NEVADA BENCHBOOK
FOR ABUSE AND NEGLECT CASES
AND RELATED MATTERS

Table of Contents

Section 1. Purpose and Use of Benchbook

This Benchbook is not exhaustive in nature, but is designed to give a quick reference to Abuse and Neglect cases under:

- NRS Chapter 432B,
- Termination of Parental Rights under NRS Chapter 128,
- Adoptions under NRS Chapter 127,
- Paternity under NRS Chapter 126, and
- Guardianship to a limited extent as it relates to 432B actions.

Special notice should be taken as it relates to Indian children under the Indian Child Welfare Act ("ICWA"), as under federal law there are different burdens of proof for removal of such children and termination of parental rights. Also, there are cultural requirements in certain placements.

Timetable requirements under both Nevada state and U.S. federal law are a part of this Benchbook.

Accompanying the Introduction in each section herein is a chart of At-a-Glance items to be considered at each hearing and a checklist of things to be done at each hearing.

Section 2 - Preliminary Protective Hearing (72-hour Hearing)

Introduction

Time is of great importance in dealing with children.

A hearing is required **within 72 hours** after removal of the child excluding Saturdays, Sundays, and holidays under NRS 432B.470 and NRS 432B.480.

The **burden of proof** is upon the Division of Child and Family Services to show by a preponderance of evidence that there is reasonable cause to believe either:

1. that it would be contrary to the welfare of the child to reside at his home, or
2. that it is in the best interest of the child to place him outside of his home.

See NRS 432B.480 [effective January 1, 2008]; *see also* In re Temporary Custody of Five Minors, 105 Nev. 441, 777 P.2d 801 (1989) in Appendix (establishes preponderance of evidence for temporary custody).

The court must also determine that placement complies with NRS 432B.3905.

The finding that "continuation in the home is contrary to the welfare of the child" must be made in the first order, even if temporary, to be eligible for Title IV-E funding.

The table on the following page sets forth a checklist of matters to be considered at such 72-hour hearing.

Preliminary Protective Hearing
- At a Glance –

Relevant Statutes	NRS 432B.470, 432B.480
Purpose of Hearing	• Determine whether the child should remain in protective custody or be immediately and safely returned home pending further action from the Court. Determine if appropriate placement. NRS 432B.490 as amended. • Ensure parties have been identified and served • Appoint counsel for parties – attempt to have counsel there • Determine if ICWA applies • Determine if reasonable effort/active efforts were made to prevent the removal of the child from home • NRS 432B.490
Time Frame	• A child taken into protective custody must have a hearing within 72 hours after child is removed from the home (excludes Saturdays, Sundays and holidays) • No timeline is defined if the child is not taken into custody under NRS 432B.470
Notice	• Notice of time and place of hearing must be given to a parent or other person responsible for child's welfare: 1. By personal service of a written notice; 2. Orally; or 3. By posting a written notice on door of parent's residence, if parent cannot be located after reasonable effort • If notice is given orally or by posting a written notice on the door of the parent's residence, a copy of the notice must be mailed to the person at the parent's last known address within 24 hours after the child is placed in protective custody. NRS 432B.470 • Federal law requires states to provide the current care provider for a child notice of all hearings concerning the child and a right to be hear. 42 USC § 675(5)(G)
Advisements and Findings To Be Made At Hearing	1. Identify parties right to be represented by counsel 2. Appointment of counsel if possible for parents or responsible party, and for child 3. The right to present evidence 4. Determine by a preponderance of evidence if reasonable cause to believe contrary to welfare of child to return to home or in best interest of child to be placed outside (make specific findings). 5. Determine if placement is proper under NRS 432B.3905 6. May place with appropriate relative 7. If finding of best interest requires, release child back to parents
Rules of Evidence	• The Court may hear all relevant material evidence • Presumptions arise when there is expert testimony on the child's injuries. NRS 432B.450
Set Next Hearing	If a petition is filed after the hearing, the adjudicatory hearing must be held within 30 days of the filing; set the date and time of the hearing.

Case Law: In re Custody of Five Minors

105 Nev. 441, 441 (1989) In re Temporary Custody of Five Minors

IN THE MATTER OF THE TEMPORARY CUSTODY OF FIVE MINOR CHILDREN. AUGUST H. AND LEANN H., APPELLANTS, *v.* THE STATE OF NEVADA; WILMA H., MARION H., JAMES H., SUE ANN H., MARY LOU H., RESPONDENTS.

No. 19355

July 26, 1989 777 P.2d 901

Appeal from order granting petition for temporary custody of minor children. Third Judicial District Court, Lyon County; Mario G. Recanzone, Judge.

District attorney petitioned for temporary custody of minor children who were in protective custody of the Department of Human Resources, Welfare Division. The district court granted the petition. Parents appealed. The Supreme Court held that: (1) the order granting temporary custody, subject to periodic mandatory review and modification, was not a final, appealable order, but the appeal would be treated as a petition for mandamus; (2) the preponderance of the evidence standard, rather than the clear and convincing evidence test, applies to petitions for temporary custody; and (3) substantial evidence supported the determination that the children had been neglected.

Appeal treated as petition for writ of mandamus, and denied.

Terri Steik Roeser, State Public Defender, and *John C. Lambrose,* Deputy, Carson City, for Appellants.

Brian McKay, Attorney General, Carson City; *William G. Rogers,* District Attorney, and *Eileen Barnett,* Deputy, Lyon

[6]THE HONORABLE ROBERT E. ROSE, Justice, voluntarily recused himself from participation in the decision of this appeal.

105 Nev. 441, 442 (1989) In re Temporary Custody of Five Minors

County; *Claassen & Olson,* Carson City; *Ed Irvin,* Fallon, for Respondents.

1. INFANTS.
   Order determining temporary custody of minor children, subject to periodic mandatory review and modification, is not final, appealable order. NRS 432B.010 et seq., 432B.550, 432B.580, 432B.590.
2. MANDAMUS.
   Parents' attempt to appeal from order determining temporary custody of minor children could be treated as petition for writ of mandamus; although order was not immediately appealable, order affected custody of children and could have far reaching consequences for both parents and children. NRS 432B.010 et seq., 432B.550, 432B.580, 432B.590.
3. INFANTS.
   Failure to give parents access to reports that gave rise to Welfare Division's investigation of family did not violate parents' statutory and constitutional rights in proceedings in which Division obtained temporary custody of children; reports were not before district court at hearing. NRS 432B.510.
4. INFANTS.
   Requirement that Welfare Division provide parents with "plan" for services to help family is discretionary and is not prerequisite to filing of petition for temporary custody. NRS 432B.340, 432B.530.

5. INFANTS.

Preponderance of evidence standard, rather than clear and convincing evidence standard, applies to proceedings in which Welfare Division seeks temporary custody of children. NRS 432B.530.

6. INFANTS.

Substantial evidence supported district court's granting Welfare Division's petition for temporary custody of minor children on allegations that parents did not properly supervise or control their children; there was evidence that parents were unable to protect children from each other and failed to teach children basic social skills or to provide any guidance about basic toilet functions and hygiene, supporting determination that children were neglected. NRS 432B.140, 432B.510.

OPINION

Per Curiam:

On May 6, 1989, the district attorney of Lyon County filed in the district court a petition for the temporary custody of appellants' five minor children pursuant to NRS 432B.510. The petition alleged that the four oldest children were the victims of chronic neglect by their parents and that the children have poor hygiene which has resulted in complaints from school officials and the Lyon County Sheriff's Department. The petition stated that the children were in the protective custody of the Nevada Department of Human Resources, Welfare Division, and

requested that the Welfare Division be given temporary custody of the children. The petition was later amended to include appellants' youngest child.

On September 13, 1988, after holding an evidentiary hearing, the district court entered an order directing that all of the children remain in the temporary custody of the Welfare Division. That order directed the Welfare Division to give "extensive" visitation rights to appellants for the following three-month period and to present to the court a report concerning the family at the end of the three-month period. The order also allowed the Welfare Division to return the children to the home within the three-month period if it felt such action was appropriate. Finally, the order set another hearing for the matter. This appeal followed.

[Headnote 1]

Initially, we note that the proceedings below were conducted pursuant to NRS Chapter 432B. We also note that the order challenged in this appeal determines the *temporary* custody of the minor children, and that the order is subject to periodic mandatory review and modification by the district court. *See* NRS 432B.550; 432B.580; 432B.590. Thus, the challenged order of the district court is not a final order. Moreover, we note, and the parties concede, that no statute or court rule authorizes an appeal from an order of the district court granting a petition for temporary custody pursuant to NRS Chapter 432B. The right to appeal is statutory, and where no statute or rule authorizes an appeal, no right to appeal exists. *See* Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984); Kokkos v. Tsalikis, 91 Nev. 24, 530 P.2d 756 (1975). Finally, the periodic review by the district courts of orders placing minor children in temporary protective custody renders the appellate process unsuitable for the review of such orders by this court. Under these circumstances, we conclude that in the absence of a contrary legislative expression, orders granting petitions for temporary custody pursuant to NRS Chapter 432B are not substantively appealable.

[Headnote 2]

Nevertheless, because the order challenged in this proceeding affects the custody of children, and may thus have far reaching consequences for both the parents and the children, we elect to treat the instant appeal as a petition for a writ of mandamus. *See* Clark County Liquor v. Clark, 102 Nev. 654, 730 P.2d 443 (1986); Jarstad v. National Farmers Union, 92 Nev. 380, 552 P.2d 49 (1976). Mandamus is an extraordinary remedy, and the decision of whether to entertain a petition lies within the discretion of this court. *See* Poulos v. District Court, 98 Nev. 453, 455,

652 P.2d 1177, 1178 (1982). Further, mandamus will issue to control an arbitrary or capricious exercise of discretion by the district court. *See* Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Therefore, this court will not disturb a decision of the district court regarding the temporary custody of children unless the decision is affected by a manifest abuse of discretion. *See id.; cf.* Nichols v. Nichols, 91 Nev. 479, 537 P.2d 1196 (1975) (decision regarding child custody in a divorce action rests in the sound discretion of the district court and will not be disturbed unless the discretion is clearly abused).

[Headnote 3]

In the present case, appellants assert that the order giving the Welfare Division temporary custody of the minor children violated their statutory and constitutional rights. Initially, appellants complain that they were never given access to the reports which gave rise to the Welfare Division's investigation of the family. We note, however, that the district court limited the hearing below to allegations that a social worker could testify to directly. Because the reports which alerted the Welfare Division to the situation in appellants' family were not before the district court at the hearing below, appellants were not prejudiced by the denial of access to those reports.

[Headnote 4]

Appellants next assert that NRS 432B.340 requires the Welfare Division to provide them with a "plan" for services to help the family prior to instituting an action for temporary custody.[1] Appellants' contention is without merit. As respondents correctly note, the provision of a plan for services pursuant to NRS 432B.340 is discretionary; it is not a prerequisite to filing a petition for temporary custody. Thus, the Welfare Division was under no statutory obligation to provide appellants with such a plan.

Appellants next complain that the petition for temporary custody contained only conclusory allegations and thus did not give

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[1]NRS 432B.340 (emphasis added) provides in pertinent part:

> 1. If . . . [the Welfare Division] determines that a child needs protection, but is not in imminent danger from abuse or neglect, *it may:*
>
> (a) Offer to the parents . . . a plan for services and inform him [sic] that [Welfare] has no legal authority to compel him [sic] 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. . . .
>
> . . . .
>
> 2. If the parent . . . accepts the conditions of the plan offered by [Welfare] . . . [Welfare] may elect not to file a petition and may arrange for appropriate services. . . .

them sufficient notice of the facts that they would have to defend against at the hearing on the petition. Appellants also assert that the hearing on the petition was not held within thirty days as required by NRS 432B.530. We note, however, that appellants failed to object below to either the form of the petition or to the hearing date. Under these circumstances, we will not address these claims of error in this court. *Cf.* Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981) (claims for extraordinary relief must generally first be tendered to an appropriate district court); Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (a point not raised in the district court is deemed to have been waived).

[Headnote 5]

Appellants next assert that there is no indication in the documents before this court whether the district court found clear and convincing evidence supporting its order giving the Welfare Division temporary custody of the children. Analogizing to cases involving the termination of parental rights, appellants argue that a petition for temporary custody must be supported by clear and convincing evidence. *See* Santosky v. Kramer, 455 U.S. 745 (1982); Champagne v. Welfare Division, 100 Nev. 640, 691 P.2d 849 (1984). Respondents correctly note, however, that NRS 432B.530(5) requires only that the court find a preponderance of evidence showing that a minor child is in need of protection before issuing an order for temporary custody. Because an order for temporary custody differs significantly from an order terminating parental rights, we conclude that the lesser standard is appropriate.

[Headnote 6]

As a final matter, we note that the evidence presented at the hearing below clearly established that appellants did not properly supervise or control their children. Specifically, appellants were unable to protect the children from each other and failed to teach the children basic social skills or to provide any guidance to the children regarding basic toilet functions and hygiene. Because this evidence was sufficient to show that the children were neglected under NRS 432B.140,[2] we conclude that the district court did not abuse its discretion when it granted the petition for

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[2]NRS 432B.140 provides in pertinent part:

> Negligent treatment or maltreatment of a child occurs if a child . . . is without proper care, control and 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 his welfare or his neglect or refusal to provide them when able to do so.

temporary custody. *Cf.* Kobinski v. State, 103 Nev. 293, 738 P.2d 895 (1987) (an order terminating parental rights will be upheld on appeal if it is supported by substantial evidence). Accordingly, we conclude that our intervention by way of extraordinary writ is not warranted at this time. Therefore, we deny this petition.[3]

SAMPLE

Good Morning,

Do you understand why you are here?

Have you received a copy of the Petition?

Have you read it and do you understand it?

The Petition does not allege any criminal conduct on your part, and it does not appear that any criminal charges are going to be filed as a result of the conduct alleged in the Petition, therefore I cannot appoint an attorney for you. However, if you desire, I will continue this matter for one week for you to consult with and/or hire an attorney.

It is important that you understand that the Department does not have any desire to raise your children. The goal is to reunite you with your children as soon as is possible. My job is to make certain that your children are safe.

If you admit to the allegations charged in the Petition, I will set a new date for a Report and Disposition Hearing where you will be presented with a Case Plan that will be prepared after you have a Child and Family Team Meeting. The case plan will address the areas of weakness in your family that put the children at risk. Your children will be made Wards of the Court during the time that the case plan is in effect.

Once you complete the case plan, and the Court is satisfied that you will continue to keep the children safe without Court intervention, the Wardship will be terminated, the case will be closed, and you will have custody of the children again without any more Court intervention.

<u>IMPORTANT NOTE</u> – PLEASE SEE SAMPLE OF FINDINGS AND ORDER OF REASONABLE EFFORTS TO PREVENT REMOVAL AND FINDINGS AND ORDER OF ACTIVE EFFORTS TO PREVENT REMOVAL. PLEASE ALSO SEE CHART OF HEARINGS AND JUDICIAL DETERMINATIONS - REQUIRED COURT ORDERS.

COURT SHOULD ADVISE PARENT(S) OF TIMELINES AND DEADLINES

HEARINGS AND JUDICIAL DETERMINATIONS
REQUIRED COURT ORDERS-CHILD REMOVED

Removal From Home

72 Hour Protective Custody Hearing

Contrary to the Welfare Finding Required for IVE eligibility.

Court must find that:
1) Continuation in home is contrary to child's welfare, or, Removal is in child's best interest.
2) Specific reasons that existed as basis for removal must be listed in the court order.

Court may find that Reasonable Efforts were made to prevent the removal, if appropriate.

Order must list specific reasons for <u>each</u> child, unless reasons for all children are the same.

If hearing is continued, child is not eligible for IVE unless the order to continue has the contrary to the welfare language.

Reasonable Efforts to prevent the Removal

Finding must be made within 60 days of child's removal from the home.

Can be done at hearing on the Petition, Adjudicatory, Dispositional, or a special hearing for purposes of making the finding

Reasonable Efforts to Prevent the Removal finding required for IVE eligibility.

Court must find that:
Reasonable efforts have been made to prevent the removal.

Order must list specific efforts made for each child unless efforts for all children are the same.

Reasonable Efforts are <u>Not</u> Required.

In certain circumstances, the court may find that no reasonable efforts are required (NRS 432B. 393. 3).

The order must specify why reasonable efforts are not required.

This finding must be made within 60 days of the removal.

A Permanency Hearing must be held within 30 days of the finding.

Permanency Hearing must be held within 12 months of the child's removal from the home.

Court must find that:

Reasonable Efforts have been made to make and finalize a permanent plan for the child.

Order must outline specific efforts made.

Order must include what the permanency plan for each child is.

Review Hearing to be held within 6 months of the date of removal.

Permanency Hearing must be held every 12 months for the duration of the case.

Purpose:
To review efforts made to finalize the identified permanent plan.

Court must find that:
Reasonable Efforts have been made to finalize the permanency plan.

Orders must be specific to each child.

Order must include the permanency plan for each child

Order must include what the permanency plan for each child is.

If the plan is adoption, agency must identify specific efforts made to find a suitable adoptive home for the child.

Permanency Orders are a State Plan requirement.

Maintain copies of the orders in case records.

Failure to obtain proper orders will result in IVE/IVB program audit exceptions.

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:

,
Date of Birth:
A Minor, of Age.

CASE NO.:J
DEPT. NO.:

FINDINGS AND ORDER OF REASONABLE EFFORTS TO PREVENT REMOVAL

Date of Hearing:

Time of Hearing:

Courtroom:

Date of Removal:

This matter having come before the Court on , and based on the testimony and/or reports provided by and good cause being shown;

THE COURT FINDS that continuation of the minor(s) in the home of the parent(s)/guardian(s), NAME OF PARENT/GUARDIAN, is contrary to the welfare of the child(ren);

THE COURT FINDS that Reasonable Efforts pursuant to 432B393(2) were made to prevent the removal of the child(ren) from the home to wit:

CASE NO.:J

IT IS FURTHER RECOMMENDED that DFS shall have legal authority to access and obtain any records that relate to the child's well being to include but not limited to: medical, dental, educational, mental health, and substance abuse.

IT IS FURTHER RECOMMENDED that a ☐ REVIEW ☐ PLEA ☐ TRIAL ☐ R&D is set for _____ _____, _____ at the hour of _____.

Dated:_____ _____, _____ .

_____
JUVENILE HEARING MASTER

The above Findings and Recommendations of the Hearing Master are hereby approved and such are hereby made an Order of the Eighth Judicial District Court of Nevada, Family Division.

Dated this _____day of _____, _____.

_____
DISTRICT JUDGE - JUVENILE

Submitted by:

_____

CASE MANAGER
DEPARTMENT OF FAMILY SERVICES

Submitted by:
DAVID ROGER
DISTRICT ATTORNEY

By: _____
Deputy District Attorney

Hay servicios gratis de ayuda con otros idiomas. Para pedir un intérprete, llame por favor al Coordinador de Servicios de Intérpretes al *671-4578*.

Free language assistance services are available. To request an interpreter, please call the Language Assistance Coordinator at 671-4578.

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:

,
Date of Birth:
A Minor, of Age.

CASE NO.:J
DEPT. NO.:

FINDINGS AND ORDER OF ACTIVE EFFORTS TO PREVENT REMOVAL

Date of Hearing:

Time of Hearing:

Courtroom:

Date of Removal:

This matter having come before the Court on , and based on the testimony and/or reports provided by and good cause being shown;

THE COURT FINDS that continuation of the minor(s) in the home of the parent(s)/guardian(s), NAME OF PARENT/GUARDIAN, is contrary to the welfare of the child(ren);

THE COURT FINDS that Active Efforts pursuant to 25 USC 1912(b) were made to prevent the removal of the child(ren) from the home to wit:

CASE NO.:J

IT IS FURTHER RECOMMENDED that DFS shall have legal authority to access and obtain any records that relate to the child's well being to include but not limited to: medical, dental, educational, mental health, and substance abuse.

IT IS FURTHER RECOMMENDED that a ☐ REVIEW ☐ PLEA ☐ TRIAL ☐ R&D is set for _____ _____, _____ at the hour of _____.

Dated:_____ _____, _____ .

_____
JUVENILE HEARING MASTER

The above Findings and Recommendations of the Hearing Master are hereby approved and such are hereby made an Order of the Eighth Judicial District Court of Nevada, Family Division.

Dated this _____day of _____, _____.

_____
DISTRICT JUDGE - JUVENILE

Submitted by:

_____
CASE MANAGER
DEPARTMENT OF FAMILY SERVICES

Submitted by:
DAVID ROGER
DISTRICT ATTORNEY

By: _____
Deputy District Attorney

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Section 3 – Procedure Following 72-Hour Hearing or Investigation

Introduction

After the 72-hour hearing the agency which provides child welfare services shall **within 10 days** after the hearing file a petition which meets the requirements of NRS 432B.510 or recommend any further action. NRS 432B.490.

> **NOTE**: NRS 432B.490(2) provides that if the agency recommends against further action, "the court may on its own motion, initiate proceedings when it finds it is in the best interest of the child."

After a petition is filed the **court shall appoint a guardian ad litem** for the child. NRS 432B.500. Qualifications for such guardian ad litem are set forth in NRS 432B.505.

Section 4 – Adjudicatory Hearing

Introduction

Within 30 days after the filing of a petition, an adjudicatory hearing must be held. NRS 432B.530.

NOTE: Reports prior to any hearings shall be provided not later than 72 hours before the hearing to parents, guardians, and attorneys.

The following table sets forth a checklist of matters to be considered at the Adjudicatory Hearing:

Adjudicatory Hearing
- At a Glance –

Relevant Statute	NRS 432B.530
Purpose of Hearing	Determine whether allegations of dependency/abuse or neglect concerning a child are sustained by the evidence and, if so, are legally sufficient to support state intervention on behalf of the child. NRS 432B.530
Time Frame	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. NRS 432B.530
Notice	Generally notice is given to the parents at the preliminary hearing, if they attended. If the parents were not at the preliminary hearing, they must be given notice of this hearing. Federal law requires states to provide the current care provider for a child notice of all hearings concerning the child and a right to be heard. 42 USC § 675(5)(G)
Burden of Proof	• By preponderance of the evidence. NRS 432B.530 • ICWA standard of proof is clear and convincing evidence
Rule of Evidence	Court may consider all relevant and material evidence helpful in determining the questions presented, including oral and written reports. NRS 432B.530
Circumstances for Adjudication of Dependency	• The child has been abandoned, abused or neglected by a person responsible for his welfare; or another child has died as a result of abuse or neglect by that person; • He has been placed for care or adoption in violation of law; or • He has been voluntarily surrendered to emergency services. • A child may be in need of protection if the person responsible for his welfare: - is incarcerated, hospitalized, or incapacitated; - fails, although he is financially able to do so or has been offered financial or other means to do so, to provide for the child's food, clothing or shelter necessary for the child's health or safety, education as required by law, or adequate medical care; or - has been responsible for the abuse or neglect of a child who has resided with that person. A child may be in need of protection if the death of one parent of the child is due to domestic violence by the other; or the child was affected by prenatal drug exposure. NRS 432B.330
Set Next Hearing	Set the date and time of the disposition hearing which must occur within 15 working days. NRS 432B.530. If disposition is held at the conclusion of the adjudicatory hearing, the next hearing will be the semi-annual review in six months, or within 90 days of a request by a party. NRS 432B.580

Evidence Code Provisions under NRS 432B.530

NRS 43B.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 his removal from his 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.

Adjudicatory Hearing
- Checklist –

Initial Inquiries

- Identify parties and other persons present
- Identify putative fathers and investigate paternity issues
- Ensure notice has been properly given
- Appoint counsel and Guardian ad litem, if not already appointed
- Ensure parents or guardian received a copy of the agency's report not later than 72 hours prior to the hearing

Trial/Contested Hearing

- The burden of proof:
  - *preponderance of the evidence* that the child was in need of protection at the time of his removal from his home
  - *For an Indian child*, there must be *clear and convincing evidence* that continued custody by the parent/Indian custodian is likely to result in *serious emotional or physical damages to the child*.
- If ICWA applies, the hearing *must* include testimony of a "qualified expert witness" regarding Indian child-rearing practices
- If parties admit the allegations, proceed to the "Required Determinations"
- The court shall hear all relevant and material evidence
- The parties must be given opportunity to examine reports and cross-examine individuals making the reports
- Expert testimony that the injury is abuse creates a rebut table presumption that the child is in need of protection

Required Determinations

- Determine whether allegations of dependency/abuse or neglect concerning a child are sustained by the evidence and, if so, are legally sufficient to support state intervention on behalf of the child
- Determine if the agency made reasonable efforts/active efforts to avoid protective placement of the child
- Determine if circumstances exist that reasonable efforts are not required
- If the child has been removed prior to the hearing, or the court determines the child must be removed at this hearing, the court *must* make the finding that "continuance in the home of the parent or legal guardian would be contrary to the child's welfare." The court *must* also order that "placement and care are the responsibility of the state agency or any other public agency with which the responsible state agency has an agreement."

Placement and Services

- Identify potential relative placements
- Ensure placement with siblings or visitation with siblings
- Make visitation orders for parents and relatives
- Ensure the child's education, medical and dental needs are met
- Order counseling and other services to assist the child and family

Findings

- If the petition is sustained:
  - The court 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 evidence does not support the petition:
  - The court shall dismiss the petition and, if the child is in protective custody, order the immediate release of the child.

Additional Orders

- Order the agency to provide a written report concerning the conditions in the child's residence, including school records and the background of the family
- Set the date and time of the next hearing

CODE 2700

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF:	)
	)
,	)
	)
MINOR CHILD.	) Case No. JV
	)
	) Dept. No.
	)

ORDER AFTER ADJUDICATORY HEARING

This matter came before the Court for an adjudicatory hearing on the Petition on , 2007, before the Honorable and the following persons appeared: , mother of said minor children, represented by ; , father of said minor child, represented by ; , Washoe County Department of Social Services, represented by , Deputy District Attorney.

John Smith, father, hereby submits/admits/denies to the allegations contained in the , 2007, Petition for Hearing.

Marilyn Smith, mother, hereby submits/admits/denies to the allegations contained in the , 2007, Petition for Hearing.

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FINDINGS

The Court considering itself fully advised in the premises, hereby finds the following:

1. The allegations contained in the , 2007 Petition for Hearing are sustained.

2. The children are in need of protection pursuant to NRS 432B.330 in that they are .

3. This Court has jurisdiction in this matter pursuant to NRS Chapter 432B.

The Court hereby orders as follows:

1. A disposition hearing shall be held on, 2007, at .m.

2. All orders previously entered herein shall remain in full force and effect.

IT IS SO ORDERED.

DATED:

_____

DISTRICT JUDGE

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I will deposit for mailing in the U.S. Mails, with postage fully prepaid, or by inter-office mail where indicated, a true and correct copy of the foregoing in an envelope addressed to the following:

Dated this _____ day of _____, 2007.

_____

Section 5 – Dispositional Hearing

Introduction

The purpose of the dispositional hearing is to receive reports and/or evidence to enable the court to decide the placement of the child, considering that the preference is to keep siblings together, and, if possible, to place a child with relatives.

Steps should be put in place to develop a case plan if one has not already been formulated.

At all hearings, children of suitable age ought to be in attendance and heard, or a photo of the child should be provided. Foster parents have the right to be heard at all hearings, together with the litigants.

Timetables under both Nevada state and U.S. federal law must be followed.

Disposition Hearing
- At a Glance –

Relevant Statutes	NRS 432B. 530, 432B.540, 432B.550, 432B.553
Purpose of Hearing	• Determine who should have custody and control of the child • Decide whether to continue out-of-home placement or to remove the child from home • Develop a case plan for the family • Identify a permanent plan for child
Time Frame	May be held immediately after adjudicatory hearing or within 15 working days after the adjudicatory hearing. NRS 432B.530 Federal law requires a completed case plan by the 60th day after the child is taken into care. 45 C.F.R. § 1356.21(g)
Notice	Generally, notice is given to the parents at the preliminary or adjudicatory hearings, if they attended. If the parents were not at the previous hearings, they must be given notice of this hearing. Federal law requires states to provide the current care provider for a child notice of all hearings concerning the child and a right to be heard. 42 USC § 675(5)(G)
Burden of Proof	• Preponderance of the evidence. NRS 432B.530 • For an Indian child under ICWA, the standard of proof is clear and convincing evidence.
Rules of Evidence	Court reviews the reports from the agency in which child welfare services makes determinations of custody. NRS 432B.550
Set Next Hearing	Set the date and time of the next hearing which will be the semiannual review no later than six months from the date the child entered foster care, or within 90 days of a request by a party. NRS 432B.580, 42 USC §§ 671(a)(16), 675 (5)(B)

Disposition Hearing
- Checklist –

Initial Inquiries

- Identify parties and other persons present
- Ensure notice has been properly given
- Ensure parents or guardian received a copy of the agency's report not later than 72 hours prior to the hearing
- Ensure Disposition Report contains adequate information on conditions in the child's life, the families' needs, and the description of the case plan to assist the child and family

Required Determinations

- Determine if the agency made reasonable efforts (active efforts for an Indian child)
- Determine if circumstances exist that reasonable efforts are not required
- Determine whether the child should be returned home immediately or kept in foster care prior to trial
- If the child has been removed prior to the hearing, or the court determines the child must be removed at this hearing the court *must* make the finding that "continuance in the home of the parent or legal guardian would be contrary to the child's welfare." The court *must* also order that "placement and care are the responsibility of the state agency or any other public agency with which the responsible state agency has an agreement."

Placement and Services

- Review the placement options, including identifying relative placements
- Ensure placement with siblings or visitation with siblings; it must be presumed to be in the best interests of the child to be placed together with his siblings

Case Plan

- Orders case plan within 60 days from the child's removal from the home
- Ensure the child's educational, medical and dental needs are met
- Order counseling and other services to assist the child and family
- Identify a long-term plan for the child, including a concurrent plan

Orders

- Determine the legal disposition of the case and the custody of the child
- State the long-term plan for the child
- When applicable, specify why continuation of child in the home would be contrary to the child's welfare
- Determine a plan for monitoring the implementation of the service plan
- Specify whether reasonable/active efforts have been made to prevent or eliminate the need for placement
- Specify the terms of parental visitation
- Specify parental responsibilities for child support
- Set date and time of Semiannual review hearing, no more than six months from the date the child entered foster care.

CODE 2700

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF:	)
	)
,	)
	)
MINOR CHILDREN.	))Case No. JV
	)
	Dept. No. 5

ORDER AFTER DISPOSITION HEARING

This matter came before the Court for a disposition hearing on the Petition on , 2007, before the Honorable Deborah Schumacher and the following persons appeared: , mother of said minor children, represented by ; , father of said minor children, represented by ; , Washoe County Department of Social Services, represented by , Deputy District Attorney.

FINDINGS

The Court having received the report of the Department of Social Services and considering itself fully advised in the premises, hereby finds the following:

1. This Court has jurisdiction in this matter pursuant to NRS Chapter 432B.

///

2. The least restrictive and most appropriate treatment has been provided the minors .

3. The children are in need of protection pursuant to NRS 432B.330.

4. The Court approves current physical placement of said minor child with

The Court hereby orders as follows:

1. Legal and physical custody of Johnny Smith shall remain with Washoe County Department of Social Services.

2. John Smith, father, shall comply with the tasks and goals contained in the Collaborative Case Plan and Service Agreement entered into with Washoe County Department of Social Services.

3. Marilyn Smith, mother, shall comply with the tasks and goals contained in the Collaborative Case Plan and Service Agreement entered into with Washoe County Department of Social Services.

4. Washoe County Department of Social Services may consent to any and all necessary and/or emergency medical/dental treatment for said minor children while they remain in the custody of Washoe County Department of Social Services.

5. John Smith, father, and Marilyn Smith, mother, shall provide Washoe County Department of Social Services a completed financial statements.

6. John Smith, father, and Marilyn Smith, mother, shall reimburse Washoe County Department of Social Services for costs of care for according to statutory limits, as per the Washoe County Child Support Order filed herein.

7. A Semi-annual/Permanency Review Hearing shall be held , 2008, at :00 a.m.

IT IS ORDERED.

DATED:

_____
DISTRICT JUDGE

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I will deposit for mailing in the U.S. Mails, with postage fully prepaid, or by inter-office mail where indicated, a true and correct copy of the foregoing in an envelope addressed to the following:

Dated this _____ day of _____, 2007.

_____

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA

In the Matter of: XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXX, Date of Birth: A Minor, of Age.	CASE NO.: XXXXXXXXXX DEPT. NO.: COURTROOM:

PROTECTIVE SERVICES ORDER (Trial Home Visit)

This matter having come on for hearing before the Family Court, Eighth Judicial District, County of Clark, State of Nevada, on petition of XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXX, Family Services Specialist, Clark County Department of Family Services, on this day of , , with the parent(s)/guardian(s), Select One in Court and good cause being shown;

IT IS HEREBY ORDERED that XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXX Select One of the Family Court, as Select one, with Formal Supervision through the Clark County Department of Family Services and physical custody is placed with , for trial home visit, until the further Order of the Court. Control and custody is awarded with all necessary authority and power to furnish, provide, and authorize care and services to said Minor(s) as may seem necessary and proper and desirable and in the aforesaid child(ren)'s best interests and welfare; including, but not limited to food, clothing, shelter, education, medical-surgical-dental care and treatment;

IT IS FURTHER ORDERED shall not remove the above named Minor(s) from the State of Nevada without the written consent of Department of Family Services or by Order of the Court;

IT IS FURTHER ORDERED that shall comply with all terms and conditions of the Court Order and the Case Plan submitted and filed with the Court;

IT IS FURTHER ORDERED:

1) That this matter be reviewed in 6 months.

This matter shall be reviewed on the _____ day of_____,

_____, at the hour of _____.

Dated this _____day of _____, _____.

_____

JUVENILE HEARING MASTER

IT IS SO ORDERED

Dated this _____day of _____, _____.

_____

DISTRICT JUDGE – JUVENILE

Submitted by:

_____

XXXXXXXXXXX
XXXXXXXXXXXXXXXXXXX
CASE MANAGER
DEPARTMENT OF FAMILY SERVICES

Submitted by:

DAVID ROGER
DISTRICT ATTORNEY

By: _____

Deputy District Attorney

Hay servicios gratis de ayuda con otros idiomas. Para pedir un intérprete, llame por favor al Coordinador de Servicios de Intérpretes al *671-4578*.

Free language assistance services are available. To request an interpreter, please call the Language Assistance Coordinator at *671-4578*.

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION - JUVENILE
CLARK COUNTY, NEVADA

In the Matter of:

XXXXXXXXXXXX XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX,
Date of Birth:
A Minor, of Age.

CASE NO.: XXXXXXXXXX
DEPT. NO.:
COURTROOM:

PROTECTIVE SERVICES ORDER (For Relatives)

This matter having come on for hearing before the Family Court, Eighth Judicial District, County of Clark, State of Nevada, on petition of XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX, Family Services Specialist, Clark County Department of Family Services, on this day of , , with the parent(s)/guardian(s), Select One in Court and good cause being shown;

IT IS HEREBY ORDERED that XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX Select One of the Family Court, as Select one, with Formal Supervision through the Clark County Department of Family Services and physical custody is placed with , until the further Order of the Court. Control and custody is awarded with all necessary authority and power to furnish, provide, and authorize care and services to said Minor(s) as may seem necessary and proper and desirable and in the aforesaid

child(ren)'s best interests and welfare; including, but not limited to food, clothing, shelter, education, medical-surgical-dental care and treatment;

IT IS FURTHER ORDERED shall not remove the above named Minor(s) from the State of Nevada without the written consent of Department of Family Services or by Order of the Court;

IT IS FURTHER ORDERED that shall comply with all terms and conditions of the Court Order and the Case Plan submitted and filed with the Court;

IT IS FURTHER ORDERED:

1) That this matter be reviewed in 6 months.

This matter shall be reviewed on the _____ day of_____,

_____, at the hour of _____.

Dated this _____day of _____, _____.

_____

JUVENILE HEARING MASTER

IT IS SO ORDERED

Dated this _____day of _____, _____.

_____

DISTRICT JUDGE – JUVENILE

Submitted by:

_____

XXXXXXXXXXX
XXXXXXXXXXXXXXXXXXX
CASE MANAGER
DEPARTMENT OF FAMILY SERVICES

Submitted by:

DAVID ROGER
DISTRICT ATTORNEY

By: _____

Deputy District Attorney

Hay servicios gratis de ayuda con otros idiomas. Para pedir un intérprete, llame por favor al Coordinador de Servicios de Intérpretes al *671-4578*.

Free language assistance services are available. To request an interpreter, please call the Language Assistance Coordinator at *671-4578*.

Section 6 – Semiannual and Review Hearings

Introduction

NRS 432B.580 requires, at a minimum, that there be a semiannual review of the case when the child is in placement. A 90-day review is required when requested by a party to the proceeding. This should not be a rubber stamp to an agency, but rather a check to see if everyone subject to the Dispositional Order is doing what they have been ordered to do or by law are required to do. Some adjustments to the plan may be needed.

Parents should be placed on notice as to the time requirements that exist by law and that the clock is ticking.

Semiannual and Review Hearings
- Checklist –

Relevant Statute	NRS 432B.580
1.	Call case number and case name.
2.	Determine if case is open or closed hearing under NRS 432B.430 NOTE: different based upon population
3.	Identify **parties** and **attorneys**.
4.	Determine if child is or should be present. (Request photos of child)
5.	Determine if all appropriate persons have received reports, particularly parents or guardians, 72 hours before hearing. See NRS 432B.513.
6.	Have evidence presented, if any.
7.	Provide opportunity to be heard to all parties to the prior proceedings and all persons planning to adopt the child and foster parents. See NRS 432B.580(6-7)
8.	Make **findings** as it relates to the recommendations.
9.	Determine who will prepare the Order.
10.	Set next hearing date and time

CODE 2700

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF:	)
,	) Case No. JV
MINOR CHILDREN.	))Dept. No.

ORDER AFTER [3-6-9 MONTH REVIEW] [WITH CONCURRENT PLANNING] HEARING

This matter came before the Court for a hearing on the on , 2005, before the Honorable and the following persons appeared: , mother of said minor children, represented by ; , father of said minor children, represented by ; , Washoe County Department of Social Services, represented by , Deputy District Attorney.

FINDINGS

The Court having received the report of the Department of Social Services and considering itself fully advised in the premises, hereby finds the following:

1. The Court approves current physical placement of Johnny Smith with/in family foster care.

2. The Court approves the permanency plan of reunification with a concurrent plan of .

3. Washoe County Department of Social Services has made reasonable efforts as required by NRS 432B.393.

The Court hereby orders as follows:

1. Legal and physical custody of shall remain with Washoe County Department of Social Services.

2. John Smith, father, and Marilyn Smith, mother, shall comply with the tasks and goals contained in the Collaborative Case Plan and Service Agreement entered into with Washoe County Department of Social Services.

3. John Smith, father, and Marilyn Smith, mother, shall comply with the tasks and goals contained in the Collaborative Case Plan and Service Agreement entered into with Washoe County Department of Social Services.

4. Washoe County Department of Social Services may consent to any and all necessary and/or emergency medical/dental treatment for said minor children while they remain in the custody of Washoe County Department of Social Services.

5. Washoe County Department of Social Services is hereby granted permission to recruit for a flexible family home including use of photographs and biography of the child that does not reveal the identity of the child or the family.

6. John Smith, father, and Marilyn Smith, mother, shall provide Washoe County Department of Social Services a completed financial statements.

///

///

6. John Smith, father, and Marilyn Smith, mother, shall reimburse Washoe County Department of Social Services for costs of care for according to statutory limits.

7. A Semi-Annual/Permanency Review Hearing shall be held , 200, at :00 a.m.

IT IS ORDERED.

DATED:

_____
DISTRICT JUDGE

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I will deposit for mailing in the U.S. Mails, with postage fully prepaid, or by inter-office mail where indicated, a true and correct copy of the foregoing in an envelope addressed to the following:

Dated this _____ day of _____, 2005.

_____

Section 7 – Annual Hearing on Disposition

Introduction

Under NRS 432B.590 and ASFA, an annual review is a critical hearing, particularly as to reasonable efforts by the agency, and to decide upon a permanent placement for the child.

Note that a permanent placement hearing must be done within 30 days of the court making a finding that reasonable efforts by the agency are no longer required as a result of findings by the court under NRS 432B.393(3) (these provisions are about the faults of parent).

Annual Hearing on Disposition
- At a Glance –

Relevant Statutes	NRS 432B.590
Purpose of Hearing	● Decide upon the permanent placement of the child ● To review the progress of both the family and agency in terms of the requirements of the case plan and/or to review the case plan for needed adjustments if the child is still to be returned home. ● To make findings, if timely, regarding NRS 14/20 month rule and Federal 15/22 month rule
Time Frame	● Not later than 12 months after the date the child entered foster care, and annually thereafter. ● Within 30 days after making any of the findings that no reasonable efforts are necessary (set forth in NRS 432B.393(3)) ● Hearing may take the place of the semiannual review required by NRS 432B.580 NRS 432B.590
Notice	Notice of this hearing must be given by registered or certified mail to: ● All of the parties to any of the prior proceedings; and ● Any persons planning to adopt the child, relatives of the child or foster care providers who are currently providing care to the child ● Notice of the hearing need not be given to a parent whose rights have been terminated or who has voluntarily relinquished the child for adoption. NRS 432B.580, 432B.590 Federal law requires states to provide the current care provider for a child notice of all hearings concerning the child and a right to be heard. 42 USC § 675(5)(G)
Set Next Hearing	Set the date and time of the next hearing which will be the semiannual review within six months, or within 90 days of a request by a party, or If applicable, the next hearing will be the hearing to terminate parental rights to be held within six months of the permanency planning hearing. NRS 432B.590

Annual Hearing on Disposition
- Checklist –

Initial Inquiries

- Identify parties and other persons present
- Ensure notice has been properly given
- Ensure parents, guardians, and their counsel, if any, received a copy of the agency's report not later than 72 hours prior to the hearing

Required Determinations

- If Reunification is Goal:
  - Determine if the agency made reasonable efforts/active efforts to rehabilitate the family and eliminate the need for placement of the child
- If Reunification is not the goal, and there is a permanency plan in place:
  - Determine if the Agency has made reasonable efforts to complete the necessary steps to finalize the permanent placement.

Placement/Permanent Plan

- Determine if the child should be returned to his parents
- Determine if it is in the best interests of the child to establish a guardianship
- Determine if it is in the best interests of the child to initiate a proceeding to terminate parental rights so the child can be placed for adoption.
- If the child has been in foster care for 14 months of any 20 consecutive months (or 15 of most recent 22 months under Federal Law), then:
  - The best interest of the child must be presumed to be served by the termination of parental rights.
    NOTE: an exception to termination of parental rights may still apply if another plan is in the child's best interest

Services Needed

- Clarify or modify any of the services set forth in the case plan
- For children 16 and older in foster care, the Court must review the services set forth in the case plan to ensure it includes those needed to assist the child in making the transition to independent living
- The Court should ensure the child's educational, medical and dental needs are provided for, ordering any tests or evaluations needed

Visitation

- Modify the terms of visitation (parental or other relatives) if necessary
- Approve a plan for sibling visitation if it is in the best interest of the child

Orders

- Make appropriate orders depending on the permanency goal of the case – return home, adoption, guardianship, permanent foster care with a specific family, or another permanent living arrangement.
- Prepare an explicit statement of the facts upon which each determination is based.
- Set date and time of next hearing.

CODE 2700

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF:	)
,	) Case No. JV
MINOR CHILDREN.	))Dept. No.

ORDER AFTER [12-MONTH] PERMANENCY HEARING (REUNIFICATION)

This matter came before the Court for a hearing on the on , 2005, before the Honorable and the following persons appeared: , mother of said minor children, represented by ; , father of said minor children, represented by ; , Washoe County Department of Social Services, represented by , Deputy District Attorney.

FINDINGS

The Court having received the report of the Department of Social Services and considering itself fully advised in the premises, hereby finds the following:

1. The Court approves current physical placement of Johnny Smith with/in family foster care.

2. The Court approves the permanency plan of reunification.

3. Compelling reasons exist not to terminate parental rights including/as outlined in paragraph * of the Court Report filed *.

4. Washoe County Department of Social Services has made reasonable efforts to finalize the permanency plan.

The Court hereby orders as follows:

1. Legal and physical custody of shall remain with Washoe County Department of Social Services.

2. John Smith, father, and Marilyn Smith, mother, shall comply with the tasks and goals contained in the Collaborative Case Plan and Service Agreement entered into with Washoe County Department of Social Services.

3. John Smith, father, and Marilyn Smith, mother, shall comply with the tasks and goals contained in the Collaborative Case Plan and Service Agreement entered into with Washoe County Department of Social Services.

4. Washoe County Department of Social Services may consent to any and all necessary and/or emergency medical/dental treatment for said minor children while they remain in the custody of Washoe County Department of Social Services.

5. John Smith, father, and Marilyn Smith, mother, shall provide Washoe County Department of Social Services a completed financial statements.

6. John Smith, father, and Marilyn Smith, mother, shall reimburse Washoe County Department of Social Services for costs of care for according to statutory limits.

///

7. A Semi-Annual/Permanency Review Hearing shall be held , 200, at :00 a.m.

IT IS ORDERED.

DATED:

_____
DISTRICT JUDGE

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I will deposit for mailing in the U.S. Mails, with postage fully prepaid, or by inter-office mail where indicated, a true and correct copy of the foregoing in an envelope addressed to the following:

Dated this _____ day of _____, 2005.

_____
LISA LEE

Section 8 – Permanent Placement with Guardian

Introduction

As an alternative to either terminating parental right and adopting child or returning them to parents, when a child is in need of protection, the Court may, under NRS 432B.466 - .468, establish a permanent guardianship over the child, at which time the custody of the agency over the child is terminated. The Court's jurisdiction over the child continues until such child reaches the age of 18.

Permanent Placement with Guardian
- At a Glance –

Relevant Statutes	NRS 432B.466 - .468
Requirements of Guardianship	To appoint a guardian, a governmental agency, a nonprofit corporation or any interested person may petition the court. The petition: - May not be filed before the Court has determined that the child is in need of protection - Must include the information required in NRS 159.044; - 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 NRS 432B.466
Time Frame	The guardian may be appointed at the Permanent Planning Hearing (NRS 432B.590) or at a separate noticed hearing. NRS 432B.466
Notice	Whoever 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 at least 20 days before the hearing on the person - To all 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 if 14 years of age or older, the child. NRS 432B.466 Federal law requires states to provide the current care provider for a child notice of all hearings concerning the child and a right to be heard. 42 USC § 675(5)(G)
Rules of Evidence	The Court may consider all relevant and material evidence, including but not limited to, any report submitted by a special advocate appointed as guardian ad litem for the child. NRS 432B.467
Next Hearing	Upon establishing a guardianship, proceedings are terminated. NRS 432B.4675 The Court retains jurisdiction to enforce, modify or terminate the guardianship, upon receipt of a motion. NRS 432B.468

Permanent Placement with Guardian
- Checklist –

Initial Inquiries

- Ensure petition has been served
- Ensure notice has been properly served

Required Determinations

- Determine the petition is complete
- Burden of Proof: clear and convincing evidence that the appointment of the guardianship is necessary
- Determine the proposed guardian is qualified
- Determine if the guardian is suitable, reviewing the statutory preferences
- If the child is 14 years of age or older, the child consent
- The child must have been in the custody of the proposed guardian for 6 months or more
- The Court may make any appropriate visitation order if it is in the best interest of the child

Orders

- Enter the Order of the Court establishing a guardianship
- Terminate the agency's custody of the child
- Relieve all counsel and guardian ad litem
- Terminate the protective custody proceedings
- The Court may maintain limited jurisdiction to enforce, modify, or terminate a guardianship until the child reaches the age of 18

Section 9 – Termination of Parental Rights

Introduction

The Nevada Supreme Court in various cases has labeled termination of parental rights as the "death penalty of the civil law." Therefore the burden of proof is higher, i.e., by clear and convincing evidence, and under the ICWA for an Indian child, beyond a reasonable doubt.

Although under current Nevada Supreme court case law, appointment of counsel for parents whose parental rights are being terminated is not required, but best practice and due process would argue that all such parents should have legal counsel.

Termination of Parental Rights
- At a Glance –

Relevant Statutes	NRS 128.005 – NRS 128.160, inclusive; ICWA; ASFA
Purpose of Hearing	- Appoint counsel, if not already appointed, for parents and child - Evaluate service and notice - Determine whether the statutory grounds for termination of parental rights have been satisfied - Rule if termination is in the best interest of the child
Time Frame	Proceedings should be completed within 6 months after the petition for termination of parental rights is filed. NRS 128.055 When the mother of an unborn child files a petition to terminate the father's rights, the hearing shall NOT be held until the birth of the child or 6 months after filing, whichever is later. NRS 128.085
Notice	After the petition is filed, the Court directs the clerk to have the petition, with a description of the substance of the petition and the hearing date, personally served on the parents and guardian, if applicable. If the parents or guardian cannot be found, service may be done by publication. NRS 128.060 Federal law requires states to provide the current care provider for a child notice of all hearings concerning the child and a right to be heard. 42 USC § 675(5)(G)
Burden of Proof	The petitioner must establish the facts by clear and convincing evidence. NRS 128.090 In the case of an Indian Child, the standard is beyond a reasonable doubt. 25 USC § 1912
Rules of Evidence	The proceedings are governed by the Nevada Rules of Civil Procedure. NRS 128.090
Next Hearing	If the Court terminated parental rights, the next hearing may be the adoption of the child, pursuant to NRS 127 et seq. Until the adoption is finalized, every 6 months, the Court must hold the Semiannual Review Hearing, to review the placement of the child. NRS 432B.580 If the Court did not terminate parental rights, a new Permanency Hearing must be held to determine the new permanent plan for the child. Thereafter, the case must be reviewed every 6 months at the Semiannual Review hearing. NRS 432B.580, .590

Termination of Parental Rights
- Checklist –

Initial Inquiries

- Termination of parental rights hearings are closed to the public
- Identify parties and other persons present
- Ensure notice has been properly given
- Ensure petition to terminate parental rights has been properly filed and verified
- Appoint counsel and guardian ad litem
- Determine if the child is an Indian Child and whether the ICWA applies to this case

Trial/Hearing

- The Court may consider all of the reports from the protective custody case
- Burden of proof: the petitioner must establish the facts by *clear and convincing evidence*. In the case of an Indian Child, the burden of proof is *beyond a reasonable doubt*
- Consider 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*.

Grounds for Terminative Parental Rights

- Best interests of the child is the primary consideration in any proceeding to terminate parental rights
- Consider the conduct of the parent(s) in the case plan and other conditions demonstrating unfitness of a parent
- Consider the desires of the child, the physical, emotional and mental condition of the child, and whether the child is bonded to the foster family
- If a child has been in foster care for 14 of any 20 consecutive months (Federal law – 15 of the most recent 22 months), the petition *must* be filed by the end of the child's fifteenth month in foster care and there is a presumption towards termination.
    - Exceptions: if the child is in relative care, there is a compelling reason that termination of parental rights is not in the child's best interest, or the Court found that the agency had not provided reasonable efforts as was necessary.

Orders

Upon finding grounds for the termination of parental rights pursuant to a hearing upon the petition, the Court shall make:

- a written order, signed by the Judge presiding in the Court,
- judicially depriving the parent(s) of the custody and control of, and terminating the parental rights of the parent(s) 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
- Set the date and time of the next review hearing

PRINCIPLES OF NEVADA CASE LAW RELATING TO TERMINATION OF PARENTAL RIGHTS

1. The power to terminate parental rights is an awesome power. A.J.G. v. State, 122 Nev. Adv. Op. 117, 148 P.3d 759, 763 (2006).

2. Termination of parental rights is tantamount to a civil death penalty. Drury v. Lang, 105 Nev. 430, 433, 776 P.2d 843, 845 (1989).

3. Under a substantive due process analysis, parental rights are fundamental; however, the state has a compelling interest in assuring that abused and neglected children achieve safe, stable and permanent home environments within which to be reared. Vincent L.G. v. State Div. of Child & Family Servs. (In re D.R.H.), 120 Nev. 422, 427, 92 P.3d 1230, 1233 (2004).

4. Under NRS 128.105, 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. A.J.G. at 762. *See attached* "Appendix of Statutes".

   Due process requires that clear and convincing evidence be established before terminating parental rights. In re Termination of Parental Rights as to N.J., 116 Nev. 790, 796, 8 P.3d 126, 129 (2000).

   The termination statute sets forth factors to be considered in determining the best interests of the child. In particular, NRS 128.005(2)(c) provides that 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." In re Termination of Parental Right as to N.J. at 800, 132-33.

5. 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. A.J.G. at 760. *See* "Appendix of Statutes".

   For the relationship between NRS 128.105-109, see generally A.J.G. v. State, 122 Nev. Adv. Op. 117, 148 P.3d 759, 763 (2006).

6. The Supreme Court of Nevada will no longer refer to the terms "jurisdictional" and "dispositional" to describe the judicial findings that must be made in parental termination cases. In re Termination of

Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000). *See* footnote 5.

7. No absolute right to counsel in termination proceedings exists in Nevada. Letesheia O. v. State (in re N.D.O.), 121 Nev. 379, 383, 115 P.3d 223, 225 (2005).

   NRS 128.100(2) provides the district court with the discretion to appoint counsel for an indigent parent in parental rights termination proceedings. Letesheia O. at 382, 225. *See* "Appendix of Statutes".

8. 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. A.J.G. at 760.

9. The Indian Child Welfare Act provides standing to an Indian ("Native American") child, an Indian parent, or an Indian tribe, to petition a court to invalidate a termination of parental rights. *See generally* Phillip A.C. v. Central Council (In re Phillip A.C.), 122 Nev. Adv. Op. 109, 149 P.3d 51 (2006).

APPENDIX OF STATUTES

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.** (emphasis added).

NRS 128.105 Grounds for terminating parental rights: Considerations; required findings.

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:

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 was the basis for a finding made pursuant to subsection 3 of NRS 432B.393 or 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.

NRS 128.106 Specific considerations in determining neglect by or unfitness of parent.

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

1. Emotional illness, mental illness or mental deficiency of the parent which renders the parent consistently unable to care for the immediate and continuing physical or psychological needs of the child for extended periods of time. The provisions contained in NRS 128.109 apply to the case if the child has been placed outside his home pursuant to chapter 432B of NRS.
2. Conduct toward a child of a physically, emotionally or sexually cruel or abusive nature.
3. Conduct that violates any provision of NRS 200.463 [involuntary servitude], 200.464 [involuntary servitude] or 200.465 [assuming rights of ownership over another person].
4. Excessive use of intoxicating liquors, controlled substances or dangerous drugs which renders the parent consistently unable to care for the child.
5. Repeated or continuous failure by the parent, although physically and financially able, to provide the child with adequate food, clothing, shelter, education or other care and control necessary for his physical, mental and emotional health and development, but a person who, legitimately practicing his religious beliefs, does not provide specified medical treatment for a child is not for that reason alone a negligent parent.
6. Conviction of the parent for commission of a felony, if the facts of the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care and control to the extent necessary for the child's physical, mental or emotional health and development.
7. Unexplained injury or death of a sibling of the child.
8. Inability of appropriate public or private agencies to reunite the family despite reasonable efforts on the part of the agencies.

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 his desires regarding the termination, if the court determines he is of sufficient capacity to express his 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 him to his 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.

For purposes of this section, the court shall disregard incidental conduct, contributions, contacts and communications.

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 him, the court shall consider whether the child has become integrated into the foster family to the extent that his 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 his 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 he 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.

NRS 128.109 Determination of conduct of parent; presumptions.

1. If a child has been placed outside of his 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 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 paragraph (f) of subsection 2 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 paragraph (d) of subsection 2 of NRS 128.105.

2. If a 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, 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.

CODE 2700

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF:	)
,	) Case No. JV
MINOR CHILDREN.	))Dept. No.

ORDER AFTER [12-MONTH] PERMANENCY HEARING (TPR-ADOPTION)

This matter came before the Court for a hearing on the on , 2005, before the Honorable and the following persons appeared: , mother of said minor children, represented by ; , father of said minor children, represented by ; , Washoe County Department of Social Services, represented by , Deputy District Attorney.

FINDINGS

The Court having received the report of the Department of Social Services and considering itself fully advised in the premises, hereby finds the following:

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1. The Court approves current physical placement of Johnny Smith with/in family foster care.

2. The Court approves the permanency plan of termination of parental rights and adoption.

3. Further efforts for reunification are inconsistent with the permanency plan.

4. Washoe County Department of Social Services has made reasonable efforts to finalize the permanency plan.

The Court hereby orders as follows:

1. Legal and physical custody of shall remain with Washoe County Department of Social Services.

2. Washoe County Department of Social Services may consent to any and all necessary and/or emergency medical/dental treatment for said minor children while they remain in the custody of Washoe County Department of Social Services.

3. Washoe County Department of Social Services is hereby granted permission to recruit for a flexible family home including use of photographs and biography of the child that does not reveal the identity of the child or the family.

4. John Smith, father, and Marilyn Smith, mother, shall provide Washoe County Department of Social Services a completed financial statements.

5. John Smith, father, and Marilyn Smith, mother, shall reimburse Washoe County Department of Social Services for costs of care for according to statutory limits.

5. A Semi-Annual/Permanency Review Hearing shall be held , 200, at :00 a.m.

IT IS ORDERED.

DATED:

_____
DISTRICT JUDGE

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I will deposit for mailing in the U.S. Mails, with postage fully prepaid, or by inter-office mail where indicated, a true and correct copy of the foregoing in an envelope addressed to the following:

Dated this _____ day of _____, 2005.

_____
LISA LEE

Section 10 – Adoption

Introduction

It can be reasonably anticipated that as a result of the timelines required under NRS Chapter 432B and Federal legislation generally referred to as ASFA there will be more terminations of parental rights and therefore more adoptions.

It does not make sense to take a child from one inadequate home and place him in another inadequate home. Therefore, oversight by the Court in placing children into good, loving homes should be a priority of the judiciary.

"Open adoptions" could assist in carrying out this process. See NRS 127.187 – 127.1895.

Adoption
- At a Glance –

Relevant Statutes	NRS 127.010 - .1895, inclusive; ICWA
Purpose of Hearing	Determine if adoption is in the best interests of the child, and, if so, grant the petition for adoption. NRS 127.150 Order any appropriate post-adoption contact with natural family. NRS 127.187
Time Frame	Petition can be filed any time after child has resided in the adopting home for 30 days. NRS 127.110 Agency investigates and submits report within 30 days after receipt of the adoption petition, or after the child has lived with the petitioners for 6 months, whichever is later. NRS 127.120 No decree of adoption may be made until after the child has lived for 6 months in the home of the petitioners. NRS 127.150
Notice	Notice of filing of petition must be provided to legal custodian or guardian, if other than the natural parents of the child. NRS 127.123 Federal law requires states to provide the current care provider for a child notice of all hearings concerning the child and a right to be heard. 42 USC § 675(5)(G)
Burden of Proof	The best interest of the child, giving strong consideration to the emotional bond between the child and the foster parent. NRS 127.150
Next Hearing	If adoption is granted, terminate the agency's care and custody of the child If the adoption is not granted, schedule another Permanency Hearing to select an alternative plan for the child.

Adoption
- Checklist –

Initial Inquiries

- Adoption hearings are confidential and must be held in closed court.
- Identify parties and other persons present
- Ensure notice has been properly given
- Review home studies or Court-ordered reports
- Make sure adopting parents understand that adoption is permanent

Required Determinations

- Ascertain that the parental rights have been terminated and the appeals process is over
- Ensure petition for adoption has been filed correctly and is complete
- Ensure petitioners have submitted the filing fee affidavit
- If the child is an Indian Child, transfer the case to the Indian Child's tribe and follow ICWA
- If the child is over the age of 14, the child's consent is necessary
- Confirm in cases involving children with special needs, that the adoptive parents have been advised of all of the necessary services
- The Court shall waive all court costs of the proposed adoptive family in an adoption proceeding for a child with special needs if the agency consents to such adoption
- 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

Orders

- If the court finds it is in the best interests of the child warrant the granting of the petition, and the child has lived for 6 months in the home of the petitioners, then:
  - An order or decree of adoption must be made and filed, ordering that henceforth the child is the child of the petitioners
- The Court may change the name of the child, if desired.
- Ensure the petitioners send a copy of the order or decree to the nearest office of the child welfare agency within 7 days
- The Court shall direct the petitioners to prepare a report of adoption on a form prescribed and furnished by the State Registrar of Vital Statistics
- The Court may grant a reasonable right to visit to certain relatives of the child only if a similar right had been granted prior to termination of parental rights, pursuant to an order from the district court.
- An agreement for post-adoptive contact between the natural parents and the child is enforceable if the agreement is in writing, and incorporated into an order or decree of adoption
- The Court shall retain jurisdiction to enforce modify or terminate the post-adoptive contact agreement until the child reaches 18 years of age, emancipates, or the agreement is terminated

Section 11 – Paternity

Introduction

Establishing paternity is governed by NRS Chapter 126. Such actions are governed by the Nevada Rules of Civil Procedure, unlike 432B actions which are governed by NRS 432B.530.

The issues of *res judicata* and equitable estoppel are sometimes a part of such proceedings and case law from the Nevada Supreme Court should be reviewed in such instances. See, for example, Love v. Love, 114 Nev. 572, 959 P.2d 523 (1998), concerning *res judicata*; Hermanson v. Hermanson, 110 Nev. 1400, 887 P.2d 1241 (1994), concerning equitable estoppel.

Paternity
- At a Glance –

Relevant Statutes	NRS 126.051, NRS 126.053, NRS 126.091 - .141, NRS 126.151 to NRS 126.163, NRS 126.201, NRS 126.211
Purpose	To establish the identity of the child's presumed father for purposes of reunification, placement, support, or termination of parental rights.
Time Frame	Paternity should be established as early as possible in the process. A later determination of paternity can affect important timelines for the implementation of the permanent plan, reunification of the family, or termination of parental rights.
Notice / Service of Process	Whenever service of process is required to determine the existence or nonexistence of the paternal relationship, it may be made pursuant to NRCP 4 or by certified mail, restricted delivery, with return receipt requested. NRS 126.105
Burden of Proof	Paternity can be established by presumptions, either that the parents were married or cohabitating at conception, the father has held the child out as his own, or genetic tests show a 99 percent probability of fatherhood. The presumptions can only be rebutted by clear and convincing evidence. If there are two or more presumptions in conflict, whichever is founded on weightier considerations of policy and logic controls. NRS 126.051
Rules of Evidence	The Court should endeavor to resolve paternity issues in an informal hearing, without observing strict rules of evidence. Privilege does not apply to a doctor testifying as to the circumstances of the pregnancy and the condition of the child at birth. NRS 126.111
Important Hearings	The Preliminary Protective Hearing should be the first attempt at this determination, and all hearings thereafter.

Section 12 – Indian Child Welfare Act

Indian Child Welfare Act - At a Glance –	
Relevant Statutes	ICWA – 25 USC §§ 1901 -1923; NRS 432B.397, NRS 432B.420, NRS 432B.451, NRS 128.023, NRS 128.093, NRS 127.013, NRS 127.017
Purpose	The goal of ICWA is to protect the best interests of Indian Children while promoting stability and security of Indian Tribes.
Time Frame	ICWA inquiries must begin immediately at the beginning of a case. Failure to make such inquiries can cause a case to be reversed and the process begun again, delaying permanence for the child.
Notice	Notice of proceedings must be made by registered mail, return receipt requested, to the parent or Indian custodian, the tribe and the Department of the Interior, Bureau of Indian Affairs. The hearing may not commence until 10 days after receipt of the notice.
Burden of Proof	Active efforts must be made to avoid removal of an Indian Child from the home and to reunify the family. *Clear and convincing evidence* that the continued custody of the child by the parent or Indian custodian is likely to result in *serious emotional or physical damage* to the child is required to remove an Indian child from home and place her in foster care. To terminate parental rights, it must be proven *beyond a reasonable doubt* that the continued custody of the child by the parent or Indian custodian is likely to result in *serious emotional or physical damage* to the child. For all hearings, qualified expert testimony is *required* that continued custody by the parent/Indian custodian is likely to result in serious emotional or physical damage to the child.
Placement	Placement Requirements: Placements must be the least restrictive setting which most approximates a family, in which the child's special needs may be met, and which is in reasonable proximity to his or her home. Placement Preferences (absent good cause to the contrary): Indian Child's extended family; Foster home (licensed, approved or specified by the tribe); Indian foster home licensed/approved by DHS; Institution approved by the tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

Section 13 – Reasonable Efforts/Active Efforts

Reasonable Efforts / Active Efforts - At a Glance –	
Relevant Statutes	Title IV-E of the Social Security Act, 42 USC 670 et seq.; ICWA - 25 USC § 1912(d); NRS 432B.393, NRS 432B.550
Purpose	Make a determination verbally and in writing whether the agency which provides child welfare services made reasonable efforts/active efforts to preserve and reunify the family of a child or determine whether no such efforts are required in the particular case. NRS 432B.550; 42 USC §§ 671(a)(15), 672(a)(1); ICWA – 25 USC § 1912(d)
Timelines	Initial Finding: Within 60 days after the removal of a child from his home. NRS 432B.550, 45 CFR § 1356.21(b)(1)(ii) Annual Finding: Every 12 months, beginning with the date no later than 12 months after the child enters foster care, the Court must determine if *reasonable efforts to reunify the child and family*, or *reasonable efforts to create and finalize a permanent placement* have been made. 45 CFR § 1356.21(b)(3), 45 CFR § 1356.21(b)(2)(i)
Consequences of Failing to Make Proper Orders	If the initial finding of reasonable efforts is not made within 60 days after the removal: - The child is NEVER eligible for Title IV-E foster care funding for the duration of this placement episode. 45 CFR § 1356.21(b)(1)(ii) If the annual determination of reasonable efforts is not made: - The child becomes ineligible for the IV-E foster care maintenance payment from the end of the 12th month until a judicial determination of reasonable efforts is made. 45 CFR § 1356.21(b)(3), 45 CFR § 1356.21(b)(2)(i)
Burden of Proof	Court shall evaluate evidence and make findings based on reasonable person standard.

Section 14 – Older Youth Exiting the Foster Care System

Older Youth Exiting the Foster Care System - At a Glance –	
Relevant Statutes	NRS 432B.016, NRS 432.0165, NRS 432.017; 42 USC § 675(5)(D); AB 94 Guidelines
Purposes	To provide older youth who are exiting the foster care system the information and resources to successfully emancipate
Time Frame	Ongoing, depending on each youth's circumstances. When the youth is approximately 15 years old, the foster care worker, school, and youth should be creating an Independent Living Plan and working on independent living skills. The Independent Living Plan is required to be complete when the youth turns 16. Adoption efforts should continue.

Section 15 – Time Requirements under 432B and ASFA

TIME REQUIREMENTS UNDER NRS 432B AND ASFA

NRS 432B		
TIME	**TIME REQUIREMENTS**	**SOURCE**
72-hour hearing	From the time a child is taken into protective custody, excluding Saturdays, Sundays and holidays, a hearing must be conducted to determine if the child should remain in protective custody.	NRS 432B.470
10 days	To file a Petition alleging abuse and/or neglect if wish to keep custody of children.	NRS 432B.490
30 days	From filing of Petition, an adjudicatory hearing must be held unless good cause is shown or hearing continued pursuant to NRS 432B.513 (at the request of parent or guardian).	NRS 432B.530
15 days	Dispositional hearing may be held immediately or within 15 working days after adjudicatory hearing.	NRS 432B.530
60 days	Within 60 days after removal of child, the Court shall determine if reasonable efforts have been made by agency as required by NRS 432B.393. Also, federal law requires a case plan within 60 days of child being taken into care.	NRS 432B.550
6 months	First review hearing no more than 6 months from the date the child is in foster care, and at least every 6 months thereafter until reunification. Within 90 days upon request of a party.	NRS 432B.580
12 months	Annual hearing on disposition not later than 12 months after date the child is in foster care, and annually thereafter.	NRS 432B.590

ASFA		
TIME	**TIME REQUIREMENTS**	**SOURCE**
60 days* (actual removal)	Case plan from actual removal.	45 C.F.R. 1356.21(g)
60 days (actual removal)	Reasonable efforts to prevent removal.	45 C.F.R. 1356.21(b)
6 months* (foster care entry)	Periodic review. Semi-annual review of placement.	42 U.S.C. § 671(a)(16) 42 U.S.C. § 675(5)(B)
12 months	Permanency hearing. (ANNUAL HEARING ON DISPOSITION)	45 C.F.R. 1356.21(b)(2)(i)
12 months (foster care entry)	Reasonable efforts to finalize permanency plan.	42 U.S.C. § 675(5)(C)
15 months (foster care entry)	Mandatory termination filing if child in foster care 15 of the last 22 months.	65 F.R. 4060

* ASFA uses two different starting points for time requirements: **(1)** actual removal from home; **(2)** the time a child "enters foster care". This is defined as the earlier of **(a)** the day the court finds the child is neglected or abused, or **(b)** 60 days after the child's actual removal.

CHAPTER 52

DOCUMENTARY AND OTHER PHYSICAL EVIDENCE

OBJECTIONS

TO THE FORM OF THE QUESTION
- Leading and Suggestive
- Too General and Calls for Narrative Answer
- Has Been Asked and Answered-Repetitive Questions
- Unintelligible or Ambiguous
- Compound Questions
- Harassing or Embarrassing Question
- Argumentative Questions
- Questions Assuming Fact not in Evidence
- Questions Calling for Conclusion
- After Objection (Motion to Strike)
- Calls for Conjecture, Speculation on Judgement of Veracity

TO COMPETENCY OF WITNESS
- Mental competency
- Alcohol or Drug Abuse Affecting Competency

TO EXAMINATION OF WITNESSES
- Cross-Examination beyond scope of direct
- Lack of Personal Knowledge

LACKING A PROPER FOUNDATION
- Authentication or Identification

EVIDENCE NOT RELEVANT
- Relevancy, Competency and Materiality

OTHERWISE RELEVANT EVIDENCE
- Cumulative
- More Prejudical than Probative
- Confusing Waste of Time

HEARSAY

CHAPTER 47

GENERAL PROVISIONS; JUDICIAL NOTICE; PRESUMPTIONS

GENERAL PROVISIONS

JUDICIAL NOTICE

PRESUMPTIONS

CHAPTER 48

ADMISSIBILITY GENERALLY

CHAPTER 51

HEARSAY

GENERAL PROVISIONS

EXCEPTIONS
AVAILABILITY OF DECLARANT IMMATERIAL

DECLARANT UNAVAILABLE

STATEMENT OF CHILD DESCRIBING SEXUAL CONDUCT

SUPPLEMENTAL MATERIALS

74TH SESSION BILLS (2007)

Assembly Bill No. 94–Assemblymen Leslie, Buckley, Bobzien, Carpenter, Parks, Anderson, Horne, Munford, Oceguera, Ohrenschall, Pierce and Smith

Joint Sponsors: Senators Care and Titus

CHAPTER 164

AN ACT relating to administrative procedure; eliminating the prohibition against the admission of a person as a party to an administrative proceeding in a contested case involving the grant, denial or renewal of a license if the person does not have a direct financial interest in the grant, denial or renewal of the license; and providing other matters properly relating thereto.

[Approved: May 29, 2007]

Legislative Counsel's Digest:

Existing law prohibits the admission of a person as a party to an administrative proceeding in a contested case involving the grant, denial or renewal of a license if the person does not have a direct financial interest in the grant, denial or renewal of the license. (NRS 233B.127) **Section 1** of this bill eliminates that prohibition.

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

Section 1. NRS 233B.127 is hereby amended to read as follows:

233B.127 1. When the grant, denial or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

2. When a licensee has made timely and sufficient application for the renewal of a license or for a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

3. No revocation, suspension, annulment or withdrawal of any license is lawful unless, ~~[prior to]~~ ***before*** the institution of agency proceedings, the agency gave notice by certified mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. Such proceedings ~~[shall]~~ ***must*** be promptly instituted and determined.

~~[4. Except as otherwise provided in this subsection, a person must not be admitted as a party to an administrative proceeding in a contested case involving the grant, denial or renewal of a license unless he demonstrates to the satisfaction of the presiding hearing officer that:~~

~~(a) His financial situation is likely to be maintained or to improve as a direct result of the grant or renewal of the license; or~~

~~(b) His financial situation is likely to deteriorate as a direct result of the denial of the license or refusal to renew the license.~~

~~➥ The provisions of this subsection do not preclude the admission, as a party, of any person who will participate in the administrative proceeding as the agent or legal representative of an agency.]~~

Sec. 2. NRS 233B.130 is hereby amended to read as follows:

233B.130 1. Any party who is:

(a) Identified as a party of record by an agency in an administrative proceeding; and

(b) Aggrieved by a final decision in a contested case,

➥ is entitled to judicial review of the decision. Where appeal is provided within an agency, only the decision at the highest level is reviewable unless a decision made at a lower level in the agency is made final by statute. Any preliminary, procedural or intermediate act or ruling by an agency in a contested case is reviewable if review of the final decision of the agency would not provide an adequate remedy.

2. Petitions for judicial review must:

(a) Name as respondents the agency and all parties of record to the administrative proceeding;

(b) Be instituted by filing a petition in the district court in and for Carson City, in and for the county in which the aggrieved party resides or in and for the county where the agency proceeding occurred; and

(c) Be filed within 30 days after service of the final decision of the agency.

➥ Cross-petitions for judicial review must be filed within 10 days after service of a petition for judicial review.

3. The agency and any party desiring to participate in the judicial review must file a statement of intent to participate in the petition for judicial review and serve the statement upon the agency and every party within 20 days after service of the petition.

4. A petition for rehearing or reconsideration must be filed within 15 days after the date of service of the final decision. An order granting or denying the petition must be served on all parties at least 5 days before the expiration of the time for filing the petition for judicial review. If the petition is granted, the subsequent order shall be deemed the final order for the purpose of judicial review.

5. The petition for judicial review and any cross-petitions for judicial review must be served upon the agency and every party within 45 days after the filing of the petition, unless, upon a showing of good cause, the district court extends the time for such service. If the proceeding involves a petition for judicial review or cross-petition for judicial review of a final decision of the State Contractors' Board **,** ~~[or of a final decision of an agency or hearing officer in a contested case involving the grant, denial or renewal of a license,]~~ the district court ~~[shall,]~~ ***may,*** on its own motion or the motion of a party, dismiss from the proceeding any agency or person who:

(a) Is named as a party in the petition for judicial review or cross-petition for judicial review; and

(b) Was not a party to the administrative proceeding for which the petition for judicial review or cross-petition for judicial review was filed.

6. The provisions of this chapter are the exclusive means of judicial review of, or judicial action concerning, a final decision in a contested case involving an agency to which this chapter applies.

Sec. 3. This act becomes effective upon passage and approval.

COURT RULES

Nevada Rules of Civil Procedure — Rule 4

RULE 4. PROCESS

(a) Summons: Issuance. Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it to the plaintiff or to the plaintiff's attorney, who shall be responsible for service of the summons and a copy of the complaint. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.

[As amended; effective February 11, 1986.]

(b) Same: Form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and county and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which the defendant must appear and defend, and shall notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. When service of the summons is made by publication, the summons shall, in addition to any special statutory requirements, also contain a brief statement of the object of the action substantially as follows: "This action is brought to recover a judgment dissolving the contract of marriage (or bonds of matrimony) existing between you and the plaintiff," or "foreclosing the mortgage of plaintiff upon the land (or other property) described in complaint," or as the case may be.

[As amended; effective January 1, 2005.]

(c) By Whom Served. Process shall be served by the sheriff of the county where the defendant is found, or by a deputy, or by any person who is not a party and who is over 18 years of age, except that a subpoena may be served as provided in Rule 45; where the service of process is made outside of the United States, after an order of publication, it may be served either by any person who is not a party and who is over 18 years of age or by any resident of the country, territory, colony or province, who is not a party and who is over 18 years of age.

[As amended; effective January 1, 2005.]

(d) Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made by delivering a copy of the summons attached to a copy of the complaint as follows:

(1) Service Upon Nevada Corporation. If the suit is against a corporation formed under the laws of this state; to the president or other head of the corporation, secretary, cashier, managing agent, or resident agent thereof; provided, when for any reason service cannot be had in the manner hereinabove provided, then service may be made upon such corporation by delivering to the secretary of state, or the deputy secretary of state, a copy of said summons attached to a copy of the complaint, and by posting a copy of said process in the office of the clerk of the court in which such action is brought or pending; defendant shall have 20 days after such service and posting in which to appear and answer; provided, however, that before such service shall be authorized, plaintiff shall make or cause to be made and filed in such cause an affidavit setting forth the facts showing that personal service on or notice to the officers, managing agent or resident agent of said corporation cannot be had within the state; and provided further, that if it shall appear from such affidavit that there is a last known address of a known officer of said corporation outside the state, plaintiff shall, in addition to and after such service upon the secretary of state and posting, mail or cause to be mailed to such known officer at such address by registered mail, a copy of the summons and a copy of the complaint, and in all such cases defendant shall have 20 days from the date of such mailing within which to answer or plead.

[As amended; effective January 1, 2005.]

(2) Service Upon Foreign Corporation or Nonresident Entity. If the suit is against a foreign corporation, or a nonresident partnership, joint-stock company or association, doing business and having a managing or business agent, cashier, or secretary within this state; to such agent, cashier, or secretary or to an agent designated for service of process as required by law; or in the event no such agent is designated, to the secretary of state or the deputy secretary of state, as provided by law.

[As amended; effective January 1, 2005.]

(3) Service Upon Minors. If against a minor, under the age of 14 years, residing within this state, to such minor, personally, and also to the minor's father, mother, or guardian; or if there be none within this state; then to any person having the care or control of such minor, or with whom the minor resides, or in whose service the minor is employed.

[As amended; effective January 1, 2005.]

(4) Service Upon Incompetent Persons. If against a person residing within this state who has been judicially declared to be of unsound mind, or incapable of conducting his or her own affairs, and for whom a guardian has been appointed, to such person and also to his or her guardian.

[As amended; effective January 1, 2005.]

(5) Service Upon Local Governments. If against a county, city, or town, to the chairperson of the board of commissioners, president of the council or trustees, mayor of the city, or other head of the legislative department thereof.

[As amended; effective January 1, 2005.]

(6) Service Upon Individuals. In all other cases to the defendant personally, or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

[As amended; effective January 1, 2005.]

(e) Same: Other Service.

(1) Service by Publication.

(i) General. In addition to methods of personal service, when the person on whom service is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or by concealment seeks to avoid the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court or judge thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, and that the defendant is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of summons.

Provided, when said affidavit is based on the fact that the party on whom service is to be made resides out of the state, and the present address of the party is unknown, it shall be a sufficient showing of such fact if the affiant shall state generally in such affidavit that at a previous time such person resided out of this state in a certain place (naming the place and stating the latest date known to affiant when such party so resided there); that such place is the last place in which such party resided to the knowledge of affiant; that such party no longer resides at such place; that affiant does not know the present place of residence of such party or where such party can be found; and that affiant does not know and has never been informed and has no reason to believe that such party now resides in this state; and, in such case, it shall be presumed that such party still resides and remains out of the state, and such

affidavit shall be deemed to be a sufficient showing of due diligence to find the defendant. This rule shall apply to all manner of civil actions, including those for divorce.

(ii) Property. In any action which relates to, or the subject of which is, real or personal property in this state in which such person defendant or corporation defendant has or claims a lien or interest, actual or contingent, therein, or in which the relief demanded consists wholly or in part of excluding such person or corporation from any interest therein, and the said defendant resides out of the state or has departed from the state, or cannot after due diligence be found within the state, or by concealment seeks to avoid the service of summons, the judge or justice may make an order that the service be made by the publication of summons; said service by publication shall be made in the same manner as now provided in all cases of service by publication.

(iii) Publication. The order shall direct the publication to be made in a newspaper, published in the State of Nevada, to be designated by the court or judge thereof, for a period of 4 weeks, and at least once a week during said time. In addition to in-state publication, where the present residence of the defendant is unknown the order may also direct that publication be made in a newspaper published outside the State of Nevada whenever the court is of the opinion that such publication is necessary to give notice that is reasonably calculated to give a defendant actual notice of the proceedings. In case of publication, where the residence of a nonresident or absent defendant is known, the court or judge shall also direct a copy of the summons and complaint to be deposited in the post office, directed to the person to be served at the person's place of residence. The service of summons 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 summons and complaint in the post office is also required, at the expiration of 4 weeks from such deposit.

[As amended; effective January 1, 2005.]

(2) Personal Service Outside the State. Personal service of summons upon a party outside this state may be made by delivering a copy of the summons, together with a copy of the complaint, to the party served in the manner provided by statute or rule of court for service upon a party of like kind within this state. The methods of service are cumulative, and may be utilized with, after, or independently of, other methods of service.

[As amended; effective January 1, 2005.]

(3) Statutory Service. Whenever a statute provides for service, service may be made under the circumstances and in the manner prescribed by the statute.

(f) Territorial Limits of Effective Service. All process, including subpoenas, may be served anywhere within the territorial limits of the State and, when a statute or rule so provides, beyond the territorial limits of the State. A voluntary appearance of the defendant shall be equivalent to personal service of process upon the defendant in this State.

[As amended; effective January 1, 2005.]

(g) Return. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. Proof of service shall be as follows:

(1) If served by the sheriff or deputy, the affidavit or certificate of such sheriff or deputy; or,

(2) If by any other person, the affidavit thereof; or

(3) In case of publication, the affidavit of the publisher, foreman or principal clerk, or other employee having knowledge thereof, showing the same, and an affidavit of a deposit of a copy of the summons in the post office, if the same shall have been deposited; or,

(4) The written admission of the defendant.

In case of service otherwise than by publication, the certificate or affidavit shall state the date, place and manner of service. Failure to make proof of service shall not affect the validity of the service.

[As amended; effective January 1, 2005.]

(h) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(i) Summons: Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion, unless the party on whose behalf such service was required files a motion to enlarge the time for service and shows good cause why such service was not made within that period. If the party on whose behalf such service was required fails to file a motion to enlarge

the time for service before the 120-day service period expires, the court shall take that failure into consideration in determining good cause for an extension of time. Upon a showing of good cause, the court shall extend the time for service and set a reasonable date by which service should be made.

[Added; effective June 9, 1986; Amended effective January 1, 2005.]

DRAFTER'S NOTE
2004 AMENDMENT

The amendments to subdivisions (b), (d), (f) and (g) are technical.

The amendment to subdivision (c), adding the words "person who is not a party," clarifies that service may be made by any person who is over 18 years of age so long as he or she is also a disinterested person. The revised provision is consistent with the current federal rule and with the common law rule, followed in Nevada, requiring that service be made by a disinterested person, see Sawyer v. Sugarless Shops, 106 Nev. 265, 269-70, 792 P.2d 14, 17 (1990) ("Nevada has long had rules prohibiting service by a party. This was a common law requirement and has not been changed by [statute]." (citation omitted)).

The amendments to subdivision (e)(1)(iii) clarify that a publication order is not a precondition to personal service outside of the state by removing the fourth sentence of the former rule. The amendment to subdivision (e)(2) removes language that provided that personal service outside of Nevada could be used "only where the party being served has submitted to the jurisdiction of the courts of this state as provided by NRS 14.065." The revision corresponds to the 1995 amendments to NRS 14.065.

Subdivision (i) is similar to the federal rule except that the district court is limited to enlarging the time for service only upon a motion to enlarge the 120-day service period that demonstrates good cause why service was not made within the 120-day period. Thus, unlike the federal rule, the Nevada rule does not give the district court discretion to enlarge the time for service in the absence of a showing of good cause. Additionally, unlike the federal rule, the revised Nevada rule clarifies that in deciding whether there is good cause why service was not made within the 120-day period, the district court must consider whether the party on whose behalf such service was required filed a motion to enlarge the time for service within the 120-day period.

WEST PUBLISHING CO.

Process ! 1.

WESTLAW Topic No. 313.

C.J.S. Process § 2.

NEVADA CASES.

Failure to serve husband constituted harmless error where wife was served and interests were similar. Where notice and petition for a deposition before an action to perpetuate testimony of witness pursuant to N.R.C.P. 27(a) named both husband and wife as expected adverse parties and the wife was properly served, failure to effect service on the husband in the manner required by N.R.C.P. 4 was harmless error and did not preclude use of the deposition at the subsequent trial in the circumstances where the husband and wife lived in the same house, their interests in the anticipated litigation were substantially similar, the wife was represented by counsel at the taking of the deposition, and there was no showing that the husband suffered any prejudice from the fact that his own counsel was not present. Cardinal v. Zonneveld, 89 Nev. 403, 514 P.2d 204 (1973)

Due Process Clause requires exercise of due diligence in notifying defendant. The Due Process Clause of Nev. Art. 1, § 8 requires that a party exercise due diligence in notifying a defendant of a pending action. Technical compliance with the requirements of N.R.C.P. 4 may fall short of the due process requirement. Where other reasonable methods exist for locating the whereabouts of a defendant, plaintiff should exercise those methods. Price v. Dunn, 106 Nev. 100, 787 P.2d 785 (1990), cited, McNair v. Rivera, 110 Nev. 463, at 468, 874 P.2d 1240 (1994), Gassett v. Snappy Car Rental, 111 Nev. 1416, at 1419, 906 P.2d 258 (1995), Browning v. Dixon, 114 Nev. 213, at 218, 954 P.2d 741 (1998), Abreu v. Gilmer, 115 Nev. 308, at 313, 985 P.2d 746 (1999), Maiola v. State, 120 Nev. 671, at 675, 99 P.3d 227 (2004)

Default judgment not supported by proper service is void. The defective service rendered the district court's personal jurisdiction (see N.R.C.P. 4) over the defendant invalid and the default judgment (see N.R.C.P. 55) against the defendant void. For a judgment to be void, there must be a defect in the court's authority to enter judgment through either lack of personal jurisdiction or jurisdiction over subject matter in the suit. Gassett v. Snappy Car Rental, 111 Nev. 1416, 906 P.2d 258 (1995), cited, Browning v. Dixon, 114 Nev. 213, at 218, 954 P.2d 741 (1998), see also Maiola v. State, 120 Nev. 671, at 675, 99 P.3d 227 (2004)

FEDERAL AND OTHER CASES.

Service by publication ordered by tribal court was sufficient to satisfy requirements of due process under the circumstances. In an action brought to enjoin the prosecution of two civil actions filed in tribal court against the State and several game wardens in their official and personal capacities for alleged violation of the civil rights of a member of the tribe, service of summons and complaint by publication pursuant to the order of the tribal court after the court had adopted the provisions of N.R.C.P. 4 satisfied the constitutional requirements of due process where: (1) the complaint was stamped as accepted and signed by a deputy attorney general for the State; (2) each defendant was initially served by certified mail sent by the tribal court; (3) the defendants had actual notice of the civil rights action as evidenced by their special appearance to quash service; and (4) service by publication was expressly authorized by the tribal court. Under the facts of the case, the defendants could not make a reasonable argument that the defendants did not receive notice reasonably calculated to apprise them of the action and give them

opportunity to be heard, or that they were not afforded a reasonable period to make an appearance or that the necessary information was not conveyed to them. State v. Hicks, 944 F. Supp. 1455 (D. Nev. 1996)

(a) Summons: Issuance.

NEVADA CASES.

Application for service of summons not barred by prior defective service; leave of court not required for issuance of summons. Where Supreme Court in a prohibition proceeding determined that district court had acquired no jurisdiction of the defendant in a civil action by reason of defective service, this did not bar district court from considering future application for service of a valid summons, because under NCL § 8573 (cf. N.R.C.P. 4(a)), no leave of the court is required for issuance of a summons. Brockbank v. Second Judicial Dist. Court, 65 Nev. 781, 201 P.2d 299 (1948)

(c) By Whom Served.

NEVADA CASES.

Service of process by attorney void. Attempted service of process by the plaintiff's attorney is void. Common law rule requiring that service be made by a disinterested person is in effect under RL § 5474 (cf. NRS 1.030), providing that common law governs except where in conflict with a statute, because the Legislature, in enacting RL § 5022 (cf. N.R.C.P. 4(c)), permitting service by any citizen over 21 years of age, did not intend to abrogate common law rule. At common law, an attorney for a party is not a disinterested person. Nevada Cornell Silver Mines, Inc. v. Hankins, 51 Nev. 420, 279 Pac. 27 (1929), cited, Deboer v. Fattor, 72 Nev. 316, at 319 (dissenting opinion at 324), 304 P.2d 958 (1956), Tahoe Regional Planning Agency v. McKay, 590 F. Supp. 1071, at 1075 (D. Nev. 1984), Sawyer v. Sugarless Shops, Inc., 106 Nev. 265, at 269, 792 P.2d 14 (1990)

(d) Summons: Personal Service.

NEVADA CASES.

Service upon subordinate of managing agent of foreign corporation a violation of former statute. Under sec. 29, ch. 112, Stats. 1869 (cf. N.R.C.P. 4(d)), service of a summons could be accomplished by serving the managing agent of a foreign corporation, and service upon a subordinate of the managing agent did not comply with the statute. Scorpion Silver Mining Co. v. Marsano, 10 Nev. 370 (1875), cited, Lonkey v. Keyes Silver Mining Co., 21 Nev. 312, at 317, 31 Pac. 57 (1892), Karns v. State Bank & Trust Co., 31 Nev. 170, at 177, 179, 101 Pac. 564 (1909)

Affidavit for publication of summons must state facts showing diligence used to attempt to effect service. An affidavit for publication of a summons in an action against a foreign corporation in Justice Court must show that the defendant could not be served as required by B § 1092 (cf. NRS 14.030, N.R.C.P. 4(d) and JCRCP 4(d)), and must state the facts showing what diligence was used to effect such service. An affidavit which states only that the constable returned the summons not served, and that due diligence had been used to find the defendant, is not sufficient. Victor Mill & Mining Co. v. Justice Court, 18 Nev. 21, 1 Pac. 831 (1883), cited, Coffin v. Bell, 22 Nev. 169, at 183, 37 Pac. 240 (1894), Veith v. Nevada Reduction Co., 36 Nev. 586, at 588, 137 Pac. 520 (1913), Wildes v. Lou Dillon Goldfield Mining Co., 41 Nev. 364, at 371, 170 Pac. 1046 (1918)

Service on a managing agent valid even though the agent was a party to a scheme to perpetrate fraud on the corporation. Personal service of a summons on the managing agent of a corporation in accordance with provisions of BH § 3051 (cf. N.R.C.P. 4(d)) constitutes valid personal service on the corporation, even though the managing agent was a party to a scheme thereby to perpetrate fraud upon the corporation by concealing such service and permitting default judgment to be entered against it. Lang Syne Gold Mining Co. v. Ross, 20 Nev. 127, 18 Pac. 358 (1888)

Substituted service cannot be made outside the State. Substituted service under N.R.C.P. 4(d) cannot be made outside the State, and personal service outside the State in lieu of publication must be made as provided in N.R.C.P. 4(e) by direct delivery to the person served. (N.B., case decided before adoption of NRS 14.065 in 1969.) Moran v. Second Judicial Dist. Court, 72 Nev. 142, 297 P.2d 261 (1956), cited, Kelley v. Kelley, 85 Nev. 317, at 318, 454 P.2d 85 (1969), distinguished, Orme v. Eighth Judicial Dist. Court, 105 Nev. 712, 782 P.2d 1325 (1989)

Joint service upon mother and son ineffective where son was in military service. Where only one copy of a summons, addressed jointly to a mother and son, was delivered to the residence of the mother when the son was in the Armed Services, service to the son was ineffective because each party must be served with a copy of the summons. The fact that the son was in military service did not effect service of process because N.R.C.P. 4(d) provides that service may be made by leaving copies of a summons at the usual place of abode of a defendant, and it was presumed that the usual place of abode was not changed by entry into military service. Doyle v. Jorgensen, 82 Nev. 196, 414 P.2d 707 (1966), distinguished, Cardinal v. Zonneveld, 89 Nev. 403, at 406, 514 P.2d 204 (1973)

Absence from the State preventing service presents issue of fact precluding summary judgment based upon the bar by the statute of limitations. In an action on a promissory note, where the complaint showed on the face that the cause of the action was barred by the statute of limitations, NRS 11.190, unless tolled by absence from the State pursuant to NRS 11.300, disputed an affidavit of the defendant's maid that no one was present in the defendant's home during his absence from the State upon whom service could have been made pursuant to N.R.C.P. 4(d) presented an issue of fact which precluded summary judgment for the defendant. Bank of Nevada v. Friedman, 82 Nev. 417, 420 P.2d 1 (1966), cited, Havas v. Long, 85 Nev. 260, at 262, 454 P.2d 30 (1969), Los Angeles Airways, Inc. v. Estate of Hughes, 99 Nev. 166, at 168, 659 P.2d 871 (1983)

Rule can be used to interpret the statute concerning tolling of the statute of limitations. N.R.C.P. 4(d), dealing with service of process, could be used to interpret NRS 11.300, the tolling statute for the statute of limitations, without violating a prohibition of NRS 2.120 that the rules of procedure shall not enlarge or modify any substantive right, because the statute of limitations affects the remedy and does not destroy the substantive cause of action. Claimant's right to a day in court is subject to reasonable procedural requirements. Bank of Nevada v. Friedman, 82 Nev. 417, 420 P.2d 1 (1966)

Error not to set aside default judgment where summons and complaint served upon Secretary of State but not forwarded to defendant corporation. Defendant was a foreign corporation with no agent, cashier or secretary within Nevada. Plaintiff, pursuant to N.R.C.P. 4(d), served a summons and complaint upon the Secretary of State's office, which failed to forward the summons and complaint to the defendant because the defendant had failed to file its list of officers as required by NRS 80.110. District court entered a default judgment against the defendant and denied its motion to set aside the default judgment pursuant to N.R.C.P. 60(c). The ruling of district court denying the motion constituted reversible error because defendant's showing that it (1) was not personally served, (2) filed a motion to set aside the default judgment within the statutory period, and (3) had a meritorious defense, established a prima facie case pursuant to N.R.C.P. 60(c) and shifted the burden to the plaintiff to show that granting the motion would be inequitable, which the plaintiff was not able to do. Although pursuant to NRS 80.150 noncompliance with the filing requirement deprives a corporation of the right to do business within Nevada, equity does not demand that the corporation, delinquent in its filings with the Secretary of State, loses the opportunity to defend itself against a lawsuit. Basf Corp. v. Jafbros, Inc., 105 Nev. 142, 771 P.2d 161 (1989)

(1) Service Upon Nevada Corporation.

NEVADA CASES.

Service upon director not authorized. A judgment rendered against a domestic corporation was void where process was served on the director of the corporation who was not a person named in ch. 76, Stats. 1913 (cf. N.R.C.P. 4(d)(1)), upon whom process might be served, and the corporation did not appear in the action. State ex rel. Nevada Douglass Gold Mines, Inc. v. Seventh Judicial Dist. Court, 51 Nev. 206, 273 Pac. 659 (1929), cited, State ex rel. Garaventa Land & Livestock Co. v. Second Judicial Dist. Court, 61 Nev. 350, at 352, 128 P.2d 266 (1942), Schwob v. Hemsath, 98 Nev. 293, at 294, 646 P.2d 1212 (1982)

Appointment of temporary receiver upon notice to resident agent proper. In a proceeding by a stockholder to obtain appointment of a receiver for a corporation, appointment of a temporary receiver upon notice to the resident agent of the corporation was proper, because neither N.R.C.P. 4(d)(1) nor NRS 78.650 requires service upon directors or officers and NRS 78.650 meets the constitutional requirements of notice and opportunity to be heard. State ex rel. Hersh v. First Judicial Dist. Court, 86 Nev. 73, 464 P.2d 783 (1970)

Personal service required upon a foreign corporation. Under NRS 14.065, conferring personal jurisdiction over a party outside the State as to the cause of action arising from transacting any business within the State, service of process on a foreign corporation not qualified to do business in Nevada was required to be made in the manner prescribed by N.R.C.P. 4(d)(1) for service on a domestic corporation, because the portion of NRS 14.065 providing the method of service requires personal service in the manner provided for service on a person of like kind within the State, and substituted service is not authorized. The provisions of the statute were intended to afford actual notice and satisfy the procedural due process requirements. Certain-Teed Prod. Corp. v. Second Judicial Dist. Court, 87 Nev. 18, 479 P.2d 781 (1971), cited, Phillips v. Incline Manor Ass'n, 91 Nev. 69, at 70, 530 P.2d 1207 (1975), Jarstad v. National Farmers Union Property & Cas. Co., 92 Nev. 380, at 384, 552 P.2d 49 (1976), Orme v. Eighth Judicial Dist. Court, 105 Nev. 712, at 716, 782 P.2d 1325 (1989)

Order authorizing service outside State and affidavit in support of service not required as prerequisite to service on a foreign corporation. In an action against a foreign corporation not qualified to do business in Nevada, neither the order authorizing service outside the State nor an affidavit in support of an order were necessary, because NRS 14.065, prescribing the method of service, does not provide for substituted service, and neither it nor N.R.C.P. 4(d)(1) requires an affidavit or an order as a prerequisite to service.

Certain-Teed Prod. Corp. v. Second Judicial Dist. Court, 87 Nev. 18, 479 P.2d 781 (1971), cited, Jarstad v. National Farmers Union Property & Cas. Co., 92 Nev. 380, at 384, 552 P.2d 49 (1976)

Absent competent evidence of service, court without jurisdiction to enter default. Where respondent's counsel allegedly placed a summons and complaint in a sealed envelope which he gave to a process server who did not have personal knowledge of what was in the envelope, and the appellant subsequently failed to answer or appear and default judgment was entered against him, default was reversed on appeal because in absence of competent evidence of service, trial court was without jurisdiction to enter default. (See N.R.C.P. 4(d) and 60(c).) Sawyer v. Sugarless Shops, Inc., 106 Nev. 265, 792 P.2d 14 (1990)

FEDERAL AND OTHER CASES.

Absence of principal from State did not toll statute of limitations because service is authorized upon the Secretary of State. In an action brought by a corporation against a city to recover damages resulting from the city's denial of the corporation's application for a building license, where the city filed a counterclaim alleging fraud and mistake approximately 3 1/2 years after the facts constituting fraud or mistake were allegedly discovered, absence of the corporation's principal from Nevada did not toll the running of the 3-year statute of limitations because, as N.R.C.P. 4(d)(1) provided for service of a summons and complaint in an action against a corporation on the Secretary of State if an officer or agent of that corporation could not be located, the principal was otherwise subject to service of process at all times. Vari-Build, Inc. v. City of Reno, 622 F. Supp. 97 (D. Nev. 1985)

(2) Service Upon Foreign Corporation or Nonresident Entity

NEVADA CASES.

Service upon manager of foreign corporation valid. Service upon the manager of a foreign corporation was valid service under sec. 29, ch. 112, Stats. 1869 (cf. N.R.C.P. 4(d)(2)), which provides that service on a foreign corporation doing business in the State may be made by delivery to an agent, cashier, secretary, president or other head thereof. Daly v. Lahontan Mines Co., 39 Nev. 14, 151 Pac. 514, 158 Pac. 285 (1915)

Service upon purported managing agent not valid where corporation neither acquiesed in nor consented to representation by the person served. Where a foreign corporation moved to vacate a default judgment entered against it on the ground that it had not been served with process pursuant to N.R.C.P. 4(d)(2), and evidence presented at a hearing established that the summons and complaint were served on a person who worked for the company located on the same premises as the corporation and who told servers that he was a managing agent of the corporation although he was not, judgment was set aside because there was no evidence presented that the foreign corporation acquiesced in or consented to representation by the person served. Orbit Stations, Inc. v. Curtis, 100 Nev. 205, 678 P.2d 1153 (1984)

Service of process insufficient under the circumstances to give court jurisdiction over nonresident partnership consisting of foreign corporations. Where a party to a contract was a nonresident partnership consisting of two foreign corporations and plaintiff sued on the contract, naming as the defendant a natural person doing business as a partnership and effectuated service of process upon that person's wife, such service was insufficient to bring the partnership within jurisdiction of the court because in order to obtain jurisdiction over such partnership, at least one partner had to be served in its corporate capacity. Plaintiff's contention that because the partnership had actual notice of the action through participation in litigation by an officer of the corporation, effective substitute for service of process should be deemed to have occurred was rejected because notice is not a substitute for service of process and personal service or a legally provided substitute must occur in order to obtain jurisdiction over a party. (See N.R.C.P. 4(d)(2) and NRS 14.030.) C.H.A. Venture v. G.C. Wallace Consulting Eng'rs, Inc., 106 Nev. 381, 794 P.2d 707 (1990), cited, Dobson v. Dobson, 108 Nev. 346, at 348, 830 P.2d 1336 (1992), Lacey v. Wen-Neva, Inc., 109 Nev. 341, at 345, 849 P.2d 260 (1993), Abreu v. Gilmer, 115 Nev. 308, at 314, 985 P.2d 746 (1999)

ATTORNEY GENERAL'S OPINIONS.

Service upon the Secretary of State, in absence of a resident agent, cannot be made by mail. AGO 4 (12-23-1914)

(6) Service Upon Individuals.

NEVADA CASES.

Uncontradicted evidence of lack of authority to receive service must be taken as true. Where evidence that the person served was not authorized by defendants to receive service of process was uncontradicted, denial of authority had to be taken as true for the purpose of applying N.R.C.P. 4(d)(6). Foster v. Lewis, 78 Nev. 330, 372 P.2d 679 (1962)

Agent for collection not "authorized by law" to receive service of process. No statute or rule in this State confers on an agent for collection the authority to accept service of process. Such an agent is not one authorized by law to receive service of process under N.R.C.P. 4(d)(6). Foster v. Lewis, 78 Nev. 330, 372 P.2d 679 (1962)

"Appointed to receive service of process" means specifically appointed for that purpose. The phrase "an agent authorized by appointment to receive service of process," as used in N.R.C.P. 4(d)(6), means an agent specifically appointed for that purpose. Foster v. Lewis, 78 Nev. 330, 372 P.2d 679 (1962)

Agency to accept service of process will not be implied. An agency to accept service of process under N.R.C.P. 4(d)(6) will not be implied in the absence of a specific appointment or authorization where there is no statute conferring authority. Foster v. Lewis, 78 Nev. 330, 372 P.2d 679 (1962)

Temporary absence from the State did not toll running of statute of limitations where a person was at a dwelling upon whom service could have been made. The temporary absence of a resident defendant from Nevada did not toll running of the statute of limitations under NRS 11.300 if, in fact, there was a person at the defendant's dwelling house or usual place of abode upon whom service of process could be made pursuant to N.R.C.P. 4(d)(6), because running of the statute is not tolled if the defendant is continuously liable to service. Bank of Nevada v. Friedman, 82 Nev. 417, 420 P.2d 1 (1966), cited, Blotzke v. Christmas Tree, Inc., 88 Nev. 449, at 450, 499 P.2d 647 (1972), Simmons v. Trivelpiece, 98 Nev. 167, at 168, 643 P.2d 1219 (1982), Seely v. Illinois-California Express, Inc., 541 F. Supp. 1307, at 1310 (D. Nev. 1982), Los Angeles Airways, Inc. v. Estate of Hughes, 99 Nev. 166, at 168, 659 P.2d 871 (1983), Vari-Build, Inc. v. City of Reno, 622 F. Supp. 97, at 100 (D. Nev. 1985)

Service on wife of defendant outside State an effective substitute service under the circumstances. Where service of a summons and complaint upon defendant was made outside the State by delivery to his wife and district court granted the defendant's motion to quash service, appellate court held that: (1) the substituted service of process was sufficient and the petitioner was entitled to a writ of mandamus compelling the district court to accept personal jurisdiction; (2) provisions of N.R.C.P. 4(e)(2) requiring personal service were not specifically applicable because the defendant was not a resident of this State and the proceeding was not an action in rem or an action affecting specific property; and (3) service was effective since NRS 14.065 authorizes service upon a party outside the State if done in the same manner as required for service upon a person of like kind to the defendant within the State, and N.R.C.P. 4(d)(6) provides that a person of like kind within this state may be served by personal delivery in hand or by leaving copies of the summons and complaint at his dwelling house or usual place of abode with some person of suitable age and discretion there residing. Orme v. Eighth Judicial Dist. Court, 105 Nev. 712, 782 P.2d 1325 (1989)

(e) Same: Other Service.

NEVADA CASES.

Affidavit for publication of summons must show existence of cause of action. Under sec. 10, ch. 44, Stats. 1866 (cf. N.R.C.P. 4(e) and JCRCP 4(e)), relating to service by publication, an affidavit for publication of summons must affirmatively show the existence of a cause of action. A statement of a legal conclusion to that effect is sufficient. Little v. Currie, 5 Nev. 90 (1869), cited, Roy v. Whitford, 9 Nev. 370, at 373 (1874), Victor Mill & Mining Co. v. Justice Court, 18 Nev. 21, at 24, 1 Pac. 831 (1883), Perry v. District Court, 42 Nev. 284, at 291, 174 Pac. 1058 (1918)

No jurisdiction obtained where action in personam commenced in a manner provided for action in rem. The method prescribed by RL § 5025 (cf. NRS 14.030) for service of a summons upon a foreign corporation doing business in Nevada which has neglected to designate an agent for service of a summons is by service upon the Secretary of State. Where plaintiff proceeded against a foreign corporation under RL §§ 5026 and 5027 (cf. N.R.C.P. 4(e)), relating to commencement of actions in rem, rather than by service on the Secretary of State, in an action in personam, the trial court did not obtain jurisdiction of the foreign corporation. Ex rel. Pacific States Sec. Co. v. District Court, 48 Nev. 53, 226 Pac. 1106 (1924), distinguished, State ex rel. Crummer v. Fourth Judicial Dist. Court, 69 Nev. 276, at 282, 249 P.2d 226 (1952)

Former statutes limited to actions in rem. RL §§ 5026 and 5027 (cf. N.R.C.P. 4(e)) authorize entry of an order for publication for service of a summons in actions in rem, but not in actions in personam. Ex rel. Pacific States Sec. Co. v. District Court, 48 Nev. 53, 226 Pac. 1106 (1924), distinguished, State ex rel. Crummer v. Fourth Judicial Dist. Court, 69 Nev. 276, at 282, 249 P.2d 226 (1952)

Purpose of affidavit; statement showing that residence is outside the State is sufficient. The purpose of an affidavit for publication of a summons required by RL § 5026 (cf. N.R.C.P. 4(e)) is to enable a court to determine the place of residence of a defendant, if known, and if not, where notice will most likely reach him. An affidavit that states positively where the defendant's residence is, and shows that it is outside the State, is sufficient. Klepper v. Klepper, 51 Nev. 468, 279 Pac. 758 (1929), distinguished, Foster v. Lewis, 78 Nev. 330, at 335, 372 P.2d 679 (1962)

Unintentional violation by recently admitted attorney not grounds for disciplinary action. On an appeal from a decision of the Board of Governors of the State Bar finding an attorney guilty of professional misconduct

consisting, in part, of failure to comply with the provisions of NCL §§ 8582 and 8583 (cf. N.R.C.P. 4(e) and JCRCP 4(e)), regarding substituted service of process, where evidence showed that the attorney was recently admitted to the bar and was careless in not carefully reading such provisions, but that he did not intend to mislead the court or any parties involved, the findings of the Board were set aside and disciplinary proceedings dismissed. State Bar v. McCluskey, 58 Nev. 114, 71 P.2d 1046 (1937)

Affidavit immaterial where not attached to summons and could not have affected the decree issued. In disciplinary proceedings charging an attorney with procuring a decree of divorce without first obtaining a court order for service of a summons on the defendant outside of the State, as required by NCL §§ 8582 and 8583 (cf. N.R.C.P. 4(e) and JCRCP 4(e)), where such decree was subsequently vacated and the summons was served after proper procedure had been followed, it was immaterial that an affidavit had been made showing service at some earlier time where such affidavit was never attached to any summons appearing of record and could not have affected the decree issued, and the specification on which such disciplinary proceedings were based averred that the summons upon which the annulled decree had been granted was served, returned and filed 3 months later than the date of the unfiled and unused affidavit. State Bar v. McCluskey, 58 Nev. 114, 71 P.2d 1046 (1937)

Faithful observance of former statute essential for constructive or substituted service. Faithful observance of 1931 NCL § 8582 (cf. N.R.C.P. 4(e)), is essential for constructive or substituted service. Brockbank v. Second Judicial Dist. Court, 65 Nev. 781, 201 P.2d 299 (1948), cited, State ex rel. Crummer v. Fourth Judicial Dist. Court, 68 Nev. 527, at 530, 238 P.2d 1125 (1951)

Former statute strictly construed because it was in derogation of common law. Statutes such as 1931 NCL § 8582 (cf. N.R.C.P. 4(e)) which provide for constructive service must be strictly construed, because they are in derogation of common law. State ex rel. Crummer v. Fourth Judicial Dist. Court, 68 Nev. 527, 238 P.2d 1125 (1951), cited, Foster v. Lewis, 78 Nev. 330, at 333, 372 P.2d 679 (1962)

Affidavit insufficient where date of defendant's departure from the State and expected duration of absence not given. An affidavit for publication of a summons which did not give the date of the defendant's departure from the State, or show the expected duration of his absence, did not satisfy the requirements of 1931 NCL § 8582 (cf. N.R.C.P. 4(e)), because under such statute, which provides that proof of defendant's absence from the State relieves the plaintiff from the necessity of showing due diligence to locate the defendant within the State, if the requirement of due diligence is to be avoided, it must appear with reasonable certainty that the defendant was absent from the State at the time the order for publication of the summons was sought. State ex rel. Crummer v. Fourth Judicial Dist. Court, 68 Nev. 527, 238 P.2d 1125 (1951), cited, Penn Moultrie Corp. v. Eighth Judicial Dist. Court, 79 Nev. 269, at 271, 382 P.2d 397 (1963)

Affidavit must state probative facts, not ultimate facts or conclusions. An affidavit for publication of a summons under 1931 NCL § 8582 (cf. N.R.C.P. 4(e)) must state probative facts, not ultimate facts or conclusions, in order to permit a judge to determine whether the statutory requirements for service by publication have been met, and in the case of a resident defendant who has concealed himself or who is absent from the State, such facts should include his place of residence, the particular circumstances of his absence and its probable duration, and the names and residences, or other description, of persons from whom information of the absence or concealment was obtained. State ex rel. Crummer v. Fourth Judicial Dist. Court, 68 Nev. 527, 238 P.2d 1125 (1951), cited, Penn Moultrie Corp. v. Eighth Judicial Dist. Court, 79 Nev. 269, at 271, 382 P.2d 397 (1963)

Substituted service cannot be made outside the State; service by direct delivery required. Substituted service under N.R.C.P. 4(d) cannot be made outside the State, and personal service outside the State in lieu of publication must be made as provided in N.R.C.P. 4(e) by direct delivery to the person served. (N.B., case decided before adoption of NRS 14.065 in 1969.) Moran v. Second Judicial Dist. Court, 72 Nev. 142, 297 P.2d 261 (1956), cited, Kelley v. Kelley, 85 Nev. 317, at 318, 454 P.2d 85 (1969), distinguished, Orme v. Eighth Judicial Dist. Court, 105 Nev. 712, at 714, 715, 782 P.2d 1325 (1989)

Service in another state by leaving a copy of summons at home of defendant invalid. In a separate maintenance action, attempted service in another state by leaving a copy of a summons at the home of the defendant with the housekeeper, the defendant being absent, was invalid, because N.R.C.P. 4(e), relating to service by publication and personal service outside the State, makes no provision for substituted service. Moran v. Second Judicial Dist. Court, 72 Nev. 142, 297 P.2d 261 (1956)

Provisions for acquiring jurisdiction without personal service must be strictly construed. Provisions of N.R.C.P. 4(e) for acquiring jurisdiction of defendants by other than personal service must be strictly construed. Foster v. Lewis, 78 Nev. 330, 372 P.2d 679 (1962)

Affidavit containing mere conclusions invalid for failure to show due diligence. In a separate maintenance action, substituted service upon a resident defendant based upon an affidavit of the plaintiff that despite her

diligent efforts his whereabouts were unknown to her, and that she had no reason to believe that he was in Nevada, was invalid for want of a showing of due diligence required by N.R.C.P. 4(e), because such affidavit reflected only the conclusion of the affiant. Penn Moultrie Corp. v. Eighth Judicial Dist. Court, 79 Nev. 269, 382 P.2d 397 (1963)

Personal service outside the State equivalent to publication where service by publication authorized. Where plaintiff was allegedly injured at a motel in Nevada owned and operated by the defendants who subsequently moved outside the State, the court acquired jurisdiction over such defendants, who were served personally with process outside the State, because: (1) the occurrence of injury while the defendants lived in Nevada was a minimum contact to satisfy due process; (2) pursuant to N.R.C.P. 4(e) service of process on such defendants could be made by publication; and (3) personal service outside the State was equivalent to publication. Gambs v. Morgenthaler, 83 Nev. 90, 423 P.2d 670 (1967), cited, Mizner v. Mizner, 84 Nev. 268, at 270, 439 P.2d 679 (1968), Certain-Teed Products Corp. v. Second Judicial Dist. Court, 87 Nev. 18, at 21, 479 P.2d 781 (1971), Blotzke v. Christmas Tree, Inc., 88 Nev. 449, at 450, 499 P.2d 647 (1972), Seely v. Illinois-California Express, Inc., 541 F. Supp. 1307, at 1310 (D. Nev. 1982), Huffy Corp. v. Overlord Indus., 246 F.Supp.2d 1093, at 1097 (D. Nev. 2003), distinguished, McCulloch Corp. v. Eighth Judicial Dist. Court, 83 Nev. 396, at 398, 433 P.2d 839 (1967)

(1) Service by Publication.

NEVADA CASES.

Personal service equivalent to publication where publication ordered. Where publication of a summons is ordered, personal service of the summons outside the State is, by sec. 31, ch. 112, Stats. 1869 (cf. N.R.C.P. 4(e) (1)), made equivalent to publication and deposit in a post office. Coffin v. Bell, 22 Nev. 169, 37 Pac. 240 (1894)

Former statute applicable to in personam actions against residents but not nonresidents. 1931 NCL § 8582 (cf. N.R.C.P. 4(e)(1)), which provides that service by publication of a summons may be ordered where it appears to a judge that the person on whom service is to be made resides outside the State, has departed the State, cannot after due diligence be found within the State, or conceals himself to avoid service, is not applicable to in personam actions against nonresidents, but may be applied to in personam actions against residents. State ex rel. Crummer v. Fourth Judicial Dist. Court, 69 Nev. 276, 249 P.2d 226 (1952), cited, Gambs v. Morgenthaler, 83 Nev. 90, at 92, 423 P.2d 670 (1967)

Statute providing the method of exercising jurisdiction does not grant or limit jurisdiction; any method or service authorized for residents. Where a court interpreted 1931 NCL § 8582 (cf. N.R.C.P. 4(e)(1)), providing for service of a summons by publication, as not applicable to in personam actions against nonresidents, and the statute made no distinction of in personam actions against residents, the conclusion that the statute was also inapplicable to in personam actions against residents outside the state did not follow, because the statute is not a grant or limitation of jurisdiction, but merely provides the method by which jurisdiction may be exercised, and the State, having inherent jurisdiction over residents, can use any method of service. State ex rel. Crummer v. Fourth Judicial Dist. Court, 69 Nev. 276, 249 P.2d 226 (1952), cited, Gambs v. Morgenthaler, 83 Nev. 90, at 92, 423 P.2d 670 (1967)

Personal service on resident outside the state sufficient notice to meet requirements of due process. Under 1931 NCL § 8582 (cf. N.R.C.P. 4(e)(1)(i)), which provides that where it appears that a person upon whom service is to be made resides outside the State, has departed the State, cannot after due diligence be found within the State, or conceals himself to avoid service, service may be made by publication of a summons, and 1931 NCL § 8583 (cf. N.R.C.P. 4(e)(1)(iii)), which provides that personal service outside the State is equivalent to service by publication, personal service on a resident outside the State was sufficient notice to meet the requirements of due process. State ex rel. Crummer v. Fourth Judicial Dist. Court, 69 Nev. 276, 249 P.2d 226 (1952)

Failure to inquire of agent not an exercise of due diligence to determine defendants' place of residence. Plaintiff who failed to inquire of defendants' collection agent, to whom payments had been made for more than 10 years, did not exercise due diligence or good faith to determine the defendants' place of residence for the purposes of an affidavit for publication of a summons under N.R.C.P. 4(e)(1)(i). Foster v. Lewis, 78 Nev. 330, 372 P.2d 679 (1962), cited, Penn Moultrie Corp. v. Eighth Judicial Dist. Court, 79 Nev. 269, at 271, 382 P.2d 397 (1963), Price v. Dunn, 106 Nev. 100, at 103, 787 P.2d 785 (1990), see also Gassett v. Snappy Car Rental, 111 Nev. 1416, at 1419, 1420, 906 P.2d 258 (1995), Browning v. Dixon, 114 Nev. 213, at 218, 954 P.2d 741 (1998), Abreu v. Gilmer, 115 Nev. 308, at 313, 985 P.2d 746 (1999)

Proviso applicable only if affidavit states both required facts. Proviso to N.R.C.P. 4(e)(1)(i) is applicable only where the person on whom service is to be made resides out of the State and his present address is unknown. An affidavit for publication of a summons which fails to state both facts is insufficient. Foster v. Lewis, 78 Nev. 330, 372 P.2d 679 (1962)

Statement of former post office box address insufficient statement of defendant's residence. An affidavit for publication of a summons giving a former post office box address for defendants was insufficient to satisfy the requirement of N.R.C.P. 4(e)(1) that the place of defendants' residence be stated. Foster v. Lewis, 78 Nev. 330, 372 P.2d 679 (1962), cited, De La Cruz v. Dufresne, 533 F. Supp. 145, at 149 (D. Nev. 1982)

Requirements for affidavit for publication of summons. An affidavit for publication of a summons under N.R.C.P. 4(e)(1)(i) is sufficient to give a court jurisdiction to order publication of the summons if it states that the party resides out of the State and that he cannot be found in the State, and gives his present place of residence out of the State. Foster v. Lewis, 78 Nev. 330, 372 P.2d 679 (1962)

Defendant served by publication waived objection to jurisdiction by entering general appearance. In an action on a debt, where: (1) service on the defendant in California was made by the Nevada plaintiff under N.R.C.P. 4(e)(1)(i), which provides for service by publication upon a nonresident defendant; (2) the defendant moved to quash the summons on the ground of lack of jurisdiction but the motion was denied; and (3) the defendant moved for summary judgment on the ground of the statute of limitations, the issue of jurisdiction was removed because the defendant did not test the validity of the denial of the motion to dismiss but rather entered a general appearance and moved for summary judgment. Havas v. Long, 85 Nev. 260, 454 P.2d 30 (1969), but see Hansen v. Eighth Judicial Dist. Court, 116 Nev. 650, at 656, 6 P.3d 982 (2000)

Single attempt to effectuate personal service was insufficient to support order for service by publication. Where the record on an appeal of a civil action for medical malpractice indicated that the plaintiff was granted a 6-month extension of time in which to serve the defendant personally but the plaintiff made only one attempt at service during that period, the Supreme Court concluded from evidence of the record that the plaintiff failed to make an adequate showing of due diligence required by N.R.C.P. 4(e)(1)(i) to support the district court's order for service by publication. McNair v. Rivera, 110 Nev. 463, 874 P.2d 1240 (1994), cited, Gassett v. Snappy Car Rental, 111 Nev. 1416, at 1420, 906 P.2d 258 (1995), see also Browning v. Dixon, 114 Nev. 213, at 218, 954 P.2d 741 (1998)

Attempted service consisting of one visit to an old address and service by publication failed to demonstrate due diligence under the circumstances. Where an attempt of the plaintiff to serve a summons and complaint consisted of one visit to an old address and service by publication, and no attempt was made to locate the defendant through her attorney even though the plaintiff knew that the defendant had been represented by the attorney, the plaintiff's attempt at service failed to demonstrate due diligence (see N.R.C.P. 4(e)(1)(i)). Thus, default judgment entered against the defendant was void because of failure of jurisdiction. Gassett v. Snappy Car Rental, 111 Nev. 1416, 906 P.2d 258 (1995), cited, Browning v. Dixon, 114 Nev. 213, at 218, 954 P.2d 741 (1998), Abreu v. Gilmer, 115 Nev. 308, at 313, 985 P.2d 746 (1999)

Plaintiffs exercised due diligence in attempting personal service before resorting to service by publication. In an action arising from an automobile accident where: (1) no police report was prepared; (2) the parties exchanged limited personal information; (3) the defendant was highly transient and her location was not easily discoverable through normal investigative means; (4) the plaintiffs attempted personal service; (5) the plaintiffs attempted to serve the defendant through her known insurer and putative attorney; and (6) after the unsuccessful attempts to personally serve the defendant, the plaintiffs resorted to service by publication pursuant to NRCP 4(e)(1), the court held that the plaintiffs exercised due diligence to locate and serve the defendant before resorting to service by publication. Abreu v. Gilmer, 115 Nev. 308, 985 P.2d 746 (1999)

Receipt of actual notice may be one factor in determining whether the plaintiff exercised due diligence in attempting service of process. In an action arising from an automobile accident where: (1) the plaintiffs attempts at personal service were unsuccessful; and (2) the plaintiffs attempted to serve the defendant through her known insurer and putative attorney, the Court noted that although the insurer and the attorney were not obligated to assist the plaintiffs in serving the defendant, the efforts made by the plaintiffs were reasonable and calculated to afford the defendant her right to due process. The Court further noted that although actual notice of a suit is not an effective substitute for service of process, receipt of actual notice of a complaint may be one factor in determining if the plaintiff exercised due diligence in attempting service of process, as required by NRCP 4(e)(1). Abreu v. Gilmer, 115 Nev. 308, 985 P.2d 746 (1999)

There is no objective formula for determining whether a plaintiff has exercised due diligence. In an action arising from an automobile accident where the plaintiffs attempts at personal service were unsuccessful and therefore the plaintiffs resorted to service by publication pursuant to NRCP 4(e)(1), the Court noted that there is no objective, formulaic standard for determining whether the plaintiffs have exercised due diligence. The Court stated that the "due diligence requirement is not quantifiable by reference to the number of service attempts or inquiries into public records. Instead, due diligence is measured by the

qualitative efforts of a specific plaintiff seeking to locate and serve a specific defendant." Abreu v. Gilmer, 115 Nev. 308, 985 P.2d 746 (1999)

(2) Personal Service Outside the State.

NEVADA CASES.

Failure to obtain court order not justification for quashing service where service authorized by statute without court order. Defendant in a Nevada divorce action who was personally served in his state of residence (California) could not quash service of the process on the ground that it was not carried out in compliance with N.R.C.P. 4(e)(2), which requires a court order, where he had lived in a marital relationship in Nevada and the plaintiff continued to reside in Nevada, because NRS 14.065 provided that under those circumstances he could be personally served without a court order. Under N.R.C.P. 4(e)(3) and 81(a), NRS 14.065 took precedence over N.R.C.P. 4(e)(2). Wylie v. Second Judicial Dist. Court, 96 Nev. 620, 614 P.2d 12 (1980), cited, Orme v. Eighth Judicial Dist. Court, 105 Nev. 712, at 716, 782 P.2d 1325 (1989)

Service on wife of defendant outside State an effective substitute service under the circumstances. Where service of a summons and complaint upon defendant was made outside the State by delivery to his wife and district court granted the defendant's motion to quash service, appellate court held that: (1) the substituted service of process was sufficient and the petitioner was entitled to a writ of mandamus compelling district court to accept personal jurisdiction; (2) the provisions of N.R.C.P. 4(e)(2) requiring personal service were not specifically applicable because the defendant was not a resident of this State and the proceeding was not an action in rem or an action affecting specific property; and (3) service was effective since NRS 14.065 authorizes service upon a party outside of the State if done in the same manner as required for service upon a person of like kind to the defendant within the State, and N.R.C.P. 4(d)(6) provides that a person of like kind within this State may be served by personal delivery in hand or by leaving copies of the summons and complaint at his dwelling house or usual place of abode with some person of suitable age and discretion there residing. Orme v. Eighth Judicial Dist. Court, 105 Nev. 712, 782 P.2d 1325 (1989)

(3) Statutory Service.

NEVADA CASES.

Failure to obtain a court order not justification for quashing service where service authorized by statute without a court order. The defendant in a Nevada divorce action who was personally served in his state of residence (California) could not quash service of process on the ground that it was not carried out in compliance with N.R.C.P. 4(e)(2), which requires a court order, where he had lived in a marital relationship in Nevada and the plaintiff continued to reside in Nevada, because NRS 14.065 provided that under those circumstances he could be personally served without a court order. Under N.R.C.P. 4(e)(3) and 81(a), NRS 14.065 took precedence over N.R.C.P. 4(e)(2). Wylie v. Second Judicial Dist. Court, 96 Nev. 620, 614 P.2d 12 (1980), cited, Orme v. Eighth Judicial Dist. Court, 105 Nev. 712, at 716, 782 P.2d 1325 (1989)

(f) Territorial Limits of Effective Service.

NEVADA CASES.

General appearance in mandamus proceeding waives irregularities in the writ. Under sec. 35, ch. 103, Stats. 1861 (cf. N.R.C.P. 4(f)), which provides that voluntary appearance of a defendant is equivalent to personal service upon him, a general appearance of the respondent in a mandamus proceeding waives all irregularities in the writ. State ex rel. Curtis v. McCullough, 3 Nev. 202 (1867)

Person physically present in Nevada subject to service of process. Where a resident of Nevada was injured at the petitioner's home in California, served copy of a summons and complaint on the petitioner while he was in Las Vegas and district court denied the petitioner's motion to quash service of process, the Supreme Court, pursuant to N.R.A.P. 21(b), denied the petition for a writ of mandamus because: (1) pursuant to N.R.C.P. 4(f) personal jurisdiction may be asserted over a person served with process while physically present in Nevada; (2) resort to the "long-arm statute," NRS 14.065, and the constitutional "minimum contacts" analysis was unnecessary in this case; and (3) any hardships arising out of the exercise of personal jurisdiction over a nonresident defendant who is served within the forum can be avoided through recourse to the doctrine of forum non conveniens pursuant to NRS 13.050. Cariaga v. Karatz, 104 Nev. 544, 762 P.2d 886 (1988)

(g) Return.

NEVADA CASES.

Certification of an affidavit by a deputy county clerk authorized. Where proof of service is made by an affidavit of the person serving, certification of the fact that the affidavit has been sworn to by affiant may be made by the deputy county clerk of the county where such proof of service is made. Gillig, Mott & Co. v. Independent Gold & Silver Mining Co., 1 Nev. 247 (1865)

Court bound to give credence to properly certified affidavit unless false on its face. The Supreme Court of Nevada is bound to give credence to an affidavit which has been properly certified by a county clerk or his deputy unless there is something on the face of the affidavit showing it to be false. Gillig, Mott & Co. v. Independent Gold & Silver Mining Co., 1 Nev. 247 (1865)

Knowledge of an action and retention of an attorney not evidence of proof of service or admission of service. Neither proof of constructive service of summons, nor admission of service, pursuant to RL § 5032 (cf. N.R.C.P. 4(g)), was made by evidence tending to show that the defendant had knowledge of pendency of an action and had engaged an attorney to represent her. Williamson v. Williamson, 52 Nev. 78, 280 Pac. 651 (1929)

Error in mailing address in affidavit corrected after judgment to reflect address of actual mailing. After service of a summons by publication in compliance with RL § 5032 (cf. N.R.C.P. 4(g)), an affidavit of mailing which contains an error in the address to which the summons was mailed may be amended after a judgment to show the address to which the summons was actually mailed in accordance with a court order. Williamson v. Williamson, 52 Nev. 78, 280 Pac. 651 (1929)

Proof of service by publication required before trial court authorized to find it has jurisdiction over defendant. Where summons is served by publication, proof of service as required by RL § 5032 (cf. N.R.C.P. 4(g)) must be furnished before a trial court is authorized to find that it has jurisdiction over the person of the defendant. Williamson v. Williamson, 52 Nev. 78, 280 Pac. 651 (1929)

Affidavit of publication by manager of publisher invalid. Where summons was served by publication in compliance with RL § 5032 (cf. N.R.C.P. 4(g)), an affidavit of publication made by the manager of the publisher did not comply with the statute, as the manager was not one of the persons specifically authorized by statute, and it did not appear from the affidavit that he had knowledge of the publication. Williamson v. Williamson, 52 Nev. 78, 280 Pac. 651 (1929)

(i) Summons: Time Limit for Service.

NEVADA CASES.

Facts warranting good cause for failure to serve timely process. On an appeal from a district court order dismissing appellant's complaint without prejudice for failure to effect service of a summons and complaint within 120 days pursuant to N.R.C.P. 4(i), where the record revealed that: (1) the appellant's Nevada counsel agreed to file the complaint at the request of the appellant's California counsel with the express understanding that the California counsel arrange to have a different Nevada counsel handle the remainder of the litigation; (2) the Nevada counsel returned the appellant's case file to the California counsel; (3) the California counsel could not arrange for a substitution of the Nevada counsel; (4) the California counsel returned the file to the Nevada counsel 10 days before the expiration of the 120-day time limitation; (5) the combination of difficulties with the summons and the communications with the California counsel, and the absence of the Nevada counsel from his office in part because of illness; (6) the Nevada counsel did attempt to serve process within the time allowed, and service was repeatedly attempted until counsel successfully served process 9 days after the 120 days mandated by N.R.C.P. 4(i); and (7) the delay in service caused no prejudice to the respondents, the Court concluded that the appellant demonstrated good cause for her failure to serve timely process and reversed the district court order. Domino v. Gaughan, 103 Nev. 582, 747 P.2d 236 (1987), cited, Scrimer v. Eighth Judicial Dist. Court, 116 Nev. 507, at 513, 998 P.2d 1190 (2000), see also Lacey v. Wen-Neva, Inc., 109 Nev. 341, at 344-346, 849 P.2d 260 (1993), distinguished, Dallman v. Merrell, 106 Nev. 929, at 931, 803 P.2d 232 (1990), Dougan v. Gustaveson, 108 Nev. 517, at 520, 835 P.2d 795 (1992)

Dismissal for failure timely to serve process was proper. Where plaintiff failed to serve defendant with a summons and complaint until 230 days after the complaint was filed, and district court found that the plaintiff had not shown good cause for failure to serve process within 120 days as required by N.R.C.P. 4(i) and that some prejudice to the defendant would result from the delay, district court properly granted the defendant's motion to dismiss. Dallman v. Merrell, 106 Nev. 929, 803 P.2d 232 (1990), cited, Dougan v. Gustaveson, 108 Nev. 517, at 520, 835 P.2d 795 (1992), Scrimer v. Eighth Judicial Dist. Court, 116 Nev. 507, at 514, 998 P.2d 1190 (2000), see also Lacey v. Wen-Neva, Inc., 109 Nev. 341, at 344, 849 P.2d 260 (1993), Clark v. Columbia/HCA Info. Servs., Inc., 117 Nev. 468, at 481, 25 P.3d 215 (2001)

Inadvertence does not justify untimely service. Where plaintiff failed to serve process upon the defendant until 128 days after the complaint was filed, the fact that service was late because the secretary who calendared service of process mistakenly thought that the service had to occur within 120 days after the date of the return of the filed complaint from the clerk of the court, rather than 120 days after the complaint was filed, was insufficient to demonstrate good cause for untimely service pursuant to N.R.C.P. 4(i). Inadvertence does not justify untimely service. Dougan v. Gustaveson, 108 Nev. 517, 835

P.2d 795 (1992), cited, Lacey v. Wen-Neva, Inc., 109 Nev. 341, at 346, 849 P.2d 260 (1993), but see Scrimer v. Eighth Judicial Dist. Court, 116 Nev. 507, 998 P.2d 1190 (2000)

Failure timely to assert defect in service constituted a waiver of objection. Where plaintiff, in violation of N.R.C.P. 4(i), failed to serve process upon the defendant until 128 days after the complaint was filed, but the defendant failed to object to the late service until 2 months after his answer was filed and nearly 1 year after he was served, the defendant was held to have waived his objection to untimely service by failing to assert it in his first responsive pleading or by a motion before the pleading. Therefore, district court erred in dismissing the action pursuant to N.R.C.P. 4(i). Dougan v. Gustaveson, 108 Nev. 517, 835 P.2d 795 (1992), cited, Lacey v. Wen-Neva, Inc., 109 Nev. 341, at 347, 849 P.2d 260 (1993), Scrimer v. Eighth Judicial Dist. Court, 116 Nev. 507, at 512, 998 P.2d 1190 (2000), Hansen v. Eighth Judicial Dist. Court, 116 Nev. 650, at 657, 6 P.3d 982 (2000)

Action dismissed for failure to effect service of process within the statutory period. Plaintiff in a personal injury action served a copy of a complaint upon the defendant within 1 month after filing the complaint, but service was defective. More than 1 year later, the plaintiff amended the complaint and properly served the defendant. The defendant's motion to dismiss the action for failure to effect service of process within 120 days after filing the complaint, as required by N.R.C.P. 4(i), was granted by the district court. On appeal, judgment of district court was affirmed because: (1) plaintiff could not show "good cause" for his failure to serve defendant timely; (2) defendant did not waive its objection to the defective original service by failing to bring a motion to quash service before bringing a motion to dismiss; and (3) filing an amended complaint which did not add new parties did not extend the time of initial service beyond the 120-day period beginning with the filing of the original complaint. Lacey v. Wen-Neva, Inc., 109 Nev. 341, 849 P.2d 260 (1993), but see Scrimer v. Eighth Judicial Dist. Court, 116 Nev. 507, 998 P.2d 1190 (2000)

Settlement negotiations between parties did not constitute good cause for failure to serve process timely. Where plaintiff in a personal injury action failed properly to serve a complaint upon defendant within 120 days after filing the complaint as required by N.R.C.P. 4(i), the fact that defendant entered into settlement negotiations with plaintiff did not relieve plaintiff from properly serving the complaint timely. Absent an agreement between the parties as part of the settlement negotiations that service requirements of N.R.C.P. 4(i) would not be strictly enforced, settlement negotiations alone did not constitute good cause for plaintiff's failure to serve process within the statutory period. Lacey v. Wen-Neva, Inc., 109 Nev. 341, 849 P.2d 260 (1993)

Overruled, Scrimer v. Eighth Judicial Dist. Court, 116 Nev. 507, 998 P.2d 1190 (2000)

Where defendant warns plaintiff of defect in service of process, subsequent motion to dismiss for failure to effect service within the statutory period does not waive defendant's objection to sufficiency of original service of process. In a personal injury action, the facts established that: (1) plaintiff served the complaint upon defendant within 120 days after filing the complaint as required by N.R.C.P. 4(i); (2) defendant warned plaintiff that service was defective; (3) more than 1 year later, plaintiff amended the complaint and properly served defendant; and (4) defendant filed a motion to dismiss pursuant to N.R.C.P. 4(i) for failure of plaintiff to effect service of process within the statutory period. Plaintiff's assertion that defendant's failure to file a motion to quash service waived any objection to the original defective service of process was rejected because where defendant warns plaintiff of defect in service, motion to dismiss pursuant to N.R.C.P. 4(i) does not waive defendant's objection to sufficiency of original service of process. Lacey v. Wen-Neva, Inc., 109 Nev. 341, 849 P.2d 260 (1993)

Statutory period within which service must be effected is not tolled by amendment of complaint as to defendants named in original complaint. Amendment of a complaint by plaintiff does not justify a delay in service of the original complaint unless the amended complaint names an additional party as a defendant. If the amended complaint adds a defendant, a new 120-day period within which service must be effected begins to run as to the added defendant. However, the amendment does not toll the 120-day period as to the defendants already named. Where the plaintiff did not effect service of either the original or the amended complaint within 120 days after filing of the original complaint, district court did not err in dismissing the action pursuant to N.R.C.P. 4(i). Lacey v. Wen-Neva, Inc., 109 Nev. 341, 849 P.2d 260 (1993), cited, Scrimer v. Eighth Judicial Dist. Court, 116 Nev. 507, at 515, 998 P.2d 1190 (2000)

Amendment of complaint to correct the name of defendant after running of statute of limitations was permissible under the circumstances. Where a complaint was filed before running of the statute of limitations, no fictitious defendants were named in the original complaint as permitted by N.R.C.P. 10(a), plaintiff incorrectly named the party a defendant, and plaintiff amended the complaint after running of the statute of limitations to name the correct defendant, defendant was properly brought into the action even though the statute of limitations had run because plaintiff who has incorrectly named the party a defendant in the timely filed complaint may amend the complaint to name the correct defendant so long as the correct

defendant is served within the time allowed by N.R.C.P. 4(i). (See also N.R.C.P. 15(a).) Bender v. Clark Equip. Co., 111 Nev. 844, 897 P.2d 208 (1995)

Delay in personal service was excused for good cause under the circumstances. In an action arising from an automobile accident where: (1) the plaintiffs exercised due diligence in attempting personal service; (2) the plaintiffs resorted to service by publication within 120 days after the complaint had been filed; (3) the defendant subsequently filed a motion to quash the service of process for untimely service, which motion contained the defendant's current address; and (4) the plaintiffs obtained the defendant's current address from the motion to quash and personally served the defendant 146 days after the complaint was filed, the Supreme Court held that the delay in personal service was excused because the plaintiffs had exercised due diligence before resorting to service by publication and the service by publication within the 120-day limit prescribed by NRCP 4(i) was efficacious in notifying the defendant. Abreu v. Gilmer, 115 Nev. 308, 985 P.2d 746 (1999)

Considerations governing district court's analysis of whether good cause exists: No automatic sanction for failure to serve within 120 days. A "balanced and multifaceted analysis" by the district court is warranted to determine whether good cause exists pursuant to N.R.C.P. 4(i) for failure to serve a summons and complaint within 120 days after filing of the complaint. Such an analysis includes the following considerations, with no single consideration controlling the outcome: (1) difficulties in locating the defendant; (2) the defendant's efforts at evading service or concealing improper service until after the 120-day period has lapsed; (3) the plaintiff's diligence in attempting to serve the defendant; (4) difficulties encountered by counsel; (5) the running of the applicable statute of limitations; (6) the parties' good faith attempts to settle the litigation during the 120-day period; (7) the lapse of time between the end of the 120-day period and the actual service of process on the defendant; (8) the prejudice to the defendant caused by the plaintiff's delay in serving the defendant; (9) the defendant's knowledge of the existence of the lawsuit; and (10) any extensions of time for service granted by the district court. Underlying these considerations is the policy behind N.R.C.P. 4(i) to encourage the diligent prosecution of complaints; however, the rule was not adopted to become an automatic sanction when a plaintiff fails to serve a complaint within 120 days after filing. Scrimer v. Eighth Judicial Dist. Court, 116 Nev. 507, 998 P.2d 1190 (2000), cited, Civil Serv. Comm'n v. Second Judicial Dist. Court, 118 Nev. 186, at 190, 42 P.3d 268 (2002)

NEVADA REVISED STATUTES

NRS Chapter 126

REVISER'S NOTE.

Ch. 599, Stats. 1979, the source of NRS 126.011 to 126.231, inclusive, contains a preamble not included in NRS, which reads as follows:

"WHEREAS, The parent and child relationship, with its rights, privileges, duties and obligations, extends equally to every child and to every parent regardless of the marital status of the parents, and it is the duty of the state to establish means to protect and enforce these interests as well as those of adoptive parents; and

WHEREAS, The failure of parents to provide adequate financial support and care for their children is a major cause of financial dependency and a contributing cause to social delinquency; and

WHEREAS, The present remedies are slow and uncertain, and result in a burden on the resources of the state, which must provide public assistance for basic maintenance when parents fail to meet their obligations; and

WHEREAS, It is the duty of the state to conserve money for public assistance by providing reasonable and effective means to enforce the obligations of persons who are responsible for the care and support of their children; and

WHEREAS, Determination of parentage is necessary to effective enforcement of that responsibility;"

NEVADA CASES.

Where no issue of fact remained for determination and summary judgment should have been granted for defendant, writ of mandate was issued requiring trial court to dismiss action. In a proceeding under the former Uniform Illegitimacy Act (see NRS ch. 126), where no issue of fact remained for determination and summary judgment should have been granted for the defendant, a writ of mandate was issued requiring the trial court to dismiss the action, because no appeal lies from the denial of a motion for summary judgment. Smith v. Gabrielli, 80 Nev. 390, 395 P.2d 325 (1964), cited, Holloway v. Barrett, 87 Nev. 385, at 389, 487 P.2d 501 (1971), State ex rel. Dep't of Highways v. Eighth Judicial Dist. Court, 95 Nev. 715, at 718, 601 P.2d 710 (1979), Ash Springs Dev. Corp. v. O'Donnell, 95 Nev. 846, at 847, 603 P.2d 698 (1979), distinguished, Perry v. Byrd, 87 Nev. 431, at 434, 488 P.2d 550 (1971), Moore v. Eighth Judicial Dist. Court, 96 Nev. 415, at 416, 610 P.2d 188 (1980)

Chapter is not an exclusive procedure for compelling the support of an illegitimate child. NRS ch. 126, formerly the Uniform Illegitimacy Act, is not an exclusive procedure for compelling the support of an illegitimate child, see the provisions of former NRS 126.080 (cf. NRS 126.291). Therefore, where the defendant had

promised to contribute to the child's support, an action based on his contractual obligation rather than on the obligation of support imposed by the provisions of former NRS 126.030 (see NRS 125B.020) was valid, and compliance with the procedural requirements of NRS ch. 126 was not necessary. Bruno v. Schoch, 94 Nev. 712, 582 P.2d 796 (1978)

GENERAL PROVISIONS

NRS 126.011 Applicability of chapter. This chapter applies to all persons, no matter when born.
(Added to NRS by 1979, 1269)

NRS 126.021 Definitions. As used in this chapter, unless the context otherwise requires:
1. "Custodial parent" means the parent of a child born out of wedlock who has been awarded physical custody of the child or, if no award of physical custody has been made by a court, the parent with whom the child resides.
2. "Nonsupporting parent" means the parent of a child born out of wedlock who has failed to provide an equitable share of his child's necessary maintenance, education and support.
3. "Parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. It includes the mother and child relationship and the father and child relationship.
(Added to NRS by 1979, 1269; A 1983, 1867)

NRS 126.031 Relationship of parent and child not dependent on marriage; primary physical custody of child born out of wedlock.
1. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.
2. Except as otherwise provided in a court order for the custody of a child:
(a) Except as otherwise provided in paragraph (b), the mother of a child born out of wedlock has primary physical custody of the child if:
(1) The mother has not married the father of the child; and
(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.
(b) The father of a child born out of wedlock has primary physical custody of the child if:
(1) The mother has abandoned the child to the custody of the father; and
(2) The father has provided sole care and custody of the child in her absence.
3. For the purposes of this section, "abandoned" means failed, for a continuous period of not less than 6 weeks, to provide substantial personal and economic support.
4. As used in this section, "expedited process" has the meaning ascribed to it in NRS 126.161.
(Added to NRS by 1979, 1270; A 1993, 1425; 1997, 2303)

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Parent and Child ! 1.
WESTLAW Topic Nos. 76H, 285.
C.J.S. Children Out-of-Wedlock §§ 37, 38.
C.J.S. Parent and Child §§ 2-10.

NRS 126.041 Establishment of relationship. The parent and child relationship between a child and:
1. The natural mother may be established by proof of her having given birth to the child, or under this chapter, or NRS 125B.150 or 130.701.
2. The natural father may be established under this chapter, or NRS 125B.150, 130.701 or 425.382 to 425.3852, inclusive.
3. An adoptive parent may be established by proof of adoption.
(Added to NRS by 1979, 1270; A 1983, 1867; 1997, 2303; 1999, 3570)

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Children Out-of-Wedlock ! 12, 13.
WESTLAW Topic No. 76H.
C.J.S. Children Out-of-Wedlock §§ 23, 25, 26, 28.

SURROGACY AGREEMENTS

NRS 126.045 Contract requirements; treatment of intended parents as natural parents; unlawful acts.
1. Two persons whose marriage is valid under chapter 122 of NRS may enter into a contract with a surrogate for assisted conception. Any such contract must contain provisions which specify the respective rights of each party, including:
(a) Parentage of the child;
(b) Custody of the child in the event of a change of circumstances; and
(c) The respective responsibilities and liabilities of the contracting parties.
2. A person identified as an intended parent in a contract described in subsection 1 must be treated in law as a natural parent under all circumstances.

3. It is unlawful to pay or offer to pay money or anything of value to the surrogate except for the medical and necessary living expenses related to the birth of the child as specified in the contract.

4. As used in this section, unless the context otherwise requires:

(a) "Assisted conception" means a pregnancy resulting when an egg and sperm from the intended parents are placed in a surrogate through the intervention of medical technology.

(b) "Intended parents" means a man and woman, married to each other, who enter into an agreement providing that they will be the parents of a child born to a surrogate through assisted conception.

(c) "Surrogate" means an adult woman who enters into an agreement to bear a child conceived through assisted conception for the intended parents.

(Added to NRS by 1993, 2050; A 1995, 1075)

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Contracts ! 108(2).
WESTLAW Topic No. 95.
C.J.S. Contracts §§ 212 et seq.

PATERNITY GENERALLY

NRS 126.051 Presumptions of paternity.

1. A man is presumed to be the natural father of a child if:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 285 days after the marriage is terminated by death, annulment, declaration of invalidity or divorce, or after a decree of separation is entered by a court.

(b) He and the child's natural mother were cohabiting for at least 6 months before the period of conception and continued to cohabit through the period of conception.

(c) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is invalid or could be declared invalid, and:

(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 285 days after its termination by death, annulment, declaration of invalidity or divorce; or

(2) If the attempted marriage is invalid without a court order, the child is born within 285 days after the termination of cohabitation.

(d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.

2. A conclusive presumption that a man is the natural father of a child is established if tests for the typing of blood or tests for genetic identification made pursuant to NRS 126.121 show a probability of 99 percent or more that he is the father except that the presumption may be rebutted if he establishes that he has an identical sibling who may be the father.

3. A presumption under subsection 1 may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

(Added to NRS by 1979, 1270; A 1983, 1868; 1995, 732, 2416; 1997, 2304; 2007, 1523)

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Children Out-of-Wedlock ! 3.
WESTLAW Topic No. 76H.
C.J.S. Children Out-of-Wedlock §§ 13-17.

NEVADA CASES.

Objection to a petition for distribution in probate proceedings sufficient to bring a child within the purview of the statutes. An objection to a petition for distribution in probate proceedings which alleged that the decedent was the father of an illegitimate child, had publicly acknowledged that he was the father, and had provided maintenance and schooling for the child, was sufficient to bring the child within the purview of RL § 5833 (cf. NRS 126.051, 126.071), which provides that the father of an illegitimate child, by publicly acknowledging it as his own or otherwise treating it as his legitimate child, adopts it, and it is deemed legitimate from birth. In re Estate of Parrott, 45 Nev. 318, 203 Pac. 258 (1922)

Payments by a putative father for expenses connected with the birth of an illegitimate child do not constitute furnishing support. Payments by a putative father for hospital and medical expenses connected with the birth of an illegitimate child, whether made before or after the birth, do not constitute the furnishing of support under the provisions of former NRS 126.340 (cf. NRS 126.051 and 126.081), which limits the bringing of an action to enforce an obligation unless paternity has been acknowledged by the furnishing of support. Smith v. Gabrielli, 80 Nev. 390, 395 P.2d 325 (1964)

Neither an oral acknowledgment by telephone nor a cashier's check given the physician by a putative father is sufficient to toll the statute of limitations. Under the provisions of former NRS 126.340 (cf. NRS 126.051 and 126.081), which provided for the tolling of the statute of limitations in a bastardy action by the acknowledgment of paternity in writing, neither an oral acknowledgment by telephone nor a cashier's check given the

physician by the putative father for services in the birth of the child is sufficient. Smith v. Gabrielli, 80 Nev. 390, 395 P.2d 325 (1964)

Furnishing of support should be regular and fairly consistent to toll the statute of limitations. In order to toll the statute of limitations under the Uniform Illegitimacy Act, the provisions of former NRS 126.340 (cf. NRS 126.051 and 126.081), the "furnishing of support" must be the course of conduct sufficient to substitute written acknowledgment of paternity. It may include the payment of money, provided the intention is that the money be used for the support of the child and no other purpose. The furnishing of support should be regular and fairly consistent. Smith v. Gabrielli, 80 Nev. 390, 395 P.2d 325 (1964)

Illegitimate child was "heir" for the purposes of a wrongful death action. A minor posthumous illegitimate child had a cause of action for the wrongful death of a putative father where paternity was clearly established despite the lack of a written acknowledgment pursuant to the provisions of former NRS 134.170 (cf. NRS 126.051), because for the purposes of a wrongful death action, she was the "child" of a decedent within the meaning of the term as used in the provisions of former NRS 41.090 (cf. NRS 41.085), and "heir" within the meaning of former provisions of NRS 12.080, since the equal protection clause prohibits discrimination between legitimate and illegitimate children in wrongful death actions. Weaks v. Mounter, 88 Nev. 118, 493 P.2d 1307 (1972)

Statute is applicable in a custody proceeding to determine paternity and the doctrine of equitable adoption does not apply in such a proceeding. In a custody proceeding to determine legal parentage, where the district court found that the wife's husband was the legal father of the child although blood tests conclusively established that he was not the biological father of the child, the supreme court reversed and held that paternity is properly determined in accordance with NRS 126.051 and that the doctrine of equitable adoption enunciated in Frye v. Frye, 103 Nev. 301, 738 P.2d 505 (1987) was inapplicable in such a proceeding. Hermanson v. Hermanson, 110 Nev. 1400, 887 P.2d 1241 (1994), cited, Russo v. Gardner, 114 Nev. 283, at 288, 956 P.2d 98 (1998)

Res judicata does not preclude an ex-husband from proving that he is not the biological father of a child if his ex-wife fraudulently concealed the child's paternity when the parties obtained their divorce decree. Where: (1) in a divorce action, the husband did not challenge the paternity of his wife's child, whom he believed to be his biological child, and agreed to pay child support and other reasonable expenses for the child; (2) DNA tests subsequently confirmed that the husband was not the biological father of the child; and (3) the husband filed a motion for summary judgment to establish that he was not the biological father of the child and to set aside the divorce decree as it related to custody, maintenance and support of the child, alleging that his ex-wife fraudulently concealed the child's paternity when the divorce decree was entered, the supreme court reversed the order of the district court denying the husband's motion for summary judgment and held that although the judgment as to the paternity of the child in the original divorce proceeding would ordinarily operate as res judicata and preclude the parties from relitigating the issue of paternity, in this case a genuine issue of material fact existed as to whether the ex-wife fraudulently concealed the child's paternity when the divorce decree was entered. Accordingly, the supreme court held that on remand the district court must, as a threshold matter, determine whether the original judgment was procured by fraud, in which case res judicata would not preclude the husband from proving that he was not the biological father of the child. (See NRS 125.510, 126.051 and 126.071.) Love v. Love, 114 Nev. 572, 959 P.2d 523 (1998)

Statute sets forth rebuttable presumptions of paternity rather than conclusive presumptions. Where: (1) in a divorce action, the husband did not challenge the paternity of his wife's child, whom he believed to be his biological child, and agreed to pay child support and other reasonable expenses for the child; (2) DNA tests subsequently confirmed that the husband was not the biological father of the child; and (3) the husband filed a motion for summary judgment to establish that he was not the biological father of the child and to set aside the divorce decree as it related to custody, support and maintenance of the child, the supreme court rejected the husband's contention that the results of the DNA tests proved as a matter of law that he had no legal responsibility for the child because NRS 126.051 sets forth rebuttable presumptions of paternity and not conclusive presumptions. In this case, the results of the DNA tests created a presumption of nonpaternity that conflicted with the presumption of paternity arising from the fact that the husband was married to the child's mother, the husband apparently cohabited with the child's mother for 1 year before the child was born and the husband held out the child as his own. Therefore, on remand the district court must determine, pursuant to NRS 126.051, which presumptions are "founded on the weightier considerations of policy and logic." Love v. Love, 114 Nev. 572, 959 P.2d 523 (1998)

The results of DNA tests do not conclusively establish paternity. Where: (1) in a divorce action, the husband did not challenge the paternity of his wife's child, whom he believed to be his biological child, and agreed to pay child support and other reasonable expenses for the child; (2) DNA tests subsequently confirmed that

the husband was not the biological father of the child; and (3) the husband filed a motion for summary judgment to establish that he was not the biological father of the child and to set aside the divorce decree as it related to custody, support and maintenance of the child, the supreme court rejected the husband's contention that the results of the DNA tests proved as a matter of law that he had no legal responsibility for the child because the statutory scheme established by the legislature does not require the district court to determine, as a matter of law, that a man is not a child's biological father based upon the results of DNA tests. (See NRS 126.051 and 126.121.) The supreme court stated that "[t]his statutory scheme clearly reflects the legislature's intent to allow nonbiological factors to become critical in a paternity determination." In this case, the results of the DNA tests created a presumption of nonpaternity that conflicted with the presumption of paternity arising from the fact that the husband was married to the child's mother, the husband apparently cohabited with the child's mother for 1 year before the child was born and the husband held out the child as his own. Therefore, on remand the district court must determine, pursuant to NRS 126.051, which presumptions are "founded on the weightier considerations of policy and logic." Love v. Love, 114 Nev. 572, 959 P.2d 523 (1998)

ATTORNEY GENERAL'S OPINIONS.

Paternity affidavit signed by a man other than the biological father of the child may not be used as legal defense to avoid an order of child support. The conclusive presumption of paternity set forth in former provisions of NRS 440.280 is intended only to apply to vital statistics and not for the purpose of establishing responsibility for child support. The conclusive presumption is rebuttable by a standard of clear and convincing evidence set forth in NRS 126.051. Thus, a paternity affidavit signed by a man other than the biological father of the child may not be used by the biological father as legal defense to avoid an order of child support. AGO 94-12 (5-26-1994)

NRS 126.053 Voluntary acknowledgment of paternity.

1. After the expiration of the period described in subsection 2, a declaration for the voluntary acknowledgment of paternity developed by the State Board of Health pursuant to NRS 440.283 shall be 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 in this or any other state by the mother and father of the child. A declaration for the voluntary acknowledgment of paternity that is signed pursuant to this subsection is not required to be ratified by a court of this State before the 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.

2. A person who signs an acknowledgment of paternity in this State may rescind the acknowledgment:

(a) Within 60 days after the acknowledgment is signed by both persons; or

(b) Before the date on which an administrative or judicial proceeding relating to the child begins if that person is a party to the proceeding,

➥ whichever occurs earlier.

3. After the expiration of the period during which an acknowledgment may be rescinded pursuant to subsection 2, the acknowledgment may not be challenged except upon the grounds of fraud, duress or material mistake of fact. The burden of proof is on the person challenging the acknowledgment to establish that the acknowledgment was signed because of fraud, duress or material mistake of fact.

4. Except upon a showing of good cause, a person's obligation for the support of a child must not be suspended during a hearing to challenge a voluntary acknowledgment of paternity.

(Added to NRS by 1997, 2301; A 2007, 1524)

NRS 126.061 Artificial insemination.

1. If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the Health Division of the Department of Health and Human Services, where, except as otherwise provided in NRS 239.0115, it must be kept confidential and in a sealed file. The physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

2. The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

(Added to NRS by 1979, 1271; A 2007, 2073)

NRS CROSS REFERENCES.

Physician defined, NRS 0.040

ACTION TO DETERMINE PATERNITY

NRS 126.071 Who may bring action; when action may be brought.

1. A child, his natural mother, a man presumed or alleged to be his father or an interested third party may bring an action pursuant to this chapter to declare the existence or nonexistence of the father and child relationship.

2. If an action under this section is brought before the birth of the child, all proceedings must be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

3. Upon the request of any of the persons listed in subsection 1, the district attorney shall take such action as is necessary to establish the parentage of a child.

(Added to NRS by 1979, 1271; A 1983, 1869; 1987, 2251)

WEST PUBLISHING CO.

Children Out-of-Wedlock ! 34.

WESTLAW Topic No. 76H.

C.J.S. Children Out-of-Wedlock §§ 85, 86, 89.

NEVADA CASES.

Objection to petition for distribution in probate proceedings sufficient to bring child within purview of statutes. An objection to a petition for distribution in probate proceedings which alleged that decedent: (1) was the father of an illegitimate child; (2) had publicly acknowledged that he was the father; and (3) had provided maintenance and schooling for the child, was sufficient to bring the child within the purview of RL § 5833 (cf. NRS 126.051, 126.071), which provides that the father of an illegitimate child, by publicly acknowledging it as his own or otherwise treating it as his legitimate child, adopts it, and it is deemed legitimate from birth. In re Estate of Parrott, 45 Nev. 318, 203 Pac. 258 (1922)

Where a child born out of wedlock is acknowledged by the natural father, consent of the natural father is required for adoption by the stepfather. Where the natural father of a child born out of wedlock had obtained a declaration of the existence of the relation of parent and child between himself and the child under the provisions of former NRS 41.530 (cf. NRS 126.071) prior to the filing of a petition of the stepfather to adopt the child, the petition for adoption was properly dismissed on motion of the natural father because NRS 127.040 required his consent to the proposed adoption. In re Scott, 88 Nev. 254, 495 P.2d 610 (1972)

Proof of paternity alone was sufficient to establish a parental relationship. In a proceeding under the provisions of former NRS 41.530 (cf. NRS 126.071), proof of paternity alone was sufficient to establish a parental relationship without proof that it was in the best interests of the children. Turner v. Saka, 92 Nev. 108, 546 P.2d 233 (1976)

Application of California law was error where California did not have a substantial relationship to the litigation and where such an application violated public policy of Nevada. In an action to determine paternity (see NRS 126.071), where the district court applied conclusive presumption established by California law that a son was issue of the mother's marriage to her husband, the court erred because: (1) California did not have a substantial interest in the litigation in that its only relationship to the litigation was that the child was born in California and that the parties resided there for 3 years during their marriage, but the parties had not resided in California during the most recent 10 years; and (2) application of California law violated public policy of Nevada in that a minor child who is a resident of Nevada has a right to have his paternity determined under Nevada law. Hermanson v. Hermanson, 110 Nev. 1400, 887 P.2d 1241 (1994)

Holding that equitable estoppel barred mother from denying husband's paternity of child was error under the circumstances. Where the district court, in an action to determine paternity (see NRS 126.071), held that the doctrine of equitable estoppel barred a mother from denying husband's paternity of a child based on the court's findings that: (1) the mother repeatedly affirmed that she was pregnant with the husband's child soon after she learned that she was pregnant; (2) the mother named the husband as the father of the child on the child's birth certificate; (3) the parties had continuously held themselves out to the public as the parents of the child; and (4) the mother had applied for welfare benefits for the dependent children by naming the husband as the father, the district court erred because the doctrine of estoppel is grounded in the principles of fairness and, in this case, instead of ensuring fairness, estoppel worked unjustly to deprive the mother from disputing a presumption of paternity. Hermanson v. Hermanson, 110 Nev. 1400, 887 P.2d 1241 (1994)

Res judicata does not preclude an ex-husband from proving that he is not the biological father of a child if his ex-wife fraudulently concealed the child's paternity when the parties obtained their divorce decree. Where: (1) in a divorce action, the husband did not challenge the paternity of his wife's child, whom he believed to be his biological child, and agreed to pay child support and other reasonable expenses for the child; (2) DNA tests subsequently confirmed that the husband was not the biological father of the child; and (3) the husband filed a motion for summary judgment to establish that he was not the biological father of the child and to set aside the divorce decree as it related to custody, maintenance and support of the child, alleging that his ex-wife fraudulently concealed the child's paternity when the divorce decree was entered, the supreme court reversed the order of the district court denying the husband's motion for summary judgment and held that although the judgment as to the paternity of the child in the original divorce proceeding would ordinarily operate as res judicata and preclude the parties from relitigating the

issue of paternity, in this case a genuine issue of material fact existed as to whether the ex-wife fraudulently concealed the child's paternity when the divorce decree was entered. Accordingly, the supreme court held that on remand the district court must, as a threshold matter, determine whether the original judgment was procured by fraud, in which case res judicata would not preclude the husband from proving that he was not the biological father of the child. (See NRS 125.510, 126.051 and 126.071.) Love v. Love, 114 Nev. 572, 959 P.2d 523 (1998)

NRS 126.081 Period of limitations.

1. An action brought under this chapter to declare the existence or nonexistence of the father and child relationship is not barred until 3 years after the child reaches the age of majority.

2. This section does not alter the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

(Added to NRS by 1979, 1272; A 1981, 1573; 1983, 1870)

WEST PUBLISHING CO.

Children Out-of-Wedlock ! 38.
WESTLAW Topic No. 76H.

C.J.S. Children Out-of-Wedlock § 81.

NEVADA CASES.

Payments by putative father for expenses connected with birth of illegitimate child do not constitute furnishing support. Payments by the putative father for hospital and medical expenses connected with the birth of an illegitimate child, whether made before or after birth, do not constitute "furnishing of support" under the provisions of former NRS 126.340 (cf. NRS 126.051 and 126.081), which limits the bringing of an action to enforce obligation unless paternity has been acknowledged by the furnishing of support. Smith v. Gabrielli, 80 Nev. 390, 395 P.2d 325 (1964)

Neither oral acknowledgment by telephone nor cashier's check given physician by putative father is sufficient to toll statute of limitations. Under the provisions of former NRS 126.340 (cf. NRS 126.051 and 126.081), which provides for the tolling of the statute of limitations in a bastardy action by acknowledgment of paternity in writing, neither an oral acknowledgment by telephone nor a cashier's check given to a physician by the putative father for services in the birth of the child is sufficient. Smith v. Gabrielli, 80 Nev. 390, 395 P.2d 325 (1964)

Furnishing of support should be regular and fairly consistent to toll statute of limitations. In order to toll the statute of limitations under the Uniform Illegitimacy Act, former NRS 126.340 (cf. NRS 126.051 and 126.081), "furnishing of support" must be a course of conduct sufficient to substitute a written acknowledgment of paternity. It may include the payment of money, provided the intention is that the money be used for the support of a child and no other purpose. Furnishing of support should be regular and fairly consistent. Smith v. Gabrielli, 80 Nev. 390, 395 P.2d 325 (1964)

NRS 126.091 Jurisdiction; venue.

1. Each district court has jurisdiction of an action brought under this chapter. The action may be joined with an action for divorce, annulment, separate maintenance or support.

2. A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this chapter with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by law, personal jurisdiction may be acquired by personal service of summons outside this state or by certified mail, restricted delivery, with return receipt requested.

3. The action may be brought in the county in which the child, the mother or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced. The court has jurisdiction whether or not the plaintiff resides in this state.

4. If an action to establish paternity is transferred from one judicial district in this state to another judicial district in this state, the district court to which the action is transferred shall not require the petitioner to file additional documents with the court or provide additional service of process upon the respondent to maintain jurisdiction over the parties.

(Added to NRS by 1979, 1272; A 1997, 2305)

WEST PUBLISHING CO.

Children Out-of-Wedlock ! 36, 37.
WESTLAW Topic No. 76H.

C.J.S. Children Out-of-Wedlock §§ 83, 84.

NRS 126.101 Parties.

1. The child must be made a party to the action. If he is a minor, he must be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. If a district attorney brings an action pursuant to NRS 125B.150 and the interests of the child:

(a) Are adequately represented by the appointment of the district attorney as his guardian ad litem, the district attorney shall act as guardian ad litem for the child without the need for court appointment.

(b) Are not adequately represented by the appointment of the district attorney as his guardian ad litem, the Division of Welfare and Supportive Services of the Department of Health and Human Services must be appointed as guardian ad litem in the case.

2. The natural mother and a man presumed to be the father under NRS 126.051 must be made parties, but if more than one man is presumed to be the natural father, only a man presumed pursuant to subsection 2 or 3 of NRS 126.051 is an indispensable party. Any other presumed or alleged father may be made a party.

3. The court may align the parties.

(Added to NRS by 1979, 1273; A 1981, 1573; 1983, 1870; 1993, 541; 1995, 2418; 1997, 2305; 1999, 875; 2007, 1525)

NRS 126.105 Service of process. Whenever service of process is required in an action brought under this chapter to determine the existence or nonexistence of the paternal relationship, it may be made pursuant to Rule 4 of N.R.C.P. or by certified mail, restricted delivery, with return receipt requested.

(Added to NRS by 1981, 1572; A 1983, 1870; 1995, 2418; 1997, 2306)

WEST PUBLISHING CO.
Children Out-of-Wedlock ! 39.
WESTLAW Topic No. 76H.
C.J.S. Children Out-of-Wedlock §§ 90, 94.

NRS 126.111 Pretrial hearing; testimony.

1. The court shall endeavor to resolve the issues raised in an action pursuant to this chapter by an informal hearing.

2. As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing must be held. The court may order that the hearing be held before a master or referee. The public shall be barred from the hearing. A record of the proceeding or any portion thereof must be kept if any party requests or the court orders. Strict rules of evidence need not be observed, but those prescribed in NRS 233B.123 apply.

3. Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from prosecution for all criminal offenses shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

4. Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

(Added to NRS by 1979, 1273)

NRS CROSS REFERENCES.
Physician defined, NRS 0.040
WEST PUBLISHING CO.
Children Out-of-Wedlock ! 39.
WESTLAW Topic No. 76H.
C.J.S. Children Out-of-Wedlock §§ 90, 94.

NRS 126.121 Tests for typing of blood or genetic identification; admissibility in court; effect of refusal to submit to test.

1. The court may, and shall upon the motion of a party, order the mother, child, alleged father or any other person so involved to submit to one or more tests for the typing of blood or taking of specimens for genetic identification to be made by a designated person, by qualified physicians or by other qualified persons, under such restrictions and directions as the court or judge deems proper. Whenever such a test is ordered and made, the results of the test must be received in evidence and must be made available to a judge, master or referee conducting a hearing pursuant to NRS 126.111. The results of the test and any sample or specimen taken may be used only for the purposes specified in this chapter. Unless a party files a written objection to the result of a test at least 30 days before the hearing at which the result is to be received in evidence, the result is admissible as evidence of paternity without foundational testimony or other proof of authenticity or accuracy. The order for such a test also may direct that the testimony of the experts and of the persons so examined may be taken by deposition or written interrogatories.

2. If any party refuses to submit to or fails to appear for a test ordered pursuant to subsection 1, the court may presume that the result of the test would be adverse to the interests of that party or may enforce its order if the rights of others and the interests of justice so require.

3. The court, upon reasonable request by a party, shall order that independent tests for determining paternity be performed by other experts or qualified laboratories.

4. In all cases, the court shall determine the number and qualifications of the experts and laboratories.

5. As used in this section:

(a) "Designated person" means a person who is:

(1) Properly trained to take samples or specimens for tests for the typing of blood and genetic identification; and

(2) Designated by an enforcing authority to take such samples or specimens.

(b) "Enforcing authority" means the Division of Welfare and Supportive Services of the Department of Health and Human Services, its designated representative, a district attorney or the Attorney General when acting pursuant to NRS 425.380.

(Added to NRS by 1979, 1273; A 1991, 1337; 1995, 2418; 2007, 1525)

WEST PUBLISHING CO.
Children Out-of-Wedlock ! 45.
WESTLAW Topic No. 76H.
C.J.S. Children Out-of-Wedlock § 101.

NEVADA CASES.

The results of DNA tests do not conclusively establish paternity. Where: (1) in a divorce action, the husband did not challenge the paternity of his wife's child, whom he believed to be his biological child, and agreed to pay child support and other reasonable expenses for the child; (2) DNA tests subsequently confirmed that the husband was not the biological father of the child; and (3) the husband filed a motion for summary judgment to establish that he was not the biological father of the child and to set aside the divorce decree as it related to custody, support and maintenance of the child, the supreme court rejected the husband's contention that the results of the DNA tests proved as a matter of law that he had no legal responsibility for the child because the statutory scheme established by the legislature does not require the district court to determine, as a matter of law, that a man is not a child's biological father based upon the results of DNA tests. (See NRS 126.051 and 126.121.) The supreme court stated that "[t]his statutory scheme clearly reflects the legislature's intent to allow nonbiological factors to become critical in a paternity determination." In this case, the results of the DNA tests created a presumption of nonpaternity that conflicted with the presumption of paternity arising from the fact that the husband was married to the child's mother, the husband apparently cohabited with the child's mother for 1 year before the child was born and the husband held out the child as his own. Therefore, on remand the district court must determine, pursuant to NRS 126.051, which presumptions are "founded on the weightier considerations of policy and logic." Love v. Love, 114 Nev. 572, 959 P.2d 523 (1998)

NRS 126.131 Evidence relating to paternity; evidence of costs of certain medical services.

1. Evidence relating to paternity may include:

(a) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception.

(b) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy.

(c) The results of any test for the typing of blood or taking of specimens for genetic identification that is:

(1) Of a type acknowledged as reliable by an organization approved by the Secretary of Health and Human Services; and

(2) Performed by a laboratory which is accredited by such an organization.

(d) An expert's opinion concerning the results of a blood test or test for genetic identification, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity.

(e) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts.

(f) All other evidence relevant to the issue of paternity of the child.

2. Bills or receipts for the costs of:

(a) Medical care received during the pregnancy;

(b) The birth of the child; or

(c) Tests for the typing of blood or taking of specimens for genetic identification to determine the paternity of the child,

➥ are prima facie evidence of the amounts incurred for those services and are admissible as evidence without the foundational testimony of a third party.

(Added to NRS by 1979, 1274; A 1991, 1337; 1997, 2306)

WEST PUBLISHING CO.
Children Out-of-Wedlock ! 42-52.
WESTLAW Topic No. 76H.
C.J.S. Children Out-of-Wedlock §§ 100-109.

NRS 126.141 Pretrial recommendations.

1. On the basis of the information produced at the pretrial hearing, the judge, master or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement must be made to the parties, which may include any of the following:

(a) That the action be dismissed with or without prejudice.

(b) That the matter be compromised by an agreement among the alleged father, the mother and the child, in which the father and child relationship is not determined but in which a defined economic obligation, fully secured by payment or otherwise, is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge, master or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge, master or referee conducting the hearing shall consider the best interest of the child, discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him.

(c) That the alleged father voluntarily acknowledge his paternity of the child.

2. If the parties accept a recommendation made in accordance with subsection 1, judgment may be entered accordingly.

3. If a party refuses to accept a recommendation made under subsection 1 and blood tests or tests for genetic identification have not been taken, the court shall require the parties to submit to blood tests or tests for genetic identification, if practicable. Thereafter the judge, master or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action must be set for trial.

4. The guardian ad litem may accept or refuse to accept a recommendation under this section.

5. The pretrial hearing may be terminated and the action set for trial if the judge, master or referee conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection 1 or 3.

(Added to NRS by 1979, 1274; A 1983, 1871; 1989, 860; 1997, 2306)

NEVADA CASES.

Res judicata effect of compromise agreement on later suit to determine paternity. Where a court-approved compromise agreement entered into pursuant to NRS 126.141 between the mother of a child and appellant who was alleged to be the father of the child, provided that appellant would pay financial support but that the issue of paternity would remain confidential and would not be included in the official record of the proceedings, and where the mother brought a subsequent action to determine paternity, the supreme court found that the compromise agreement was binding on the mother as if the matter were actually tried and acted as res judicata to bar the mother from bringing a later action asserting claim or cause of action to determine paternity. However, as to the child, the supreme court held that, even though the prior suit which resulted in the compromise agreement is also brought in the child's name, that agreement is not binding on the minor child. Unlike the mother, the child has legal interests which flow from a determination of paternity including the right to prosecute an action for wrongful death and a claim for workmen's compensation, the right to inheritance, and the interest of the child in being able to ascertain his heritage and lineage. Therefore, the minor child is not precluded from bringing a subsequent action against appellant which asserted claim to determine paternity. Willerton v. Bassham, 111 Nev. 10, 889 P.2d 823 (1995), cited, Wright v. State, 112 Nev. 391, at 400, 916 P.2d 146 (1996), Love v. Love, 114 Nev. 572, at 577, 959 P.2d 523 (1998)

Compromise agreement which includes financial support is not res judicata and does not bar subsequent review and modification. Appellant, who was alleged to be the father of a child, argued that the amount of support required by a court-approved compromise agreement which appellant and the mother of the child entered into pursuant to NRS 126.141 was res judicata and barred subsequent review or modification concerning the amount of support. The supreme court rejected appellant's argument and held that: (1) the compromise agreement does not act as res judicata to bar a suit to modify the amount of support because of the interest of the state and the minor child in ensuring that the father pays an adequate amount of support to the minor child; and (2) NRS 125B.145, which requires the periodic review of orders for support of a child, applies to compromise agreements entered into pursuant to NRS 126.141. Willerton v. Bassham, 111 Nev. 10, 889 P.2d 823 (1995), cited, Love v. Love, 114 Nev. 572, at 577, 959 P.2d 523 (1998)

Defined economic obligation entered into pursuant to compromise agreement is subject to the provisions of chapter 125B **of NRS.** Appellant father argued that NRS 125B.145 which requires periodic review of orders for the support of a minor child does not apply to a compromise agreement entered into pursuant to NRS 126.141 because a defined economic obligation which is part of a compromise agreement is not an order for the support of a child. The supreme court rejected his argument and held that a defined economic obligation which is part of a compromise agreement entered into pursuant to NRS 126.141 is subject to periodic review required by NRS 125B.145 because such a review would ensure that defined economic obligations are modified and enforced in the same manner as other agreements for financial support governed by chapter 125B of NRS. Willerton v. Bassham, 111 Nev. 10, 889 P.2d 823 (1995)

Minor child was not prevented from instituting subsequent suit to determine paternity where court record of a compromise agreement did not include evidence of consideration of the best interest of the child. Where no evidence or findings were included in the record as to whether the court or parties considered, pursuant to NRS 126.141, the best interest of the child in approving a compromise agreement on the issue of paternity between the mother of the child and appellant alleged to be the father of the child, and where the parties utterly failed to address the child's best interest on appeal, the supreme court determined that the child was not prevented from instituting a subsequent suit to determine paternity. Willerton v. Bassham, 111 Nev. 10, 889 P.2d 823 (1995)

FEDERAL AND OTHER CASES.

Court-approved agreement is bar to subsequent paternity proceedings. A court-approved agreement entered into by the mother and putative father of an illegitimate child under NCL § 3430 (cf. NRS 126.141) is bar to subsequent paternity proceedings by the mother or child in New York. Rhyne v. Katleman, 206 Misc. 202, 133 N.Y.S.2d 221 (N.Y. City Ct. Spec. Sess. 1954)

Affirmed mem., Rhyne v. Katleman, 142 N.Y.S.2d 365 (App. Div. 1955)

NRS 126.143 Order for temporary support of child. After an action is set for trial pursuant to NRS 126.141, the judge, master or referee shall, upon the motion of a party, issue an order providing for the temporary support of the child pending the resolution of the trial if the judge, master or referee determines that there is clear and convincing evidence that the party against whom the order is issued is the father of the child.

(Added to NRS by 1997, 2301)

NRS 126.151 Trial: Applicability of Nevada Rules of Civil Procedure; admissibility of evidence of other sexual contact; without jury.

1. An action under this chapter is a civil action governed by the Nevada Rules of Civil Procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Subsections 3 and 4 of NRS 126.111 and NRS 126.121 and 126.131 apply.

2. In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning that man's sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests or tests for genetic identification, the results of which show a probability less than 99 percent that he is the father of the child.

3. The trial must be by the court without a jury.

(Added to NRS by 1979, 1275; A 1995, 2419; 1997, 2307)

WEST PUBLISHING CO.

Children Out-of-Wedlock ! 44, 49, 50, 57.
WESTLAW Topic No. 76H.

C.J.S. Children Out-of-Wedlock §§ 101, 105, 106, 113, 114.

ATTORNEY GENERAL'S OPINIONS.

Proceedings are of civil nature. Proceedings to compel the support of an illegitimate child are proceedings of a civil nature. AGO 376 (6-26-1930)

NRS 126.161 Contents and effect of judgment or order.

1. A judgment or order of a court, or a judgment or order entered pursuant to an expedited process, determining the existence or nonexistence of the relationship of parent and child is determinative for all purposes.

2. If such a judgment or order of this State is at variance with the child's birth certificate, the judgment or order must direct that a new birth certificate be issued as provided in NRS 440.270 to 440.340, inclusive.

3. If the child is a minor, such a judgment or order of this State must provide for his support as required by chapter 125B of NRS and must include an order directing the withholding or assignment of income for the payment of the support unless:

(a) One of the parties demonstrates and good cause is found by the court, or pursuant to the expedited process, for the postponement of the withholding or assignment; or

(b) All parties otherwise agree in writing.

4. Such a judgment or order of this State may:

(a) Contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Direct the father to pay the reasonable expenses of the mother's pregnancy and confinement. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred which the court deems just.

5. A court that enters such a judgment or order shall ensure that the social security numbers of the mother and father are:

(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.

6. As used in this section, "expedited process" means a voluntary acknowledgment of paternity, judicial procedure or an administrative procedure established by this or another state, as that term is defined in NRS 130.10179, to facilitate the collection of an obligation for the support of a child.

(Added to NRS by 1979, 1275; A 1983, 1872; 1987, 2251; 1989, 671; 1995, 2419; 1997, 2307, 2308; 2005, 248)

WEST PUBLISHING CO.
Children Out-of-Wedlock ! 64.
Records ! 32.
WESTLAW Topic Nos. 76H, 326.
C.J.S. Children Out-of-Wedlock §§ 120-121.
C.J.S. Records §§ 65, 67-75.

NRS 126.163 Order issued on or after October 1, 1998: Provision of information by court and parties to action; regulations.

1. A court that, on or after October 1, 1998, issues an order in this State establishing the paternity of a child shall:

(a) Obtain and provide to the Division of Welfare and Supportive Services of the Department of Health and Human Services such information regarding the order as the Division of Welfare and Supportive Services determines is necessary to carry out the provisions of 42 U.S.C. § 654a.

(b) Ensure that the social security numbers of the child and the parents of the child are placed in the records relating to the matter and, except as otherwise required to carry out a specific statute, maintained in a confidential manner.

2. Within 10 days after a court of this State issues an order establishing the paternity of a child, each party to the cause of action shall file with the court that issued the order and with the Division of Welfare and Supportive Services:

(a) His social security number;
(b) His residential and mailing addresses;
(c) His telephone number;
(d) His driver's license number; and
(e) The name, address and telephone number of his employer.

➥ Each party shall update the information filed with the court and with the Division of Welfare and Supportive Services pursuant to this subsection within 10 days after that information becomes inaccurate.

3. The Division of Welfare and Supportive Services shall adopt regulations specifying the particular information required to be provided pursuant to subsection 1 to carry out the provisions of 42 U.S.C. § 654a.

(Added to NRS by 1997, 2302; A 2005, 249)

WEST PUBLISHING CO.
Children Out-of-Wedlock ! 64.
Records ! 32.
WESTLAW Topic Nos. 76H, 326.
C.J.S. Children Out-of-Wedlock §§ 120-121.
C.J.S. Records §§ 65, 67-75.

NRS 126.171 Costs. The court may order reasonable fees of counsel, experts and the child's guardian ad litem, and other costs of the action and pretrial proceedings, including blood tests or tests for genetic identification, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the county. In no event may the State be assessed any costs when it is a party to an action to determine parentage.

(Added to NRS by 1979, 1276; A 1981, 1573; 1997, 2309)

WEST PUBLISHING CO.
Children Out-of-Wedlock ! 75.
WESTLAW Topic No. 76H.
C.J.S. Children Out-of-Wedlock § 141.

NRS 126.181 Enforcement of judgment or order.

1. If the parent and child relationship has been established, the obligation of a parent may be enforced in the same or independent proceedings by the other parent, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

2. The court may order support payments to be made to the custodial parent or a person or public agency designated to administer them for the benefit of the child under the supervision of the court.

3. Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

(Added to NRS by 1979, 1276; A 1997, 2309)

WEST PUBLISHING CO.
Children Out-of-Wedlock ! 69.
WESTLAW Topic No. 76H.
C.J.S. Children Out-of-Wedlock §§ 128, 129.

ATTORNEY GENERAL'S OPINIONS.

District attorney must represent proper public authorities in action to compel support of illegitimate child. If proceedings to compel the support of an illegitimate child are brought by the proper public authorities, a district attorney must represent them in the action. AGO 376 (6-26-1930)

NRS 126.191 Modification of judgment or order. Except as otherwise provided in NRS 125B.140 and chapter 130 of NRS, the court has continuing jurisdiction to modify the judgment or order as to custody, visitation or support.

(Added to NRS by 1979, 1276; A 1983, 1873; 1987, 2251; 1997, 2309)

WEST PUBLISHING CO.

Children Out-of-Wedlock ! 68.
WESTLAW Topic No. 76H.
C.J.S. Children Out-of-Wedlock § 126.

NRS 126.193 Cause of action subsequent to issuance of order: Notice and service of process. If, after a court issues an order establishing the paternity of a child, a subsequent cause of action between the parties concerning the support of the child is initiated, the requirements for notice and service of process shall be deemed to have been met with respect to a party to the proceeding who cannot be found if:

1. The party initiating the proceeding shows proof that diligent effort has been made to ascertain the location of the missing party; and
2. Written notice of the initiation of the proceeding has been mailed to the mailing address of the missing party or the address of the missing party's employer as those addresses appear in the information required to be filed pursuant to subsection 2 of NRS 126.163.

(Added to NRS by 1997, 2303; A 2005, 249)

NRS 126.201 Right to counsel; appointment of counsel by court; free transcript on appeal.

1. At the pretrial hearing and in further proceedings, any party may be represented by counsel. If a party is financially unable to obtain counsel, the court may appoint counsel to represent that party with respect to the determination of the existence or nonexistence of the parent and child relationship and the duty of support, including without limitation the expenses of the mother's pregnancy and confinement, medical expenses for the birth of the child and support of the child from birth until trial.
2. If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

(Added to NRS by 1979, 1276; A 1983, 1873)

WEST PUBLISHING CO.

Children Out-of-Wedlock ! 39, 73.
WESTLAW Topic No. 76H.
C.J.S. Children Out-of-Wedlock §§ 90, 94, 134, 137.

NRS 126.211 Hearings and records: Confidentiality. Any hearing or trial held under this chapter must be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the Division of Welfare and Supportive Services of the Department of Health and Human Services or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

(Added to NRS by 1979, 1276)

WEST PUBLISHING CO.

Records ! 32, 55.
WESTLAW Topic No. 326.
C.J.S. Records § 36.

NRS 126.221 Substitution of certificate of birth. Upon order of a court of this state or upon request of a court of another state, the State Registrar of Vital Statistics shall prepare a new certificate of birth consistent with the findings of the court and substitute the new certificate for the original certificate of birth as provided in NRS 440.270 to 440.340, inclusive.

(Added to NRS by 1979, 1277)

NRS CROSS REFERENCES.

Substitution of birth certificate, NRS 440.325

NRS 126.223 Entry of default upon failure to plead or defend in action. If a man who is alleged to be the father of a child in an action brought pursuant to this chapter fails to plead or otherwise defend against the action as provided in the Nevada Rules of Civil Procedure, the clerk of the court shall enter his default upon a showing of proof of service of process and any other showing required pursuant to the Nevada Rules of Civil Procedure.

(Added to NRS by 1997, 2302)

ACTION TO DETERMINE MATERNITY

NRS 126.231 Who may bring action; provisions of chapter applicable to action. Any interested party may bring an action to determine the existence of a mother and child relationship. Insofar as practicable, the provisions of this chapter applicable to the father and child relationship apply to that action.

(Added to NRS by 1979, 1276; A 1983, 1873)

PROCEEDINGS TO COMPEL SUPPORT

NRS CROSS REFERENCES.

Recovery of payments for support of child, NRS chs. 31A, 125B, 130, 425

NRS 126.291 Proceedings not exclusive; fees.

1. Proceedings to compel support by a nonsupporting parent may be brought in accordance with this chapter. They are not exclusive of other proceedings. The court may assess the usual filing fees, charges or court costs against the nonsupporting parent and shall enforce their collection with the other provisions of the judgment.
2. Except as otherwise provided in this subsection, when the district attorney is requested to bring an action to compel support or an action to determine paternity, he may charge the requester a fee of not more than $20 for an application. This fee may not be assessed against:
   (a) The State of Nevada when acting as a party to an action brought pursuant to this chapter.
   (b) Any person or agency requesting services pursuant to chapter 130 of NRS.
3. If the court finds that a parent and child relationship exists, it may assess against the nonsupporting parent, in addition to any support obligation ordered a reasonable collection fee. If the court finds that the nonsupporting parent would experience a financial hardship if required to pay the fee immediately, it may order that the fee be paid in installments, each of which is not more than 25 percent of the support obligation for each month.
4. All fees collected pursuant to this section must be deposited in the general fund of the county and an equivalent amount must be allocated to augment the county's program for the enforcement of support obligations.

[6:87:1923; A 1933, 186; 1931 NCL § 3410]—(NRS A 1979, 1280; 1981, 1575; 1983, 261, 1874; 1997, 2309, 2310)

WEST PUBLISHING CO.

Parent and Child ! 3.3(1)-3.3(10).
WESTLAW Topic No. 285.

C.J.S. Parent and Child §§ 73-89.

NEVADA CASES.

Chapter not an exclusive procedure for compelling the support of an illegitimate child. NRS ch. 126, formerly the Uniform Illegitimacy Act, is not an exclusive procedure for compelling the support for an illegitimate child, see the provisions of former NRS 126.080 (cf. NRS 126.291). Therefore, where the defendant had promised to contribute to the child's support, an action based on his contractual obligation rather than on the obligation of support imposed by the provisions of former NRS 126.030 (see NRS 125B.020) was valid, and compliance with the procedural requirements of NRS ch. 126 was not necessary. Bruno v. Schoch, 94 Nev. 712, 582 P.2d 796 (1978)

NRS 126.295 Form of complaint; verification. The complaint must be in writing and verified by oath or affirmation of the complainant.

[10:87:1923; NCL § 3414]—(NRS A 1983, 262, 1875)

WEST PUBLISHING CO.

Parent and Child ! 3.3(3).
WESTLAW Topic No. 285.

C.J.S. Parent and Child §§ 76, 77.

NRS 126.301 Absence of defendant. If the defendant fails to appear, the court may proceed as if he were present and hear the complaint. The court shall require the plaintiff to establish the facts, and shall give full and careful consideration to all evidence presented and the rights and claims of the plaintiff, defendant and children, and the best interests of the child or children involved. The court shall, upon its own findings or the verdict of the jury, make such orders as it would make if the defendant were present.

[17:87:1923; NCL § 3421]—(NRS A 1979, 1280; 1983, 1875)

WEST PUBLISHING CO.

Parent and Child ! 3.3(6).
WESTLAW Topic No. 285.

C.J.S. Parent and Child § 79.

NRS 126.311 Effect of death, absence or insanity of plaintiff. If after the complaint has been filed, the plaintiff dies, becomes insane or cannot be found within the jurisdiction, the proceeding does not abate, but the child may be substituted as complainant by his guardian ad litem.

[18:87:1923; NCL § 3422]—(NRS A 1971, 803; 1979, 1280)—(Substituted in revision for NRS 126.200)

WEST PUBLISHING CO.

Parent and Child ! 3.3(3).

WESTLAW Topic No. 285.
C.J.S. Parent and Child §§ 76, 77.

NRS 126.321 Effect of death of defendant. In case of the death of the defendant, the action to compel support may be prosecuted against the personal representatives of the deceased with like effect as if he were living, subject as regards the measure of support to the provisions of this chapter. No personal representative may be required to post a bond.

[19:87:1923; NCL § 3423]—(NRS A 1979, 1280)—(Substituted in revision for NRS 126.210)

NRS 126.331 Payment to trustee.

1. The court may require the payments to be made to the custodial parent, a public agency or a person designated by the court as trustee.
2. If the Division of Welfare and Supportive Services of the Department of Health and Human Services has provided money for the support of the child, the court shall direct that payment be made to the Division as provided for in NRS 425.360.
3. Except as otherwise provided in subsection 1 of NRS 425.410, the payments must be made to a trustee if the custodial parent does not reside within the jurisdiction of the court or has assigned his right to receive support to a public agency in another state.
4. The trustee shall report to the court annually, or more often, as directed by the court, the amounts received and paid over.

[22:87:1923; NCL § 3426]—(NRS A 1979, 1281; 1997, 2310)

WEST PUBLISHING CO.
Parent and Child ! 3.3(8).
WESTLAW Topic No. 285.
C.J.S. Parent and Child §§ 80-89.

MISCELLANEOUS PROVISIONS

NRS 126.371 Promise to furnish support for child: Enforcement; confidentiality.

1. Any promise in writing to furnish support for a child, growing out of a supposed or alleged parent and child relationship, does not require consideration and is enforceable according to its terms.
2. In the best interest of the child or the custodial parent, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

(Added to NRS by 1979, 1276; A 1983, 1875)

WEST PUBLISHING CO.
Parent and Child ! 3.1(8).
WESTLAW Topic No. 285.
C.J.S. Parent and Child §§ 60, 61.

NRS Chapter 127

NEVADA CASES.

District court did not abuse its discretion in applying the doctrine of equitable adoption to impose a duty to pay child support under the circumstances. Where the appellant: (1) sought and effectuated an order terminating the parental rights of the child's natural father, thereby leaving the child without any legal recourse against the natural father for child support; (2) signed a petition to adopt the child (see NRS ch. 127); and (3) later denied any obligation to support the child after the relationship between the appellant and the child's biological mother deteriorated, the supreme court held that the district court did not abuse its discretion in applying the doctrine of equitable adoption to order the appellant to pay child support (see NRS ch. 125B). Frye v. Frye, 103 Nev. 301, 738 P.2d 505 (1987), distinguished, Hermanson v. Hermanson, 110 Nev. 1400, 887 P.2d 1241 (1994), Russo v. Gardner, 114 Nev. 283, 956 P.2d 98 (1998)

ATTORNEY GENERAL'S OPINIONS.

Attorney or physician who participates in an adoption other than through the provision of legal or medical services violates the chapter. Any attorney or physician who places, arranges placement of or assists in the placement of a child for adoption, other than through the provision of legal or medical services, violates the provisions of NRS ch. 127 which provide for the adoption of children. AGO 84-10 (5-15-1984)

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)

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.
➥ 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,
➥ 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 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)

ADMINISTRATIVE REGULATIONS.
State register for adoptions, NAC 127.090
WEST PUBLISHING CO.
Records ! 3, 32, 54.
WESTLAW Topic No. 326.
C.J.S. Records §§ 3, 36.

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 his 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 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)

ADMINISTRATIVE REGULATIONS.
Identification and submission of information regarding children with special needs, NAC 127.475

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

REVISER'S NOTE.

Ch. 1, Stats. 2001 Special Session, which amended various provisions of NRS 127.010 to 127.186, inclusive, to replace references to "the Division" with references to an "agency which provides child welfare services" contains the following provisions not included in NRS:

"Notwithstanding the amendatory provisions of this act, the Division of Child and Family Services of the Department of Human Resources [now the Department of Health and Human Services] shall, except as otherwise provided in NRS 432B.325, provide child welfare services in a county whose population is 100,000 or more as necessary until the Division and the board of county commissioners of the county agree that an agency in the county is fully capable of providing child welfare services. Any dispute regarding the capability of the agency to provide child welfare services must be determined by the Governor."

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)

WEST PUBLISHING CO.

Adoption ! 10.

WESTLAW Topic No. 17.

C.J.S. Adoption of Persons §§ 74, 75.

NEVADA CASES.

Jurisdiction of juvenile court did not divest district court of original jurisdiction in adoption proceedings. An order of the juvenile court of a county in which a child was found abandoned which placed the child in the custody of the Welfare Division (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) did not preclude the district court of another county from entertaining a subsequent petition for adoption of the child, because jurisdiction of a juvenile court under former NRS 62.040 and 62.070 (cf. NRS 62B.320 and 62B.410) was limited to the juvenile proceeding and did not divest district court of the original jurisdiction provided by NRS 127.010 in adoption proceedings. State v. Bill, 91 Nev. 275, 534 P.2d 1264 (1975)

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. A minor child may be adopted by an adult person in the cases and subject to the rules prescribed in this chapter. The 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.
[2:332:1953]

WEST PUBLISHING CO.
Adoption ! 5, 7.1.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 18-24, 51-72.

NRS 127.030 Who may petition. 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. The petition by a person having a husband or wife shall not be granted unless the husband or wife consents thereto and joins therein.
[3:332:1953]

WEST PUBLISHING CO.
Adoption ! 11.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 76, 77, 87.

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)

WEST PUBLISHING CO.
Adoption ! 7.5.
Parent and Child ! 2(3.7).
WESTLAW Topic Nos. 17, 285.
C.J.S. Adoption of Persons §§ 51 et seq., 68 et seq.
C.J.S. Parent and Child §§ 19, 26.
NEVADA CASES.

Consent of parents is most important factor in adoption proceeding. Consent of the parents to the adoption of a legitimate child is the most important factor in an adoption proceeding, and under NCL § 9478 (cf. NRS 127.040), adoption cannot be accomplished without such consent, except in the cases enumerated therein. In re Jackson, 55 Nev. 174, 28 P.2d 125 (1934)

Consent to adoption could not be revoked where mother voluntarily relinquished child and it was not shown that enforcement of relinquishment would be detrimental to child. In a habeas corpus proceeding by the natural mother of an illegitimate child to recover custody from the persons with whom the child was placed for adoption, where the mother voluntarily relinquished the child to an authorized placement agency, under provisions of 1931 NCL § 1065.02 (cf. NRS 127.040), and it was not shown that enforcement of relinquishment would be detrimental to the child, consent could not be revoked. In re Schultz, 64 Nev. 264, 181 P.2d 585 (1947), cited, Welfare Div. v. Maynard, 84 Nev. 525, at 528, 445 P.2d 153 (1968), Blanchard v. State Welfare Dep't, 91 Nev. 749, at 752, 542 P.2d 737 (1975), distinguished, Las Vegas Sun, Inc. v. Franklin, 74 Nev. 282, at 289, 290, 329 P.2d 867 (1958)

Public policy required that adoptive parents be protected against uncertainty from revocation of consent at whim of natural parent. In a habeas corpus proceeding by the natural mother of an illegitimate child to recover custody from the persons with whom the child was placed for adoption, where the mother voluntarily relinquished the child, public policy under the adoption act, 1931 NCL § 1065.02 (cf. NRS 127.040), required that prospective adoptive parents be protected against uncertainty resulting from revocation at the whim of the natural parent. In re Schultz, 64 Nev. 264, 181 P.2d 585 (1947), cited, Welfare Div. v. Maynard, 84 Nev. 525, at 528, 445 P.2d 153 (1968)

Relinquishment signed by natural mother in which name of authorized placement agency was blank was valid. Where the natural mother of an illegitimate child executed relinquishment for adoption in which the name of the authorized placement agency was blank, and delivered it to an agent of an authorized agency, release was valid under 1931 NCL § 1065.02 (cf. NRS 127.040), requiring consent or relinquishment by natural parents. In re Schultz, 64 Nev. 264, 181 P.2d 585 (1947), distinguished, Las Vegas Sun, Inc. v. Franklin, 74 Nev. 282, at 289, 290, 329 P.2d 867 (1958)

District court of county where infant resided had jurisdiction to appoint legal guardian despite the fact that petition for adoption was pending in another district court. The district court of a county where an infant resided had jurisdiction to appoint a custodian of the infant as his legal guardian, despite the fact that a petition for adoption of the infant was pending in another district court, because the court could have found that such an appointment was necessary and convenient as required by NCL § 9495 (cf. NRS 159.035), inasmuch as the adoption statute, 1943 NCL § 1065 (cf. NRS 127.040), requires consent to adoption by a guardian. Mendive v. Third Judicial Dist. Court, 70 Nev. 51, 253 P.2d 884 (1953)

Whether or not refusal of guardian to consent to adoption of minor was in best interests of minor may be determined by appropriate proceeding before court appointing guardian. Where the guardian of the person of a minor refuses to consent to the adoption of such a minor, whether or not refusal was in the best interests of the minor may be determined by an appropriate proceeding before the court appointing the guardian, and if the court, after a full hearing with notice to all parties, decides that the guardian should consent to the adoption, it may make an appropriate order, but if it decides that the guardian was justified in refusing consent, such determination would make further proceedings of the court hearing the adoption petition futile, because it would be unable to make a final order of adoption without the consent of the guardian under 1943 NCL § 1065.02 (cf. NRS 127.040). Mendive v. Third Judicial Dist. Court, 70 Nev. 51, 253 P.2d 884 (1953)

Intent of legislature had to be inferred to apply requirement of consent to particular adopting parents to all cases of direct placement by natural parents. In an action for damages for libel, where plaintiff contended that execution by an unwed mother of consent to adoption with the names of the adopting parents left blank was authorized by law, relying on a prior decision upholding a blank consent delivered to a public welfare agency, but after that decision the words "specific adoption proposed by the petition" were added to NRS 127.040, and relinquishment for placement to be chosen by another was limited to specified public agencies, the intent of the legislature had to be inferred to apply the requirement of consent to particular adopting parents to all cases of direct placement by natural parents, and to restrict the desirable public policy of not disclosing the names of adopting parents to placement through public agencies. Las Vegas Sun, Inc. v. Franklin, 74 Nev. 282, 329 P.2d 867 (1958), cited, In re Adoption of Minor Child, 118 Nev. 962, at 969, 60 P.3d 485 (2002), distinguished, Reimche v. First Nat'l Bank of Nevada, 512 F.2d 187, at 188 (1975)

Statutes in force contemplated two methods of placement. In an action for damages for libel, where plaintiff contended that execution by the unwed mother of consent to adoption with the names of adopting parents left blank was authorized by law, NRS 127.040 required consent to the specific adoption proposed or relinquishment to a specified agency, and no statute required that the names of the adopting parents appear, the statutes in force contemplated two methods of placement: (1) by direct action of the natural parents to selected adopting parents; and (2) through a public agency which would select adopting parents. Las Vegas Sun, Inc. v. Franklin, 74 Nev. 282, 329 P.2d 867 (1958), cited, In re Adoption of Minor Child, 118 Nev. 962, at 969, 60 P.3d 485 (2002)

Where child born out of wedlock was acknowledged by natural father, consent of natural father was required for adoption by stepfather. Where the natural father of a child born out of wedlock had obtained a declaration of existence of relation of parent and child between himself and the child under provisions of former NRS 41.530 (cf. NRS 126.071) prior to the filing of a petition of the stepfather to adopt the child, the petition for adoption was properly dismissed on the motion of the natural father because NRS 127.040 required his consent to the proposed adoption. In re Scott, 88 Nev. 254, 495 P.2d 610 (1972)

ATTORNEY GENERAL'S OPINIONS.

Guardianship of person not assignable. When letters of guardianship are granted and a guardian seeks the right to place a minor for adoption, the matter should be submitted to a court for approval because it is generally held that the guardianship of a person is not assignable. AGO 664 (8-14-1948)

Statutory authority required for regulation establishing fee to be paid by adoptive parents for hospitalization of expectant mother. There must be statutory authority before the State Welfare Department (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) may set up a regulation requiring prospective adoptive parents of an unborn, illegitimate child to pay a fee for hospitalization of the expectant mother. AGO 872 (2-20-1950)

Written consent to specific adoption not valid unless names of adopting parents are known to person consenting. Written consent to a specific adoption required under sec. 4, ch. 332, Stats. 1953 (cf. NRS 127.040), where relinquishment of a child is not to agencies recognized under sec. 5, ch. 332, Stats. 1953 (cf. NRS 127.050), but directly to parents as allowed by sec. 12, ch. 332, Stats. 1953 (cf. NRS 127.120), is not valid unless the names of adopting parents are known to the person or persons consenting. AGO 150 (2-15-1956); AGO 153 (2-27-1956)

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)

WEST PUBLISHING CO.
Adoption ! 7.2(1).
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 57 et seq.

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,

➥ 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)

WEST PUBLISHING CO.
Adoption ! 11.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 76, 77, 87.

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;

(b) A child-placing agency licensed by the Division, to whom the child has been relinquished for adoption; or

(c) Any child-placing agency authorized under the laws of another state to accept relinquishments and make placements, to whom the child has been relinquished or otherwise approved for adoption in that state.

3. If an agency which provides child welfare services accepts a relinquishment on behalf of a child-placing agency pursuant to subsection 1, the child-placing agency shall reimburse the agency which provides child welfare services for any costs associated with the acceptance.

[5:332:1953]—(NRS A 1963, 890, 1301; 1967, 1147; 1973, 1406; 1979, 236; 1991, 948; 1993, 2680; 2001 Special Session, 3)

ADMINISTRATIVE REGULATIONS.
Prerequisites for acceptance of relinquishment by biological parents, NAC 127.260, 127.465
WEST PUBLISHING CO.
Adoption ! 8.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 41-48.
NEVADA CASES.

Use of consent to adopt with names of adopting parents omitted is limited to placement through public agency. In an action for damages for libel, where plaintiff contended that execution by an unwed mother of consent to adoption with the names of the adopting parents left blank was authorized by law, relying on a prior decision upholding a blank consent delivered to a public welfare agency, but after that decision the words "specific adoption proposed by the petition" were added to NRS 127.040, and relinquishment for placement to be chosen by another was limited to specified public agencies, the intent of the legislature had to be inferred to apply the requirement of consent to particular adopting parents to all cases of direct placement by natural parents, and to restrict the desirable public policy of not disclosing the names of adopting parents to placement through public agencies. Las Vegas Sun, Inc. v. Franklin, 74 Nev. 282, 329 P.2d 867 (1958), cited, In re Adoption of Minor Child, 118 Nev. 962, at 969, 60 P.3d 485 (2002), distinguished, Reimche v. First Nat'l Bank of Nevada, 512 F.2d 187, at 188 (1975)

Statutes contemplate two methods of placement—direct and through public agency. In an action for damages for libel, where plaintiff contended that execution by the unwed mother of consent to adoption with the

names of adopting parents left blank was authorized by law, NRS 127.040 required consent to the specific adoption proposed or relinquishment to a specified agency, and no statute required that the names of the adopting parents appear, the statutes in force contemplated two methods of placement: (1) by direct action of the natural parents to selected adopting parents; and (2) through a public agency which would select adopting parents. Las Vegas Sun, Inc. v. Franklin, 74 Nev. 282, 329 P.2d 867 (1958), cited, In re Adoption of Minor Child, 118 Nev. 962, at 969, 60 P.3d 485 (2002)

ATTORNEY GENERAL'S OPINIONS.

Written consent to specific adoption not valid unless names of adopting parents are known to person consenting. Written consent to a specific adoption required under sec. 4, ch. 332, Stats. 1953 (NRS 127.040), where relinquishment of a child is not to agencies recognized under sec. 5, ch. 332, Stats. 1953 (NRS 127.050), but directly to parents as allowed by sec. 12, ch. 332, Stats. 1953 (NRS 127.120), is not valid unless the names of adopting parents are known to the person or persons consenting. AGO 150 (2-15-1956); AGO 153 (2-27-1956)

Home in which child is placed for adoption must be approved before placement of child. Under NRS 424.070, relating to notice to the State Welfare Department (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) of the pending placement of a child in a home for the purpose of adoption and the necessity of approval by the department of placement, the home in which the child is placed for adoption must be approved by the department before placement of the child. (See NRS 127.050.) AGO 418 (10-17-1958)

NRS 127.051 Agency responsible for care of child and entitled to custody; termination of placement. The agency to which a child has been ordered or relinquished for adoption shall be responsible for the care of the child, and shall be entitled to the custody and control of the child at all times until a petition for adoption has been granted. Any placement for adoption made by the agency may be terminated by the mutual consent of the prospective adoptive parents and the agency, or by order of the district court for removal from the home upon the application of the agency when in the opinion of the agency the placement for adoption is detrimental to the interest of the child. In the event of the termination of any placement for temporary care or for adoption, the child shall be returned promptly to the physical custody of the agency.

(Added to NRS by 1973, 1588)

WEST PUBLISHING CO.

Adoption ! 1.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 2-4.

NRS 127.052 Agency to determine whether child is Indian child; notification of child's tribe.

1. Each agency which, pursuant to NRS 127.050, accepts a relinquishment for the adoption of a child shall make all necessary inquiries to determine whether the child is an Indian child. If it determines that the child is an Indian child and that the child is a ward of a tribal court, resides on a reservation or is domiciled on a reservation, the agency shall so notify the child's tribe in writing.
2. The Division shall adopt regulations establishing reasonable and uniform standards for making the necessary inquiries to determine whether a child is an Indian child.
3. 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)

ADMINISTRATIVE REGULATIONS.

Prospective adopted child who is American Indian, NAC 127.245, 127.425

NRS 127.053 Consent to adoption: Requisites. No consent to a specific adoption executed in this State, or executed outside this State for use in this State, is valid unless it:

1. Identifies the child to be adopted by name, if any, sex and date of birth.
2. Is in writing and signed by the person consenting to the adoption as required in this chapter.
3. Is acknowledged by the person consenting and signing the consent to adoption in the manner and form required for conveyances of real property.
4. Contains, at the time of execution, the name of the person or persons to whom consent to adopt the child is given.
5. Is attested by at least two competent, disinterested witnesses who subscribe their names to the consent in the presence of the person consenting. If neither the petitioner nor the spouse of a petitioner is related to the child within the third degree of consanguinity, then one of the witnesses must be a social worker employed by:

(a) An agency which provides child welfare services;
(b) An agency licensed in this state to place children for adoption;
(c) A comparable state or county agency of another state; or
(d) An agency authorized under the laws of another state to place children for adoption, if the natural parent resides in that state.

(Added to NRS by 1961, 736; A 1973, 1588; 1987, 2050; 1991, 948; 1993, 204, 2681, 2731; 2001 Special Session, 3)

WEST PUBLISHING CO.
Adoption ! 7.5.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 51 et seq., 68 et seq.

NRS 127.055 Consent to adoption: Attesting witnesses may make self-proving affidavits to be attached to consent.

1. Any or all of the attesting witnesses to any consent to adoption may, at the request of the person or persons who executed the consent, make and sign an affidavit before any person authorized to administer oaths in this state, stating such facts as they would be required to testify to in court to prove the due execution of the consent to adoption. The affidavit must be written on the consent to adoption, or, if that is impracticable, on some paper attached thereto. The sworn statement of any witness so taken must be accepted by the court in any action or proceeding relating to the validity or due execution of the consent to adoption as if it had been taken before the court.

2. The affidavit described in subsection 1 may be substantially in the following form:

State of Nevada }
}ss.
County of.....}

(Date).....

Then and there personally appeared the within-named ..... and ....., who, being duly sworn, depose and say: That they witnessed the execution of the within consent to adoption by ..... (name of person or persons consenting); that she (he or they) subscribed the consent to adoption and declared the same to be a voluntary consent to adoption in their presence; that at the time the consent to adoption was executed it contained the names of the person or persons to whom consent was thereby given to adopt the child; that they thereafter subscribed the same as witnesses in the presence of ..... (name of person or persons consenting) and in the presence of each other and at the request of ..... (name of person or persons consenting); that at the time of the execution of the consent to adoption ..... (name of person or persons consenting) acknowledged to them that she (he or they) was (were), and she (he or they) appeared to them to be, in full possession of her (his or their) faculties and not under the influence of any drug or sedative or subject to any duress, fear, menace, compulsion or undue influence whatever; and that they make this affidavit at her (his or their) request.

.....
.....

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)

WEST PUBLISHING CO.
Adoption ! 7.5, 7.8(2).
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 51 et seq., 57 et seq., 68 et seq.

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 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)

WEST PUBLISHING CO.
Adoption ! 7.5.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 51 et seq., 68 et seq.

NRS 127.060 Residence of petitioners: Adoption of two or more children.

1. 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.

[6:332:1953]—(NRS A 1961, 737)

WEST PUBLISHING CO.
Adoption ! 4.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 13-24.

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)

WEST PUBLISHING CO.
Adoption ! 7.5.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 51 et seq., 68 et seq.

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)

WEST PUBLISHING CO.
Adoption ! 7.6(1)-7.6(3).
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 51 et seq., 70 et seq.

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]

WEST PUBLISHING CO.
Adoption ! 7.2(1)-7.2(3).
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 57 et seq., 58, 65.

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]

WEST PUBLISHING CO.
Adoption ! 11, 12.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 76-87.

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 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)

WEST PUBLISHING CO.

Adoption ! 11.

WESTLAW Topic No. 17.

C.J.S. Adoption of Persons §§ 76, 77, 87.

NEVADA CASES.

Failure to allege certain facts in petition not jurisdictional defect. Failure to allege in a petition for adoption that a minor resided in the county, that consent of the guardian had been obtained, and that the child had resided in the proposed home for 6 months, was not a jurisdictional defect, although 1943 NCL §§ 1065.01 and 1065.02 (cf. NRS 127.110) provided that the adoption could not be granted until the requirements were shown, because the statute did not require that they be alleged in the petition. Mendive v. Third Judicial Dist. Court, 70 Nev. 51, 253 P.2d 884 (1953)

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)

NEVADA CASES.

Role of former Welfare Division. After receiving notice and a copy of a petition to adopt a child, it is then the province of the Welfare Division (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) pursuant to NRS 127.120 to verify the allegations of the petition and complete background investigations of the prospective parents and child. Pursuant to NRS 127.150 the court makes the final decision on the adoption after weighing the findings and recommendations of the Welfare Division against the allegations of the petition. The role of the Welfare Division is one of an adviser to the court, not to make the decision. State v. Bill, 91 Nev. 275, 534 P.2d 1264 (1975)

ATTORNEY GENERAL'S OPINIONS.

Duty to make investigations and reports may not be delegated to another child-placing agency. Under provisions of NRS 127.120, relating to a petition for adoption and the investigations and reports of the State Welfare Department (now the Division of Welfare and Supportive Services of the Department of Health and Human Services), the duty to make the investigations and reports is imposed upon the State Welfare Department and such department may not delegate the duty to another child-placing agency. AGO 142 (3-4-1960)

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)

WEST PUBLISHING CO.
Adoption ! 12.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 78-86.

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)

WEST PUBLISHING CO.
Adoption ! 9.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 49, 73.

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)

WEST PUBLISHING CO.
Adoption ! 13.
Records ! 54.
WESTLAW Topic Nos. 17, 326.
C.J.S. Adoption of Persons §§ 49, 50, 88-97.
C.J.S. Records § 36.

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)

WEST PUBLISHING CO.
Records ! 32.
WESTLAW Topic No. 326.
C.J.S. Records §§ 65, 67-75.

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. No order or decree of adoption may be made until after the child has lived for 6 months in the home of the petitioners.

2. 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.

3. 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)

WEST PUBLISHING CO.
Adoption ! 14, 18.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 98-102, 124-140.

NEVADA CASES.

Role of former Welfare Division. After receiving notice and a copy of a petition to adopt a child, it is then the province of the Welfare Division (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) pursuant to NRS 127.120 to verify the allegations of the petition and complete background investigations of the prospective parents and child. Pursuant to NRS 127.150 the court makes the final decision on the adoption after weighing the findings and recommendations of the Welfare Division against the allegations of the petition. The role of the Welfare Division is one of an adviser to the court, not to make the decision. State v. Bill, 91 Nev. 275, 534 P.2d 1264 (1975)

Disclosure in adoption proceedings of pending appeal of order terminating parental rights. Where an appeal has been taken from an order terminating parental rights, the State must disclose the pendency of such appeal, plainly, sua sponte, to the prospective adoptive parents and to any court conducting adoption proceedings. Although the statutes do not preclude finalization of the adoption if there is such an appeal pending, the possibility of future trauma to the child implicates public policy and justifies the refusal to enter a decree of adoption under NRS 127.150. Kobinski v. State, Welfare Division, 103 Nev. 293, 738 P.2d 895 (1987)

Unenforceability of agreement to allow post-adoption contact between child and biological parent. Agreements allowing post-adoption contact between a child and that child's natural (biological) parents do not per se violate this State's public policy of protecting the child's best interests (see NRS 127.150 and 127.186). However, no provision of Nevada law provides for the enforcement of such agreements and, furthermore, because an adoption decree terminates all rights of the natural parent and confers such rights upon the adoptive parent (see NRS 127.160), the enforcement of such agreements would be inconsistent with the legislature's mandate that a natural parent may not exercise any right to the adopted child not incorporated in the adoption decree. Birth Mother v. Adoptive Parents, 118 Nev. 972, 59 P.3d 1233 (2002)

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 he 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)

ADMINISTRATIVE REGULATIONS.

Information regarding child to adoptive family, NAC 127.255, 127.440, 127.445

WEST PUBLISHING CO.

Adoption ! 9.
WESTLAW Topic No. 17.

C.J.S. Adoption of Persons §§ 49, 73.

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)

WEST PUBLISHING CO.

Adoption ! 14.
WESTLAW Topic No. 17.

C.J.S. Adoption of Persons §§ 98-102, 124-128.

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 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 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 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 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 him, and they shall become his legal parents with all the rights and duties between them of natural parents and legitimate child. By virtue of such adoption he shall inherit from his adoptive parents or their relatives the same as though he were the legitimate child of such parents, and in case of his death intestate the adoptive parents and their relatives shall inherit his estate as if they had been his 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 his property. The child shall not owe his natural parents or their relatives any legal duty nor shall he inherit from his natural parents or kindred. Notwithstanding any other provisions to the contrary in this section, the adoption of a child by his stepparent shall not in any way change the status of the relationship between the child and his natural parent who is the spouse of the petitioning stepparent.

[16:332:1953]

WEST PUBLISHING CO.

Adoption ! 18.
WESTLAW Topic No. 17.

C.J.S. Adoption of Persons §§ 133, 140.

NEVADA CASES.

Natural paternal grandparent of adopted child has no standing to petition for visitation with child once parental rights of father are terminated and child is adopted. Where natural paternal grandparents sought visitation with a grandchild only after the natural father terminated his parental rights and the child was adopted, the supreme court found that district court erred in granting visitation to the grandparents because, pursuant

to NRS 127.160, the natural grandparents' legal relationship with the grandchild ceased to exist when the grandchild was adopted. Therefore, the grandparents did not have standing to petition for visitation. Bopp v. Lino, 110 Nev. 1246, 885 P.2d 559 (1994), cited, Birth Mother v. Adoptive Parents, 118 Nev. 972, at 975, 59 P.3d 1233 (2002)

Right of natural relative to visit child after adoption is limited by NRS 127.171. Where natural paternal grandparents first sought visitation rights with a grandchild 8 months after the parental rights of the natural father were terminated and the child was adopted, district court was precluded from granting visitation to the grandparents because: (1) pursuant to NRS 127.171, district court may grant, during the course of an adoption proceeding, the right to visitation to only natural relatives who have been granted a similar right of visitation pursuant to former NRS 125A.330 (cf. NRS 125C.050); (2) this was not an adoption proceeding; and (3) the grandparents neither sought nor were granted the right to visitation before the child was adopted. Therefore, pursuant to NRS 127.160, the grandparents' legal relationship to the grandchild was terminated when the grandchild was adopted. Bopp v. Lino, 110 Nev. 1246, 885 P.2d 559 (1994), cited, Birth Mother v. Adoptive Parents, 118 Nev. 972, at 975, 59 P.3d 1233 (2002)

Unenforceability of agreement to allow post-adoption contact between child and biological parent. Agreements allowing post-adoption contact between a child and that child's natural (biological) parents do not per se violate this state's public policy of protecting the child's best interests (see NRS 127.150 and 127.186). However, no provision of Nevada law provides for the enforcement of such agreements and, furthermore, because an adoption decree terminates all rights of the natural parent and confers such rights upon the adoptive parent (see NRS 127.160), the enforcement of such agreements would be inconsistent with the legislature's mandate that a natural parent may not exercise any right to the adopted child not incorporated in the adoption decree. Birth Mother v. Adoptive Parents, 118 Nev. 972, 59 P.3d 1233 (2002)

FEDERAL AND OTHER CASES.

Adopted child was not entitled to share in estate of sister of natural father. Where a former Nevada statute (cf. NRS 127.160) provided at the time of plaintiff's adoption for inheritance by an adopted child from and through the adopting parents but was silent as to inheritance from or through the natural parents, plaintiff was not entitled to share in the estate of the sister of his natural father. Rauhut v. Short, 26 Conn. Sup. 55, 212 A.2d 827 (1965)

ATTORNEY GENERAL'S OPINIONS.

Parental rights and duties of natural parent are severed upon adoption. Under NRS 127.160, the parental rights and duties of a natural parent are severed upon adoption. AGO 247 (10-13-1961)

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 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 certain relatives of the child only if a similar right had been granted previously pursuant to NRS 125C.050.
2. 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)

NEVADA CASES.

Right of natural relative to visit child after adoption is limited by section. Where natural paternal grandparents first sought visitation rights with a grandchild 8 months after the parental rights of the natural father were terminated and the child was adopted, district court was precluded from granting visitation to the grandparents because: (1) pursuant to NRS 127.171, district court may grant, during the course of an adoption proceeding, the right to visitation to only natural relatives who have been granted a similar right of visitation pursuant to former NRS 125A.330 (cf. NRS 125C.050); (2) this was not an adoption proceeding; and (3) the grandparents neither sought nor were granted the right to visitation before the child was adopted. Therefore, pursuant to NRS 127.160, the grandparents' legal relationship to the

grandchild was terminated when the grandchild was adopted. Bopp v. Lino, 110 Nev. 1246, 885 P.2d 559 (1994), cited, Birth Mother v. Adoptive Parents, 118 Nev. 972, at 975, 59 P.3d 1233 (2002)

No equitable power for court to grant visitation rights of natural relatives of adopted child not otherwise entitled to visitation by section. The Supreme Court found that district court erred where district court found that it had equitable power to grant the right to visitation to natural paternal grandparents, who sought the right to visitation with a grandchild only after grandchild was adopted by stepfather, if visitation is in best interest of the child, because NRS 127.171 prohibits district court from granting the right to visitation to any person who has not previously been granted a similar right to visitation pursuant to former NRS 125A.330 (cf. NRS 125C.050) and the paternal grandparents had neither sought nor been granted the right to visitation with the grandchild before the grandchild was adopted. Bopp v. Lino, 110 Nev. 1246, 885 P.2d 559 (1994), cited, Birth Mother v. Adoptive Parents, 118 Nev. 972, at 975, 59 P.3d 1233 (2002)

Family court properly granted child's motion to serve siblings' legal guardians with petitions for sibling visitation, even though parental rights had already been terminated. A child whose mother's parental rights had been terminated desired to reestablish contact with her three younger sisters, two of whom had been adopted and one of whom had been reunited with her biological father. Before the other siblings were adopted, the family court ordered that a visitation plan be established before final adoption and that the children be given unlimited unsupervised visitation. The children's adult caregivers, including the Division of Child and Family Services of the Department of Human Resources (now the Department of Health and Human Services), failed to comply with this order. The child who desired to reestablish contact with her younger sisters remained a ward of the State. The child moved the family court to compel the release of the addresses of her siblings' legal guardians so that the guardians could be served with petitions for sibling visitation. The family court issued an order granting the child's motion. The Division subsequently petitioned the Nevada Supreme Court for a writ to arrest the family court's order granting the motion to compel, arguing that: (1) the child never filed a petition for sibling visitation under NRS 125C.050(7) before the termination of parental rights and thus her right to seek such visitation had expired; and (2) the child's right to visit her siblings was cut off by NRS 127.171 because visitation was not previously granted under NRS 125C.050. The Nevada Supreme Court denied the Division's petition, determining that if the Division's arguments were to be countenanced, no child in the Division's custody would ever be granted sibling visitation unless the Division petitioned for such visitation on the child's behalf before the termination of parental rights. The Supreme Court further determined that even if the family court's order was issued after the termination of parental rights, the family court's order was presumptively valid and the Division could not decide unilaterally whether or not to comply with the order. State Div. of Child & Fam. Servs. v. Eighth Judicial Dist. Court, 119 Nev. 655, 81 P.3d 512 (2003)

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 Supreme Court 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]

WEST PUBLISHING CO.
Adoption ! 15.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 103-113.

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 service 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 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 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 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)

ADMINISTRATIVE REGULATIONS.

Financial assistance, NAC 127.490-127.500

NEVADA CASES.

Unenforceability of agreement to allow post-adoption contact between child and biological parent. Agreements allowing post-adoption contact between a child and that child's natural (biological) parents do not per se violate this state's public policy of protecting the child's best interests (see NRS 127.150 and 127.186). However, no provision of Nevada law provides for the enforcement of such agreements and, furthermore, because an adoption decree terminates all rights of the natural parent and confers such rights upon the adoptive parent (see NRS 127.160), the enforcement of such agreements would be inconsistent with the legislature's mandate that a natural parent may not exercise any right to the adopted child not incorporated in the adoption decree. Birth Mother v. Adoptive Parents, 118 Nev. 972, 59 P.3d 1233 (2002)

AGREEMENTS FOR POSTADOPTIVE CONTACT

NRS CROSS REFERENCES.

False information affecting agreements, civil actions, NRS 41.509

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 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)

WEST PUBLISHING CO.

Adoption ! 6.
Child Custody ! 35, 312.

WESTLAW Topic Nos. 17, 76D.
C.J.S. Adoption of Persons §§ 28-45, 140.
C.J.S. Parent and Child §§ 60-62.

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)

WEST PUBLISHING CO.
Attorney and Client ! 32(14).
Infants ! 17.
WESTLAW Topic Nos. 45, 211.
C.J.S. Adoption of Persons §§ 10-14, 41.
C.J.S. Attorney and Client §§ 44, 53.
C.J.S. Infants §§ 6, 8-9.

NRS 127.188 Inquiry by court before entering order or decree of adoption.

1. Before a court may enter an order or decree of adoption of a child, the court must address in person:

(a) 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. 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)

WEST PUBLISHING CO.
Adoption ! 13, 14.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 46-47, 93-108, 130-135, 140.

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)

WEST PUBLISHING CO.
Adoption ! 11.

Child Custody ! 571, 578, 605, 858.
WESTLAW Topic Nos. 17, 76D.
C.J.S. Adoption of Persons §§ 80-83.
C.J.S. Parent and Child § 143.

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)

WEST PUBLISHING CO.
Adoption ! 7.6(2), 16.
Child Custody ! 857, 874.
WESTLAW Topic Nos. 17, 76D.
C.J.S. Adoption of Persons §§ 56, 74-76, 119-129.

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)

WEST PUBLISHING CO.
Child Custody ! 566, 571, 578, 605, 634, 661.
WESTLAW Topic No. 76D.
C.J.S. Parent and Child § 143.

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, 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)

WEST PUBLISHING CO.
Adoption ! 5.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 18-24.

NRS 127.200 Adoption of adults: Consent required.

1. A married person not lawfully separated from his 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 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)

WEST PUBLISHING CO.
Adoption ! 7.1.

WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 51-72.

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. 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)

WEST PUBLISHING CO.
Adoption ! 6.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 25-40.

PLACEMENT OF CHILDREN FOR ADOPTION AND PERMANENT FREE CARE

REVISER'S NOTE.

Ch. 1, Stats. 2001 Special Session, which amended various provisions of NRS 127.220 to 127.310, inclusive, to replace references to "the Division" with references to an "agency which provides child welfare services" contains the following provisions not included in NRS:

"Notwithstanding the amendatory provisions of this act, the Division of Child and Family Services of the Department of Human Resources [now the Department of Health and Human Services] shall, except as otherwise provided in NRS 432B.325, provide child welfare services in a county whose population is 100,000 or more as necessary until the Division and the board of county commissioners of the county agree that an agency in the county is fully capable of providing child welfare services. Any dispute regarding the capability of the agency to provide child welfare services must be determined by the Governor."

WEST PUBLISHING CO.
Adoption ! 7.3.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 59-67.

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)

ADMINISTRATIVE REGULATIONS.

Adoption of children, NAC ch. 127

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 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 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)

ADMINISTRATIVE REGULATIONS.

Licensure of agency, NAC 127.100-127.125

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)

ADMINISTRATIVE REGULATIONS.

Denial, suspension or revocation of license, NAC 127.130, 127.135

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)

ADMINISTRATIVE REGULATIONS.

Waiver or reduction of fees, NAC 127.321

WEST PUBLISHING CO.

Adoption ! 9.

WESTLAW Topic No. 17.

C.J.S. Adoption of Persons §§ 49, 73.

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 his 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)

ATTORNEY GENERAL'S OPINIONS.

Indian tribe's agency for social services required to notify state agency before placing child for adoption off reservation.

An Indian tribe's agency for social services was required to notify the Welfare Division of the Department of Human Resources (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) pursuant to NRS 127.280 before placing a child for adoption off the reservation. AGO 85-20 (12-23-1985)

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)

ADMINISTRATIVE REGULATIONS.

Evaluation of prospective adoptive parents and study of prospective adoptive home, NAC 127.235-127.238, 127.395-127.410

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 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,

➥ 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)

ADMINISTRATIVE REGULATIONS.
Criteria for selection of adoptive home, NAC 127.239, 127.240, 127.415, 127.420
WEST PUBLISHING CO.
Adoption ! 1, 4.
Infants ! 17.
WESTLAW Topic No. 17, 211.
C.J.S. Adoption of Persons §§ 2-4, 13-24.
C.J.S. Infants §§ 8, 9.

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 his siblings. 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.

(Added to NRS by 1999, 2026)

WEST PUBLISHING CO.
Adoption ! 3, 4.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 6-9, 13-17, 23-24.

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 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 surrogate, be inseminated and give birth to the child of a man who is not her husband.

(Added to NRS by 1987, 2049)

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, 200.464 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)

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 in any periodical or newspaper, or by radio or other public medium, that he will place children for adoption, or accept, supply, provide or obtain children for adoption, or causes any advertisement to be published in or by any public medium soliciting, requesting or asking for any child or children for adoption,

➥ 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 or other public medium is not subject to any criminal penalty or civil liability for publishing or broadcasting an advertisement that violates the provisions of this section.

(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)

ATTORNEY GENERAL'S OPINIONS.

Attorney who sends information describing prospective adoptive parents to birth mother in Nevada violates statute. An attorney who sends videotapes, audiotapes, resumes, letters or other information describing prospective adoptive parents to the birth mother in Nevada, without holding a valid license as a child-placing agency, violates the provisions of NRS 127.310. AGO 91-4 (4-16-1991)

INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

WEST PUBLISHING CO.
Adoption ! 25.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 144, 154.

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 his transfer 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 his 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 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 parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt or his 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)

ATTORNEY GENERAL'S OPINIONS.

Provisions of article apply to all placements, regardless of purpose. Article V of the Interstate Compact on the Placement of Children, NRS 127.330, applies to all placements by sending agencies to receiving states, regardless of the purpose. AGO 88-4 (5-24-1988)

Placement in family free home includes placement with nonresident parent. Placement in a "family free home" as used in paragraph (b) of Article II of the Interstate Compact on Placement of Children, NRS 127.330, includes placement of child by court with child's parent who lives in another state that is party to compact. AGO 88-4 (5-24-1988)

Termination of jurisdiction pursuant to article. Pursuant to Article V of the Interstate Compact on the Placement of Children (see NRS 127.330), a court that places a child in the custody of a parent who resides in another state that is a party to the compact may not terminate its jurisdiction over the child without the concurrence of the receiving state unless the child is adopted, attains majority or becomes self-supporting. AGO 88-4 (5-24-1988)

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 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 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 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)

NRS Chapter 128

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NEVADA CASES.

Evidence showed court properly overruled hearsay objection as not timely and denied motion to strike testimony. In proceeding under NRS ch. 128 for an order terminating the parental rights of natural parents, where a witness's testimony included reference to the substance of a report she had received from a probation officer in Oregon, and no objection was made to such testimony as hearsay until after the cross-examination of the witness, the court properly overruled the hearsay objection as not timely, and properly denied the motion to strike the testimony. In re Dumais, 76 Nev. 409, 356 P.2d 124 (1960), cited, Wagon Wheel Saloon v. Mavrogan, 78 Nev. 126, at 129, 369 P.2d 688 (1962), Hotel Riviera, Inc. v. Short, 80 Nev. 505, at 511, 396 P.2d 855 (1964), Southern Pac. Co. v. Watkins, 83 Nev. 471, at 482, 435 P.2d 498 (1967), Ginnis v. Mapes Hotel Corp., 86 Nev. 408, at 415, 470 P.2d 135 (1970), Lewis v. State, 86 Nev. 889, at 895, 478 P.2d 168 (1970), Foss v. State, 92 Nev. 163, at 168, 547 P.2d 688 (1976)

Where evidence showed rehabilitation on part of parents, trial court's order dismissing petition for termination of parental rights was not disturbed on appeal. On a petition under NRS ch. 128 for an order terminating the parental rights of natural parents of a minor on the ground that the parents had neglected and refused to provide properly for the child and that they were unfit parents, where there was substantial evidence tending to show rehabilitation on the part of the parents between the date of their separation from the minor child and the date of the hearing and tending to support the trial court's order dismissing the petition, the order was not disturbed on appeal. In re Dumais, 76 Nev. 409, 356 P.2d 124 (1960)

Whether father had abandoned child was question of fact and not question of law. Where an action was brought to terminate the parental rights of a divorced father, whether the father had abandoned his child within the meaning of NRS ch. 128, which provides for the termination of parental rights, was a question of fact and not a question of law, and the appellate court will not substitute its judgment for that of the judge who heard the witnesses and observed their demeanor. Carson v. Lowe, 76 Nev. 446, 357 P.2d 591 (1960), cited, Pyborn v. Quathamer, 96 Nev. 145, at 147, 605 P.2d 1147 (1980), Kobinski v. State, Welfare Division, 103 Nev. 293, at 296, 738 P.2d 895 (1987), see also Hall v. SSF, Inc., 112 Nev. 1384, at 1394, 930 P.2d 94 (1996) (dissenting opinion), Recodo v. State, Dep't of Human Resources, 113 Nev. 141, at 148, 930 P.2d 1128 (1997), Gonzales v. Dep't of Human Resources, 113 Nev. 324, at 330, 933 P.2d 198 (1997), Tanksley v. State, 113 Nev. 997, at 1002, 946 P.2d 148 (1997), In re Parental Rights as to N.J., 116 Nev. 790, at 795, 8 P.3d 126 (2000)

Termination of parental rights should be applied with caution. The remedy of a decree for the termination of parental rights under NRS ch. 128 should be applied with caution. Carson v. Lowe, 76 Nev. 446, 357 P.2d 591 (1960), cited, Chapman v. Chapman, 96 Nev. 290, at 292, 607 P.2d 1141 (1980), State ex rel. Welfare Div. v. Vine, 99 Nev. 278, at 282, 662 P.2d 295 (1983), Daly v. Daly, 102 Nev. 66, at 68, 715 P.2d 56 (1986), Price v. Dunn, 106 Nev. 100, at 105, 787 P.2d 785 (1990), In re Parental Rights as to C.J.M., 118 Nev. 724, at 732, 58 P.3d 188 (2002)

Judicial policy favoring decision on merits heightens in matters involving termination of parental rights. Because the termination of parental rights constitutes the drastic and permanent severance of the parent-child relationship, judicial policy favoring the decision on merits heightens in matters involving the termination of parental rights. (See NRS ch. 128.) Bauwens v. Evans, 109 Nev. 537, 853 P.2d 121 (1993)

In a proceeding for the termination of parental rights, the absence of a current report by the State on a parent's progress in meeting conditions of reunification did not violate the parent's procedural due process rights. An appellant contended that his right to procedural due process had been violated where the District Court terminated his parental rights without having a current review of the case plan to reunite the father with his child prepared by the Division of Child and Family Services of the Department of Human Resources (now the Department of Health and Human Services). The Supreme Court noted that as a matter of due process in a proceeding for the termination of parental rights pursuant to NRS ch. 128, the parent was entitled to: (1) a clear and definite statement of the allegation of the petition to terminate parental rights; (2) a notice of hearing; and (3) right to counsel. The Supreme Court found that despite the negligence of the Division of Child and Family Services in not preparing a current report, the absence of a current report did not work an injustice. The appellant admitted that he was familiar with the case plan and conditions for reunification. Further, the appellant was given ample opportunity at a hearing to report on his progress in meeting those conditions. Therefore, the appellant's right to procedural due process was not violated and the order terminating his parental rights was upheld. Weinper v. State, Dep't of Human Resources, 112 Nev. 710, 918 P.2d 325 (1996), cited, Recodo v. State, Dep't of Human Resources, 113 Nev. 141, at 151, 930 P.2d 1128 (1997), Daniels v. Department of Human Resources, 114 Nev. 81, at 88, 953 P.2d 1 (1998), clarified, In re Parental Rights as to N.D.O., 121 Nev. 379, at 382, 115 P.3d 223 (2005)

Parent-child relationship is a fundamental liberty interest. The relationship between parent and child is a fundamental liberty interest. (See also NRS 125.450 et seq., NRS chs. 125A, 125C and 128 and Nev. Art. 1, § 8.) Weinper v. State, Dep't of Human Resources, 112 Nev. 710, 918 P.2d 325 (1996), see also Daniels v. Dep't of Human Resources, 114 Nev. 81, at 87, 953 P.2d 1 (1998), In re Parental Rights as to N.J., 116 Nev. 790, at 801, 8 P.3d 126 (2000), In re Parental Rights as to J.L.N., 118 Nev. 621, at 625, 55 P.3d 955 (2002), Kirkpatrick v. Eighth Judicial Dist. Court, 119 Nev. 66, at 71, 64 P.3d 1056 (2003), In re Guardianship of L.S. & H.S., 120 Nev. 157, at 166, 87 P.3d 521 (2004), In re Parental Rights as to D.R.H., 120 Nev. 422, at 426-27, 92 P.3d 1230 (2004)

Termination of parental rights of mentally ill mother who never had chance to care for child was not violation of her procedural due process rights under circumstances. On appeal of the termination of parental rights pursuant to NRS ch. 128, mother diagnosed with paranoid schizophrenia argued that her procedural due process rights had been violated because she had never been given the opportunity to care for her child, who was removed from the mother's care 3 days after the child's birth, and thus there was no evidence of neglect by the mother. Although the supreme court acknowledged that the child had never been in the mother's care, the order for termination of parental rights was based on the mother's failure to make necessary adjustments, so evidence of neglect was not a necessary predicate to the termination of parental rights. Further, the mother had been provided notice and counsel at the initial proceeding shortly after the child's birth and at the termination hearing. Therefore, the requirements of due process were met and the order terminating her parental rights was affirmed. Deck v. Department of Human Resources, 113 Nev. 124, 930 P.2d 760 (1997)

Putative father who was omitted from reunification case plan was not denied procedural due process where father showed little interest in child and made little effort to establish paternity. On appeal of the termination of parental rights pursuant to NRS ch. 128, putative father argued that his procedural due process rights were violated by respondent's failure to provide for reunification of the child and the putative father within the case plan established to reunify the mother and child. In affirming the termination of parental rights of the putative father, the supreme court found that respondent had provided appellant with due process and fulfilled its statutory obligation (see NRS 128.107) because it informed the putative father of the means by which he could establish paternity and because of the appointment of counsel at the termination hearing. Without further contact by the putative father and with virtually no demonstrated interest by the putative father in the child, respondent was under no obligation to provide the putative father with a case plan. Deck v. Department of Human Resources, 113 Nev. 124, 930 P.2d 760 (1997), cited, In re Parental Rights as to C.J.M., 118 Nev. 724, at 735, 58 P.3d 188 (2002)

Family privacy cases involving competing familial interests: Application of more flexible "reasonableness" test for analyzing substantive due process challenges. Although the U.S. Supreme Court has held that the usual standard for analyzing a substantive due process (see Nev. Art. 1, § 8) challenge to the constitutionality of a state statute that impinges on a fundamental constitutional right is whether the statute is narrowly tailored so as to serve a compelling interest, and although the relationship between parent and child is a fundamental liberty interest, in family privacy cases involving competing interests within the family, the U.S. Supreme Court has deviated from the usual test to apply a more flexible "reasonableness" test which implicitly calibrates the level of scrutiny in each case to match the particular degree of intrusion upon the parents' interests. Kirkpatrick v. Eighth Judicial Dist. Court, 119 Nev. 66, 64 P.3d 1056 (2003), cited, In re Guardianship of L.S. & H.S., 120 Nev. 157, at 166, 87 P.3d 521 (2004), but see In re Parental Rights as to D.R.H., 120 Nev. 422, at 427, 92 P.3d 1230 (2004)

Determination of whether due process requires appointment of counsel in termination proceedings on a case-by-case basis. Due process (see Nev. Art. 1, § 8) does not require an absolute right to counsel in parental rights terminations hearings. (See ch. 128 of NRS). In determining whether due process requires the appointment of counsel, a court must balance the private interests at stake, the government's interest and the risk that the procedures used will lead to erroneous results. The provisions of NRS 128.100 allow for the balancing required for determining whether due process demands counsel. In re Parental Rights as to N.D.O., 121 Nev. 379, 115 P.3d 223 (2005)

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 his 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 he is found, the parent or parents are presumed to have intended to abandon the child.

(Added to NRS by 1975, 963; A 1981, 1753)

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Termination of parental rights under child abandonment statute not in violation of due process. Termination of the parental rights of a divorced father under child abandonment statute, NRS 128.010 (cf. NRS 128.012), is not in violation of the due process clauses of state and federal constitutions. Carson v. Lowe, 76 Nev. 446, 357 P.2d 591 (1960)

Where conduct of the father evidenced a settled purpose to forego parental custody and the father left the child with the mother without support or communication for 1 year, there was ample support for finding of abandonment. In an action by the mother of a minor child to terminate the parental rights of the father on the theory of abandonment, where the conduct of the father evidenced a settled purpose to forego all parental custody and relinquish all claims to the child, and the father left the child in the care and custody of the mother without provision for his support and without communication for a period of 1 year, there was ample support in the record for finding of abandonment under both the former provisions of NRS 128.010 (cf. NRS 128.012) and NRS 128.090. Carson v. Lowe, 76 Nev. 446, 357 P.2d 591 (1960), cited, Casper v. Huber, 85 Nev. 474, at 477, 456 P.2d 436 (1969), Sernaker v. Ehrlich, 86 Nev. 277, at 279, 468 P.2d 5 (1970), Pyborn v. Quathamer, 96 Nev. 145, at 147, 605 P.2d 1147 (1980), Drury v. Lang, 105 Nev. 430, at 433, 776 P.2d 843 (1989), Greeson v. Barnes, 111 Nev. 1198, at 1203, 900 P.2d 943 (1995), Daniels v. Department of Human Resources, 114 Nev. 81, at 93, 953 P.2d 1 (1998), see also Deck v. Department of Human Resources, 113 Nev. 124, at 137, 930 P.2d 760 (1997), Gonzales v. Department of Human Resources, 113 Nev. 324, at 331, 332, 933 P.2d 198 (1997)

Facts sufficient to support finding of abandonment. On appeal from an order terminating parental rights and granting adoption, where: (1) the father left the mother and child shortly after the birth of the child, compelling the mother to seek welfare assistance; (2) the father paid monthly support for several months but was convicted of first degree murder and sentenced to prison in other state for 25 to 30 years; (3) the mother placed the child in the care of her aunt and uncle, who instituted proceedings to adopt the child; (4) the mother executed relinquishment in favor of adoption; and (5) the father, in prison, objected to adoption but acknowledged that leaving the child with the aunt and uncle was satisfactory provided he could correspond with and visit the child whenever able to do so, there was substantial evidence to support the court's finding of abandonment (see NRS 128.012), and the best interests of the child were properly served by the order of termination and granting of adoption. Casper v. Huber, 85 Nev. 474, 456 P.2d 436 (1969), cited, Sernaker v. Ehrlich, 86 Nev. 277, at 279, 468 P.2d 5 (1970), Drury v. Lang, 105 Nev. 430, at 433, 776 P.2d 843 (1989), Greeson v. Barnes, 111 Nev. 1198, at 1203, 900 P.2d 943 (1995)

Evidence was sufficient to support a finding of abandonment and that termination of father's parental rights was in the best interest of child. In an action by the mother of a minor child to terminate the parental rights of the father, where both parties had remarried, and the father had failed to provide support for several years, had visited the child only once and telephoned once, and had broken promises to the child, evidence was sufficient to support a finding of abandonment under both the former provisions of NRS 128.010 (cf. NRS 128.012) and NRS 128.090, and that termination of the father's parental rights was in the best interest of the child. Sernaker v. Ehrlich, 86 Nev. 277, 468 P.2d 5 (1970), cited, Whitaker v. Olsson, 89 Nev. 157, at 157, 508 P.2d 1014 (1973), Pyborn v. Quathamer, 96 Nev. 145, at 146, 605 P.2d 1147 (1980), Chapman v. Chapman, 96 Nev. 290, at 292, 607 P.2d 1141 (1980), Kobinski v. State, Welfare Div., 103 Nev. 293, at 296, 738 P.2d 895 (1987), Drury v. Lang, 105 Nev. 430, at 433, 776 P.2d 843 (1989), Greeson v. Barnes, 111 Nev. 1198, at 1203, 900 P.2d 943 (1995), Gonzales v. Department of Human Resources, 113 Nev. 324, at 332, 933 P.2d 198 (1997), see also Bush v. State, Dep't of Human Resources, 112 Nev. 1298, at 1308, 929 P.2d 940 (1996) (dissenting opinion), Daniels v. Department of Human Resources, 114 Nev. 81, 953 P.2d 1 (1998)

Termination of parental rights upheld if based on substantial evidence. Termination of parental rights will be upheld on appeal if there is substantial evidence in the record to support abandonment under the former provisions of NRS 128.010 (cf. NRS 128.012). Sernaker v. Ehrlich, 86 Nev. 277, 468 P.2d 5 (1970), cited, Pyborn v. Quathamer, 96 Nev. 145, at 146-147, 605 P.2d 1147 (1980), see also Kobinski v. State, Welfare Div., 103 Nev. 293, at 296, 738 P.2d 895 (1987), August H. v. State, 105 Nev. 441, at 446, 777 P.2d 901 (1989), Greeson v. Barnes, 111 Nev. 1198, at 1201, 900 P.2d 943 (1995), Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, at 726, 917 P.2d 949 (1996), Recodo v. State, Dep't of Human Resources, 113 Nev. 141, at 148, 930 P.2d 1128 (1997), Gonzales v. Department of Human Resources, 113 Nev. 324, at 331, 332, 933 P.2d 198 (1997), In re Carron, 114 Nev. 370, at 374, 956 P.2d 785 (1998), In re Parental Rights as to Q.L.R., 118 Nev. 602, at 605, 54 P.3d 56 (2002)

Finding that mother had abandoned child was not supported by substantial evidence. On appeal from judgment terminating a mother's parental rights, findings that the mother's conduct evinced a settled purpose to forego custody and relinquish all claims to her child, that she had left the child in the custody of guardians without more than "token efforts" to communicate with her for a period in excess of 6 months, and therefore that she had abandoned the child within the meaning of NRS 128.012 and 128.105, were not supported by substantial evidence where: (1) during part of the 6-month period, the mother had been under a temporary restraining order prohibiting any contact with the child; (2) during at least part of the 6-month period the mother had been seriously ill; and (3) the mother had visited the child often before the death of the child's father, during the period when he had custody. Chapman v. Chapman, 96 Nev. 290, 607 P.2d 1141 (1980)

Evidence sufficient to support finding of abandonment. In an action to terminate parental rights, where: (1) the parents were arrested on charges involving narcotics, burglary and child abuse; (2) the children were frequently left unattended; (3) the father had an unbridled temper and was a chronic abuser of alcohol and controlled substances; (4) the parents did not, although they were required to do so, support the children while they were in the custody of the state; and (5) the children told welfare workers that they wanted a new life and new mother and father, there was substantial evidence to support finding that the children suffered serious and continued neglect and were abandoned by their parents (see NRS 128.012). The trial court, therefore, did not abuse its discretion in finding that the best interests of the children would be served by terminating their parental rights. Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984), cited, Drury v. Lang, 105 Nev. 430, at 433, 776 P.2d 843 (1989)

Abandonment as ground for termination of parental rights. In an action to terminate the parental rights of a father who was transsexual, there was clear and convincing evidence that both jurisdictional and dispositional grounds existed to justify issuance of an order of termination where: (1) a physician who examined the child testified that there was serious risk of emotional or mental injury to the child if she were required to be in her father's presence, that there are children who are not able to accept a parent as a transsexual, and that alternatives such as psychological or psychiatric counseling may not be successful and would risk emotional injury; (2) the child, who had requisite capacity to express her desires, said that she did not want to see her father and that it would be disturbing to her if she were required to do so; and (3) the father paid no support for the child for over 1 year, and what communication there was with the child during that time was described as "token." (See NRS 128.012 and 128.107.) Daly v. Daly, 102 Nev. 66, 715 P.2d 56 (1986)

Specific conduct which does not demonstrate intent to abandon child. In an action for termination of father's parental rights, where parents were divorced, but father exercised his visitation rights when he could, called his daughter every 2 to 6 months, and occasionally sent her gifts and cards at Christmas and on her birthday, father's parental rights could not be terminated on ground of abandonment because his conduct did not demonstrate requisite intent to abandon his daughter. (See NRS 128.012.) Smith v. Smith, 102 Nev. 263, 720 P.2d 1219 (1986), cited, Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, at 727, 917 P.2d 949 (1996), In re Carron, 114 Nev. 370, at 375, 956 P.2d 785 (1998), see also In re Parental Rights as to Q.L.R., 118 Nev. 602, at 606, 54 P.3d 56 (2002)

Six-month lapse in communication insufficient to support finding of abandonment. A 6-month lapse in communication between the noncustodial parent and the children, without more, is insufficient as a matter of law to support the finding that the parent has demonstrated a settled purpose to abandon the children. (See NRS 128.012 and 128.105.) Drury v. Lang, 105 Nev. 430, 776 P.2d 843 (1989), cited, Daniels v. Department of Human Resources, 114 Nev. 81, at 93, 953 P.2d 1 (1998)

Evidence that contact between parent and child was negligible and that the amount parent paid for child support was de minimis was sufficient to support finding that parent had abandoned child. There was sufficient evidence to support a district court's order to terminate a father's parental rights on ground that the father had abandoned his child (see NRS 128.012) where, during a 5-year period, the father paid only $60 in child support and his only contact with the child was negligible. Although a noncustodial parent may demonstrate his intent not to abandon his child by providing financial support or by maintaining contact with the child, or both, the father did neither. Further, the evidence showed that the mother and stepfather had provided a stable environment for the child, and that the father had made express and implied threats of death and bodily harm to the mother, stepfather and maternal grandfather, and had threatened to abduct the child. Therefore, in affirming the district court's order, the supreme court found that the best interest of the child was served by terminating the father's parental rights pursuant to NRS 128.105. Greeson v. Barnes, 111 Nev. 1198, 900 P.2d 943 (1995), cited, Gonzales v. Department of Human Resources, 113 Nev. 324, at 332, 933 P.2d 198 (1997), In re Parental Rights as to C.J.M., 118 Nev. 724, at 734, 58 P.3d 188 (2002)

Termination of parental rights based on abandonment which was not supported by clear and convincing evidence of abandonment was reversed. In a hearing for termination of parental rights, there was not clear and convincing evidence that the mother's conduct demonstrated a settled purpose to forego parental custody and relinquish all claims to her child as required to constitute abandonment of a child pursuant to NRS 128.012 where the mother: (1) made significant strides to overcome her problems with alcohol abuse; (2) found suitable housing and employment; (3) was out of contact with the child for less than 6 months; (4) was briefly absent from the State due in part to the belief that she would be unable to regain custody of her child who was in foster care; (5) made several attempts to contact the Division of Child and Family Services of the Department of Human Resources (now the Department of Health and Human Services); and (6) made it abundantly clear that she would oppose a petition to terminate her parental rights. Because there was not clear and convincing evidence to support jurisdictional finding that the mother had abandoned her child, the order to terminate the parental rights of the mother based on abandonment was reversed. Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, 917 P.2d 949 (1996)

Facts sufficient to support finding that putative father had abandoned his child. Where a putative father made no effort to establish himself as a natural father other than signing an affidavit of paternity only after an action to terminate his parental rights was commenced, and the putative father provided no support, gave no gifts and had little or no significant contact with the child, there was clear and convincing evidence that the putative father had abandoned the child (see NRS 128.012). Therefore, there were jurisdictional grounds for termination of parental rights to the child (see NRS 128.105) and the order for termination of parental rights was affirmed. (See also NRS 128.095.) Deck v. Department of Human Resources, 113 Nev. 124, 930 P.2d 760 (1997)

Failure to maintain contact with children and provide support sufficient to support finding of abandonment. In an action to terminate a mother's parental rights, where the mother did not contact or provide support for her children for a period of 1 year, the district court did not err in its finding that the mother had abandoned her children within the meaning of NRS 128.012 and 128.105, even though the mother had undergone extreme emotional trauma following the death of the children's father, because the actions of the mother demonstrated clear intent to relinquish her parental rights. Gonzales v. Department of Human Resources, 113 Nev. 324, 933 P.2d 198 (1997)

Abandonment of child and failure of parental adjustment established by clear and convincing evidence. Jurisdictional grounds for the termination of a father's parental rights for abandoning his children and failing to make parental adjustment were established by clear and convincing evidence where the father: (1) continued to associate with the mother who was a drug addict, even though he was instructed to avoid contact with her by the Division of Child and Family Services of the Department of Human Resources (now the Department of Health and Human Services); (2) visited the children on only one occasion during a period of 2 1/2 years; (3) was unemployed and without a permanent residence; (4) made no efforts to attend parenting classes; and (5) failed to pay support for the children while they were in the custody of the State. (See NRS 128.012, 128.0126 and 128.105.) Daniels v. Department of Human Resources, 114 Nev. 81, 953 P.2d 1 (1998)

Abandonment of child and failure of parental adjustment established by clear and convincing evidence. Jurisdictional grounds for the termination of a mother's parental rights for abandoning her children and failing to make parental adjustment were established by clear and convincing evidence where the mother: (1) admitted to supervising the children improperly at a hearing before the juvenile court; (2) made no effort to communicate with the state agencies that had custody of the children; (3) during 17 months in prison, sent the children one letter; (4) upon release from prison, failed to provide the state agency with a telephone number or permanent address; (5) failed to pay support for the children while they were in the custody of the state; and (6) failed to comply with conditions for reunification. (See NRS 128.012, 128.0126 and 128.105.) Daniels v. Department of Human Resources, 114 Nev. 81, 953 P.2d 1 (1998)

The conduct of a parent before the birth of a child may be considered in determining whether the parent abandoned the child. In an action to terminate the parental rights of a father where the: (1) actions and words of the father toward the biological mother during the mother's pregnancy indicated that he wanted nothing to do with the child; and (2) father did not assert his parental rights until after the person seeking to adopt the child filed a petition to terminate the parental rights of the father, the supreme court held that the father's conduct before the birth of the child during the mother's pregnancy may be considered as one factor in determining whether the father abandoned the child because NRS 128.012 allows the court to consider "any conduct of one or both parents" and does not limit the court's consideration to the conduct of a parent after the birth of the child. In re Carron, 114 Nev. 370, 956 P.2d 785 (1998)

The district court erred in failing to apply the statutory presumption of abandonment. The district court erred by not applying the statutory presumption of abandonment set forth in NRS 128.012 where evidence was

introduced that: (1) the child's parents left the child with an aunt and uncle without any provision for support for more than 7 years; and (2) during the 7-year period of absence, the parents spoke to the child once on the telephone and the mother saw the child twice. In re Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000)

If the statutory presumption of abandonment applies, the burden of proof shifts to the parents to prove that they did not abandon their child. If evidence is introduced that the parents of a child left the child in the care of another without provision for support or communication for 6 months, the statutory presumption of abandonment set forth in NRS 128.012 applies and the burden of proof shifts to the parents to prove that they did not abandon their child. In re Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000), cited, In re Parental Rights as to C.J.M., 118 Nev. 724, at 734, 58 P.3d 188 (2002)

Incarceration does not constitute abandonment as a matter of law. Voluntary conduct resulting in incarceration does not alone establish an intent to abandon a child. (See NRS 128.012.) In re Parental Rights as to Q.L.R., 118 Nev. 602, 54 P.3d 56 (2002), cited, In re Parental Rights as to J.L.N., 118 Nev. 621, at 628, 55 P.3d 955 (2002), see also In re Parental Rights as to K.D.L., 118 Nev. 737, at 748, 58 P.3d 181 (2002), explained, In re Parental Rights as to C.J.M., 118 Nev. 724, at 736, 58 P.3d 188 (2002)

Evidence did not support a finding that an incarcerated father had abandoned his child. In an action brought to terminate the parental rights of a father who was incarcerated, substantial evidence did not exist to support a finding of abandonment (see NRS 128.012) where the father: (1) attempted to continue his relationship with the child, although he was unable to provide financial support for the child; (2) sold some of his personal possessions in order to send money to the child; (3) filed a civil action to reclaim his possessions in order to sell them and provide more money for the child; and (4) sent the child cards and drawings from prison. In re Parental Rights as to Q.L.R., 118 Nev. 602, 54 P.3d 56 (2002)

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 home.

(Added to NRS by 1987, 172)

NEVADA CASES.

Failure of parental adjustment as basis for termination of parental rights. Failure of parental adjustment (see NRS 128.0126) may provide a jurisdictional basis for the termination of parental rights (see NRS 128.105). If a child is removed from the home, the parent must exercise reasonably diligent efforts to seek the child's return. Failure to make such efforts may result in the court's finding that the parent is unsuitable by reason of unfitness or neglect in the form of failing or refusing to adjust after the child was removed. The parent, however, still must be shown to be at fault in some manner and cannot be judged unsuitable by reason of failure to comply with requirements and plans that are unclear, not communicated to him, or which are impossible for him to abide by. Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984), cited, Kobinski v. State, Welfare Div., 103 Nev. 293, at 296, 738 P.2d 895 (1987), Bush v. State, Dep't of Human Resources, 112 Nev. 1298, at 1315, 929 P.2d 940 (1996) (dissenting opinion), Recodo v. State, Dep't of Human Resources, 113 Nev. 141, at 150, 930 P.2d 1128 (1997), Gonzales v. Dep't of Human Resources, 113 Nev. 324, at 333, 933 P.2d 198 (1997), In re Parental Rights as to J.L.N., 118 Nev. 621, at 627, 55 P.3d 955 (2002), In re Parental Rights as to K.D.L., 118 Nev. 737, at 748, 58 P.3d 181 (2002)

Failure of parental adjustment to be applied with caution. Failure of parental adjustment (see NRS 128.0126), as a basis for termination of parental rights, is fraught with difficulties and must be applied with caution. (See also NRS 128.105.) Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984), cited, Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, at 729, 917 P.2d 949 (1996), Bush v. State, Dep't of Human Resources, 112 Nev. 1298, at 1315, 929 P.2d 940 (1996) (dissenting opinion), Gonzales v. Dep't of Human Resources, 113 Nev. 324, at 332-33, 933 P.2d 198 (1997), In re Parental Rights as to J.L.N., 118 Nev. 621, at 627, 55 P.3d 955 (2002), see also In re Parental Rights as to K.D.L., 118 Nev. 737, at 748, 58 P.3d 181 (2002)

Order terminating parental rights of parent for failure to adjust was reversed where record indicated that parent made substantial effort to correct problem with abuse of alcohol. Parental rights of appellant, who had a history of abuse of alcohol and whose child had been a ward of the state for approximately 22 months, were terminated pursuant to NRS 128.105 for failure of parental adjustment where the district court determined that appellant was unable or unwilling within a reasonable time to substantially correct the circumstances or conduct which led to placement of the child outside of the home (see NRS 128.0126). However, the record showed that, with the exception of 8 months when appellant made no or only a partial attempt to adjust, appellant made substantial efforts to correct the conduct and circumstances by entering a rehabilitation program, remaining sober in compliance with the revised plan for reunification, becoming successfully employed and establishing a stable home life. Therefore, because there was not clear and convincing evidence of failure of parental adjustment, the supreme court reversed order terminating appellant's parental rights. Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, 917 P.2d 949 (1996)

Finding of failure of parental adjustment was supported by clear and convincing evidence. In action to terminate a mother's parental rights, where the mother failed to: (1) maintain contact with her children for a period of 1 year; (2) provide support for her children; (3) maintain contact with the Division of Child and Family Services of the Department of Human Resources (now the Department of Health and Human Services); and (4) comply with the plan to reunite the family developed by the Division, there was clear and convincing evidence to support the finding of failure of parental adjustment for the purposes of NRS 128.0126, 128.105 and 128.109. Gonzales v. Department of Human Resources, 113 Nev. 324, 933 P.2d 198 (1997)

Abandonment of child and failure of parental adjustment established by clear and convincing evidence. Jurisdictional grounds for the termination of a father's parental rights for abandoning his children and failing to make parental adjustment were established by clear and convincing evidence where the father: (1) continued to associate with the mother who was a drug addict, even though he was instructed to avoid contact with her by the Division of Child and Family Services of the Department of Human Resources (now the Department of Health and Human Services); (2) visited the children on only one occasion during a period of 2 1/2 years; (3) was unemployed and without a permanent residence; (4) made no efforts to attend parenting classes; and (5) failed to pay support for the children while they were in the custody of the state. (See NRS 128.012, 128.0126 and 128.105.) Daniels v. Department of Human Resources, 114 Nev. 81, 953 P.2d 1 (1998)

Abandonment of child and failure of parental adjustment established by clear and convincing evidence. Jurisdictional grounds for the termination of a mother's parental rights for abandoning her children and failing to make parental adjustment were established by clear and convincing evidence where the mother: (1) admitted to supervising the children improperly at a hearing before the juvenile court; (2) made no effort to communicate with the state agencies that had custody of the children; (3) during 17 months in prison, sent the children one letter; (4) upon release from prison, failed to provide the state agency with a telephone number or permanent address; (5) failed to pay support for the children while they were in the custody of the state; and (6) failed to comply with conditions for reunification. (See NRS 128.012, 128.0126 and 128.105.) Daniels v. Department of Human Resources, 114 Nev. 81, 953 P.2d 1 (1998)

Clear and convincing evidence showed that the father of children failed to adjust parentally when he committed a second act of domestic violence while on parole. A biological father was subject to a case plan for reunification which required him to, in relevant part, attend weekly anger management therapy sessions. Although the mother of the children declined to press charges, the father beat the mother and inflicted a bilateral jaw fracture upon her, leading the police department to take the children into protective custody. Approximately 1 year after this act, the father pleaded guilty (for that act) to battery with substantial bodily harm. The father apparently complied with the part of the case plan requiring him to take anger management therapy, yet while on parole for beating the mother of the children, the father committed an act of domestic violence against his own mother, violating the terms of his parole and resulting in his incarceration for a minimum term of 48 months. Although incarceration, alone, is not a sufficient ground to terminate parental rights, the district court concluded, and the supreme court agreed, that the nature of the father's acts were such that the father presented a potential danger to his children and demonstrated a failure of parental adjustment on the part of the father. (See also NRS 128.0126, 128.105 and 128.109.) In re Parental Rights as to K.D.L., 118 Nev. 737, 58 P.3d 181 (2002)

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 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 his parent or guardian, in the practice of his 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 his ability to function within his 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 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 his health, morals or well-being;
3. Whose parent, guardian or custodian neglects or refuses to provide the special care made necessary by his 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 himself or others,
➥ and the parent's neglect need not be willful.
(Added to NRS by 1975, 964; A 1981, 1753)

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Infants ! 156.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 31-62.

NEVADA CASES.

Basis for finding of neglect. On an appeal from a judgment terminating a mother's parental rights, a finding of neglect as defined by NRS 128.014 could not be based upon evidence that the child was left by the mother in an environment where the child was known to be receiving proper care or upon evidence of the treatment of the child when the child was not in the mother's custody. Chapman v. Chapman, 96 Nev. 290, 607 P.2d 1141 (1980), cited, Champagne v. Welfare Div., 100 Nev. 640, at 658, 691 P.2d 849 (1984), Smith v. Smith, 102 Nev. 263, at 267, 720 P.2d 1219 (1986)

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, including rights of inheritance.
2. As used in this section, "parent" includes an adoptive parent.
(Added to NRS by 1975, 964)

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)

NEVADA CASES.

Parents were not found unsuitable to raise their children in an acceptable manner on the ground that the appropriate agencies were unable to reunite the family after the children were taken from the home. In an action to terminate

parental rights, the parents were not unsuitable to raise their children in an acceptable manner pursuant to NRS 128.106 on the ground that the appropriate public or private agencies were unable to reunite the family after the children were removed from the home where: (1) the parents cooperated with those public agencies; (2) the proposed plans to reunite the family failed to specify relevant criteria to determine whether they were successfully completed; and (3) the record did not indicate that an agreement was made between the parents, the court and the agency with custody of the children imposing the conditions leading to the return of the children or to their adoption as required by former NRS ch. 62 (cf. NRS title 5) and NRS 128.0155. Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984)

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 his 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)

NEVADA CASES.

Specific facts establishing parent as "unfit." It was not an error for the trial court to terminate the parental rights of the father pursuant to NRS 128.105 and find he made only a token effort to avoid being declared unfit (see NRS 128.018), where there was ample evidence of: (1) an unstable and chaotic home life resulting in the placement of the children in the custody of the Welfare Division (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) because of neglect and abandonment; (2) the father's failure, after repeated notice, to make support payments as ordered and to provide the medical needs of the children; and (3) his erratic attendance at court-ordered counseling sessions. Spencer v. Welfare Division, 94 Nev. 627, 584 P.2d 669 (1978), cited, Kobinski v. State, Welfare Division, 103 Nev. 293, at 296, 738 P.2d 895 (1987)

Evidence was not sufficient to support finding that mother was unfit parent. On an appeal from a judgment terminating a mother's parental rights, the evidence was not sufficient to support a finding that the mother was an unfit parent within the meaning of NRS 128.018 where it established that the mother: (1) had been convicted of transporting marijuana 4 years earlier; (2) had changed her place of residence frequently; (3) socialized with a man who was on probation; (4) had a history of sporadic employment; and (5) admitted having had a drink while taking prescribed sedative medication. Chapman v. Chapman, 96 Nev. 290, 607 P.2d 1141 (1980)

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 parents.

[2:161:1953]—(NRS A 1975, 965; 1981, 1753; 1995, 783)

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Infants ! 196.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 42, 53, 54.

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 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)

WEST PUBLISHING CO.
Infants ! 194.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 42, 50, 51, 53, 54.

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)

WEST PUBLISHING CO.
Infants ! 194.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 42, 50, 51, 53, 54.

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 his parents.
(d) The name and residence of the person or persons having physical custody or control of the child.
(e) The name and residence of his 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)

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Infants ! 197.
WESTLAW Topic No. 211.
C.J.S. Infants § 55.

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)

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Adoption ! 3, 4.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 6-9, 13-17, 23-24.

NRS 128.060 Notice of hearing: Contents; personal service to certain persons; petitioner to mail notice to Department of Health and Human Services if he 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 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 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)

WEST PUBLISHING CO.
Infants ! 198.
WESTLAW Topic No. 211.
C.J.S. Infants § 56.

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.

➥ 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 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 his parents 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)

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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 CROSS REFERENCES.
Protection of children from abuse or neglect, NRS ch. 432B, 432.0999-432.130

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Where conduct of the father evidenced a settled purpose to forego parental custody and the father left the child with the mother without support or communication for 1 year, there was ample support for finding of abandonment. In an action by the mother of a minor child to terminate parental rights of the father on the theory of abandonment, where conduct of the father evidenced a settled purpose to forego all parental custody and relinquish all claims to the child, and the father left the child in the care and custody of the mother without provision for his support and without communication for a period of 1 year, there was ample support in the record for finding of abandonment under both the former provisions of NRS 128.010 (cf. NRS 128.012) and NRS 128.090. Carson v. Lowe, 76 Nev. 446, 357 P.2d

591 (1960), cited, Casper v. Huber, 85 Nev. 474, at 477, 456 P.2d 436 (1969), Sernaker v. Ehrlich, 86 Nev. 277, at 279, 468 P.2d 5 (1970), Pyborn v. Quathamer, 96 Nev. 145, at 147, 605 P.2d 1147 (1980), Drury v. Lang, 105 Nev. 430, at 433, 776 P.2d 843 (1989), Greeson v. Barnes, 111 Nev. 1198, at 1203, 900 P.2d 943 (1995), Daniels v. Department of Human Resources, 114 Nev. 81, at 93, 953 P.2d 1 (1998), see also Deck v. Department of Human Resources, 113 Nev. 124, at 137, 930 P.2d 760 (1997), Gonzales v. Department of Human Resources, 113 Nev. 324, at 331, 332, 933 P.2d 198 (1997)

Evidence was sufficient to support a finding of abandonment and that termination of the father's parental rights was in the best interest of the child. In an action by the mother of a minor child to terminate the parental rights of the father, where both parties had remarried, and the father had failed to provide support for several years, had visited the child only once and telephoned once, and had broken promises to the child, evidence was sufficient to support a finding of abandonment under both the former provisions of NRS 128.010 (cf. NRS 128.012) and NRS 128.090, and that termination of the father's parental rights was in the best interest of the child. Sernaker v. Ehrlich, 86 Nev. 277, 468 P.2d 5 (1970), cited, Whitaker v. Olsson, 89 Nev. 157, at 157, 508 P.2d 1014 (1973), Pyborn v. Quathamer, 96 Nev. 145, at 146, 605 P.2d 1147 (1980), Chapman v. Chapman, 96 Nev. 290, at 292, 607 P.2d 1141 (1980), Kobinski v. State, Welfare Div., 103 Nev. 293, at 296, 738 P.2d 895 (1987), Drury v. Lang, 105 Nev. 430, at 433, 776 P.2d 843 (1989), Greeson v. Barnes, 111 Nev. 1198, at 1203, 900 P.2d 943 (1995), Gonzales v. Department of Human Resources, 113 Nev. 324, at 332, 933 P.2d 198 (1997), see also Bush v. State, Dep't of Human Resources, 112 Nev. 1298, at 1308, 929 P.2d 940 (1996) (dissenting opinion), Daniels v. Department of Human Resources, 114 Nev. 81, 953 P.2d 1 (1998)

Due process requires that termination of parental rights be supported by clear and convincing evidence. Pursuant to the U.S. 14th Amendment (see also Nev. Art. 1, § 8), the Due Process Clause requires, at a minimum, a standard of proof of clear and convincing evidence rather than of a preponderance of evidence before a state may irrevocably terminate the rights of a parent to a natural child. (See also NRS 128.090.) Cloninger v. Russell, 98 Nev. 597, 655 P.2d 528 (1982), cited, In re Parental Rights as to N.J., 116 Nev. 790, at 795, 8 P.3d 126 (2000), see also In re Parental Rights as to C.J.M., 118 Nev. 724, at 732, 58 P.3d 188 (2002), In re Parental Rights as to K.D.L., 118 Nev. 737, at 744, 58 P.3d 181 (2002), In re Parental Rights as to D.R.H., 120 Nev. 422, at 428, 92 P.3d 1230 (2004)

Specific facts establishing grounds for terminating parental rights. Where children were placed in temporary protective custody to be returned to the mother upon provision by her of a residence, food, clothing and bedding for the children which, despite assistance from the Welfare Division (now the Division of Welfare and Supportive Services of the Department of Health and Human Services), she never did, and where the mother had a problem with alcohol, never paid required child support, rejected required counseling, was unable to successfully complete a course in effective parenting, had not improved significantly in 10 years of state intervention, and had visited the children only 11 times in 2 1/2 years, and where there were adoptive placements available for each child, evidence was clear and convincing and sufficient to establish jurisdictional and dispositional grounds for termination of the mother's parental rights. (See NRS 128.090 and 128.106.) Facts justified findings of abandonment, neglect, parental unfitness, token efforts to remedy parental shortcomings, and failure of parental adjustment under NRS 128.105, and that action taken was in children's best interest. Kobinski v. State, Welfare Division, 103 Nev. 293, 738 P.2d 895 (1987), cited, Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, at 729, 917 P.2d 949 (1996)

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)

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Facts sufficient to support the finding that the putative father had abandoned the child. Where the putative father made no effort to establish himself as the natural father other than signing an affidavit of paternity only after an action to terminate his parental rights was commenced, and the putative father provided no support, gave no gifts and had little or no significant contact with the child, there was clear and convincing evidence that the putative father had abandoned the child (see NRS 128.012). Therefore, there were jurisdictional grounds for the termination of parental rights to the child (see NRS 128.105) and the order for the termination of parental rights was affirmed. (See also NRS 128.095.) Deck v. Department of Human Resources, 113 Nev. 124, 930 P.2d 760 (1997)

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, 200.464 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)

NRS CROSS REFERENCES.

Sale or purchase of person, NRS 200.465

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 counsel and, if the child does not have a guardian ad litem appointed pursuant to NRS 432B.500, as his 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)

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C.J.S. Infants §§ 51, 52, 62-67.

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Statutes do not permit the appointment of counsel for a parent who appeals from an order terminating parental rights and granting adoption. In an appeal from an order terminating parental rights and granting adoption, where the aunt and uncle of a child sought adoption, where the father, who was imprisoned in another state, appeared in proceedings by a court-appointed counsel, and where the court awarded adoption rights to the aunt and uncle, the requests of the father that the appellate court permit him to file an appeal without payment of the filing fee because he was a pauper and that the appellate court appoint an attorney to represent him for the appeal were without merit because pauper privileges are provided by NRS 12.015 only for the trial level of litigation and not for appeals and because the appointment of counsel is permitted by NRS 128.100 only for one who petitions for the termination of parental rights or for a minor in proceedings and not for a parent who appeals from an order terminating parental rights and granting adoption. Casper v. Huber, 85 Nev. 474, 456 P.2d 436 (1969)

Determination of whether due process requires appointment of counsel in termination proceedings on a case-by-case basis. Due process (see Nev. Art. 1, § 8) does not require an absolute right to counsel in parental rights terminations hearings. (See ch. 128 of NRS). In determining whether due process requires the appointment of counsel, a court must balance the private interests at stake, the government's interest and the risk that the procedures used will lead to erroneous results. The provisions of NRS 128.100 allow for the balancing required for determining whether due process demands counsel. In re Parental Rights as to N.D.O., 121 Nev. 379, 115 P.3d 223 (2005)

NRS 128.105 Grounds for terminating parental rights: Considerations; required findings. 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:

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 was the basis for a finding made pursuant to subsection 3 of NRS 432B.393 or 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.
(Added to NRS by 1975, 964; A 1981, 1755; 1985, 244; 1987, 173, 210; 1995, 215; 1999, 2027)

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WESTLAW Topic No. 211.
C.J.S. Infants §§ 31-62.

NEVADA CASES.

Termination of parental rights must be upheld upon finding of abandonment. Where appellate court held there was ample support in the record for finding of abandonment, it was unnecessary for it to consider appellant's assignment of error challenging the district court's finding that he was an unfit person, since, regardless of his fitness or unfitness in other respects, the judgment terminating his parental rights must be affirmed by reason of the finding of abandonment. (See NRS 128.105.) Carson v. Lowe, 76 Nev. 446, 357 P.2d 591 (1960), cited, Kobinski v. State, Welfare Div., 103 Nev. 293, at 297, 738 P.2d 895 (1987)

In reviewing a termination of parental rights, the supreme court will not substitute its judgment for that of the lower court, but will uphold the termination if it is based upon substantial evidence. A trial court has all relevant parties before it and is able to observe their demeanor and weigh their credibility. As a result, when the supreme court reviews a trial court's decree terminating parental rights (see also NRS 128.105 and 128.110), the supreme court will not substitute its judgment for that of the lower court, but will uphold the termination if it is based upon substantial evidence. Carson v. Lowe, 76 Nev. 446, 357 P.2d 591 (1960), cited, Kobinksi v. State, 103 Nev. 293, at 296, 738 P.2d 895 (1987), see also Whitaker v. Olsson, 89 Nev. 157, at 157, 508 P.2d 1014 (1973), August H. v. State, 105 Nev. 441, at 446, 777 P.2d 901 (1989), Greeson v. Barnes, 111 Nev. 1198, at 1201, 900 P.2d 943 (1995), Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, at 726, 917 P.2d 949 (1996), Recodo v. State, Dep't of Human Resources, 113 Nev. 141, at 148, 930 P.2d 1128 (1997), Gonzales v. Dep't of Human Resources, 113 Nev. 324, at 330, 933 P.2d 198 (1997), In re Carron, 114 Nev. 370, at 374, 956 P.2d 785 (1998), In re Parental Rights as to N.J., 116 Nev. 790, at 795, 8 P.3d 126 (2000), In re Parental Rights as to Q.L.R., 118 Nev. 602, at 605, 54 P.3d 56 (2002), In re Parental Rights as to J.L.N., 118 Nev. 621, at 625, 55 P.3d 955 (2002), In re Parental Rights as to C.J.M., 118 Nev. 724, at 732, 58 P.3d 188 (2002), In re Parental Rights as to K.D.L., 118 Nev. 737, at 744, 58 P.3d 181 (2002), Castle v. Simmons, 120 Nev. 98, at 103, 86 P.3d 1042 (2004), In re Parental Rights as to D.R.H., 120 Nev. 422, at 428, 92 P.3d 1230 (2004)

Specific facts establishing parent as "unfit." It was not error for a trial court to terminate the parental rights of a father pursuant to NRS 128.105 and find he made only a token effort to avoid being declared unfit (see NRS 128.018), where there was ample evidence of: (1) an unstable and chaotic home life resulting in placement of the children in the custody of the Welfare Division (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) because of neglect and abandonment; (2) the father's failure, after repeated notice, to make support payments as ordered and to provide the medical needs of the children; and (3) his erratic attendance at court-ordered counseling sessions. Spencer v. Welfare Division, 94 Nev. 627, 584 P.2d 669 (1978), cited, Kobinski v. State, Welfare Division, 103 Nev. 293, at 296, 738 P.2d 895 (1987)

Finding of abandonment sufficient to terminate parental rights. Pursuant to NRS 128.105(1), the finding by a court that a parent has abandoned his child is sufficient ground, in and of itself, for termination of parental rights. Pyborn v. Quathamer, 96 Nev. 145, 605 P.2d 1147 (1980), cited, Kobinski v. State, Welfare Div., 103 Nev. 293, at 296, 738 P.2d 895 (1987)

Finding that mother had abandoned child was not supported by substantial evidence. On appeal from judgment terminating a mother's parental rights, findings that the mother's conduct evinced a settled purpose to forego custody and relinquish all claims to her child, that she had left the child in the custody of guardians without more than "token efforts" to communicate with her for a period in excess of 6 months, and therefore that she had abandoned the child within the meaning of NRS 128.012 and 128.105, were not supported by substantial evidence where: (1) during part of the 6-month period, the mother had been

under a temporary restraining order prohibiting any contact with the child; (2) during at least part of the 6-month period the mother had been seriously ill; and (3) the mother had visited the child often before the death of the child's father, during the period when he had custody. Chapman v. Chapman, 96 Nev. 290, 607 P.2d 1141 (1980)

Standards for determining if parent unfit. To provide a jurisdictional basis for termination of parental rights, parental unfitness must be shown to be severe and persistent and such as to render the parent unsuitable to maintain a parental relationship. (See NRS 128.105.) Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984), cited, Weinper v. State, Dep't of Human Resources, 112 Nev. 710, at 718, 918 P.2d 325 (1996) (dissenting opinion), Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, at 728, 917 P.2d 949 (1996), Bush v. State, Dep't of Human Resources, 112 Nev. 1298, at 1319, 929 P.2d 940 (1996) (dissenting opinion), Deck v. Dep't of Human Resources, 113 Nev. 124, at 140, 930 P.2d 760 (1997) (dissenting opinion), Recodo v. State, Dep't of Human Resources, 113 Nev. 141, at 148, 930 P.2d 1128 (1997)

Standards for determining parental neglect. To provide a jurisdictional basis for termination of parental rights, neglect must be serious and persistent and sufficiently harmful to the child so as to mandate forfeiture of parental rights. (See NRS 128.105.) Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984), cited, Bush v. State, Dep't of Human Resources, 112 Nev. 1298, at 1319, 929 P.2d 940 (1996) (dissenting opinion)

Necessity of proving jurisdictional and dispositional grounds. A person who institutes proceedings to terminate parental rights must be able to prove clearly and convincingly that the parent provided some cause for termination (jurisdictional grounds) and that under no reasonable circumstances could the child's best interest be served by sustaining a parental tie (dispositional grounds). (See NRS 128.105.) Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984), cited, McGuire v. Welfare Div., 101 Nev. 179, at 181, 697 P.2d 479 (1985), Daly v. Daly, 102 Nev. 66, at 68, 715 P.2d 56 (1986), Smith v. Smith, 102 Nev. 263, at 267, 720 P.2d 1219 (1986), Kobinski v. State, Welfare Div., 103 Nev. 293, at 296, 738 P.2d 895 (1987), Drury v. Lang, 105 Nev. 430, at 434, 776 P.2d 843 (1989), August H. v. State, 105 Nev. 441, at 445, 777 P.2d 901 (1989), Scalf v. State, Dep't of Human Resources, 106 Nev. 756, at 758, 801 P.2d 1359 (1990), Greeson v. Barnes, 111 Nev. 1198, at 1200, 900 P.2d 943 (1995), Weinper v. State, Dep't of Human Resources, 112 Nev. 710, at 714, 918 P.2d 325 (1996), Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, at 726, 917 P.2d 949 (1996), Bush v. State, Dep't of Human Resources, 112 Nev. 1298, at 1315, 929 P.2d 940 (1996) (dissenting opinion), Deck v. Dep't of Human Resources, 113 Nev. 124, at 137, 930 P.2d 760 (1997), Recodo v. State, Dep't of Human Resources, 113 Nev. 141, at 148, 930 P.2d 1128 (1997), Gonzales v. Dep't of Human Resources, 113 Nev. 324, at 330, 933 P.2d 198 (1997), Cooley v. State, Dep't of Human Resources, 113 Nev. 1191, at 1196, 946 P.2d 155 (1997), Daniels v. Dep't of Human Resources, 114 Nev. 81, at 92, 953 P.2d 1 (1998), In re Carron, 114 Nev. 370, at 374, 956 P.2d 785 (1998)

Overruled, In re Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000)

Failure of parental adjustment as basis for termination of parental rights. Failure of parental adjustment (see NRS 128.0126) may provide a jurisdictional basis for termination of parental rights (see NRS 128.105). If a child is removed from the home, the parent must exercise reasonably diligent efforts to seek the child's return. Failure to make such efforts may result in a court's finding that the parent is unsuitable by reason of unfitness or neglect in the form of failing or refusing to adjust after the child was removed. The parent, however, still must be shown to be at fault in some manner and cannot be judged unsuitable by reason of failure to comply with requirements and plans that are unclear, not communicated to him, or which are impossible for him to abide by. Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984), cited, Kobinski v. State, Welfare Div., 103 Nev. 293, at 296, 738 P.2d 895 (1987), Bush v. State, Dep't of Human Resources, 112 Nev. 1298, at 1315, 929 P.2d 940 (1996) (dissenting opinion), Recodo v. State, Dep't of Human Resources, 113 Nev. 141, at 150, 930 P.2d 1128 (1997), Gonzales v. Dep't of Human Resources, 113 Nev. 324, at 333, 933 P.2d 198 (1997), In re Parental Rights as to J.L.N., 118 Nev. 621, at 627, 55 P.3d 955 (2002), In re Parental Rights as to K.D.L., 118 Nev. 737, at 748, 58 P.3d 181 (2002)

Phrase "token efforts" is unclear, but section as a whole requires substantial abandonment, neglect, parental unfitness or child abuse. Although the meaning of "token efforts" in NRS 128.105 is unclear, the section as a whole means that termination of parental rights must be based upon substantial abandonment, neglect, parental unfitness or child abuse. Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984), cited, Drury v. Lang, 105 Nev. 430, at 433, 776 P.2d 843 (1989), see also Daniels v. Dep't of Human Resources, 114 Nev. 81, 953 P.2d 1 (1998)

Severance of parental rights is an awesome power that must be questioned closely by the reviewing court. In reviewing the appeals of four district court orders that permanently terminated the parental rights of

mothers and fathers, the supreme court stated that "[s]everance of parental rights is an exercise of awesome power" that must be questioned closely by the court in its review of the cases before it. (See NRS 128.105 and 128.110.) Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984), cited, Smith v. Smith, 102 Nev. 263, at 266, 720 P.2d 1219 (1986), In re Carron, 114 Nev. 370, at 374, 956 P.2d 785 (1998), see also In re Parental Rights as to N.J., 116 Nev. 790, at 795, 8 P.3d 126 (2000), In re Parental Rights as to J.L.N., 118 Nev. 621, at 625, 55 P.3d 955 (2002), In re Parental Rights as to C.J.M., 118 Nev. 724, at 732, 58 P.3d 188 (2002), In re Parental Rights as to K.D.L., 118 Nev. 737, at 744, 58 P.3d 181 (2002)

Failure of parental adjustment to be applied with caution. Failure of parental adjustment (see NRS 128.0126), as a basis for termination of parental rights, is fraught with difficulties and must be applied with caution. (See also NRS 128.105.) Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984), cited, Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, at 729, 917 P.2d 949 (1996), Bush v. State, Dep't of Human Resources, 112 Nev. 1298, at 1315, 929 P.2d 940 (1996) (dissenting opinion), Gonzales v. Dep't of Human Resources, 113 Nev. 324, at 332-33, 933 P.2d 198 (1997), In re Parental Rights as to J.L.N., 118 Nev. 621, at 627, 55 P.3d 955 (2002), see also In re Parental Rights as to K.D.L., 118 Nev. 737, at 748, 58 P.3d 181 (2002)

Effect on appeal of invalidation of one jurisdictional ground where there are several such grounds. Where there were several jurisdictional grounds for terminating parental rights, invalidation by appellate court of one jurisdictional ground did not invalidate the decree. (See NRS 128.105.) Kobinski v. State, Welfare Division, 103 Nev. 293, 738 P.2d 895 (1987)

Specific facts establishing grounds for terminating parental rights. Where children were placed in temporary protective custody to be returned to the mother upon the provision by her of a residence, food, clothing and bedding for the children which, despite assistance from the Welfare Division (now the Division of Welfare and Supportive Services of the Department of Health and Human Services), she never did, and where the mother had a problem with alcohol, never paid required child support, rejected required counseling, was unable to successfully complete a course in effective parenting, had not improved significantly in 10 years of state intervention, and had visited the children only 11 times in 2 1/2 years, and where there were adoptive placements available for each child, the evidence was clear and convincing and sufficient to establish jurisdictional and dispositional grounds for termination of the mother's parental rights. (See NRS 128.090 and 128.106.) The facts justified findings of abandonment, neglect, parental unfitness, token efforts to remedy parental shortcomings, and failure of parental adjustment under NRS 128.105, and that the action taken was in the children's best interest. Kobinski v. State, Welfare Division, 103 Nev. 293, 738 P.2d 895 (1987), cited, Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, at 729, 917 P.2d 949 (1996)

Termination of parental rights by judicial decree is a serious matter that must be scrutinized closely by the reviewing court. In reviewing a district court order that terminated the parental rights of a mother to her three children, the supreme court stated that "[t]ermination of parental rights is a most serious matter, and is scrutinized closely on appeal." (See also NRS 128.105 and 128.110.) Kobinski v. State, Welfare Div., 103 Nev. 293, 738 P.2d 895 (1987), cited, In re Carron, 114 Nev. 370, at 374, 956 P.2d 785 (1998), In re Parental Rights as to N.J., 116 Nev. 790, at 795, 8 P.3d 126 (2000), see also In re Parental Rights as to C.J.M., 118 Nev. 724, at 732, 58 P.3d 188 (2002)

Six-month lapse in communication insufficient to support finding of abandonment. A 6-month lapse in communication between the noncustodial parent and the children, without more, is insufficient as a matter of law to support the finding that the parent has demonstrated a settled purpose to abandon the children. (See NRS 128.012 and 128.105.) Drury v. Lang, 105 Nev. 430, 776 P.2d 843 (1989), cited, Daniels v. Dep't of Human Resources, 114 Nev. 81, at 93, 953 P.2d 1 (1998)

Best interest of child was served by terminating father's parental rights where father was found to have abandoned child under circumstances. There was sufficient evidence to support a district court's order to terminate a father's parental rights on ground that the father had abandoned his child (see NRS 128.012) where, during a 5-year period, the father paid only $60 in child support and his only contact with the child was negligible. Although a noncustodial parent may demonstrate his intent not to abandon his child by providing financial support or by maintaining contact with the child, or both, the father did neither. Further, the evidence showed that the mother and stepfather had provided a stable environment for the child, and that the father had made express and implied threats of death and bodily harm to the mother, stepfather and maternal grandfather, and had threatened to abduct the child. Therefore, in affirming the district court's order, the supreme court found that the best interest of the child was served by terminating the father's parental rights pursuant to NRS 128.105. Greeson v. Barnes, 111 Nev. 1198, 900 P.2d 943

(1995), cited, Gonzales v. Dep't of Human Resources, 113 Nev. 324, at 332, 933 P.2d 198 (1997), In re Parental Rights as to C.J.M., 118 Nev. 724, at 734, 58 P.3d 188 (2002)

Jurisdictional and dispositional grounds for termination of parental rights existed where parent was unfit and failed to adjust to plan for reunification, and termination was in the best interest of the child. Appellant challenged termination of his parental rights, arguing that the State failed to establish by clear and convincing evidence sufficient grounds for termination as set forth in NRS 128.105. The supreme court held that the district court properly found that jurisdictional grounds existed for termination because there was clear and convincing evidence that appellant was unfit as a parent, as demonstrated by his continued use of drugs and criminal activity during the period in which the child was in foster care (see NRS 128.106), and that appellant failed to adjust, as demonstrated by his failure to comply with the terms and conditions of a plan for reunification for nearly 3 years (see NRS 128.109). Further, the district court properly found that termination was in the best interest of the child based on uncontradicted evidence that the child was thriving in the custody of foster parents. Therefore, the order of the district court terminating parental rights was affirmed. Weinper v. State, Dep't of Human Resources, 112 Nev. 710, 918 P.2d 325 (1996)

Order terminating parental rights of parent with history of chronic alcohol abuse was reversed where the record indicated that alcoholism was not irremediable under the circumstances. Although the sole issues bearing on appellant's suitability as a parent were her alcoholism (see NRS 128.106) and her ability to remain sober, the evidence showed that appellant: (1) had made significant progress to overcome alcoholism; (2) was successfully employed; (3) had established a stable home environment with a new husband who had a stable job, had no criminal background and did not drink; and (4) had fully complied with the terms and conditions of a revised plan for reunification. Therefore, the supreme court was unable to conclude that appellant's alcoholism was irremediable. Because there was not clear and convincing evidence to support the finding that appellant was unfit as a parent in accordance with NRS 128.105, the supreme court reversed the order to terminate appellant's parental rights. Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, 917 P.2d 949 (1996), but see In re Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000)

Order terminating parental rights of parent for failure to adjust was reversed where record indicated that parent made substantial effort to correct problem with abuse of alcohol. The parental rights of appellant, who had a history of abuse of alcohol and whose child had been a ward of the State for approximately 22 months, were terminated pursuant to NRS 128.105 for failure of parental adjustment where the district court determined that appellant was unable or unwilling within a reasonable time to substantially correct the circumstances or conduct which led to placement of the child outside of the home (see NRS 128.0126). However, the record showed that, with the exception of 8 months when appellant made no or only a partial attempt to adjust, appellant made substantial efforts to correct her conduct and circumstances by entering a rehabilitation program, remaining sober in compliance with a revised plan for reunification, becoming successfully employed and establishing a stable home life. Therefore, because there was not clear and convincing evidence of failure of parental adjustment, the supreme court reversed the order terminating appellant's parental rights. Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, 917 P.2d 949 (1996), but see In re Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000)

Termination of rights of mentally challenged parents based on unfitness of parents and parental failure to adjust. On an appeal of termination of the parental rights of mentally challenged parents, a district court did not err in determining that the parents were unfit pursuant to NRS 128.106 and that there was parental failure to adjust (see NRS 128.107), where: (1) both children had mental deficiencies and special needs; (2) although the parents made efforts towards becoming better parents, they persistently refused to recognize the need for assistance; and (3) there was clear and convincing evidence that the parents would be unable to meet the immediate and continuing needs of the children. Therefore, the order of the district court terminating the rights of the parents pursuant to NRS 128.105 was affirmed. Bush v. State, Dep't of Human Resources, 112 Nev. 1298, 929 P.2d 940 (1996), cited, In re Parental Rights as to D.R.H., 120 Nev. 422, at 433, 92 P.3d 1230 (2004)

Termination of parental rights to mentally challenged children in foster care where natural parents were also mentally challenged. On an appeal of termination of the parental rights of mentally challenged parents, where: (1) the children, who were also mentally challenged and had special needs, spent most of their lives in foster care; (2) there was clear and convincing evidence that the natural parents would be unable to meet the immediate and continuing needs of the children; and (3) the foster parents indicated the desire to adopt the children, there was sufficient evidence for the district court to determine that the children had become integrated into the foster family and that termination of the parental rights of the natural parents was in the best interest of the children (see NRS 128.108). Therefore, the order of the district court terminating parental rights pursuant to NRS 128.105 was affirmed. Bush v. State, Dep't of Human Resources, 112

Nev. 1298, 929 P.2d 940 (1996), distinguished, In re Parental Rights as to Q.L.R., 118 Nev. 602, at 608, 54 P.3d 56 (2002)

Termination of parental rights of mentally ill parent who failed to make necessary parental adjustments was affirmed. Where mother: (1) had permanent mental condition of paranoid schizophrenia; (2) believed that the medication prescribed to manage her condition had no effect on her; (3) made only token efforts to visit and develop a relationship with her child; and (4) failed to provide nominal financial support as required by the reunification case plan, there was clear and convincing evidence of the mother's failure to make the necessary parental adjustments (see NRS 128.105). Therefore, the district court had jurisdiction grounds to terminate her parental rights to the child and the termination of parental rights was affirmed. Deck v. Dep't of Human Resources, 113 Nev. 124, 930 P.2d 760 (1997)

Where the facts supported finding that putative father had abandoned his child, termination of his parental rights was affirmed. Where a putative father made no effort to establish himself as a natural father other than signing an affidavit of paternity only after an action to terminate his parental rights was commenced, and the putative father provided no support, gave no gifts and had little or no significant contact with the child, there was clear and convincing evidence that the putative father had abandoned the child (see NRS 128.012). Therefore, there were jurisdictional grounds for termination of parental rights to the child (see NRS 128.105) and the order for termination of parental rights was affirmed. (See also NRS 128.095.) Deck v. Dep't of Human Resources, 113 Nev. 124, 930 P.2d 760 (1997)

Termination of parental rights of mentally ill mother and putative father was in best interests of child under the circumstances. A district court did not err in finding that dispositional grounds existed (see NRS 128.105) to terminate the parental rights of a mother diagnosed with paranoid schizophrenia and a putative father based on the best interests of a child where: (1) psychiatric evaluations of the mother concluded that she was not able to care for the child on a long-term basis; (2) as a result of long periods of separation without any visits from the parents, the child was estranged from the parents and a reunion with them would likely prove to be traumatic to the child; (3) the child had integrated and bonded with the family with which the child had been staying, and enjoyed a loving and nurturing environment in their home; and (5) the family with which the child had been staying was the only family that the child had ever known. Therefore, the district court's order terminating parental rights of the mother and father was affirmed. Deck v. Dep't of Human Resources, 113 Nev. 124, 930 P.2d 760 (1997)

Where mother had irremedial inability to function as proper and acceptable parent, court could terminate her parental rights on ground that she was an unfit parent. Where: (1) a mother had chronic instability in her employment, housing and contacts with her child; (2) the State found substitute care of the child so that the mother could find housing and employment and establish stability in her life; (3) despite reasonable efforts by the State to reunite the mother and her child, the mother did little to help establish stability in her life which she needed to care for the child; and (4) the foster parents, who were providing an environment in which the child was thriving, indicated the desire to adopt the child (see NRS 128.108), there was clear and convincing evidence of the mother's irremedial inability to function as a proper and acceptable parent and that termination of parental rights would be in the best interest of the child. Therefore, the court had jurisdictional and dispositional grounds to terminate the parental rights of the mother pursuant to NRS 128.105 on basis that the mother was an unfit parent. (See NRS 128.106.) Recodo v. State, Dep't of Human Resources, 113 Nev. 141, 930 P.2d 1128 (1997)

Termination of parental rights affirmed where mother was unwilling within reasonable time to correct substantially conditions which led to placement of child outside her home and termination of parental rights was in the best interest of child. Where: (1) a child was adjudicated to be neglected and placed into foster care; (2) despite being given over 1 year to adjust, the mother was unable or unwilling to correct substantially the conditions that led to the child being placed outside of her home (see NRS 128.109); (3) nothing in the record indicated with any certainty that provision of additional services to the mother would bring about lasting parental adjustment; and (4) the foster parents who were providing an environment in which the child was thriving indicated the desire to adopt the child (see NRS 128.108), the district court properly concluded that there was failure of parental adjustment and that termination of the mother's parental rights was in the best interest of the child (see NRS 128.105). Therefore, termination of the parental rights of the mother was affirmed. Recodo v. State, Dep't of Human Resources, 113 Nev. 141, 930 P.2d 1128 (1997)

Finding that mother had abandoned children was supported by substantial evidence. In an action to terminate a mother's parental rights, where the mother did not contact or provide support for her children for a period of 1 year, the district court did not err in its finding that the mother had abandoned her children within the meaning of NRS 128.012 and 128.105, even though the mother had undergone extreme emotional trauma following the death of the children's father, because the actions of the mother demonstrated a clear intent to relinquish her parental rights. Gonzales v. Dep't of Human Resources, 113 Nev. 324, 933 P.2d 198 (1997)

Finding of failure of parental adjustment was supported by clear and convincing evidence. In an action to terminate a mother's parental rights, where mother failed to: (1) maintain contact with her children for a period of 1 year; (2) provide support for her children; (3) maintain contact with the Division of Child and Family Services of the Department of Human Resources (now the Department of Health and Human Services); and (4) comply with a plan to reunite the family developed by the division, there was clear and convincing evidence to support the finding of failure of parental adjustment for the purposes of NRS 128.0126, 128.105 and 128.109. Gonzales v. Dep't of Human Resources, 113 Nev. 324, 933 P.2d 198 (1997)

Best interests of children were served by terminating mother's parental rights. In an action to terminate a mother's parental rights, where the mother did not contact or provide support for her children for a period of 1 year and the children had resided in a stable foster home for 4 years and no longer recognized their biological mother, the best interests of the children were served by termination of the mother's parental rights (see NRS 128.105). Gonzales v. Dep't of Human Resources, 113 Nev. 324, 933 P.2d 198 (1997)

Jurisdictional grounds to terminate parental rights of teenage mother existed under circumstances. Where a teenage mother: (1) was immature, lacking of parental skills and could not provide a stable home for her child; (2) abandoned her child by failing to provide financial or emotional support; (3) offered no argument to dispute whether she abused or neglected the child or that she would not abuse or neglect the child in the future if parental rights were not terminated; (4) made little or no attempts to avail herself of aid from the State, including, applying for welfare benefits and complying with a case plan; and (5) continually placed the child in an unsanitary and dangerous living environment, a district court reasonably could have found by clear and convincing evidence jurisdictional grounds to terminate parental rights in accordance with NRS 128.105, based on abandonment, abuse, neglect, failure of parental adjustment and only token efforts made by the mother. Therefore, the district court did not abuse its discretion in terminating the parental rights of the teenage mother. Cooley v. State, Dep't of Human Resources, 113 Nev. 1191, 946 P.2d 155 (1997), cited, In re Parental Rights as to D.R.H., 120 Nev. 422, at 433, 92 P.3d 1230 (2004)

Termination of teenage mother's parental rights was in the best interest of the child based on the mother's immaturity, selfishness and indifference, and her inability and unwillingness to provide for her child. A district court did not abuse its discretion in finding that termination of the parental rights of a teenage mother would be in the best interest of the child where the mother was unable or unwilling to provide for the child's physical, mental and emotional development, and the mother's immaturity, selfishness and indifference caused confusion and distress in the child. Therefore, the order terminating the parental rights of the teenage mother was upheld. (See NRS 128.105.) Cooley v. State, Dep't of Human Resources, 113 Nev. 1191, 946 P.2d 155 (1997), cited, In re Parental Rights as to N.J., 116 Nev. 790, at 800, 8 P.3d 126 (2000)

Abandonment of child and failure of parental adjustment established by clear and convincing evidence. Jurisdictional grounds for the termination of a father's parental rights for abandoning his children and failing to make parental adjustment were established by clear and convincing evidence where the father: (1) continued to associate with the mother who was a drug addict, even though he was instructed to avoid contact with her by the Division of Child and Family Services of the Department of Human Resources (now the Department of Health and Human Services); (2) visited the children on only one occasion during a period of 2 1/2 years; (3) was unemployed and without a permanent residence; (4) made no efforts to attend parenting classes; and (5) failed to pay support for the children while they were in the custody of the State. (See NRS 128.012, 128.0126 and 128.105.) Daniels v. Dep't of Human Resources, 114 Nev. 81, 953 P.2d 1 (1998)

Abandonment of child and failure of parental adjustment established by clear and convincing evidence. Jurisdictional grounds for the termination of a mother's parental rights for abandoning her children and failing to make parental adjustment were established by clear and convincing evidence where the mother: (1) admitted to supervising the children improperly at a hearing before the juvenile court; (2) made no effort to communicate with the state agencies that had custody of the children; (3) during 17 months in prison, sent the children one letter; (4) upon release from prison, failed to provide the state agency with a telephone number or permanent address; (5) failed to pay support for the children while they were in the custody of the State; and (6) failed to comply with conditions for reunification. (See NRS 128.012, 128.0126 and 128.105.) Daniels v. Dep't of Human Resources, 114 Nev. 81, 953 P.2d 1 (1998)

Dispositional grounds for termination of parental rights established by clear and convincing evidence. Dispositional grounds for termination of parental rights were established by clear and convincing evidence where: (1) once the State gained custody of the children and placed them in therapeutic foster care, the children's dysfunctional behavior improved, made it possible for them to attend school and enhanced their chances for adoption; and (2) reunification with either parent was unlikely as neither parent demonstrated the

capability of providing a stable and nurturing environment for the children. (See NRS 128.105.) Daniels v. Dep't of Human Resources, 114 Nev. 81, 953 P.2d 1 (1998)

The conduct of a parent before the birth of a child may serve, in part, as a basis for a finding of jurisdictional or dispositional grounds for terminating parental rights. In an action to terminate the parental rights of a father where the: (1) actions and words of the father toward the biological mother during the mother's pregnancy indicated that he wanted nothing to do with the child; and (2) father did not assert his parental rights until after the person seeking to adopt the child filed a petition to terminate the parental rights of the father, the supreme court held that the father's conduct before the birth of the child during the mother's pregnancy may be considered, at least in part, as a basis for a finding of jurisdictional or dispositional grounds pursuant to NRS 128.105 for terminating the father's parental rights. In re Carron, 114 Nev. 370, 956 P.2d 785 (1998)

The standard for determining termination of parental rights requires consideration of the best interests of the child in conjunction with parental fault. The court found that adherence to the standard set forth in *Champagne v. Welfare Div.*, 100 Nev. 640, 691 P.2d 849 (1984), which requires a finding of parental fault ("jurisdictional grounds") before the district court considers the best interests of the child ("dispositional grounds"), has resulted in improper application of the grounds for termination set forth in NRS 128.105. Accordingly, the court overruled the standard set forth in *Champagne*, and held that the standard for determining termination of parental rights requires consideration of the best interests of the child in conjunction with parental fault. In light of the new standard, the court provided that it will no longer use the terms "jurisdictional grounds" and "dispositional grounds" to refer to the judicial findings that must be made in parental termination cases. In re Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000), cited, In re Parental Rights as to T.M.C., 118 Nev. 563, at 566, 52 P.3d 934 (2002), In re Parental Rights as to Q.L.R., 118 Nev. 602, at 605, 54 P.3d 56 (2002), In re Parental Rights as to J.L.N., 118 Nev. 621, at 625, 55 P.3d 955 (2002), In re Parental Rights as to C.J.M., 118 Nev. 724, at 733, 58 P.3d 188 (2002), In re Parental Rights as to K.D.L., 118 Nev. 737, at 744, 58 P.3d 181 (2002)

Letters written in Arabic by the father of a child were admissible to rebut assertions of parents in a parental termination case. In a parental termination case (see NRS 128.105) brought by the aunt and uncle of a child, the district court abused its discretion by excluding four letters written in Arabic by the father of the child which had been translated by a translator certified by the district court and which rebutted the assertion of the child's parents that they never intended for the child to remain with the aunt and uncle. The letters were admissible under the general exception to the hearsay rule (see NRS 51.075). In re Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000)

Termination of parental rights cannot be used to reward a parent by relieving him of his obligation to provide support. It is inappropriate to use termination of parental rights (see NRS 128.105) as a means to reward a parent by shielding him from his obligation to provide support for his child. A minor child has a right to support from a parent that cannot be abdicated unless it is in the best interests of the child. In re Parental Rights as to T.M.C., 118 Nev. 563, 52 P.3d 934 (2002)

Voluntary termination of parental rights is not appropriate unless it is in the best interests of the child. A parent cannot voluntarily terminate his parental rights and obligations unless such termination is deemed to be in the best interests of the child. Even if the parent engages in conduct that demonstrates parental fault under NRS 128.105, the child's best interests must be served by the termination of parental rights for the termination to be appropriate. In re Parental Rights as to T.M.C., 118 Nev. 563, 52 P.3d 934 (2002)

Father failed to provide clear and convincing evidence that his parental rights should be terminated. In a proceeding instituted by a father for the termination of his parental rights, where the father argued that his rights should be terminated because: (1) the mother did not give the child the father's surname; (2) the mother did not intend the father to have a role in the child's life; (3) the father did not see the child until the child was approximately 14 years of age; (4) the father was in contact with the child only because the child's aunt filed a petition for public assistance; (5) the father never wanted to have children; (6) the parents never thought pregnancy was a possibility; (7) the mother allowed her sister to become the guardian of the child; (8) the child lived with his grandmother at the time of the proceeding; (9) the child did not want a relationship with his father; and (10) it was the Welfare Division of the Department of Human Resources (now the Division of Welfare and Supportive Services of the Department of Health and Human Services), not the mother, that was seeking reimbursement for the support that had been provided for the child, the father failed to prove clearly and convincingly that there was parental fault and that the termination would be in the best interests of the child, as required for the termination of parental rights by NRS 128.105. Therefore, his petition was properly denied. In re Parental Rights as to T.M.C., 118 Nev. 563, 52 P.3d 934 (2002)

Voluntary termination of parental rights was not appropriate where the termination served only the father's personal financial interest. A father's parental rights could not be voluntarily terminated, even though he expressed

an intent to abandon his child, where the termination would serve only the father's personal financial interest, and not the best interests of the child. (See NRS 128.105.) In re Parental Rights as to T.M.C., 118 Nev. 563, 52 P.3d 934 (2002)

Evidence did not support a finding that the termination of the parental rights of an incarcerated father was in the best interests of the child. In an action brought to terminate the parental rights of a father who was incarcerated, substantial evidence did not exist to support a finding that it was in the best interests of the child to terminate her father's parental rights (see NRS 128.105) where: (1) the father was eligible for parole when the child would be 7 years of age; (2) the father completed a number of programs in prison that would assist him in becoming a positive part of the child's life upon his release; (3) before the mother and father were separated, the father contributed to the family's expenses; (4) the mother testified that the father interacted affectionately with the child; and (5) there was no other person who wanted to adopt the child. In re Parental Rights as to Q.L.R., 118 Nev. 602, 54 P.3d 56 (2002), cited, In re Parental Rights as to J.L.N., 118 Nev. 621, at 628, 55 P.3d 955 (2002), explained, In re Parental Rights as to C.J.M., 118 Nev. 724, at 736, 58 P.3d 188 (2002)

Parental rights of an incarcerated father could not be terminated based solely on the duration of his incarceration. In an action brought to terminate the parental rights of a father who was incarcerated, it was error for the district court to focus on the length of the father's incarceration in determining whether termination would be in the best interests of the child (see NRS 128.105), rather than the nature of the crime for which the father was convicted. State law does not support the termination of parental rights based solely on the duration of the parent's incarceration. (See also NRS 128.106.) In re Parental Rights as to Q.L.R., 118 Nev. 602, 54 P.3d 56 (2002), cited, In re Parental Rights as to J.L.N., 118 Nev. 621, at 628, 55 P.3d 955 (2002), see also In re Parental Rights as to K.D.L., 118 Nev. 737, at 748, 58 P.3d 181 (2002), In re Parental Rights as to N.D.O., 121 Nev. 379, at 385, 115 P.3d 223 (2005), explained, In re Parental Rights as to C.J.M., 118 Nev. 724, at 736, 58 P.3d 188 (2002)

Clear and convincing evidence showed that the father of children failed to adjust parentally when he committed a second act of domestic violence while on parole. A biological father was subject to a case plan for reunification which required him to, in relevant part, attend weekly anger management therapy sessions. Although the mother of the children declined to press charges, the father beat the mother and inflicted a bilateral jaw fracture upon her, leading the police department to take the children into protective custody. Approximately 1 year after this act, the father pleaded guilty (for that act) to battery with substantial bodily harm. The father apparently complied with the part of the case plan requiring him to take anger management therapy, yet while on parole for beating the mother of the children, the father committed an act of domestic violence against his own mother, violating the terms of his parole and resulting in his incarceration for a minimum term of 48 months. Although incarceration, alone, is not a sufficient ground to terminate parental rights, the district court concluded, and the supreme court agreed, that the nature of the father's acts were such that the father presented a potential danger to his children and demonstrated a failure of parental adjustment on the part of the father. (See also NRS 128.0126, 128.105 and 128.109.) In re Parental Rights as to K.D.L., 118 Nev. 737, 58 P.3d 181 (2002)

Clear and convincing evidence showed that termination of the biological father's parental rights was in the children's best interests. Clear and convincing evidence showed that termination of the biological father's parental rights was in the children's best interests (see NRS 128.105) where: (1) the father was twice convicted of domestic violence despite complying substantially with the elements of his case plan requiring participation in anger management therapy, thereby demonstrating his continuing inability to manage his anger; (2) the children had resided for 19 consecutive months in foster care and the father failed to overcome the presumption set forth in NRS 128.109(2); and (3) the two children were only 3 years old and 18 months old, respectively, at the time of the father's incarceration and no stable bond existed between the children and their father. In re Parental Rights as to K.D.L., 118 Nev. 737, 58 P.3d 181 (2002)

Rebuttable presumption in favor of termination of parental rights in cases of abuse or neglect where child has resided outside of home for 14 of 20 consecutive months does not violate substantive due process rights of parent. The provisions of NRS 128.109 presume that termination of parental rights will serve a child's best interest when the child has been placed outside of his home under NRS ch. 432B and has resided outside of his home pursuant to that placement for 14 months of any 20 consecutive months (see also NRS 432B.553 and 432B.590). The presumption does not violate parental substantive due process rights (see Nev. Art. 1, § 8) because it is narrowly tailored to serve a compelling state interest. The State has a compelling interest in assuring that abused and neglected children achieve safe, stable and permanent home environments within which to be reared and, without such a presumption, a child is susceptible to drift for an indefinite length of time within the foster care system. The presumption is narrowly tailored because the presumption: (1) applies only where a child is removed from the home pursuant to NRS ch. 432B as a

result of parental abuse or neglect; (2) is rebuttable upon the presentation of evidence showing that termination of parental rights is not in the child's best interest; (3) must be read in conjunction with NRS 128.105, which requires the court to examine the child's best interest and to make a determination concerning parental fault; and (4) addresses the compelling state interest of planning for safe, stable and permanent placements for abused and neglected children. In re Parental Rights as to D.R.H., 120 Nev. 422, 92 P.3d 1230 (2004)

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

1. Emotional illness, mental illness or mental deficiency of the parent which renders the parent consistently unable to care for the immediate and continuing physical or psychological needs of the child for extended periods of time. The provisions contained in NRS 128.109 apply to the case if the child has been placed outside his home pursuant to chapter 432B of NRS.
2. Conduct toward a child of a physically, emotionally or sexually cruel or abusive nature.
3. Conduct that violates any provision of NRS 200.463, 200.464 or 200.465.
4. Excessive use of intoxicating liquors, controlled substances or dangerous drugs which renders the parent consistently unable to care for the child.
5. Repeated or continuous failure by the parent, although physically and financially able, to provide the child with adequate food, clothing, shelter, education or other care and control necessary for his physical, mental and emotional health and development, but a person who, legitimately practicing his religious beliefs, does not provide specified medical treatment for a child is not for that reason alone a negligent parent.
6. Conviction of the parent for commission of a felony, if the facts of the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care and control to the extent necessary for the child's physical, mental or emotional health and development.
7. Unexplained injury or death of a sibling of the child.
8. Inability of appropriate public or private agencies to reunite the family despite reasonable efforts on the part of the agencies.

(Added to NRS by 1981, 1751; A 1989, 1187; 1995, 361; 2005, 89)

NRS CROSS REFERENCES.

Sale or purchase of person, NRS 200.465

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WESTLAW Topic No. 211.

C.J.S. Infants §§ 31-62.

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Parents were not unsuitable to raise their children in an acceptable manner on the ground that the father's mental deficiency rendered him consistently unable to care for the immediate and continuing physical needs of the children. In an action to terminate parental rights, the parents were not unsuitable to raise their children in an acceptable manner pursuant to NRS 128.106 on the ground that the father's mental deficiency rendered him consistently unable to care for the immediate and continuing physical or psychological needs of his children for extended periods of time where: (1) the mother, who primarily cared for their children, was mentally competent and the family, as a unit, was competent to care for the children; (2) the only evidence presented regarding the father's mental capacity was the testimony of the director of the agency providing services to mentally retarded persons that the father fit their criteria, but was not responsible for the primary care of the children; and (3) the record did not indicate that the father's mental condition rendered him unable to care for his children. Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984), cited, Bush v. State, Dep't of Human Resources, 112 Nev. 1298, at 1313, 929 P.2d 940 (1996) (dissenting opinion)

Parents were not unsuitable to raise their children in an acceptable manner on the ground that the appropriate agencies were unable to reunite the family after the children were removed from the home. In an action to terminate parental rights, the parents were not unsuitable to raise their children in an acceptable manner pursuant to NRS 128.106 on the ground that the appropriate public or private agencies were unable to reunite the family after the children were removed from the home where: (1) the parents cooperated with those public agencies; (2) the proposed plans to reunite the family failed to specify relevant criteria to determine whether they were successfully completed; and (3) the record did not indicate that an agreement was made between the parents, the court and the agency with custody of the children imposing the conditions leading to the return of the children or to their adoption as required by chapter 62 of NRS and NRS 128.0155. Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984)

Specific facts establishing grounds for terminating parental rights. Where children were placed in temporary protective custody to be returned to the mother upon provision by her of a residence, food, clothing and bedding for the children which, despite assistance from the Welfare Division (now the Division of Welfare and Supportive Services of the Department of Health and Human Services), she never did, and where the mother had a problem with alcohol, never paid the required child support, rejected required counseling, was unable to complete successfully a course in effective parenting, had not improved significantly in 10 years of state intervention and had visited the

children only 11 times in 2 1/2 years, and where there were adoptive placements available for each child, the evidence was clear and convincing and sufficient to establish jurisdictional and dispositional grounds for the termination of the mother's parental rights. (See NRS 128.090 and 128.106). The facts justified findings of abandonment, neglect, parental unfitness, token efforts to remedy parental shortcomings and failure of parental adjustment under NRS 128.105, and that the action taken was in the children's best interest. Kobinski v. State, Welfare Division, 103 Nev. 293, 738 P.2d 895 (1987), cited, Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, at 729, 917 P.2d 949 (1996)

Clear and convincing evidence existed of father's unfitness as parent. In a proceeding for the termination of parental rights of the father, where during the 3 years after the child was removed from his custody, the father tested positive for drugs three times, had a misdemeanor drug conviction, had been arrested for the theft of his mother's car and credit cards and, at the time of the proceeding, was incarcerated on a charge of assaulting his mother with a deadly weapon, the district court could reasonably find, pursuant to NRS 128.106, that there was clear and convincing evidence of the father's unfitness as a parent. Weinper v. State, Dep't of Human Resources, 112 Nev. 710, 918 P.2d 325 (1996)

Jurisdictional and dispositional grounds for the termination of parental rights existed where the parent was unfit and failed to adjust to the plan for reunification, and termination was in the best interest of the child. The appellant challenged the termination of his parental rights, arguing that the State failed to establish by clear and convincing evidence sufficient grounds for the termination as set forth in NRS 128.105. The supreme court held that the district court properly found that jurisdictional grounds existed for the termination because there was clear and convincing evidence that the appellant was unfit as a parent, as demonstrated by his continued use of drugs and criminal activity during the period in which the child was in foster care (see NRS 128.106), and that the appellant failed to adjust, as demonstrated by his failure to comply with the terms and conditions of the plan for reunification for nearly 3 years (see NRS 128.109). Further, the district court properly found that the termination was in the best interest of the child based on uncontradicted evidence that the child was thriving in the custody of foster parents. Therefore, the order of the district court terminating parental rights was affirmed. Weinper v. State, Dep't of Human Resources, 112 Nev. 710, 918 P.2d 325 (1996)

Order terminating parental rights of a parent with a history of chronic alcohol abuse was reversed where the record indicated that the alcoholism was not irremediable under the circumstances. Although the sole issues bearing on the appellant's suitability as a parent were her alcoholism (see NRS 128.106) and her ability to remain sober, the evidence showed that the appellant: (1) had made significant progress to overcome the alcoholism; (2) was successfully employed; (3) had established a stable home environment with a new husband who had a stable job, had no criminal background and did not drink; and (4) had fully complied with the terms and conditions of the revised plan for reunification. Therefore, the supreme court was unable to conclude that the appellant's alcoholism was irremediable. Because there was not clear and convincing evidence to support the finding that the appellant was unfit as a parent in accordance with NRS 128.105, the supreme court reversed the order to terminate the appellant's parental rights. Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, 917 P.2d 949 (1996), but see In re Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000)

Termination of rights of mentally challenged parents based on unfitness of parents and parental failure to adjust. On an appeal of the termination of parental rights of mentally challenged parents, the district court did not err in determining that the parents were unfit pursuant to NRS 128.106 and that there was parental failure to adjust (see NRS 128.107), where: (1) both children had mental deficiencies and special needs; (2) although the parents made efforts towards becoming better parents, they persistently refused to recognize the need for assistance; and (3) there was clear and convincing evidence that the parents would be unable to meet the intermediate and continuing needs of the children. Therefore, the order of the district court terminating the rights of the parents pursuant to NRS 128.105 was affirmed. Bush v. State, Dep't of Human Resources, 112 Nev. 1298, 929 P.2d 940 (1996), cited, In re Parental Rights as to D.R.H., 120 Nev. 422, at 433, 92 P.3d 1230 (2004)

Where the mother had an irremedial inability to function as a proper and acceptable parent, the court could terminate her parental rights on the ground that she was an unfit parent. Where: (1) a mother had a chronic instability in her employment, housing and contacts with her child; (2) the State found substitute care of the child so that the mother could find housing and employment and establish stability in her life; (3) despite reasonable efforts by the State to reunite the mother and child, the mother did little to help establish stability in her life which she needed to care for the child; and (4) the foster parents, who were providing an environment in which the child was thriving, indicated a desire to adopt the child (see NRS 128.108), there was clear and convincing evidence of the mother's irremedial inability to function as a proper and acceptable parent and that the termination of parental rights would be in the best interest of the child. Therefore, the court had jurisdictional and dispositional grounds to terminate the parental rights of the mother pursuant to NRS 128.105 on the basis that the mother was an unfit parent. (See NRS 128.106.) Recodo v. State, Dep't of Human Resources, 113 Nev. 141, 930 P.2d 1128 (1997)

Parental rights of an incarcerated father could not be terminated based solely on the duration of his incarceration. In an action brought to terminate the parental rights of a father who was incarcerated, it was error for the district court to focus on the length of the father's incarceration in determining whether termination would be in the best interests of the child (see NRS 128.105), rather than the nature of the crime for which the father was convicted. State law does not support the termination of parental rights based solely on the duration of the parent's incarceration. (See also NRS 128.106.) In re Parental Rights as to Q.L.R., 118 Nev. 602, 54 P.3d 56 (2002), cited, In re Parental Rights as to J.L.N., 118 Nev. 621, at 628, 55 P.3d 955 (2002), see also In re Parental Rights as to K.D.L., 118 Nev. 737, at 748, 58 P.3d 181 (2002), In re Parental Rights as to N.D.O., 121 Nev. 379, at 385, 115 P.3d 223 (2005), explained, In re Parental Rights as to C.J.M., 118 Nev. 724, at 736, 58 P.3d 188 (2002)

Successive acts of domestic violence against close family members demonstrated the biological father's unfitness as a parent. Where the biological father of children was convicted of two successive acts of felony domestic violence (battery resulting in substantial bodily harm to the mother of the children, and domestic violence with a deadly weapon against his own mother), the district court concluded and the supreme court agreed that the nature of the father's felony convictions provided clear and convincing evidence of the father's parental unfitness (see NRS 128.106) in his inability to provide for the children's physical, mental and emotional health and development. In re Parental Rights as to K.D.L., 118 Nev. 737, 58 P.3d 181 (2002)

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 his desires regarding the termination, if the court determines he is of sufficient capacity to express his 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 him to his 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.

➥ For purposes of this section, the court shall disregard incidental conduct, contributions, contacts and communications.

(Added to NRS by 1981, 1751; A 1987, 173)

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Statute only requires that court "consider" efforts being made by parent to modify conditions which caused removal of child from home. In an action to terminate a mother's parental rights, where the mother underwent counseling or "treatment" intermittently throughout her child's life and was engaged in counseling at the time the action was brought, the trial court did not abuse its discretion by terminating her parental rights at the time when she was receiving counseling, because NRS 128.107 requires only that the court "consider" the efforts being made by a parent to modify the conditions which caused the removal of a child from the home. Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984), cited, Deck v. Dep't of Human Resources, 113 Nev. 124, at 138, 930 P.2d 760 (1997)

Consideration of desires of child. In an action to terminate the parental rights of a father who was transsexual, there was clear and convincing evidence that both jurisdictional and dispositional grounds existed to justify the issuance of an order of termination where: (1) the physician who examined the child testified that there was a serious risk of emotional or mental injury to the child if she were required to be in her father's presence, that there are children who are not able to accept a parent as a transsexual, and that alternatives such as psychological or psychiatric counseling may not be successful and would risk emotional injury; (2) the child, who had a requisite capacity to express her desires, said that she did not want to see her father and that it would be disturbing to her if she were required to do so; and (3) the father paid no support for the child for over 1 year, and what communication there was with the child during that time was described as "token." (See NRS 128.012 and 128.107.) Daly v. Daly, 102 Nev. 66, 715 P.2d 56 (1986)

Termination of rights of mentally challenged parents based on unfitness of parents and parental failure to adjust. On an appeal of the termination of parental rights of mentally challenged parents, the district court did not err in determining that the parents were unfit pursuant to NRS 128.106 and that there was parental failure to adjust (see NRS 128.107), where: (1) both children had mental deficiencies and special needs; (2) although the parents made efforts towards becoming better parents, they persistently refused to recognize the need for assistance; and (3) there was clear and convincing evidence that the parents would be unable

to meet the intermediate and continuing needs of the children. Therefore, the order of the district court terminating the rights of the parents pursuant to NRS 128.105 was affirmed. Bush v. State, Dep't of Human Resources, 112 Nev. 1298, 929 P.2d 940 (1996), cited, In re Parental Rights as to D.R.H., 120 Nev. 422, at 433, 92 P.3d 1230 (2004)

State was under no obligation to provide a reunification case plan for the putative father and the child where the father demonstrated little or no interest in the child. On an appeal of the termination of parental rights pursuant to NRS ch. 128, the putative father argued that his procedural due process rights were violated by the respondent's failure to provide for the reunification of the child and the putative father within the case plan established to reunify the mother and child. In affirming the termination of parental rights of the putative father, the supreme court found that the respondent had provided the appellant with due process and fulfilled its statutory obligation (see NRS 128.107) because it informed the putative father of means by which he could establish paternity and because of the appointment of counsel at the termination hearing. Without further contact by the putative father and with virtually no demonstrated interest by the putative father in the child, the respondent was under no obligation to provide the putative father with a case plan. Deck v. Dep't of Human Resources, 113 Nev. 124, 930 P.2d 760 (1997), cited, In re Parental Rights as to C.J.M., 118 Nev. 724, at 735, 58 P.3d 188 (2002)

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 him, the court shall consider whether the child has become integrated into the foster family to the extent that his 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 his 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 he 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)

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Termination of parental rights to mentally challenged children in foster care where natural parents were also mentally challenged. On an appeal of the termination of parental rights of mentally challenged parents, where: (1) the children, who were also mentally challenged and had special needs, spent most of their lives in foster care; (2) there was clear and convincing evidence that the natural parents would be unable to meet the immediate and continuing needs of the children; and (3) the foster parents indicated a desire to adopt the children, there was sufficient evidence for the district court to determine that the children had become integrated into the foster family and that the termination of parental rights of the natural parents was in the best interest of the children (see NRS 128.108). Therefore, the order of the district court terminating parental rights pursuant to NRS 128.105 was affirmed. Bush v. State, Dep't of Human Resources, 112 Nev. 1298, 929 P.2d 940 (1996), distinguished, In re Parental Rights as to Q.L.R., 118 Nev. 602, at 608, 54 P.3d 56 (2002)

Where the mother had an irremedial inability to function as a proper and acceptable parent, the court could terminate her parental rights on the ground that she was an unfit parent. Where: (1) the mother had a chronic instability in her employment, housing and contacts with her child; (2) the state found substitute care of the child so that the mother could find housing and employment and establish stability in her life; (3) despite reasonable efforts by the state to reunite the mother and child, the mother did little to help establish stability in her life which she needed to care for the child; and (4) the foster parents, who were providing an environment in which the child was thriving, indicated a desire to adopt the child (see NRS 128.108), there was clear and convincing evidence of the mother's irremedial inability to function as a proper and acceptable parent and that the termination of parental rights would be in the best interest of the child. Therefore, the court had jurisdictional and dispositional grounds to terminate the parental rights of the

mother pursuant to NRS 128.105 on the basis that the mother was an unfit parent. (See NRS 128.106.) Recodo v. State, Dep't of Human Resources, 113 Nev. 141, 930 P.2d 1128 (1997)

Termination of parental rights was affirmed where the mother was unwilling within a reasonable time to correct substantially the conditions which led to the placement of her child outside her home and the termination of parental rights was in the best interest of the child. Where: (1) a child was adjudicated to be neglected and placed into foster care; (2) despite being given over 1 year to adjust, the mother was unable or unwilling to correct substantially the conditions that led to the child being placed outside of her home (see NRS 128.109); (3) nothing in the record indicated with any certainty that the provision of additional services to the mother would bring about lasting parental adjustment; and (4) the foster parents who were providing an environment in which the child was thriving indicated a desire to adopt the child (see NRS 128.108), the district court properly concluded that there was a failure of parental adjustment and that the termination of the mother's parental rights was in the best interest of the child (see NRS 128.105). Therefore, the termination of parental rights of the mother was affirmed. Recodo v. State, Dep't of Human Resources, 113 Nev. 141, 930 P.2d 1128 (1997)

NRS 128.109 Determination of conduct of parent; presumptions.

1. If a child has been placed outside of his 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 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 paragraph (f) of subsection 2 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 paragraph (d) of subsection 2 of NRS 128.105.

2. If a 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, 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)

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Jurisdictional and dispositional grounds for the termination of parental rights existed where the parent was unfit and failed to adjust to the plan for reunification, and termination was in the best interest of the child. The appellant challenged the termination of his parental rights, arguing that the State failed to establish by clear and convincing evidence sufficient grounds for the termination as set forth in NRS 128.105. The supreme court held that the district court properly found that jurisdictional grounds existed for the termination because there was clear and convincing evidence that the appellant was unfit as a parent, as demonstrated by his continued use of drugs and criminal activity during the period in which the child was in foster care (see NRS 128.106), and that the appellant failed to adjust, as demonstrated by his failure to comply with the terms and conditions of the plan for reunification for nearly 3 years (see NRS 128.109). Further, the district court properly found that the termination was in the best interest of the child based on uncontradicted evidence that the child was thriving in the custody of foster parents. Therefore, the order of the district court terminating parental rights was affirmed. Weinper v. State, Dep't of Human Resources, 112 Nev. 710, 918 P.2d 325 (1996)

Termination of parental rights was affirmed where the mother was unwilling within a reasonable time to correct substantially the conditions which led to the placement of her child outside her home and the termination of parental rights was in the best interest of the child. Where: (1) a child was adjudicated to be neglected and placed into foster care; (2) despite being given over 1 year to adjust, the mother was unable or unwilling to correct substantially the conditions that led to the child being placed outside of her home (see NRS 128.109); (3) nothing in the record indicated with any certainty that the provision of additional services to the mother would bring about lasting parental adjustment; and (4) the foster parents who were providing an environment in which the child was thriving indicated a desire to adopt the child (see NRS 128.108), the district court properly concluded that there was a failure of parental adjustment and that the termination of the mother's parental rights was in the best interest of the child (see NRS 128.105). Therefore, the termination of parental rights of the mother was affirmed. Recodo v. State, Dep't of Human Resources, 113 Nev. 141, 930 P.2d 1128 (1997)

Finding of failure of parental adjustment was supported by clear and convincing evidence. In an action to terminate a mother's parental rights, where the mother failed to: (1) maintain contact with her children for a period of 1 year; (2) provide support for her children; (3) maintain contact with the Division of Child and Family Services of the Department of Human Resources (now the Department of Health and Human Services); and (4) comply with the plan to reunite the family developed by the Division, there was clear and convincing evidence to support the finding of the failure of parental adjustment for the purposes of NRS 128.0126, 128.105 and 128.109. Gonzales v. Department of Human Resources, 113 Nev. 324, 933 P.2d 198 (1997)

Rebutting of presumption that placement of child outside home for certain number of months would cause termination of parental rights to be in child's best interests. The provisions of NRS 128.109(2) and 432B.553(2) establish a presumption that the best interests of a child would be served by termination of parental rights if the child has been placed outside the home for 14 of any 20 consecutive months. However, this presumption is rebuttable and NRS 432B.553(2)(c) specifically allows an agency to forego pursuing termination of parental rights if the agency finds compelling reasons that termination would not be in a child's best interests. In re Parental Rights as to J.L.N., 118 Nev. 621, 55 P.3d 955 (2002), cited, In re Parental Rights as to N.D.O., 121 Nev. 379, at 386, 115 P.3d 223 (2005)

Presumption that termination of parental rights was in the child's best interests was rebutted under the circumstances. Although the biological mother of a child had been incarcerated and, as a result, the child had spent more than 14 months out of a 20-month period outside of home as a ward of the State, the mother presented substantial evidence to rebut the presumption that parental rights should be terminated (see NRS 128.109 and 432B.553). Specifically, the mother showed that: (1) the child had a strong, loving relationship with both the mother and a maternal grandparent; (2) testimony by a supervisor at the division of child and family services indicated the child might suffer potential negative effects when she became a teenager as a result of termination of parental rights; (3) the child had never actually lived in the home of the potential adoptive parents; (4) the mother's incarceration would end within a year and there was no evidence that the child's health or well being would be jeopardized by waiting for the mother to be released; and (5) the mother's felony conviction did not relate to abuse or neglect of her children and there was no evidence the mother suffered from alcohol or drug abuse. In re Parental Rights as to J.L.N., 118 Nev. 621, 55 P.3d 955 (2002), cited, In re Parental Rights as to N.D.O., 121 Nev. 379, at 386, 115 P.3d 223 (2005)

Failure to complete case plan within 6 months does not necessarily constitute a ground for finding parental fault. The mere failure of a parent to complete a case plan within 6 months does not necessarily constitute a ground for finding parental fault (see NRS 128.109). The presumption in NRS 128.109(1)(b) may be rebutted by evidence that the parent has made reasonable and consistent efforts to adjust the circumstances that led to the children being placed outside of their home. Thus, where an incarcerated mother did as much as possible toward completing her case plan while incarcerated, and where the mother would be released in time to complete the rest of the plan within a reasonable length of time, the supreme court held that the mother had rebutted the presumption of failure of parental adjustment. In re Parental Rights as to J.L.N., 118 Nev. 621, 55 P.3d 955 (2002), cited, In re Parental Rights as to N.D.O., 121 Nev. 379, at 386, 115 P.3d 223 (2005)

Public policy: Permanent placement preferable to foster care. Taken together, NRS 128.109 and 432B.553 express the general public policy to seek permanent placement for children rather than have them remain in foster care. In re Parental Rights as to J.L.N., 118 Nev. 621, 55 P.3d 955 (2002), cited, In re Parental Rights as to K.D.L., 118 Nev. 737, at 745, 58 P.3d 181 (2002), In re Parental Rights as to D.R.H., 120 Nev. 422, at 427, 92 P.3d 1230 (2004)

Clear and convincing evidence showed that the father of children failed to adjust parentally when he committed a second act of domestic violence while on parole. A biological father was subject to a case plan for reunification which required him to, in relevant part, attend weekly anger management therapy sessions. Although the mother of the children declined to press charges, the father beat the mother and inflicted a bilateral jaw fracture upon her, leading the police department to take the children into protective custody. Approximately 1 year after this act, the father pleaded guilty (for that act) to battery with substantial bodily harm. The father apparently complied with the part of the case plan requiring him to take anger management therapy, yet while on parole for beating the mother of the children, the father committed an act of domestic violence against his own mother, violating the terms of his parole and resulting in his incarceration for a minimum term of 48 months. Although incarceration, alone, is not a sufficient ground to terminate parental rights, the district court concluded, and the supreme court agreed, that the nature of the father's acts were such that the father presented a potential danger to his children and demonstrated a failure of parental adjustment on the part of the father. (See also NRS 128.0126, 128.105 and 128.109.) In re Parental Rights as to K.D.L., 118 Nev. 737, 58 P.3d 181 (2002)

Clear and convincing evidence showed that termination of the biological father's parental rights was in the children's best interests. Clear and convincing evidence showed that termination of the biological father's parental

rights was in the children's best interests (see NRS 128.105) where: (1) the father was twice convicted of domestic violence despite complying substantially with the elements of his case plan requiring participation in anger management therapy, thereby demonstrating his continuing inability to manage his anger; (2) the children had resided for 19 consecutive months in foster care and the father failed to overcome the presumption set forth in NRS 128.109(2); and (3) the two children were only 3 years old and 18 months old, respectively, at the time of the father's incarceration and no stable bond existed between the children and their father. In re Parental Rights as to K.D.L., 118 Nev. 737, 58 P.3d 181 (2002)

Rebuttable presumption in favor of termination of parental rights in cases of abuse or neglect where child has resided outside of home for 14 of 20 consecutive months does not violate substantive due process rights of parent. The provisions of NRS 128.109 presume that termination of parental rights will serve a child's best interest when the child has been placed outside of his home under NRS ch. 432B and has resided outside of his home pursuant to that placement for 14 months of any 20 consecutive months (see also NRS 432B.553 and 432B.590). The presumption does not violate parental substantive due process rights (see Nev. Art. 1, § 8) because it is narrowly tailored to serve a compelling state interest. The State has a compelling interest in assuring that abused and neglected children achieve safe, stable and permanent home environments within which to be reared and, without such a presumption, a child is susceptible to drift for an indefinite length of time within the foster care system. The presumption is narrowly tailored because the presumption: (1) applies only where a child is removed from the home pursuant to NRS ch. 432B as a result of parental abuse or neglect; (2) is rebuttable upon the presentation of evidence showing that termination of parental rights is not in the child's best interest; (3) must be read in conjunction with NRS 128.105, which requires the court to examine the child's best interest and to make a determination concerning parental fault; and (4) addresses the compelling state interest of planning for safe, stable and permanent placements for abused and neglected children. In re Parental Rights as to D.R.H., 120 Nev. 422, 92 P.3d 1230 (2004)

NRS 128.110 Order terminating parental rights; preference for placement of child with certain relatives and his siblings; 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.

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 third 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 siblings.

➥ 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 home.

[11:161:1953]—(NRS A 1975, 966; 1981, 1755; 1991, 1177; 1999, 2028)

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C.J.S. Infants §§ 57, 69-85.

NEVADA CASES.

In reviewing a termination of parental rights, the supreme court will not substitute its judgment for that of the lower court, but will uphold the termination if it is based upon substantial evidence. A trial court has all relevant parties before it and is able to observe their demeanor and weigh their credibility. As a result, when the supreme court reviews a trial court's decree terminating parental rights (see also NRS 128.105 and 128.110), the supreme court will not substitute its judgment for that of the lower court, but will uphold the termination if it is based upon substantial evidence. Carson v. Lowe, 76 Nev. 446, 357 P.2d 591 (1960), cited, Kobinksi v. State, 103 Nev. 293, at 296, 738 P.2d 895 (1987), see also Whitaker v. Olsson, 89 Nev. 157, at 157, 508 P.2d 1014 (1973), August H. v. State, 105 Nev. 441, at 446, 777 P.2d 901 (1989), Greeson v. Barnes, 111 Nev. 1198, at 1201, 900 P.2d 943 (1995), Montgomery v. State, Dep't of Human Resources, 112 Nev. 719, at 726, 917 P.2d 949 (1996), Recodo v. State, Dep't of Human Resources, 113 Nev. 141, at 148, 930 P.2d 1128 (1997), Gonzales v. Dep't of Human Resources, 113 Nev. 324, at 330, 933 P.2d 198 (1997), In re Carron, 114 Nev. 370, at 374, 956 P.2d 785 (1998), In re Parental Rights as to N.J., 116 Nev. 790, at 795, 8 P.3d 126 (2000), In re Parental Rights as to Q.L.R., 118 Nev. 602, at 605, 54 P.3d 56

(2002), In re Parental Rights as to J.L.N., 118 Nev. 621, at 625, 55 P.3d 955 (2002), In re Parental Rights as to C.J.M., 118 Nev. 724, at 732, 58 P.3d 188 (2002), In re Parental Rights as to K.D.L., 118 Nev. 737, at 744, 58 P.3d 181 (2002), Castle v. Simmons, 120 Nev. 98, at 103, 86 P.3d 1042 (2004), In re Parental Rights as to D.R.H., 120 Nev. 422, at 428, 92 P.3d 1230 (2004)

Term "parental rights" includes both parental rights and parental obligations. The term "parental rights," as used in NRS 128.110, includes both parental rights and parental obligations. Thus an order terminating a father's parental rights also terminated his obligation of child support, and the State had no basis for an action against him under the former provisions of the Revised Uniform Reciprocal Enforcement of Support Act. State ex rel. Welfare Div. v. Vine, 99 Nev. 278, 662 P.2d 295 (1983), cited, Frye v. Frye, 103 Nev. 301, at 302, 738 P.2d 505 (1987), In re Parental Rights as to T.M.C., 118 Nev. 563, at 567, 52 P.3d 934 (2002), distinguished, Lara v. County of Yolo, 104 Nev. 705, 765 P.2d 1151 (1988)

Severance of parental rights is an awesome power that must be questioned closely by the reviewing court. In reviewing the appeals of four district court orders that permanently terminated the parental rights of mothers and fathers, the supreme court stated that "[s]everance of parental rights is an exercise of awesome power" that must be questioned closely by the court in its review of the cases before it. (See NRS 128.105 and 128.110.) Champagne v. Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984), cited, Smith v. Smith, 102 Nev. 263, at 266, 720 P.2d 1219 (1986), In re Carron, 114 Nev. 370, at 374, 956 P.2d 785 (1998), see also In re Parental Rights as to N.J., 116 Nev. 790, at 795, 8 P.3d 126 (2000), In re Parental Rights as to J.L.N., 118 Nev. 621, at 625, 55 P.3d 955 (2002), In re Parental Rights as to C.J.M., 118 Nev. 724, at 732, 58 P.3d 188 (2002), In re Parental Rights as to K.D.L., 118 Nev. 737, at 744, 58 P.3d 181 (2002)

Termination of parental rights by judicial decree is a serious matter that must be scrutinized closely by the reviewing court. In reviewing a district court order that terminated the parental rights of a mother to her three children, the supreme court stated that "[t]ermination of parental rights is a most serious matter, and is scrutinized closely on appeal." (See also NRS 128.105 and 128.110.) Kobinski v. State, Welfare Div., 103 Nev. 293, 738 P.2d 895 (1987), cited, In re Carron, 114 Nev. 370, at 374, 956 P.2d 785 (1998), In re Parental Rights as to N.J., 116 Nev. 790, at 795, 8 P.3d 126 (2000), see also In re Parental Rights as to C.J.M., 118 Nev. 724, at 732, 58 P.3d 188 (2002)

ATTORNEY GENERAL'S OPINIONS.

No authority for vesting custody in former State Welfare Board. The State Welfare Board (now the State Board of Welfare and Supportive Services) is a policymaking group and there is no authority for vesting custody of any child in such a board. AGO 18 (3-6-1959)

State agency authorized to petition for and have custody of children. Under the provisions of NRS 128.110, relating to termination of parental rights, the State Welfare Department (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) is authorized to petition for and have custody of children. AGO 18 (3-6-1959)

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 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)

WEST PUBLISHING CO.

Infants ! 232.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 57, 69-85.

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 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)

WEST PUBLISHING CO.
Infants ! 212.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 57, 69-85.

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,

➥ 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,

➥ 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 his legal parents on that date with all the rights and duties of parents.

(Added to NRS by 2007, 91)

INVOLUNTARY SERVITUDE; PURCHASE OR SALE OF PERSON

NRS 200.463 Involuntary servitude; penalties.

1. A person who knowingly subjects, or attempts to subject, another person to forced labor or services by:

(a) Causing or threatening to cause physical harm to any person;

(b) Physically restraining or threatening to physically restrain any person;

(c) Abusing or threatening to abuse the law or legal process;

(d) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of the person;

(e) Extortion; or

(f) Causing or threatening to cause financial harm to any person,

➥ is guilty of holding a person in involuntary servitude.

2. A person who is found guilty of holding a person in involuntary servitude is guilty of a category B felony and shall be punished:

(a) Where the victim suffers substantial bodily harm while held in involuntary servitude or in attempted escape or escape therefrom, by imprisonment in the state prison for a minimum term of not less than 7 years and a maximum term of not more than 20 years, and may be further punished by a fine of not more than $50,000.

(b) Where the victim suffers no substantial bodily harm as a result of being held in involuntary servitude, by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years, and may be further punished by a fine of not more than $50,000.

(Added to NRS by 2005, 87)

WEST PUBLISHING CO.

False Imprisonment ! 43, 44.
Slaves ! 24.
WESTLAW Topic Nos. 168, 356.
C.J.S. False Imprisonment §§ 70-71.
C.J.S. Peonage §§ 3-5.

NRS 432.0165 Nevada Children's Gift Revolving Account.

1. The Nevada Children's Gift Revolving Account is hereby created. All money in the Nevada Children's Gift Revolving Account must be deposited in a financial institution qualified to receive deposits of public money and must be secured with a depository bond that is satisfactory to the State Board of Examiners, unless it is otherwise secured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755.

2. The money in the Nevada Children's Gift Revolving Account may be distributed by the Division to foster parents, upon request, on the basis of need, to pay the costs associated with participation by a child in foster care in intramural, recreational, social, school and sports-related activities, including, without limitation, uniforms and equipment, the rental of musical instruments, registration fees and art lessons.

3. All requests for distributions of money from the Nevada Children's Gift Revolving Account must be made to the Division in writing. The person making the request must demonstrate that all other resources for money to pay for the activity have been exhausted.

4. The Division shall develop policies for the administration of this section.

5. Purchases made by the Division pursuant to this section are exempt from the provisions of the State Purchasing Act.

6. The balance in the Nevada Children's Gift Revolving Account must be carried forward at the end of each fiscal year.

(Added to NRS by 2005, 22nd Special Session, 43)

REVISER'S NOTE.

As part of the repeal, reorganization and reenactment in title 38 of NRS of certain provisions relating to the Division of Welfare and Supportive Services, the Division of Health Care Financing and Policy, and the Division of Child and Family Services of the Department of Health and Human Services, which became effective on October 1, 2005, the provisions of NRS 432.0165 were derived from former NRS 423.135, which had the following legislative history:

"(Added to NRS by 1995, 2301; A 1997, 3058; 1999, 1494)"

NRS 432.017 Account to Assist Persons Formerly in Foster Care.

1. The Account to Assist Persons Formerly in Foster Care is hereby established in the Department of Health and Human Services' Gift Fund.

2. The Account must be administered by the Administrator.

3. The money in the Account must be used to assist persons who attained the age of 18 years while children in foster care in this State to make the transition from foster care to economic self-sufficiency, and may, consistent with that purpose, be:

(a) Disbursed on behalf of such persons, on the basis of need, to obtain goods and services, including, without limitation:

(1) Job training;

(2) Housing assistance; and

(3) Medical insurance;

(b) Granted to nonprofit community organizations; or

(c) Expended to provide matching money required as a condition of any federal grant.

4. A request for the disbursement of money from the Account pursuant to paragraph (a) of subsection 3 must be made to the Division in writing. The request must include information to demonstrate that all other resources for money to pay for the goods and services have been exhausted.

5. The Division shall adopt such regulations as necessary for the administration of this section.

6. Money in the Account at the end of any fiscal year remains in the Account and does not revert to any other fund.

(Added to NRS by 2005, 22nd Special Session, 44)

REVISER'S NOTE.

As part of the repeal, reorganization and reenactment in title 38 of NRS of certain provisions relating to the Division of Welfare and Supportive Services, the Division of Health Care Financing and Policy, and the Division of Child and Family Services of the Department of Health and Human Services, which became effective on October 1, 2005, the provisions of NRS 432.017 were derived from former NRS 423.137, which had the following legislative history:

"(Added to NRS by 2001, 3221)"

NRS Chapter 432B

REVISER'S NOTES.

Ch. 455, Stats. 1985, the source of this chapter, contains a preamble not included in NRS, which reads as follows:

"WHEREAS, The legislature finds that there are abused or neglected children within this State who need protection; and

WHEREAS, The legislature finds that there is a need for the prevention, identification and treatment of abuse or neglect of children; and

WHEREAS, It is the purpose of this act to establish judicial procedures to protect the rights of parents and children and to provide a system for the services necessary to protect the welfare and development of abused or neglected children and, if appropriate, to preserve and stabilize the family;"

Ch. 508, Stats. 1999, as amended by Ch. 1, Stats. 2001 Special Session, contains a preamble and other provisions not included in NRS, which are effective through June 30, 2003, and read as follows:

"WHEREAS, The system for providing protective services for children in this State is bifurcated, with services being provided both by county agencies and the Division of Child and Family Services of the Department of Human Resources [now the Department of Health and Human Services]; and

WHEREAS, There are disparities between the payments made to providers of those services by the county agencies and the Division; and

WHEREAS, Because of such disparities and because the county agencies and the Division contract with different providers of foster care, the placement of a child in foster care is frequently disrupted to place the child with a different provider of foster care; and

WHEREAS, Frequently changing the placement of children in foster care is not in the best interests of those children; and

WHEREAS, On November 19, 1997, Congress enacted the Adoption and Safe Families Act of 1997, which, as a condition to the receipt of federal money, requires a plan for the permanent placement of a child in foster care to be established no later than 12 months after a child has been placed in foster care; and

WHEREAS, To comply with this federal law requires diligent effort on the part of the county agencies and the Division from the time that a child first enters the system for providing protective services; and

WHEREAS, The bifurcated system for providing protective services to children in this State does not uniformly provide the continuity in care and services that are necessary to establish a plan for the permanent placement of those children within the time frame required by federal law;

Section 1. 1. A county that is required to provide protective services to children in that county pursuant to NRS 432B.325 may enter into an agreement with the Division of Child and Family Services of the Department of Human Resources [now the Department of Health and Human Services] to establish a pilot program to provide continuity of care for children who receive protective services. A pilot program established pursuant to such an agreement may provide:

(a) For the county and the Division of Child and Family Services jointly to furnish services relating to the assessment of a child and planning for the provision of protective services to the child;

(b) For a child to be in the joint custody of the county and the Division of Child and Family Services;

(c) For continuity in the placement of a child in foster care;

(d) That the rate of payment by the county for foster care and shelter care must be equal to the rate of payment by the Division of Child and Family Services for foster care and shelter care;

(e) For continuity in the management of a case for the provision of protective services to a child; and

(f) For services designed to carry out a plan for the permanent placement of a child established pursuant to NRS 432B.590 or the Adoption and Safe Families Act of 1997, Public Law 105-89.

2. Notwithstanding any specific statute to the contrary, for the purpose of a pilot program established pursuant to an agreement entered into pursuant to this section, the Division of Child and Family Services may deviate from the rate of payment for foster care approved by the Legislature.

Sec. 2. On or before November 30, 2002, the Division of Child and Family Services of the Department of Human Resources [now the Department of Health and Human Services] shall submit a report to the Director of the Legislative Counsel Bureau for transmittal to the appropriate legislative committee. The report must include the following information for each agreement entered into pursuant to section 1 of this act:

1. The number of children involved in the pilot project established pursuant to the agreement;

2. A description of the services provided to those children that includes:

(a) The name of the agency that provided the services; and

(b) The costs incurred by the agency that provided the services;

3. If available, the disposition of the cases of those children; and

4. An analysis of the benefits, if any, to the children involved in the pilot project and to the families of those children."

Ch. 1, Stats. 2001 Special Session, which amended various provisions of this chapter, contains the following provisions not included in NRS:

"Notwithstanding the amendatory provisions of this act, the Division of Child and Family Services of the Department of Human Resources [now the Department of Health and Human Services] shall, except as otherwise provided in NRS 432B.325, provide child welfare services in a county whose population is 100,000 or more as necessary until the Division and the board of county commissioners of the county agree that an agency in the county is fully capable of providing child welfare services. Any dispute regarding the capability of the agency to provide child welfare services must be determined by the Governor."

WEST PUBLISHING CO.

Infants ! 131.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 31, 33, 42, 50, 51, 53, 54.

NEVADA CASES.

Family privacy cases involving competing familial interests: Application of more flexible "reasonableness" test for analyzing substantive due process challenges. Although the U.S. Supreme Court has held that the usual standard for analyzing a substantive due process (see Nev. Art. 1, § 8) challenge to the constitutionality of a state statute that impinges on a fundamental constitutional right is whether the statute is narrowly tailored so as to serve a compelling interest, and although the relationship between parent and child is a fundamental liberty interest, in family privacy cases involving competing interests within the family, the U.S. Supreme Court has deviated from the usual test to apply a more flexible "reasonableness" test which implicitly calibrates the level of scrutiny in each case to match the particular degree of intrusion upon the parents' interests. Kirkpatrick v. Eighth Judicial Dist. Court, 119 Nev. 66, 64 P.3d 1056 (2003), cited, In re

Guardianship of L.S. & H.S., 120 Nev. 157, at 166, 87 P.3d 521 (2004), but see In re Parental Rights as to D.R.H., 120 Nev. 422, at 427, 92 P.3d 1230 (2004)

ATTORNEY GENERAL'S OPINIONS.

Name of the person reporting child abuse and the name of the child concerned remain confidential after the death of the abused child. NRS ch. 432B provides for the protection of children from abuse and neglect. NRS 432B.220 requires that certain persons and agencies discovering evidence of child abuse or neglect report information regarding the suspected child abuse to the appropriate state agency. Information, investigations and reports made pursuant to NRS 432B.220 are confidential in order to encourage reporting and may be released only to the persons specified in NRS 432B.290. The nondisclosure law makes the information itself privileged; therefore, the names of the persons making the report and the names of the children concerned remain confidential and protected from general dissemination to the public even after the death of the abused child. AGO 88-15 (12-14-1988)

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)

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,

➥ 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 of that section; 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 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)

ADMINISTRATIVE REGULATIONS.

Interpretation of "nonaccidental," NAC 432B.020

WEST PUBLISHING CO.

Infants ! 156-159.
WESTLAW Topic No. 211.

C.J.S. Infants §§ 31-62.

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,

➥ which provides or arranges for necessary child welfare services.

(Added to NRS by 1985, 1369; A 1993, 2705; 2001 Special Session, 34)

NRS 432B.040 "Child" defined. "Child" means a person under the age of 18 years.

(Added to NRS by 1985, 1369)

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

1. Protective services, including, without limitation, investigations of abuse or neglect and assessments;

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)

WEST PUBLISHING CO.

Adoption ! 1-3.
Infants ! 131-232.
WESTLAW Topic Nos. 17, 211.
C.J.S. Adoption of Persons §§ 2-12, 145.

C.J.S. Courts § 249.
C.J.S. Criminal Law § 2008.
C.J.S. Infants §§ 31-91, 95.

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.
(Added to NRS by 1985, 1369)

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.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 his ability to function within his 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)

ADMINISTRATIVE REGULATIONS.
Interpretation of "disfigurement," NAC 432B.024

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)

WEST PUBLISHING CO.
Infants ! 20.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 100 et seq.

NEVADA CASES.
Provisions of NRS 171.095 **govern the extended period for filing of action for offense relating to sexual abuse of child not limited to offense committed in secret manner.** Paragraph (b) of subsection 1 of NRS 171.095 does not contain any language limiting its application to offenses committed in a secret manner. The plain language of paragraph (b) of subsection 1 indicates that, regardless of when the crime was discovered, for an offense constituting the sexual abuse of a child (see NRS 432B.100), the State may file a charging

document up to the time the child victim reaches age twenty-one. Bailey v. State, 120 Nev. 406, 91 P.3d 596 (2004)

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)

WEST PUBLISHING CO.
Infants ! 20.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 95, 100-107.

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 he 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, or a person directly responsible or serving as a volunteer for or employed in a public or private home, institution or facility where the child actually resides or is receiving child care outside of his home for a portion of the day.

(Added to NRS by 1985, 1370; A 1989, 439; 2001 Special Session, 34)

NRS 432B.140 Negligent treatment or maltreatment. Negligent treatment or maltreatment of a child occurs if a child has been abandoned, is without proper care, control and 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 his welfare or his neglect or refusal to provide them when able to do so.

(Added to NRS by 1985, 1370)

NEVADA CASES.

Evidence sufficient to show that children were neglected. Where the parents were unable to protect the children from each other and failed to teach the children basic social skills or to provide any guidance to the children regarding basic toilet functions and hygiene, the evidence was sufficient to show that the children were neglected (see NRS 432B.140). August H. v. State, 105 Nev. 441, 777 P.2d 901 (1989)

Statute was not unconstitutionally vague as applied to the defendant in light of evidence of the defendant's failure to obtain medical treatment for the child. In prosecution for child abuse and neglect under NRS 200.508, where the prosecution proved that: (1) the boyfriend of the defendant beat the child immediately before his death, thereby inflicting multiple bruises on the child's chest and abdomen; (2) the boyfriend told the defendant that he had beaten the child; (3) the defendant knew the child had fever, was lethargic, vomited repeatedly, did not eat or drink and did not go to the bathroom after the beating; and (4) the boyfriend suggested several times that the child be taken to a doctor, but the defendant refused because she feared the child would be taken from her, the defendant could not claim that NRS 432B.140, which provides that a person commits abuse or neglect of a child if he willfully fails to provide medical care necessary for the well-being of the child when he was able to do so, was unconstitutionally vague because it failed to delineate factors to determine when treatment by a medical professional was required. As applied to the defendant's case, it was untenable for the defendant to argue that she was unaware that her willful failure to obtain medical treatment for the child was criminal pursuant to NRS 432B.140, as incorporated in NRS 200.508. Smith v. State, 112 Nev. 1269, 927 P.2d 14 (1996), cited, Rice v. State, 113 Nev. 1300, at 1307, 949 P.2d 262 (1997), modified, City of Las Vegas v. Eighth Judicial Dist. Court, 118 Nev. 859, at 863, 59 P.3d 477 (2002)

Evidence was sufficient to support the finding of failure to obtain medical treatment for the child. In prosecution for child abuse and neglect under NRS 200.508, there was sufficient evidence to convict the defendant of

willfully allowing the child to be placed in a situation in which he suffered unjustifiable physical pain and substantial bodily harm by failing to provide medical care to the child when the defendant was able to do so where: (1) the boyfriend of the defendant beat the child immediately before his death, thereby inflicting multiple bruises on the child's chest and abdomen; (2) the boyfriend told the defendant that he beat the child; (3) the defendant saw bruises on the child's body when she gave the child a bath; (4) the defendant knew the child was listless and ill and had a temperature during the days before his death; and (5) the defendant refused to take the child to the hospital because she feared the child would be taken from her. (See also NRS 432B.140.) Smith v. State, 112 Nev. 1269, 927 P.2d 14 (1996)

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 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 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)

WEST PUBLISHING CO.

Divorce ! 298.
Infants ! 19.
Parent and Child ! 2.
WESTLAW Topic Nos. 134, 211, 285.
C.J.S. Divorce § 620.
C.J.S. Infants §§ 11-15, 17-19, 22-23, 26-29.
C.J.S. Parent and Child §§ 16, 19.

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.

➥ 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)

WEST PUBLISHING CO.
Divorce ! 298.
Infants ! 19.
WESTLAW Topic Nos. 134, 211.
C.J.S. Divorce § 620.
C.J.S. Infants §§ 11-15, 17-19, 22-23, 26-29.

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,

➥ 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)

WEST PUBLISHING CO.
Physicians and Surgeons ! 15(9).
WESTLAW Topic No. 299.
C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 58, 60, 70, 97-100.

NEVADA CASES.

Child abuse investigations: Public policy; discretionary functions. Where a former wife brought an action against the county and several of its social services offices and employees thereof, alleging that those persons and entities failed to adequately investigate allegations made by her former husband that the former wife and her current husband had committed sexual abuse with respect to the former couple's children, the supreme court held that the former wife's claim must fail, both because: (1) public policy considerations militate in favor of immunity for child abuse investigations, so that social workers do not postpone the prevention of further abuse to avoid liability; and (2) the investigation of the former husband's allegations implicated a discretionary function (see NRS 41.032). (See also NRS 432B.160.) Foster v. Washoe County, 114 Nev. 936, 964 P.2d 788 (1998)

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.

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.

(Added to NRS by 2007, 193)

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 CROSS REFERENCES.

Statewide Central Registry for Collection of Information Concerning Abuse or Neglect, NRS 432.0999-432.130

WEST PUBLISHING CO.

Infants ! 17, 133.
WESTLAW Topic No. 211.
C.J.S. Adoption of Persons §§ 10-14, 41.

C.J.S. Infants §§ 6, 8-9, 43, 71-95.

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 subsection 3 of 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)

ADMINISTRATION

NRS 432B.180 Duties of Division of Child and Family Services; corrective action required by certain agencies which provide child welfare services; consequences for failure to take corrective action; deposit of administrative fines by Division. The Division of Child and Family Services shall:

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

2. Plan, coordinate and monitor the delivery of child welfare services provided throughout the State.

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

4. 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.

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

6. Evaluate all child welfare services provided throughout the State and, if an agency which provides child welfare services is not complying 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.

7. If an agency which provides child welfare services fails to take corrective action required pursuant to subsection 6 within a reasonable period, take one or more of the following actions against the agency which provides child welfare services:

(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 contributes 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.

➥ The Division shall adopt regulations to carry out the provisions of this subsection, 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.

8. In consultation with each agency which provides child welfare services, request sufficient money for the provision of child welfare services throughout this State.

9. 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.

10. Coordinate with and assist:

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

(b) A nonprofit or community-based organization in recruiting and training providers of family 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)

REVISER'S NOTE.

Ch. 330, Stats. 2007, which amended this section to prescribe consequences for failure of an agency which provides child welfare services to take corrective action, contains the following provisions not included in NRS:

"1. The Department of Health and Human Services shall submit a report to the Interim Finance Committee, the Legislative Committee on Health Care and any other interim committee of the Nevada Legislature that has oversight of child welfare services concerning each action taken pursuant to subsection 7 of NRS 432B.180, as amended by section 8 of this act, during the 2007-2009 interim. Each report must be submitted

within 30 days after the Division of Child and Family Services of the Department has taken action against an agency which provides child welfare services for failure to take corrective action and must include, without limitation:

(a) The action taken by the Division;

(b) The purpose for taking such action, including, without limitation, the corrective action that the agency failed to take;

(c) The amount of money withheld from the agency or the amount of the administrative fine imposed against the agency, if applicable; and

(d) If an administrative fine was imposed pursuant NRS 432B.180, the manner in which the Division expended the money.

2. On or before January 1, 2009, the Department shall submit to the Director of the Legislative Counsel Bureau for transmission to the 75th Session of the Nevada Legislature a cumulative summary of all reports submitted pursuant to subsection 1."

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 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 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.

➥ 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. 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)

ADMINISTRATIVE REGULATIONS.

Protection of children from abuse and neglect, NAC ch. 432B

WEST PUBLISHING CO.

Infants ! 17.

WESTLAW Topic No. 211.

C.J.S. Adoption of Persons §§ 10-14, 41.

C.J.S. Infants §§ 6, 8-9.

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)

WEST PUBLISHING CO.

Infants ! 17.
WESTLAW Topic No. 211.
C.J.S. Adoption of Persons §§ 10-14, 41.
C.J.S. Infants §§ 6, 8-9.

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 CROSS REFERENCES.

Statewide Central Registry for Collection of Information Concerning Abuse or Neglect, NRS 432.0999-432.130

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)

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.

1. Any person who is described in subsection 4 and who, in his 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 his 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 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 physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, physician assistant licensed pursuant to chapter 630 or 633 of NRS, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, clinical social worker, athletic trainer, advanced emergency medical technician or other person providing medical services licensed or certified in this State.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of suspected abuse or neglect of a child by a member of the staff of the hospital.

(c) A coroner.

(d) A clergyman, practitioner of Christian Science or religious healer, unless he has acquired the knowledge of the abuse or neglect from the offender during a confession.

(e) A social worker and an administrator, teacher, librarian or counselor of a school.

(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 to conduct a foster home.

(h) Any officer or employee of a law enforcement agency or an adult or juvenile probation officer.

(i) An attorney, unless he has acquired the knowledge of the abuse or neglect from a client who is or may be accused of the abuse or neglect.

(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 an approved youth shelter. As used in this paragraph, "approved youth shelter" has the meaning ascribed to it in NRS 244.422.

(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 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.

(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)

WEST PUBLISHING CO.

Health ! 196.
Infants ! 13.5(1).
WESTLAW Topic Nos. 198H, 211.

C.J.S. Infants § 116.

NEVADA CASES.

Former provisions of the section were unconstitutionally vague. Because the former provisions of NRS 432B.220 which required that a report of suspected child abuse be made "immediately" vested in the prosecuting authorities the unbridled discretion to determine whether a report of suspected child abuse was made quickly enough, the section failed to inform persons who were subject to its terms what conduct would render them liable to criminal sanctions and, therefore, was unconstitutionally vague. Sheriff, Washoe County v. Sferrazza, 104 Nev. 747, 766 P.2d 896 (1988)

ATTORNEY GENERAL'S OPINIONS.

Name of the person reporting child abuse and the name of the child concerned remain confidential after the death of the abused child. NRS ch. 432B provides for the protection of children from abuse and neglect. NRS 432B.220 requires that certain persons and agencies discovering evidence of child abuse or neglect report information regarding the suspected child abuse to the appropriate state agency. Information, investigations and reports made pursuant to NRS 432B.220 are confidential in order to encourage reporting and may be released only to the persons specified in NRS

432B.290. The nondisclosure law makes the information itself privileged; therefore, the names of the persons making the report and the names of the children concerned remain confidential and protected from general dissemination to the public even after the death of the abused child. AGO 88-15 (12-14-1988)

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:

(a) The name, address, age and sex of the child;

(b) The name and address of the child's parents or other person responsible for his care;

(c) 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;

(d) Any evidence of previously known or suspected:

(1) Abuse or neglect of the child or the child's siblings; or

(2) Effects of prenatal illegal substance abuse on or evidence of withdrawal symptoms resulting from prenatal drug exposure of the newborn infant;

(e) The name, address and relationship, if known, of the person who is alleged to have abused or neglected the child; and

(f) 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)

WEST PUBLISHING CO.
Infants ! 13.5(1).
WESTLAW Topic No. 211.
C.J.S. Infants § 116.

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 a misdemeanor.

(Added to NRS by 1985, 1373)

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:

1. For his failure to make a report pursuant to NRS 432B.220;
2. In cooperating with an agency which provides child welfare services or a guardian ad litem for a child; or
3. 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:

(a) The child is 5 years of age or younger;

(b) There is a high risk of serious harm to the child;

(c) The child has suffered a fatality; or

(d) 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:

(a) The child is not in imminent danger of harm;

(b) The child is not vulnerable as the result of any untreated injury, illness or other physical, mental or emotional condition that threatens his immediate health or safety;

(c) 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 his family are referred to or participate in social or health services offered in the community, or both; or

(d) The agency determines that the:

(1) 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, including, without limitation, spanking or paddling; and

(2) 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.

➥ If an agency determines that an investigation is not warranted for the reason set forth in paragraph (d) of subsection 3, the agency shall take no further action in regard to the matter and shall delete all references to the matter from its records.

7. If an agency which provides child welfare services enters into an agreement with a person to provide services to a child or his family pursuant to subsection 6, the agency shall require the person to notify the agency if the child or his 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. An agency which provides child welfare services that determines that an investigation is not warranted 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)

ADMINISTRATIVE REGULATIONS.

Agencies which provide family assessment services, NAC 432B.135-432B.1368

WEST PUBLISHING CO.

Infants ! 17.
WESTLAW Topic No. 211.
C.J.S. Adoption of Persons §§ 10-14, 41.
C.J.S. Infants §§ 6, 8-9.

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 his sibling 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 his sibling was interviewed, unless the designee determines that such notification would endanger the child or his 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 he 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)

WEST PUBLISHING CO.

Physicians and Surgeons ! 15(9).
WESTLAW Topic No. 299.

C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 58, 60, 70, 97-100.

NRS 432B.280 Confidentiality of reports and of records concerning reports and investigations; 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, reports made pursuant to this chapter, as well as all records concerning these reports and investigations thereof, are confidential.

2. Any person, law enforcement agency or public agency, institution or facility who willfully releases data or information concerning such reports and investigations, 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 misdemeanor.

(Added to NRS by 1985, 1373; A 1999, 2032; 2001, 1701; 2007, 195, 1507, 1980, 2106)

NRS CROSS REFERENCES.

Application to court for order allowing inspection or copying of certain records, NRS 239.0115

Electronic submission of health information, NRS 439.538

WEST PUBLISHING CO.

Infants ! 133.
WESTLAW Topic No. 211.

C.J.S. Infants §§ 57, 69-85.

NEVADA CASES.

Family court acted within its jurisdiction in ordering Division of Child and Family Services of former Department of Human Resources to disclose addresses of siblings' guardians for sole purpose of effecting service of petition for sibling visitation. A child in the custody of the Division of Child and Family Services of the Department of Human Resources (now the Department of Health and Human Services) desired to reestablish communication with her sisters, all of whom had either been adopted or reunited with a biological parent. To this end, a family court ordered the Division to disclose the addresses of the guardians of the child's siblings for the limited purpose of serving those guardians with a petition for sibling visitation. The Division asserted that the family court lacked jurisdiction to issue the order as NRS 432B.280 declares such information to be confidential unless an exception for disclosure is allowed under NRS 432B.290. Upon review, the Nevada Supreme Court determined that the order was permissible under both NRS 432B.290(1)(e) and 432B.290(1)(g) because: (1) the information was necessary to bring the issue of sibling visitation before the family court; and (2) pursuant to the family court's order, the information was only to be disclosed to the child's attorney, and not to the child herself. State Div. of Child & Fam. Servs. v. Eighth Judicial Dist. Court, 119 Nev. 655, 81 P.3d 512 (2003)

NRS 432B.290 Authorized release of data or information concerning reports and investigations; penalty; regulations.

1. Except as otherwise provided in subsections 2 and 3 and NRS 432B.165, 432B.175 and 432B.513, data or information concerning reports and investigations thereof made pursuant to this chapter may be made available only to:

(a) A physician, if the physician has before him a child who he 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 a child who he 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) A 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 person engaged in bona fide research or an audit, but information identifying the subjects of a report must not be made available to him;

(g) The attorney and the guardian ad litem of the child;

(h) A grand jury upon its determination that access to these records is necessary in the conduct of its official business;

(i) 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 and neglect;

(j) 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;

(k) A team organized pursuant to NRS 432B.350 for the protection of a child;

(l) A team organized pursuant to NRS 432B.405 to review the death of a child;

(m) A parent or legal guardian of the child and an attorney of a parent or guardian of the child, if the identity of the person responsible for reporting the abuse or neglect of the child to a public agency is kept confidential;

(n) The persons who are the subject of a report;

(o) 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;

(p) 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 his family is not the person alleged to have committed the abuse or neglect;

(q) 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;

(r) 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;

(s) The Rural Advisory Board to Expedite Proceedings for the Placement of Children created pursuant to NRS 432B.602 or a local advisory board to expedite proceedings for the placement of children created pursuant to NRS 432B.604;

(t) The panel established pursuant to NRS 432B.396 to evaluate agencies which provide child welfare services; or

(u) An employer in accordance with subsection 3 of NRS 432.100.

2. 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.

3. An agency which provides child welfare services shall disclose the identity of a person who makes a report or otherwise initiates an investigation pursuant to this chapter if a court, after reviewing the record in camera and determining that there is reason to believe that the person knowingly made a false report, orders the disclosure.

4. Any person, except for:

(a) The subject of a report;

(b) A district attorney or other law enforcement officer initiating legal proceedings; or

(c) 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,

➥ who is given access, pursuant to subsection 1, to information identifying the subjects of a report and who makes this information public is guilty of a misdemeanor.

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

(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)

WEST PUBLISHING CO.

Infants ! 133.
Labor and Employment ! 21.
WESTLAW Topic Nos. 211, 231H.

C.J.S. Infants §§ 43, 71-95.

NEVADA CASES.

Family court acted within its jurisdiction in ordering Division of Child and Family Services of former Department of Human Resources to disclose addresses of siblings' guardians for sole purpose of effecting service of petition for sibling visitation. A child in the custody of the Division of Child and Family Services of the Department of Human Resources (now the Department of Health and Human Services) desired to reestablish communication with her sisters, all of whom had either been adopted or reunited with a biological parent. To this end, a family court ordered the Division to disclose the addresses of the guardians of the child's siblings for the limited purpose of serving those guardians with a petition for sibling visitation. The Division asserted that the family court lacked jurisdiction to issue the order as NRS 432B.280 declares such information to be confidential unless an exception for disclosure is allowed under NRS 432B.290. Upon review, the Nevada Supreme Court determined that the order was permissible under both NRS 432B.290(1)(e) and 432B.290(1)(g) because: (1) the information was necessary to bring the issue of sibling visitation before the family court; and (2) pursuant to the family court's order, the information was only to be disclosed to the child's attorney, and not to the child herself. State Div. of Child & Fam. Servs. v. Eighth Judicial Dist. Court, 119 Nev. 655, 81 P.3d 512 (2003)

ATTORNEY GENERAL'S OPINIONS.

Name of the person reporting child abuse and the name of the child concerned remain confidential after the death of the abused child. NRS ch. 432B provides for the protection of children from abuse and neglect. NRS 432B.220 requires that certain persons and agencies discovering evidence of child abuse or neglect report the information regarding the suspected child abuse to the appropriate state agency. Information, investigations and reports made pursuant to NRS 432B.220 are confidential in order to encourage reporting and may be released only to the persons specified in NRS 432B.290. The nondisclosure law makes the information itself privileged; therefore, the names of the persons making the report and the names of the children concerned remain confidential and protected from general dissemination to the public even after the death of the abused child. AGO 88-15 (12-14-1988)

NRS 432B.300 Determinations to be made from investigation of report. Except as otherwise provided in NRS 432B.260, an agency which provides child welfare services shall investigate each report of abuse or neglect received or referred to it to determine:

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 he remains in the same environment; and

5. The treatment and services which appear necessary to help prevent further abuse or neglect and to improve his environment and the ability of the person responsible for the child's welfare to care adequately for him.

(Added to NRS by 1985, 1375; A 1997, 2475; 2001, 1850; 2001 Special Session, 42; 2003, 236; 2007, 1507)

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.

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, his parents, any other person responsible for his welfare 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.

3. As used in this section, "Central Registry" has the meaning ascribed to it in NRS 432.0999.

(Added to NRS by 1985, 1375; A 1999, 2912; 2001, 212, 1850; 2005, 2037, 2096; 2007, 1508)

WEST PUBLISHING CO.

Infants ! 17, 133.
WESTLAW Topic No. 211.
C.J.S. Adoption of Persons §§ 10-14, 41.
C.J.S. Infants §§ 6, 8-9, 43, 71-95.

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

NEVADA CASES.

State employees engaged in child protective duties integral to court's decision-making processes are entitled to quasi-judicial immunity; distinction. State employees engaged in child protective services (see NRS 432B.325 et seq.) are entitled to quasi-judicial immunity when they provide information to a court pertaining to a child who is or may become a ward of the state. This immunity would apply when such employees or the agencies by which they are employed act as an arm of the court by providing their decision-making expertise to the court in forms such as, but not limited to, reports, case plans, testing evaluations and recommendations. However, such quasi-judicial immunity would not apply where: (1) a court has rendered its decision and the actions of the state agency or its employees are merely to carry out the order of the court; or (2) a state agency or its employees are simply carrying out the day-to-day management and care of their wards. (See also NRS 41.032.) State v. Second Judicial Dist. Court (Ducharm), 118 Nev. 609, 55 P.3d 420 (2002)

NRS 432B.325 County whose population is 100,000 or more to provide protective services for children in county. Each county whose population is 100,000 or more shall provide protective services for the children 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.

(Added to NRS by 1987, 1439)

NRS CROSS REFERENCES.

Population defined, NRS 0.050

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) He has been abandoned by a person responsible for his welfare;

(b) He has been subjected to abuse or neglect by a person responsible for his welfare;

(c) He is in the care of a person responsible for his welfare and another child has died as a result of abuse or neglect by that person;

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

(e) He 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 his welfare:

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

(b) Fails, although he 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; or

(c) Has been responsible for the abuse or neglect of a child who has resided with that person.

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 he is identified as being affected by prenatal illegal substance abuse or as having withdrawal symptoms resulting from prenatal drug exposure.

(Added to NRS by 1985, 1371; A 1991, 52; 1999, 830; 2001, 1256; 2005, 2038)

WEST PUBLISHING CO.

Infants ! 156.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 20-22, 26-28, 40, 42, 44-45, 58-59.

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 him that the agency has no legal authority to compel him 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 his parents or guardian or that he 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, his parents or guardian.

(Added to NRS by 1985, 1376; A 2001 Special Session, 42)

NEVADA CASES.

Provision of plan for services is discretionary. The Welfare Division of the Department of Human Resources (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) is under no statutory obligation to provide parents with a plan for services to help the family before filing a petition for temporary custody of children. The provision of such a plan is discretionary (see NRS 432B.340). August H. v. State, 105 Nev. 441, 777 P.2d 901 (1989)

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 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 his temporary placement;

(b) Inform the agency or institution of any change in his address or circumstances; 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 his custody, 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 his physical custody 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 him to the custody of his 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 his 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)

ADMINISTRATIVE REGULATIONS.
Voluntary placement of child, NAC 432B.250

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 he 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 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 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 him 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 in a hospital, if the child needs hospitalization, or in a shelter, which may include, without limitation, a foster home or other home or facility which provides care for those children, except as otherwise provided in NRS 432B.3905. 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.
7. 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;
(c) Give preference in placement of the child to 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; and
(d) 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.
8. 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, 1377; A 1989, 268; 1991, 1182; 1993, 467; 1999, 830; 2001, 1257; 2001 Special Session, 44; 2007, 1004)

WEST PUBLISHING CO.
Infants ! 154.1.
WESTLAW Topic No. 211.

C.J.S. Infants §§ 31, 36-40, 43-44, 51-52, 55, 62.

NRS 432B.3905 Limitations on transfer and placement of child who is under 3 years of age; notice; reports. [Effective January 1, 2008, through December 31, 2008.]

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 3 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 3 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. The Director of the Department shall, on or before January 1 of each year, submit to the Director of the Legislative Counsel Bureau for transmittal to the Legislature a written report concerning any child under the age of 3 years who was placed in a child care institution during the previous 12 months. Such a report must include, without limitation:

(a) An explanation of the situation that required the transfer of the child to or placement of the child in a child care institution;

(b) A summary of any actions that were taken to ensure the health, welfare and safety of the child; and

(c) The length of time that the child was required to remain in the child care institution.

➥ The Director of the Legislative Counsel Bureau shall cause such report to be made available to each Senator and Assemblyman.

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, effective January 1, 2008)

REVISER'S NOTE.

Ch. 274, Stats. 2007, the source of this section, contains the following provisions not included in NRS:

"1. As soon as possible, but not later than January 15, 2008, an agency which provides child welfare services shall determine whether any children for whom the agency is responsible are in the custody of a child care institution in violation of the provisions of section 1 of this act [NRS 432B.3905] and shall establish a plan for the transfer of any such children into a home or facility that complies with the provisions of section 1 of this act [NRS 432B.3905]. The agency shall provide the Director of the Department of Health and Human Services with a list of any such children and the plans for their transfer.

2. As soon as possible, but not later than January 15, 2009, an agency which provides child welfare services shall determine whether any children for whom the agency is responsible are in the custody of a child care institution in violation of the provisions of section 6 of this act [NRS 432B.3905] and shall establish a plan for the transfer of any such children into a home or facility that complies with the provisions of section 6 of this act [NRS 432B.3905]. The agency shall provide the Director of the Department of Health and Human Services with a list of any such children and the plans for their transfer."

NRS 432B.3905 Limitations on transfer and placement of child who is under 6 years of age; notice; reports. [Effective January 1, 2009.]

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. The Director of the Department shall, on or before January 1 of each year, submit to the Director of the Legislative Counsel Bureau for transmittal to the Legislature a written report concerning any child under the age of 6 years who was placed in a child care institution during the previous 12 months. Such a report must include, without limitation:

(a) An explanation of the situation that required the transfer of the child to or placement of the child in a child care institution;

(b) A summary of any actions that were taken to ensure the health, welfare and safety of the child; and

(c) The length of time that the child was required to remain in the child care institution.

➥ The Director of the Legislative Counsel Bureau shall cause such report to be made available to each Senator and Assemblyman.

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, effective January 1, 2009)

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 adult resident 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 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 must submit to the agency which provides child welfare services or its approved designee a complete set of his 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 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)

WEST PUBLISHING CO.
Infants ! 17, 226.
WESTLAW Topic No. 211.
C.J.S. Adoption of Persons §§ 10-12.
C.J.S. Infants §§ 8-9.

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; 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 for his removal from his home; and

(b) To make it possible for his safe return to his 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 primary caretaker of the child 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 primary caretaker, 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 his 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 his home, adjudicated to have been abused or neglected, returned to his home and subsequently removed from his home as a result of additional abuse or neglect; or

(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.

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 and available services for the child, 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 the provisions of subsection 6 are applicable; and

(h) 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.

(Added to NRS by 1999, 2031; A 2001, 1258, 1843; 2001 Special Session, 45; 2003, 236)

WEST PUBLISHING CO.

Adoption ! 3, 4.

WESTLAW Topic No. 17.

C.J.S. Adoption of Persons §§ 6-9, 13-17, 23-24.

NRS 432B.395 Plan of efforts to prevent or eliminate need for removal of child from home and to make safe return to home possible. Repealed. (See chapter 330, Statutes of Nevada 2007, at page 1510.)

ADMINISTRATIVE REGULATIONS.

Evaluation and contents of plan, NAC 432B.040, 432B.050

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)

WEST PUBLISHING CO.

Adoption ! 3, 4.

WESTLAW Topic No. 17.

C.J.S. Adoption of Persons §§ 6-9, 13-17, 23-24.

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)

ADMINISTRATIVE REGULATIONS.

Inquiry by agency, NAC 432B.263

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 he 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 he is holding the child.

(Added to NRS by 1985, 1378; A 2001 Special Session, 47; 2005, 2038)

WEST PUBLISHING CO.

Infants ! 13, 192.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 24-25, 41-42, 46-48, 110-114, 118-121.

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)

WEST PUBLISHING CO.
Infants ! 271.
WESTLAW Topic No. 211.
OPEN MEETING LAW OPINIONS.

(N.B., this opinion was rendered by the attorney general as a guideline for enforcing the open meeting law and not as a written opinion requested pursuant to NRS 228.150.)

Team to review the death of a child was not a public agency for the purposes of the open meeting law. A team to review the death of a child that was established by a county child protective services agency pursuant to NRS 432B.405 was not a public body as defined in NRS 241.015 where the team: (1) had no administrative, advisory or executive powers; (2) did not regulate any activity, administer any governmental program or establish public policy; (3) did not report to or directly advise a governmental entity; (4) did not act on motions, vote, make collective decisions or pass resolutions; and (5) did not receive or expend public money or advise any public body which was responsible for spending public money. OMLO 97-03 (6-17-1997)

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 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.

4. 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)

NRS CROSS REFERENCES.

Application to court for order allowing inspection or copying of certain records, NRS 239.0115

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 Administrative team 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 to an administrative team for review.

2. An administrative team must consist of administrators of agencies which provide child welfare services, and agencies responsible for vital statistics, public health, mental health and public safety.

3. The administrative team 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)

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 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.

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; and

(f) Compile and distribute a statewide annual report, including statistics and recommendations for regulatory and policy changes.

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)

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, an administrative team organized pursuant to NRS 432B.408 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, an administrative team 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)

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 CROSS REFERENCES.

Abuse, neglect or endangerment of child, NRS 200.508

WEST PUBLISHING CO.

Infants ! 196.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 42, 53, 54.

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 him. 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, 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. He may not receive any compensation for his services as a guardian ad litem.

(Added to NRS by 1985, 1379; A 1987, 1308; 1995, 787; 1999, 2037; 2001, 1703; 2003, 590)

WEST PUBLISHING CO.
Infants ! 205.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 51-67.

ATTORNEY GENERAL'S OPINIONS.

Appointment of an attorney for indigent parents is not required. NRS 432B.420 does not require the court conducting a hearing on protective custody of a child to appoint an attorney to represent indigent parents. (N.B., opinion issued before the effective date of the amendment of NRS 432B.420 in 1995.) AGO 95-11 (6-27-1995)

Circumstances under which the appointment of an attorney for indigent parents is appropriate. The appointment of an attorney pursuant to NRS 432B.420 to represent indigent parents at a hearing on protective custody of a child is appropriate if it is likely that the hearing may lead to a criminal proceeding. (N.B., opinion issued before the effective date of the amendment of NRS 432B.420 in 1995.) AGO 95-11 (6-27-1995)

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 400,000 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 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 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 400,000:

(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 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)

WEST PUBLISHING CO.
Infants ! 203.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 51-52, 62, 64-67.

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)

WEST PUBLISHING CO.
Infants ! 172, 222.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 43, 52-53, 71-95.

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 his welfare, 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)

WEST PUBLISHING CO.
Infants ! 172.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 58-61.

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 his 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)

WEST PUBLISHING CO.
Infants ! 205.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 51-52, 62, 64-67.

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)

WEST PUBLISHING CO.
Infants ! 17, 200.

WESTLAW Topic No. 211.
C.J.S. Adoption of Persons §§ 10-14, 41.
C.J.S. Infants §§ 6, 8-9, 24-25, 41, 46-48.

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)

WEST PUBLISHING CO.
Guardian and Ward ! 13(3).
WESTLAW Topic No. 196.

NRS 432B.4665 Appointment of guardian; powers and duties of and limitations on guardian; effect of guardianship; length 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 159.059;

(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) Except as otherwise provided in subsection 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.

3. The court may appoint as a guardian for a child pursuant to this section for not more than 6 months a person who does not satisfy the residency requirement set forth in subsection 5 of NRS 159.059 if the court determines that appointing such a person is necessary to facilitate the permanent placement of the child.

(Added to NRS by 2003, 589)

WEST PUBLISHING CO.
Guardian and Ward ! 10.
WESTLAW Topic No. 196.

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; and

(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.

(Added to NRS by 2003, 590)

WEST PUBLISHING CO.
Guardian and Ward ! 17.
WESTLAW Topic No. 196.

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 an order concerning 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)

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 his residence.

➥ 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 his last known address within 24 hours after the child is placed in protective custody.

(Added to NRS by 1985, 1380; A 2001, 1259)

WEST PUBLISHING CO.
Infants ! 198, 204.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 51-67.

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 him to reside at his home; or

(2) In the best interests of the child to place him outside of his home.

➥ 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 third 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 third degree of consanguinity to the child a reasonable right to visit the child while he 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 his immediate release.

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)

WEST PUBLISHING CO.

Infants ! 230.1.
WESTLAW Topic No. 211.
C.J.S. Adoption of Persons § 12.

C.J.S. Infants §§ 43, 71-95.

ATTORNEY GENERAL'S OPINIONS.

Court not required to appoint an attorney for parents. NRS 432B.480 requires the court conducting a hearing on protective custody of a child to inform the parents of their right to be represented by an attorney at that hearing. The section does not entitle parents to have an attorney appointed by the court to represent them. AGO 95-11 (6-27-1995)

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 other cases where a hearing on protective custody is held, 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) If a child is not placed in protective custody, may, after an investigation is made under NRS 432B.010 to 432B.400, inclusive, 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 his welfare pending further action in court.

(Added to NRS by 1985, 1380; A 1999, 832; 2001 Special Session, 47)

WEST PUBLISHING CO.

Infants ! 154.1.
WESTLAW Topic No. 211.

C.J.S. Infants §§ 31, 36-40, 43-44, 51-52, 55, 62.

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. No compensation may be allowed a person serving as a guardian ad litem pursuant to this section.

3. 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 he 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 his 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 his 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 he 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)

WEST PUBLISHING CO.
Infants ! 205.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 51-67.

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 be a volunteer from the community who completes an initial 12 hours of specialized training and, annually thereafter, completes 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)

WEST PUBLISHING CO.
Adoption ! 3, 4.
WESTLAW Topic No. 17.
C.J.S. Adoption of Persons §§ 6-9, 13-17, 23-24.

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, he 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 residence of the child.

(c) The names and addresses of the residences of his parents and any other person responsible for the child's welfare, and spouse if any. If his parents or other person responsible for his welfare 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)

WEST PUBLISHING CO.
Infants ! 197, 200.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 42, 53-55.

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 his attorney 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 his attorney requests that the court grant the continuance so that the parent or guardian and his attorney 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 his attorney 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)

WEST PUBLISHING CO.
Infants ! 205.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 51-52, 62, 64-67.

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. If the:

(a) Person summoned resides in this state, the summons must be served personally;

(b) Person summoned cannot be found within this state or does not reside in this state, the summons must be mailed by registered or certified mail to his last known address; or

(c) 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.

5. If it appears that the child is in such condition or surroundings that his welfare requires that his 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.

6. 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 he be brought forthwith into the custody of the court; or

(b) A person responsible for the child's welfare has absconded with him or concealed him 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)

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 his removal from his 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.

(Added to NRS by 1985, 1382; A 2001, 1703, 1846; 2003, 87)

WEST PUBLISHING CO.

Infants ! 203, 204.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 51-67.

NEVADA CASES.

Preponderance of the evidence is sufficient to support an order for temporary custody of a minor child. An order for temporary custody of a minor child differs significantly from an order terminating parental rights, and, therefore, a petition for temporary custody need not be supported by clear and convincing evidence, but only by the lesser standard of a preponderance of the evidence (see NRS 432B.530). August H. v. State, 105 Nev. 441, 777 P.2d 901 (1989)

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 his family, 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 his 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 his 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 he would receive safe and proper care and a description of his needs;

(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 his parent or to ensure his permanent placement;

(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)

WEST PUBLISHING CO.

Infants ! 208.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 51-85.

NRS 432B.550 Determination of custody of child by court; 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 his parents 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 him in the temporary or permanent custody of a relative or other person who the court finds suitable to receive and care for him with or without supervision, and with or without retaining jurisdiction of the case, upon such conditions as the court may prescribe; or

(c) Place him 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.

➥ 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 his rights.

(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, the court may consider, among other factors, whether the child has resided with a particular relative 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 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 provide proper care and guidance for the child, regardless of whether the relative resides within this State.

➥ 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 his home. If a child is placed with any person who resides outside of this State, the placement must be in accordance with NRS 127.330.

6. Within 60 days after the removal of a child from his home, 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.

(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)

WEST PUBLISHING CO.

Infants ! 221, 222.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 57, 69-85.

NEVADA CASES.

Order for temporary custody of minor children not appealable. The order of the district court directing that the minor children of the appellant remain in the temporary custody of the Welfare Division of the Department of Human Resources (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) (see NRS 432B.550) was not the final order and was subject to review and modification by the court (see NRS 432B.580 and 432B.590). Such orders are not appealable on substantive grounds (see N.R.A.P. 3A). August H. v. State, 105 Nev. 441, 777 P.2d 901 (1989), cited, AGO 95-11 (6-27-1995)

Decision concerning the temporary custody of children will not be disturbed on appeal absent the manifest abuse of discretion. The supreme court will not disturb a decision of the district court concerning the temporary custody of children (see NRS 432B.550) unless the decision is affected by the manifest abuse of discretion. August H. v. State, 105 Nev. 441, 777 P.2d 901 (1989)

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 his home 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 his home; 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)

NEVADA CASES.

Rebutting of presumption that placement of child outside home for certain number of months would cause termination of parental rights to be in child's best interests. The provisions of NRS 128.109(2) and 432B.553(2) establish a presumption that the best interests of a child would be served by termination of parental rights if the child has been placed outside the home for 14 of any 20 consecutive months. However, this presumption is rebuttable and NRS 432B.553(2)(c) specifically allows an agency to forego pursuing termination of parental rights if the agency finds compelling reasons that termination would not be in a child's best interests. In re Parental Rights as to J.L.N., 118 Nev. 621, 55 P.3d 955 (2002), cited, In re Parental Rights as to N.D.O., 121 Nev. 379, at 386, 115 P.3d 223 (2005)

Presumption that termination of parental rights was in the child's best interests was rebutted under the circumstances. Although the biological mother of a child had been incarcerated and, as a result, the child had spent more than 14 months out of a 20-month period outside of home as a ward of the state, the mother presented substantial evidence to rebut the presumption that parental rights should be terminated (see NRS 128.109 and 432B.553). Specifically, the mother showed that: (1) the child had a strong, loving relationship with both the mother and a maternal grandparent; (2) testimony by a supervisor at the division of child and family services indicated the child might suffer potential negative effects when she became a teenager as a result of termination of parental rights; (3) the child had never actually lived in the home of the potential adoptive parents; (4) the mother's incarceration would end within a year and there was no evidence that the child's health or well being would be jeopardized by waiting for the mother to be released; and (5) the mother's felony conviction did not relate to abuse or neglect of her children and there was no evidence the mother suffered from alcohol or drug abuse. In re Parental Rights as to J.L.N., 118 Nev. 621, 55 P.3d 955 (2002), cited, In re Parental Rights as to N.D.O., 121 Nev. 379, at 386, 115 P.3d 223 (2005)

Public policy: Permanent placement preferable to foster care. Taken together, NRS 128.109 and 432B.553 express the general public policy to seek permanent placement for children rather than have them remain in foster care. In re Parental Rights as to J.L.N., 118 Nev. 621, 55 P.3d 955 (2002), cited, In re Parental Rights as to K.D.L., 118 Nev. 737, at 745, 58 P.3d 181 (2002), In re Parental Rights as to D.R.H., 120 Nev. 422, at 427, 92 P.3d 1230 (2004)

Rebuttable presumption in favor of termination of parental rights in cases of abuse or neglect where child has resided outside of home for 14 of 20 consecutive months does not violate substantive due process rights of parent. The provisions of NRS 128.109 presume that termination of parental rights will serve a child's best interest when the child has been placed outside of his home under NRS ch. 432B and has resided outside of his home pursuant to that placement for 14 months of any 20 consecutive months (see also NRS 432B.553 and 432B.590). The presumption does not violate parental substantive due process rights (see Nev. Art. 1, § 8) because it is narrowly tailored to serve a compelling state interest. The State has a compelling interest in assuring that abused and neglected children achieve safe, stable and permanent home environments within which to be reared and, without such a presumption, a child is susceptible to drift for an indefinite length of time within the foster care system. The presumption is narrowly tailored because the presumption: (1) applies only where a child is removed from the home pursuant to NRS ch. 432B as a result of parental abuse or neglect; (2) is rebuttable upon the presentation of evidence showing that termination of parental rights is not in the child's best interest; (3) must be read in conjunction with NRS

128.105, which requires the court to examine the child's best interest and to make a determination concerning parental fault; and (4) addresses the compelling state interest of planning for safe, stable and permanent placements for abused and neglected children. In re Parental Rights as to D.R.H., 120 Nev. 422, 92 P.3d 1230 (2004)

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 his release 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 his parents.

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)

WEST PUBLISHING CO.

Infants ! 221.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 57, 69-85.

NEVADA CASES.

District court's oral order commanding that child be released from psychiatric facility was ineffective and could not serve as basis for subsequent contempt order. Pursuant to the authority set forth in NRS 432B.560 and 432B.580, a district court ordered the Division of Child and Family Services to release a child from a psychiatric facility. The district court's release order was oral and not written. Twelve days later, after learning that the Division still had not released the child from the psychiatric facility, the district court orally held the Division in contempt. On appeal, the Nevada Supreme Court determined that the district court's oral release order was ineffective because, as a dispositional order, it had to be written, signed and filed to become effective. Furthermore, the provisions of NRS 22.030, allowing summary punishment of contempt committed in the immediate view and presence of the court, did not apply. (See also NRS 22.010.) Division of Child & Family Servs. v. Eighth Judicial Dist. Court, 120 Nev. 445, 92 P.3d 1239 (2004)

District court had jurisdiction to order child's release from psychiatric facility because court has power to determine proper treatment for child and is required to assess appropriateness of child's placement. The plain language of NRS 432B.560 dictates that the district court has the power to decide on appropriate treatment for a child. This power to determine proper treatment includes the power to discontinue the child's present treatment and order a new course of treatment. The provisions of NRS 432B.580 also require the district court to assess the appropriateness of the child's placement. If this requirement to assess meant the district court could merely evaluate the placement but not exercise discretion to change it, the court's placement review would be rendered meaningless. Thus, taken together, NRS 432B.560 and 432B.580 give a district court the jurisdiction to order the release of a child from a psychiatric facility in which the Division of Child and

Family Services has placed the child. Division of Child & Family Servs. v. Eighth Judicial Dist. Court, 120 Nev. 445, 92 P.3d 1239 (2004)

ATTORNEY GENERAL'S OPINIONS.

Orders concerning the placement of a "do not resuscitate" order on the medical chart of a terminally ill child in the custody of the division of child and family services. Where a terminally ill child is in the custody of the division of child and family services, a physician determines that a "do not resuscitate" order is appropriate to place on the medical chart of the child, and no parent of the child can be reached to make the final decision, the court has authority pursuant to NRS 432B.560, if the court determines it to be in the best medical interests of the child, to: (1) order directly the placement on the child's medical chart of such an order; or (2) authorize the division to consent to the physician's decision to place such an order on the child's medical chart, if the division first seeks status as a temporary guardian of the child pursuant to NRS 159.052. The court also has such authority even if the parent of the child objects to the placement of such an order on the child's medical chart. In any case, the division would be immune from liability pursuant to NRS 41.032. AGO 97-08 (2-27-1997)

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)

WEST PUBLISHING CO.

Infants ! 230.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 57, 69-85.

NRS 432B.580 Semiannual review by court of placement of child.

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 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.

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 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 person refuses to comply with or disobeys an order issued pursuant to this subsection, he 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 paragraph (c) of subsection 6 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; and

(b) Any persons planning to adopt the child, relatives of the child or providers of foster care who are currently providing care to the child.

➥ Notice of the hearing 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.

7. 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 an opportunity to be heard at the hearing.

8. 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, his home or placed for adoption or under a legal guardianship.

9. The provision of notice and an opportunity to be heard pursuant to this section does not cause any person planning to adopt the child, or any relative or 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)

WEST PUBLISHING CO.

Infants ! 222, 280.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 43, 71-95, 378.

NEVADA CASES.

Order for temporary custody of minor children not appealable. The order of the district court directing that the minor children of the appellant remain in the temporary custody of the Welfare Division of the Department of Human Resources (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) (see NRS 432B.550) was not the final order and was subject to review and modification by the court (see NRS 432B.580 and 432B.590). Such orders are not appealable on substantive grounds (see N.R.A.P. 3A). August H. v. State, 105 Nev. 441, 777 P.2d 901 (1989), cited, AGO 95-11 (6-27-1995)

District court's oral order commanding that child be released from psychiatric facility was ineffective and could not serve as basis for subsequent contempt order. Pursuant to the authority set forth in NRS 432B.560 and 432B.580, a district court ordered the Division of Child and Family Services to release a child from a psychiatric facility. The district court's release order was oral and not written. Twelve days later, after learning that the Division still had not released the child from the psychiatric facility, the district court orally held the Division in contempt. On appeal, the Nevada Supreme Court determined that the district court's oral release order was ineffective because, as a dispositional order, it had to be written, signed and filed to become effective. Furthermore, the provisions of NRS 22.030, allowing summary punishment of contempt committed in the immediate view and presence of the court, did not apply. (See also NRS 22.010.) Division of Child & Family Servs. v. Eighth Judicial Dist. Court, 120 Nev. 445, 92 P.3d 1239 (2004)

District court had jurisdiction to order child's release from psychiatric facility because court has power to determine proper treatment for child and is required to assess appropriateness of child's placement. The plain language of NRS 432B.560 dictates that the district court has the power to decide on appropriate treatment for a child. This power to determine proper treatment includes the power to discontinue the child's present treatment and order a new course of treatment. The provisions of NRS 432B.580 also require the district court to assess the appropriateness of the child's placement. If this requirement to assess meant the district court could merely evaluate the placement but not exercise discretion to change it, the court's placement review would be rendered meaningless. Thus, taken together, NRS 432B.560 and 432B.580 give a district court the jurisdiction to order the release of a child from a psychiatric facility in which the Division of Child and Family Services has placed the child. Division of Child & Family Servs. v. Eighth Judicial Dist. Court, 120 Nev. 445, 92 P.3d 1239 (2004)

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 on disposition of case; 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 his home and annually thereafter.

(b) Within 30 days after making any of the findings set forth in subsection 3 of NRS 432B.393.

➥ 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 an opportunity 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 determine:

(a) Whether the agency with legal custody of the child has made the reasonable efforts required by subsection 1 of NRS 432B.553; and

(b) Whether, and if applicable when:

(1) The child should be returned to his parents 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 the child in another permanent living arrangement.

➥ The court shall prepare an explicit statement of the facts upon which each of its determinations is based. 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. The provisions of this subsection 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.

4. If a child has been placed outside of his home and has resided outside of his 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.

5. This hearing may take the place of the hearing for review required by NRS 432B.580.

6. The provision of notice and an opportunity to be heard pursuant to this section does not cause any person planning to adopt the child, or any relative or 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)

REVISER'S NOTE.

Ch. 218, Stats. 1995, the source of the provision that sets forth the presumption that child's best interests will be served by termination of parental rights, contains the following provision not included in NRS:

"The calculation of the number of months that a child has resided outside his home, for the purposes of NRS 128.109 and 432B.590, as amended by this act, must not include any months before January 1, 1995."

ADMINISTRATIVE REGULATIONS.

Permanent placement of child, NAC 432B.261, 432B.2625

Termination of parental rights, NAC 432B.262

WEST PUBLISHING CO.

Infants ! 230, 231.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 57, 69-85.

NEVADA CASES.

Order for temporary custody of minor children not appealable. The order of the district court directing that the minor children of the appellant remain in the temporary custody of the Welfare Division of the Department of Human Resources (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) (see NRS 432B.550) was not the final order and was subject to review and modification by the court (see NRS 432B.580 and 432B.590). Such orders are not appealable on substantive grounds (see N.R.A.P. 3A). August H. v. State, 105 Nev. 441, 777 P.2d 901 (1989), cited, AGO 95-11 (6-27-1995)

Rebuttable presumption in favor of termination of parental rights in cases of abuse or neglect where child has resided outside of home for 14 of 20 consecutive months does not violate substantive due process rights of parent. The provisions of NRS 128.109 presume that termination of parental rights will serve a child's best interest when the child has been placed outside of his home under NRS ch. 432B and has resided outside of his home pursuant to that placement for 14 months of any 20 consecutive months (see also NRS 432B.553 and 432B.590). The presumption does not violate parental substantive due process rights (see Nev. Art. 1, § 8) because it is narrowly tailored to serve a compelling state interest. The State has a compelling interest in assuring that abused and neglected children achieve safe, stable and permanent home environments within which to be reared and, without such a presumption, a child is susceptible to drift for an indefinite length of time within the foster care system. The presumption is narrowly tailored because the presumption: (1) applies only where a child is removed from the home pursuant to NRS ch. 432B as a result of parental abuse or neglect; (2) is rebuttable upon the presentation of evidence showing that termination of parental rights is not in the child's best interest; (3) must be read in conjunction with NRS 128.105, which requires the court to examine the child's best interest and to make a determination concerning parental fault; and (4) addresses the compelling state interest of planning for safe, stable and permanent placements for abused and neglected children. In re Parental Rights as to D.R.H., 120 Nev. 422, 92 P.3d 1230 (2004)

ADVISORY BOARDS TO EXPEDITE PROCEEDINGS FOR PLACEMENT OF CHILDREN

WEST PUBLISHING CO.

Adoption ! 3, 4.

WESTLAW Topic No. 17.

C.J.S. Adoption of Persons §§ 6-9, 13-17, 23-24.

NRS 432B.602 Rural Advisory Board to Expedite Proceedings for Placement of Children: Creation; terms; vacancies; members serve without compensation; duties.

1. The Rural Advisory Board to Expedite Proceedings for the Placement of Children, consisting of two members from each local advisory board created by a district court pursuant to NRS 432B.604, is hereby created within the Division of Child and Family Services.

2. After the initial terms, the members of the Rural Advisory Board serve terms of 4 years. Any member of the Rural Advisory Board may be reappointed. If a vacancy occurs during the term of a member, the district court that created the local advisory board from which the member was appointed shall appoint a person to replace that member for the remainder of the unexpired term.

3. Members of the Rural Advisory Board serve without compensation, except that necessary travel and per diem expenses may be reimbursed, not to exceed the amounts provided for state officers and employees generally, to the extent that money is made available for that purpose.

4. The Division of Child and Family Services shall provide the Rural Advisory Board with administrative support and shall provide any information requested by the Rural Advisory Board to the Rural Advisory Board within 10 working days after receiving the request for information.

5. The Rural Advisory Board shall:

(a) At its first meeting and annually thereafter, elect a Chairman from among its members.

(b) Meet at least four times annually and may meet at other times upon the call of the Chairman.

(c) Review the findings of each local advisory board created pursuant to NRS 432B.604.

(d) Prepare and make available to the public an annual report, including, without limitation, a summary of the activities of the Rural Advisory Board.

(Added to NRS by 1999, 2029)

NRS 432B.604 Local advisory boards to expedite proceedings for placement of children: 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 duty or commits malfeasance in office.

3. The district court shall appoint two members of the local advisory board to serve on the Rural Advisory Board created pursuant to NRS 432B.602.

4. Members of a local advisory board serve without compensation, and necessary travel and per diem expenses may not be reimbursed.

5. 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.

6. Each local advisory board shall:

(a) At its first meeting and annually thereafter, elect a chairman 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.

7. A local advisory board may review other cases as deemed appropriate by the district court.

(Added to NRS by 1999, 2030)

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 his 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

WEST PUBLISHING CO.

Infants ! 227(1).

WESTLAW Topic No. 211.

C.J.S. Infants §§ 24-25, 41, 43, 46-48, 71-95.

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)

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.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. 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:
1. By a certificate of a physician, psychiatrist or licensed psychologist stating that he 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 others if allowed his liberty; or
2. By a sworn written statement by the petitioner that:
(a) The petitioner has, based upon his 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 others if allowed his liberty; and
(b) 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.
(Added to NRS by 2005, 1318)

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:
(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 he is likely to harm himself or others if allowed his 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 others if allowed his 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)

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 subsection 2 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; 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)

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 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, 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 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.

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)

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 his 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.

(Added to NRS by 2005, 1320)

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 5 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 criteria which must be satisfied before the child is discharged from the facility, as determined by the medical professional responsible for the care, treatment and training of the child in the facility;

(c) 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;

(d) 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

(e) The suggested placement of the child after the child is discharged from the facility.

(Added to NRS by 2005, 1320)

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, 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)

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 or his designee of the facility 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 he 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 him 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 his designee 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 others. Except as otherwise provided in this subsection, the administrative officer or his designee 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 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 his designee 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 his emotional disturbance or has improved to such an extent that he is no longer considered to present a clear and present danger of harm to himself 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 chapter 433 **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 apply to all children who are in the custody of an agency which provides child welfare services.

(Added to NRS by 2005, 1322)

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 he 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, policemen 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 CROSS REFERENCES.

Nevada Boat Act, NRS ch. 488

Wildlife, NRS Title 45

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 he 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)

MISCELLANEOUS PROVISIONS

WEST PUBLISHING CO.

Infants ! 13, 131-181.
WESTLAW Topic No. 211.
C.J.S. Criminal Law § 2008.
C.J.S. Infants §§ 5, 31-93, 95-98.

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 he 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 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 or a law enforcement agency, 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.

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 his 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, "provider of emergency services" means:

(a) A hospital, an obstetric center or an independent center for emergency medical care licensed pursuant to chapter 449 of NRS;

(b) A public fire-fighting agency; or

(c) A law enforcement agency.

(Added to NRS by 2001, 1254; A 2001 Special Session, 56; 2003, 236)

NRS CROSS REFERENCES.

Abuse or neglect of child, exception to penalty provision, NRS 200.508
Contributory neglect, exception to penalty provision, NRS 201.110

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 6 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)

NRS CROSS REFERENCES.

Award of compensation for assessment, evaluation or counseling, NRS 217.160

NEVADA REPORTS CASES

JOANNE DRURY, APPELLANT, *v.* CECIL S. LANG, RESPONDENT.

No. 18787

July 6, 1989 776 P.2d 843

Appeal from judgment terminating appellant's parental rights. Fifth Judicial District Court, Nye County; William P. Beko, Judge.

Father brought action to terminate mother's parental rights. The district court held for father, and mother appealed. The Supreme Court held that mother's failure to communicate with her children for period of six months was not sufficient as matter of law to support termination of her parental rights, on ground that her behavior evinced settled purpose to abandon children.

Reversed and remanded with directions.

William R. Phillips & Associates and *Ralph G. Dawson,* Las Vegas, for Appellant.

Rick Lawton, Fallon, for Respondent.

INFANTS.

Parent's failure to communicate with her children for period of six months was not sufficient as matter of law to support termination of her parental rights, on ground that her behavior evinced settled purpose to abandon children. NRS 128.108, subd. 6.

OPINION

Per Curiam:

The primary issue in this appeal is whether a parent's failure to communicate with her children for a period of six months is sufficient as a matter of law to support a determination that the

parent's behavior evinces a settled purpose to abandon the children. We conclude that it is not, and reverse the district court's judgment terminating appellant's parental rights.

FACTS

Appellant Joanne Drury (Joanne) and respondent Cecil S. Lang (Cecil) were married on September 4, 1976. On August 10, 1983, Joanne was granted a decree of divorce on grounds of irreconcilable differences. The district court awarded Cecil custody of the parties' twin children, then age six, and awarded Joanne reasonable visitation privileges. Cecil neither sought nor did the district court award him child support. Both parties subsequently married other people. Cecil continued to reside in Tonopah with the parties' children, his present wife, and her two children. Joanne remained in Tonopah until September, 1985, and, thereafter, lived in New Mexico, Colorado, and Goldfield, Nevada. Joanne returned to Tonopah in November, 1986, after Cecil petitioned the district court to terminate her parental rights.

The gravamen of Cecil's petition was that Joanne left the children in the custody of another without provision for their support and without communication for a period of more than six months. *See* NRS 128.012(2). Contending that she had endeavored to maintain contact with the children since the divorce, but that Cecil increasingly frustrated her efforts, Joanne opposed Cecil's petition. Joanne disputed Cecil's averment that she had not communicated with the children for six months, and supported her opposition to his petition with an affidavit which detailed her efforts to maintain contact with the children, as well as with telephone billings for the months of April and May, 1986, which indicated long distance calls of relatively short duration from her to Cecil's residence.

Although the hearing on Cecil's petition was not recorded, the district court minutes reflect that both parties appeared and were represented by counsel, called witnesses, and offered exhibits.[1]

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[1]Despite the absence of a transcript of the proceedings below, Joanne's counsel did not submit to this court a settled and approved statement of the evidence adduced at trial as provided for in NRAP 10(c). We express no opinion on whether this omission was due to economic factors, appellate tactics, or attorney neglect. Although NRAP 10(c) is framed in the permissive, we strongly recommend, particularly in matters as serious as the termination of a parent's rights, that counsel follow the procedure set forth in the rule when the proceedings below are unreported.

[2]For purposes of our decision we accept as correct the district court's findings and characterization of the evidence. *See* City of Las Vegas v. Bolden, 89 Nev. 526, 526 P.2d 110 (1973) (this court will assume that record supports lower court's findings when evidence upon which judgment rests is not included in the record on appeal).

Approximately nine months after the hearing, the district court issued its Memorandum of Decision and Order, which, according to the court, was based on clear and convincing evidence.[2] The district court initially observed that the parties' divorce decree did not impose upon Joanne an obligation of support. It therefore concluded that Cecil's allegation of abandonment premised on failure to support was meritless. The district court then focused on the six month period immediately preceding Cecil's filing of the petition on September 17, 1986. Finding that "[i]f any communication occurred during the subject period, it could be generously characterized as only a token effort not likely to have led to enhancing the parent-child relationship," the district court concluded that Joanne's "lack of communication evinced a settled purpose to abandon the children."

Having found what it considered to be the requisite jurisdictional grounds for termination of Joanne's parental rights, i.e., abandonment, the district court next determined that dispositional grounds were also present. Based on its findings that the children "have become integrated into a stable environment . . . ," and that "[t]heir obvious previous insecurity has been replaced by an

atmosphere which is free of the discord which permeated their earlier home," the district court held that the children's best interest would be served by terminating Joanne's parental rights. This appeal followed.

DISCUSSION

Joanne contends that the district court erred in concluding that her failure to communicate for a period of six months "evinced a settled purpose to abandon the children." In Joanne's view, a mere six month lapse in communication is insufficient as a matter of law to establish a parent's intent to abandon her children. We agree.

At the time of the hearing on Cecil's petition, NRS 128.105 provided in pertinent part:

> 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 of NRS 128.106, 128.107 and 128.108:
>
> 1. Abandonment of the child;
>
> . . . .
>
> 5. Only token efforts by the parent or parents:
>
> (a) To support or communicate with the child;
>
> . . . .
>
> 6. With respect to termination of the parental rights of one parent, the abandonment by that parent.

Although the district court characterized Joanne's attempts at communication with the children as "token effort[s] not likely to have led to enhancing the parent-child relationship," it did not specifically base its finding of jurisdictional grounds, and we believe correctly so, on subsection 5 of NRS 128.108, *supra.* *See* Champagne v. Welfare Division, 100 Nev. 640, 646, 691 P.2d 849, 854 (1984) ("Whatever 'token efforts' might mean, we read NRS 128.105 as a whole to mean termination of parental rights is to be based on *substantial* abandonment, neglect, parental unfitness or child abuse."). (Emphasis added.) Instead, it presumably found that Joanne had abandoned the children. *Cf.* NRS 128.108(6), *supra.*

The term "abandonment of a child" as used in NRS 128.105 is defined as "any conduct . . . which evinces a settled purpose . . . to forego all parental custody and relinquish all claims to the child." NRS 128.012(1). While abandonment is determined by the facts in each case, Sernaker v. Ehrlich, 86 Nev. 277, 280, 468 P.2d 5, 7 (1970), in every previous case in which we have upheld a trial court's finding of abandonment something more than a mere failure to communicate for a six month period was present. *See, e.g., Champagne,* 100 Nev. at 640, 691 P.2d at 849 (failure to support, neglect and parental unfitness established); Pyborn v. Quathamer, 96 Nev. 145, 605 P.2d 1146 (1980) (no real effort to communicate for ten month period and only token efforts to support during same period); *Sernaker,* 86 Nev. at 277, 468 P.2d at 5 (failure to communicate with and to support child); Casper v. Huber, 85 Nev. 474, 456 P.2d 436 (1969) (failure to provide proper parental care, custody, guidance, maintenance or support, and child suffered severe environmental deprivation); Carson v. Lowe, 76 Nev. 446, 357 P.2d 591 (1960) (parent's efforts to communicate with child over three to four year period were meager and parent did not provide support). Indeed, before a parent's intent to abandon her child is presumed by statute, the

parent must have left the "child in the care and custody of another without provision for his support *and* without communication for a period of 6 months. . . ." NRS 128.012(2) (emphasis added).

Because termination of a parent's rights to her child is tantamount to imposition of a civil death penalty, we have previously declared that "the degree and duration of parental fault or incapacity necessary to establish jurisdictional grounds for termination is greater than that required for other forms of judicial intervention." *Champagne,* 100 Nev. at 648, 691 P.2d at 854-55. In our view, a six month lapse in communication, without more, is insufficient as a matter of law to support a finding that a parent has demonstrated a settled purpose to abandon her children.

CONCLUSION

Based on the foregoing, we conclude that the district court erred in determining that jurisdictional grounds for termination were present here.

Our determination of the jurisdictional grounds issue obviates the necessity of deciding whether the district court erred in determining that dispositional grounds were also present. *See id.* at 647, 691 P.2d at 854 (when jurisdictional grounds are not found analysis ends and termination is denied). We note in passing, however, that nothing said herein is intended to foreclose the district court, upon a proper motion, from imposing reasonable conditions or restrictions upon Joanne's visitation privileges if required in the children's best interests.

The judgment of the district court is reversed and the cause remanded with directions to dismiss Cecil's petition.

STEFFEN, A. C. J., and SPRINGER, MOWBRAY and ROSE, JJ., and SULLIVAN, D. J.,[3] concur.

THE STATE OF NEVADA, APPELLANT, *v.* RALPH A. WILCOX, RESPONDENT.

No. 19312

July 21, 1989 776 P.2d 549

Appeal from an order of the district court dismissing the criminal information against respondent. Eighth Judicial District Court, Clark County; J. Charles Thompson, Judge.

Defendant was charged with forming a conspiracy to cheat at gambling. The district court granted defendant's motion to dismiss, and State appealed. The Supreme Court held that defendant could be prosecuted in Nevada, although alleged conspiracy was conceived in Arizona and defendant might not have committed any acts in Nevada in furtherance of conspiracy, where other members of conspiracy performed acts in Nevada in furtherance of conspiracy.

Reversed and remanded.

Brian McKay, Attorney General, Carson City; *Rex Bell*, District Attorney, and *James Tufteland*, Deputy District Attorney, Clark County, for Appellant.

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[3]The Honorable Jerry V. Sullivan, Judge of the Sixth Judicial District Court, was designated by the Governor to sit in the place of THE HONORABLE CLIFF YOUNG, Chief Justice. Nev. Const. art. VI, § 4.

Morgan D. Harris, Public Defender, and *Victor John Austin* and *Mark S. Blaskey*, Deputy Public Defenders, Clark County, for Respondent.

CRIMINAL LAW.

Defendant could be prosecuted in Nevada for alleged conspiracy to cheat at gambling, though conspiracy was conceived in Arizona and defendant might not have committed any acts in Nevada in furtherance of conspiracy, where other members of conspiracy performed acts in Nevada in furtherance of conspiracy. NRS 465.070, 465.088.

OPINION

Per Curiam:

This is an appeal from an order of the district court dismissing the criminal information against respondent. The evidence introduced at the preliminary hearing revealed that respondent and several other individuals met in Bullhead City, Arizona, and formed a conspiracy to cheat at gambling. Upon returning to the Nevada Club Casino in Laughlin, Nevada, other members of the conspiracy committed acts in furtherance of the conspiracy but respondent arguably did not.[1]

Respondent, Ralph Wilcox, was charged by information with one count of conspiracy to cheat at gambling. *See* NRS 465.070; 465.088. Thereafter, respondent filed a motion in the district court to dismiss the information for lack of jurisdiction. He contended that the crime of conspiracy was completed in Arizona, where the agreement was made, and that only Arizona could prosecute the crime. *See* NRS 465.088(2) (a person may be punished for conspiracy to cheat at gambling whether or not he personally played any gambling game or used any prohibited device). The district court agreed with this contention, and granted the motion to dismiss.

Appellant, the State of Nevada, contends that Nevada has jurisdiction to prosecute respondent for a conspiracy conceived in Arizona, where other members of the conspiracy performed acts in Nevada in furtherance of the conspiracy. We agree. This court has previously stated: "Even though a crime has been committed, the conspiracy does not necessarily end, but it continues until its aim has been achieved." Goldsmith v. Sheriff, 85 Nev. 295, 306, 454 P.2d 86, 93 (1969). The conspiracy for which respondent was charged did not end when the conspirators formed their

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[1]The conspirators requested a slot machine mechanic to alter the payouts on certain slot machines at the Nevada Club Casino. Certain members of the conspiracy were later observed playing these slot machines.

agreement in Arizona. The conspiracy continued in Nevada, where respondent's co-conspirators played the altered slot machines.

Although respondent may not have committed any acts in Nevada in furtherance of the conspiracy, he became subject to prosecution in this state when his co-conspirators carried out

their criminal design in Nevada. *See* Pinkerton v. United States, 328 U.S. 640, 646-647 (1946) (so long as the partnership in crime continues, the partners act for each other in carrying it forward; an overt act of one partner may be the act of all without a new agreement specifically directed to that act). *See also* Downing v. United States, 348 F.2d 594 (5th Cir. 1965) (defendant was bound by the unlawful acts and statements of his co-conspirators in furtherance of the conspiracy, even though such acts and statements took place in another state out of his presence), *cert. denied,* 382 U.S. 901. We conclude, therefore, that Nevada may prosecute respondent for the crime of conspiracy to cheat at gambling. Accordingly, we vacate the order of the district court dismissing the information against respondent, and we remand this matter to the district court for further proceedings consistent with this opinion.

YOUNG, C. J., and STEFFEN, SPRINGER and MOWBRAY, JJ., and MOSLEY, D. J.,[2] concur.

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[2]The Honorable Donald M. Mosley, Judge of the Eighth Judicial District Court, was designated by the Governor to sit in place of THE HONORABLE ROBERT E. ROSE, Justice. Nev. Const. art. 6, § 4.

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105 Nev. 441, 441 (1989) In re Temporary Custody of Five Minors

IN THE MATTER OF THE TEMPORARY CUSTODY OF FIVE MINOR CHILDREN. AUGUST H. AND LEANN H., APPELLANTS, *v.* THE STATE OF NEVADA; WILMA H., MARION H., JAMES H., SUE ANN H., MARY LOU H., RESPONDENTS.

No. 19355

July 26, 1989 777 P.2d 901

Appeal from order granting petition for temporary custody of minor children. Third Judicial District Court, Lyon County; Mario G. Recanzone, Judge.

District attorney petitioned for temporary custody of minor children who were in protective custody of the Department of Human Resources, Welfare Division. The district court granted the petition. Parents appealed. The Supreme Court held that: (1) the order granting temporary custody, subject to periodic mandatory review and modification, was not a final, appealable order, but the appeal would be treated as a petition for mandamus; (2) the preponderance of the evidence standard, rather than the clear and convincing evidence test, applies to petitions for temporary custody; and (3) substantial evidence supported the determination that the children had been neglected.

Appeal treated as petition for writ of mandamus, and denied.

Terri Steik Roeser, State Public Defender, and *John C. Lambrose,* Deputy, Carson City, for Appellants.

Brian McKay, Attorney General, Carson City; *William G. Rogers,* District Attorney, and *Eileen Barnett,* Deputy, Lyon

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[6]THE HONORABLE ROBERT E. ROSE, Justice, voluntarily recused himself from participation in the decision of this appeal.

County; *Claassen & Olson,* Carson City; *Ed Irvin,* Fallon, for Respondents.

1. INFANTS.
Order determining temporary custody of minor children, subject to periodic mandatory review and modification, is not final, appealable order. NRS 432B.010 et seq., 432B.550, 432B.580, 432B.590.
2. MANDAMUS.
Parents' attempt to appeal from order determining temporary custody of minor children could be treated as petition for writ of mandamus; although order was not immediately appealable, order affected custody of children and could have far reaching consequences for both parents and children. NRS 432B.010 et seq., 432B.550, 432B.580, 432B.590.
3. INFANTS.
Failure to give parents access to reports that gave rise to Welfare Division's investigation of family did not violate parents' statutory and constitutional rights in proceedings in which Division obtained temporary custody of children; reports were not before district court at hearing. NRS 432B.510.
4. INFANTS.
Requirement that Welfare Division provide parents with "plan" for services to help family is discretionary and is not prerequisite to filing of petition for temporary custody. NRS 432B.340, 432B.530.
5. INFANTS.
Preponderance of evidence standard, rather than clear and convincing evidence standard, applies to proceedings in which Welfare Division seeks temporary custody of children. NRS 432B.530.
6. INFANTS.
Substantial evidence supported district court's granting Welfare Division's petition for temporary custody of minor children on allegations that parents did not properly supervise or control their children; there was evidence that parents were unable to protect children from each other and failed to teach children basic social skills or to provide any guidance about basic toilet functions and hygiene, supporting determination that children were neglected. NRS 432B.140, 432B.510.

OPINION

Per Curiam:

On May 6, 1989, the district attorney of Lyon County filed in the district court a petition for the temporary custody of appellants' five minor children pursuant to NRS 432B.510. The petition alleged that the four oldest children were the victims of chronic neglect by their parents and that the children have poor hygiene which has resulted in complaints from school officials and the Lyon County Sheriff's Department. The petition stated that the children were in the protective custody of the Nevada Department of Human Resources, Welfare Division, and

requested that the Welfare Division be given temporary custody of the children. The petition was later amended to include appellants' youngest child.

On September 13, 1988, after holding an evidentiary hearing, the district court entered an order directing that all of the children remain in the temporary custody of the Welfare Division. That order directed the Welfare Division to give "extensive" visitation rights to appellants for the following three-month period and to present to the court a report concerning the family at the end of the three-month period. The order also allowed the Welfare Division to return the children to the home within the three-month period if it felt such action was appropriate. Finally, the order set another hearing for the matter. This appeal followed.

[Headnote 1]

Initially, we note that the proceedings below were conducted pursuant to NRS Chapter 432B. We also note that the order challenged in this appeal determines the *temporary* custody of the minor children, and that the order is subject to periodic mandatory review and modification by

the district court. *See* NRS 432B.550; 432B.580; 432B.590. Thus, the challenged order of the district court is not a final order. Moreover, we note, and the parties concede, that no statute or court rule authorizes an appeal from an order of the district court granting a petition for temporary custody pursuant to NRS Chapter 432B. The right to appeal is statutory, and where no statute or rule authorizes an appeal, no right to appeal exists. *See* Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984); Kokkos v. Tsalikis, 91 Nev. 24, 530 P.2d 756 (1975). Finally, the periodic review by the district courts of orders placing minor children in temporary protective custody renders the appellate process unsuitable for the review of such orders by this court. Under these circumstances, we conclude that in the absence of a contrary legislative expression, orders granting petitions for temporary custody pursuant to NRS Chapter 432B are not substantively appealable.

[Headnote 2]

Nevertheless, because the order challenged in this proceeding affects the custody of children, and may thus have far reaching consequences for both the parents and the children, we elect to treat the instant appeal as a petition for a writ of mandamus. *See* Clark County Liquor v. Clark, 102 Nev. 654, 730 P.2d 443 (1986); Jarstad v. National Farmers Union, 92 Nev. 380, 552 P.2d 49 (1976). Mandamus is an extraordinary remedy, and the decision of whether to entertain a petition lies within the discretion of this court. *See* Poulos v. District Court, 98 Nev. 453, 455,

652 P.2d 1177, 1178 (1982). Further, mandamus will issue to control an arbitrary or capricious exercise of discretion by the district court. *See* Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Therefore, this court will not disturb a decision of the district court regarding the temporary custody of children unless the decision is affected by a manifest abuse of discretion. *See id.; cf.* Nichols v. Nichols, 91 Nev. 479, 537 P.2d 1196 (1975) (decision regarding child custody in a divorce action rests in the sound discretion of the district court and will not be disturbed unless the discretion is clearly abused).

[Headnote 3]

In the present case, appellants assert that the order giving the Welfare Division temporary custody of the minor children violated their statutory and constitutional rights. Initially, appellants complain that they were never given access to the reports which gave rise to the Welfare Division's investigation of the family. We note, however, that the district court limited the hearing below to allegations that a social worker could testify to directly. Because the reports which alerted the Welfare Division to the situation in appellants' family were not before the district court at the hearing below, appellants were not prejudiced by the denial of access to those reports.

[Headnote 4]

Appellants next assert that NRS 432B.340 requires the Welfare Division to provide them with a "plan" for services to help the family prior to instituting an action for temporary custody.[1] Appellants' contention is without merit. As respondents correctly note, the provision of a plan for services pursuant to NRS 432B.340 is discretionary; it is not a prerequisite to filing a petition for temporary custody. Thus, the Welfare Division was under no statutory obligation to provide appellants with such a plan.

Appellants next complain that the petition for temporary custody contained only conclusory allegations and thus did not give

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[1]NRS 432B.340 (emphasis added) provides in pertinent part:

> 1. If . . . [the Welfare Division] determines that a child needs protection, but is not in imminent danger from abuse or neglect, *it may:*
>
> (a) Offer to the parents . . . a plan for services and inform him [sic] that [Welfare] has no legal authority to compel him [sic] 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. . . .
>
> . . . .
>
> 2. If the parent . . . accepts the conditions of the plan offered by [Welfare] . . . [Welfare] may elect not to file a petition and may arrange for appropriate services. . . .

them sufficient notice of the facts that they would have to defend against at the hearing on the petition. Appellants also assert that the hearing on the petition was not held within thirty days as required by NRS 432B.530. We note, however, that appellants failed to object below to either the form of the petition or to the hearing date. Under these circumstances, we will not address these claims of error in this court. *Cf.* Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981) (claims for extraordinary relief must generally first be tendered to an appropriate district court); Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (a point not raised in the district court is deemed to have been waived).

[Headnote 5]

Appellants next assert that there is no indication in the documents before this court whether the district court found clear and convincing evidence supporting its order giving the Welfare Division temporary custody of the children. Analogizing to cases involving the termination of parental rights, appellants argue that a petition for temporary custody must be supported by clear and convincing evidence. *See* Santosky v. Kramer, 455 U.S. 745 (1982); Champagne v. Welfare Division, 100 Nev. 640, 691 P.2d 849 (1984). Respondents correctly note, however, that NRS 432B.530(5) requires only that the court find a preponderance of evidence showing that a minor child is in need of protection before issuing an order for temporary custody. Because an order for temporary custody differs significantly from an order terminating parental rights, we conclude that the lesser standard is appropriate.

[Headnote 6]

As a final matter, we note that the evidence presented at the hearing below clearly established that appellants did not properly supervise or control their children. Specifically, appellants were unable to protect the children from each other and failed to teach the children basic social skills or to provide any guidance to the children regarding basic toilet functions and hygiene. Because this evidence was sufficient to show that the children were neglected under NRS 432B.140,[2] we conclude that the district court did not abuse its discretion when it granted the petition for

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[2]NRS 432B.140 provides in pertinent part:

> Negligent treatment or maltreatment of a child occurs if a child . . . is without proper care, control and 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 his welfare or his neglect or refusal to provide them when able to do so.

temporary custody. *Cf.* Kobinski v. State, 103 Nev. 293, 738 P.2d 895 (1987) (an order terminating parental rights will be upheld on appeal if it is supported by substantial evidence). Accordingly, we conclude that our intervention by way of extraordinary writ is not warranted at this time. Therefore, we deny this petition.[3]

CINDY HERMANSON, APPELLANT, *v.* DAVID HERMANSON, RESPONDENT.

No. 25113

December 22, 1994 887 P.2d 1241

This is an appeal from a decree of divorce incorporating an interlocutory order declaring David Hermanson to be the father of James Hermanson. Eighth Judicial District Court, Clark County; Gloria Sanchez, Judge.

Wife appealed decree of divorce entered by the district court which incorporated interlocutory order declaring husband to be the father of wife's child. The supreme court held that: (1) district court erred in applying law of California, where child was born, rather than law of Nevada, where child now resides, to determine paternity, and (2) equitable estoppel did not bar wife from denying husband's paternity.

Reversed and remanded.

Marshal S. Willick, Las Vegas, for Appellant.

Nicholas A. Del Vecchio, Las Vegas, for Respondent.

1. ACTION.
   Under substantial relationship test used to resolve conflict of law questions in Nevada, the state whose law is applied must have substantial relationship with the transaction and the transaction must not violate strong public policy of Nevada.
2. CHILDREN OUT-OF-WEDLOCK.
   California had no substantial interest in having its law applied in Nevada paternity action where California's only relationship with the litigation was that child was born there, child had not resided in California for almost ten years, and California paternity statute at issue had been repealed. Cal. Evid. Code § 621 (Repealed).

3. CHILDREN OUT-OF-WEDLOCK.
   Under current paternity statutes of both Nevada and California, presumption is rebuttable that child born to legally married couple is child of the marriage. NRS 126.051; Cal. Fam. Code § 7611.
4. CHILDREN OUT-OF-WEDLOCK.
   District court's application of repealed California law which provided conclusive presumption that child born to legally married couple is child of the marriage was violation of Nevada public policy which recognizes that minors have right to have their paternity determined in court of law and affords them the opportunity to litigate paternity until three years after the age of majority. NRS 126.081; Cal. Evid. Code § 621 (Repealed).
5. ESTOPPEL.
   Four elements of equitable estoppel are that the party to be estopped must be apprised of the true facts, the party to be estopped must intend that his or her conduct shall be acted upon or must act in such a manner that the party asserting estoppel has the right to believe it was

so intended, the party asserting estoppel must be ignorant of the true state of facts, and the party asserting estoppel must have relied to his or her detriment on the conduct of the party to be estopped.

6. EVIDENCE.

"Substantial evidence" for purposes of determining sufficiency of the evidence is that which a reasonable mind might accept as adequate to support a conclusion.

7. CHILDREN OUT-OF-WEDLOCK.

Finding that wife was estopped from denying that husband was father of child was not supported by evidence that wife told husband she was pregnant with another man's child, that husband admitted wife never told him he was child's biological father, that husband admitted in court papers that he was not child's blood father, that husband's contact with child was intermittent, and that husband did not pay significant sums for child's support.

8. ESTOPPEL.

Doctrine of estoppel is grounded in principles of fairness.

OPINION

Per Curiam:

Cindy Hermanson ("Cindy"), the biological mother of James Hermanson ("James"), appeals from a district court order finding that David Hermanson ("David") is the father of James. Cindy and David married when Cindy was six months pregnant with James in June, 1982. Cindy maintains that she informed David that she was pregnant with another man's child. David admits that Cindy never told him that he was the father of her unborn child.

James was born on October 12, 1982. The parties agree that things did not go well after James's birth. Cindy stated that for the three years following James's birth (1982-85), she moved in and out of David's residence, seeking temporary housing in battered

women's shelters, and staying with various friends. Cindy sought protective orders and direct assistance in battered women's shelters on multiple occasions between 1982 and 1985.

In October, 1985, Cindy separated from David and relocated to Iowa with James. Between 1985 and 1988, Cindy raised James alone while attending nursing school. She applied for and received welfare. In May, 1990, Cindy completed nursing school in Iowa. In August, 1990, David and Cindy discussed a reconciliation. Cindy returned to Las Vegas with James in October, 1990. The reconciliation attempt lasted only thirty days.

Cindy filed for divorce in December, 1990. Cindy's divorce complaint asserted that there were no issue of the marriage, although David's name appeared on James's birth certificate. She also asserted that David knew, and had always known, that he was biologically unrelated to the child. David denied Cindy's assertions.

In January, 1991, David filed a motion requesting that the child be named "the defacto child" of David "even if he is not the biological son of [David]." Cindy opposed the motion and requested blood tests as to paternity. A domestic relations referee heard the motion. In June, 1991, he filed his recommendation stating that "this case is similar to *Frye v. Frye* (Equitable Adoption), based on the conduct of the parties," and that David "is found to be the real father of the child and should be declared the real father." The referee also established a visitation schedule and ordered that David pay child support.

Cindy and David each filed objections to the referee's recommendation—she as to the "real father" recommendation, and he as to the child support amount. David subsequently withdrew his objection, and argued that the court should not order blood tests to determine paternity. In July, 1991, the district court sustained Cindy's objection and referred the parties to a paternity hearing master with direction to order blood tests. The blood tests conclusively proved that David was not the father of James, and the parties so stipulated.

In November, 1991, after further filings, the matter returned to the district court's regular law and motion calendar. After hearing argument, and requesting additional written arguments, the district court concluded that Cindy failed to rebut a conclusive presumption in the California Evidence Code that James was the issue of her marriage to David. The district court further stated that equitable estoppel barred Cindy from denying that David was James's father. Thus, the court held that David is James's legal father.

Cindy appealed the district court's order to this court. This

court noted jurisdictional defects and ordered that appeal dismissed on September 14,1992.

Cindy and David's divorce went to trial on April 1, 1993, on all matters other than paternity, and a decree was entered on August 25, 1993. It states that pursuant to the February 4, 1992 order, David is the father of James. The court awarded Cindy primary physical custody of James and it granted David joint legal custody of James and extensive visitation rights. Cindy filed a timely appeal.

On appeal, Cindy argues that the district court erred because it applied California law instead of Nevada law to determine James's paternity and because substantial evidence does not support a finding of equitable estoppel. We agree.

The district court applied California Evidence Code section 621 to determine the paternity of James Hermanson. California Evidence Code section 621, at the time the Hermansons lived in California, provided:[1]

> Notwithstanding any other provision of law, the issue of a wife cohabitating with her husband, who is not impotent, is *conclusively* presumed to be legitimate.

Cal. Evid. Code § 621 (West 1990) (emphasis added). The district court stated that there was no evidence on the record that David is either impotent or sterile. Because the parties were legally married and cohabitating at James's birth, the district court applied this conclusive presumption to find that David is the father of James.

[Headnote 1]

This court has adopted the substantial relationship test to resolve conflict of law questions. Sievers v. Diversified Mtg. Investors, 95 Nev. 811, 603 P.2d 270 (1979). Under this test, the state whose law is applied must have a substantial relationship with the transaction: and the transaction must not violate a strong public policy of Nevada. *Id.* at 815, 603 P.2d at 273.[2]

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[1]In Michael H. v. Gerald D., 491 U.S. 110 (1989), the United States Supreme Court addressed the constitutionality of the conclusive presumption of paternity under California Evidence Code section 621. In a five-four decision containing five separate opinions, the Court held, after balancing the private interests of the parties with the interests of the state, that a conclusive presumption of paternity does not deny due process to a putative father. *Id.* at 430. However, several members of the court disagreed. Michael H. v. Gerald D., 491 U.S. at 138-64 (Brennan, J., Marshall, J., Blackmun, J., and White, J., dissenting).

[2]Some courts have applied the "origin of domicile" doctrine to determine that the law of the child's birthplace is the applicable law for paternity

[Headnotes 2, 3]

California's only relationship with this litigation is that James was born there and that David and Cindy resided there during the three years that they cohabitated during their turbulent marriage. The parties have not resided in California for almost ten years. California has no substantial interest in having former California Evidence Code section 621 applied in this paternity action in the Nevada court system especially in light of the fact that the California Legislature has repealed California Evidence Code section 621.[3] Under California's current paternity statute, California Family Code section 7611, a paternity action may be brought "at any time." Thus, the prevailing public policy in California is that there is no statute of limitations for paternity actions.

[Headnote 4]

Moreover, the district court's application of California Evidence Code section 621 violates a public policy of Nevada. Under NRS 126.081, a paternity action is "not barred until 3 years after the child reaches the age of majority." Nevada recognizes that minors have a right to have their paternity determined in a court of law. Therefore, Nevada affords them the opportunity to litigate their paternity for three years after the age of eighteen. In this case, James is presently twelve years old. He is a Nevada resident and should have the opportunity to have his paternity determined under Nevada law rather than precluded by a repealed California statute.

Choice of law analysis dictates that Nevada law applies to the determination of James's paternity. Because the district court applied California law, we conclude that the district court erred.

[Headnotes 5-7]

The district court also determined that the doctrine of equitable estoppel bars Cindy from denying David's paternity of James. The district court found that Cindy began a steady stream of affirmations that she was pregnant with David's child soon after she learned that she was pregnant with James; Cindy named David as the father of James and placed his name on the birth

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actions. *See* In Re Estate of Dauenhauer, 535 P.2d 1005 (Mont. 1975); Kowalski v. Wojtkowski, 116 A.2d 6 (N.J. 1955). However, these cases reflect a traditional conflict of laws approach which Nevada has rejected by adopting the more modern substantial relationship test.

[3]The California Legislature repealed California Evidence Code section 621—effective January 1, 1994. Thus, California's policy position on this conclusive presumption of paternity has changed. Under California's and Nevada's current paternity statutes, the presumption that a child born to a legally married couple is a child of the marriage is *rebuttable*.

certificate; the parties have continuously held themselves to the public as the parents of James; Cindy applied for and received welfare benefits for dependent children by naming David as the father. The district court determined that "[e]ach of the preceding factors demonstrates a specific and repetitious pattern which Cindy has maintained to all concerned that David is the father of James." Thus, the district court held that the doctrine of equitable estoppel bars Cindy from denying that David is the father of James.

In Nevada, equitable estoppel has four elements:

> (1) the party to be estopped must be appraised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true

state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped.

Southern Nev. Mem. Hosp. v. State, 101 Nev. 387, 391, 705 P.2d 139, 142 (1985) (quoting Cheqer, Inc. v. Painters & Decorators, 98 Nev. 609, 655 P.2d 996 (1982)). Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion." State Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (citation omitted).

Applying the test set forth above, in order for Cindy to be estopped from denying David's paternity, the second element would require that Cindy asserted that David was the father and intended David to rely on her assertions. The facts simply do not support such a finding. In her affidavit, Cindy asserts that after she knew she was pregnant, Cindy informed David that she was pregnant with another man's child. At a hearing before the referee, David admitted that Cindy never told him that he was the biological father of her unborn child.

The third element for estoppel, the party asserting the estoppel must be ignorant of the true state of facts, would require that David was ignorant of the fact that he is not the biological father of James. David has admitted that he was told that he was not the child's father before James was born. In his responding brief, David notes "the Respondent in this matter is not the blood father of the minor child."

In light of the above facts, we conclude that substantial evidence does not support a finding of the second and third elements for estoppel in this case.

Furthermore, David's contact with James and financial support of James do not support the application of the doctrine of estoppel. David's contact with James for the three years after his birth

was intermittent. Cindy moved in and out of David's residence seeking temporary housing in battered women's shelters from 1982 until 1985. Cindy estimates that the parties actually cohabitated a total of nine months after James's birth. David testified that he actually cohabitated with James for about two years total during the child's lifetime.

In addition, David did not pay any significant sums for James's support. From 1985 to 1988, Cindy raised James alone while attending nursing school in Iowa. She applied for and received welfare benefits. David paid a total of $125.50 in child support for the years Cindy was on welfare.

[Headnote 8]

In Topaz Mutual Co. v. Marsh, 108 Nev. 845, 853, 839 P.2d 606, 611 (1992), this court stated, "[e]quitable estoppel functions to prevent the assertion of legal rights that in equity and good conscience should not be available due to a party's conduct." This statement reflects that the doctrine of estoppel is grounded in principles of fairness. This case does not warrant the application of the doctrine of estoppel. Instead of ensuring fairness, estoppel works in this case to unjustly deprive Cindy from disputing the presumption of paternity. The issue of David's paternity of James should be reached on its merits under Nevada law, not determined by a repealed California statute nor by the doctrine of equitable estoppel.

Furthermore, we conclude that the doctrine of equitable adoption enunciated in Frye v. Frye, 103 Nev. 301, 738 P.2d 505 (1987), and the myriad of other psychological theories of parentage that the parties mention in order to determine paternity are inapplicable.

Nevada's paternity statute, NRS 126.051, states, in pertinent part:

1. A man is presumed to be the natural father of a child if:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage . . . .

. . . .

3. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. . . . The presumption is rebutted by a court decree establishing paternity of the child by another man.

NRS 126.051 provides for a *rebuttable* presumption of paternity and is the applicable statute in this matter. We reverse the district court's order finding that David is the father of James and

⬇110 Nev. 1400, 1407 (1994) Hermanson v. Hermanson⬇

remand this case to the district court for further proceedings consistent with this opinion.[4]

⬇114 Nev. 572, 572 (1998) Love v. Love⬇

MICHAEL E. LOVE, APPELLANT, *v.* CATHERINE L. LOVE, RESPONDENT.

No. 29729

May 19, 1998 959 P.2d 523

Appeal from (1) an order granting respondent's motion for modification of child support, and (2) an order denying appellant's motion for summary judgment and finally resolving a complaint challenging paternity. Second Judicial District Court, Washoe County; Charles M. McGee, Judge.

Former husband sought to set aside stipulation in divorce decree that he was father of his former wife's child, and wife sought increased child support. The district court denied husband's motion for summary judgment and increased husband's child support obligation. Husband appealed. The supreme court, SHEARING, J., held that: (1) genuine issue of material fact as to whether wife fraudulently concealed her child's parentage precluded dismissal, on res judicata grounds, of husband's summary judgment motion; (2) results of deoxyribonucleic acid (DNA) test did not compel finding of husband's non-paternity; (3) trial court did not abuse its discretion in modifying husband's child support obligation; (4) child's "educational expenses," within meaning of marital settlement agreement, included private school tuition; and (5) trial court abused its discretion in granting statutory attorney fees to wife based upon sealed attorney billing statements.

Affirmed in part, reversed in part, and remanded.

SPRINGER, C. J., dissented in part.

Ronald J. Logar, Reno, for Appellant.

Silverman & Decaria, Reno, for Respondent.

1. DIVORCE.

Trial court's order denying husband's motion for summary judgment to establish that he was not the father of wife's child and to set aside divorce decree insofar as it related to child custody, support and maintenance was appealable, though an order denying a motion for summary judgment was ordinarily not final and appealable, as trial court's order in effect finally resolved husband's complaint challenging paternity. NRAP 3A.

2. DIVORCE.

It is generally accepted that decisions as to the paternity of a child, litigated pursuant to a divorce decree, are res judicata as to subsequent proceedings between the parties.

3. DIVORCE.

Decision of paternity in adjudication incident to divorce decree will

not operate as res judicata where extrinsic fraud existed in the adjudication.

4. JUDGMENT.

Where a claim is fraudulently advanced and that fraud is so successful that the other party is not aware that he has a particular claim or defense, this may be a sufficient basis for equitable relief from the judgment.

5. JUDGMENT.

That which keeps one party away from court by conduct preventing a real trial on the issues is extrinsic fraud and forms a sufficient basis for equitable relief from the judgment.

6. JUDGMENT.

Genuine issue of material fact as to whether wife fraudulently concealed her child's parentage precluded summary judgment dismissal, on res judicata grounds, of husband's motion to set aside stipulation in divorce decree that he was the child's father.

7. CHILDREN OUT-OF-WEDLOCK.

Statutory scheme for determining paternity clearly reflects the legislature's intent to allow nonbiological factors to become critical. NRS 126.051.

8. CHILDREN OUT-OF-WEDLOCK.

Legislature's primary interest in enacting statutory scheme for determining paternity was in ensuring that children are supported by their parents, and not by welfare. NRS 126.051.

9. CHILDREN OUT-OF-WEDLOCK.

Legislature has the power to decide that the results of biological tests do not conclusively determine a paternity action. NRS 126.051.

10. CHILDREN OUT-OF-WEDLOCK.

Under statutory scheme for determining paternity, district court is not compelled to determine, on basis of deoxyribonucleic acid (DNA) test, that a man is or is not a child's father as a matter of law. NRS 126.051, 126.121.

11. DIVORCE.

Trial court did not abuse its discretion in modifying former husband's child support obligation to $1,800 per month, which exceeded statutory "cap." Husband's wealth had increased, husband had vastly greater wealth than wife, and child's expenses had increased because child became a teenager, though child's needs might not have exceeded the cap and wife might not have been paying her share of child's expenses. NRS 125B.070.

12. PARENT AND CHILD.

District court has limited discretion to deviate from child support guidelines. NRS 125B.070.

13. HUSBAND AND WIFE.

"Educational expenses," within meaning of marital settlement agreement obligating husband to pay all of child's reasonable and necessary educational expenses, included private school tuition, though child had attended public school for several years.

14. CONTRACTS.

Where language in a document is clear and unambiguous on its face, the court must construe it based on this plain language.

15. DIVORCE.

Awarding of statutory attorney fees to either party in divorce, if

those fees are in issue under the pleadings, is within the sound discretion of the district court. NRS 125.150(3).

16. DIVORCE.

Trial court abused its discretion in granting statutory attorney fees to wife in divorce case based upon sealed attorney billing statements of wife's attorney, as trial court's use of sealed statements precluded husband from disputing the amount and legitimacy of the award. NRS 125.150(3).

OPINION

By the Court, SHEARING, J.:

Appellant Michael E. Love ("Michael") and respondent Catherine L. Love ("Catherine") were married on September 17, 1981. Seven months later, on April 24, 1982, a child ("the child") was born. Two years after the child's birth, the parties entered into a marital settlement agreement, which was incorporated into a decree of divorce entered on May 22, 1984. Under the settlement agreement, Michael agreed to pay $1,200 per month in child support until the child reached first grade, and $800 per month thereafter. Michael also agreed to pay all reasonable and necessary medical, dental and educational expenses for the child. At the time of the divorce, Michael was in bankruptcy proceedings.

In December 1993, Michael had blood drawn from himself and the child, then eleven years old, for DNA analysis. A DNA analysis laboratory reported that Michael was excluded from being the child's biological father.

Michael's financial circumstances greatly improved after the divorce. In February 1995, Catherine filed a motion to increase child support and for judgment on arrears. Catherine requested that the district court increase child support to $2,000 per month, and order Michael to pay the cost of private school tuition and other educational expenses.

Michael then filed a complaint against Catherine seeking to establish that he had no responsibility to pay child support based upon his allegation that she had fraudulently misrepresented that the child was his. The district court consolidated Catherine's motion and Michael's action.

In August 1995, a second DNA test confirmed that Michael was not the child's biological father. In September 1995, Michael filed a motion for summary judgment to establish that he was not the child's biological father and to set aside the judgment and decree of divorce insofar as they related to child custody, support and maintenance. Catherine opposed the motion, arguing, *inter alia,* that a genuine issue of material fact existed regarding

whether Michael was misled into believing that he was the child's father. Catherine asserted that Michael was aware of the single occasion on which she had sexual intercourse with another potential father, because Michael had participated.

On February 2, 1996, the district court filed an order denying Michael's motion for summary judgment. The order stated:

> A divorce decree that establishes paternity of a child is a final determination of paternity. Harris v. Harris, 95 Nev. 214, 591 P.2d 1147 (1979). . . . In this case, the parties' divorce decree was entered on May 22, 1984 and established paternity. Thus, the issue of paternity of [the child] is *res judicata* as to Plaintiff or Defendant in this or any future proceeding.

[Headnote 1]

On November 25, 1996, the district court filed a written order directing Michael to pay child support of $1,800 per month and to pay educational costs including tuition. The district

court also granted attorney fees and costs to Catherine. Michael appeals from this order and from the order denying his motion for summary judgment, which resolved his complaint contesting paternity.[1]

Michael argues that Catherine fraudulently concealed the child's parentage, and therefore, he is not barred by *res judicata* from challenging paternity. He contends that he did not challenge paternity during the original divorce proceedings because he had no reason to suspect that he was not the child's father at that time. Michael also contends that the district court erred in denying his motion for summary judgment because DNA tests prove as a matter of law that he has no legal responsibility for the child.

Catherine argues that the district court properly decided that Michael was barred by *res judicata* from relitigating the paternity issue. She also asserts that she did not fraudulently conceal the child's paternity.

[Headnotes 2, 3]

It is generally accepted that decisions as to the paternity of a child, litigated pursuant to a divorce decree, are res judicata as to subsequent proceedings between the parties. *See* Donald M. Zupanec, Annotation, *Effect, in Subsequent Proceedings, of Paternity Findings or Implications in Divorce or Annulment*

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[1]Although an order denying a motion for summary judgment is ordinarily not a final, appealable order, *see, e.g.,* Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984), here, the district court's order in effect finally resolved Michael's complaint challenging paternity and is therefore appealable. *See* NRAP 3A.

Decree or in Support or Custody Order Made Incidental Thereto, 78 A.L.R. 3d 846, 853 (1977) (Supp. 1997) (citing cases holding same). Indeed, in Harris v. Harris, 95 Nev. 214, 217, 591 P.2d 1147, 1148-49 (1979), this court stated:

> It is generally held that an adjudication incident to a divorce decree concerning the paternity of a child is *res judicata* as to the husband or wife in any subsequent proceeding . . . . Here the paternity issue was pleaded, litigated, and determined in the district court at the original proceedings in 1975. The issue was not novel to these proceedings. Respondent was provided the opportunity at that time to present his evidence, and the decision was against him . . . . We hold that as between the parties a divorce decree establishing the paternity of a child is a final determination which precludes relitigation of the question of paternity.

(Citation omitted.)

[Headnotes 4, 5]

However, Michael alleges that he was misled into believing that he was the father of the child. A decision of paternity will not operate as res judicata where extrinsic fraud existed in the original proceeding. Where a claim is fraudulently advanced and that fraud is so successful that the other party is not aware that he has a particular claim or defense, this may be a sufficient basis for equitable relief. Villanon v. Bowen, 70 Nev. 456, 471, 273 P.2d 409, 416 (1954). That which keeps one party away from court by conduct preventing a real trial on the issues is extrinsic fraud and forms a sufficient basis for equitable relief from the judgment. Libro v. Walls, 103 Nev. 540, 543, 746 P.2d 632, 634 (1987); *Villanon,* 70 Nev. at 471, 273 P.2d at 416; Savage

v. Salzman, 88 Nev. 193, 195, 495 P.2d 367, 368 (1972); Colby v. Colby, 78 Nev. 150, 153-154, 369 P.2d 1019, 1021 (1962); Murphy v. Murphy, 65 Nev. 264, 271, 193 P.2d 850, 854 (1948).

In *Libro,* 103 Nev. at 541, 746 P.2d at 633, a husband did not challenge paternity during divorce proceedings. After the husband paid child support for thirteen months, blood tests conclusively established that he was not the child's father. The district court ruled that the husband could not raise non-paternity as a defense to a judgment for child support arrearages. *Id.* This court reversed, noting that the wife's failure to notify her husband that he might not be the child's father prevented him from having a fair opportunity to litigate paternity in the divorce proceedings. *Id.* at 543, 746 P.2d at 634.

Michael did not challenge paternity during the original divorce proceedings. In fact, the district court's judgment was based upon a stipulation between the parties whereby they entered into a

settlement agreement. This judgment would ordinarily have a *res judicata* effect between the parties, precluding them from relitigating the issue. Willerton v. Bassham, 111 Nev. 10, 16, 889 P.2d 823, 826 (1995).

[Headnote 6]

However, we conclude that *res judicata* does not necessarily bar Michael from proving nonpaternity because of the possible presence of extrinsic fraud in the original proceeding. A genuine issue of material fact exists as to whether Catherine fraudulently concealed the child's parentage; therefore, disposition by summary judgment is unwarranted. On remand, the district court must, as a threshold matter, determine whether the original judgment was procured by fraud.

Michael argues that the DNA analysis proves as a matter of law that he has no legal responsibility for the child. We have not previously discussed the weight to be given to a DNA analysis in a paternity action. The Nevada legislature addresses paternity in NRS 126.051, which sets forth rebuttable presumptions of paternity. NRS 126.051 states, in pertinent part:

> 1. A man is presumed to be the natural father of a child if:
> (a) He and the child's natural mother are or have been married to each other and the child is born during the marriage . . . .
> (b) He and the child's natural mother were cohabiting for at least 6 months before the period of conception and continued to cohabit through the period of conception.
> (c) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is invalid . . . .
> (d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.
> (e) Blood tests made pursuant to NRS 126.121 show a probability of 99 percent or more that he is the father.
>
> . . . .
>
> 3. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of

policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

. . . .

[Headnotes 7, 8]

NRS 126.051 does not set forth conclusive presumptions of paternity. Instead, as set forth in section 3, the presumptions enumerated in section 1 may be rebutted. This statutory scheme clearly reflects the legislature's intent to allow nonbiological factors to become critical in a paternity determination. *See* In re Marriage of Freeman, 53 Cal. Rptr. 2d 439, 447 (Ct. App. 1996) (California statute made clear that "biology is not the predominant consideration in determining parental responsibility once a child has reached his or her third year of life."). Thus, where factors conflict, as they may here, the district court must use its discretion to apply considerations of policy and logic to the relevant evidence.[2]

In Michael H. v. Gerald D., 491 U.S. 110 (1989), a California statute provided that "the issue of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage." The United States Supreme Court held that this statute did not infringe upon the due process rights of a natural father seeking to establish paternity, whose blood tests indicated a 98.07% probability of paternity. *Id.* at 118-30; *see also* Dawn D. v. Superior Court, No. S060966, 1998 WL 154536, at *1 (Cal. Apr. 6, 1998).

[Headnotes 9, 10]

Thus, the legislature has the power to decide that the results of biological tests do not conclusively determine a paternity action. Nowhere in our statutory scheme does the legislature state that the results of a DNA test compel a district court to determine, as a matter of law, that a man is or is not a child's father. *See* NRS 126.051; NRS 126.121.

Here, pursuant to NRS 126.051(3), the DNA test results create a presumption that conflicts with the presumption of paternity arising from the fact that Michael was married to the child's mother, apparently cohabited with her for one year prior to the child's birth, and held the child out as his own for a number of years. If, on remand, the district court concludes that the judgment was procured by fraud, then the court must determine which presumptions are "founded on the weightier considerations of policy and logic" as required by NRS 126.051(3).

[Headnote 11]

Michael further argues that the district court improperly increased child support to $1,800 monthly without a hearing,

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[2]The history of NRS 126.051 shows that the legislature's primary interest was in ensuring that children are supported by their parents, and not by welfare. Minutes of the Assembly Judiciary Comm., 60th Leg. (Nev., March 13, 1979).

making findings that are not supported by evidence. Michael argues that the district court improperly based its decision upon his increased wealth. Michael contends that his current monthly payment exceeds the "cap" set forth in NRS 125B.070, and argues that Catherine has failed to produce evidence that the child's needs exceed the cap.

[Headnote 12]

A district court has limited discretion to deviate from child support guidelines set forth in NRS 125B.070.[3] Anastassatos v. Anastassatos, 112 Nev. 317, 320, 913 P.2d 652, 654 (1996). Any deviation from the formula set forth in NRS 125B.070 must be based upon the factors provided under NRS 125.080(9).[4] *Id.* at 320, 913 P.2d at 654. "Greater weight . . . must be given to the standard of living and circumstances of each parent, their earning capacities and the 'relative financial means of parents' than to any of the other factors." Barbagallo v. Barbagallo, 105 Nev. 546, 551, 779 P.2d 532, 536 (1989).

In Herz v. Gabler-Herz, 107 Nev. 117, 808 P.2d 1 (1991), the district court found that appellant had vastly greater wealth than respondent. This court held that the district court did not abuse its discretion in ordering an upward departure from the statutory formula based on a factor other than increased need. *Id.* at 119, 808 P.2d at 1; *accord* Chambers v. Sanderson, 107 Nev. 846, 822 P.2d 657 (1991).

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[3]NRS 125B.070 provides in part:

1(b) "Obligation for support" means the amount determined according to the following schedule:

(1) For one child, 18 percent; . . . of a parent's gross monthly income, but not more than $500 per month per child for an obligation for support . . . unless the court sets forth findings of fact as to the basis for a different amount pursuant to subsection 6 of NRS 125B.080.

[4]NRS 125B.080(9) states:

The court shall consider the following factors when adjusting the amount of support of a child upon specific findings of fact:

(a) The cost of health insurance;
(b) The cost of child care;
(c) Any special educational needs of the child;
(d) The age of the child;
(e) The responsibility of the parents for the support of others;
(f) The value of services contributed by either parent;
(g) Any public assistance paid to support the child;
(h) Any expenses reasonably related to the mother's pregnancy and confinement;
(i) The cost of transportation of the child to and from visitation if the custodial parent moved with the child from the jurisdiction of the court which ordered the support and the noncustodial parent remained;
(j) The amount of time the child spends with each parent;
(k) Any other necessary expenses for the benefit of the child; and
(l) The relative income of both parents.

In the present case, the district court based its order to increase child support upon the vast difference in the parties' financial resources and the increased expenses of a teenager.

Michael argues that Catherine is not paying her share of the child's expenses. This argument is without merit.

> Child support is not calculated as a supplement to the presumably inadequate means of the custodial parent. NRS 125B.070 specifies a parent's duty of child support according to the parent's means rather than according to the child's needs. Although the ultimate policy objective may be the welfare of the child, the legislative scheme implements this policy by focusing the court's attention upon a parent's statutory duty to provide a fixed percentage of his income as support.

Lewis v. Hicks, 108 Nev. 1107, 1113, 843 P.2d 828, 832 (1992). We conclude that the district court properly considered Michael's financial circumstances in departing from the statutory child support formula.

The court made its decision without a hearing. However, the parties do not dispute that Michael's earnings are much greater than Catherine's, and Michael stipulated that he could pay

any reasonable amount of child support. We conclude that the district court did not abuse its discretion in departing from the statutory child support formula and ordering a modification of child support to $1,800 per month based on the factors stated by the court.

[Headnote 13]

Michael also argues that the district court abused its discretion in ordering him to pay for private school without first holding an evidentiary hearing. The parties' marital settlement agreement stated in part:

> (2) As and for additional child support, HUSBAND shall pay all reasonable and necessary medical, dental and educational expenses of the minor child from the date of execution of this Agreement and continuing thereafter until such time as HUSBAND's obligation to support said child shall cease.

Michael contends that because the term "educational expenses" in the parties' marital settlement agreement is unclear, he should be permitted to introduce parol evidence that the parties did not intend "educational" to include private education.

[Headnote 14]

Where language in a document is clear and unambiguous on its face, the court must construe it based on this plain language. Southern Trust v. K & B Door Co., 104 Nev. 564,763 P.2d 353

(1988). We perceive no ambiguity in the marital settlement agreement regarding this issue so as to require an evidentiary hearing. Tuition clearly falls within the term educational expenses. The agreement does not state that "reasonable and necessary . . . educational expenses" cannot include private school tuition. The fact that the child attended public school for several years does not alter the provision. Accordingly, we conclude that the district court did not err in declining to hold a hearing on this issue. We further conclude that the district court properly exercised its discretion in ordering Michael to pay private school tuition.

Michael argues that the district court abused its discretion in awarding attorney fees, and in permitting Catherine to submit a sealed statement of attorney fees. Michael contends that NRS 18.010(2)(b)[5] only permits an award of attorney fees to a prevailing party, which Catherine was not. Michael contends that the court did not find that his action was brought without reasonable grounds or that he acted to harass Catherine.

Michael contends that he should be afforded an opportunity to dispute fees related to a bogus claim which may be included in the sealed statements. Catherine argues that the billing statements contained privileged information; therefore, the district court properly reviewed them *in camera.*

[Headnote 15]

The district court's order and judgment did not state the basis for its award of attorney fees and costs. In the present case, NRS 18.010(2)(b) is not the only statute that could have served as a basis for the fees. NRS 125.150(3) states:

> Whether or not application for suit money has been made under the provisions of NRS 125.040, the court may award a reasonable attorney's fee to either party to an action for divorce if those fees are in issue under the pleadings.

See Leeming v. Leeming, 87 Nev. 530, 490 P.2d 342 (affirming award of attorney fees for post-judgment motion in divorce action); *cf.* Korbel v. Korbel, 101 Nev. 140, 696 P.2d 993 (1985). Such an award is within the sound discretion of the

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[5]NRS 18.010(2) states, in pertinent part:

> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> . . . .
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought without reasonable ground or to harass the prevailing party.

district court. Fletcher v. Fletcher, 89 Nev. 540, 543-44, 516 P.2d 103, 104 (1973).

[Headnote 16]

However, because the billing statements were sealed and the district court reviewed them in camera, this court is unable to assess the validity of the award of attorney fees. We conclude that to grant attorney fees based upon sealed billing statements unfairly precluded Michael from disputing the amount and legitimacy of the award. We, therefore, reverse the award of attorney's fees and remand with instructions to the district court to allow Michael to review and dispute expenses contained within the billing statement.

The district court erred in concluding that paternity was conclusively established on the basis of *res judicata* without a factual determination as to whether the original judgment was procured by fraud. Therefore, we reverse the order of the district court resolving appellant's paternity complaint, and remand this matter to the district court for further proceedings consistent with this opinion. Pending the district court's further decisions, we perceive no abuse of discretion in the district court's continuing to require Michael to pay increased child support and private tuition.

ROSE, YOUNG, and MAUPIN, JJ., concur.

SPRINGER, C. J., concurring in part and dissenting in part:

I agree that *res judicata* does not bar Mr. Love from denying paternity; however, I dissent from this court's requiring him to pay child support and tuition under the circumstances of this case.

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

Appeal from orders of the district court denying a petition for termination of parental rights and denying a motion for a new trial. Eighth Judicial District Court, Clark County; Cynthia Dianne Steel, Judge, and Robert E. Gaston, Judge, Family Court Division.

In an adoption proceeding, the child's uncle and aunt petitioned to terminate the biological parents' parental rights. The district court 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 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), Scalf 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), and McGuire v. Welfare Division, 101 Nev. 179, 697 P.2d 479 (1985); (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.

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.

1. INFANTS.

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.

↓116 Nev. 790, 791 (2000) Matter of Parental Rights as to N.J.↓

2. CONSTITUTIONAL LAW.

Due process requires that clear and convincing evidence be established before terminating parental rights. U.S. CONST. amend. 14.

3. INFANTS.

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.

4. INFANTS.

The district court always maintains subject matter jurisdiction over a properly filed petition to terminate parental rights.

5. STATUTES.

Words in a statute should be given their plain meaning unless this violates the spirit of the act.

6. STATUTES.

No part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided.

7. STATUTES.

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.

8. INFANTS.

In all termination of parental rights proceedings, the best interests of the child must be the primary consideration. NRS 128.105.

9. INFANTS.

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 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), Scalf 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), and McGuire v. Welfare Division, 101 Nev. 179, 697 P.2d 479 (1985). NRS 128.105.

10. INFANTS.

The best interests of the child and parental fault must both be shown by clear and convincing evidence before parental rights can be terminated. NRS 128.105.

11. INFANTS.

The purpose of the parental right termination statute is not to punish parents, but to protect the welfare of children. NRS 128.005.

12. CONSTITUTIONAL LAW.

The parent-child relationship is a fundamental liberty interest. U.S. CONST. amend. 14.

13. INFANTS.

Deciding whether to terminate parental rights requires weighing the interests of the children and the interests of the parents. NRS 128.105.

14. INFANTS.

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. NRS 47.180(1), 128.012(2).

15. INFANTS.

The application of the statutory presumption of abandonment of a child by a parent is not discretionary. NRS 128.012(2).

16. INFANTS.

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. NRS 51.075.

17. APPEAL AND ERROR; TRIAL.

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.

Before the Court EN BANC.

OPINION

By the Court, 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 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

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.

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[1]At the time, Hikmet was a university professor and medical doctor in Baghdad.

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]

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

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[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.

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

[Headnotes 1-3]

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:

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.*

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.

[Headnote 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 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

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:

> 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 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.

[Headnotes 5-9]

"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

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 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. *Id.* at 1192-96, 946 P.2d

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[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); Scalf 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.

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]

[Headnote 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.

[Headnotes 11-13]

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 (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 (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); Quilloin v. Walcott, 434 U.S. 246, 255

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[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.

(1978) (recognizing that the parent-child relationship is constitutionally protected); Stanley v. Illinois, 405 U.S. 645, 651 (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 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., 386 N.W.2d 877 (Neb. 1986) (balancing best interests of child with parental fault in termination proceeding); In re Kristopher B., 486 A.2d 277 (N.H. 1984) (balancing best interests of the child with parental fault required in termination proceeding); Ward v. Commonwealth, 408 S.E.2d 921 (Va. Ct. App. 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.

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

[Headnote 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 "[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

nonexistence of the presumed fact is more probable than its existence").

[Headnote 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

[Headnote 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.

[Headnote 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

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., YOUNG, MAUPIN, SHEARING, LEAVITT and BECKER, JJ., concur.

IN THE MATTER OF THE PARENTAL RIGHTS AS TO D.R.H., T.V.G., AND C.A.G.

VINCENT L. G. AND CRISTAN H., APPELLANTS, *v.* THE STATE OF NEVADA DIVISION OF CHILD AND FAMILY SERVICES, DEPARTMENT OF HUMAN RESOURCES, RESPONDENT.

No. 41352

July 12, 2004 92 P.3d 1230

Appeal from a district court order terminating appellants' parental rights. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

The supreme court, AGOSTI, J., held that: (1) statute establishing a rebuttable presumption that termination of parental rights would serve child's best interest when the child had been placed outside of his home for fourteen of twenty consecutive months did not violate father's substantive due process rights, (2) substantial

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[20] 114 Nev. 910, 965 P.2d 901 (1998).

[21] We have considered Allred's other arguments and conclude they are without merit.

evidence supported determination that mother and father had neglected their children, (3) substantial evidence supported determination that mother and father were unfit parents, (4) substantial evidence supported determination that mother and father had failed to adjust their faults to obtain custody of children, (5) substantial evidence supported determination that return of children to either mother or father would place the children at risk of serious injury, (6) substantial evidence supported determination that mother and father made only token efforts to regain custody of children, and (7) substantial evidence supported determination that termination of mother's and father's parental rights was in children's best interest.

Affirmed.

Rick Lawton, Fallon, for Appellant Vincent L. G.

Michael L. Shurtz, Elko, for Appellant Cristan H.

Brian Sandoval, Attorney General, and *Karen R. Dickerson,* Deputy Attorney General, Carson City, for Respondent.

1. CONSTITUTIONAL LAW; INFANTS.

Statute establishing a rebuttable presumption that termination of parental rights would serve a child's best interest when the child had been placed outside of his home for fourteen of twenty consecutive months was narrowly tailored to serve state's compelling interest in the welfare of and permanency planning for children who have been taken from the physical shelter of their parents' custody, such that the statute did not violate father's substantive due process rights. U.S. CONST. amend. 14; NRS 128.109(2).

2. APPEAL AND ERROR.

The supreme court reviews questions of law de novo.

3. CONSTITUTIONAL LAW.

A parent's interest in raising his or her child is a fundamental right protected by the Due Process Clause. U.S. CONST. amend. 14.

4. CONSTITUTIONAL LAW.

The supreme court analyzes substantive due process challenges to statutes impinging on fundamental constitutional rights under a strict scrutiny standard. Under this standard, the statute in question must be narrowly tailored to serve a compelling state interest. U.S. CONST. amend. 14.

5. INFANTS.

To terminate parental rights, a petitioner must prove by clear and convincing evidence that termination is in the child's best interest and that one of the enumerated parental fault factors set forth in statute exists. NRS 128.105(2).

6. INFANTS.

If substantial evidence in the record supports the district court's determination that clear and convincing evidence warrants termination of parental rights, the supreme court will uphold the termination order. NRS 128.105.

7. INFANTS.

Substantial evidence supported determination that mother and father had neglected their children, so as to support termination of their parental rights. Division of Child and Family

Services (DCFS) had found the children in dirty condition and injured while in mother's care, DCFS reported that children were found unsupervised on two occasions, mother tested positive for drugs while pregnant, several incidents of domestic violence had occurred in the home while children were present, father engaged in repeated instances of domestic violence, and father failed to consistently communicate with children when they were not in his immediate custody. NRS 128.105(2)(b).

8. INFANTS.

When determining parental unfitness for purposes of terminating parental rights, district court could consider father's felony conviction for domestic violence. Father's felony conviction was especially relevant given the district court's determination that father was often unable to control his temper, as demonstrated by father's contact with Division of Child and Family Services (DCFS), in which he verbally attacked social workers on the telephone. NRS 128.105(2)(c), 128.106(6).

9. INFANTS.

Substantial evidence supported determination that mother and father were unfit parents, so as to support termination of their parental rights. Father engaged in repeated instances of domestic violence, resulting in a felony domestic violence conviction, children witnessed several domestic violence incidents, exposing them to risk of harm and negatively affecting their emotional well-being, father failed to consistently communicate with children while they were in foster care, mother had abused drugs for much of children's lives, and mother's drug use put the children in danger at times. NRS 128.105(2)(c).

10. INFANTS.

Substantial evidence supported determination that mother had failed to adjust her faults to obtain custody of her children, so as to support termination of her parental rights, although Division of Child and Family Services (DCFS) had refused to place the children at a location near mother. Since DCFS had removed children from mother's custody, mother had failed to substantially comply with her case plan by failing to maintain stable employment and by failing to maintain a drug-free lifestyle, and mother's drug use negatively affected the children. NRS 128.105(2)(d).

11. INFANTS.

Substantial evidence supported determination that father had failed to adjust his faults to obtain custody of his children, so as to support termination of his parental rights. Father had demonstrated an inability to manage his anger, father had been convicted of a third domestic violence offense and had been terminated from his employment due to an altercation since Division of Child and Family Services (DCFS) had removed children from home, father verbally attacked DCFS social workers on the telephone, and father's animosity to DCFS did not excuse his failure to regularly communicate with his children. NRS 128.105(2)(d).

12. INFANTS.

Substantial evidence supported determination that return of children to either mother or father would place the children at risk of serious injury, so as to support termination of mother's and father's parental rights. Mother had continuing drug abuse problem and had failed to adjust her circumstances, father was incarcerated at time of termination proceedings,

was unemployed, lacked stable housing, and lacked foster care licensing for mother's child, who was neither father's biological nor adopted child, and proposed placement of children with father's out-of-state relatives was uncertain. NRS 128.105(2)(e).

13. INFANTS.

Substantial evidence supported determination that mother and father made only token efforts to regain custody of their children, so as to support termination of their parental rights. Children were in foster care for over thirty consecutive months, giving rise to statutory presumption that parents had demonstrated only token efforts to reunify, mother had failed to adequately address her drug abuse problem, even after provided with extensive drug rehabilitation services, father had failed to adequately address his anger problems, despite participating in numerous anger management courses, and father did not consistently communicate with children while they were in foster care. NRS 128.105(2)(f), 128.109(1)(a).

14. INFANTS.

The continuing needs of a child for proper physical, mental and emotional growth and development are relevant to the child's best interest, in proceedings to terminate parental rights. NRS 128.005(2)(c).

15. INFANTS.

Substantial evidence supported determination that termination of mother's and father's parental rights was in children's best interest. Mother had failed to overcome her drug abuse problems, as required by her case plan, father continued to have anger management and domestic violence problems even after completion of required courses on these issues, father had failed to communicate with children for almost two years, case history was replete with incidents of domestic violence between the parents, children were adjusting well to foster home, and children had been in foster care for over thirty consecutive months. NRS 128.105, 128.109(2), 432B.157.

16. INFANTS.

Opinion testimony of clinical psychologist was admissible in termination-of-parental-rights proceeding and could be favorably considered by the district court, even though Division of Child and Family Services (DCFS) had not provided psychologist with a complete report regarding the parents. DCFS's failure to provide a complete report to psychologist affected the weight the district court might have accorded psychologist's testimony, not its admissibility, and mother and father fully availed themselves of opportunity to cross-examine psychologist.

Before BECKER, AGOSTI and GIBBONS, JJ.

OPINION

By the Court, AGOSTI, J.:

Appellant Cristan H. is the natural mother of minor children D.R.H., T.V.G. and C.A.G. At the time of the district court's hearing on the petition to terminate parental rights, D.R.H. was seven years old, T.V.G. was six years old and C.A.G. was four years old. All three children are boys. Appellant Vincent G. is the

natural father of T.V.G. and C.A.G. Cristan and Vincent lived together on and off throughout the children's lives, but remained unmarried.

Respondent Division of Child and Family Services (DCFS) removed the children from Cristan's custody in April 2000. On April 6, law enforcement officers had found the children, unsupervised, playing on a busy highway. At that time, the children were ages five, four and two. Cristan was found asleep in her home. A drug test later that day revealed that Cristan had used amphetamines. The next day, C.A.G. stopped breathing and was taken to the hospital. Physicians discovered bruising on C.A.G. that was consistent with forceful grabbing. A physician contacted DCFS, requesting protective custody of C.A.G. DCFS took legal custody of all three children, placing physical custody of the children with Vincent. During the summer of 2000, after learning of Vincent's third domestic violence charge and because of his failure to comply with interstate placement restrictions, DCFS removed the children from his custody. After nearly 2 1/2 years of attempts to return the children to Cristan and Vincent, DCFS petitioned the district court to terminate Cristan's and Vincent's parental rights. After conducting a termination proceeding, the district court issued an order terminating both Cristan's and Vincent's parental rights.

On appeal, Vincent argues that NRS 128.109(2) is unconstitutional as it infringes on his substantive due process rights. This statute establishes a presumption that children who have been placed outside of their homes for fourteen of twenty consecutive months have their best interest served by parental termination. Additionally, both parents argue that clear and convincing evidence did not support the district court's termination of their parental rights and that termination of their rights was not in the children's best interest. We conclude that NRS 128.109(2) is constitutional and that substantial evidence supports the district court's decision to terminate Cristan's and Vincent's parental rights.

Constitutionality of NRS 128.109(2)

[Headnote 1]

Vincent contends that NRS 128.109(2) violates his substantive due process rights because it interferes with the parent-child relationship.

[Headnotes 2-4]

This court reviews questions of law de novo.[1] We recognize that a parent's interest in raising his or her child is a fundamental

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[1] *SIIS v. United Exposition Services Co.*, 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

right.[2] Parental termination proceedings implicate this fundamental right. We analyze substantive due process challenges to statutes impinging on fundamental constitutional rights under a strict scrutiny standard.[3] The statute in question, NRS 128.109(2), must therefore be "narrowly tailored to serve a compelling [state] interest."[4] Pursuant to NRS 128.109(2), it is presumed that termination of parental rights will serve a child's best interest when "a 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."

In determining whether the statute is narrowly tailored to serve a compelling state interest, we turn first to the state interest involved. We have previously held that NRS 128.109(2) expresses "the general public policy to seek permanent placement for children rather than have

them remain in foster care."[5] We observe that it makes good sense and exceedingly sound public policy for the district court, after the requisite time has passed, to evaluate whether continuing attempts to return a child to the home are in the child's best interest. Certainly the state has a compelling interest in assuring that abused and neglected children achieve safe, stable and permanent home environments within which to be reared. Both periodic placement reviews[6] and the statute in question, which authorizes a presumption in favor of termination after a child has spent a significant time in foster care, address this compelling interest. Without placement reviews and without a statute granting a presumption in favor of termination when a child has been in foster care for a significant time, a child is susceptible to drift for an indefinite length of time within the foster care system. If a child has spent fourteen or more of twenty consecutive months outside the home of either or both parents, the presumption that termination of parental rights is in the child's best interest is more than justified.

Next, we turn to the question of whether NRS 128.109(2) is narrowly tailored. We observe first that the statute applies only where a child is removed from the home because of parental abuse or neglect pursuant to NRS Chapter 432B. Additionally, we note

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[2] *Matter of Parental Rights as to J.L.N.*, 118 Nev. 621, 625, 55 P.3d 955, 958 (2002).

[3] *Id.*

[4] *Id.*

[5] *Id.* (examining NRS 128.109(2), in conjunction with NRS 432B.553(2), which provides for a plan of permanent placement when a child remains outside the home for fourteen consecutive months).

[6] *See* NRS 432B.580 (mandating that, when a child is placed into protective custody, the court must review the placement semiannually).

that the statute's presumption is rebuttable. Parents are free to present evidence showing that termination of their parental rights is not in a child's best interest. Also, the statute must be read in conjunction with NRS 128.105, which requires the court to examine the child's best interest and also to make a determination concerning parental fault. Moreover, the presumption addresses the compelling state interest of planning for safe, stable and permanent placements for abused and neglected children. Therefore, we conclude that NRS 128.109(2) is narrowly tailored to promote the state's compelling interest in the welfare of and permanency planning for children who have been taken from the physical shelter of their parents' custody. Accordingly, Vincent's argument is without merit.

Termination of parental rights

[Headnotes 5, 6]

In order to terminate parental rights, a petitioner must prove by clear and convincing evidence that termination is in the child's best interest and that one of the enumerated parental fault factors set forth in NRS 128.105(2) exists.[7] If substantial evidence in the record supports the district court's determination that clear and convincing evidence warrants termination, we will uphold the termination order.[8] In the present case, the district court determined that terminating Vincent's and Cristan's parental rights was in the children's best interest. Although NRS 128.105(2) only requires a finding of one of the enumerated parental fault factors, the district court here found parental fault on the grounds of neglect, unfitness, failure of parental adjustment, risk of serious injury and token efforts to reunify with the children.[9]

Parental fault

Neglect

[Headnote 7]

The district court determined by clear and convincing evidence that, due to Cristan's persistent drug abuse and her neglect of the children's needs, Cristan failed to provide her children with proper parental care.[10] Several instances supported the district court's determination. First, DCFS had found the children in a dirty condition and injured while in Cristan's care. Second, DCFS reported that the children were found unsupervised on two separate occa

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[7] *Matter of Parental Rights as to N.J.*, 116 Nev. 790, 801, 8 P.3d 126, 133 (2000).

[8] *Id.* at 795, 8 P.3d at 129.

[9] NRS 128.105(2)(b)-(f).

[10] *See* NRS 128.014.

sions. On one occasion, law enforcement officers found the children playing on a busy highway while Cristan was sleeping in her home. A drug test later that day revealed that Cristan had used drugs. Third, Cristan had tested positive for cannabinoids and amphetamines while pregnant with C.A.G. Finally, the district court noted several incidents of domestic violence had occurred in the home while the children were present and, as a result, the children were placed in harm's way.

The district court also determined by clear and convincing evidence that, in light of Vincent's inability to control his temper, his participation in numerous domestic violence incidents and his failure to consistently communicate with the children, Vincent failed to provide the proper care necessary for the children's emotional well-being. The district court found that Vincent had engaged in repeated instances of domestic violence. In one of these incidents, Vincent pushed Cristan while she held T.V.G. These incidents sometimes occurred in front of the children. Moreover, when the children were not in Vincent's immediate custody, he failed to consistently communicate with them. For example, when DCFS removed the children from Cristan's custody in 1997 and again in 1998, Vincent did not attempt to regain physical custody or request that DCFS return the children to his care. He also failed to consistently and meaningfully communicate with the children between June 2000 and June 2002, thereby disregarding the children's emotional needs.

Accordingly, we conclude that substantial evidence supports the district court's determination that Cristan and Vincent neglected their children.

Unfitness of parent

[Headnote 8]

NRS 128.106(6) provides that, when determining parental unfitness, a court may consider felony convictions of the parent "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." The district court noted that, despite a case plan tailored to treat Vincent's problems with anger management and domestic violence, at the time of the termination hearing, Vincent was serving a sentence of imprisonment for his third

domestic violence conviction, a felony under NRS 200.485(1)(c). Vincent's felony conviction was especially relevant given the district court's determination that Vincent was often unable to control his temper. Vincent's contact with DCFS, in which he verbally attacked social workers on the telephone, was also probative of his aggressive ten

dencies and inability to manage his anger. Thus, the district court properly considered Vincent's felony conviction.

[Headnote 9]

The district court also found that the children had witnessed several of these domestic violence incidents, had become involved in at least some of them, and that the children behaved inappropriately by acting like their parents. Vincent argues that the district court failed to consider that he was being "brushed off" by DCFS, in that DCFS was not promoting reunification, and that DCFS was not concerned with his rights as a parent. We need not address these allegations, however, because Vincent did not counter the evidence demonstrating the negative effect of his behavior on the children's emotional well-being. Moreover, the district court found that Vincent had failed to consistently communicate with the children while they were in foster care and, therefore, failed to provide proper guidance and support.

The district court found that, for much of the children's lives, Cristan had abused drugs.[11] Moreover, the district court determined that Cristan's drug use often rendered her unable to provide the appropriate care for the children and, at times, put the children in danger, such as allowing the children to wander the streets unsupervised and abusing drugs while pregnant. Additionally, the district court found repeated incidents of domestic violence in the home, which often placed the children at risk of harm.

The district court found by clear and convincing evidence that neither Cristan nor Vincent were able to offer continuous care to the children, whether the interruption arose from violence in the home, drug use or neglect. The district court further concluded that, because of their respective faults, both parents had failed "to provide [the children] with proper care, guidance and support."[12] We conclude that substantial evidence supports the district court's finding of parental unfitness.

Failure of parental adjustment

The district court determined that Vincent and Cristan had not adjusted their conduct or circumstances, or made reasonable efforts to do so, within a reasonable time to warrant the return of the children to their care.[13]

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[11] NRS 128.106 sets forth specific considerations in determining neglect or unfitness. NRS 128.106(4) provides that "[e]xcessive use of intoxicating liquors, controlled substances or dangerous drugs which renders the parent consistently unable to care for the child," is one such factor.

[12] NRS 128.018 (" 'Unfit parent' is any parent of a child who, by reason of his fault or habit or conduct toward the child or other persons, fails to provide such child with proper care, guidance and support.").

[13] *See* NRS 128.0126; NRS 128.107.

[Headnote 10]

The district court found by clear and convincing evidence that, since DCFS had removed the children from Cristan's custody, Cristan had failed to substantially comply with her case plan by failing to maintain stable employment and, more importantly, by failing to maintain a drug-free lifestyle. Cristan argues that testimony from her Henderson caseworkers demonstrates that she substantially complied with her case plan, that her failure was partly due to the revolving door of social workers assigned to her case and that DCFS enacted procedures to weaken the family bonds, such as refusing to place the children in Henderson, where she could be near to them.[14] Cristan, however, was unable to dispute the fact that she did not remain drug free. Nor did she counter evidence that her drug use negatively affected the children. Furthermore, placement of the child near the parent must be consistent with the best interest of the child. DCFS could reasonably have concluded that, due to the lack of consistency in Cristan's living arrangements and her continued substance abuse, remaining with stable foster parents in Elko[15] was in the children's best interest.

[Headnote 11]

The district court found by clear and convincing evidence that, since removal, Vincent had been convicted of a third domestic violence offense and had been terminated from his employment due to an altercation at work. Additionally, Vincent's treatment of DCFS social workers supported the district court's determination that Vincent had failed to curb his temper. Vincent argues that DCFS's failure to follow procedure created animosity between him and the social workers, making it unproductive for him to communicate with DCFS. Vincent contends that DCFS failed to address his concerns and ignored his repeated requests to place the children with his family. Vincent's animosity to DCFS does not excuse his failure to regularly communicate with his children. Nor was he consistent in his attempts to regain custody of the children. While Vincent had begun to send letters to the children in the summer of 2002, the district court properly determined that these efforts were too little, too late, and that Vincent had not changed the circumstances and conditions that had led to removal.

Accordingly, we conclude that substantial evidence supports the district court's finding that the parents had failed to modify their

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[14] *See* NRS 432B.540(2) (providing that DCFS place the children as near to the parents as "is consistent with the best interests and special needs of the child").

[15] Cristan and Vincent had previously lived in Ely, where the children had been born and raised. After DCFS took custody of the children, Cristan moved to southern Nevada to obtain employment and enter a rehabilitation program.

conduct within a reasonable time to justify the return of the children to either parent.

Risk of serious injury

[Headnote 12]

Based on its factual findings, the district court determined that Cristan's drug problems and her failure to adjust her circumstances would cause the children to suffer emotionally and would put them at risk of physical harm if they were returned to her care. The district court noted

Vincent's lack of communication with the children, the children's integration into the foster home and that the children had been exposed to domestic violence throughout their lives.

Additionally, DCFS cautioned that Vincent was incarcerated at the time of the termination proceedings, was unemployed, lacked stable housing and lacked foster care licensing for Cristan's child, D.R.H., who was neither Vincent's biological nor adopted child. While Vincent insists that the children could have stayed with relatives in Utah, the relatives had not obtained foster care licensing needed for D.R.H., placing him at risk of separation from his brothers. Moreover, at the termination proceeding, there was conflicting testimony as to whether Vincent's relatives were serious about caring for the children long-term. DCFS was also awaiting a response from Utah on whether the state would accept interstate placement. Accordingly, the district court properly determined that the uncertain situation would expose the children to a risk of serious emotional or physical injury.

Token efforts

[Headnote 13]

Pursuant to NRS 128.109(1)(a), because the children were in foster care for over thirty consecutive months, a presumption arose that Cristan and Vincent had "demonstrated only token efforts" to reunify with their children. The district court also considered additional evidence demonstrating that the parents had failed to make any attempt to overcome their respective faults or to reunify with their children.

The district court found that Cristan's failure to adequately address her drug problem, even after DCFS had provided extensive drug rehabilitation services, demonstrated that she had made only a token effort to become a fit parent. Similarly, the district court concluded that, despite his participation in numerous anger management courses, Vincent had also failed to adequately address his anger problems. The district court also considered that, while Vincent testified that he had urged his attorney to get the matter

back to court, Vincent failed to provide a reasonable explanation as to why he did not contact the children through the foster parents or DCFS. Similarly, Vincent's argument that DCFS's animosity towards him prevented him from communicating with his children is unreasonable. Vincent's failure to demonstrate his ability to provide continuous long-term care for the children supported the district court's conclusion that he had made only token efforts to eliminate risks to the children and to become a fit parent.

Accordingly, we conclude that substantial evidence supports the district court's finding that Cristan and Vincent had made only token efforts to reunify with their children.

Best interest

[Headnote 14]

"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."[16] These considerations are also relevant to the children's best interest.[17]

[Headnote 15]

As indicated above, the district court found that both Vincent and Cristan had neglected their children, were unfit as parents, had failed to adjust their conditions or circumstances to reunify with their children and had made only token efforts in doing so. Moreover, the district court found that returning the children to either parent would put the children at substantial risk of harm.

The district court also found by clear and convincing evidence that Cristan had not completed her DCFS-sponsored case plan, as she had failed to overcome her drug problems.[18] While Vincent completed his case plan by his continued participation in anger management and domestic violence courses, his problems in these areas continued even after completion of the courses.

Next, the district court found that neither parent was able to meet the specific mental and emotional needs of the children.[19] The district court noted that Vincent failed to communicate with the children for almost two years. Vincent responds that he continually

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[16] NRS 128.005(2)(c).

[17] *See Matter of N.J.*, 116 Nev. at 800, 8 P.3d at 133.

[18] *See Cooley v. State, Dep't of Hum. Res.*, 113 Nev. 1191, 1197-98, 946 P.2d 155, 157 (1997) (considering whether a parent completes a DCFS-sponsored case plan when determining the best interest of the child), *overruled on other grounds by Matter of N.J.* 116 Nev. at 800 n.4, 8 P.3d at 132 n.4.

[19] *See Bush v. State, Dep't Hum. Res.*, 112 Nev. 1298, 1303-04, 929 P.2d 940, 944 (1996) (considering whether the parent is able to meet the specific mental, emotional and developmental needs of the child when determining the best interest of the child).

demanded the return of his children, and that his lack of communication with DCFS was a direct result of DCFS's failure to reunify the family. The record, however, does not support Vincent's assertion. The district court also found that Cristan had failed to provide for her children's emotional needs, which was often a result of her drug addiction.

Additionally, the district court found that the case history was replete with incidents of domestic violence between Cristan and Vincent, and that the children were present during several violent events. Witnessing these incidents had also affected the children's emotional well-being, as evidenced by the foster parent's description of their behavior. The district court concluded that, because of the pattern of domestic violence, Cristan and Vincent had been unable to provide a safe home for the children. Additionally, the children were sometimes caught in the middle of the fight, as evidenced by Cristan accidentally striking D.R.H. during one incident. Finally, NRS 432B.157 provides a rebuttable presumption that placing the child with a parent who has engaged in domestic violence does not serve the child's best interest. Here, both parents had engaged in domestic violence acts on more than one occasion. Neither parent provided any evidence rebutting this presumption.

[Headnote 16]

The district court also found the testimony of clinical psychologist Dr. Ronald G. Seaborn persuasive. Dr. Seaborn testified that "the parents have demonstrated a history of hedonistic, self-indulging, self-destructive behavior without care or consideration for the serious detrimental effects this behavior was having on the children." Vincent argues that the district court failed to consider that DCFS had not provided Dr. Seaborn with a complete report. Indeed, Dr. Seaborn testified that his impression was that the father had been out of the picture, that Dr. Seaborn himself was unaware of the programs in which the parents had participated, that he had

only received a negative history of the parents and that, had he been provided with this information, his final opinion would have been different. He also testified that he was not making a determination on whether termination of parental rights was in the children's best interest. As Dr. Seaborn testified to the basis of his opinion and the limitations of his opinions, the district court was free to weigh his testimony accordingly. DCFS's failure to provide a complete report to Dr. Seaborn does not, under these circumstances, preclude the admissibility of his testimony. Rather, it affects the weight the district court might have accorded Dr. Seaborn's observations and opinions. We perceive no abuse of discretion by the district court in favorably considering Dr. Seaborn's testimony. We further note that Vincent and Cristan fully availed

themselves of the opportunity to cross-examine Dr. Seaborn on the information upon which he based his opinion.

Additionally, the district court found, by clear and convincing evidence, that the boys were adapting well to the foster home and had made some positive adjustments while in foster care. The foster mother had testified that the children rarely mentioned their parents.[20] At the time of the termination proceedings, these young children had lived with the foster parents for over two years.[21]

Finally, the district court noted that, because the children had remained in foster care for over thirty consecutive months since their removal pursuant to NRS Chapter 432B, under NRS 128.109(2), a presumption arose that terminating Vincent's and Cristan's parental rights was in the children's best interest. Substantial evidence supports the district court's finding that neither parent has rebutted this presumption. Accordingly, we conclude that substantial evidence supports the district court's determination that termination of parental rights was in the children's best interest.[22]

CONCLUSION

The district court found by clear and convincing evidence that both parents were negligent, unfit and had failed to adjust their faults to obtain custody of the children, that return of the children to either parent would place the children at risk of harm and that the parents had made only token efforts to regain custody. The district court also determined by clear and convincing evidence that terminating Cristan's and Vincent's parental rights was in the children's best interest. Moreover, because the children had remained in foster care for over thirty months since their removal, a presumption arose that terminating Cristan's and Vincent's parental rights was in the children's best interest. Having reviewed the record, we conclude that substantial evidence supports the district court's decision. Accordingly, we affirm the judgment of the district court.

BECKER and GIBBONS, JJ., concur.

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[20] *See Matter of Parental Rights as to Gonzales*, 113 Nev. 324, 335, 933 P.2d 198, 206 (1997) (noting that the mother "was no more than a friendly stranger to the girls"), *overruled on other grounds by Matter of N.J.*, 116 Nev. at 800 n.4, 8 P.3d at 132 n.4.

[21] *See Bush*, 112 Nev. at 1303, 929 P.2d at 944 (considering whether the child was placed into foster care at a young age when determining the best interest of the child).

[22] While Vincent argues that DCFS should have placed the children with his relatives, this argument has no bearing on whether the district court properly terminated his parental rights, and therefore, we need not consider it.

IN THE MATTER OF THE PARENTAL RIGHTS AS TO N.D.O., T.L.O., AND T.O.

LETESHEIA O., AKA LATESHEIA O., APPELLANT, *v.* THE STATE OF NEVADA, DIVISION OF CHILD AND FAMILY SERVICES, DEPARTMENT OF HUMAN RESOURCES, RESPONDENT.

No. 42937

July 14, 2005

115 P.3d 223

Appeal from a district court order terminating parental rights. Eighth Judicial District Court, Family Court Division, Clark County; Gerald W. Hardcastle, Judge.

The supreme court, PARRAGUIRRE, J., held that: (1) due process did not demand appointment of counsel for mother in termination proceedings; (2) no absolute right to counsel in termination proceedings exists in Nevada, abrogating *Matter of Parental Rights as to Bow,* 113 Nev. 141, 930 P.2d 1128 (1997), and *Matter of Parental Rights as to Daniels,* 114 Nev. 81, 953 P.2d 1 (1998); (3) any error in admission of hearsay testimony was harmless; and (4) trial court was statutorily required to consider evidence of mother's prior convictions.

[25]*See id.* § 300.661(c); *id.* § 300.660(b) ("In resolving a complaint in which it has found a failure to provide appropriate services, [NDOE], pursuant to its general supervisory authority . . . must address: (1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement . . . .").

Affirmed.

Mills & Mills and *Gregory S. Mills,* Las Vegas, for Appellant.

Brian Sandoval, Attorney General, and *Dennis C. Wilson,* Deputy Attorney General, Carson City, for Respondent.

1. INFANTS.

District court has statutory discretion to appoint counsel for an indigent parent in parental rights termination proceedings. NRS 128.100(2).

2. CONSTITUTIONAL LAW; INFANTS.

Due process did not demand appointment of counsel for mother in proceedings for termination of her parental rights, where contested issues were not complex and case did not involve expert testimony, State's interest in protecting children from abuse and neglect and providing them with stable family life was also strong, and risk of erroneous decision

was minimal; mother testified about her long-term cocaine addiction, and State's evidence consisted of court-mandated reports that reflected physical abuse and neglect of children, little progress toward reunification, and mother's criminal convictions, which evidence was admissible over any objection. U.S. CONST. amend. 14; NRS 128.100(2).

3. CONSTITUTIONAL LAW; INFANTS.

No absolute right to counsel in termination proceedings exists in Nevada; the applicable statute contemplates a case-by-case determination of whether due process demands the appointment of counsel; abrogating *Matter of Parental Rights as to Bow,* 113 Nev. 141, 930 P.2d 1128 (1997); *Matter of Parental Rights as to Daniels,* 114 Nev. 81, 953 P.2d 1 (1998). U.S. CONST. amend. 14; NRS 128.100(2).

4. CONSTITUTIONAL LAW.

No absolute right to counsel exists under the United States Constitution's Fourteenth Amendment in parental rights termination proceedings; however, at a minimum, the states must balance the interests of the state and the parent to determine if due process demands counsel. U.S. CONST. amend. 14.

5. INFANTS.

Any error in admission of hearsay testimony of investigator and case manager for Division of Child and Family Services (DCFS) in termination of parental rights proceedings, to effect that children had told them that they were happy living with their grandmother in Mississippi and wanted to remain with her, that they had large extended family near their grandmother, and that grandmother had expressed wish to adopt them, was harmless, where such information was also contained in reports required to be filed with court by DCFS. NRS 51.035.

6. INFANTS.

Trial court was statutorily required to consider evidence of mother's prior convictions in proceedings for termination of her parental rights. NRS 128.106(6).

7. INFANTS.

Substantial evidence supported district court's findings of parental fault, in proceedings for termination of mother's parental rights, on grounds of unfitness, failure of parental adjustment, and token efforts to avoid being an unfit parent, and finding that termination of parental rights served children's best interests, where mother failed to present sufficient

evidence to rebut evidence with respect to children's best interests. NRS 128.105(2)(c), 128.109(1)(a)–(b), (2).

Before the Court EN BANC.

OPINION

By the Court, PARRAGUIRRE, J.:

In considering this appeal, we necessarily examine when a constitutional right to counsel exists in the context of a parental rights termination proceeding, for without this constitutional right, no ineffective-assistance-of-counsel claim will lie. We conclude that the right to counsel must be assessed on a case-by-case basis, consistent with the United States Supreme Court's decision in *Lassiter v. Department of Social Services.*[1] As no right to counsel exists in this case, we do not reach the claim of ineffective assistance of counsel.

FACTS

Appellant Letesheia O. challenges the termination of her parental rights to her three children. Her two older children have lived outside of Nevada with their maternal grandmother for most of their lives. Letesheia moved to Las Vegas with her youngest child when the child was 3 months old. Thereafter, Letesheia was convicted several times for theft and sentenced to jail time and house arrest. Letesheia's two aunts, who reside in Las Vegas, cared for her youngest child during Letesheia's absence. The youngest child was removed from Letesheia's care once due to physical abuse.

Six years after Letesheia moved to Las Vegas, her two older children joined her. Within less than a year, the State had removed all three children from Letesheia's home several times due to physical abuse and neglect. After Letesheia failed to substantially comply with her court-mandated case plan, all three children were placed in the custody of their maternal grandmother in Mississippi. State agencies worked with Letesheia to develop a new case plan. Letesheia agreed to take parenting, substance abuse and domestic violence classes and to participate in counseling, but she only minimally complied with her case plan. Moreover, Letesheia also was stealing in order to fund her cocaine habit and subsequently was arrested on more than 30 counts of theft. She later escaped from prison and appeared at her caseworker's office to inquire about her children. Police arrested Letesheia, and she remained in custody throughout the parental rights termination pro

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[1]452 U.S. 18 (1981).

ceedings. At the time of the proceedings, she had been incarcerated for about 12 of the 18 months since her children had been placed with their grandmother.

The district court granted the State's petition to terminate the parental rights of Letesheia and the putative father. The court found that the State proved by clear and convincing evidence the statutory parental fault grounds of unfitness, failure of parental adjustment and token efforts to avoid being an unfit parent. The court further determined that termination of parental rights is in the children's best interests, so that their maternal grandmother may adopt them. Letesheia appeals.

DISCUSSION

Letesheia argues that she received ineffective assistance of counsel because her trial attorney failed to object during trial, despite many hearsay statements made by the Division of Child and Family Services (DCFS) investigator and case manager about the children's bond with their grandmother. She also notes that counsel did not object to the State's questioning of Letesheia about the details of her felony convictions.

[Headnotes 1, 2]

NRS 128.100(2) provides the district court with the discretion to appoint counsel for an indigent parent in parental rights termination proceedings. Recent precedent may have generated confusion as to whether, and when, a right to counsel exists. In *Matter of Parental Rights of Weinper,* this court noted that other states have determined that procedural due process for termination proceedings requires: "(1) a clear and definite statement of the allegations of the

petition; (2) notice of the hearing and the opportunity to be heard or defend; and (3) the right to counsel."[2] Without explicitly stating that due process in Nevada termination proceedings requires that the parent be afforded these rights, we determined that the parent in *Weinper* had been afforded all of these enumerated rights.[3]

[Headnote 3]

In two subsequent opinions, this court stated that a parent must be afforded the rights described in *Weinper,* including the right to counsel, in order to satisfy due process.[4] However, we now clarify

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[2]112 Nev. 710, 713, 918 P.2d 325, 328 (1996), *superseded by statute on other grounds as stated in Matter of Parental Rights as to N.J.*, 116 Nev. 790, 798-800, 8 P.3d 126, 131-32 (2000); *see also* U.S. Const. amend. XIV, § 1; Nev. Const. art. 1, § 8(5).

[3]*Weinper,* 112 Nev. at 713, 918 P.2d at 328.

[4]*Matter of Parental Rights as to Bow,* 113 Nev. 141, 150-51, 930 P.2d 1128, 1134 (1997) (quoting *Weinper* and explaining that "[t]his court has stated that

that no absolute right to counsel in termination proceedings exists in Nevada. Our statute contemplates a case-by-case determination of whether due process demands the appointment of counsel.

In *Lassiter v. Department of Social Services,* the Court held that the Fourteenth Amendment does not require the appointment of counsel in all termination proceedings.[5] The Court reviewed the due process evaluation propounded in *Mathews v. Eldridge,* holding that a court must balance the private interests at stake, the government's interest and the risk that the procedures used will lead to erroneous decisions.[6] The Court noted that a parent's right to the companionship, care, and custody of her children is an important interest that warrants deference absent the State's strong, countervailing interest in protecting children.[7] The Court explained that because the State and the parent at least theoretically share an urgent concern for the child's welfare, both parties may have a strong interest in appointed counsel.[8]

However, the Court concluded that because " 'due process is not so rigid as to require that the significant interests in informality, flexibility and economy must always be sacrificed,' " appointment of counsel is not per se required in all termination proceedings.[9] In explaining that no bright line rule exists, the Court reasoned that the standards of proof and evidentiary issues in a termination proceeding often are not complicated, though also acknowledged that parents with little education or court experience may have difficulty presenting a case, particularly when expert medical or psychiatric testimony is involved.[10] Although the Court concluded that the parent in *Lassiter* was not entitled to counsel because her case was not particularly complex, nor was expert testimony involved, the Court acknowledged that appointment of counsel is generally favored:

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as a matter of due process, 'parents are entitled to: (1) a clear and definite statement of the allegations of the petition; (2) notice of the hearing and the opportunity to be heard or defend; and (3) the right to counsel' "), *superseded by statute on other grounds as stated in Matter of Parental Rights as to N.J.*, 116 Nev. at 798-800, 8 P.3d at 131-32; *Matter of Parental Rights as to Daniels,* 114 Nev. 81, 88, 953 P.2d 1, 5 (1998) (stating that the court in *Weinper* had examined due process in other jurisdictions and noted that parents have a right to counsel in termination proceedings, and then considering whether the right to counsel attaches to any earlier proceedings), *superseded by statute on other grounds as stated in Matter of Parental Rights as to N.J.*, 116 Nev. at 798-800, 8 P.3d at 131-32.

[5]452 U.S. 18, 31 (1981).

[6]424 U.S. 319, 335 (1976).

[7]*Lassiter,* 452 U.S. at 27.

[8]*Id.* at 27-28.

[9]*Id.* at 31 (quoting *Gagnon v. Scarpelli,* 411 U.S. 778, 788 (1973)).

[10]*Id.* at 29-30.

"[i]nformed opinion has clearly come to hold that an indigent parent is entitled to the assistance of appointed counsel not only in parental termination proceedings, but in dependency and neglect proceedings as well."[11]

[Headnote 4]

Thus, after *Lassiter,* no absolute right to counsel exists under the United States Constitution's Fourteenth Amendment in parental rights termination proceedings. However, at a minimum, the states must balance the interests according to the *Mathews* test to determine if due process demands counsel. NRS 128.100 allows for that due-process balancing.

In this case, the district court appointed counsel to represent Letesheia without any due process analysis. We therefore examine whether the specifics of Letesheia's termination proceeding mandated that she receive the assistance of counsel in order to ensure due process. Because the right to effective assistance of counsel derives only from a constitutional right to counsel, if Letesheia did not have a constitutional right to counsel, her ineffective-assistance claim must fail.

Clearly, Letesheia has a strong interest at stake in proceedings to terminate her rights to her children. We have characterized parental rights termination as a "civil death penalty" because legal termination severs the parent-child relationship.[12] The State also has a strong interest in a just and correct determination as it seeks to protect Letesheia's children from abuse and neglect and ensure that they have a stable family life. We expect that both the parent's interests and the State's interests will almost invariably be strong in termination proceedings.

Thus, we turn to the risk of an erroneous decision. As in *Lassiter,* case workers testified about the events that led to the placement of Letesheia's children with their grandmother, as well as Letesheia's progress on her case plan. The DCFS reports documented physical abuse and neglect of her children, including abuse and neglect petitions, and ongoing domestic violence. These reports showed that DCFS removed Letesheia's children from her care four times between August 2000 and May 2002. The reports, as well as caseworker testimony, indicated that the children were happy living with their grandmother and wanted to stay with her.

[Headnote 5]

In raising her ineffective-assistance claim on appeal, Letesheia points out that the record reflects no objections by her attorney when the DCFS investigator and case manager testified that the children told them that they were happy living with their grand

[11]*Id.* at 33-34.

[12]*Drury v. Lang,* 105 Nev. 430, 433, 776 P.2d 843, 845 (1989).

mother, wanted to remain with her, had a large extended family near their grandmother in Mississippi, and that the grandmother had expressed a desire to adopt the children. Neither the children nor the grandmother were present at the trial, and the testimony by the State caseworkers as to the grandmother's and children's statements constituted hearsay.[13] However, these statements appeared in the reports that DCFS is required to complete and submit to the district court; the court monitors the children and parents through these reports. An objection to the admission of these hearsay statements would have been unsuccessful because the statements already formed part of the district court record. Whether or not Letesheia had received assistance of counsel, the hearsay statements could not have been kept out of the proceeding.

[Headnote 6]

Letesheia also argues that her counsel was ineffective in failing to challenge the admission into evidence of her previous convictions. As in our discussion regarding the hearsay statements, Letesheia's counsel had no role in whether details of Letesheia's convictions were admitted into evidence. We previously have explained that "[w]hen considering a parent's incarceration in termination proceedings, the district court must consider the nature of the crime, the sentence imposed, who the crime was committed upon, the parent's conduct toward the child before and during incarceration, and the child's specific needs."[14] As the district court specifically is directed to consider the details of the parent's convictions, Letesheia's counsel was powerless to prevent the admission into evidence of information surrounding Letesheia's felony convictions. Again, whether or not Letesheia had received assistance of counsel, NRS 128.106(6) dictates that the court consider details of her previous convictions.

We identify no particular intricacies of Letesheia's case that would undermine confidence in the result the district court reached. The Court in *Lassiter* noted that cases that require expert testimony may be difficult to navigate without counsel. In Letesheia's case, no expert testimony was offered.[15] Letesheia herself testified about her long-term cocaine addiction. The evidence the State presented to argue that termination of parental rights was warranted consisted of court-mandated DCFS reports that reflected physical abuse and neglect and little progress toward reunification, as well as Letesheia's criminal convictions. Particularly in light of

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[13]*See* NRS 51.035.

[14]*Matter of Parental Rights as to J.L.N.*, 118 Nev. 621, 628, 55 P.3d 955, 960 (2002); *see also* NRS 128.106(6).

[15]We note that Letesheia's counsel called a therapist who had met with Letesheia only a few times and who offered general observations that with therapy Letesheia could learn to parent appropriately.

the fact that this evidence was admissible over any objection, we determine that nothing in the record points to a high risk of an incorrect decision.

We emphasize that in many instances, including cases that involve medical, psychiatric or other expert testimony, complex facts or evidentiary questions, or a parent who for another reason is unable to represent herself, appointed counsel may be required to satisfy due process. However, balancing the interests involved in this case reveals that Letesheia was not constitutionally entitled to counsel. This conclusion precludes consideration of her ineffective-assistance-of-counsel claim.

[Headnote 7]

We have considered Letesheia's remaining claims of error and find that they lack merit. Substantial evidence supports the district court's findings of parental fault on the grounds of unfitness,[16] failure of parental adjustment,[17] and token efforts to avoid being an unfit parent,[18] and that termination of parental rights served the children's best interests.[19]

CONCLUSION

We conclude that, though the district court properly exercised its discretion by appointing counsel, Letesheia was not constitutionally entitled to counsel. Balancing the interests, both the State and Letesheia had a very strong interest in the correct result. Because the evidence the State presented is evidence that the district court must consider in parental rights termination proceedings, no significant risk of an erroneous decision existed in this case. Due process did not mandate appointment of counsel, and thus we cannot reach Letesheia's claim of ineffective assistance of counsel. Further, substantial evidence supports the district court's judgment that termination of Letesheia's parental rights was warranted based on parental fault and the best interests of the children. Accordingly, we affirm the district court's order terminating the parental rights of Letesheia O.

BECKER, C. J., ROSE, MAUPIN, GIBBONS, DOUGLAS and HARDESTY, JJ., concur.

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[16]NRS 128.105(2)(c).

[17]NRS 128.109(1)(b).

[18]NRS 128.109(1)(a).

[19]NRS 128.109(2). We note that the statutory presumptions set forth in NRS 128.109 are rebuttable. *J.L.N.,* 118 Nev. at 626, 55 P.3d at 958. However, Letesheia failed to present sufficient rebuttal evidence.