

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, SPECIAL SESSION, February 22, 1968

Meeting was called to order at 11:20 A.M. by Chairman Marvin White.

Present: White, Lowman, Dungan, Hilbrecht, Schouweiler, Swackhamer, Torvinen, Kean, and Petrini.

Absent: None

The following Senators, members of the Senate Judiciary Committee, were present by invitation: Monroe, Hug, Christensen, Dodge, and Young.

Other Assemblymen present were: Frazzani, Viani, Foote, and Frank Young.

Invited to be present to speak on the bills were: Frank Daykin, Mr. Grayson, Bob Petroni, Dr. Theodore Johnson

MR. WHITE explained to the group the origin of AB 19, AB 20, and AB 21: how the Assembly Judiciary Committee had come to feel that they were doing more harm with AB 7 than they were doing good, so they had had these three new bills drawn up to take care of the things they were trying to do.

He introduced, to the Senators, the Judiciary's Special Subcommittee, which has been studying the problem and getting these new bills. They are: Zel Lowman, Chairman, Mr. Swackhamer, Mr. Torvinen, and Miss Dungan.

MR. SWACKHAMER: What we are actually doing with AB 21, besides giving the superintendent authority to transfer, is assuming on a state level what has been on a county level.

MR. WHITE asked MR. LOWMAN, as chairman of the subcommittee, to go over the various points on these three bills with the group.

AB 19: Amends financial and commitment provisions relating to mental illness.

MR. LOWMAN: There is nothing in AB 19 that was not originally in AB 7 and considerably more, according to the attorney in the department. If you have questions we can go through it, or we can see if Southern Nevada Memorial Hospital or the State Hospital has further questions.

SENATOR DODGE: What prompted this legislation?

MR. TORVINEN: Briefly, the basic problem was the general commitment bill passed at the last session, which provided for voluntary commitment but made no provision to pay for it. This has created a burden on the counties. This is the primary cause of this legislation.

MR. GRAYSON: The law passed in 1967 was based on the law from the District of Columbia. The circumstances in Nevada are different from those in D.C. from which our bill was taken. This new legislation is mostly provisions to adopt the thing to our needs.

MR. HILBRECHT: One other point: In Southern Nevada, under the new commitment bill, we had difficulty finding out who was going to see that involuntary commitment was carried through the courts in an orderly fashion. The D.A. claimed to represent the state only. The result was that legal societies were deluged by requests to represent the interests of the public at commitment hearings of involuntary nature. Page 4 spells out in no uncertain terms that the D.A. must carry out and represent the interests of the people.

MR. WHITE: The Clark County District Attorney is very much opposed to this.

MR. HILBRECHT: The language of the existing bill is uniformly interpreted by the D.A.'s to mean that they do represent the people at these hearings, allowing people adjudged insane to be represented by private attorneys. However, the Clark County District Attorney doesn't see it this way.

MR. PETRONI: There are too many delays. By the time a person is picked up and had a hearing at the hospital, which may be continued to another week, sometimes two-three weeks go by before an actual hearing finds he was not ill enough for commitment. If he is insane, then you have to wait for the State Hospital car to come down and pick him up. All this is a great expense to the county. The state must bear this.

MR. TORVINEN: Running through italicized sections: page 2, line 18. The last act provides that officials of the mental health division or police officers can take a person in custody and deliver him to the hospital for emergency observation. But police officers are very reluctant to do this, unless the ill person is out on the streets, or a public problem in some way. Nobody wants to take the responsibility for commitment. This new section presents an alternative way to get the person into the hospital for observation. Anyone can go to the District Attorney and get this taken care of. We have objections from George Franklin but we don't think this puts him in a bad position. If they are already arrested, this provision doesn't apply.

Page 2, line 13. The old bill said the court could appoint an attorney to defend a person. The only change in this is that we are setting the limit at \$300.

MR. HILBRECHT: In Clark County this would be no additional expense to the county. It would be done by the Public Defender who is on salary anyway.

MR. PETRONI: In our county we have the Department of Health and Welfare, but most counties do not have this.

MR. TORVINEN: They would be there less than the D.A.'s.

Page 5 puts the responsibility for collecting money from a relative or from the estate of the person on the Mental Hygiene Division. I think the rest of the changes are pretty well just technical.

MR. PETRONI: Page 6, line 17, makes provision for cases not voluntary. We have many in Las Vegas that are transient.

MR. TORVINEN: Page 6, line 41, concerns the county where the person "last resided". I am not sure just what that means but we have been living under that for years.

MR. HILBRECHT: Do you want to deal with these one at a time and dispose of them on that basis?

MR. WHITE: Yes.

SENATOR MONROE: Page 3 amended section 23 provides for service of the notice on this mentally ill person. I checked back in section 22 and it seems to me there is some possibility that this might be a dangerous thing. Serving notice on an insane person is a rather useless operation, but we should give notice to someone. Maybe we should notify the wife or another relative. Then, again, maybe the wife is trying to stow him away. Maybe the protection is where the judge sees to counsel.

MR. TORVINEN: The chief of service shall within 48 hours send notice by certified mail, etc.

MR. HILBRECHT: Is this in a voluntary or involuntary?

MR. DAYKIN: It covers any, where taken to the hospital prior to the hearing. It doesn't apply where the person is not in the hospital.

MR. WHITE: I think there are enough safeguards there for the person committed against his wishes.

MR. PETRONI: He is entitled to call an attorney or whoever else he wants to.

SENATOR YOUNG: I would like to get some idea of the traffic involved since the new law went into effect in July.

MR. PETRONI: We run about ten-twelve a week. The bills have come to \$27,000 in hospitalization alone. This doesn't account for any payments to the psychiatrist.

SENATOR DODGE: What percentage of these cases are connected with alcoholism?

MR. PETRONI: About 10%. No more. On the alcoholics we use medical people instead of psychiatrists.

MR. GRAYSON: The residency requirement for drug addicts remain in the law.

MR. TORVINEN: We do not want to wrestle with a residency thing in this session.

MR. PETRONI: The Washoe County problem runs about five-six a week.

SENATOR DODGE: Have there been more commitments since the new law went in in July?

MR. PETRONI: They are probably running about the same, really. Of course we have the problem of the normal growth rate.

MR. SWACKHAMER: Dr. Schwartz said he felt that about 60% were being treated and released without commitment.

SENATOR DODGE: Page 4, line 7: Do the courts automatically advise as to the rights of counsel or would it be advisable to write something in here about that? It says the court "may". I highly favor court procedure to safeguard commitment.

MISS DUNGAN: Shall we use the word "shall" instead of "may"?

SENATOR DODGE: No. The only question is do we feel reassured on this? The court may not find the person mentally deranged.

MR. GRAYSON: My understanding at the State Hospital is that the patient is informed in writing of his rights to retain counsel and of his other rights as a patient there. We added a section allowing a relative or friend to ask for counsel, so that in a case of a railroading wife someone else could help with the situation.

MISS DUNGAN: Mr. Hilbrecht suggested that on page 4, line 10, after "court" add "should advise of rights and appoint counsel."

SENATOR YOUNG: 13.5. I would like to inquire about costs. It is difficult to tie things down. How do you determine what "mutually agreeable" is? Are there guide lines?

MR. PETRONI: Just like in other cases.

MR. TORVINEN: It applies only to the voluntary cases.

MR. PETRONI: This would not affect the indigent. We would have to let them in regardless of whether they had any money or not.

MR. TORVINEN: The intent was to make this the same as other hospitalizations.

MR. GRAYSON: This means the state or county or public hospitals. Many private hospitals are getting \$55 a day for a room. This provision concerning paying of fees to private hospitals has to be in there to prevent depletion of state's funds. The state can commit to a private hospital if arrangements are made for payment.

SENATOR HUG: I find trouble here about what county should pay for it--the old law.

MR. TORVINEN: We have been living with this law for 50 years. We can live with it for another ten or eleven months.

MR. PETRONI: We have had difficulty with the supreme court on a couple of cases.

SENATOR DODGE: Can't see to much trouble with this. Maybe an amnesia case might wander off or something like that. This provision is all right unless somebody points out that it is unworkable.

MR. LOWMAN: I move to amend on page 4 line 10 by inserting "shall advise him of his rights and appoint counsel" and give AB 19 a Do Pass.

Mr. Hilbrecht seconded
Motion passed unanimously

SENATOR DODGE: Should we put in something about advising guardians and other qualified people?

MR. DAYKIN: "Legal guardian and next of kin if known."

MR. HILBRECHT: I move to amend the former motion to include this.

Mr. Lowman seconded
Motion passed unanimously

Speaker MEL CLOSE came in at this point and asked if he could say something.

MR. CLOSE: May I make a statement on another point? The last session changed a portion of the law relating to questioning of jurors as to bias. One of the District Attorneys feels that this precludes him from asking "are you for or against capital punishment?" One negative response hangs a jury in a capital case.

It was not the intent of the Legislature to remove capital punishment from the state. It was to continue as always. A recent case, the Spillers case, indicates that one who does not believe in capital punishment is not an unbiased juror. We should not let this continue and increase litigation in the supreme court.

If I can convince the Governor, I intend to introduce legislation to make this point clear. If we have persons who wish to abolish capital punishment, they should come in the front door and not try to do it this way. We will be remiss if we do not take some action to clear this up. Is there anyone who would oppose such a measure?

MR. HILBRECHT: My only point: I am not sure whether all you say is the way I understand it. The argument contra to disqualify someone for bias is that someone under trial for a capital offense is entitled to a jury of his peers and this should not exclude those who do not believe in the death penalty any more than one who does.

If you cite the Spillers case this does not conform to my opinion.

MR. TORVINEN: It is still up to a judge to decide if a jury is biased. There is some feeling that the judge is precluded from asking this question.

MR. HILBRECHT: I have no objection to the use of a peremptory for any reason but excluding for the point of view that they would not be inclined to render an opinion permitting capital punishment I do object to. This would not represent a cross section of his peers.

MR. CLOSE: Mr. White, would you inquire if the committee would introduce the bill if the Governor will consent?

MR. LOWMAN: I would like the record to show that we did consider the letter from the District Attorney from Clark County and determined that it should be rejected and not considered further. I ask that it be incorporated in the minutes of this meeting, also the letter from Kenneth E. Thomas.

AB 20: Provides for detention and treatment of insane criminals at Nevada State Prison.

MR. WHITE: Can we give this a Do Pass?

MR. HILBRECHT: If you adopt certain amendments: 1. section 1, page 1, line 2 we should restore the word "convict"; 2. line 5 and following should conform to 1306.

At a hearing at the prison there was considerable discussion about the language to follow the brackets on line 5. The suggestion of the prison warden and of the director of the State Hospital was that the person's sanity or insanity does not necessarily have anything to do with his guilt or non-guilt of the charge with which he is charged. They would like to have more flexibility on deciding between the two institutions where he should be kept.

MR. WHITE: We are going to try to get an appropriation to fund a psychiatric ward at the prison. I have talked to the money committees and I think we are going to take that approach.

MR. LOWMAN: The thrust of these amendments is: 1. Takes a person who has not been able to come to trial because of mental capacity and puts him in the custody of the mental hospital instead of the prison. The effect may be the same but we would prefer that the mental hospital make the decision; 2. We are asking the warden to make facilities available for maximum security where the hospital administrator thinks it necessary.

MR. SWACKHAMER: What happened to the suggestion that a board be set up?

MR. WHITE: The superintendent can be petitioned to send a security risk to the prison.

MISS DUNGAN: They want to be able to transfer back and forth as the two of them see necessary.

MR. LOWMAN: I believe they can do this administratively if they want to.

MR. GRAYSON: Prior to the 1967 statute, the superintendent of the State Hospital was allowed, upon judicial decision, to transfer to the state prison. I understand this was repealed.

MISS DUNGAN: No. I checked it out. It has not been repealed.

MR. TORVINEN: We had testimony from Dr. McAllister that security risks at the State Hospital were worse off than they would be at the state prison. They are more confined and there is less effective treatment.

MR. LOWMAN: I have contacted Dr. Raymond Brown and Miss Dungan contacted Dr. McAllister and they are both satisfied as it is now.

MR. DAYKIN: Was the word "convict" in the amendment which was passed around?

MR. HILBRECHT: "place in custody" instead of "deliver to".

MISS DUNGAN: On page 4, line 33: "No employee in the classified service except a physician licensed, etc." Ways and Means wanted this to be "psychiatrist".

MR. DAYKIN: The italicized printing on lines 33 and 34 has been changed to "except a senior psychiatrist whose position is included in a work program pursuant to NRS 353.215."

I would like further guidance from the committee on one point. "Shall become effective upon passage and approval": do you want this amendment taking the load off psychiatrists July 15?

MR. LOWMAN: No. The savings are there because these jobs have not been filled.

MR. LOWMAN Moved Do Pass AB 20 with the two amendments
Miss Dungan seconded
Motion passed unanimously

MR. TORVINEN: This includes oral amendments (106) plus the ones drafted by Daykin.

MR. WHITE: While the committee and others are here I would like to explain the procedure. We have talked to the money committees. We are going to delete some unfilled positions at the hospital and create the position of full time psychiatrist at the prison. We feel this is an area that we have some responsibility in and we must take care of it at this time.

AB 21: Provides for transfer of mentally retarded children to cottage facilities.

MR. LOWMAN: We have cut the money out of it except for commitment. We wanted to pass the emergency part so we would be able to fill the cottages in case they are ready before the next session.

Dr. Ted Johnson, Executive Director for the mentally retarded in the state of Nevada, is present for this bill.

MR. WHITE: We have passed this out of committee. He should really address himself to the Senate Committee.

DR. JOHNSON: This seems fine.

MR. WHITE: We should take some action on AB 7.

MR. TORVINEN: I move we indefinitely postpone AB 7
Mr. Schouweiler seconded
Motion passed unanimously

MR. WHITE excused the Senate Judiciary Committee at this point.

MR. WHITE: I have a couple of things to bring before the committee.

1. This is a result of the visit to the prison. It is the consensus of opinion among those who made the visit that we should put this full-time psychiatrist for the prison on the agenda. I have talked to the money committees and to the governor and he has consented to put it on the agenda.

2. There is a large list of discrepancies concerning judicial procedures at the prison. I would like to have this committee ask the warden to meet with us to discuss some of the things discussed yesterday. From that point, I would like to have two of you work with me to prepare a report of this committee's findings at the prison.

MR. LOWMAN: Can we make another visit?

MR. WHITE: It would not accomplish anything at this time.

MISS DUNGAN: I move that we follow the suggested procedure.
The motion was seconded by Mr. Lowman and Mr. Torvinen

MISS DUNGAN: I have here the letter from Mr. Daykin and Mr. McDonald about the salaries. It pertains to matters discussed under AB 20.

MR. LOWMAN: About this psychiatric staff at the prison: Are we talking about moving someone or getting someone new?

MR. WHITE: Actually we are talking about four or five positions, a full-time psychiatrist and some assistants.

MR. KEAN: We are talking in the neighborhood of \$60,000.

MISS DUNGAN: I suggest an introduction by this committee and the state institutions committee.

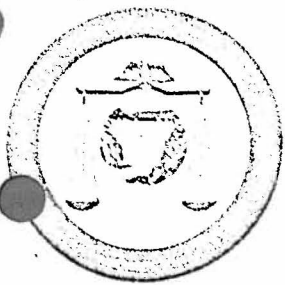
The money being spent at the prison comes out of the federal funds.

MR. KEAN: What is the effect of this towards the federal man that is out there now.

MR. LOWMAN: None. He is only there 8 hours a week.

MISS DUNGAN: This doesn't take him away.

Meeting adjourned at 12:20 P.M.



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GEORGE E. FRANKLIN, JR.
 DISTRICT ATTORNEY

February 19, 1968

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ADMINISTRATIVE
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 JACK ADAMS

The Honorable Zell Lowman
 Assemblyman, Clark County
 Carson City, Nevada

My dear friend Zell:

The following information is being addressed to you as
 Chairman of the Sub-Committee concerned with amendments
 to the Mental Illness Statute.

First of all, let me say that which I know you already
 know--legislation based on convenience or expediency is
 never good law. Any attempt to place the processing of
 mentally ill back in the hands of the District Attorney
 is based purely on convenience, and not on humane, moral
 or legal principles.

If a person is truly mentally ill, and that cannot be
 determined until the commitment hearing, he certainly
 should not bear the stigma of being handled by a "prosecutor";
 and what if he has been detained, without the possibility of
 bail, and is then determined not to be mentally ill?

Of a certainty, the District Attorney should be present at
 all commitment proceedings, but in his true capacity as a
 representative of the State, and not as the attorney for
 the person seeking another person's incarceration. The law
 of the State of Nevada presumes every person to be sane, and
 it is the duty of the District Attorney to try to uphold
 that presumption, and to prevent at all cost the commitment
 of a person not truly mentally ill.

If the District Attorney is compelled by law to initiate
 commitment procedures, even under emergency situations, he
 then becomes the attorney for the petitioner who is seeking
 commitment, and not the attorney for the State.

There is another very practical reason why the District Attorney
 should never initiate the proceedings, i.e., a majority of

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criminals yell mental illness at some stage of the criminal proceeding either to completely beat the charge, or to secure mitigation of punishment. If the District Attorney is legislatively forced to file mental proceedings upon a representation of mental illness, then defense counsel will represent that their client is mentally ill, force the District Attorney to process him, and if he is found not mentally ill, then assert that there must be something wrong with him when the District Attorney filed a mental complaint.

At the present time, I do not want to invade the province of the legislative function to determine how the mentally ill should be handled, but I did want you to have my views as to why the District Attorney's function therein should be limited solely to representing the State--thereby protecting the rights of persons charged as being mentally ill.

Kindest personal regards,



GEORGE E. FRANKLIN, JR.
DISTRICT ATTORNEY

GEF/ds

LEGISLATIVE MEMORANDUM

February 14, 1968

Date

To: Mr. Kenneth E. Thomas

Committee on Publication for Nevada

In reply to your letter or report of February 8, 1968

Re: Bill number: AB 7 Topic for filing: Mental Health

Short title of bill: An Act relating to mental abnormality;...providing a commitment procedure for mentally retarded children....

Action recommended by this office:

- No action necessary.
No action required at this time; watch for future changes in the bill.
Amendment approved.
Recommend different wording for amendment. (See comment below.)
[X] Other recommendations. (See comment below.)

COMMENT:

This is a rather comprehensive mental health law, and although it contains certain procedural safe-guards, we would feel a lot easier if an amendment were included along the following lines as new subsection 3 of Sec. 5 (being Sec. 15 of the basic law), page 2, between lines 38 and 39 of the printed bill:

3. No person who is being treated by prayer in the practice of the religion of any church which teaches reliance on spiritual means alone for healing, may be ordered detained or committed under the provisions of this chapter unless substantial evidence is produced upon which the Court finds, in addition to the other findings required by this chapter, that he is or would likely become dangerous to himself or to the person or property of others or unless he or his legal guardian, if any, consents to such detention or commitment.

This wording is based on the Wyoming mental health law as quoted on page 41d of the Legislative Digest. The last sentence of the Wyoming provision has been deliberately omitted from the above, as it does not conform with our policy as given in Sec. 3-6.6-1, pages 61-62 of the Handbook. You will note that our policy is not to seek exemption from compulsory treatment, once a person has been committed to an institution either voluntarily or involuntarily. It is helpful for a committed patient to have the right to access to his Christian Science books, as well as visits by a Christian Science practitioner.