

Abandoned, Abused, or Neglected: An Overview of a Child's Entry Into Dependency Court System

BY JEFF BRIGGS, ESQ.

Thousands of children in Nevada are the subject of dependency court cases. The procedures for their removal from parents or other adult caregivers are strictly governed by statute and early judicial review.

Circumstances arise daily in our communities where children may need protection due to lack of an available caregiver or lack of a safe caregiver. They may be as egregious as sexual exploitation, or as simple as a failure to provide for the basic needs of the child. Here are a few examples:

- Imagine yourself driving by the scene of an accident and witnessing an adult being loaded into an ambulance or the back of a patrol car. You then notice children on the side of the road or in the back of a separate patrol car – what happens to those kids?

- Consider for a moment the circumstances of a child who has been detained at a juvenile facility or is being treated in an acute care mental facility, but the need for said detention or treatment has concluded.

What happens if an overwhelmed parent decides they cannot or will not pick their child up when they are released?

- What happens to a newborn baby who is born suffering withdrawal symptoms resulting from prenatal substance exposure?

Children of an age to express themselves under these, and a multitude of similar scenarios, often have some very basic, and understandable questions.

“What is going on? Why am I being taken away?”

In Nevada, an abandoned child or one who has been abused or neglected is deemed by law to be in need of protection. Abuse is defined as physical or mental injury of a nonaccidental nature, sexual exploitation, or sexual abuse. Neglect is defined in Nevada as the failure to provide for basic needs or a failure to provide proper care, control, and supervision of a child as necessary for the welfare of the child or the refusal to do so when able to. Neglect may take the form of abandonment or the failure to provide for the needs of a child (often referred to as “basic needs”) relating to food, clothing, shelter, education as required by law, or adequate



medical care. Other circumstances that require protection might also include if the person responsible for the welfare of a child is unable to discharge their duties due to hospitalization, incarceration, or other physical or mental incapacity. Nevada Revised Statute (NRS) 432B.330. A child may need protection based on more than one underlying cause, i.e., both neglect and abuse. Additionally, a parent or other person responsible for the child's welfare may consent to having their child placed in protective custody. NRS 432B.390.

According to the most recent publicly released data (February 2023), the vast majority of children who are the subject of abuse or neglect in the U.S. are victims of some form of neglect – 76 percent; while slightly more than 16 percent are physically abused, and about 10 percent are abused sexually. *See* U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, *Child Maltreatment 2021*, available at <https://www.acf.hhs.gov/cb/data-research/child-maltreatment> (2023).

“Who are you?”

Invariably, a stranger removes a child from a circumstance where they are in danger or lack a safe caregiver. Nevada law identifies the people who can place a child in protective custody; they include a law enforcement agent, a juvenile probation officer, or a designee of an agency that provides child welfare services. If the agent, officer, or designee has reasonable cause to believe that immediate action is necessary to protect a child from injury, abuse, or neglect, they can statutorily take protective custody of the child. If exigent circumstances are not present or the threat to the child is not imminent, a warrant will be sought, and if granted, a child may be placed in protective custody.

“Where am I going?”

Pending a hearing on the need for protective custody, children must be placed in one of four settings: a hospital (if needed), with a suitable and able relative or other fictive kin, in a licensed foster home, or in a licensed shelter that provides care to children under such circumstances. Hopefully, a relative or other person known to the child can be located and is able and willing to care for the child; otherwise, the child will be placed with people they do not know. Whenever possible, a child in protective custody

pending an investigation and hearing must be placed with any siblings of that child. NRS 432B.390. Due to a lack of available licensed homes, it is not uncommon for larger sibling groups to be separated.

“How long do I stay here? What happens next?”

Following an emergency removal or the granting of a warrant, Nevada law requires a hearing be set to determine if a child should remain in protective custody pending further court action. The hearing must be held within 72 hours (excluding Saturdays, Sundays, and judicial holidays). Notice of the hearing must be provided to a parent or other person responsible for the child's welfare. NRS 432B.470. Common examples of persons responsible for a child's welfare other than a parent are guardians, a stepparent with whom the child lives, or an adult person continually or regularly found in the same household as the child. NRS 432B.130. The subject of the action – the child – does not need to be notified or present for the hearing.

At the hearing, a determination is made regarding whether there is reasonable cause to believe that it would be contrary to the welfare of the child to reside at their home, or if it is in the best interests of the child to place the child outside of their home. The court will order the immediate release of the child if it finds their best interests do not require protective custody. Alternatively, the court may issue an order maintaining protective custody pending a disposition. The court must determine if the placement of the child complies with Nevada law, and if not shall establish a plan with the agency that provides child welfare services for the prompt transfer to a placement that complies. NRS 432B.480.

An order maintaining protective custody is good for 10 days, by which time the agency must file a petition alleging the child is in need of continuing protection. NRS 432B.490. A petition need not be filed if the circumstances giving rise to protective custody have been remedied or no longer exist, in which case the child is returned.

Upon the filing, an adjudicatory hearing is set to allow the parties to admit or deny the allegations, and if denied, hear evidence on the petition. Evidentiary rules are relaxed in this proceeding, and all relevant and material evidence may be allowed and relied on to the extent of its probative value. The parties are afforded the opportunity to controvert any such evidence and examine witnesses. The court may require the presence of the child at this hearing. NRS 432B.530.

“How does the judge know what I want to happen?”

In Nevada, a child alleged to have been abused or neglected is a party to the action and the court is required to appoint an attorney to represent the child in all stages of the proceedings with the same rights and authority as an attorney representing the other parties. NRS 432B.420.

This is only the beginning of a child's dependency case. The goal of these cases is to find permanency for the child, and for them to exit the dependency system when it is safe to do so.

“Who will represent me?”

Throughout Nevada, Northern Nevada Legal Aid and Legal Aid Center of Southern Nevada provide legal representation for children in dependency and related proceedings through their respective Child Advocacy Programs. Additionally, opportunities to fulfill pro bono publico hours are available for attorneys who have a heart for working with children through what is likely to be the most difficult circumstances of their young life. The resolution of such cases, and the child's legally represented participation in it, will leave a lasting impression on them as they continue into adulthood. If you are interested in pursuing a pro bono opportunity, please contact:

- **Northern Nevada Legal Aid** (formerly known as Washoe Legal Services): Sean Stapleton, Pro Bono & Communications Manager, at ssapleton@nnlegalaid.org or (775) 321-2066; or
- **Legal Aid Center of Southern Nevada**: Carmen Ramirez, PB/CAP Liaison for the Legal Aid Center of Southern Nevada, at cramirez@lacs.org or (702) 386-1551.

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