

## ASSEMBLY COMMITTEE ON JUDICIARY - 56th Session, 1971

MEETING MARCH 26, 1971

The meeting was called to order at 3:12 p.m. Present: Miss Foote, Messrs. Fry, Torvinen, Dreyer, McKissick and Kean. Absent: Messrs. May, Olsen and Lowman.

AB 760 - Exempts Welfare Division from operation of Administrative Procedure Act. Adjusts and clarifies fair hearing procedure.

NORMAN SAMUELSON, ESQ., Legislative Counsel Bureau, explained the provisions of the bill to the committee. It will bring the Welfare Division in line with the regulations of the Federal Government and not get people confused with the Administrative Procedure Act as to old age assistance, ADC and aid to the blind. The idea is to make procedures in all of these cases the same. The applicant could make application for a hearing to the Welfare Division, and if still dissatisfied, could appeal to the court. It would save the time and expense of hearing by the Welfare Board, which is not a full-time board. The Welfare Division must conform to the Federal rules and regulations, or they will lose Federal funds.

In many cases, the Federal regulations and the Administrative Procedure Act conflict, but the Federal regulations must be followed, and this bill would allow that. The provisions of the bill will also make it easier for District Judges in the state to decide about hearings. The licensing provisions and references to group care in Chapter 431 need not necessarily be exempted from the Administrative Procedure Act.

Mr. Fry asked if there is a need for the provisions of Chapter 425 as it applies to establishment of regulations to be in the Administrative Procedure Act. Mr. Samuelson stated there is no need; the Federal government has specified all the rules needed.

Mr. Torvinen noted that in order for rules to be adopted, under the Administrative Procedure Act there must be public notice, publication, and filing with the Secretary of State.

WILLIAM HADLEY, ESQ., Deputy District Attorney, Washoe County, stated the Supreme Court of Nevada has mentioned the fact that the regulations of the Welfare Division must fulfill the statutes and not go beyond them. In the Villa case there was a conflict in aid to the blind between the statute and regulations which did not

carry out the purposes. The Administrative Procedure Act is intended to supplement present statutes and not to limit or repeal them. There is no necessity for this bill.

Mr. Fry asked if in order to make procedures the same, Section 1 of the bill should be eliminated. Mr. Hadley said that is correct, but Welfare Division would not be eliminated from other provisions.

Mr. Torvinen asked if under the recent Court opinion on welfare hearings, the recipients who were cut off could stay on the welfare rolls until they themselves initiated an appeal.

MR. DAVID TOMLINSON, Welfare Division, stated there will be a 15 day period in which to appeal, and if appeal is not taken, the aid will be terminated. Hearing examiners are taken care of by Federal regulation. He suggested the words "fair hearing" should be used in the bill rather than "appeal."

MR. WILLIAM LaBADIE, Welfare Division, stated that if the committee is concerned about the first part of the bill regarding the Administrative Procedure Act, the Division would be willing to let that portion go rather than losing the rest of the bill, for which they strongly urge passage.

Mr. LaBadie stated that if the Welfare Board has to hear cases as the middle ground, it would cost around \$500,000 just for hearings at this point.

Mr. Torvinen asked where the law requires an intermediate appeal to the Welfare Board. Mr. LaBadie stated that is in the Aid to Dependent Children regulations.

MR. KEITH MACDONALD, Chairman, State Welfare Board, stated that the National Welfare Rights Organization has made arrangements to have the board inundated with welfare hearings. The members of the Board, who do not serve full time but have other professions to attend to, receive \$10 per meeting. The members of the board would be unable to afford to spend full time hearing the cases.

MR. ERNEST NEWTON, Nevada Taxpayers' Association, said he would suggest that whether the committee adopts all but Section 1 of AB 760 or do as has been suggested and repeal the hearing section, the important thing is to get out of the regulations the requirement that there be a step between the initial hearing and the district court. This creates a bottleneck of cases. He also urged that a Section 7 be added to the bill, making the act effective on passage and approval.

ROBERT HOLLAND, ESQ., Deputy Attorney General, referred to copies of the Federal fair hearing regulations which will become effective April 14, and stated there are two similar, but not identical, sets of regulations to operate under, so they find the opposition taking advantage of this and demanding that various provisions of both sets of regulations be complied with. Operating under the Federal regulations would help eliminate the confusion.

Mr. Torvinen stated it would be better to go into Chapters 425 and 426 and say that the Welfare Division may adopt by reference the rules and regulations of the Federal government in this field. This would match the Federal regulations and assure the state of Federal funding.

Mr. Tomlinson stated the Federal regulations are broad, but the terminology talks about appeal to the court if the state statute provides for it. The Legislature would have to specifically provide for it in the statutes.

AB 761 - Requires parents and guardians offering children for adoption to cooperate with Welfare Division.

GLORIA HANDLEY, Welfare Division, stated the bill is primarily an attempt to clarify present statutes. Sec. 127.280 provides there be notification to the welfare division prior to the child being placed in an adoptive home and for investigation by the welfare division prior to placement. There has been some confusion in this. They are attempting to indicate that a parent may place a child so long as the provisions of Sec. 280 are adhered to.

WILLIAM HADLEY stated the bill goes too far in that the parent is eliminated from participating in an adoption without first going through the Welfare Division. It might be construed as prohibiting a person from signing a consent without first getting a license from the agency.

WILLIAM LaBADIE stated the Welfare Division anticipates a problem with adoptions since there are few Caucasian, healthy youngsters available for adoption and people will be going through the "black market" to adopt this type of child.

Mr. Torvinen asked if the bill would require that the mother of a child place the child with the Welfare Division and with no one else. Mr. Hadley stated he felt this was so, and the rights of the natural parents were not considered. He stated there are adequate safeguards now for adoptions.

Mr. LaBadie stated the Welfare Division often does not get notification until the adoption petition is filed in the court.

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The problem is that some people have interpreted Chapter 240 as meaning there is no need for prior investigation or prior notification to the Welfare Division.

Mr. Holland said the need is to get the parents to cooperate with the Welfare Division instead of ignoring the requirements for investigation.

Mr. Torvinen felt the District Judge would probably accept the recommendations of the Welfare Division that the adoptive home is not suitable. Mr. LaBadie stated that the District Judges do not always go along with the Welfare recommendations. Mrs. Handley cited some cases in which the child had been placed in a home which for various reasons was completely unsuitable and possibly dangerous to a child.

Mr. Kean moved that AB 762 be re-referred to the Committee on Ways and Means. Seconded by Mr. McKissick. Carried.

AB 763 - Limits responsibility for child care of Welfare Division to dependent or neglected children.

GLORIA HANDLEY stated that NRS 422.270 states presently that the Welfare Division shall receive any child for placement and provide care for the child. It means that if the child is delinquent, retarded, or has any other problems, the Welfare Division must take charge of it. The Welfare Division many times does not have the financial resources, staff, foster homes, or institution room available, so they are left in a quandary as to what to do to care for the children so placed.

She asked that AB 763 be amended, since there is an error in terms of the statute quoted. The quotation of "NRS 201.090" should read "NRS 62.040(a)(1)". When responsibility is not clearly defined there is buck passing between various agencies. Each agency wants to protect its own budget and the needs of the children become secondary.

WILLIAM HADLEY stated there were two lawsuits decided against the Welfare Division on the problem the bill attempts to rectify. He stated there is a difference on where a child should be placed if the child is retarded and needs home care, or institutional care, or if he is a child with personality problems. If this law is passed the county will have to take care of the child without the aid of Federal funds.

DR. DI VOSS, Special Children's Clinic, stated that the mental relationship of a child could change from time to time and is subject to interpretation.

Mr. Fry stated he felt the bill did not properly belong in the Judiciary Committee, but in the Health and Welfare Committee.

AB 764 - Clarifies and simplifies determination of grants of aid to the blind; removes residence restrictions; permits public assistance care of member of family to be considered with grant of aid to the blind.

DAVID TOMLINSON stated the bill primarily changes requirements to fit requirements in recent Supreme Court decisions. The last legislative session removed the term "actual need" and replaced it with this terminology. After the legislation, the Supreme Court said the language that now exists, "compatible with decency and health" is in essence the same as actual need.

Mr. Kean questioned the exemptions, considering similar provisions in another bill in Taxation Committee. Mr. Tomlinson said these requirements in AB 764 will relate to different types of exemptions, mostly Federal aid and public assistance grants, not taxation exemptions.

Miss Foote, remarking on legislative intent last session, stated that a person could decide his actual needs were greater than the money the state could possibly provide, so "compatible with decency and health" was set out as a guideline.

AB 667 - Expands definition of "police officer" and "fireman" for purposes of public employees' retirement system.

MR. KEITH HENRIKSON stated the summary and title of the bill are misleading. "Expands" in the summary should be "restricts" and the second sentence of the title should also read "restricts" to show the intent of the bill.

He recommended amendments to the bill: That lines 3 and 4 on page two be deleted.

Mr. Henrikson stated the Retirement Board is in favor of the bill. The actuaries have problems because of lack of statistical information and lack of definition of "peace officer". Peace officers in hazardous duty have a shorter life expectancy. The following groups are in favor of the bill: State Firemen's Association, Firefighters' Association, Peace Officers' Association and Federated Firefighters' Association. The bill was drawn based on an opinion of the Attorney General's Office.

Mr. Torvinen noted the rationale of early retirement for peace officers is that they are involved in hazardous duties which would decrease life expectancy. He therefore disagreed with

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including "guards at state institutions", stating that a guard at the Nevada State Museum would not be subjected to hazardous duties, and said this should be limited to guards at the state prison and at the girls' and boys' detention centers.

WARDEN CARL HOCKER, Nevada State Prison, spoke in favor of the bill, noting that his guards are dealing with criminals at all times, and are unarmed.

The committee discussed various amendments to the bill. Mr. Fry suggested the following bills involving "peace officers" be taken into consideration: AB 90, 510, 667 and 775, and SB 538, 539, 511 and 399. Representatives of the State Retirement Board will speak to the committee Tuesday, and amendments to the bill will be prepared.

Mr. Kean moved that AB 306 be indefinitely postponed. Seconded by Mr. Fry. Carried.

Amendments to AB 208 were considered, and Mr. Fry appointed a subcommittee composed of Mr. Kean and Mr. Dreyer to present proper amendments to the committee.

There being no further business, the meeting adjourned at 5:45 p.m.

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ASSEMBLY

AGENDA FOR COMMITTEE ON JUDICIARY

Date March 26 Time adjournment Room 240

Bills or Resolutions to be considered

Table with 3 columns: Bills or Resolutions to be considered, Subject, and Counsel requested\*. Rows include items like AJR 30, AB 760, AB 761, AB 762, AB 763, AB 764, AB 90, AB 510, AB 667, AB 775, and AB 705.

\*Please do not ask for counsel unless necessary.

HEARINGS PENDING

Form for HEARINGS PENDING with fields for Date, Time, Room, and Subject.