommendations of the UNLV Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years after Fordham*, 6 NEV. L. J. 592-687 (2006) (UNLV Recommendations).

⁹ As stated in the Recommendations, "[c]hildren's attorneys should take their direction from the client and should not substitute for the child's wishes the attorney's own judgment of what is best for children or for that child." *Id.* at 609.

¹⁰ Co-sponsors of UNLV included the ABA Center on Children and the Law, Young Lawyers Division; ABA Center for Professional Responsibility; ABA Child Custody and Adoption Pro Bono Project; ABA Section of Family Law; ABA Section of Litigation; Home at Last, Children's Law Center of Los Angeles; Juvenile Law Center; National Association of Counsel for Children; National Center for Youth Law; National Council of Juvenile and Family Court Judges; National Juvenile Defender Center; Stein Center

Consistent with the ABA Abuse and Neglect Standards, ABA policy, and the recommendations of national children's law experts, Section 3 of this Model Act mandates that an attorney, acting in a traditional role, should be appointed for every child who is the subject of an abuse or neglect proceeding.¹¹ Attorneys can identify legal issues regarding their child clients, use their legal skills to ensure the protection of their clients' rights and needs, and advocate for their clients. The Model Act requires lawyers to complete a thorough and independent investigation and participate fully in all stages of the litigation. Lawyers for children, as lawyers for any client, have a role as a counselor to their clients and should assist their clients in exploring the practical effects of taking various positions, the likelihood that a court will accept particular arguments, and the impact of such decisions on the child, other family members, and future legal proceedings.¹²

Lawyers for children allow children to be participants in the proceedings that affect their lives and safety. Children who are represented by a lawyer often feel the process is fairer because they had a chance to participate and to be heard. Consequently, children are more likely to accept the court's decision because of their own involvement in the process.

Requiring lawyers to represent children in abuse and neglect cases is also consistent with federal law. The Child Abuse Prevention and Treatment Act (CAPTA) requires the appointment of a "guardian *ad litem*" for a child as a condition of receiving federal funds for child abuse prevention and treatment programs. Providing a child with a lawyer is consistent with the requirements of CAPTA. No state with a lawyer model has been held out of compliance with CAPTA and Health and Human Services (HHS) has issued guidance suggesting that appointing counsel for a child promotes the child's "best interest" consistent with CAPTA.¹³

The Model Act also provides lawyers guidance when representing children with diminished capacity, which includes young children. Like all children in these proceedings, young children are entitled to proceedings that fully examine and address their needs, including *inter alia* their physical, behavioral, and developmental health and well-being, their education and early-learning needs, their need for family permanency and stability, and their need to be safe from harm. The Model Act also allows states to set an age of capacity if they so choose.

The Model Act allows and welcomes "best interest advocates" in child welfare cases. A best interest advocate is defined as "an individual, not functioning or intended to function

for Law and Ethics, Fordham University School of Law; Support Center for Child Advocates; and Youth Law Center.

¹¹ Federal law has long authorized the discretionary appointment of counsel for Indian children subject to the Indian Child Welfare Act. See 25 U.S.C. § 1912(b) (2000).

¹² Model Act, Commentary for Section (7)(c)(1).

¹³ U.S. Department of HHS Children's Bureau, *Adoption 2002: The President's Initiative on Adoption and Permanence for Children*, Commentary to Guideline 15A

as the child's lawyer, appointed by the court to assist in determining the best interests of the child."¹⁴ The advisor may be a court-appointed special advocate (CASA), a guardian *ad litem* or other person who has received training specific to the best interest of the child. The Act endorses and in no way restricts the widespread use of CASAs to fulfill the role of court appointed advisor.¹⁵

A state's law regarding abuse and neglect proceedings should be designed to provide children involved in an abuse and neglect case with a well-trained, high quality lawyer who is well-compensated and whose caseload allows for effective representation. Lawyers for children are essential for ensuring that the child's legal rights are protected. "Unless children are allowed by lawyers to set the objectives of their cases, they would not only be effectively deprived of a number of constitutional rights, they would be denied procedures that are fundamental to the rule of law."¹⁶

Children in dependency court proceedings are often taken from their parents, their siblings and extended families, their schools, and everything that is familiar to them. Children and youth deserve a voice when important and life-altering decisions are being made about them. They deserve to have their opinions heard, valued and considered. They have interests that are often distinct or are opposed to those of the state and their parents in dependency proceedings and, as the ABA has recognized many times, they deserve ethical legal representation.

In preparing this Model Act, the drafters have taken into consideration the enormous contributions of various organizations and advocates in defining standards of representation, most notably that of the American Bar Association (ABA), the National Association of Counsel for Children (NACC), the Uniform Law Commission (ULC), participants in the Representing Children in Families UNLV Conference, and the states themselves. In addition, drafters have sought input from the ABA Standing Committee on Ethics, various sections within the ABA, and more than 30 children's law centers around the country who represent children every day.

¹⁴ Model Act, Section 1.

¹⁵ The Court Appointed Special Advocate is a lay volunteer who advocates as a non-lawyer on behalf of a child in child abuse and neglect proceedings. Volunteers are screened and trained at the local level, but all CASA programs that are affiliated with the National Court Appointed Special Advocate Association must comply with the standards issued by that organization. See www.nationalcasa.org. In addition, many states have established their own standards to ensure that the volunteers representing children are competent and possess relevant training and experience. See generally Michael S. Piraino, *Lay Representation of Abused and Neglected Children: Variations on Court Appointed Special Advocate Programs and Their Relationship to Quality Advocacy*, 1 JOURNAL OF CENTER FOR CHILDREN AND THE COURTS 63 (1999). The Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice is authorized to enter into cooperative agreements with the National CASA Association to expand CASA programs nationally. See 42 U.S.C.A. § 13013 (2005 & Supp. 2006). One of the key strengths of the CASA program is that a CASA volunteer generally represents only one child at a time. Moreover, an attorney for the child working in tandem with a CASA volunteer can provide a powerful "team" approach in juvenile court. In addition, CASA volunteers may have access to the CASA program's own legal representative for legal advice.

¹⁶ Martin Guggenheim, *A Paradigm for Determining the Role of Counsel for Children*, 64 Fordham L.Rev. 1399, 1423-24 (1996).

Respectfully Submitted,
Hilarie Bass, Chair
Section of Litigation
August, 2011

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3 Nevada Bar No. 3918
4 **CHILDREN'S ATTORNEY'S PROJECT**
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FILED

Nov 16 9 03 AM '99

Shirley M. Langston
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

0247237

B

IN RE: THE CHILDREN'S ATTORNEY'S
PROJECT OF CLARK COUNTY
LEGAL SERVICES

ORDER OF APPOINTMENT
OF ATTORNEY FOR
CERTAIN CHILDREN

12 Upon the filing of a Petition for Appointment of Attorney by the CHILDREN'S
13 ATTORNEY'S PROJECT of CLARK COUNTY LEGAL SERVICES PROGRAM,
14 INC., and good cause appearing therefor,

15 **IT IS HEREBY ORDERED AND DECREED** that the CHILDREN'S
16 ATTORNEY'S PROJECT of CLARK COUNTY LEGAL SERVICES shall be permitted
17 to provide independent legal representation to children in cases pending before the Family
18 Division of the Eighth Judicial District Court. Representation shall be activated by the
19 filing of a Notice of Entry of Appearance;

20 **IT IS FURTHER ORDERED AND DECREED** that the CHILDREN'S
21 ATTORNEY'S PROJECT of CLARK COUNTY LEGAL SERVICES shall be notified
22 of any hearings or other proceedings regarding the children it represents in actions
23 pending before this Court and the Family Division of this Court;

24 **IT IS FURTHER ORDERED AND DECREED** that the CHILDREN'S
25 ATTORNEY'S PROJECT of CLARK COUNTY LEGAL SERVICES shall be a party to

26 ///

27 ///

28 ///

1 all cases in which it files a Notice of Entry of Appearance and a party to any agreement or
2 plan entered into on behalf of the children.

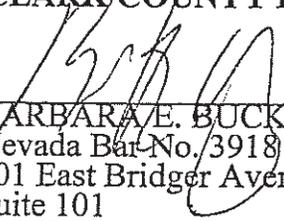
3 DATED this ___ day of November, 1999.

4 **LEE A. GATES**

5 CHIEF JUDGE

6 SUBMITTED BY:

7 **CHILDREN'S ATTORNEY'S PROJECT**
8 **OF CLARK COUNTY LEGAL SERVICES**

9 By: 
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0510.0 Nevada Safety Assessment

0510.1 Policy Approval Clearance Record

<input checked="" type="checkbox"/> Collaborative Policy	This policy supersedes: 225 Safety Assessment	Number of pages in Policy: 14 Date Policy Effective: 12/13/07
PART Review & Approval	____/____/____	Policy Leads: Caroline Thomas MSW LSW and Marjorie Walker MSW, LSW
DMG Approval	07/17/07 and 07/19/07	Policy Lead: Betsey Crumrine LCSW
Reformat Revisions	9/24/07	Policy Lead: Betsey Crumrine LCSW
Approved Revisions	09/18/08	Policy Lead: Betsey Crumrine LCSW
DMG Approved Revisions	____/____/____	Policy Lead: _____
DCFS Administrator Approval:		Signature: On File
Review from Representative from the Office of the Attorney General:	____/____/____	Signature:

0510.2 Statement of Purpose

0510.2.1 Policy Statement: A safety assessment is the systematic collection of information about threatening family conditions and current, significant, and clearly observable threats to the safety of a child(ren).

0510.2.2 Purpose: The purpose of assessing *safety*:

- Determination whether a child(ren) are likely to be in immediate or imminent danger of serious physical or other type of harm that may require a protective intervention; and
- The purpose of developing a *safety plan* is:
 - To insure the immediate protection of a child while safety threats are being addressed.

0510.3 Authority

Adoptions and Safe Families ACT 1997, D.L. 105-89
NRS 432B.180, .190, .260, .330, .340
NAC 432B.150, .155, .160, .185, .260, .310

0510.4 Definitions

0510.4.1 Caregiver Protective Capacities: A parent's or caregiver's strengths or abilities to manage existing safety threats, prevent additional safety threats from arising, or prevent risk influences from creating a safety threat. Protective capacities may be grouped into three different categories that include: cognitive, emotional and behavioral (personal and parenting).

Cognitive protective capacity refers to the parent's ability to recognize hazardous conditions in a child's physical environment or recognize others who may present a threat to a child. Another cognitive capacity is the ability of the caregiver to defer his/her own needs in favor of the child's. It is specific intellect, knowledge, understanding and perception that results in parenting and protective vigilance.

Behavioral protective capacity can include meeting the basic needs of the child and protecting the child from others as needed for child safety. Physical protection might

mean the ability to physically isolate the child or to mediate conflicts that could escalate into harmful situations. In addition, the caregiver must address forms of personal behavior or conditions that may contribute to the child being unsafe, such as: alcohol and drug abuse, selection of dangerous partners, and mental health issues. It is specific action, activity, performance that is consistent with and results in parenting and protective vigilance.

Emotional protective capacity refers to the attachment or emotional bond between a child and their parent or caregiver. Attachment constitutes an emotional bond that provides motivation to protect and nurture a child. Consider how the attachment does or does not contribute to the increased safety of the child and the potential impact of disrupted attachment. It is specific feelings, attitudes, identification with a child and motivation that results in parenting and protective vigilance.

- 0510.4.2 Child Maltreatment:** Encompasses physical abuse, sexual abuse, emotional abuse and neglect. Child maltreatment occurs as a result of parenting behavior harmful or destructive to a child’s cognitive, emotional, social, or physical development.
- 0510.4.3 Child Welfare Services (CWS):** As defined by NRS 432B.044, includes, without limitation: 1) Protective services, investigations of abuse or neglect and assessments; 2) Foster care services, as defined in NRS 432.010; and 3). Services related to adoption.
- 0510.4.4 Impending Danger:** A family situation or household member’s behavior that is determined to be out-of-control and will likely result in serious harm to a child. [This was previously known as “foreseeable danger”].
- 0510.4.5 Information Collection Standard:** Refers to the six critical areas that are used for assessing and analyzing family strengths, risk of maltreatment and child safety. This are: 1) surrounding circumstances accompanying the maltreatment; 2) child functioning on a daily basis; 3) adult functioning with respect to daily life management and general adaptation (including mental health functioning and substance usage); 4) disciplinary approaches used by the parent; 5) the overall, typical, pervasive parenting practices; and 6) the extent of maltreatment.
- 0510.4.6 Nevada Initial Assessment (NIA):** The information gathering process necessary to identify family safety, strengths, and risk of maltreatment.
- 0510.4.7 Nevada Initial Assessment Summary:** The consolidation of the information collected related to the six areas of functioning.
- 0510.4.8 Observable:** Dangerous, real, can be seen, can be reported, and is evidenced in explicit unambiguous ways.
- 0510.4.9 Observable and Specific:** A family condition is observable when it can be clearly described and articulated.
- 0510.4.10 Out of Control:** A behavior or condition may be defined as out of control if credible information suggest that a caregiver or a child’s family system lacks the internal inhibitions to prevent actions that pose a threat of serious harm to a child or otherwise knowingly chooses to engage in behavior that poses a threat of serious harm to a child. Examples of a behavior or condition that may be deemed to be out of control include, but are not limited to: a physiological, neurological or psychological condition (e.g. an addiction, mental illness, mental retardation, or domestic violence); or a strong belief

system that to the caregiver justifies an action (e.g. belief that harsh and dangerous physical punishment is necessary or justifiable).

- 0510.4.11 Present Danger:** An immediate, significant, and clearly observable family condition that is actively occurring or “in process” of occurring at the point of contact with a family; and will likely result in serious harm to a child.
- 0510.4.12 Re-certification of Initial Safety Assessment:** Occurs when the original safety decision at the point of initial contact was “safe” and no subsequent safety threats were identified at the conclusion of the investigation. The caseworker re-certifies that there is no change in the original safety assessment by signing and dating the Nevada Safety Assessment. It is then submitted to the supervisor for review and approval. Note: If during the investigation new safety threats are identified, re-certification is not appropriate and a new safety assessment must be completed.
- 0510.4.13 Re-assessment of Safety:** Means that a new safety assessment is completed for all children in the family (NAC 432B.185) at all required milestones.
- 0510.4.14 Risk Assessment:** The Risk Assessment (based on the Children’s Resource Center and California Structured Decision Making Model) identifies families, which have low, moderate, high, or very high probabilities of future abuse or neglect. This assessment does not predict recurrence, but assists the caseworker in assessing whether a family is more or less likely to have another incident without intervention.
- 0510.4.15 Risk of Maltreatment:** The likelihood of future maltreatment based on the current condition of the family. Risk indicates conditions and/or circumstances in a family that contribute to the likelihood of occurrence or re-occurrence of maltreatment.
- 0510.4.16 Safe Child:** A child may be considered safe when there are no present or impending threats of serious harm or there are sufficient caregiver protective capacities to prevent harm.
- 0510.4.17 Safety Assessment:** The process for evaluating family functioning to determine if there are negative family conditions that are out-of-control and therefore pose an imminent safety threat (present or impending danger) to a child.
- 0510.4.18 Safety Assessment Conclusion:** The conclusion that a child is safe or unsafe based upon the assessment of safety threats, and evaluation of child vulnerability and caregiver protective capacities.
- 0510.4.19 Safety Intervention:** The action taken to respond to and manage threats to child safety.
- 0510.4.20 Safety Plan:** A time limited, written plan that is put into place upon contact with the family when present and/or impending danger is manifested to ensure immediate protection of a child. The safety plan must be sufficient to manage and control safety threats, based on a high degree of confidence that it can be implemented and sustained.
- 0510.4.21 Safety Threshold for Danger:** The point at which a threat of harm suggests that a child is in imminent danger of serious harm. While risk of maltreatment considers harm on a continuum from mild to severe, safety threats (present and impending danger) are associated with maltreatment and actual or potential threat of serious harm to a child. Concern for child safety occurs when negative family circumstances and/or family member behaviors, emotions, perceptions, motives, etc., become intense and extreme to such a degree, that they cross over a threshold and cease being merely a risk influence,

and become a safety threat. The safety threshold for danger is what differentiates a negative family condition from being a safety factor versus a risk factor. Family behaviors and conditions cross the threshold of safety when they meet the following criteria:

1. **Out-of-control** (*see definition*);
2. **Severe:** Severity is fundamental to the definition of safety and refers to the effects of maltreatment that has already occurred (present danger) and/or the prudent judgment regarding the likelihood of severe effects of maltreatment based on the vulnerability of a child and the threat of danger that exists in a family (impending).
3. **Imminent:** In the context of safety intervention, imminence refers to threats to child safety that are likely to become active. There is a degree of certainty that the negative condition(s) that threaten child safety will emerge or re-emerge.
4. **Observable and Specific** behaviors and/or observable conditions in the family that clearly justify a safety concern.

0510.4.22 **Serious Harm:** Includes the threat or evidence of serious physical injury, sexual abuse, significant pain or mental suffering, extreme fear or terror, extreme impairment or disability; death, substantial impairment or risk of substantial impairment to the child's mental or physical health or development.

0510.4.23 **State:** The Family Programs Office (FPO) at the Division of Child and Family Services (DCFS).

0510.4.24 **Unsafe or Not Safe Child:** A child is considered unsafe when present or impending danger threats exist and cannot be managed by the caregiver/family's protective capacities.

0510.4.25 **Vulnerable Child:** A child who is unable to protect him/herself and dependent on others for protection.

0510.5 Procedures

0510.5.1 **Safety Assessment:** The Nevada Safety Assessment is to be completed to assess and analyze child safety for all children in their home of origin and while in an out-of-home placement. The Safety Assessment Guidelines are used to clarify the 12 indicators of present and impending danger on the Safety Assessment form.

The Safety Assessment form has seven components: Milestones; Assessment; Child Vulnerability; Caretaker Protective Capacities; Conclusion; Safety Intervention Analysis and Safety Plan. Each component contains best-practice standards related to child safety assessment.

A. Milestones: Safety is assessed at the following milestones on all children in the home: (NAC 432B.185)

- 1) The initial intake performed by assessing a priority level to the report of harm (see Intake Policy).
- 2) The initial face-to-face contact with the alleged child victim must be documented within 24 hours of contact with the child, excluding weekends and Holidays. However,

if circumstances do not allow for contact with caregiver(s) and all other children in the home prior to the completion of that safety assessment, another safety assessment must be completed within 48 hours of contact with caregiver(s) and remaining children in the home. If the safety assessment is completed on hard copy, the assessment must be documented in UNITY within 5 days, per 0601 Documentation Policy.

- 3) Re-certify or complete a safety assessment at the conclusion of Nevada Initial Assessment
- 4) Any time the agency is considering removal of the child from the custody of his/her parents;
- 5) Before any unsupervised visitations between the child and his/her parents;
- 6) Before returning the child to the custody of his/her parents;
- 7) Any time a significant event or change occurs that affects the household of a parent of the child or a foster parent or other provider of substitute care for the child, including, without limitation, a birth, marriage, death or major illness;
- 8) Before each court review.
- 9) Any time, as determined by the agency, there is an indication that the safety of the child may be jeopardized; whenever evidence or circumstances suggest that a child's safety may be in jeopardy.
- 10) After reunification with the family of the child (30 days after reunification, if the case remains open) and
- 11) Prior to supervisory approval for closure of a case for the provision of child welfare services to a child.

B. Safety Assessment: The Safety Assessment consists of 12 standardized indicators of present and impending danger (threat of serious harm) that are used to analyze the information related to the six assessment areas. When assessing the 12 safety threats, the caseworker must consider how specific case information relates to the following four safety threshold criteria (see Safety Assessment Guidelines):

1. Out-of-control
2. Severe (serious harm)
3. Imminent
4. Observable and specific

C. Child Vulnerability: A vulnerable child is one who is unable to protect him/herself and is dependent on others for protection. This determination is made in Part C of the Safety Assessment Form and requires justification for why a child is not considered vulnerable to each indicated safety threat.

D. Caregiver Protective Capacities: Part D of the Safety Assessment form collects information regarding a parent or caregiver's strengths or abilities to manage existing safety threats, prevent additional safety threats from arising, or prevent risk influences from creating a safety threat. The assessment of protective capacities of a caregiver includes the consideration of behavioral, cognitive and emotional characteristics such as intellectual skills, motivations to protect, positive attachments and social connections.

The worker will indicate whether a caregiver residing in the home can and will protect a vulnerable child from present and/or impending danger and then will justify this decision by describing the protective capacities present. For example, "Caregiver believes child and has filed a temporary protection order against alleged perpetrator who has subsequently moved out of the home. Caregiver has reported any attempts to contact the alleged victim to police and child welfare agency".

- E. Safety Assessment Conclusion:** The safety assessment conclusion is a critical determination based on an evaluation of each of the 12 standardized safety threats. A child is considered to be safe if there are no safety threats present, OR, if there are safety threats present AND there are sufficient caregiver protective capacities to assure that safety threats are controlled. A child is not safe if there are safety threats present and caregiver protective capacities are insufficient to assure that safety threats are controlled.
- F. Safety Intervention Analysis:** This is a focused examination of four areas that assist in the development of a sufficient safety plan. Whenever it is determined that a child is not safe, it is necessary to consider what safety plan will be most appropriate and least intrusive. Safety intervention analysis follows the decision that a child is not safe. Safety intervention analysis is the process of further engaging a family in the safety planning process to promote family self-determination. The results of safety intervention analysis, which includes the development of a safety plan, should not be implemented without supervisory consultation. The family, caseworker and supervisor should consider how safety threats are manifested in the family and the time of day when safety threats are active. This will assist in determining the type of safety plan that is required and the level of effort needed to control existing safety threats.

To determine if an in-home CPS managed safety plan is an appropriate response for a particular family it is necessary to consider the following four questions listed in Part F of the Safety Assessment:

1. Caregiver(s) is/are residing in the home where the child will live?
2. The home environment is stable or calm enough for safety actions or tasks to be provided and for people participating in safety management to be in the home safely without disruption?
3. Caregiver(s) is/are willing for safety actions or tasks to be provided and will cooperate with those participating in the initial protective plan or continuing safety plan?
4. Are there sufficient resources within the family or community to perform the safety actions, tasks, or services necessary to manage the identified safety threats?

If the answer to any of the above questions is "NO," safety management must involve out-of-home placement. Explain all "no" responses.

G. Safety Assessment Form Documentation Requirements:

The caseworker must complete eleven required screens in the UNITY system that are associated with the Safety Assessment. See section 510.6.4B. for UNITY documentation screens.

0510.5.2

Safety Planning: Safety plans are intended to be temporary interventions and should only be instituted when a determination has been made that children are unsafe. The safety plan must be completed and signed by the caregiver(s) prior to the worker leaving the identified child(ren) with the caregiver after a safety threat has been identified. If a

safety plan is in place, the provisions of the plan must continue to sufficiently control present or impending danger or the plan must be adjusted. If the child is placed out of the home, reasonable efforts must be made to return the child to the home of origin as soon as possible. Cases should never be closed when an active safety plan is in place.

The purpose of a safety plan is to control and manage present (impending) danger and/or safety threats. The use of an in-home safety plan or placement is intended to substitute for diminished or absent caregiver protective capacities by controlling and managing identified safety threats until such time as the caregiver is able to assure child safety. Safety plans recognize and use caregiver’s strengths and abilities to manage existing safety threats, prevent additional safety threats from arising, or prevent risk influences from becoming safety threats. These safety plans are very short term, to allow time to complete the NIA and assess for impending danger.

- A. Safety Plan Intervention:** Safety planning is designed along a continuum from the least to most intrusive intervention to assure child safety. A family’s ability to sufficiently manage safety on its own is the least intrusive response for controlling identified safety threats. If caregiver protective capacities cannot independently control safety threats, then consideration should be given to the use of an in-home safety plan (see safety plan analysis). If it is determined that an in-home safety plan is not feasible or appropriate, then out-of-home placement must be pursued. In cases where children are legally removed from the home, documentation of a safety plan is not required. However, a case plan must still be completed within the timeframe required by the 0204 Case Planning Policy.

Consider the following questions when determining safety plan sufficiency:

- 1) If a safety plan is in place, can the child continue to remain in the home with the use of an in-home safety plan?
- 2) If a child has been removed, can reunification occur with the implementation of an in-home safety plan?
- 3) If a safety plan is in place, will the provisions of the plan continue to sufficiently control present and/or impending danger? What adjustment(s) to the plan is needed to sufficiently control present and/or impending danger?
- 4) If there has been no previous safety plan or placement prior to the completion of the NIA, what safety plan seems indicated to sufficiently control present and/or impending danger?

If it is determined that there is no present and/or impending danger and a child is safe, a safety plan or placement is not required. A comparison of the content of the safety plan verses a case plan is as follows:

Safety Planning	Case Planning
Purpose: Control and Manage Safety Threats - (present and/or impending danger)	Purpose: Change the Conditions Associated with Safety Threats
Child Welfare Responsibility: Oversight of Child Safety	Child Welfare Responsibility: Facilitation of Services and Monitoring Progress
Safety Providers: Informal and Formal	Service Providers: Formal and Informal
Effect: Immediate Action	Effect: Long Term Outcomes

B. Safety Plan Criteria: To be effective, all safety plans must meet the following criteria:

- 1) Action oriented;
- 2) Safety response(s) must be readily accessible and available at the level required to assure safety;
- 3) Safety response(s) must have an immediate impact on controlling safety threats;
- 4) Intervention should be the least intrusive response for assuring safety;
- 5) Describe the frequency of the activity to address child safety;
- 6) Do not include promissory commitments (e.g., "I will not hit my child.")
- 7) Identify each person participating in specific activities;
- 8) Identify a Safety Provider;
- 9) Delineate timeframes for each activity and the plan; and
- 10) Describe agency activities to oversee the plan, to include changes in the caseworker contact requirement and safety plan monitoring responsibilities during the timeframe the safety plan is in place.

C. Safety Plan Provider(s): To qualify as a safety provider a person must be:

- 1) Fully aware of and acknowledge the safety concerns and agree to their role in monitoring safety concerns while working (being) in the home with the family.
- 2) Demonstrating a responsible attitude and/or have a background that demonstrates responsible actions;
- 3) Available, accessible, and agreeable to participation;
- 4) Trustworthy, committed, and properly aligned to the safety/case plan outcomes;
- 5) Prepared, skilled, and competent to perform the safety activity;
- 6) Able to perform the activities outlined in the safety plan; able to provide an appropriate physical environment for the child(ren); and
- 7) Must be able to protect the child(ren) from danger.

Any person, including a relative, friend, volunteer, paraprofessional, or professional may be a safety provider as long as the above qualifications are met.

In all communities consideration should also be given to the concept of:

Family Network/Environmental protective capacity refers to the visibility of a child within the community and the existence of other care giving and concerned adults who represent positive attributes and potential sources of protective capacities. The viability of these other adults often depend on their degree of access to the child and their capacity for immediate intervention, should a safety threat arise.

D. Documentation Requirements for Safety Plan: The caseworker must develop a Safety Plan with the caregiver(s) immediately upon determining that a child is unsafe, if the child(ren) is going to remain in the home while the safety threat is being addressed. The caregiver(s) must sign the Safety Plan prior to the worker leaving the child(ren) with the caregiver after an unsafe child has been identified. If a parent refuses to sign the safety plan, caseworker must consult with supervisor immediately as another plan for

safety will need to be made. If it is determined that an in-home safety plan is not feasible or appropriate, then out-of-home placement must be pursued.

A copy of the safety plan (signed by the caregiver and supervisor) must be attached to the case record. This document must become part of the case record within 24 hours of the plan being developed with the family (refer to FPO 0510C Safety Plan form).

- E. Managing Safety Plans:** During development of the safety plan, caseworkers must address how they will monitor the plan. Upon completion of the safety plan a case staffing between caseworker and supervisor must occur within 24 hours of instituting the plan to determine if the level of caseworker contact is adequate or additional caseworker visits are necessary during the institution of the safety plan. Weekly contact with safety plan providers is recommended.

Once a safety plan is established, it becomes a primary responsibility of the CPS caseworker to assertively supervise the safety response plan and monitor child safety. Continued safety management involves remaining well informed about the status of the safety plan. At the inception of the initial safety plan a date to review the safety plan will be agreed upon and noted on the safety plan form. Prior to the safety plan review, a caseworker and supervisor staffing must occur.

The safety plan review includes a face-to-face contact with the child, caregivers, and with out-of-home care providers (if involved). The review includes a personal contact with all other safety plan participants who are responsible for protecting the child. The review verifies that all parties remain informed, active and committed. The review concludes whether the safety plan is effectively managing safety threats and if less intrusive methods are possible and feasible.

Caseworker documentation needs to reflect that safety threats are addressed at each contact until safety threat is mitigated and safety plan is no longer needed.

- F. Ongoing Safety Monitoring:** Safety assessment, analysis and planning must occur throughout ongoing Child Welfare involvement with a family.
- Specific ongoing Child Welfare case milestones requiring a safety assessment are delineated in NAC 432B.185, however every encounter with a family during ongoing Child Welfare should consider threats to child safety.
 - When a family transfers to ongoing Child Welfare, immediate preparation should occur in order to assume continued safety management responsibilities. Upon transfer, Child Welfare staff must have a clear understanding of how safety threats are manifested in the family and the sufficiency of the safety plan should be re-evaluated at that time.
 - As a case proceeds through the ongoing Child Welfare process, safety intervention should be approached as an active and dynamic process. Ongoing Child Welfare staff must remain vigilant in managing safety responses required to assure child safety.

0510.5.3 Timelines:

Table 0510.1: Timelines for Nevada Safety Assessment Policy

Requirement	Deadline	Starting Date	Responsible Party	Actions to be Taken
Initial contact safety assessment Safety Assessments are located in UNITY windows, see Table 0510.3	Must be documented within 24 hours of contact with the child, excluding weekends and Holidays. However, if circumstances do not allow for contact with caregiver(s) and all other children in the home prior to the completion of that safety assessment, another safety assessment must be completed within 48 hours of contact with caregiver(s) and remaining children in the home. If the safety assessment is completed on hard copy, the assessment must be documented in UNITY within 5 days, per Documentation Policy.	At initial face-to-face contact with child.	CPS caseworker	Vary depending on safety status
Recertification of initial face- to-face safety assessment	The initial safety assessment can be re-certified if the original safety decision at the initial point of contact was "safe" and no subsequent safety threats were identified at the conclusion of the investigation.	At the conclusion of investigation.	CPS caseworker	Investigation concluded.
Safety Assessment at Milestones, see 0510.5.1 A. Milestones	If done on hard copy must be documented in UNITY within 5 days, as outlined in the documentation policy.	Varies depending on milestone	CPS or CWS caseworker	Vary depending on family situation
Safety Plan Must be documented on form, FPO 0510C	Must be developed immediately upon identifying a child is "unsafe" if that child is going to remain in the home while a safety threat (s) is being addressed. Upon completion of the safety plan a case staffing between supervisor and caseworker must occur within 24 hours of instituting a safety plan. The safety plan must become a part of the case record within 24 hours of being developed.	Date safety plan initiated	CPS or CWS caseworker	Vary depending on family situation
Safety Plan Review	Prior to the safety plan review, a caseworker and supervisor staffing must occur.	At the inception of the initial safety plan a date to review the safety plan will be agreed upon and noted on the safety plan form.	CPS or CWS caseworker	The safety plan review includes a face to face contact with the child, caregivers, and with out-of-home care providers (if involved). The review includes a personal contact with all other safety plan participants. The review verifies that all parties remain informed, active and committed.

0510.5.4 Forms:

- A. FPO 0510A The Nevada Safety Assessment:** There are eleven required UNITY screens that must be filled out in order to complete a safety assessment in UNITY. A paper copy of the safety assessment is provided as attachment 0510.9.1 for information purposes only.
- B. FPO 0510B Nevada Safety Assessment Field Guide:** The guide contains sections B, C, D, E and F of the Nevada Safety Assessment Form. It is provided to workers as a reference to the UNITY safety assessment when they are in the field.
- C. FPO 0510C Nevada Safety Plan:**
- 1) **Purpose:** The purpose of a safety plan is to control and manage present / impending danger and/or safety threats. This form shall be used for in-home safety management actions or tasks. A safety plan must be developed with the child's caregiver(s) immediately upon determining a child is unsafe, if the child (ren) is going to remain in the home while the safety threat(s) is being addressed.
 - 2) **Safety Plan Instructions:** Fill out the Safety Plan in conjunction with the child's caregiver(s) and safety plan providers. Write legibly and in terms caregiver(s) can understand. For each identified safety threat, every cell within that row must be filled in. If a parent refuses to sign the safety plan, make a notation of their response somewhere on the plan and consult with a supervisor immediately as another plan for safety will need to be made. If it is determined that an in-home safety plan is not feasible or appropriate, then out-of-home placement must be pursued. A copy of the safety plan (signed by the caregiver and supervisor) must be attached to the case record within 24 hours of the plan being developed with the family.
 - **Case Name:** This is the name of the name of the primary caregiver.
 - **Case Number:** This is the UNITY Case Number.
 - **List identified safety threats to specified child and child's age:** Write the number of the corresponding safety threat (Part B Safety Assessment) and a brief description. If a specific safety threat only pertains to one child out of many, identify child each threat pertains to.
 - **Example, "# 3, Serious injury has occurred, Sara age 4."** OR If an identified threat pertains to all children in the home,
 - **Example, "#5, Caregiver unable to meet children's immediate needs for protection, children ages 2, 4, and 6."**
 - **Describe safety action or task selected to control the safety threat:** Safety actions or tasks must convincingly demonstrate high confidence to effectively managing safety threats.
 - **Who will complete the task and where will it occur?** Example, "Marie Brown, AA sponsor and Sally Dye, paternal grandmother." "In the home."
 - **Describe method for monitoring safety action or task.** "CPS caseworker will make weekly unannounced visits to the home and weekly calls to safety providers. Safety Providers will call CPS immediately with any concerns."
 - **Describe how the safety provider is confirmed suitable to participate in the identified safety plan.** Worker should document the reasons he/she deems each safety provider responsible to perform actions or tasks.

- **Examples** include, “Safety provider is well informed ; trustworthy; accessible and available, mentally, emotionally and physically able, properly prepared or aligned with CPS, sufficiently experienced, reliable and dependable, accepting of his/her safety management responsibilities, fully accepting of the need for safety management and committed to participate with CPS in accordance with the established safety plan”.

0510.6 Jurisdictional Action

- 0510.6.1 Development of Internal Policies:** Jurisdictions are expected to follow the policy as written.
- 0510.6.2 Timelines:** None
- 0510.6.3 Tools & Forms:** All three jurisdictions will use the forms included with this policy.
- 0510.6.4 Documentation:**

A. Case File Documentation (paper):

Table 0510.2: Case file documentation for NV Safety Assessment Policy

File Location	Data Required
Safety Plans and Safety Plan Review forms will be maintained in the case file.	Jurisdictions must identify and communicate to DCFS Central Office FPO policy lead the exact location in the case file where these two forms can be found within 60 days of distribution of this policy.

B. UNITY Documentation (electronic):

Table 0510.3: UNITY Documentation for NV Safety Assessment Policy

Applicable UNITY Screen	Data Required
CFS056	Case Directory
CFS041	Safety Assessment History
CFS042	Safety Assessment Approval
CFS038	Safety Intervention Analysis/Safety Response Explain: Note(CFS242), if Unsafe

0510.6.5 Supervisory Responsibility:

Supervisors have the responsibility for consulting, analyzing, providing oversight and making appropriate recommendations for safety assessments and safety plans.

Supervisory consultation should occur at the following points:

1. Safety Assessments which indicate a child is “unsafe” should immediately be routed to a supervisor and reviewed by the supervisor within 24 hours of submission.
2. Safety Assessments which indicate a child is “safe” should be reviewed by a supervisor within 72 hours of submission.
3. Initial Safety Plans must be reviewed and approved by a supervisor within 24 hours of implementation.
4. Continuing safety plans must be reviewed by a supervisor biweekly and/or prior to the safety plan review date indicated on safety plan.

0510.7 State Responsibilities

0510.7.1 Participants in Policy Development

- A. FPO Staff: Investigative/ Front End
- B. Jurisdictional Representatives: CPS Supervisors, Managers, Administrators
- C. Stakeholders: None

0510.7.2 Technical Assistance

- A. Requesting Technical Assistance: ACTION for Child Protection Inc.
- B. Relaying TA Information: ACTION for Child Protection Inc.
- C. Evidenced Based Practice: ACTION For Child Protection Inc.

0510.7.3 Clearance Process

- A. Approved by DMG on 7/17/07, revisions approved on 7/19/07.

0510.7.4 State Oversight

- A. QI Reviews will occur in all three jurisdictions to assure safety assessments are being completed at necessary milestones and documented in accordance with timeframes established in this policy.
- B. Targeted QI reviews will occur to ensure that the kind of safety actions and/or tasks used to form a safety plan correspond in complexity with exactly what it will take to control identified safety threats.

0510.8 Policy Cross Reference

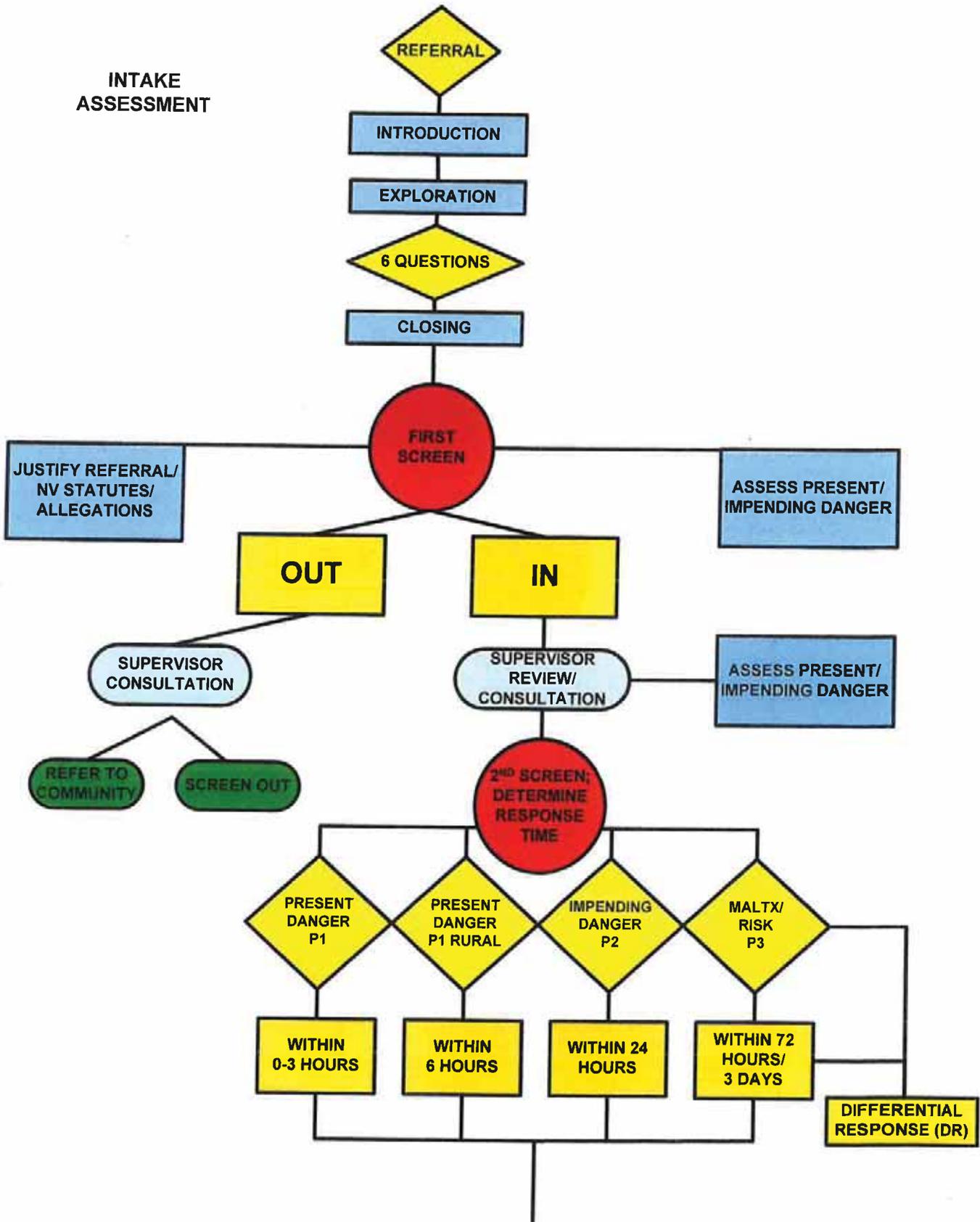
0503 Differential Response
0506 Intake
0509 Nevada Initial Assessment
0511 Risk Assessment
0601 Documentation

0510.9 Attachments

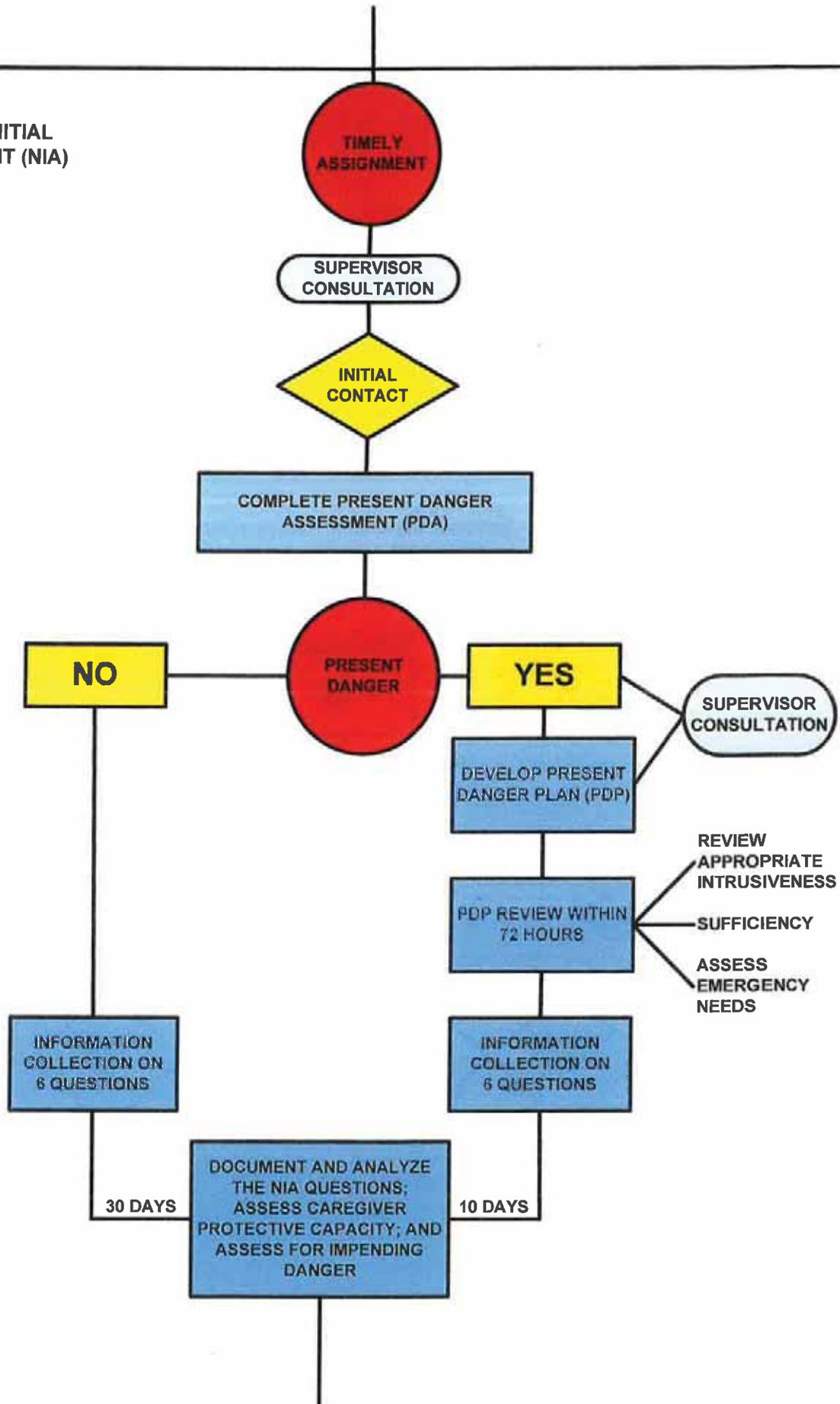
0510.9.1	FPO 0510A	Nevada Safety Assessment, a UNITY document
0510.9.2	FPO 0510B	Nevada Safety Assessment Field Guide, UNITY document
0510.9.3	FPO 0510C	Nevada Safety Plan
0510.9.4	FPO 0510D	Safety Plan Review
0510.9.5	FPO 0510E	Nevada Safety Threats Guide
0510.9.6	FPO 0509C	NIA, Safety and Risk Assessment Table

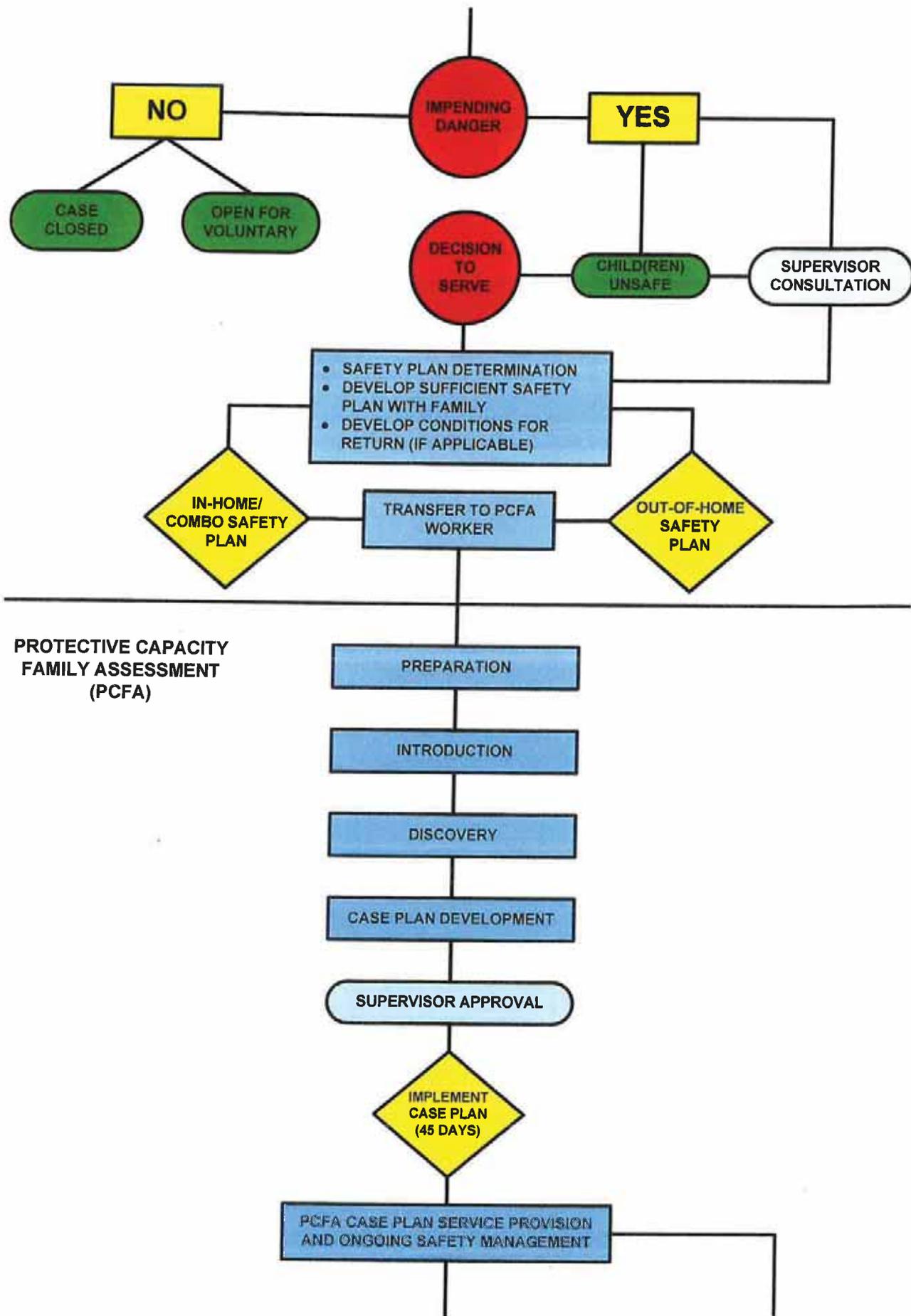
SAFETY INTERVENTION AND PERMANENCY SYSTEM (SIPS)

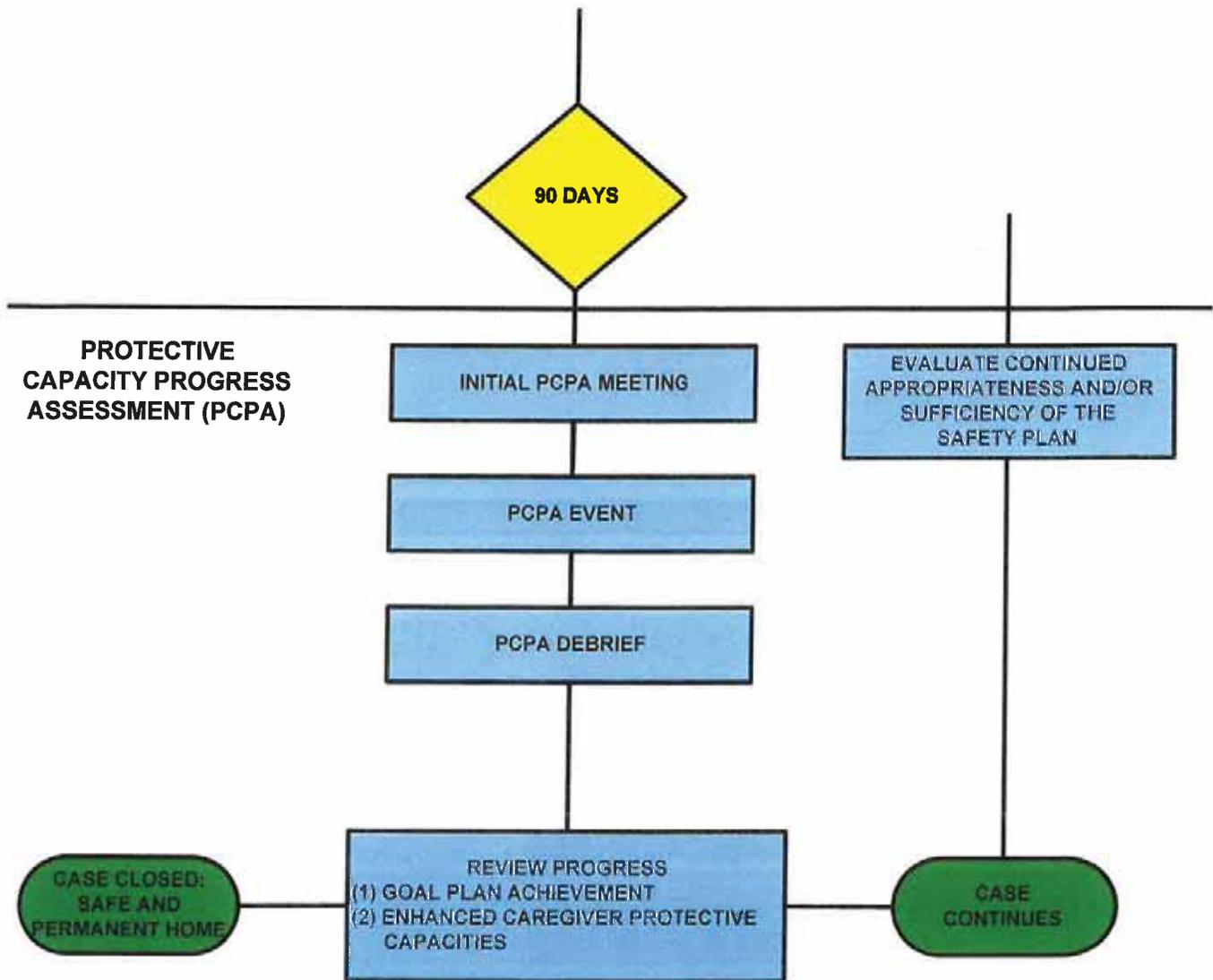
INTAKE
ASSESSMENT



NEVADA INITIAL ASSESSMENT (NIA)







APPENDIX D
NEVADA SUPREME COURT AND
NINTH CIRCUIT COURT OF APPEALS CASES

In re Parental Rights as to A.G., 295 P.3d 589 (Nev. 2013)

In re Parental Rights as to A.J.G., 122 Nev. 1418, 148 P.3d 759 (2006)

In re Termination of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000)

Kirkpatrick v. Cty. of Washoe, 792 F.3d 1184 (9th Cir. 2015)

295 P.3d 589
Supreme Court of Nevada.

In the Matter of **PARENTAL RIGHTS** as to A.G.
Washoe County Department
of Social Services, Appellant,
v.
Kory L.G., Respondent.

No. 60071.
|
Feb. 28, 2013.

Synopsis

Background: County department of social services appealed from order of the Second Judicial District Court, Family Court Division, Washoe County, *Deborah Schumacher, J.*, denying petition to terminate father's parental rights as to child.

Holdings: The Supreme Court, *Douglas, J.*, held that:

[1] father was not required to comply with case plan and accept services for purposes of reunification, and

[2] presumptions favoring termination of parental rights, which arose from child being placed outside home in dependency proceeding, did not apply to father.

Affirmed.

West Headnotes (10)

[1] Constitutional Law

🔑 Child custody, visitation, and support

Due process requires that each parent is entitled to a hearing before being deprived of the custody of his or her child. *U.S.C.A. Const.Amend. 14.*

1 Cases that cite this headnote

[2] Infants

🔑 Dependency, permanency, and rights termination in general

Infants

🔑 Welfare and best interest of child

Presumptions, establishing parental fault and that child's best interest would be served by termination of parental rights, are rebuttable and, once established, the burden shifts to the parent to overcome the presumptions. *West's NRSA 128.105, 128.109.*

1 Cases that cite this headnote

[3] Constitutional Law

🔑 Removal or termination of parental rights

Termination of parental rights implicates fundamental liberty interests of a parent's relationship with his or her child. *U.S.C.A. Const.Amend. 14; West's NRSA 128.109.*

2 Cases that cite this headnote

[4] Infants

🔑 Proceedings

Infants

🔑 Placement or Custody

Procedures for terminating parental rights, and granting custody of a child to a nonparent, must be fundamentally fair. *West's NRSA 128.109.*

1 Cases that cite this headnote

[5] Constitutional Law

🔑 Removal or termination of parental rights

Even when the fairness of the procedures afforded to the parents in proceeding to terminate parental rights is not called into question, substantive due process nevertheless demands that the government have a basis for subjecting the parents to the procedures in the first instance. *U.S.C.A. Const.Amend. 14; West's NRSA 128.109.*

Cases that cite this headnote

[6] Infants

🔑 Fitness of parent

It is presumed that fit parents act in the best interest of their children.

[1 Cases that cite this headnote](#)

[7] Infants

🔑 [Unfitness or Incompetence of Parent or Person in Position Thereof](#)

As long as parent adequately cares for his or her children, i.e., is fit, there will normally be no reason for state to inject itself into private realm of the family in order to further question ability of that parent to make best decisions as to rearing of that parent's children.

[Cases that cite this headnote](#)

[8] Infants

🔑 [Compliance by parent or custodian](#)

Father of child placed into state custody and made the subject of dependency proceeding, based on neglectful actions of mother, was not required to comply with case plan and accept services for purposes of reunification; father could not be compelled to comply with case plan for reunification with child when father was not responsible for her removal from home, father had never been found to have abused or neglected child, and petition for neglect was dismissed as to father by agreement of parties. West's *NRSA* 432B.560.

[Cases that cite this headnote](#)

[9] Infants

🔑 [Rehabilitation and rehabilitation efforts](#)

Presumptions of token efforts and failure of parental adjustment, which arose from child being placed outside home in dependency proceeding due to neglectful actions of mother, did not apply to support termination of parental rights of father, who was “nonoffending” party; presumptions arose from child's lengthy placement in foster care, child was removed from home because of mother's actions, and county department of social services never substantiated findings that father had neglected child. West's *NRSA* 128.109.

[Cases that cite this headnote](#)

[10] Infants

🔑 [Multiple factors](#)

County department of social services failed to establish by clear and convincing evidence that termination of father's parental rights was warranted; child was placed outside home in dependency proceeding due to neglectful actions of mother, there was no evidence that father had abused or neglected child or that father's drug use rendered him unable to provide safe and caring home for child, and, although child had bonded with maternal grandmother, child still had love and emotional ties with father and father had resources, ability, and desire to care for child's physical, mental, and emotional growth and development. West's *NRSA* 128.105, 128.106, 128.108.

[Cases that cite this headnote](#)

Attorneys and Law Firms

*590 Richard A. Gammick, District Attorney, and Janice Anne Hubbard, Deputy District Attorney, Washoe County, for Appellant.

Jeffrey Friedman, Reno, for Respondent.

BEFORE THE COURT EN BANC.

OPINION

By the Court, **DOUGLAS, J.:**

In this appeal, we consider whether a parent of a child placed into state custody and made the subject of a dependency proceeding, based on the neglectful actions of the other parent, is required to comply with a case plan and accept services under *NRS* 432B.560 for purposes of reunification, when that parent has not been found to have neglected the child (nonoffending parent).¹ In connection with these circumstances, we must also determine whether presumptions that arose in the dependency proceeding should operate

against the parent in a subsequent action to terminate his parental rights.

We conclude that keeping the child from the custody of the parent who is not the subject of the dependency proceeding violates the parent's fundamental constitutional rights to parent his child, when the child was not removed from the home because of his conduct, there were no substantiated findings that he had neglected the child, and the petition for neglect was dismissed as to him. Therefore, the presumptions favoring termination of parental rights under [NRS 128.109](#), which arose from the child being placed outside the home in the dependency proceeding, do not apply to respondent, and the district court correctly concluded that appellant failed to establish parental fault and that terminating respondent's parental rights is in the child's best interest. Accordingly, we affirm the district court's order.

FACTS

This case comes to us after two-year-old A.G. was placed into the protective custody of appellant Washoe County Department of Social Services in May 2009, after the child was found at a campsite with her mother Rachael L., who was extremely intoxicated. This was not the family's first involvement with Social Services.

Social Services had previously been contacted by the maternal grandmother over concerns that she had for A.G. because of Rachael's drug use. At a meeting with Rachael around one week before the night in question, the social worker noted that Rachael was unemployed, her food stamps had run out, and her drug screen had come back positive for methamphetamine and marijuana. The social worker scheduled a follow-up home visit with Rachael to discuss the drug screen and possible services.

The night before the scheduled home visit, however, Rachael took A.G. to a camping party at Pyramid Lake. Rachael had a history of drug and alcohol use as well as suicidal thoughts, and she had made statements to relatives that she believed A.G. was going to be taken into custody the following day, and ***591** she wanted to spend one last night with her and "show her a good time." Based on concerns over Rachael and A.G.'s welfare, the maternal grandmother called authorities. In responding to the call, the police found A.G. with Rachael at the campsite.

A.G.'s father, respondent Kory L.G., was not present at the time of this incident, and was in no way involved in the events that led to A.G.'s removal from Rachael's custody. In fact, Kory and Rachael were separated at the time. Kory primarily cared for A.G. since the child's birth, and she had been well cared for. At the time of A.G.'s placement in protective custody, however, she had been in Rachael's care for about a month because Rachael had obtained a temporary protective order (TPO) against Kory in April 2009. Kory and Rachael's relationship had been tumultuous at best, and the TPO was based on an alleged physical altercation that occurred between Kory and Rachael in front of the child, when Kory went to retrieve A.G. after a visit with Rachael. The TPO initially prohibited Kory from having contact with Rachael and A.G.

Despite Kory's lack of involvement in the events leading to A.G.'s removal, shortly after the child was removed from Rachael's custody, but before the protective custody hearing and the appointment of counsel for Kory, Social Services required Kory to submit to a drug test, for which he complied and tested positive for marijuana and methamphetamine.

An initial protective custody hearing was conducted before a juvenile master to determine whether A.G. was a child in need of protection. At the hearing, the master found that there was reasonable cause to believe that it was contrary to A.G.'s welfare to remain in Rachael's home because of her intoxication while caring for A.G. It was further determined that the child could not be placed with Kory because of the TPO. The master granted Social Services the discretion to temporarily place A.G. with appropriate relatives or in foster care. The child was placed in foster care.²

Social Services subsequently filed a petition for a hearing against both parents, alleging that A.G. was in need of protection from neglect under NRS Chapter 432B. An adjudicatory hearing was conducted during which Rachael submitted to the allegations, which included her drug use, that her home was not in a suitable condition for the child, that she was unable to provide for A.G.'s needs, and that she was intoxicated at the time of A.G.'s removal. The allegations as to Kory included only the TPO. Through counsel, Kory denied the allegations of neglect. The master sustained the allegations as to Rachael and found that A.G. was a child in need of protection and set a dispositional hearing as to Rachael. Because Kory had denied the allegations, the court set the matter for an evidentiary hearing as to him.

In July 2009, before the evidentiary hearing, Kory and Social Services met and reached an agreement to dismiss the petition for a hearing as to Kory. The stipulation to dismiss was placed on the record, and the master filed findings and recommendations reciting the stipulation and vacating the evidentiary hearing. Nevertheless, Social Services filed a case plan and service agreement, which Kory did not sign. Because Kory had tested positive in a drug screening, the case plan included requirements that Kory submit to random drug screens and submit to a substance abuse evaluation and that he undergo a domestic violence evaluation. That same month, a dispositional hearing was held for Rachael, during which Kory requested that A.G. be placed with him. By this time, the TPO against Kory had been modified to allow Kory to have contact with A.G., and he argued that he had challenged the sufficiency of the TPO and that the matter was pending in another court.

Following the stipulation to dismiss the petition between Social Services and Kory, and the dispositional hearing for Rachael, the master found that A.G. was a child in need of protection under [NRS 432B.330](#) as to Rachael. The master further denied the child's placement with Kory, approved A.G.'s placement ***592** in family foster care, and recommended that legal custody of A.G. remain with Social Services. The master also recommended that Kory comply with his case plan and ordered him to pay child support. Kory did not file an objection to these recommendations. Ultimately, the juvenile court adopted the master's recommendations by order on July 29, 2009. Kory was granted supervised visitation with A.G., which he exercised on a regular basis. In August 2009, the TPO was dismissed based on insufficient evidence.

With the TPO and the petition for a hearing having both been dismissed, Kory filed a motion in the juvenile court to terminate Social Services' action and return the child to him or begin reunification with unsupervised home visits. After a hearing in October 2009, the master denied the motion, recommending that A.G. remain in the physical and legal custody of Social Services. The master found that although the TPO had been dismissed, there was still an obligation to determine whether Kory was a safe placement for A.G. The master stated that the primary issue preventing unsupervised visits was its inability to determine the extent of Kory's drug use and whether he could abstain from substance use while caring for A.G. The master noted that Kory had recently tested negative in a September 2009 drug screen but the master could not determine Kory's abstinence between May

and September 2009, because Kory had not taken drug tests during that time. Although the master recommended that Kory's motion for immediate placement be denied, the master concluded that A.G. could be safely placed with Kory if he was not actively using drugs, and recommended that Kory submit to a substance abuse evaluation and continue to submit to drug screens. Kory did not file any objection to the recommendations, and the juvenile court entered an order affirming and adopting the master's recommendations. Social Services retained custody of A.G., she was moved from foster care to live with her maternal grandmother, and Kory continued supervised visits.

Six months later, a permanency hearing was held, and the master approved a "permanency plan of reunification with Kory [] together with a concurrent plan of termination of parental rights followed by adoption." The master was persuaded by Kory's argument that his progress on the case plan had been impeded by a lack of communication and specificity regarding the services he was expected to complete. The master ordered Kory to enter into a revised case plan with Social Services, which included more detailed terms regarding visitation, weekly drug testing, counseling services and monitoring, and communications. Social Services filed an objection challenging the master's authority to rework Kory's case plan; the juvenile court denied the objection and remanded the case to the master for further proceedings. On remand, the master ordered Kory to comply with the revised terms of the case plan.

Another six months passed, and a second permanency hearing was conducted, after which the master found that despite extensive modification to Kory's case plan, he had not been in compliance with the plan because he failed his drug test, failed to communicate with Social Services, and failed to attend any counseling or substance abuse treatment. The master did find that Kory had maintained a fairly consistent visitation schedule with A.G. The master recommended A.G.'s continued placement with the maternal grandmother, approved a permanency plan of termination of parental rights followed by adoption, and recommended that Social Services be relieved of providing further reunification efforts with the parents. Kory objected to the recommendation for termination of parental rights. He argued that he had provided good care to A.G. before her removal from Rachael's custody and that Social Services had not shown that he used drugs to an extent that would render him unable to responsibly and capably care for A.G. Not persuaded by Kory's arguments, the juvenile

court affirmed the master's findings and recommendation for termination of Kory's parental rights.

Social Services then filed a petition in the district court to terminate Kory's parental rights to A.G. At that point, A.G. had been in the custody of Social Services for 18 months and Kory had not substantially complied with his case plan. This triggered the presumptions *593 for termination under NRS 128.109, where the child has been out of the home for 14 of any 20 consecutive months and where the parent has failed substantially to comply with services for reunification within 6 months. Thus, Social Services argued that it must be presumed that Kory had provided only token efforts and had failed to adjust his conduct, and that termination was in A.G.'s best interest. In addition to the presumptions, Social Services further argued that the facts affirmatively established parental fault and that the child's best interest would be served by termination.

Following a three-day bench trial, the district court denied the petition, finding that the presumptions did not apply and that Social Services had otherwise failed to demonstrate parental fault or that termination was in A.G.'s best interest. The court explained that its decision was based on Kory's status as a nonoffending parent, which it noted is an issue that this court has not previously addressed. Social Services now appeals from the order denying its petition to terminate Kory's parental rights.

DISCUSSION

Legal presumptions

The action to terminate Kory's parental rights was preceded by the separate dependency proceeding instituted by Social Services under NRS Chapter 432B to protect A.G. from abuse or neglect by the person responsible for the child's care, in this case Rachael. Because events that occurred in that dependency proceeding gave rise to certain legal presumptions under both the abuse and neglect statutes, NRS Chapter 432B, and the termination of parental rights statutes, NRS Chapter 128, which were applied against Kory in the case to terminate his parental rights, we begin by briefly reviewing the legal framework of the dependency proceeding and how the presumptions arose.

Dependency proceedings

[1] In Nevada, the juvenile court has exclusive jurisdiction in proceedings concerning a child who is or may be a child in need of protection. See NRS 432B.410(1); see also NRS 432B.050; NRS 62A.180. A child is in need of protection if, among other things, “[t]he child has been subjected to abuse or neglect by a person responsible for the welfare of the child.” NRS 432B.330(1)(b). An agency that provides child welfare services must file a petition in the juvenile court alleging that a child is in need of protection. See NRS 432B.490; NRS 432B.510. When the petition alleges abuse or neglect by only one parent, the other parent nonetheless has constitutional protections and must be treated individually. See NRS 432B.457 (requiring that each parent be notified of any plan for the child's temporary or permanent placement); NRS 432B.510(4)(c) (stating that the petition for hearing must include the names of the child's parents); NRS 432B.520(1) (requiring that the parent be notified of the hearing on the petition if the child is in the custody of a nonparent). Due process requires that each parent is entitled to a hearing before being deprived of the custody of his or her child. See *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); cf. *In re Doe*, 123 N.H. 634, 465 A.2d 924, 931 (1983) (noting that fundamental liberty interests prohibit imputing one parent's conduct to terminate the parental rights of the other parent).

Shortly after the child is placed into protective custody, the court conducts an adjudicatory hearing and, if the allegations in the petition are denied by the person responsible for the child, an evidentiary hearing on the petition must be conducted. See NRS 432B.530. “If the court finds that the allegations in the petition have not been established, it shall dismiss the petition” and order the child's immediate release from protective custody. NRS 432B.530(5). If the juvenile court finds that the child is in need of protection, the court may make a number of dispositions, including allowing the child to remain with a parent or placing the child with a nonparent. See NRS 432B.530(5); NRS 432B.550. If the child is placed outside the home, the agency must make reasonable efforts to reunify and preserve the family of the child, with the child's health and safety being a paramount concern. See NRS 432B.393(1) and (2). The agency must submit a plan concerning placement of the child, *594 including a description of services to be provided to the person responsible for the child and to the child in order to facilitate reunification or to ensure a permanent placement for the child. NRS 432B.540(2)(b). The juvenile court may also order “[t]he child, a parent or the guardian to undergo such medical, psychiatric, psychological, or other care or treatment

as the court considers to be in the best interests of the child.” NRS 432B.560(1)(a).

Within 12 months after the initial removal of the child from the home, and annually thereafter, the juvenile court must conduct a dispositional hearing to review the plan for permanent placement of the child and to determine whether the agency has made reasonable efforts to finalize the child's permanent placement. NRS 432B.590(1)(a) and (3); *see also* NRS 432B.553(1). The court may consider whether the child should be returned to the parents or whether termination of parental rights proceedings should be instituted under NRS Chapter 128, so that the child can be placed for adoption. NRS 432B.590(3)(b). If the child has been placed outside of the home for 14 of any 20 consecutive months, “the best interests of the child must be presumed to be served by the termination of parental rights.” NRS 432B.590(4).

Termination of parental rights proceedings

[2] If a parental termination proceeding is instituted against a parent, the petitioner must establish by clear and convincing evidence that parental fault exists and that the child's best interest would be served by termination of parental rights. NRS 128.105. Parental fault can be established by findings that the parent's conduct constitutes abandonment, neglect, unfitness, failure of parental adjustment, risk of injury, or token efforts. NRS 128.105; *Matter of Parental Rights as to D.R.H.*, 120 Nev. 422, 428–33, 92 P.3d 1230, 1234–37 (2004). In addition to affirmative findings, certain presumptions can arise to establish parental fault and that the child's best interest would be served by termination. In this regard, when a child has been placed outside his or her home under NRS Chapter 432B for 14 of any 20 consecutive months, “it must be presumed that the parent or parents have demonstrated only token efforts to care for the child.” NRS 128.109(1)(a). These token efforts demonstrate parental fault and give rise to the presumption that termination of the parent's parental rights is in the child's best interest. NRS 128.109(1)(a) and (2). Another presumption, failure of parental adjustment, arises when the parent fails to substantially comply “with the terms and conditions of a plan to reunite the family within 6 months after the date on which the child was placed or the plan was commenced, whichever occurs later.” NRS 128.109(1)(b); NRS 128.105(2)(d). These presumptions are rebuttable and once established, the burden shifts to the parent to overcome the presumptions. *Matter of Parental Rights as to J.L.N.*, 118 Nev. 621, 625–26, 55 P.3d 955, 958 (2002). It is these presumptions that are at issue in this case.

In denying the petition to terminate Kory's parental rights, the district court recognized that because Kory was not responsible for A.G.'s removal from the home and Kory had never been found to have abused or neglected A.G., he had a constitutionally protected right to the custody of his child as a nonoffending parent. The district court defined a nonoffending parent as “an individual against whom no allegations of abuse, neglect or unfitness have been substantiated, and whose only proven ‘fault’ is to have had a child in common with a parent from whom the child was removed.” Thus, the district court concluded that the child's removal from the home and Kory's failure to comply with the case plan could not be used as a basis for presuming parental fault in the termination proceeding and that Social Services otherwise failed to carry its burden of establishing that termination was in A.G.'s best interest.

On appeal, Social Services argues that once a child is found to be a child in need of protection based on the conduct of only one parent, the juvenile court may take jurisdiction over that child even if there is a noncustodial parent available to take custody. Social Services asserts that it has an obligation to ensure the health and safety of the child, *595 and to investigate a proper placement, and that Kory was not a proper placement in this case. According to Social Services, the juvenile court may require the parent to comply with services under NRS 432B.560 to determine whether the parent is fit for placement and to facilitate reunification, and that Kory's failure to timely comply with his case plan gives rise to the presumptions for parental termination under NRS 128.109. Social Services argues that the presumptions arising from the neglect proceeding should have applied in this case to establish parental fault by Kory and that termination was in A.G.'s best interest.

While neither Nevada's statutes nor caselaw addresses the rights of the nonoffending parent, we take this opportunity to clarify the constitutional rights of a parent whose child is the subject of a dependency proceeding based on the conduct of the other parent, and against whom no allegations of abuse or neglect have been substantiated.

A parent's constitutionally protected parental rights

[3] [4] [5] This court has consistently recognized that severing the parent-child relationship is an extreme measure and an exercise of awesome power. *Parental Rights of J.L.N.*, 118 Nev. at 625, 55 P.3d at 958; *Matter of Parental Rights as to N.J.*, 116 Nev. 790, 795, 8 P.3d 126, 129 (2000).

Termination of parental rights implicates fundamental liberty interests of a parent's relationship with his or her child. *Parental Rights of D.R.H.*, 120 Nev. at 426–27, 92 P.3d at 1233. The procedures for terminating parental rights, and granting custody of a child to a nonparent, must be fundamentally fair. *Id.*; *Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). Even when the fairness of the procedures afforded to the parents is not called into question, substantive due process nevertheless demands that the government have a basis for subjecting the parents to the procedures in the first instance. *Licari v. Ferruzzi*, 22 F.3d 344, 347 (1st Cir.1994) (recognizing that substantive due process tenet, which ensures that government action is not arbitrary, regardless of whether the procedures afforded were fair).

[6] [7] The United States Supreme Court has held that parents have a fundamental liberty interest in the care, custody, and control of their children. *See Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *see also In re Parental Rights as to C.C.A.*, 128 Nev. —, —, 273 P.3d 852, 854 (2012). This liberty interest is protected by the Due Process Clause of the Fourteenth Amendment. *Troxel*, 530 U.S. at 65, 120 S.Ct. 2054. It is presumed that fit parents act in the best interest of their children. *Id.* As long as parents adequately care for their children, there is ordinarily “no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.” *Id.* at 68–69, 120 S.Ct. 2054. These substantive due process rights prohibit the government from depriving parents of the custody of their children without a finding of parental unfitness. *Stanley*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (holding that parents are constitutionally entitled to a hearing on parental fitness before children are removed from their custody).

In applying these constitutional principles to custody determinations that arise in dependency proceedings, other courts have recognized a preference for placing the child with a fit parent, where the child was removed from the home based on the conduct of the other parent. *See, e.g., In re D.S.*, 52 A.3d 887 (D.C.2012) (recognizing a parental preference in neglect proceedings in the absence of evidence that the parent is unfit or that granting custody to that parent would be detrimental to the children's best interest); *In Interest of M.M.L.*, 258 Kan. 254, 900 P.2d 813 (1995) (recognizing that a parent's fundamental right to the care

of his or her child may not be disturbed absent a finding of parental unfitness or substantial endangerment to the child's welfare); *Matter of Cheryl K.*, 126 Misc.2d 882, 484 N.Y.S.2d 476 (N.Y.Fam.Ct.1985) (holding that when the child was removed from the home because *596 of the father's actions, the mother, who had never been adjudicated an unfit parent, had a superior right to custody as against third parties). This preference is rooted in these constitutionally protected parental rights, as well as statutory dependency provisions that express a preference for keeping the child with his or her family. *See In re D.S.*, 52 A.3d at 894; *see also NRS 432B.393(1)* (providing that the agency shall make reasonable efforts to preserve and reunify the family). Additionally, the state's interest in protecting the welfare of children is served because, in the absence of findings of parental unfitness, a parent is presumed to make decisions in the best interest of his or her child. *See Troxel*, 530 U.S. at 65, 120 S.Ct. 2054; *see also NRS 432B.393(2)* (stating that the child's health and safety is a paramount concern in reunifying the family).

This leads us to the case at hand and whether Kory was afforded his constitutionally protected rights as a parent in this case. Nevada's statute requires a finding that the child has been abused or neglected only by “a person” responsible for the child's welfare, before the court can assume jurisdiction over the child. *NRS 432B.330(1)(b)*. It does not require a finding that both parents have abused or neglected the child. Thus, in this case, the juvenile court properly had jurisdiction over A.G. based on the mother's neglectful conduct.

[8] The problem arose, however, when the juvenile court required Kory to comply with a case plan for reunification after the petition for neglect had been dismissed as to him and denied his request to have the child returned to his care. That decision also resulted in the child being outside of Kory's home for 14 of any consecutive 20 months, and because Kory failed to complete the case plan, gave rise to the presumptions under the termination statute that parental fault existed and that it was in A.G.'s best interest to terminate Kory's parental rights. Social Services argues that, in light of its concerns over Kory's substance abuse, the juvenile court had authority to order Kory to complete a case plan under *NRS 432B.560*, which provides that the court may order “a parent ... to undergo such medical, psychiatric, psychological, or other care or treatment as the court considers to be in the best interests of the child.” While *NRS 432B.560* may allow the juvenile court to order services for a parent, it does not allow

the court to require the noncustodial parent to complete a case plan for reunification under the circumstances presented here.

In this case, A.G. was taken into protective custody because of the mother's neglect and not because of any neglect by Kory. Kory had been the primary caretaker to A.G. for most of her life, and she had been well cared for. Although A.G. could not be immediately placed with Kory because of the TPO, the protective order was quickly modified to allow contact between Kory and A.G., and was later dismissed altogether for lack of evidence. Thus, the predicate for the neglect petition as to Kory no longer existed. Aside from the TPO, the petition contained no other allegations of neglect by Kory, and Social Services never substantiated any. Indeed, Social Services agreed to dismiss the neglect petition as to Kory within two months after it was filed.

Despite that dismissal, Social Services submitted a case plan for Kory, and over the next 18 months, the court required Kory to comply with the identified services based upon concerns over Kory's drug use. These concerns, however, were unrelated to the initial basis for the neglect petition against Kory (*i.e.*, the TPO), but instead, arose because of a drug screen given to Kory before the protective custody hearing and even before Kory had counsel. For months thereafter, A.G. was kept from Kory's custody not because of any findings of neglect by Kory, but because the juvenile court could not determine the nature and extent of Kory's drug use or whether it would affect his ability to parent the child based upon Kory's inconsistent compliance with the drug screening and the other terms of the case plan—a case plan that Kory should not have been required to complete in the first place.

While we recognize that the child's health and safety is a paramount concern in the government's efforts to preserve and reunify the family unit, it must be balanced with the protection of a parent's constitutional rights. *597 NRS 432B.393(1) and (2); see *Matter of Parental Rights as to N.J.*, 116 Nev. 790, 801–02, 8 P.3d 126, 133–34 (2000) (recognizing that in parental termination proceedings, the fundamental liberty interest of parents must be balanced with society's interest in protecting the welfare of children). Social Services has an obligation to ensure the safety and well-being of the child, and it has the authority under NRS Chapter 432B to determine whether it is safe to place the child with the parent who was not responsible for the abuse or neglect that brought the child into Social Services' purview. Thus, if Social Services had concerns over Kory's drug

use and its effect on his ability to care for A.G., Social Services should have maintained a petition for neglect as to Kory and sought to substantiate allegations of Kory's neglect. See NRS 432B.330. As the district court correctly recognized, requiring Social Services to maintain a petition and prove neglect by Kory protects the due process rights of the parent's relationship with his child, while also serving the government's interest in protecting the child's welfare if there is an adequate basis for concern. A parent's fundamental liberty interest in the care, custody, and control of his child does not “simply evaporate” because the parent has not been a model parent or may have lost temporary custody of his child to Social Services. *Santosky*, 455 U.S. at 753, 102 S.Ct. 1388.

[9] Because of the constitutional violation that kept A.G. from Kory's custody in the dependency proceeding, we conclude that the presumptions of token efforts and failure of parental adjustment under NRS 128.109 cannot apply against Kory in the parental termination case. Those presumptions arose because A.G. was placed outside of the home for 14 out of 20 consecutive months, NRS 128.109(1)(a) and (2), and because Kory failed to comply with the case plan within six months, NRS 128.109(1)(b), but these circumstances would not have occurred if it were not for him being subjected to the case plan. Applying those presumptions here would be fundamentally unfair.

A.G. was removed from the home because of the mother's actions, and Social Services never substantiated findings that Kory had neglected A.G. When a parent did not cause the child's removal and was never found to have neglected the child, the statutory presumptions cannot apply to support the termination of the parent's rights. Thus, the district court properly concluded that these presumptions should not apply to terminate Kory's parental rights.

Termination was not established by clear and convincing evidence

[10] In the absence of any presumptions, the district court also found that Social Services failed to establish by clear and convincing evidence that termination of Kory's parental rights was warranted. *In re Parental Rights as to C.C.A.*, 128 Nev. —, —, 273 P.3d 852, 854 (2012); see also *Santosky*, 455 U.S. at 769, 102 S.Ct. 1388. The district court found that Social Services did not prove parental fault on any of the grounds alleged, including parental unfitness, failure of parental adjustment, and the demonstration of only token efforts. See NRS 128.105(2). The district court further found

no evidence that Kory had abused or neglected A.G., or that Kory's drug use rendered him unable to provide a safe and caring home for A.G. See [NRS 128.106](#). The district court found that Kory should never have been required to comply with the case plan; and to the extent that he ever orally agreed to comply or partially performed some of the plan's components to facilitate reunification, such an agreement had a coercive element and was an improper basis for termination.

As for the child's best interest, the district court took into account the comparative analysis between the child's family and the foster family, when the child has been living in a foster home, as well as A.G.'s attachment to Kory and her maternal grandmother. See [NRS 128.105](#); [NRS 128.108](#). The district court found that while A.G. had bonded with her maternal grandmother, A.G. still had "considerable love, affection, and emotional ties" with Kory. The court further found that Kory "has the resources, ability, and desire to care for [A.G.]'s proper physical, mental, and emotional growth and development." We conclude that the district court's decision is supported by substantial evidence, and *598 that termination of Kory's parental rights is not in A.G.'s best interest. See *Matter of Parental Rights as to A.J.G.*, 122 Nev. 1418, 1423, 148 P.3d 759, 763 (2006) (recognizing that the district court's decision to terminate parental rights will be upheld by this court if it is supported by substantial evidence).

Footnotes

- 1 Nonoffending parent doctrine. Vivek S. Sankaran, *Parens Patriae Run Amuck: The Child Welfare System's Disregard for the Constitutional Rights of Nonoffending Parents*, 82 Temp. L.Rev. 55, 73–74 (2009).
- 2 Sometime after A.G.'s placement in protective custody, Kory divorced Rachael and sought custody of A.G. At the termination trial, Rachael testified that she was willing to relinquish her parental rights, and she is not a party to this appeal.

CONCLUSION

We conclude that Kory had constitutionally protected rights in the dependency proceeding and could not be compelled to comply with a case plan for reunification with A.G. when Kory was not responsible for her removal from the home, Kory had never been found to have abused or neglected A.G., and the petition for neglect was dismissed as to Kory by agreement of the parties. Thus, the presumptions that arose from A.G.'s lengthy placement in foster care could not be used against Kory (nonoffending parent) in the parental termination proceeding to establish either parental fault or that the child's best interest would be served by termination. Further, Social Services otherwise failed to demonstrate that termination of Kory's parental rights was warranted. Accordingly, we affirm the district court's order denying the petition to terminate Kory's parental rights.

We concur: [PICKERING](#), C.J., and [GIBBONS](#), [HARDESTY](#), [PARRAGUIRRE](#), [CHERRY](#), and [SAITTA](#), JJ.

All Citations

295 P.3d 589, 129 Nev. Adv. Op. 13

122 Nev. 1418
Supreme Court of Nevada.

In the Matter of the PARENTAL
RIGHTS AS TO A.J.G. and A.C.W.
Tammila G., A/K/A Tammala J. W., Appellant,
v.
The State of Nevada, Department of
Human Resources, Division of Child
and Family Services, Respondent.

No. 46438.
|
Dec. 28, 2006.

Synopsis

Background: Petition was filed to terminate mother's parental rights. The Eighth Judicial District Court, Family Court Division, Clark County, [Gerald W. Hardcastle, J.](#), terminated mother's parental rights, and mother appealed.

Holdings: The Supreme Court, [Becker, J.](#), held that:

[1] mother, and not State, had burden of producing evidence as to desires of children regarding termination after State established presumption that termination of parental rights was in best interests of children;

[2] termination of mother's parental rights was in best interest of children; and

[3] substantial evidence supported finding of parental fault, as required to terminate parental rights.

Affirmed.

West Headnotes (12)

[1] **Infants**

➔ Needs, interest, and welfare of child

Infants

➔ Unfitness or Incompetence of Parent or Person in Position Thereof

Infants

➔ Dependency, permanency, and rights termination in general

A party petitioning to terminate parental rights must establish by clear and convincing evidence that (1) termination is in the child's best interest, and (2) parental fault exists. West's [NRSA 128.105](#).

[11 Cases that cite this headnote](#)

[2] **Infants**

➔ Scope, Standards, and Questions on Review

Terminating parental rights is an exercise of awesome power that is tantamount to imposition of a civil death penalty, and therefore, on review, the Supreme Court closely scrutinizes whether the district court properly preserved or terminated the parental rights at issue.

[8 Cases that cite this headnote](#)

[3] **Infants**

➔ Dependency, Permanency, and Rights Termination

On appeal from an order terminating parental rights, the Supreme Court reviews the district court's factual findings for substantial evidence, and it will not substitute its own judgment for that of the district court.

[8 Cases that cite this headnote](#)

[4] **Infants**

➔ Adoptability and exceptions to adoption

State was not required to prove that adoptive placement existed for children as prerequisite to terminating mother's parental rights. Adoption and Safe Families Act of 1997, [42 U.S.C.A. § 675\(5\)\(E\)](#); West's [NRSA 128.110\(1\)](#).

[Cases that cite this headnote](#)

[5] **Infants**

➔ Adoptive placement

Under the Adoption and Safe Families Act, a state may forgo seeking an adoptive placement

concurrently with a petition to terminate parental rights when the child is being cared for by a relative. Adoption and Safe Families Act of 1997, 42 U.S.C.A. § 675(5)(E)(i).

[Cases that cite this headnote](#)

[6] **Infants**

🔑 [Welfare and best interest of child](#)

Once State established presumption that termination of mother's parental rights was in best interests of children, based on evidence that children had been removed from home due to abuse and neglect and had lived outside home for at least 14 of any 20-month period, mother, and not State, had burden of producing evidence as to desires of children regarding termination. West's [NRSA 128.107\(2\)](#), [128.109\(2\)](#).

[Cases that cite this headnote](#)

[7] **Infants**

🔑 [Welfare and best interest of child](#)

Once the presumption applies that termination of parental rights is in the best interests of the child, the parent has the burden to offer evidence to overcome the presumption. West's [NRSA 128.109\(2\)](#).

[7 Cases that cite this headnote](#)

[8] **Statutes**

🔑 [Other Statutes](#)

Statutes must be read in conjunction with one another.

[Cases that cite this headnote](#)

[9] **Courts**

🔑 [Operation and Effect of Rules](#)

Statutes

🔑 [Construing together; harmony](#)

Whenever possible, the Supreme Court will interpret a rule or statute in harmony with other rules and statutes.

[Cases that cite this headnote](#)

[10] **Infants**

🔑 [Welfare and best interest of child](#)

A parent's evidence that the child does not wish his or her parent's rights to be terminated would be a consideration for the district court in determining whether the parent has overcome the presumption the termination of parental rights is in the best interests of the child. West's [NRSA 128.107\(2\)](#), [128.109\(2\)](#).

[14 Cases that cite this headnote](#)

[11] **Infants**

🔑 [Parental relationship or bond](#)

Infants

🔑 [Drug and alcohol use and dependency](#)

Infants

🔑 [Drug and Alcohol Use and Dependency](#)

Infants

🔑 [Custodian's Associates and Relationships](#)

Infants

🔑 [Failure to communicate or visit](#)

Infants

🔑 [Arrearages and failure to support](#)

Termination of mother's parental rights was in best interest of children, despite mother's assertion that she had not used drugs for over two years and that she had maintained relationship with children; mother presented no evidence in support of claim of sobriety, such as submitting to drug testing pursuant to case plan, and, although mother spoke with children on telephone and visited with them regularly, mother failed to provide any support for children while they lived outside home, telephone visits were terminated, mother continued to live with same boyfriend who had previously allowed others to abuse children, and children were flourishing while living with aunt and uncle. West's [NRSA 128.105](#).

[Cases that cite this headnote](#)

[12] **Infants**

🔑 [Arrearages and failure to support](#)

Infants

🔑 [Compliance by parent or custodian](#)

Infants

🔑 [Rehabilitation and reunification efforts](#)

Substantial evidence supported determination of parental fault based on findings that mother had made only token efforts to care for children and that mother failed to substantially comply with terms and conditions of reunification plan, as required to terminate mother's parental rights; mother made no attempt to support children financially while they lived outside of home, mother did not submit to drug testing, psychiatric evaluation, clinical assessment, or domestic violence assessment pursuant to plan, and she failed to provide proof of economic or residential stability. West's [NRSA 128.105](#), [128.109\(1\)\(a\)](#), [b](#)).

[1 Cases that cite this headnote](#)

Attorneys and Law Firms

****760** [David M. Schieck](#), Special Public Defender, and [Melinda E. Simpkins](#), Deputy Special Public Defender, Clark County, for Appellant.

[George Chanos](#), Attorney General, Carson City; [David J. Roger](#), District Attorney, and [Brigid J. Duffy](#), Deputy District Attorney, Clark County, for Respondent.

Before [BECKER](#), [HARDESTY](#) and [PARRAGUIRRE](#), JJ.

***1419 OPINION**

[BECKER](#), J.

In this appeal, we consider two issues. First, we consider whether the State must prove the existence of an adoptive placement ***1420** for a child before a court can terminate a parent's rights to that child. Second, we decide which party has the burden to present evidence of a child's desires, under [NRS 128.107\(2\)](#), in a parental rights termination case when the State has established the presumption under [NRS 128.109\(2\)](#) that it is in the child's best interest for the parent's rights to be terminated.

We first conclude that neither state nor federal law on parental rights termination requires the State to prove the existence of an adoptive placement for a child before a court can terminate parental rights. We next conclude that once the State has established the presumption under [NRS 128.109\(2\)](#), the parent has the burden to offer evidence of the child's desires regarding termination of the parent's rights if the parent wishes the court to consider those desires.

****761 FACTS**

In May 2002, Child Protective Services (CPS) removed A.J.G., then twelve years old, and A.C.W., then eleven years old, from the home of their mother, appellant Tammila G. and her boyfriend, George L.¹ CPS received a referral that the children were being bound with duct tape, slapped, and kicked by friends of Tammila and George while they were away from home. According to the children, such incidents occurred repeatedly. Although the children informed Tammila about the incidents, she did not take steps to prevent the abuse from recurring.

Following the children's removal from the home, a CPS specialist and a probation officer conducted a home visit at Tammila and George's residence. Tammila admitted to recently using methamphetamine, and officers arrested George for violation of his probation after finding methamphetamine and other drug paraphernalia at the house. The juvenile division of the district court ordered that the children remain in protective custody pending further proceedings.

The Children's Resource Bureau (CRB) of the Division of Child and Family Services (DCFS) conducted a clinical assessment of the children and their family. Reports from family members indicated that Tammila exhibited auditory and visual hallucinations and erratic behavior. Because Tammila did not participate in a CRB assessment, however, CRB was unable to determine the impact of Tammila's mental state on the children and whether her behavior was caused by drug use or a naturally occurring [psychosis](#). CRB recommended that the children be placed in foster care and that they have regular visitation with Tammila.

Upon the filing of an appropriate petition by the State, the district court found that it would be contrary to the children's welfare ***1421** to reside with Tammila and

George. Accordingly, the district court ordered that the children be made wards of the State and placed in foster care.

Subsequently, DCFS devised a case plan for Tammila with the ultimate goal of reunifying her and the children.² From November 2002 to May 2005, DCFS filed six reports with the district court on a biannual basis updating the court on Tammila's progress in completing her case plan and on the children's situation in their foster home. Each report indicated that Tammila was not fulfilling the objectives of her case plan. Specifically, she failed to (1) submit to drug tests, (2) submit to a psychiatric evaluation, (3) enroll in and complete a parenting class, (4) provide proof of economic and residential stability, and (5) submit to a CRB assessment. Tammila attempted to comply with the mental-health objective of her case plan, but the facility denied her treatment because she refused to see a psychiatrist or take medication if necessary. To Tammila's credit, she did attend visitations with her children regularly, only missing one visit.

Following the third DCFS report, the district court concluded that Tammila had made only token efforts in her attempt to reunify with the children. DCFS, with the district court's approval, changed the children's permanency plan from reunification to "Other Permanent Planned Arrangement." Under this new permanency plan, the children would reside in foster care until reaching the age of majority. Alternatively, they could be adopted. If adoption became a viable option, DCFS would seek termination of Tammila's parental rights.

At some point, the children's maternal aunt and uncle, in Louisiana, expressed an interest in and willingness to accept placement of the children with them in Louisiana. The aunt and uncle were open to either foster placement or adoption. Based on the aunt and uncle's interest in caring for the children, DCFS, with the district court's approval, changed the children's permanency plan to "relative adoption by the maternal aunt and uncle in Louisiana." DCFS, along with the aunt and uncle, began the process **762 necessary for the children's adoption. In 2004, DCFS placed the children with their aunt and uncle in Louisiana. According to DCFS, at that time, the children adjusted well to their new environment, and DCFS would continue to monitor their progress.

In April 2005, the State petitioned the district court to terminate Tammila's parental rights. At a hearing, the State presented the district court with evidence of Tammila's failure to fulfill substantially the objectives of her case plan. The district court also heard testimony from the children's aunt,

with whom they were living. *1422 The aunt testified that the children were doing well in their home in Louisiana and that they were or would be receiving some counseling. The aunt also testified that Tammila had not visited the children in Louisiana and offered them no support beyond sending some nonmonetary gifts. Tammila did telephone the children frequently, but she would not keep to a specific schedule, and the children were often upset after talking to her, which led DCFS to terminate Tammila's telephone privileges with the children.

The district court also heard testimony from Tammila, who expressed her desire to be reunited with her children but also acknowledged her failure to comply with her case plan. Tammila testified that she had been sober for two years but that she had not submitted proof of her sobriety to DCFS. She further testified that she was economically stable and in a stable residence, but she admitted that she never submitted proof of such stability to DCFS.

George, Tammila's boyfriend, also testified. He stated that he dealt with the friends who had abused the children by telling them never to do it again and by making them move off his property where they were living. He also admitted to not fulfilling his own case plan, stating that he would only work on his plan when Tammila worked on her plan.

Following the hearing, the district court granted the State's petition. The district court found that the State had established by clear and convincing evidence that it was in the children's best interest to terminate Tammila's parental rights and that parental fault existed. Specifically, the district court found that the presumption under [NRS 128.109\(2\)](#) applied, which established that it was in the children's best interest to terminate Tammila's parental rights. Additionally, the district court found that the presumptions under [NRS 128.109\(1\)\(a\)](#) and (b) applied, which established parental fault.

The district court also found that Tammila did not rebut these presumptions. Rather, the district court found that Tammila had failed within a reasonable time to remedy the conditions that led to the children's removal from her home, even though DCFS made reasonable efforts to reunite Tammila with her children, and that Tammila had failed to comply substantially with her case plan for over three-and-a-half years.

DISCUSSION

On appeal, Tammila argues that the evidence does not support terminating her parental rights because the State failed to prove that an adoptive placement existed for A.J.G. and A.C.W. She further argues that the State had the burden to, but did not, assert evidence of the children's desires to the district court. We conclude that Tammila's contentions lack merit for two reasons.

***1423** First, the State does not have a burden to prove the existence of an adoptive placement for a child before a court can terminate the parent's rights. Second, because the State established the presumption, under [NRS 128.109\(2\)](#), that termination of parental rights is in the children's best interests, the burden of evidencing A.J.G.'s and A.C.W.'s desires rested squarely on Tammila in order to overcome the presumption. Under these predicates, we conclude that substantial evidence supports the termination of Tammila's parental rights.

[1] [2] [3] A party petitioning to terminate parental rights must establish by clear and convincing evidence that (1) termination is in the child's best interest, and (2) parental fault exists.³ As we have stated previously, ****763** terminating parental rights is “ ‘an exercise of awesome power’ ”⁴ that is “ ‘tantamount to imposition of a civil death penalty.’ ”⁵ Therefore, we “closely scrutinize[] whether the district court properly preserved or terminated the parental rights at issue.”⁶ On appeal, we review the district court's factual findings in its order terminating parental rights for substantial evidence, and we will not substitute our own judgment for that of the district court.⁷

Adoptive placement

[4] Tammila contends that under the Federal Adoption and Safe Families Act of 1997 (ASFA or the Act), permanency for children is the primary focus in adoption and parental rights termination cases. Based on that primary focus, Tammila argues that, under federal law, a party seeking to terminate parental rights must prove ***1424** the existence of an adoptive placement. Additionally, because Nevada complies with the ASFA in order to receive federal funding for child welfare services, Tammila contends that state law also places a burden on the State to prove an adoptive placement for the child before the district court can terminate parental rights.

[5] With the adoption of Assembly Bill 158 in 1999, Nevada amended much of its law on the placement of children in foster care, adoption, and termination of parental rights to

comply with the ASFA.⁸ Under the ASFA, a state wishing to receive federal funds for child welfare services must create a system in accordance with the Act.⁹ To that end, a state shall either initiate a petition to terminate parental rights or join an existing petition if certain criteria are met, while concurrently “identify[ing], recruit[ing], process [ing], and approv[ing] a qualified family for adoption.”¹⁰ Contrary to Tammila's argument, this provision does ****764** not place a burden on the State to prove that an adoptive placement exists. Rather, a plain reading of [42 U.S.C. § 675\(5\)\(E\)](#) indicates that state agencies must begin seeking an adoptive placement for the child concurrently with seeking termination of parental rights.¹¹ ***1425** The statute even permits a state to forgo seeking an adoptive placement concurrently with a petition to terminate parental rights, when “the child is being cared for by a relative,”¹² as is the CASE HERE.

Nevada law also does not contemplate a burden on the State to prove an adoptive placement when seeking to terminate parental rights. Under [NRS 128.110\(1\)](#), upon termination of parental rights, the child is to be placed in the custody and control of “some person or agency qualified by the laws of this State to provide services and care to children.” That person or agency may thereafter seek further placement with a relative.¹³ Nowhere in Nevada's statutes is there a requirement that the State prove an adoptive placement for the child before parental rights can be terminated. Indeed, the Nevada statutes do not even contemplate a search for an adoptive placement concurrently with a petition to terminate parental rights similar to the federal statute.

Based on the above analysis, we conclude that, in the present matter, neither federal nor state law required the State to prove the existence of an adoptive placement for A.J.G. and A.C.W. before the district court could terminate Tammila's parental rights.¹⁴

The children's desires under NRS 128.107(2)

[6] Next, Tammila argues that the State had a burden to produce evidence, under [NRS 128.107\(2\)](#), of the children's desires with regard to termination of Tammila's parental rights. The State contends, however, that because it established the presumption under [NRS 128.109\(2\)](#), that it is in the children's best interests to terminate Tammila's parental rights, the burden of evidencing A.J.G.'s and A.C.W.'s desires rested with Tammila. We agree with the State's analysis.

In a parental rights termination case, when the child is not in the physical custody of the parent, the district court shall consider “[t]he physical, mental or emotional condition and needs of the *1426 child and *his desires regarding termination*, if the court determines he is of sufficient capacity to express his desires.”¹⁵ The statute does not specify whether a particular party has a burden to offer evidence of the child's desires.

[7] Under NRS 128.109(2), termination of parental rights is presumed to be in the child's best interest when the “child has been placed outside of his home pursuant to chapter 432B of NRS and has resided outside of his home pursuant to that placement for 14 months of any 20 consecutive months.” Once the presumption applies, the parent has the burden to offer evidence to overcome the presumption that termination of his or her rights is in the child's best interest.¹⁶

****765** [8] [9] [10] In determining whether a particular party in this case had a duty to present evidence of the children's desires under NRS 128.107(2), even when the State had established the presumption under NRS 128.109(2), we must consider how the presumption of NRS 128.109(2) affects NRS 128.107(2). To do so, the statutes must be read in conjunction with one another.¹⁷ “Whenever possible, this court will interpret a rule or statute in harmony with other rules and statutes.”¹⁸ Because NRS 128.109(2) shifts the burden to the parent to offer evidence that parental rights termination is not in the child's best interest, we conclude that the burden to establish the child's desires under NRS 128.107(2) therefore lies with the parent when the presumption, under NRS 128.109(2), applies. A parent's evidence that the child does not wish his or her parent's rights to be terminated would be a consideration for the district court in determining whether the parent has overcome the presumption.

Substantial evidence supports the district court's finding that the presumption in NRS 128.109(2) applies in this case. The record indicates that A.J.G. and A.C.W. were removed from Tammila's home for abuse and neglect under NRS Chapter 432B on May 21, *1427 2002. They have not returned to Tammila's home. As of the date of the hearing to terminate Tammila's parental rights on October 7, 2005, the children had resided outside of their home and in protective custody for over forty consecutive months. Reading NRS 128.109(2) in harmony with NRS 128.107(2), upon finding that NRS 128.109(2)'s presumption applied, the burden of evidencing

the children's desires with regard to termination of Tammila's parental rights rested on Tammila. She did not offer such evidence. A CASA report written approximately two years before Tammila's hearing indicated that the children did not wish to be adopted. The report was also written before the children began living with their aunt and uncle—the prospective adoptive parents. The district court considered this information when deciding to terminate Tammila's parental rights and terminated them nonetheless.¹⁹

Substantial evidence supports the district court's decision to terminate Tammila's parental rights

The district court found that the State established by clear and convincing evidence that (1) it was in A.J.G.'s and A.C.W.'s best interests to terminate Tammila's parental rights, and (2) Tammila exhibited parental fault. Substantial evidence supports these findings.

The children's best interests

[11] As already discussed, substantial evidence supports the district court's finding that the presumption under NRS 128.109(2) applied, establishing that it is in A.J.G.'s and A.C.W.'s best interests to terminate Tammila's parental rights. In an attempt to rebut the presumption, Tammila testified that she had not used drugs in over two years. However, she presented no independent evidence of her sobriety such as submitting to drug counseling as required by her case plan. Tammila did present evidence that she has a relationship with her children in that she spoke to them frequently until her telephone-call privileges were terminated and that she visited them regularly when they were in Nevada. The appellate record, however, also indicates that she did not attempt to support her children while they lived outside her home. Tammila testified that if the children were with her now and a domestic violence situation arose, she would take the children and leave. But she offered no evidence that her home situation is any different from the one in which the children were abused. She ****766** still lives with her boyfriend in the same house, and although her boyfriend allegedly dealt ***1428** with the friends who abused the children, the record does not indicate that the threat no longer exists. Finally, Tammila did not present evidence of the children's desires with regard to termination.

Conversely, the record indicates that the children are flourishing while living with their aunt and uncle in Louisiana. They have become well integrated into that family.

Their performance in school has improved as have their behaviors, resulting from structured parenting by their aunt and uncle.

We therefore conclude that substantial evidence supports the district court's finding that it is in the children's best interests to terminate Tammila's parental rights.

Parental fault

[12] With regard to parental fault, the district court found that the presumptions under [NRS 128.109\(1\)\(a\)](#) and [\(b\)](#) applied.

[NRS 128.109\(1\)\(a\)](#)

Under subsection (a), if a child is removed from the home under NRS Chapter 432B and has resided outside the home for 14 of any 20 consecutive months, it is presumed that the parent has demonstrated “only token efforts to care for the child as set forth in [[NRS 128.105\(2\)\(f\)](#)].”²⁰ For the same reasons as the application of [NRS 128.109\(2\)](#), substantial evidence supports the district court's application of [NRS 128.109\(1\)\(a\)](#).

Although Tammila has communicated with the children and sent them gifts, she did not attempt to support them financially. The gifts were nonmonetary. Because the statute requires more than communication and gifts, we conclude that the district court did not err in finding that Tammila did not present evidence sufficient to rebut this presumption.

[NRS 128.109\(1\)\(b\)](#)

The presumption under [NRS 128.109\(1\)\(b\)](#) provides that if the parent fails to substantially comply with the terms and conditions of the reunification plan within six months after the date on which the child was removed from the home or the case plan commenced, that failure evidences a failure of parental adjustment under [NRS 128.105\(2\)\(d\)](#).²¹ Substantial evidence also supports application of this presumption.

Tammila's case plan began on July 24, 2002. As evidenced by the first two DCFS reports, Tammila did not substantially comply ***1429** with the plan's terms within the first six months. She did not submit to drug testing, a psychiatric evaluation, a CRB assessment, or a domestic violence

assessment. She failed to enroll in parenting classes, and she failed to provide DCFS with proof of economic or residential stability. Although she did visit her children regularly while they were in Nevada, her attempts to otherwise comply with her case plan were minimal. Tammila's noncompliance with her case plan continued during the three years until the hearing to terminate her parental rights.

According to Tammila, her failure to obtain proper drug counseling was because of a mistake at the drug counseling agency, but she presented no independent evidence to support this assertion. Likewise, she claimed that her failure to obtain a domestic violence assessment was because of a mistake, but again she presented no supporting evidence. We therefore conclude that the district court did not err in finding that Tammila did not present ample evidence to overcome the presumption of failure of parental adjustment under [NRS 128.109\(1\)\(b\)](#).

Because substantial evidence supports the district court's determination that Tammila failed to overcome presumptions set forth under [NRS 128.109\(1\)\(a\)](#) and [\(b\)](#), and that it was in the children's best interests to terminate Tammila's parental rights, we conclude that the district court did not abuse its discretion in terminating Tammila's parental rights.

CONCLUSION

Based on the foregoing, we conclude that (1) a party seeking termination of parental ****767** rights does not have a burden to demonstrate that an adoptive placement for a child exists; (2) when the presumption under [NRS 128.109\(2\)](#) applies, it is the parent's burden to adduce evidence of the child's desires regarding termination of parental rights under [NRS 128.107\(2\)](#) as a consideration for the district court in rebutting the presumption; and (3) substantial evidence supports the district court's termination of Tammila's parental rights. Accordingly, we affirm the district court's order.

[HARDESTY](#) and [PARRAGUIRRE, JJ.](#), concur.

All Citations

122 Nev. 1418, 148 P.3d 759

Footnotes

- 1 At the time of this opinion, A.J.G. is seventeen years old and A.C.W. is fifteen years old.
- 2 DCFS also devised a case plan for George. Because George has no parental rights over the children, and this case involves the termination of Tammila's parental rights, George's case plan and his adherence thereto is not in issue.
- 3 See NRS 128.105; see also *Matter of Parental Rights as to N.J.*, 116 Nev. 790, 8 P.3d 126 (2000).
- 4 *Matter of Parental Rights as to N.J.*, 116 Nev. at 795, 8 P.3d at 129 (quoting *Smith v. Smith*, 102 Nev. 263, 266, 720 P.2d 1219, 1220 (1986), overruled on other grounds by *Matter of Parental Rights as to N.J.*, 116 Nev. at 800 n. 4, 8 P.3d at 132 n. 4).
- 5 *Id.* (quoting *Drury v. Lang*, 105 Nev. 430, 433, 776 P.2d 843, 845 (1989)).
- 6 *Id.* (citing *Matter of Parental Rights as to Carron*, 114 Nev. 370, 956 P.2d 785 (1998), overruled on other grounds by *Matter of Parental Rights as to N.J.*, 116 Nev. at 800 n. 4, 8 P.3d at 132 n. 4; *Matter of Parental Rights as to Gonzales*, 113 Nev. 324, 933 P.2d 198 (1997), overruled on other grounds by *Matter of Parental Rights as to N.J.*, 116 Nev. at 800 n. 4, 8 P.3d at 132 n. 4; *Scalf v. State, Dep't of Human Resources*, 106 Nev. 756, 801 P.2d 1359 (1990), overruled on other grounds by *Matter of Parental Rights as to N.J.*, 116 Nev. at 800 n. 4, 8 P.3d at 132 n. 4; *Kobinski v. State*, 103 Nev. 293, 738 P.2d 895 (1987)).
- 7 *Id.* (citing *Kobinski*, 103 Nev. at 296, 738 P.2d at 897).
- 8 A.B. 158, 70th Leg., Bill Summary 2 (Nev.1999) ("Sections of A.B. 315 have been amended into A.B. 158 so Nevada law complies with the Federal Adoption and Safe Families Act of 1997").
- 9 See 42 U.S.C. § 671(a) (2000).
- 10 42 U.S.C. § 675(5)(E) (2000). This provision states in relevant part,
 [I]n the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless—
 (i) at the option of the State, the child is being cared for by a relative;
 (ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or
 (iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 671(a)(15)(B)(ii) of this title are required to be made with respect to the child
 (Emphasis added.)
- 11 See Kurtis A. Kemper, *Construction and Application by State Courts of the Federal Adoption and Safe Families Act and Its Implementing State Statutes*, 10 A.L.R. 6th 173, § 38 (2006) (citing *In re Interest of Georgina V.*, 9 Neb.App. 791, 620 N.W.2d 130, 134–35 (2000); *Youth and Family Services v. M.F.*, 357 N.J.Super. 515, 815 A.2d 1029, 1036–37 (App.Div.2003)); see also *Matter of William S.*, 122 Nev. 432, —, 132 P.3d 1015, 1018–19 (2006) ("Generally, the plain meaning of the words in a statute should be respected unless doing so violates the spirit of the act.").
- 12 42 U.S.C. § 675(5)(E)(i).
- 13 NRS 123.110(2).
- 14 Tammila also argues that the State failed to produce sufficient evidence of an adoptive placement because it did not assert evidence that the children would consent to being adopted, as required under NRS 127.020 for adoptions of children over fourteen years of age. The State responds that because the children will be adopted in Louisiana, which has no child consent requirement for adoption, Tammila's argument lacks merit. Because we conclude that proof of an adoptive placement is not required prior to termination of parental rights, we do not address this issue.
- 15 NRS 128.107(2) (emphasis added).
- 16 See *Matter of Parental Rights as to D.R.H.*, 120 Nev. 422, 427–28, 92 P.3d 1230, 1234 (2004) (stating that presumption created by NRS 128.109(2) is rebuttable and that "[p]arents are free to present evidence showing that termination of their parental rights is not in a child's best interest"); *Matter of Parental Rights as to K.D.L.*, 118 Nev. 737, 745, 58 P.3d 181, 186 (2002) (concluding that father failed to overcome presumption of NRS 128.109(2)); *Matter of Parental Rights as to J.L.N.*, 118 Nev. 621, 625–26, 55 P.3d 955, 958 (2002) (stating that NRS 128.109(2) is a rebuttable presumption).

- 17 See *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, —, 132 P.3d 1022, 1028 (2006).
18 *Id.* (quoting *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993, 860 P.2d 720, 723 (1993)).
19 We do not reach the question of which party has the burden to adduce evidence of the child's desires under NRS 128.107(2) when the presumption under NRS 128.109(2) does not apply. That issue is not before us at this time.
20 NRS 128.105(2)(f) provides one of the bases on which a district court can find parental fault.
21 NRS 128.105(2)(d) provides another basis on which the district court can find parental fault.

116 Nev. 790
Supreme Court of Nevada.

In the Matter of TERMINATION OF
PARENTAL RIGHTS AS TO N.J., a Minor.

Sam Z. and Talia Z., Appellants,

v.

Hikmet and Raja J., and the
Minor Child N.J., Respondents.

No. 32436.

|
Aug. 24, 2000.

In an adoption proceeding, the child's uncle and aunt petitioned to terminate the biological parents' parental rights. The District Court, Clark County, [Cynthia Dianne Steel](#) and [Robert E. Gaston, JJ.](#), denied the petition and denied a motion for new trial. Uncle and aunt appealed. The Supreme Court, [Agosti, J.](#), held that: (1) a best interests/parental fault standard applies to termination of parental rights, under which the district court must always consider the best interests of the child in conjunction with a finding of parental fault, overruling [Carron](#), 114 Nev. 370, 956 P.2d 785, [Daniels](#), 114 Nev. 81, 953 P.2d 1, [Cooley](#), 113 Nev. 1191, 946 P.2d 155, [Gonzales](#), 113 Nev. 324, 933 P.2d 198, [Bow](#), 113 Nev. 141, 930 P.2d 1128, [Weinper](#), 112 Nev. 710, 918 P.2d 325, [Scalf](#), 106 Nev. 756, 801 P.2d 1359, [Smith](#), 102 Nev. 263, 720 P.2d 1219, [Daly](#), 102 Nev. 66, 715 P.2d 56, and [McGuire](#), 101 Nev. 179, 697 P.2d 479; (2) trial court should have applied statutory presumption of abandonment; and (3) letters written by biological father were not excluded under the hearsay rule.

Reversed and remanded with instructions.

West Headnotes (17)

- [1] **Infants**
 ➔ Dependency, Permanency, and Termination Factors; Children in Need of Aid
Infants
 ➔ Scope, Standards, and Questions on Review
 Termination of parental rights is an exercise of awesome power and is tantamount to imposition of a civil death penalty, and, accordingly, the Supreme Court closely scrutinizes whether the

district court properly preserved or terminated the parental rights at issue.

6 Cases that cite this headnote

[2] **Constitutional Law**

➔ Removal or termination of parental rights

Due process requires that clear and convincing evidence be established before terminating parental rights. *U.S.C.A. Const.Amend. 14.*

2 Cases that cite this headnote

[3] **Infants**

➔ Dependency, Permanency, and Rights Termination

The Supreme Court will uphold orders terminating parental rights based on substantial evidence, and will not substitute its own judgment for that of the district court.

8 Cases that cite this headnote

[4] **Infants**

➔ Jurisdiction and venue

The district court always maintains subject matter jurisdiction over a properly filed petition to terminate parental rights.

1 Cases that cite this headnote

[5] **Statutes**

➔ Plain Language; Plain, Ordinary, or Common Meaning

Words in a statute should be given their plain meaning unless this violates the spirit of the act.

Cases that cite this headnote

[6] **Statutes**

➔ Superfluousness

No part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided.

Cases that cite this headnote

[7] Statutes

🔑 Purpose and intent; unambiguously expressed intent

Where a statute is clear on its face, a court may not go beyond the language of the statute in determining the legislature's intent.

Cases that cite this headnote

[8] Infants

🔑 Needs, interest, and welfare of child

In all termination of parental rights proceedings, the best interests of the child must be the primary consideration. N.R.S. 128.105.

20 Cases that cite this headnote

[9] Infants

🔑 Dependency, Permanency, and Termination Factors; Children in Need of Aid

Infants

🔑 Needs, interest, and welfare of child

A best interests/parental fault standard applies to termination of parental rights, under which the district court must always consider the best interests of the child in conjunction with a finding of parental fault; overruling *Matter of Carron*, 114 Nev. 370, 956 P.2d 785, *Matter of Daniels*, 114 Nev. 81, 953 P.2d 1, *Cooley v. State*, 113 Nev. 1191, 946 P.2d 155, *Matter of Gonzales*, 113 Nev. 324, 933 P.2d 198, *Matter of Bow*, 113 Nev. 141, 930 P.2d 1128, *Matter of Weinper*, 112 Nev. 710, 918 P.2d 325, *Scalf v. State*, 106 Nev. 756, 801 P.2d 1359, *Smith v. Smith*, 102 Nev. 263, 720 P.2d 1219, *Daly v. Daly*, 102 Nev. 66, 715 P.2d 56, and *McGuire v. Welfare Division*, 101 Nev. 179, 697 P.2d 479. N.R.S. 128.105.

8 Cases that cite this headnote

[10] Infants

🔑 Dependency, Permanency, and Termination Factors; Children in Need of Aid

Infants

🔑 Needs, interest, and welfare of child

Infants

🔑 Dependency, permanency, and rights termination in general

The best interests of the child and parental fault must both be shown by clear and convincing evidence before parental rights can be terminated. N.R.S. 128.105.

25 Cases that cite this headnote

[11] Infants

🔑 Nature, Form, and Purpose

The purpose of the parental right termination statute is not to punish parents, but to protect the welfare of children. N.R.S. 128.005.

4 Cases that cite this headnote

[12] Constitutional Law

🔑 Parent and Child Relationship

The parent-child relationship is a fundamental liberty interest. U.S.C.A. Const.Amend. 14.

2 Cases that cite this headnote

[13] Infants

🔑 Dependency, Permanency, and Termination Factors; Children in Need of Aid

Infants

🔑 Needs, interest, and welfare of child

Deciding whether to terminate parental rights requires weighing the interests of the children and the interests of the parents. N.R.S. 128.105.

3 Cases that cite this headnote

[14] Infants

🔑 Abandonment, absence, and nonsupport

Evidence that biological parents left the child with the child's aunt and uncle without any provision for support for over seven years, that mother saw the child only twice during that period and father did not see the child at all, and that the parents spoke to the child on the telephone only once during that period, satisfied the statutory presumption of abandonment in proceeding to terminate parental rights, thereby shifting the burden to the biological parents to

prove they did not abandon the child. [N.R.S. 47.180\(1\)](#), [128.012\(2\)](#).

[4 Cases that cite this headnote](#)

[15] **Infants**

🔑 [Abandonment, absence, and nonsupport](#)

The application of the statutory presumption of abandonment of a child by a parent is not discretionary. [N.R.S. 128.012\(2\)](#).

[2 Cases that cite this headnote](#)

[16] **Infants**

🔑 [Private writings and electronic communications](#)

Hearsay rule did not exclude admission, in proceeding to terminate parental rights, of four letters written in Arabic by the biological father to the child's guardians, which were accompanied by a sworn affidavit of the translator; the nature of the letters and the special circumstances under which they were written offered assurances of accuracy not likely to be enhanced by calling the father as a witness. [N.R.S. 51.075](#).

[Cases that cite this headnote](#)

[17] **Appeal and Error**

🔑 [Rulings on admissibility of evidence in general](#)

Trial

🔑 [Admission of evidence in general](#)

The district court has considerable discretion in determining the admissibility of evidence, and the Supreme Court will not disturb a district court's ruling absent an abuse of that discretion.

[1 Cases that cite this headnote](#)

Attorneys and Law Firms

****127 *790** [Jimmerson Hansen](#), Las Vegas, for Appellants.

[Paul M. Gaudet](#), Las Vegas, for Respondents Hikmet and Raja J.

[Kirby R. Wells & Associates](#) and [Allison L. Herr](#), Las Vegas, for Respondents.

***792** BEFORE THE COURT EN BANC.

OPINION

[AGOSTI, J.:](#)

This is an appeal from an order of the district court denying a petition for termination of parental rights and from an order denying a motion for a new trial. In determining whether to terminate parental rights, this court has consistently applied the jurisdictional/dispositional standard set forth in [Champagne v. Welfare Division](#), 100 Nev. 640, 691 P.2d 849 (1984). Based on legislative amendments to [NRS 128.105](#), which sets forth the grounds for terminating parental rights, we now reject our *Champagne* standard, which requires a district court to find jurisdictional grounds to terminate parental rights before it considers the best interests of the child. In its place, we adopt a best interest/parental fault standard which requires a district court to consider whether the best interests of the child would be served by the termination and whether parental fault exists. We also conclude that the district court failed to apply the statutory presumption of abandonment as codified in [NRS 128.012\(2\)](#). In light of our decision ****128** today, we reverse the district court's orders and remand this matter for a new trial.

FACTS

In 1988, a child was born to respondents Hikmet and Raja J. in Baghdad, Iraq. In early 1990, Raja and the child traveled from Iraq to Michigan, where family resides. That summer, Raja ***793** departed from the United States and left the child behind in Michigan with her sister and brother-in-law, appellants Talia and Sam Z. Since then, Talia and Sam have raised the child in Las Vegas and San Diego. Talia and Sam are the only parents the child has ever known. Until recently, the child was unaware of the true identity of her biological parents.

In 1996, after caring for the child for approximately six years, Talia and Sam petitioned the Nevada district court

for guardianship of the child. Talia and Sam's petition was granted. Subsequently, Raja and Hikmet filed a petition to terminate the guardianship, which was denied. Thereafter, Talia and Sam sought to adopt the child. Accordingly, in May 1997, Talia and Sam moved the district court to terminate the parental rights of Raja and Hikmet. An evidentiary hearing was conducted on November 21, 1997.

During the hearing, the parties offered drastically differing evidence regarding the reasons why Talia and Sam have raised the child since 1990. Talia testified that following the news of Raja's pregnancy with the child, a family member informed her that Raja was going to give the baby to her. According to Talia, Raja allegedly said that she wanted Talia to raise the child because Raja was too old and Talia was unable to conceive. Talia further testified that when Raja brought the child to the United States in 1990, Raja told Talia that the baby was now hers. Talia testified that she telephoned Hikmet, and he also told her to keep the baby.

Raja testified that she brought the child to Michigan in 1990 simply to visit family members. Raja further testified that her mother, the child's grandmother, convinced her to leave the child in the United States so that Raja could join Hikmet at a medical conference in London, England.¹ Following the London conference, Raja and Hikmet returned to Iraq. According to Raja, she and Hikmet intended to retrieve the child in October 1990 when Hikmet was scheduled to attend a medical conference in Toronto, Canada. However, on August 2, 1990, Iraq invaded Kuwait. The allied forces began bombing Iraq on January 17, 1991. According to Raja and Hikmet, travel out of Iraq was restricted due to the conflict. Exactly when travel was restricted and for how long is unclear. The record indicates that in 1993, Raja traveled to Michigan to attend her older daughter's wedding. In 1995, Raja returned to the United States to renew her green card. Allegedly, there was a ban on highly educated people leaving Iraq without special permission, and according to Raja and Hikmet, Hikmet was not allowed to leave Iraq until 1997. Talia and Sam insist that Hikmet traveled to Jordan in 1995.

***794** Siblings of Talia and Raja testified that the entire family discussed the fact that Raja intended to give the child to Talia. According to one family member, Raja said that she gave Talia her baby in order for Talia to have luck in having children of her own. This family member testified that, "[t]hat's a superstition ... in our culture."

Also during the evidentiary hearing, the parties presented conflicting evidence regarding two adoption consent forms allegedly executed by Raja and Hikmet. Raja admitted signing the first adoption consent form in Michigan on July 2, 1990, the day she left the United States for England. However, Raja testified that she did not read the document and thought it was an application to extend the child's visa. Talia testified that Raja is fluent in English and knew that the document was an adoption consent form. Talia further testified that Hikmet signed this document in her presence when she traveled to Iraq in 1994.²

****129** Raja and Hikmet admitted that they executed a second adoption consent form during December 1990 in Iraq. Raja and Hikmet further testified that they mailed this document with a will to Raja's mother. Raja and Hikmet insist that a letter, enclosed with the documents, instructed Raja's mother not to give the adoption consent form to Talia and Sam unless Raja and Hikmet and their three grown children died during the war. Raja reclaimed the adoption consent form from her mother in 1993, but apparently did not recover the letter or will.³ Raja and Hikmet resided in Iraq until the beginning of 1997 when they immigrated to the United States.

During the seven years before Talia and Sam filed their petition to terminate Raja and Hikmet's parental rights, Raja saw the child two times while visiting the United States, and Hikmet did not see the child at all. Talia testified that even though she telephoned Raja and Hikmet frequently, Raja and Hikmet showed no interest in communicating with the child; according to Talia they spoke to the child once by telephone when the child was four or five years old. Talia and Sam insist that Raja and Hikmet never provided any financial support for the child. Talia testified that Raja and Hikmet never sent the child presents or cards, except on one occasion when Raja and Hikmet allegedly sent a Christmas card addressed to the entire Z. family. The record establishes that immediately after Talia and Sam took custody of the child from ***795** Raja and Hikmet, they changed the child's name. Raja and Hikmet, and their three grown children, have since referred to the child by the new name.

Following the evidentiary hearing, the district court denied the petition to terminate Raja and Hikmet's parental rights. The district court determined that the evidence presented did not establish by clear and convincing evidence jurisdictional grounds that Raja and Hikmet had abandoned the child. Thereafter, Talia and Sam timely filed a motion for a new

trial. On May 14, 1998, the district court denied Talia and Sam's motion. Talia and Sam timely filed this appeal.

DISCUSSION

Standard of Review

[1] [2] [3] Termination of parental rights is “an exercise of awesome power.” *Smith v. Smith*, 102 Nev. 263, 266, 720 P.2d 1219, 1220 (1986). Severance of the parent-child relationship is “tantamount to imposition of a civil death penalty.” *Drury v. Lang*, 105 Nev. 430, 433, 776 P.2d 843, 845 (1989). Accordingly, this court closely scrutinizes whether the district court properly preserved or terminated the parental rights at issue. See, e.g., *Matter of Parental Rights as to Carron*, 114 Nev. 370, 956 P.2d 785 (1998); *Matter of Parental Rights as to Gonzales*, 113 Nev. 324, 933 P.2d 198 (1997); *Scalf v. State, Dep't of Human Resources*, 106 Nev. 756, 801 P.2d 1359 (1990); *Kobinski v. State*, 103 Nev. 293, 738 P.2d 895 (1987). Due process requires that clear and convincing evidence be established before terminating parental rights. See *Cloninger v. Russell*, 98 Nev. 597, 655 P.2d 528 (1982). This court will uphold termination orders based on substantial evidence, and will not substitute its own judgment for that of the district court. See *Kobinski*, 103 Nev. at 296, 738 P.2d at 897.

Grounds for Termination of Parental Rights

NRS 128.105 sets forth the basic considerations relevant in determining whether to terminate parental rights: the best interests of the child and parental fault. In 1997, at the time of this proceeding, this statute provided as follows:

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

****130 *796** 1. The best interests of the child would be served by the termination of parental rights; and

2. The conduct of the parent or parents demonstrated at least one of the following:

- (a) Abandonment of the child;
- (b) Neglect of the child;

(c) Unfitness of the parent;

(d) Failure of parental adjustment;

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

(f) Only token efforts by the parent or parents:

(1) To support or communicate with the child;

(2) To prevent neglect of the child;

(3) To avoid being an unfit parent; or

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

(g) With respect to termination of the parental rights of one parent, the abandonment by that parent.

Talia and Sam contend that the district court failed to apply the correct standard of law in denying their petition for termination of Raja and Hikmet's parental rights. Specifically, Talia and Sam contend that the district court reached its decision by relying on the standard set forth in *Champagne*, which addressed NRS 128.105 as it was written in 1985. Talia and Sam insist that the district court is required to consider the best interests of the child in reaching its decision.

Nevada's termination statute has changed significantly since its enactment in 1975. The earliest version of the statute did not expressly address the best interests of the child. Rather, the statute articulated specific grounds upon which termination could be granted: “A finding by the court of any of the following: (a) Abandonment of a child; (b) Neglect of a child; or (c) Unfitness of a parent, is sufficient ground for termination of parental rights.” 1975 Nev.Stat. ch. 549, § 10, at 964.

In 1981, the legislature amended the statutory provisions addressing the grounds for terminating parental rights. In particular, the legislature inserted an opening paragraph: “An order of the court for termination of parental rights *may* be made on the grounds that the termination is in the child's best interest in light of the considerations set forth in this section and [NRS 128.106 to 128.108], inclusive.” 1981 Nev.Stat. ch. 718, § 19, at 1755 (emphasis added). The amendment expanded the grounds upon which termination could be granted to include (in addition to abandonment, neglect, and

unfitness of the parent) risk of serious physical, mental or emotional injury to the child, and token efforts by the parent. *Id.*

*797 Following the 1981 amendments to [NRS 128.105](#), this court in *Champagne* interpreted the statute and announced a two-step analysis to be applied when deciding whether to terminate parental rights. According to *Champagne*, the first step in the analysis requires that there be what the court characterized as “jurisdictional” grounds for termination. *Id.* at 640, 691 P.2d at 849. Jurisdictional grounds relate to “parental conduct or incapacity and the parent's suitability as a parent.” *Id.* at 646, 691 P.2d at 854 (footnote omitted). In other words, jurisdictional grounds focus on parental fault or inability to act as a parent. If jurisdictional grounds for termination are not established, the inquiry ends. *Id.* at 647, 691 P.2d at 854. If jurisdictional grounds are established, the analysis turns to whether dispositional grounds exist for termination. Dispositional grounds relate to whether “the child's interest would be served by termination.” *Id.* at 652, 691 P.2d at 857. The *Champagne* court explained that “[i]f under no reasonable circumstances the child's best interest can be served by sustaining the parental tie, dispositional grounds for termination exist.” *Id.* at 652, 691 P.2d at 858.

[4] As described, we used the term “jurisdictional” in *Champagne* to describe parental fault. The term Jurisdictional, as used in this context, may have been misleading in that it suggests that the district court would be without subject matter jurisdiction to act on a termination petition absent a finding of parental fault. In fact, the district court always maintains subject matter jurisdiction **131 over a properly filed petition to terminate parental rights. Despite the unfortunate choice of the word “jurisdictional,” *Champagne* actually held that relief prayed for in the petition, i.e., termination of parental rights, could not be granted unless parental fault was first established and a subsequent finding that termination would be in the child's best interests was made.

Our holding in *Champagne* placed the main focus on the conduct of the parents. In 1987, the legislature responded to our decision in *Champagne*, and again amended the termination statute. The amended version provided in relevant part that “an order of the court for termination of parental rights must be made ... with the initial and primary consideration being whether the best interests of the child would be served by the termination, but requiring a finding” of parental fault. 1987 Nev.Stat. ch. 116, § 1,

at 210. The legislative history indicates that the legislature was concerned that the *Champagne* decision bifurcated the issues regarding children's rights and parent's rights in termination proceedings. *See* Hearing on A.B. 308 Before the Nevada Assembly Committee on Judiciary, 64th Leg. (Nev., March 20, 1987). During the hearings, Senator Sue Wagner, chairperson of the committee on the judiciary, stated that the purpose of the bill as *798 amended was to provide that parental rights and children's rights were of equal importance in the termination of parental rights proceedings and must be considered together. *Id.*

Following the 1987 amendment to the termination statute, we acknowledged the statutory revision in *Greeson v. Barnes*, 111 Nev. 1198, 1200–01, 900 P.2d 943, 945 (1995), and concluded that jurisdictional grounds must still be established before terminating parental rights:

In *Champagne*, this court designated the considerations relating to the conduct of the parent as the “jurisdictional” ground, and the considerations relating to the child's best interest as the “dispositional” ground. In 1989, [sic] in reaction to our decision in *Champagne* which seemed to accord primary emphasis to the rights of the parent over the rights of the child, the legislature added the following language to [NRS 128.105](#): “with the initial and primary consideration being whether the best interests of the child would be served by the termination” (citation omitted). This amendment did not alter the requirement set out in [NRS 128.105](#) and *Champagne* that at least one of the grounds alleging parental fault must be proven by clear and convincing evidence.

In affirming the district court's order terminating the father's parental rights, the *Greeson* court explained that under [NRS 128.105](#) “a lower court may terminate a parent's rights if it finds by clear and convincing evidence that the parent has abandoned the child and that terminating the parent's rights is in the best interest of the child.” *Id.* at 1201, 900 P.2d at 945. The opinion concluded that the statutory amendment did not alter the *Champagne* analysis.

In 1995, the same year that *Greeson* was decided, the legislature once again amended [NRS 128.105](#) by changing the introductory sentence as follows: “The primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination.” 1995 Nev.Stat., ch. 146, § 1, at 215. The following year, in *Matter of Parental Rights of Montgomery*, 112 Nev. 719, 917 P.2d 949 (1996), this court reversed a

district court order terminating the mother's parental rights on the basis that jurisdictional grounds for termination were not proved by clear and convincing evidence. In *Montgomery*, we began our analysis by setting forth the *Champagne* standard. *Id.* at 726, 917 P.2d at 955. Thereafter, we concluded that since the jurisdictional grounds were not supported by clear and convincing evidence, the district court erred in terminating the mother's parental rights. Additionally, we determined that an analysis of the child's best interests was not warranted:

*799 Because none of the jurisdictional findings were supported by clear and convincing evidence, we conclude that the district court erred in finding jurisdictional grounds for termination of Cherrel's parental rights. Therefore, we need not address the district court's findings with **132 respect to dispositional grounds for termination.

Id. at 729–30, 917 P.2d at 956–57.

In 1997, in *Matter of Parental Rights as to Gonzales*, 113 Nev. 324, 334, 933 P.2d 198, 205 (1997), we noted that “[i]n 1995, the Nevada Legislature amended NRS 128.105 to state that ‘[t]he primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination.’” Despite our recognition of the legislative amendment, we analyzed the case under the *Champagne* framework.

Our adherence to the *Champagne* standard has resulted in the improper application of the termination statute. The amendments to NRS 128.105 demonstrate the legislature's frustration with *Champagne* and its progeny, which place too much emphasis on the conduct of the parents instead of on the best interests of the child. Clearly, the legislative amendments of NRS 128.105 illustrate the legislature's concern with protecting the best interests of the child.

[5] [6] [7] [8] [9] “It is well settled in Nevada that words in a statute should be given their plain meaning unless this violates the spirit of the act.” *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). “ ‘[N]o part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided.’ ” *Paramount Ins. v. Rayson & Smitley*, 86 Nev. 644, 649, 472 P.2d 530, 533 (1970) (alteration in original)

(quoting *Torreyson v. Board of Examiners*, 7 Nev. 19, 22 (1871)). Thus, “[w]here a statute is clear on its face, a court may not go beyond the language of the statute in determining the legislature's intent.” *McKay*, 102 Nev. at 648, 730 P.2d at 441. Pursuant to the plain meaning of the termination statute, as amended in 1995, it is unmistakable that in all termination of parental rights proceedings, the best interests of the child must be the primary consideration. Moreover, the statute clearly provides that when deciding whether to terminate parental rights, the district court must always consider the best interests of the child in conjunction with a finding of parental fault.

Accordingly, we now abandon *Champagne*'s strict adherence to a finding of parental fault to terminate parental rights before the *800 district court considers the best interests of the child.⁴ Application of the *Champagne* standard may have resulted in an artificial determination by the district court concerning parental fault, because such a determination cannot be made without considerations of how the parents' conduct has impacted the child. The impact of parental conduct on the child is, in turn, one consideration in determining the best interests of the child. We will no longer require district courts, in the name of determining parental fault, to consider rigidly and formulaically the conduct of the parents in a vacuum, without considering the best interests of the child. Instead, in conformance with NRS 128.105, we adopt a best interests/parental fault standard for termination cases.⁵ Accordingly, the district court in determining whether to terminate parental rights must consider both the best interests of the child and parental fault.

The termination statute sets forth factors to be considered in determining the best interests of the child. In particular, the statute provides that the “continuing needs of a child for proper physical, mental and emotional growth and development are the decisive **133 considerations in proceedings for termination of parental rights.” NRS 128.005(2)(c). These factors allow the district court to consider the distinct facts of each case in deciding whether or not to terminate parental rights.

In *Cooley v. State, Department of Human Resources*, 113 Nev. 1191, 946 P.2d 155 (1997), this court addressed the best-interests-of-the-child standard. In *Cooley*, the mother was sixteen years old when she gave birth to the child. Two years later, during termination proceedings, evidence was offered to show that the mother was raising that child in a home that was unsanitary and dangerous, that the mother had a bad

temper, that the mother failed to complete two separate case plans, and that the mother exhibited no emotional connection with the child. *801 *Id.* at 1192–96, 946 P.2d at 155–58. The district court found that the mother's conduct established abuse and neglect. *Id.* at 1196, 946 P.2d at 158. The district court concluded that termination was in the best interests of the child because the mother was incapable of caring for the child, lacked parenting skills and could not provide the child with a stable home. *Id.* The district court further noted that the mother was immature, selfish, and indifferent towards the child. *Id.* Finally, the district court observed that the child needed a parent immediately and that the child should not have to defer her needs until the mother decided that she wanted to be a parent. *Id.* Accordingly, in determining whether it was in the best interests of the child to terminate the mother's parental rights, the district court considered that particular child's physical, mental and emotional well being.⁶

[10] In addition to considerations of the best interests of the child, the district court must find at least one of the enumerated factors for parental fault: abandonment of the child; neglect of the child; unfitness of the parent; failure of parental adjustment; risk of injury to the child if returned to, or if left remaining in, the home of the parents; and finally, only token efforts by the parents. See NRS 128.105(2)(a)–(f). Although the best interests of the child and parental fault are distinct considerations, the best interests of the child necessarily include considerations of parental fault and/or parental conduct. Accordingly, the best interests of the child and parental fault must both be shown by clear and convincing evidence. See *Montgomery*, 112 Nev. at 726, 917 P.2d at 955.

[11] [12] [13] The purpose of Nevada's termination statute is not to punish parents, but to protect the welfare of children. See NRS 128.005. The United States Supreme Court has decisively established that the parent-child relationship is a fundamental liberty interest. See, e.g., *Lehr v. Robertson*, 463 U.S. 248, 258, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983) (maintaining that the relationship of love and duty in a family unit is a liberty interest entitled to constitutional protection); *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (noting that the fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents); *802 *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978) (recognizing that the parent-child relationship is constitutionally protected); *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)

(stressing the importance of the family and the right to raise children); see also Francis Barry McCarthy, *The Confused Constitutional Status and Meaning of Parental Rights*, 22 Ga.L.Rev. 975 (1988) (examining the historical development of parents' constitutional rights). While we recognize the importance of parents' constitutional interest in maintaining a relationship with their children, we also recognize that as a society we have an interest in raising children in an environment that is not harmful to their welfare or best interests. See Mary S. Coleman, *Standards for Termination of Parental Rights*, 26 Wayne L.Rev. 315, 322 (1980) (examining the interests of parents and children in termination proceedings); see also Raymond C. O'Brien, *An Analysis of Realistic Due Process Rights of Children Versus Parents*, 26 Conn.L.Rev. 1209 (1994) (contending **134 that application of preponderance of the evidence standard, as opposed to clear and convincing evidence, in termination cases would recognize both the parental presumption and the rights of the child). Accordingly, deciding whether to terminate parental rights requires weighing the interests of the children and the interests of the parents.

Numerous courts have recognized a best interests/parental fault standard in deciding whether to terminate parental rights. See, e.g., *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232 (Ind.1992) (reviewing evidence of parents' failure to meet responsibility as parents and best interests of the child); *L.B.A. v. H.A.*, 731 S.W.2d 834 (Ky.Ct.App.1987) (considering the rights of the natural mother and the best interests of child in termination proceedings); *In re Christina H.*, 618 A.2d 228 (Me.1992) (recognizing that best interests of the child inquiry is separate and distinct from parental fault inquiry); *In re J.J.B.*, 390 N.W.2d 274 (Minn.1986) (noting that in termination cases, balance between child's best interest and parents' interest is required); *In re A.K.L. and A.M.L.*, 942 S.W.2d 953 (Mo.Ct.App.1997) (recognizing the primary concern must be best interest of the child and parental fault); *In re M.B.*, 222 Neb. 757, 386 N.W.2d 877 (1986) (balancing best interests of child with parental fault in termination proceeding); *In re Kristopher B.*, 125 N.H. 678, 486 A.2d 277 (1984) (balancing best interests of the child with parental fault required in termination proceeding); *Ward v. Commonwealth*, 13 Va.App. 144, 408 S.E.2d 921 (1991) (stating that termination of parental rights requires examination of best interests of the child and the likelihood of parental rehabilitation). These courts have acknowledged the importance of weighing the interests of the child and the interests of the parents in termination proceedings.

*803 In the present case, the district court did not consider the best interests of the child, because the court found that the jurisdictional grounds for termination were not proven by clear and convincing evidence. In light of the statutory amendments to the termination statute, we conclude that, upon remand, the district court must consider whether the best interests of the child would be served by the termination, coupled with considerations of whether parental fault exists.

Statutory Presumption of Abandonment

[14] The district court did not apply the statutory presumption of abandonment contained in [NRS 128.012\(2\)](#) in considering whether Raja and Hikmet abandoned the child. [NRS 128.012](#) defines “abandonment of a child” as follows:

1. “Abandonment of a child” means any conduct of one or both parents of a child which evinces a settled purpose on the part of one or both parents to forego all parental custody and relinquish all claims to the child.
2. If a parent or parents of a child leave the child in the care and custody of another without provision for his support and without communication for a period of 6 months, ... the parent or parents are presumed to have intended to abandon the child.

[NRS 128.090\(2\)](#) provides in relevant part that the district court “shall in all cases require the petitioner to establish the facts by clear and convincing evidence and shall give full and careful consideration to all of the evidence presented.”

Talia and Sam introduced evidence that Raja and Hikmet had abandoned the child. The evidence showed that Raja and Hikmet left their child with Talia and Sam without any provision for support for over seven years. During that period, Raja saw the child only twice and Hikmet did not see the child at all. Talia and Sam also offered evidence that Raja and Hikmet spoke to the child on the telephone only once during this time.

As stated previously, the district court did not apply the statutory presumption of abandonment in considering whether Raja and Hikmet abandoned the child. Once Talia and Sam introduced evidence that Raja and Hikmet left the child for six months without communication or provisions for support, application of the statutory presumption of abandonment shifted the burden to Raja and Hikmet to prove that they did not abandon the child. See [NRS 47.180\(1\)](#)

(providing that **135 “[a] presumption, other than a presumption against the accused in a criminal action, imposes on the party against whom it is directed the burden of proving that the *804 nonexistence of the presumed fact is more probable than its existence”).

[15] We conclude that the district court erred in failing to apply the statutory presumption. This court has previously acknowledged that the application of the statutory presumption of abandonment contained in [NRS 128.012\(2\)](#) is not discretionary. See *Gonzales*, 113 Nev. at 331 n. 5, 933 P.2d at 202 n. 5.

Exclusion of English Translations of Four Arabic Letters

[16] During the proceedings, Talia and Sam attempted to admit four Arabic letters written by Hikmet to Talia and Sam. Talia and Sam had the letters translated by a translator certified by the Eighth Judicial District Court. The translations were accompanied by a sworn affidavit of the translator. The significance of the letters, according to Talia and Sam, is that they rebut Raja and Hikmet’s assertions that they never intended the child to remain with Talia and Sam. Talia and Sam contend that this excluded evidence is manifestly important to their case and that the district court erred in excluding the letters.

[17] The district court has considerable discretion in determining the admissibility of evidence and this court will not disturb a district court’s ruling absent an abuse of that discretion. See *K-Mart Corporation v. Washington*, 109 Nev. 1180, 866 P.2d 274 (1993). [NRS 51.075](#) provides in relevant part that “[a] statement is not excluded by the hearsay rule if its nature and the special circumstances under which it was made offer assurances of accuracy not likely to be enhanced by calling the declarant as a witness.” We conclude that the district court abused its discretion in excluding the certified translations of the four Arabic letters written by Hikmet to Talia and Sam.

CONCLUSION

We conclude that a new trial is required in light of the legislative amendments to [NRS 128.105](#), which require the district courts to give primary consideration to whether the child’s best interests will be served by the parental termination. We also conclude that a new trial is warranted because the district court failed to apply the statutory

presumption of abandonment as codified in [NRS 128.012\(2\)](#), and erred in excluding the certified English translations of the four Arabic letters.

Accordingly, we reverse the order of the district court denying Talia and Sam's petition to terminate the parental rights of Raja *805 and Hikmet as well as the district court's order denying Talia and Sam's motion for a new trial, and remand this matter for further proceedings consistent with this opinion.⁷

ROSE, C.J., and YOUNG, MAUPIN, SHEARING, LEAVITT, and BECKER, JJ., concur.

All Citations

116 Nev. 790, 8 P.3d 126

Footnotes

- 1 At the time, Hikmet was a university professor and medical doctor in Baghdad.
- 2 The notarized adoption consent form indicates that Hikmet executed this document in the presence of Dolores Fox, a notary public, and in the presence of two independent witnesses. However, Dolores Fox admitted that Hikmet did not sign the adoption consent form in her presence and that her notarization was unlawful. Hikmet contended that he never signed this document.
- 3 The letter and will were never produced at the hearing.
- 4 To the extent that our case law follows the jurisdictional/dispositional analysis announced in *Champagne*, we overrule the following cases: *Matter of Parental Rights as to Carron*, 114 Nev. 370, 956 P.2d 785 (1998); *Matter of Parental Rights as to Daniels*, 114 Nev. 81, 953 P.2d 1 (1998); *Cooley v. State, Dep't Hum. Res.*, 113 Nev. 1191, 946 P.2d 155 (1997); *Matter of Parental Rights as to Gonzales*, 113 Nev. 324, 933 P.2d 198 (1997); *Matter of Parental Rights as to Bow*, 113 Nev. 141, 930 P.2d 1128 (1997); *Matter of Parental Rights of Weinper*, 112 Nev. 710, 918 P.2d 325 (1996); *Scaff v. State, Dep't of Human Resources*, 106 Nev. 756, 801 P.2d 1359 (1990); *Smith v. Smith*, 102 Nev. 263, 720 P.2d 1219 (1986); *Daly v. Daly*, 102 Nev. 66, 715 P.2d 56 (1986); *McGuire v. Welfare Division*, 101 Nev. 179, 697 P.2d 479 (1985).
- 5 In light of this new standard, we will no longer refer to the terms "jurisdictional" and "dispositional" to describe the judicial findings that must be made in termination cases.
- 6 We note that the results of this case may have been different had the child been older and had different needs. A child's needs necessarily affect the impact of parental conduct.
- 7 In light of our disposition, we need not address the other contention raised on appeal: whether newly discovered evidence warrants a new trial or new and additional testimony.

792 F.3d 1184
United States Court of Appeals,
Ninth Circuit.

Jamie KIRKPATRICK, individually, and
as the natural father and legal guardian
of B.W., a minor, Plaintiff–Appellant,
v.
COUNTY OF WASHOE; Amy Reynolds,
WCDSS social worker; Ellen Wilcox, WCDSS
social worker; Linda Kennedy, WCDSS
social worker, Defendants–Appellees.

No. 12–15080.

Argued and Submitted Jan. 28, 2014.

Filed July 10, 2015.

Synopsis

Background: Father brought action against county and three social workers under § 1983 alleging violations of Fourth and Fourteenth Amendment rights after social workers placed two-day-old child in foster care without prior first obtaining a warrant. Defendants moved for summary judgment. The United States District Court for the District of Nevada, 2011 WL 6256975, Edward C. Reed, Jr., J., granted the motion. Father appealed.

Holdings: The Court of Appeals, Bybee, Circuit Judge, held that:

[1] removal of child did not violate father's due process rights;

[2] a fact issue existed as to whether social workers had reasonable belief that child was in imminent danger of harm;

[3] social workers were not entitled to qualified immunity; and

[4] a fact issue existed as to whether county had unofficial custom of performing warrantless seizures.

Affirmed in part, reversed in part, and remanded.

Kozinski, J., filed an opinion in which he dissented in part.

West Headnotes (21)

[1] **Constitutional Law**

➔ Parent and Child Relationship

Parents and children have a well-elaborated constitutional right to live together without governmental interference; that right is an essential liberty interest protected by the Fourteenth Amendment's guarantee that parents and children will not be separated by the state without due process of law except in an emergency. U.S.C.A. Const.Amend. 14.

1 Cases that cite this headnote

[2] **Searches and Seizures**

➔ Standing to Object

Because only the children are subjected to a seizure when they are taken into state custody, their claims should properly be assessed under the Fourth Amendment; parents cannot assert that the seizure of their child violated their own Fourth Amendment rights. U.S.C.A. Const.Amend. 4.

1 Cases that cite this headnote

[3] **Constitutional Law**

➔ Children out-of-wedlock; paternity

Infants

➔ Protective custody and removal of child

County's taking custody of child absent exigent circumstances and without judicial authorization did not violate father's substantive due process rights to familial association under the Fourteenth Amendment, where, at the time state took custody of the child, father was not a "parent," since it was unclear who the child's father was, mother admitted there were "possibly other candidates," and father had not yet taken paternity test. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[4] **Federal Civil Procedure**

🔑 [Claim for relief in general](#)

When evaluating a complaint under the rule governing pleading requirements, the court asks whether the pleading gives the defendant fair notice of the claim and includes sufficient factual matter to state a plausible ground for relief. [Fed.Rules Civ.Proc.Rule 8\(a\)\(2\)](#), 28 U.S.C.A.

[Cases that cite this headnote](#)

[5] **Federal Civil Procedure**

🔑 [Claim for relief in general](#)

Upon reviewing a complaint to determine whether it provided adequate notice of a claim, the question is not whether the complaint contains sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face; rather, the question is whether the complaint gave notice of the claim such that the opposing party may defend himself or herself effectively. [Fed.Rules Civ.Proc.Rule 8\(a\)\(2\)](#), 28 U.S.C.A.

[Cases that cite this headnote](#)

[6] **Federal Civil Procedure**

🔑 [Theory of claim](#)

A complaint need not pin plaintiff's claim for relief to a precise legal theory. [Fed.Rules Civ.Proc.Rule 8\(a\)\(2\)](#), 28 U.S.C.A.

[Cases that cite this headnote](#)

[7] **Federal Civil Procedure**

🔑 [Claim for relief in general](#)

Rule governing pleading requirements generally requires only a plausible short and plain statement of the plaintiff's claim, not an exposition of his legal argument. [Fed.Rules Civ.Proc.Rule 8\(a\)\(2\)](#), 28 U.S.C.A.

[Cases that cite this headnote](#)

[8] **Civil Rights**

🔑 [Particular Causes of Action](#)

Claim that child's rights to be with her parents had been violated when child was taken into

state custody was sufficient to put county on notice of child's claim against county for Fourth Amendment unreasonable seizure; claim recited relevant legal standard of "no reasonable cause" to believe that child was in imminent danger of serious bodily harm, and county failed to seek clarification as to whether the father or child was bringing the claim. [U.S.C.A. Const.Amend. 4](#); [Fed.Rules Civ.Proc.Rule 8\(a\)\(2\)](#), 28 U.S.C.A.

[1 Cases that cite this headnote](#)

[9] **Civil Rights**

🔑 [States and territories and their officers and agencies](#)

United States

🔑 [Qualified immunity](#)

Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing: (1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct.

[Cases that cite this headnote](#)

[10] **Infants**

🔑 [Judicial approval, warrant, or order in general](#)

Infants

🔑 [Exigent circumstances and imminent risk in general](#)

There are two ways for a government official to take custody of a child without transgressing the Fourth Amendment: first, he can obtain prior judicial authorization; second, he can take custody of the child without a warrant if he possesses information at the time of the seizure that establishes reasonable cause to believe that the child is in imminent danger of serious bodily injury and that the scope of the intrusion is reasonably necessary to avert that specific injury. [U.S.C.A. Const.Amend. 4](#).

[2 Cases that cite this headnote](#)

[11] **Federal Civil Procedure**

🔑 [Civil rights cases in general](#)

A genuine dispute of material fact existed as to whether county social workers' seizing of two-day-old child without a warrant was based on reasonable belief that child would be in imminent danger of harm within the time period it would have taken to obtain a warrant, precluding summary judgment on claim under § 1983 for unreasonable seizure in violation of the Fourth Amendment. *U.S.C.A. Const.Amend. 4*; 42 *U.S.C.A. § 1983*.

Cases that cite this headnote

[12] Infants

— Exigent circumstances and imminent risk in general

Under the Fourth Amendment, social workers who remove a child from its home without a warrant must have reasonable cause to believe that the child is likely to experience serious bodily harm in the time that would be required to obtain a warrant. *U.S.C.A. Const.Amend. 4*.

1 Cases that cite this headnote

[13] Searches and Seizures

— Fourth Amendment and reasonableness in general

The Fourth Amendment protects the right of the people to be secure against unreasonable seizures; it does not make exceptions based on age, mobility, or the capacity to understand the state's actions. *U.S.C.A. Const.Amend. 4*.

Cases that cite this headnote

[14] Arrest

— What Constitutes a Seizure or Detention

A child's ability to subjectively understand that she has been seized is not a prerequisite to the application of the Fourth Amendment. *U.S.C.A. Const.Amend. 4*.

Cases that cite this headnote

[15] Civil Rights

— Municipalities and counties and their officers

County social workers were not entitled to qualified immunity from claim under § 1983 for violation of two-day-old infant's Fourth Amendment right to be free from warrantless seizure; right to be free from warrantless seizure absent reasonable belief that child would likely face imminent harm within the time it would take to obtain a warrant was clearly established by prior case law. *U.S.C.A. Const.Amend. 4*; 42 *U.S.C.A. § 1983*.

Cases that cite this headnote

[16] Civil Rights

— Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general

For purposes of qualified immunity from a claim under § 1983, a government official's conduct violates clearly established law when, at the time of the challenged conduct, the contours of a right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right; a case directly on point is not required, but existing precedent must have placed the statutory or constitutional question beyond debate. 42 *U.S.C.A. § 1983*.

Cases that cite this headnote

[17] Civil Rights

— Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general

For purposes of clearly established law, as element of qualified immunity defense, where a single case has clear applicability to a subsequent set of facts, that case alone is sufficient to put law enforcement officials on notice.

Cases that cite this headnote

[18] Civil Rights

— Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general

Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the objective legal reasonableness of the

action, assessed in light of the legal rules that were clearly established at the time it was taken.

Cases that cite this headnote

[19] Civil Rights

🔑 Acts of officers and employees in general; vicarious liability and respondeat superior in general

A municipality cannot be held liable under § 1983 on a respondeat superior theory. 42 U.S.C.A. § 1983.

Cases that cite this headnote

[20] Civil Rights

🔑 Governmental Ordinance, Policy, Practice, or Custom

Local governments may be sued under § 1983 for constitutional deprivations visited pursuant to governmental custom even though such a custom has not received formal approval through the body's official decisionmaking channels. 42 U.S.C.A. § 1983.

Cases that cite this headnote

[21] Federal Civil Procedure

🔑 Civil rights cases in general

A genuine dispute of material fact existed as to whether county had unofficial custom of warrantless removal of children from their parents' care absent risk of imminent harm, precluding summary judgment on claim against county under § 1983 for violation of child's Fourth Amendment right to be free from unreasonable seizure. U.S.C.A. Const.Amend. 4; 42 U.S.C.A. § 1983.

Cases that cite this headnote

Attorneys and Law Firms

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Appeal from the United States District Court for the District of Nevada. Edward C. Reed, Jr., Senior District Judge, Presiding. D.C. No. 3:09–cv–00600–ECR–VPC.

*1187 Before: STEPHEN REINHARDT, ALEX KOZINSKI, and JAY S. BYBEE, Circuit Judges.

Opinion by Judge BYBEE; Partial Dissent by Judge KOZINSKI.

OPINION

BYBEE, Circuit Judge:

“Government officials are required to obtain prior judicial authorization before intruding on a parent's custody of her child unless they possess information at the time of the seizure that establishes ‘reasonable cause to believe that the child is in imminent danger of serious bodily injury and that the scope of the intrusion is reasonably necessary to avert that specific injury.’ ” *Mabe v. San Bernardino Cnty., Dep't of Pub. Soc. Servs.*, 237 F.3d 1101, 1106 (9th Cir.2001) (quoting *Wallis v. Spencer*, 202 F.3d 1126, 1136 (9th Cir.1999)). The Washoe County Department of Social Services (WCDSS) took B.W. into protective custody when she was two-days old and placed her with a foster parent without obtaining prior judicial authorization. B.W.'s biological father, Jamie Kirkpatrick, filed this 42 U.S.C. § 1983 action against the County and three of its social workers, alleging violations of the Fourth and Fourteenth Amendments. The district court granted summary judgment in favor of all of the defendants. We have jurisdiction under 28 U.S.C. § 1291. We review *de novo* the district court's order granting summary judgment. *Oswalt v. Resolute Indus., Inc.*, 642 F.3d 856, 859 (9th Cir.2011).

We affirm in part and reverse in part the district court's grant of summary judgment and remand for further proceedings.

I

A. *The County Takes Custody of B.W.*

On July 15, 2008, Rachel Whitworth gave birth to her daughter B.W. at a hospital in Reno, Nevada. Whitworth admitted that she used methamphetamine throughout her pregnancy, including as recently as two days earlier. B.W. tested positive for methamphetamine at birth. When Whitworth informed hospital staff that her two other children were in the custody of the WCDSS, the hospital contacted Chondra Ithurrealde, the WCDSS social worker managing the open case.

The next day, Ithurrealde visited the hospital with WCDSS social worker Ellen Wilcox. Ithurrealde notified the hospital that Whitworth was an active methamphetamine user who lacked stable housing and the supplies necessary to care for an infant and that the Department planned to terminate her parental rights vis-à-vis her two other children. Wilcox interviewed Whitworth, who again acknowledged that she was a methamphetamine user who did not have the means to provide for B.W. In light of this information, Wilcox requested that the hospital place a “hold” on B.W. to prevent her from being discharged. The hospital typically honors the Department's hold request as a courtesy, but it is not a court order. The hold did not prevent Whitworth from interacting with B.W. while they were in the hospital together. The hospital's notes state that B.W. remained in the room with Whitworth, who failed to feed the infant on schedule and keep her dry. Meanwhile, Wilcox conferred with her supervisor Linda Kennedy, who authorized Wilcox to take custody of B.W. when the hospital released the infant. Wilcox informed Whitworth that she had placed a hold on the child and that a protective custody hearing would be scheduled.

On July 17, 2008, the hospital discharged two-day-old B.W. into the custody of the WCDSS. The Department arranged for B.W. to stay with the foster parent who was caring for Whitworth's other children. *1188 The WCDSS had not requested judicial authorization before taking custody of B.W.

The family division of Nevada's Second Judicial District Court held a protective custody hearing the next day, with Whitworth participating by phone from the hospital. The court determined that B.W. should remain in protective custody due to Whitworth's ongoing drug use, her lack of stable housing and employment, her inability to provide for

the child, and the fact that Whitworth's other children were already in foster care.

B. *Kirkpatrick's Involvement*

Jamie Kirkpatrick, B.W.'s biological father, was present at the hospital when Whitworth gave birth to B.W. While Whitworth was pregnant, she notified Kirkpatrick that he might be the father, though she also told him that there were other potential candidates. Kirkpatrick spoke with Whitworth a couple of times during her pregnancy, but he did not participate in providing any type of prenatal care. He acknowledged that he did not know whether he was B.W.'s biological father at the time of her birth.

Kirkpatrick first learned of the Department's involvement soon after it took custody of the child on July 17, 2008. He left his contact information with Whitworth so that the Department could schedule a paternity test to determine whether he was B.W.'s biological father. Kirkpatrick did not attend the protective custody hearing the next day, but the court ordered a paternity test at his request. The test revealed that Kirkpatrick is indeed B.W.'s biological father.

On July 28, 2008, the WCDSS filed a petition alleging that B.W. was a child in need of protection. The court held hearings on August 25, 2008, and September 15, 2008. Neither Whitworth nor Kirkpatrick attended despite being served with notice. Kirkpatrick visited B.W. twice before January 2009, when he attended a six-month permanency hearing and expressed interest in reunifying with his daughter. He returned to Reno—where B.W. lived with her foster family—and began visiting his child more frequently.

In October 2009, Kirkpatrick initiated this § 1983 action against Washoe County, Amy Reynolds, Ellen Wilcox, and Linda Kennedy. Following discovery, the parties filed cross-motions for summary judgment. The district court denied Kirkpatrick's motion for summary judgment and granted summary judgment in favor of Washoe County and the three individual defendants. Kirkpatrick timely appealed.

II

[1] [2] The state's decision to take custody of a child implicates the constitutional rights of the parent and the child under the Fourteenth and Fourth Amendments, respectively. “Parents and children have a well-elaborated constitutional

right to live together without governmental interference. That right is an essential liberty interest protected by the Fourteenth Amendment's guarantee that parents and children will not be separated by the state without due process of law except in an emergency." *Wallis*, 202 F.3d at 1136 (internal citations omitted). "The claims of the parents in this regard should properly be assessed under the Fourteenth Amendment standard for interference with the right to family association." *Id.* at 1137 n. 8. But "[b]ecause only the children [a]re subjected to a seizure, their claims should properly be assessed under the Fourth Amendment." *Id.* Parents cannot assert that the seizure of their child violated their *own* Fourth Amendment rights. *Mabe*, 237 F.3d at 1111 ("[The parent] has no standing to claim a violation of [the child's] Fourth Amendment rights.").

*1189 We evaluate the claims of children who are taken into state custody under the Fourth Amendment right to be free from unreasonable seizures rather than the Fourteenth Amendment right to familial association "[b]ecause [when] the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of 'substantive due process,' must be the guide." *Graham v. Connor*, 490 U.S. 386, 395, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989); see also *Southerland v. City of New York*, 680 F.3d 127, 143 (2d Cir.2011) ("For child removal claims brought by the child, we have concluded that the Constitution provides an alternative, more specific source of protection than substantive due process. When a child is taken into state custody, his or her person is 'seized' for Fourth Amendment purposes. The child may therefore assert a claim under the Fourth Amendment that the seizure of his or her person was 'unreasonable.' "); *Hernandez ex rel. Hernandez v. Foster*, 657 F.3d 463, 474 (7th Cir.2011) ("[S]ubstantive due process may not be called upon when a specific constitutional provision (here, the Fourth Amendment) protects the right allegedly infringed upon.... [The child's] claim arising from his initial removal is properly analyzed under the Fourth Amendment because it is premised on his seizure and does not coincide with sufficiently separate conduct involving his relationship with his parents." (first alteration in original) (internal quotation marks and citations omitted)).

III

A. Kirkpatrick's Fourteenth Amendment Claim

We first consider whether the district court correctly granted the defendants' motion for summary judgment on Kirkpatrick's claim that the County and its agents violated his Fourteenth Amendment right not to be separated from B.W. without due process under non-exigent circumstances. See *Mabe*, 237 F.3d at 1106; *Wallis*, 202 F.3d at 1136. We affirm the district court's summary judgment in favor of all of the defendants on Kirkpatrick's claim because the facts alleged, construed in the light most favorable to Kirkpatrick, do not show that the defendants violated his constitutional rights. See *Saucier v. Katz*, 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001) ("If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries.").

[3] Kirkpatrick did not have a constitutionally recognized liberty interest in his relationship with B.W. when she was taken into custody on July 17, 2008, because he was not yet a "parent" to B.W. At the time, no one was confident about whether Kirkpatrick was B.W.'s biological father. Kirkpatrick acknowledged that he "did not know" whether he was the father and that there were "possibly other candidates." Rachel Whitworth had informed Kirkpatrick that B.W. might be his child, but that there was "a possibility it could be someone else's as well." The test that eventually established Kirkpatrick's paternity was not administered until four days after B.W. was taken into custody.

We have recognized that the constitutional interest in a biological parent's relationship with his child persists even when that relationship is, as a practical matter, quite attenuated. See *Burke v. Cnty. of Alameda*, 586 F.3d 725, 733 (9th Cir.2009) (holding that a biological father had a liberty interest in his relationship with his daughter even though the child's mother had sole physical custody of the child); *Brittain v. Hansen*, 451 F.3d 982, 992 (9th Cir.2006) (holding that "non-custodial parents *1190 with court-ordered visitation rights have a liberty interest in the companionship, care, custody, and management of their children"). But Kirkpatrick did not take any steps to confirm that he was B.W.'s biological father before the WCDSS took custody of B.W., such as requesting a paternity test before she was born or during her two days in the hospital, or attempting to execute a voluntary acknowledgment of paternity declaration. See *Nev.Rev.Stat. § 126.053* (providing that a voluntary acknowledgment of paternity declaration is "deemed to have the same effect as a judgment or order of a court determining the existence of the relationship of parent and child if the declaration is signed ... by the mother and father of the child"). Of course Kirkpatrick

was not obligated to attempt to confirm his paternity, but he cannot claim the constitutional entitlements that have been allocated to biological parents when he did not seek to establish that he was B.W.'s father.

On these facts, we conclude that Kirkpatrick lacked a cognizable liberty interest in his relationship with B.W. Because Kirkpatrick cannot prove a violation of his constitutional rights, the district court properly granted summary judgment in favor of all of the defendants on the claim asserted by Kirkpatrick on his own behalf.

B. B.W.'s Fourth Amendment Claim

We next consider whether the defendants violated B.W.'s Fourth Amendment right to be free from unreasonable seizures when she was taken into custody by the WCDSS.

1. Adequate notice

The district court granted summary judgment in favor of the defendants because it concluded that the operative complaint—which is styled the second amended complaint—does not assert a cause of action *on behalf of* B.W. The court noted that the complaint repeatedly refers to the “Plaintiff” in the singular, including in the caption. Only once, the district court observed, does the complaint allege that “[B.W.’s] constitutional right to be with her parents was violated.” The court reasoned that the complaint fails to articulate a claim *on behalf of* B.W. because “[r]ead in the context of the entire complaint, this one sentence does not provide notice that B.W. is a plaintiff to this case or that [Kirkpatrick] is asserting a cause of action on her behalf.” Furthermore, the complaint’s sole reference to the Fourth Amendment is located in a paragraph asserting that the defendants “acted under color of state law to deprive Plaintiff ... of constitutionally protected rights, including ... the right to be free from unreasonable searches and seizures.” The district court inferred that the singular “Plaintiff” refers to Kirkpatrick, not B.W., and, under these circumstances, a parent cannot claim relief on the grounds that the state violated his own Fourth Amendment rights by seizing his child. See *Mabe*, 237 F.3d at 1111.

The district court did not appear to disagree with the premise that a parent is authorized to assert causes of action belonging to his minor child *on behalf of the child*. See *Fed.R.Civ.P.* 17(c)(2) (“A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem.”); *Fed.R.Civ.P.* 17(b)(3) (“Capacity to sue or be sued is determined ... by the law of the individual’s

domicile.”); *Nev.Rev.Stat.* § 12.080 (“[T]he father or the mother, without preference to either, may maintain an action for the injury of a minor child who has not been emancipated, if the injury is caused by the wrongful act or neglect of another.”). Instead, the court determined that the complaint simply failed to “provide notice to the Defendants or the Court that B.W. is also a plaintiff in this case, or that Plaintiff is asserting a cause of action on her behalf.” *1191 We respectfully disagree with the district court’s reading of the complaint.

The operative complaint recites that “[B.W.’s] constitutional right to be with her parents was violated. This also resulted in the violation of Plaintiff’s constitutional right to be with his daughter.” These sentences indicate that the complaint alleges claims on behalf of *both* B.W. and Kirkpatrick. A pleading need not repeat the same assertion more than once to provide notice. We understand that the defendants or the court might have been confused to encounter this pair of claims given that the rest of the complaint refers to a singular “Plaintiff.” But defendants can resolve such ambiguities by filing a Rule 12(e) motion for a more definite statement. See *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002) (“If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding.”); see also *Crawford–El v. Britton*, 523 U.S. 574, 598, 118 S.Ct. 1584, 140 L.Ed.2d 759 (1998) (encouraging district courts to “grant the defendant’s motion for a more definite statement under Rule 12(e)” where, as here, discovery in an action against a public official would undermine “the substance of the qualified immunity defense”). The district court may also *sua sponte* request a more definite statement from the plaintiffs, even if the defendants find the complaint comprehensible. See *Anderson v. Dist. Bd. of Trs. of Cent. Fla. Cmty. Coll.*, 77 F.3d 364, 367 n. 5 (11th Cir.1996) (“[T]he court, acting *sua sponte*, should have struck the plaintiff’s complaint, and the defendants’ answer, and instructed plaintiff’s counsel to file a more definite statement.”).

[4] [5] [6] [7] [8] The district court correctly observed that the complaint never expressly states that B.W. asserts that the defendants violated *her* Fourth Amendment right to be free from unreasonable seizures. When evaluating a complaint, we ask whether the pleading gives the defendant fair notice of the claim and includes sufficient “factual matter” to state a plausible ground for relief. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56, 561–62, 127 S.Ct.

1955, 167 L.Ed.2d 929 (2007). To be clear, the question here is not whether the complaint “contain[s] sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ ” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955). Rather, the question is whether the complaint gave “notice of the claim such that the opposing party may defend himself or herself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1212 (9th Cir.2011).¹ “[U]nder the Federal Rules of Civil Procedure, a complaint need not pin plaintiff’s claim for relief to a precise legal theory. Rule 8(a)(2) of the Federal Rules of Civil Procedure generally requires only a plausible ‘short and plain’ statement of the plaintiff’s claim, not an exposition of his legal argument.” *1192 *Skinner v. Switzer*, 562 U.S. 521, 131 S.Ct. 1289, 1296, 179 L.Ed.2d 233 (2011); see also *Fontana v. Haskin*, 262 F.3d 871, 877 (9th Cir.2001) (“Specific legal theories need not be pleaded so long as sufficient factual averments show that the claimant may be entitled to some relief.”). The complaint is therefore not inadequate merely because the assertion that “[B.W.’s] constitutional right to be with her parents was violated” is not coupled with a reference of the Fourth Amendment. The complaint recites the relevant legal standard by stating that the defendants took B.W. into custody without a warrant when they “had no reasonable cause to believe that [B.W.] was likely to experience serious bodily harm in the time that would be required to obtain a warrant.”

We need not speculate about whether the complaint provided notice of the Fourth Amendment claim sufficient to allow the defendants to defend against it because the defendants themselves construed the complaint as asserting a Fourth Amendment claim *on behalf of B.W.* In their motion to dismiss, the defendants stated that “[w]hile the Second Amended Complaint indicates the Plaintiff as ‘Jamie Kirkpatrick, individually and as the natural father and legal guardian of [B.W.], a minor’, it is believed that the action is intended in pursuit of only causes of action on behalf of the minor child.” In their motion for summary judgment, the individual defendants correctly pointed out that “Mr. Kirkpatrick can only assert a violation of [B.W.’s] Fourth Amendment rights, as a representative, on behalf of his daughter.” The individual defendants then devoted seven pages to arguing that they were entitled to summary judgment on the “Plaintiffs’ representative Fourth Amendment claim.” We cannot agree with the district court’s assessment that “the operative complaint ... does not provide notice to the Defendants or the Court that B.W. is also a plaintiff in this case” when the entire litigation proceeded in accordance with

the defendants’ acknowledgment that B.W. is a plaintiff and that Kirkpatrick is asserting a Fourth Amendment claim on B.W.’s behalf.

We by no means require defendants to adopt overly broad readings of ambiguous or incoherent complaints out of an abundance of caution. The defendants could have moved to dismiss the Fourth Amendment claim on the basis that the complaint purports to assert the claim on behalf of Kirkpatrick rather than assuming that it stated a facially valid claim on behalf of B.W. Or, as we have already noted, either the defendants or the court could have insisted on a more definite statement at the pleading stage. If the plaintiffs continued to assert a facially invalid claim after amending their complaint in response to a motion to dismiss or a motion for a more definite statement pointing out the defect in the pleading, then the district court could have taken the complaint at its word and dismissed the claim with prejudice. But that is not what happened in this case. Instead, the court raised the issue *sua sponte* for the first time at the summary-judgment stage, even though the defendants actually understood the claim, repeatedly addressed it on the merits, and could have clarified it earlier in the litigation.

We conclude that the district court erred in deciding that the complaint did not provide adequate notice that B.W. asserted a Fourth Amendment claim on her own behalf. The defendants are not entitled to summary judgment on this basis.

2. Qualified immunity

[9] Having determined that the operative complaint asserts a violation of B.W.’s Fourth Amendment right to be free from unreasonable seizures, we next address whether the individual defendants are entitled to qualified immunity on B.W.’s claim.

*1193 See *United States ex rel. Ali v. Daniel, Mann, Johnson & Mendenhall*, 355 F.3d 1140, 1144 (9th Cir.2004) (“We may affirm a grant of summary judgment on any ground supported by the record, even if not relied upon by the district court.”). “Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was ‘clearly established’ at the time of the challenged conduct.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 131 S.Ct. 2074, 2080, 179 L.Ed.2d 1149 (2011).

a. Constitutional right

[10] “Government officials are required to obtain prior judicial authorization before intruding on a parent’s custody of her child unless they possess information at the time of the seizure that establishes ‘reasonable cause to believe that the child is in imminent danger of serious bodily injury and that the scope of the intrusion is reasonably necessary to avert that specific injury.’ ” *Mabe*, 237 F.3d at 1106 (quoting *Wallis*, 202 F.3d at 1138). There are thus two ways for a government official to take custody of a child without transgressing the Constitution. First, he can obtain prior judicial authorization. Or, second, he can take custody of the child without a warrant if he “possess[es] information at the time of the seizure that establishes reasonable cause to believe that the child is in imminent danger of serious bodily injury and that the scope of the intrusion is reasonably necessary to avert that specific injury.” *Id.* (internal quotation marks and citation omitted).

The defendants did not attempt to obtain judicial authorization before taking custody of B.W. Ellen Wilcox—who visited B.W. at the hospital and took her into the Department’s custody—stated that neither she nor anyone else from the WCDSS requested a warrant. Linda Kennedy—who authorized the decision to take custody of B.W. in her role as Wilcox’s supervisor—agreed that she would not have requested a warrant under these circumstances.

[11] The decision to take custody of B.W. was therefore permissible only if the defendants “possess[ed] information at the time of the seizure that establishes reasonable cause to believe that the child is in imminent danger of serious bodily injury.” *Id.* (internal quotation marks and citation omitted). “The existence of reasonable cause, and the related questions, are all questions of fact to be determined by the jury. Summary judgment in favor of the defendants is improper unless, viewing the evidence in the light most favorable to the plaintiffs, it is clear that no reasonable jury could conclude that the plaintiffs’ constitutional rights were violated.” *Wallis*, 202 F.3d at 1138 (internal citations omitted).

It is undisputed that B.W. remained in the hospital between the social workers’ first visit on July 16, 2008, and her discharge into the Department’s custody the next day. Kennedy acknowledged that the WCDSS considered the maternity floor of the hospital a “safe environment.” She noted that a mother in Rachel’s position might unexpectedly abscond with her child, but she also stated that the hospital

“generally cooperates” with the Department’s request that it hold the child.

[12] Importantly, “social workers[] who remove a child from its home without a warrant must have reasonable cause to believe that the child is likely to experience serious bodily harm *in the time that would be required to obtain a warrant.*” *Rogers v. Cnty. of San Joaquin*, 487 F.3d 1288, 1294 (9th Cir.2007) (emphasis added); *see also Doe v. Lebbos*, 348 F.3d 820, 826 n. 9 (9th Cir.2003), *overruled on other grounds by* *1194 *Beltran v. Santa Clara Cnty.*, 514 F.3d 906, 909 (9th Cir.2008) (en banc); *Wallis*, 202 F.3d at 1137 n. 8 (explaining that the claims of children who are taken into custody without a warrant under non-exigent circumstances “should properly be assessed under the Fourth Amendment” because “the children were subjected to a seizure”). In *Rogers*, we concluded that a social worker did not have reasonable cause to believe that the children at issue were in imminent danger of serious bodily injury even though they showed symptoms of neglect and would have remained in an unsanitary home while the social worker obtained a warrant. *Id.* at 1295–96. Here, B.W. would have very likely remained in the hospital, under constant medical supervision, while the defendants requested a warrant because the hospital was not planning on releasing B.W. to her mother or anyone other than the WCDSS. Viewing the facts in the light most favorable to the plaintiff, we think a reasonable juror could find that Wilcox and Kennedy could not have reasonably believed that B.W. would “likely experience serious bodily harm” during the time it would have taken to obtain a warrant. For reasons we have discussed, the defendants’ actions implicate B.W.’s Fourth Amendment right to be free from unreasonable seizures.

[13] Our analysis is unaffected by the fact that B.W. was only two days old and had yet to leave the hospital when the WCDSS took custody of her. The Fourth Amendment protects the “right of the people to be secure ... against unreasonable ... seizures.” It does not make exceptions based on age, mobility, or the capacity to understand the state’s actions. The minor plaintiffs in *Wallis* were two years old and five years old when they were taken into custody. *Wallis*, 202 F.3d at 1131. A two-year old child—like a two-day old infant—is under the near-constant control of adults and probably cannot meaningfully comprehend the notion of being “seized” by the state. Yet we held that the children in *Wallis* were “subjected to a seizure” and analyzed their claims under the Fourth Amendment. *Id.* at 1137 n. 8.

[14] Other courts have applied the same Fourth Amendment analysis to newborn children like B.W. In *Kia P. v. McIntyre*, 235 F.3d 749 (2d Cir.2000), a hospital held an infant for the first ten days of her life because it believed that the child's mother used harmful drugs while pregnant. *Id.* at 751. The court held that “there is no doubt that [the child's] retention by the Hospital was a ‘seizure’ within the meaning of the Fourth Amendment.” *Id.* at 762. It recited the familiar standard that “[a] ‘seizure’ occurs where, ‘in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.’ ” *Id.* (quoting *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980) (plurality opinion)). The court acknowledged that “the usual phrasing of the seizure test is difficult to apply” under these circumstances because an infant “is unlikely to have had a ‘belief’ as to whether or not she was free to leave.” *Id.* at 762. But the court nevertheless concluded that the child was seized because her mother “was told in no uncertain terms that she could not take [the child] home” and “[i]t was clear to [the mother], if not to [the child], that [the child] was not free to leave.” *Id.* In other words, a child's ability to subjectively understand that she has been “seized” is not a prerequisite to the application of the Fourth Amendment. As the Supreme Court explained, “*Mendenhall* establishes that the test for existence of a ‘show of authority’ is an objective one: not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person.” *1195 *California v. Hodari D.*, 499 U.S. 621, 628, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991). Here, the WCDSS physically removed B.W. from the hospital and placed her with a foster family rather than permitting her to leave with her mother. Physically restraining a person and directing her movement is a prototypical example of a “seizure” that implicates the Fourth Amendment. *Id.* at 626, 111 S.Ct. 1547 (“The word ‘seizure’ readily bears the meaning of a laying on of hands or application of physical force to restrain movement.”).²

Wilcox and Kennedy seized B.W. without obtaining a warrant under circumstances where a reasonable juror might find that a reasonable social worker could not have determined that the child was in imminent danger of serious bodily injury. We therefore conclude that the plaintiffs have satisfied the first prong of the qualified immunity inquiry because, “[t]aken in the light most favorable to the party asserting the injury, [] the facts alleged show the officer's conduct violated a constitutional right [.]” *Saucier*, 533 U.S. at 201, 121 S.Ct. 2151.

b. Clearly established

[15] [16] We next address whether the constitutional right at issue “was ‘clearly established’ at the time of the challenged conduct.” *al-Kidd*, 131 S.Ct. at 2080. “A Government official's conduct violates clearly established law when, at the time of the challenged conduct, ‘[t]he contours of [a] right [are] sufficiently clear’ that every ‘reasonable official would have understood that what he is doing violates that right.’ ” *Id.* at 2083 (alterations in original) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987)). “We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate.” *Id.*

[17] Our inquiry begins and ends with our decision in *Rogers*. Not only is *Rogers* almost “directly on point,” but it also plainly holds that the constitutional right at issue in this case is “clearly established.” Our opinion in *Rogers* explained that “[t]he law was clearly established at the time of the events in [*Rogers*] that a child could not be removed from the home without prior judicial authorization absent evidence of ‘imminent danger of serious bodily injury and [unless] the scope of the intrusion is reasonably necessary to avert that specific injury.’ ” *Rogers*, 487 F.3d at 1297 (third alternation in original) (quoting *Mabe*, 237 F.3d at 1106). The conduct reviewed in *Rogers* occurred in 2001, and we issued our opinion in 2007. The WCDSS did not take custody of B.W. until 2008. The alleged violation of B.W.'s Fourth Amendment rights thus occurred after the relevant constitutional rule was clearly established *and* after we expressly held that the right is clearly established.³

*1196 The case before us is not distinguishable from *Rogers*. It is true that *Rogers*—like *Mabe* and *Wallis*—refers to a qualified prohibition on removing children “from the home” whereas, here, the WCDSS took custody of B.W. while she was in the hospital. *See Rogers*, 487 F.3d at 1294; *Mabe*, 237 F.3d at 1107; *Wallis*, 202 F.3d at 1136. But we do not think that any reasonable social worker would read *Rogers* or its predecessors to stand for the proposition that the constitutional limitations on the seizure of children apply only when the children are at home. *See Anderson*, 483 U.S. at 640, 107 S.Ct. 3034 (“The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. *This is not to say that an official action is protected by qualified immunity*

unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing law the unlawfulness must be apparent.” (emphasis added) (internal citation omitted)). The fact that B.W. was in the hospital arguably should have made it more apparent to a reasonable social worker that she was not “likely to experience serious bodily harm in the time that would be required to obtain a warrant.” *Rogers*, 487 F.3d at 1294. In *Rogers*, we concluded that “there was no indication of imminent danger” to the seized children even though they would have remained in an “unsanitary” home with allegedly neglectful parents while the social worker obtained a warrant. *Id.* at 1295. Here, B.W. almost certainly would have remained in the hospital, where there is likely less “imminent risk of serious bodily harm” than in the conditions endured by the children in *Rogers*.

We also note that B.W. was a two-day old infant when she was taken into custody by the WCDSS, whereas the children in *Rogers* were three-years old and five-years old. *Id.* at 1291. Age is often crucial in determining whether a social worker could have reasonably believed that the child was in imminent danger of serious bodily injury because a two-day old infant like B.W. is far more vulnerable than an older child. But no reasonable social worker could read *Rogers* and its predecessors to suggest that it is always reasonable to conclude that an infant is in imminent danger of serious bodily injury. Although infants are uniquely susceptible to serious injury, the maternity ward of a hospital is an especially safe place, particularly where, as here, the hospital has been instructed not to discharge the infant without notifying the social workers.

The defendants contend that they could have reasonably believed that Nevada law authorized the WCDSS to take custody of B.W. without obtaining a warrant. They cite *Nev.Rev.Stat. § 432B.390(1)(a)*, which provides that social workers “[m]ay place a child in protective custody without the consent of the person responsible for the child’s welfare if the [social worker] has reasonable cause to believe that immediate action is necessary to protect the child from injury, abuse or neglect.” There is no indication that the state-law standard differs meaningfully from the constitutional rule that social workers may take custody of a child without prior judicial authorization if there is “reasonable cause to believe that the child is in imminent danger of serious bodily injury.” *Wallis*, 202 F.3d at 1138. *Nev.Rev.Stat. § 432B.390(1)(a)* does *not* authorize social workers to take custody of children under non-exigent circumstances. It says nothing at all about when, if ever, a social worker may

take custody of a child when he does not have “reasonable cause to believe that immediate action is necessary *1197 to protect the child from injury, abuse or neglect.” We are not confronted with a situation where an applicable state statute is in tension with the federal constitutional right on which the plaintiffs rely. See *Dittman v. California*, 191 F.3d 1020, 1027 (9th Cir.1999) (explaining that “it was reasonable for [the defendant] to believe that [a state statute] was constitutional and to enforce its mandates” when “there was no clear case law in either the federal courts or the state courts of California establishing that” the practice authorized by the state statute was unconstitutional); *Grossman v. City of Portland*, 33 F.3d 1200, 1209 (9th Cir.1994) (“[W]here a police officer has probable cause to arrest someone under a statute that a reasonable officer could believe is constitutional, the officer will be immune from liability even if the statute is later held to be unconstitutional.”).⁴

[18] Next, the defendants argue that they are entitled to qualified immunity because they were not informed of the need to obtain a warrant before taking custody of a child under non-exigent circumstances. Kennedy—who was a supervisor—stated that when the WCDSS took B.W. into custody in July 2008 she did not understand the distinction between removing a child with a warrant and doing so without a warrant. She explained that it was not her “general practice” to obtain a warrant unless there were “special circumstances” such as a “suspected kidnapping or something like that.” Wilcox said that, as of July 2008, she had not been trained in how to obtain a warrant. She was aware that other social workers received warrants before taking custody of children under certain circumstances, but she did not recall any specific instances where the practice had occurred and had never obtained a warrant herself. The defendants’ argument is unavailing because “[i]f the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct.” *Harlow v. Fitzgerald*, 457 U.S. 800, 819–20, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982) (emphasis added); see also *Groh v. Ramirez*, 540 U.S. 551, 563–64, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004); *Crawford-El*, 523 U.S. at 591, 118 S.Ct. 1584. “[W]hether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the ‘objective legal reasonableness’ of the action[,] assessed in light of the legal rules that were ‘clearly established’ at the time it was taken.” *Anderson*, 483 U.S. at 639, 107 S.Ct. 3034 (internal citations omitted) (quoting *Harlow*, 457 U.S. at 818–19, 102 S.Ct. 2727). The reasonableness of the

defendants' conduct must therefore be assessed in light of the clearly established law that social workers must obtain a warrant before taking custody of a child under non-exigent circumstances, and not in light of their own subjective beliefs about the law. *See Sorrels v. McKee*, 290 F.3d 965, 970 (9th Cir.2002) (“The relevant inquiry under this second prong [of the qualified-immunity analysis] is wholly objective; an official's subjective belief as to the lawfulness of his conduct is irrelevant.” (citing *Anderson*, 483 U.S. at 641, 107 S.Ct. 3034)).

***1198** We conclude that Wilcox and Kennedy are not entitled to qualified immunity on B.W.'s Fourth Amendment claim, and reverse the district court's summary judgment.⁵ We think that a reasonable juror might find that a reasonable social worker could not have determined that B.W. would be in imminent danger of serious bodily injury in the time that it would have taken to obtain a warrant. Because a genuine dispute of material fact exists, we remand this issue for trial. *See Mabe*, 237 F.3d at 1108–09, 1112.

3. Municipal liability

[19] [20] The final issue before us is whether Washoe County is entitled to summary judgment. “[A] municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). But “local governments ... may be sued for constitutional deprivations visited pursuant to governmental ‘custom’ even though such a custom has not received formal approval through the body's official decisionmaking channels.” *Id.* at 690–91, 98 S.Ct. 2018; *Price v. Sery*, 513 F.3d 962, 966 (9th Cir.2008) (noting that a plaintiff can establish municipal liability by showing that “the constitutional tort was the result of a longstanding practice or custom which constitutes the standard operating procedure of the local government entity” (internal quotation marks omitted)).⁶

The County represents that it does not have a policy of removing children from their parents absent a finding of imminent danger, but there is evidence in the record that contradicts the County's claim. That is, record evidence suggests that the County had an unofficial, unconstitutional custom of taking custody of children under non-exigent circumstances without obtaining prior judicial authorization. As a result, this case implicates the so-called “direct path to

municipal liability.” *Gibson v. Cnty. of Washoe, Nev.*, 290 F.3d 1175, 1185 (9th Cir.2002).

Neither Ellen Wilcox nor Linda Kennedy was familiar with the process for obtaining a warrant before taking custody of a child. Wilcox, the social worker in charge of B.W.'s case, stated that she never received training on how to obtain a warrant while she was employed by Washoe County from 2007 through 2009, and in those two years, she had never actually obtained a warrant. Under questioning, Wilcox admitted that a hypothetical child in B.W.'s circumstances was not in imminent danger:

Q: But a child is not going to be returned to his father for four days. Is that imminent danger?

A: No.

But she testified that she would likely remove such a child anyway, and without a warrant:

Q: So what do you do for that child when the mother insists on returning him to a dangerous situation and the father insists on getting him in that dangerous situation, no questions asked, you have already determined and everybody agrees it's a danger?

A: Then we remove the child. Q: You don't get a warrant?
A: No.

Q: The child you admitted is not in imminent danger.

A: No. We don't get a warrant.

Q: But would you remove the child *even though the danger may be three or four days away* ?

A: Yes.

Wilcox later attributed her answer to Washoe County's unofficial custom or protocol:

Q: Let me ask you an obvious question. If the child wasn't in danger in the hospital and was there for several days, why didn't you seek a warrant before you removed the child from mom? Is it because you didn't know you had to? You weren't trained on that?

A: It wasn't the protocol of Washoe County. No one told me to get a warrant and they didn't train me how to go about getting a warrant.

Q: Or did they even tell you you could get a warrant?

A: No. They didn't.

Kennedy—who supervised between five and seven social workers, including Wilcox at the time—confirmed that it was “not in our general practice” to obtain a warrant before removing a child:

Q: So your best recollection is that as of July of '08, Washoe County Child Protective Services did not obtain court warrants prior to the removal of a child in any circumstances?

A: I wouldn't say in no circumstances. But not in our general practice. No.

There could be—we had asked for warrants sometimes when there was like a suspected kidnapping or something like that where we had some prior knowledge, let's say.

But generally speaking, we did not. I don't recall ever getting a warrant to go out with one of my investigators to go out and pick up a child unless it was a special circumstance.

She elaborated that in cases like B.W.'s, she might have obtained a warrant “in a rare instance,” but she did not recall ever doing so:

Q: You mentioned that you have a recollection of obtaining—of seeking warrants in situations like kidnappings and things like that.

....

What I'm more interested in is the case where you've gotten a complaint or a report of some sort of child neglect that triggers an investigation which leads to determining that a child needs to be removed.

Okay? That's the case I'm more interested in.

Under those kind of circumstances, do you have any knowledge of ever obtaining a warrant to remove a child under those type of general circumstances?

A: I do not recollect doing that. No.

Q: So it would be safe to say that in your career with Washoe County Child Protective Services you're not aware of ever obtaining a warrant to remove a child from a parent?

A: I don't recollect ever doing that. However, that is not to say that it could have occurred in a rare instance that I'm not just recalling. It was not a general practice ever to get a warrant.

While discussing the process of removing a child from its parent without a warrant, Kennedy noted that “Washoe County has all kinds of policies and procedures for everything,” and that the “policy[] was to never get warrants” when removing children:

*1200 Q: You stated when a baby or a child is kidnapped that would be a situation where you would get a warrant.

A: Generally speaking, yes.

That happens very rarely.

Q: A warrant to remove the child from the kidnapper or a warrant to arrest the kidnapper?

A: A warrant to remove the child.

We have nothing to do arresting people.

Q: So if it's a kidnapper you get a warrant to remove it but if it's a parent you don't?

A: That's our policy, was never to get warrants when we remove children when I worked as a supervisor.

Q: There was a policy to not get warrants or there was no policy?

A: There was no policy related to warrants.

Like Wilcox, Kennedy understood that the “legal criteria” for warrantless removals mandated the existence of an “imminent risk to the well being of that child.” However, Kennedy's definition of “imminent risk” was hazy, at best.

Importantly, Kennedy had “no recollection” of B.W.'s case, and she did not know what facts were used to justify B.W.'s removal. But speaking in the abstract and using her knowledge as a supervisor, she said that under these circumstances a child could be removed without a warrant:

Q: Based upon your review of [B.W.'s case] can you tell me all of the facts that were relied upon to remove—to make the decision to remove [B.W.]?

A: I can tell you I don't know what facts Amy [Reynolds] used in this regard.

But I can tell you that as far as a supervisor the fact that the child tested positive for methamphetamine, that the mother admitted to recent methamphetamine use, that she admitted that she's unemployed, she does not have stable housing and then after she said she used methamphetamine during her entire pregnancy, which means we also have a drug baby here, that drug babies are generally more difficult to parent because they get agitated, they cry a lot, so we have a mom who is not necessarily stable and she has a difficult child, she lives with friends from place to place, she has a CPS history, which apparently we also had other children of hers in care, all of that would have been researched prior to removing that child to see if we had prior history on her, what it was and the fact that she never followed through for her other children to try to get them back, never followed through on any services, when you look at that whole picture, then that would be why you would have removed that child.

Like Wilcox, Kennedy said no warrant was necessary to remove B.W., even though Kennedy also admitted that B.W. was not in any immediate danger:

Q: In your opinion, is the maternity floor of Renown Regional Medical Center considered a safe environment by Washoe County Child Protective Services?

A: Yes. It is.

Q: And the child, [B.W.], was not in any danger at Renown, was she?

A: No.

Because there were nurses generally present.

....

Q: The baby would be in imminent danger if Rachel checked out of the hospital with the baby? Is that basically what you're saying?

A: We would consider that imminent danger. Yes.

Q: What was the imminent danger to the baby while in the hospital?

*1201 A: I don't know that the child was in imminent danger there.

....

Q: Would [there] be [an imminent risk to the child] if mom took the child from the hospital?

A: Yes.

Q: But in the hospital it wasn't imminent risk?

A: Right.

[21] While, as Judge Kozinski notes, Dissent at 1203, the only evidence of an unofficial custom comes from two depositions, both Wilcox and Kennedy traced their actions in B.W.'s case to the "general practice" and "protocol" in Washoe County. Wilcox started working at WCDSS in June of 2007, a year before she handled B.W.'s case. Kennedy worked as a social worker for twenty-two years in various offices before retiring; she testified that she spent seven of those years working in the Child Protective Services department at WCDSS. Based on their experience working at WCDSS, both Wilcox and Kennedy should have known the constitutional standard for removing a child: Government officials must obtain a warrant before removing a child unless they have "reasonable cause to believe that the child is in imminent danger of serious bodily harm and that the scope of the intrusion is reasonably necessary to avert that specific injury." *Mabe*, 237 F.3d at 1106 (quoting *Wallis*, 202 F.3d at 1138). But neither did. Instead, both understood that the "general practice" and "protocol" in Washoe County was to remove children without obtaining warrants. Wilcox admitted that B.W. was not in imminent danger at the hospital, but she did not first obtain a warrant before removing B.W. because "[i]t wasn't the protocol of Washoe County." Kennedy could not even remember B.W.'s specific case, but she relied on her knowledge as a WCDSS supervisor to confirm that no warrant was necessary to remove B.W. because "[i]t was not a general practice ever to get a warrant."⁷

Because the evidence presented here creates at least an inference of an unconstitutional, unofficial custom in Washoe County, the County is not entitled to summary judgment. Although the plaintiffs failed to compile any evidence of any other constitutional violations—that is, specific instances where Washoe County social workers took custody of children without obtaining a warrant when they were constitutionally required to do so—we think there is minimal evidence sufficient to controvert the County's *Monell* defense at this stage of the proceedings. The record is relatively

sparse (with depositions from only two WCDSS workers), and Wilcox's and Kennedy's testimonies of the imminent danger standard are unclear, but “ambiguity in favor of the defendant is not sufficient” to “dispose of a case on summary judgment.” *Sery*, 513 F.3d at 972 (“If a reasonable person could side with the plaintiff's interpretation of events, the issue must survive for trial.”). A triable issue exists as to whether the root of the unconstitutional behavior exhibited in B.W.'s case lies in the unofficial operating procedure of Washoe County or in the errant acts of individual social workers, and this question should go to a jury.

IV

We affirm the district court's summary judgment in favor of all of the defendants *1202 on the claim alleged by Kirkpatrick on his own behalf. We reverse the district court's summary judgment in favor of Ellen Wilcox, Linda Kennedy, and Washoe County on the claim that they violated B.W.'s Fourth Amendment right to be free from unreasonable seizures.⁸ We remand to the district court for further proceedings on the Fourth Amendment claim filed on behalf of B.W. against these three defendants. We affirm the district court's summary judgment in favor of Amy Reynolds with respect to all claims because the plaintiffs have not alleged any facts suggesting that she was involved with the decision to take custody of B.W. Each party shall bear its own costs on appeal.

AFFIRMED in part, and REVERSED in part.

KOZINSKI, Circuit Judge, dissenting in part:

This term the Supreme Court once again summarily reversed a lower court for failing to appreciate that a state official is protected by qualified immunity unless “every reasonable official [in the defendant's situation] would have understood that what he is doing violates” a constitutional right. *Taylor v. Barkes*, — U.S. —, 135 S.Ct. 2042, 2044, 192 L.Ed.2d 78 (2015) (internal quotation marks omitted). The Court has stressed time and again that, “[w]hen properly applied, qualified immunity protects all but the plainly incompetent or those who knowingly violate the law.” *Id.* (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 131 S.Ct. 2074, 2085, 179 L.Ed.2d 1149 (2011)). The majority ignores that clear admonition, and imposes personal liability on two child protective service

workers whose actions were anything but malicious or incompetent.

Under the majority's holding, Ellen Wilcox and Linda Kennedy are exposed to liability because they removed a vulnerable baby, B.W., from the care of her mother, Rachel. Rachel was a drug addict who had taken methamphetamine so recently that it was found in her daughter's blood at the time of the child's birth. Rachel previously had two other children removed from her custody because of her manifest inability to care for them. She also had no fixed address, and therefore no way of being found, had she left the hospital. Had Rachel absconded with B.W., the baby's life could well have been in peril.

The majority doesn't appear to dispute this conclusion; nonetheless it finds there was no “imminent danger of serious bodily harm” to B.W. *Rogers v. Cnty. of San Joaquin*, 487 F.3d 1288, 1295 (9th Cir.2007). The majority reasons that B.W. “would have very likely remained in the hospital ... while the defendants requested a warrant” due to the informal “hold” the Washoe County Department of Social Services placed on her. Op. at 1194. But, “very likely” is cold comfort when the life of a newborn baby is at stake. In any event, this crucial inference is entirely speculative. The majority fails to hold plaintiffs to their burden of “identify[ing] affirmative evidence from which a jury could find” a violation of clearly established law. *Crawford–El v. Britton*, 523 U.S. 574, 600, 118 S.Ct. 1584, 140 L.Ed.2d 759 (1998) (emphasis added).

There simply is no evidence in the record that the informal “hold” would have prevented Rachel from leaving the hospital and taking B.W. with her. It is undisputed that the “hold” didn't constitute a formal restriction on their movement—indeed, *1203 if it did, then the “hold” itself would have been a seizure. Because the hospital didn't have the lawful authority to restrain Rachel or B.W., it was at least possible that mother and daughter could have left while a warrant application was pending. Reasonable minds might disagree as to the precise quantum of risk faced by B.W., but, under the circumstances, it was hardly malicious or “plainly incompetent” of Wilcox and Kennedy to temporarily take B.W. out of harm's way. *al-Kidd*, 131 S.Ct. at 2085 (internal quotation marks omitted).

We've been cautioned numerous times to undertake our qualified immunity analysis “in light of the specific context of the case, not as a broad general proposition.” *Brosseau v. Haugen*, 543 U.S. 194, 198, 125 S.Ct. 596, 160 L.Ed.2d

583 (2004) (per curiam) (internal quotation marks omitted). A test like *Rogers* that is “cast at a high level of generality” constitutes clearly established law only “in an obvious case.” *Id.* at 199, 125 S.Ct. 596. At the time B.W. was taken into custody, we had never applied *Rogers* in the context of an especially vulnerable child, like a baby, or in a situation where social workers have no means of locating a child once it leaves their immediate supervision. *Rogers* alone cannot have placed every reasonable official on notice that taking B.W. into custody was unconstitutional. I worry that future babies will pay with their lives because social workers hesitate to take them into custody based on today’s decision.

Nor am I convinced that the county should be liable under *Monell*. The few remarks Wilcox and Kennedy made during their depositions, standing alone, don’t support an inference that there is a practice of constitutional violations “so persistent and widespread as to practically have the force of law.” *Connick v. Thompson*, 563 U.S. 51, 131 S.Ct. 1350, 1359, 179 L.Ed.2d 417 (2011). There is nothing else. I therefore respectfully dissent from Parts III.B.2 and III.B.3 of the majority opinion.

All Citations

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Footnotes

- 1 Although this case is not about pleading standards per se, in order to review the district court’s summary judgment order we must decide whether the complaint gave the defendants notice of the claims against them, as if we were reviewing an order granting a motion to dismiss. We have analyzed whether a complaint provides adequate notice through the lens of Rule 8(a)(2) even when the question arises at the summary-judgment stage. See *Pickern v. Pier 1 Imports (U.S.), Inc.*, 457 F.3d 963, 968 (9th Cir.2006) (evaluating “whether [the] plaintiff’s complaint complied with the notice pleading requirements of Fed.R.Civ.P. 8” where the district court granted summary judgment on the basis that the complaint failed to give the defendant “adequate notice” of particular claims).
- 2 Because the WCDSS eventually seized B.W. by taking physical custody of her and placing her with a foster family, we need not consider whether B.W. was “seized” during the period when she remained in the hospital subject to the Department’s hold request.
- 3 Once we have issued an opinion on point—here, *Rogers*—we mean business, and all officials must abide by that instruction. Judge Kozinski argues that “*Rogers* alone cannot have placed every reasonable official on notice that taking B.W. into custody was unconstitutional.” Dissent at 1203. We disagree. Where a single case “has clear applicability” to a subsequent set of facts, that case alone is sufficient to put law enforcement officials on notice. *Feathers v. Aey*, 319 F.3d 843, 850 (6th Cir.2003) (quoting *Hope v. Pelzer*, 536 U.S. 730, 742, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002)) (“*Hope* specifically states that a right is clearly established ... when the ‘premise’ of one case ‘has clear applicability’ to a subsequent set of facts.”); cf. *Rojas v. Anderson*, 727 F.3d 1000, 1004 (10th Cir.2013) (holding that a right was not clearly established where the plaintiff failed to provide “a single case citation to support” that notion).
- 4 The plaintiffs do not challenge the constitutionality of Nev.Rev.Stat. § 432B.390(1)(a). We express no view on whether the phrase “reasonable cause to believe that immediate action is necessary to protect the child from injury, abuse or neglect” in the state statute is broader than the phrase “reasonable cause to believe that the child is in imminent danger of serious bodily injury” in our cases. Even assuming *arguendo* that there might be a case where a social worker would consider the warrantless seizure of a child justified under the state standard but not under the federal standard, we do not think that any reasonable social worker could have concluded that either standard was satisfied in this case.
- 5 Although we reverse the summary judgment in favor of Wilcox and Kennedy, we affirm the district court’s summary judgment in favor of Amy Reynolds because the plaintiffs have not alleged any facts suggesting that she was involved with the decision to take custody of B.W.
- 6 Because the district court dismissed Kirkpatrick’s claims and did not think that the complaint included B.W. as a plaintiff, the district court addressed, but did not fully analyze, the *Monell* claim. It nevertheless expressed concern with Washoe County’s practices. The *Monell* question was briefed by both parties and discussed at oral argument. The record is sufficiently developed for us to determine whether the County was entitled to summary judgment.
- 7 Whether the unofficial County policy was *not* to get warrants or was silent on getting warrants, either policy would be unconstitutional because government employees are automatically required to get warrants unless the child is in “imminent danger of serious bodily harm” and a speedy removal “is reasonably necessary to avert that specific injury.” *Mabe*, 237 F.3d at 1106 (quoting *Wallis*, 202 F.3d at 1138).

- 8 Because we reverse the district court's grant of summary judgment in favor of Washoe County, we deny as moot Kirkpatrick's motion for judicial notice of the "papers and pleadings on file in the case of *Garver v. County of Washoe*, Ninth Circuit docket number 11–18015."

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