

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, SPECIAL SESSION, February 9, 1968

Meeting was called to order by Chairman White at 11:05 A.M.

Present: White, Lowman, Swackhamer, Dungan, Hilbrecht, Petrini, Torvinen

Absent: Schouweiler, Kean

Present to be heard on AB 7: Dr. Jerome Schwartz, in charge of psychiatry at Southern Nevada Memorial Hospital, James Bartley, Clark County D.A.'s office, Richard Bryan, Clark County Public defender, Paul Petroni, Las Vegas, David Henry, Clark County manager.

Also present were many members of the Assembly Ways and Means Committee and other legislators

AB 7: Amends financial and commitment provisions relating to mental illness and retardation, alcoholics, drug addicts and dependent children. Executive estimate of cost: \$350,000.

MR. BARTLEY: First objection, page 2, line 17, made on behalf of the sheriff who feels that enforcement will be a problem. He said George Franklin, Clark County D.A., strongly opposed Section 14.5, page 2 on behalf of private parties. His office does not wish to make the determination if a person should be committed. It might be an irate husband trying to have his wife committed, etc. He suggested this might be handled through the attorneys for Public Health.

MR. HILBRECHT: Isn't this actually under the D.A.'s office anyway? The Public Health attorney comes under that department. Should we require some application to a District Judge?

MR. BARTLEY: The Clark County Public Health has their own attorney and he is not a deputy district attorney.

MR. SWACKHAMER: Told of an instance of a retired general in Texas who was involved in political matters and made some people mad and wound up in a latin college. He asked if we might not be opening up Nevada for this kind of a situation. Shouldn't more people see a person before he is committed? Rather than less? It would make for more widespread consistent handling.

DR. SCHWARTZ: The reason for this amendment is to get someone taken in that won't come in himself. I do not believe an attorney has sufficient training to make this decision. It is a medical problem. It would seem to me there are enough ways of committing a patient under the pre-1967 law. This final decision should be left to a physician.

MR. HILBRECHT: This is alternative means. When the legislation was drawn up 48 hours was considered enough protection. If a preliminary order were signed by a judge would your objection be met? And the D.A.'s?

DR. SCHWARTZ: The patient should be taken to the hospital for observation, so a commitment will not be the result of a family fight and so on. I remember one case where a child was molested by the father three years previously but charges were not brought by the wife until she became mad at her husband the three years later.

MR. BARTLEY: Had objection to provision on page 9, beginning line 27 "person over 2 years of age thought to be mentally retarded". He doesn't understand or know why this 2 year limit. It has created problems. State institutions seem to take the position they should have nothing to do with child under 2 years of age. Our proposal is to have no limitation. However, someone with more training might know more than we do.

DR. GRISELLE: What do you do with the child who is mentally retarded from birth? Hydro-encephalitic children can be detected immediately, for instance.

DR. SCHWARTZ: Many others can, also.

MISS DUNGAN: What do you people suggest?

MR. PETRONI: Our feeling is that the state ought to pay for this care or provide facilities to care for the children born in this condition. We have had one of these children at Nevada Southern Memorial Hospital for 18 months and have received no money from anyone to pay for the care.

MR. BARTLEY: We have presently a Writ of Mandate from the Supreme Court to test whether or not we have to take care of these children.

MR. GRAYSON: Attorney General's office. It is the state's contention that the law does not require anyone under 2 years to be cared for by the state or at state expense. The Indigent Care provision applies and the county must pay the costs.

MISS DUNGAN: How much difference is there in caring for a six-week old and a two-year old child in this condition?

DR. SCHWARTZ: There can be a great deal of difference. For instance, even the simple matter of breathing may be a problem for a six-week old child. At the end of 2 years it may not be trained to do anything at all. We are dealing with a fairly involved and complex situation here. The difficulty is not in diagnosing but in care and treatment. This law places the burden on the county and it requires- - -

MISS DUNGAN: Are you saying a child would be better off in a facility trained for this type of thing?

DR. SCHWARTZ: Yes.

MR. WHITE: Requested that all objections and suggestions be given to him in writing, along with corrective wording.

MR. DAKIN: I respectfully suggest with amendments that you give us the page and line and then give us in plain language what you desire to accomplish, then our office will gladly draft the amendments.

MR. BRYAN: Page 15, line 49 and continuing through pages 16 and 17. I am objecting personally as well as voicing objections from our office to the provisions which provide for direct transfer to the Nevada Penitentiary. This bill authorizes such a procedure. Illustration: Someone found guilty of an offense and sentenced to one year in the county jail. The effect of these provisions would mean that this person, unable to stand trial because of mental disability, would be sent to the State Penitentiary for an indefinite period of time. The same provisions also provide for those same persons who have been convicted and later become mentally ill. It is a dangerous thing for a man to be convicted of any crime in Nevada because he might be sent to the State Prison where he might remain for the rest of his life.

MR. SWACKHAMER: Dr. McAllister favored moving this to State Prison because of no facilities at the hospital for confinement and they come in as prisoners. Your points are good and valid, however.

MR. BRYAN: We have people in Clark County accused of criminal offenses. If he is not permitted bail because of finances and is sent to Nevada State Hospital and not tried, he must be sent back to Clark County. If the problem is security, why is it more - - -

MR. SWACKHAMER: Dr. McAllister said there was less chance to give them psychiatric help at the hospital because they are understaffed and there is no possibility to go in and work with individuals. They have to use all group therapy, but they can't let these prisoners out of confinement to take part in group therapy. They have to lock him up. If he is in the prison, at least he would be in a group and could receive some treatment.

MR. HILBRECHT: Would it be possible for us to at least place these people in the custody of the State Hospital? We are not committing them to prison--they are just there temporarily. For fiscal reasons we cannot supply security provisions for some of these people without using some of the facilities now a part of the prison. If a facility there were simply a psychiatric and mental facility and occupied part of their space and a staff were supplied under the direction of the State Hospital and not under the direction of the prison, would this do away with your objection?

MR. BRYAN: Probably so, if it's really a facility with someone actually helping them. There are people right now in the prison who have never been convicted of any offense.

I would like to support Mr. Bartley in his objection to page 4, lines 22-24. I think we should provide some kind of screening assistance to commit somebody who is unwilling to go to the hospital. We received a call about a woman who had defecated all over herself and was obviously mentally ill. The D.A. and police were called but no one would take the person to the hospital. The police were afraid to act. It would be better to have some kind of central office where people can go about these things, like going to a judge to get an order. Without this provision we have a complete gap.

MR. LOWMAN: Are you proposing that this section be retained or that a District Judge should issue the order of apprehension or detention?

MR. BRYAN: They must have some office to go through. The D.A.'s office would be a proper office but it could be another office.

MR. HILBRECHT: Affidavits could be used and be available at the Public Health Office and the D.A.'s office.

MR. TORVINEN: The problem is that many times there is just nobody interested. Some public agency has got to be told that they are the responsible agency under the law.

MR. DAKIN: The section as originally drafted would have the D.A. issue this order for apprehension upon being himself satisfied. Then provisions for psychiatric examination at the hospital followed. He will not be there more than 48 hours unless reason appears. This was intended just to get the man to the hospital where the doctor and others could take over.

DR. SCHWARTZ: If it is obvious when the patient gets in the emergency that he doesn't need to be there, we would like to not have to hold him for 48 hours. Admitting is an involved procedure and we don't like to have to do it where it is not necessary. The emergency physicians's agreement that the person is dangerous should be required.

MR. HENRY: This particular bill requires and puts back onto the county expenses for care prior to commitment. Any time there is an obligation placed on the county money should

be passed along too to take care of it. I am speaking in defense of the county treasury which is much more limited in its ability to raise funds than is the state. The state can raise five million on sixty five million. The county rate of raising money is much less.

The part I am objecting to occurs in three places: Page 6, beginning line 33; Page 4, lines 16 through 19; Page 18, beginning line 23.

Our position is that we would like to cooperate with the state in handling this matter, but if you dump it on us give us the money. I am trying to make my point not on the amount but on the principle of the thing.

MR. WHITE: How about the \$100,000 mentioned previously?

I would suggest that those of you involved in money matters remain and talk with the Ways and Means Committee.

Any further comments that you might have for our committee would you direct to the subcommittee consisting of Mr. Lowman, Mr. Swackhamer, Miss Dungan, who have been appointed to draw up the amendments to the bill.

MR. SWACKHAMER: I am concerned about this bill. Mr. Torvinen has had experience on this. Could he also serve on this subcommittee?

This was agreed upon.

DR. SCHWARTZ: We manage to discharge 60% of all our committed cases before they become a burden on the state. 60% of the work is done that you never hear about.

The meeting was adjourned at 11:45 A.M.