

MINUTES

JUDICIARY COMMITTEE

February 24, 1977

8:30 a.m.

Members Present: Chairman Barengo
Vice Chairman Hayes
Mr. Price
Mr. Coulter
Mrs. Wagner
Mr. Sena
Mr. Ross
Mr. Polish
Mr. Banner

Chairman Barengo brought this meeting to order at 8:30 a.m., the first portion of the meeting, for the purposes of committee action.

COMMITTEE ACTION:

Assembly Bill 12, there was discussion as to amending this bill by deleting "no more than seven (7) years". Mr. Coulter moved for a DO PASS AS AMENDED, Mr. Sena seconded the motion. The motion passed unanimously.

Assembly Bill 37, Mr. Ross moved for a DO PASS AS AMENDED, Mr. Sena seconded the motion. The entire committee voted "yea", except for Mr. Polish who voted "no". The motion passed.

Assembly Bill 39, Mr. Price moved for a DO PASS, Mrs. Hayes seconded the motion. The motion passed unanimously.

Assembly Bill 40, Mr. Polish moved for a DO PASS AS AMENDED, Mr. Sena seconded the motion. The motion passed unanimously.

Assembly Bill 41, Mrs. Hayes moved for a DO PASS AS AMENDED, Mr. Price seconded the motion. The motion passed unanimously.

Assembly Bill 44, Mr. Ross moved for a DO PASS, Mr. Sena seconded the motion. The motion passed unanimously.

Assembly Bill 45, Mr. Ross moved for INDEFINITE POSTPONEMENT, Mr. Polish seconded the motion. The entire committee voted "yea", except Mrs. Hayes who voted "no". The motion passed.

Assembly Bill 62, action postponed until the sub-committee meets.

Assembly Bill 93, it was discussed that this is now part of the resolution and the committee will no longer consider this.

Assembly Bill 112, Mr. Ross moved for INDEFINITE POSTPONEMENT, Mr. Polish seconded the motion. The entire committee voted "yea", except for Mr. Price.

The committee then moved on to the public hearing portion of the meeting in regard to A.B. 239.

Assembly Bill 239:

Carol Senary, Director of Social Services, Nevada Division of Mental Hygiene and Mental Retardation, was first to testify on this bill, in support of it

with proposed amendments. Attached hereto and marked as Exhibit "A" are the written general testimony of Ms. Senary pertaining to A.B. 239 and her proposed amendments. Attached hereto and marked Exhibit "B" are Ms. Senary's proposed amendments to A.B. 239. Considerable discussion and questions followed.

Mr. Scott Jordan, Attorney at Law, of the Legal Aid Society in Reno, Nevada, then testified on this bill and attempted to answer some of the legal questions which the committee had concerning Ms. Senary's testimony. With regard to "special guardian" Mr. Jordan explained that the purpose of the change is that if the Court is going to appoint someone as his special guardian, the Court is going to give that person certain powers. If the Court decides that the special guardian needs to do nothing on behalf of the ward, then the Court will find that there is no need for a special guardian at all and will not appoint one. The Court will, based on its findings, specify just exactly what powers are needed and they will not necessarily be the ones listed. He explained that the intent of re-writing these sections was to limit the power of the guardian so certain abuses would not happen. Attached hereto and marked Exhibit "C" is the written testimony of Mr. Scott Jordan.

Mr. Jordan then attempted to answer certain questions which surfaced during Ms. Senary's presentation. He said in response to the questions relating to the sterilization sections, in his opinion, the reason they should be removed is because there is a need for strong controls over sterilization abuse, particularly, for those persons with limited capacity. However, the intention and tone of this special guardianship bill is to provide for freedom and independence on the part of the ward involved and for that reason, he felt that sterilization legislation, while it is necessary, should come forth in a separate bill of its own. Therefore, he felt that removing the sterilization sections from this bill did not indicate that there was no need for those, but, rather that they should be forthcoming in a separate piece of legislation. He answered the question regarding the appointment of counsel for indigent wards as is provided for in the amendments, by stating that the appointment of a guardian has the effect of removing some legal rights from the ward who is involved. While it is not a criminal proceeding when the removal of rights is involved, the law is of the position that the person whose rights are being jeopardized is entitled to the appointment of counsel if he is not able to afford to hire counsel on his own. Chairman Barengo suggested that they incorporate into their amendments something more specific as to outline the authority on hiring counsel. Chairman Barengo also asked of Mr. Jordan why delete the requirement for an examination if the examination was performed one year prior to the filing of the petition. Mr. Jordan stated that his reading of that was that the examination within the year would have to be of the same style and type that would be required by the Court. Chairman Barengo stated that it is not specifically stated that way, though, and he wants better language to tie it up. Chairman Barengo also mentioned that he'd like to see a provision expanded to read, "the report shall be filed with the attorney for the incompetent person and they may have a change to object to it, to bring their own side" and perhaps another provision, "if you are unhappy with the people who were appointed to examine the person they could have this mechanism whereby the attorney for the alleged incompetent person can bring in other sides and be compensated for it if they are indigents and then have a review of the whole thing if the court deems it necessary." Mr. Jordan then went on in an attempt to answer further questions from the committee, stating in regard to the effect of this type of legislation on the situation as it presently exists where adult retarded individuals primarily

those living with parents and the parents have been making the decisions on behalf of the adult children, with regard to the laws as they now exist. While that system occurs regularly, it is not lawful at the present time. Regarding the time limits that these proceedings should be brought to court. He stated that more and more as legislation is passed to regulate those things, a speedy hearing is required so that a person's rights will be adequately protected. While this may involve some pressure on the courts, the need is great that these be heard. He stated that he knows that this amendment is support by Judge Gabrielli of Washoe County. In answer to a question, Mr. Jordan then explained the purpose behind page 1, line 22, 3.2c. He said that these proceedings would be dealing with individuals inability to adequately function in all aspects of their lives and the purpose is to provide assistance for those people which would help them to live independently. There was considerable questions and discussion amongst the committee and Mr. Jordan. Mr. Banner related to the committee some personal circumstances of his own, that has caused him to be in support of this bill as is. He detailed for the committee many problems that he has seen in the present system. Again, some questions and discussion followed.

Ms. Lolly Guidici, President of Citizens for Humanity in Mental Health, then testified on this bill and submitted her testimony in writing which is attached hereto and marked as Exhibit "D", which does not support this bill. Chairman Barengo advised Ms. Guidici that the Mental Health people have removed the sterilization part from the bill.

Herbert M. Schall, Ph.D, then testified against this bill and attached hereto and marked as Exhibit "E" is his written testimony.

Chairman Barengo concluded the meeting by appointing a subcommittee of Mr. Price, Mrs. Wagner and Mr. Banner and asked for input from all interested parties and the subcommittee would then report back to this committee and if they feel it should pass, they will pass it and if not, they will have another public hearing and will notify everyone. This meeting was adjourned at 10:55 a.m.

Respectfully submitted,



Anne M. Peirce, Secretary

A.B. 239 Testimony

A. Introduction

My name is Carol Senary, Director of Social Services, Nevada Division of Mental Hygiene and Mental Retardation. I am speaking in support of A.B. 239 with the proposed amendments.

I will be speaking on the bills development, overall design and purpose and justification of need.

Mr. Scott Jordan, an attorney with Legal Aid Society of Washoe County, contributed greatly to the bill's development and will be speaking to legal implications and procedure, how A.B. 239 differs from NRS 159 the general guardianship law and also will be presenting information on particular amendments.

B. Development

This bill has been developing over a period of several months with review and input provided by: members of the judiciary; Judge Gabrielli; Honorable Stanley Smart; Attorneys Frank Weinroch, Paul Lamboley, Scott Jordan; Deputy Attorney General, Shirley Smith, Susan Haase, and Nevada Association of Retarded Citizens, Washoe Association of Retarded Citizens, Opportunity Village for Retarded Citizens, Developmental Disabilities Council, Wallace Roanhaus of the State Division of Aging Service, Division of Mental Hygiene and Mental Retardation.

C. Overall Design and Purpose

The main purpose of this review and revision process was to design legislation which would provide an alternative to the existing general guardianship statutes.

A.B. 239 is designed to: (1) assume the competency of the individual throughout the process and keep intact as many basic human rights as possible. (2) Specify and prove the particular area where the individual requires supervisory assistance. (3) Tailor the specific powers of the special guardian to that need.

D. Targeted Population

Any adult who has demonstrated an inability to assess the advantages and disadvantages and make a competent decision in matters such as choice of residence, employment, education, training, medical treatment or financial management to the extent that the persons needs for food, clothing, shelter or protection are imperiled.

The particular area of incapacity may be related to conditions of mental illness, mental retardation, effects of aging or other disabilities.

E. Numbers

Estimates of individuals being served in mental retardation programs throughout the state who would benefit from this service range in number from 50 to 100 over the next two years.

Current program trends are for deinstitutionalization of the high functioning mentally retarded adult. Many of these people have little experience with community living. Service providers, state and private, are doing much to increase the number of training programs required. While achieving independence, the person in many cases will require a special guardian to assist in decision making. Many persons are currently in institutions because of inability to give informed consent. (cost benefit)

Some people will remain without assistance

F. Amendments

1. Specify intent
2. Extend definition of "limited capacity"
3. Assure confidentiality of records
4. Further protect rights of proposed ward
5. Revise review process
6. Remove controversial sections
7. Remove references to gender

G. Trends

This legislation is in line with current trends to enact limited guardianship laws in other states, Michigan, Idaho, California, Wisconsin, and New Mexico.

Page 1
Insert after
Line 2

Declaration of Legislative Intent

The intent of the legislation in Sections 2 to 17 is to provide an alternative to general guardianship which allows the ward to maintain authority over the areas of citizenship and decision making where competent while providing the assistance required in specified areas of limitation.

The role of the special guardian is one of advocacy and assisting the ward in decision making in preference to substitute decision making. The ward is assumed to be and treated as competent in all areas except those areas proven to require assistance.

Page 1
Lines 7 - 10

Sec. 2.2 A person is of "limited capacity" <if he is>when able to exercise some or all of the basic rights of citizenship and to make independently some but not all of the decisions necessary for <his own> basic care and the management of <his> property to the extent that the person's needs for food, clothing, shelter or protection are imperiled.

Page 1
Line 22

Sec. 3.2(c) The specific <supervision> supervisory powers of a special guardian allegedly needed with supporting information. This document shall be confidential and shall not be a public record.

Page 1
Line 23 -
24

Sec. 3.2(d) A statement by the proposed special guardian indicating that if appointed <he> the designee will serve.

Page 1
Insert
after line
24

Sec. 3.2(e) A statement of the specific qualifications of the proposed special guardian.

A.B. 239 PROPOSED AMENDMENTS

Page 2

Lines 1 - 3 Sec. 4.1 Notice of the filing of the petition shall be promptly forwarded by the court to the proposed ward, <his> the attorney of the proposed ward, <if he has one, his> the proposed ward's spouse or a near relative and any other person the court directs.

Page 2

Line 6 Sec. 4.3 If the proposed ward is a patient or a resident of an institution, hospital or other residential facility, notice by mail shall be given to the chief executive officer or administrator thereof.

Page 2

Line 11 Sec. 5.1 Upon the filing of the petition, the proposed ward shall be advised of the right to counsel. Counsel shall be appointed by the court if the proposed ward is unable to retain an attorney. <the court shall appoint an attorney for the proposed ward if he has none>

Page 2

Lines 24 - 27 Sec. 6.2 The examination shall be made by at least two persons each of whom is professionally trained and able to provide expertise in evaluating competency in at least one of the respects in which the proposed ward's competency is alleged to be limited.

Page 2

Lines 28 - 29 Sec. 6.3(Delete) <In the case of a proposed ward who is mentally retarded one of the examiners shall be a psychologist>.

Page 2

Line 32 Sec. 6.4 The court shall make a copy of the examination report available to the proposed ward, the proposed ward's <his> attorney and any other persons whom the court deems appropriate. This document shall be confidential and shall not be a public record.

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Page 3

Lines 1 - 2 Sec. 8.4 An accurate stenographic record or tape recording of the hearings shall be taken and preserved. These records shall be confidential and shall not be public records.

Page 3

Lines 13 - 14 Sec. 10.1 If the court finds the proposed ward competent and not in need of a special guardian, it shall dismiss the petition.

Page 3

Line 17 Sec. 10.2 If the court finds the proposed ward to be of limited capacity and in need of a special guardian, it shall enter judgment declaring the ~~incompetent~~ person a ward and specifying the powers and duties of the special guardian.

Page 3

Lines 19 - 21 Sec. 10.3 (Delete) ~~If the court finds that appointment of a general guardian is required, it shall appoint such a guardian of the ward's person, estate, or person and estate.~~

Page 3

Lines 22 - 24 Sec. 10.4 The court shall ~~to the extent possible,~~ inform the ward of ~~his~~ the right to appeal and the procedure of petitioning the court for termination or modification of the special guardianship.

Page 3

Lines 25 - 28 Sec. 10.5 (Delete) ~~The court shall order the administrator of the division of mental hygiene and mental retardation, or other suitable person or agency as the court directs to review the need for modification or termination of the special guardianship at least annually.~~

Page 3

Insert after Line 24 Sec. 10.5 The court shall order the special guardian to make and file a written report which indicates the condition of the ward and status of matters for which the special guardian was appointed. This shall occur at a time specified by the court not to exceed one year from the date of the hearing. At the time of review the court shall make a determination of the need for modification or termination of the special guardianship

Page 3

Lines 35 - 37 Sec. 11 The appointment of a special guardian does not constitute a judicial finding of ~~the ward's incapacity~~ incompetence except in the areas so found by the court.

Page 3

Line 39 Sec. 12.1 Before selecting a special guardian, the court shall consult the ward to determine ~~his~~ the ward's preference

Page 3
Line 50

Sec. 12.2(f) Any qualified interested person or <his> the person's nominee.

Page 4
Line 2

Sec. 13.1 Exercise <his> supervisory authority over the ward in a manner which is least restrictive of the ward's personal freedom consistent with the need for supervision and protection.

Page 4
Line 7

Sec. 13.3 Inform the ward of <his> the right to request termination or modification of the guardianship.

Page 4
Insert
after line
8

Sec. 13.4 File a written report of the condition of the ward and status of matters for which appointment was made by the date specified by the court for review.

Page 4
Line 9

Sec. 14 The court <may grant> shall specify any one or combination of powers that are judged to be warranted. A special guardian may be granted the powers including but not limited to:

Page 4
Line 13 -
14

Sec. 14.3 (Delete) <Approve the sale or encumbrance of the ward's personal or real property.>

Page 4
Insert
after line
12

Sec. 14.3 Approve the use of that part of the ward's income which is needed for food, clothing and shelter.

Page 4
Lines 15 -
18

Sec. 14.4 (Delete) <Take possession of the personal property of the ward and liquidate or hold it for his benefit. The court may require the special guardian given this power to post an adequate security bond and to make such reports as the court may deem necessary.>

Page 4
Lines 15 -
18

Sec. 14.4 Approve the disposal of assets or income beyond that part needed for basic necessities of food, clothing and shelter. In this regard the court may grant to the special guardian some or all of the powers exercised by a general guardian of the estate, and may require of the special guardian some or all of the safeguards required of general guardians of the estate.

Page 4
Line 22

Sec. 14.7 (Delete) <Consent to the ward's sterilization.>

Page 4
Line 24

Sec. 14.9 (Delete) <Consent to the adoption of the ward.>

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Page 4

Lines 37 - Sec. 16.2 (Delete) <When a ward whose right to consent to
45 surgery has not been restricted is admitted to a hospital
for surgery other than sterilization, the chief medical
officer shall determine whether the ward's medical condition
is such that he has sufficient capacity to make a responsible
decision. If the ward has the capacity, his consent shall
be obtained before the surgery. In such cases, the ward's
consent is determinative and no other consent is necessary,
except that in the case of a minor, consent shall also be
obtained from the parent, or a near relative if no parent
is living.>

Page 4

Lines 49 - Sec. 16.4 A person who acts within the scope of the authority
50 conferred by such consent in the course of discharging <his>
Page 5 of official duties is not civilly or criminally liable for
Lines 1 - the performance of such operation. <, but> However, this
3 exemption does not affect any liability which may be incurred
as a consequence of the manner in which the operation is
performed.

Page 5

Lines 4 - 6 Sec. 16.5 (Delete) <Consent for surgery for a mentally retarded or mentally ill person committed or voluntarily admitted to a state facility is governed by the provisions of NRS 433.484.>

Page 5

Lines 7 - 22 Sec. 17 (Delete) <A ward under the age of 18 years shall not be sterilized unless this action is medically necessary. Any other ward shall not be sterilized if any temporary measure for contraception will meet his needs.
2. A ward capable of giving an informed consent shall not be sterilized unless this consent is freely given.
3. A ward whose ability to give an informed consent is not clear shall not be sterilized unless the court so orders. The ward shall first be examined by a committee of at least two persons professionally trained in treatment of the condition which limits the capacity of the ward. The committee may also interview other persons, and shall report in writing its opinion whether:
(a) The ward desires to be sterilized; and
(b) Sterilization is in the ward's best interest.
The court shall appoint special counsel for the ward to assure that all reasons for not sterilizing the ward are fully examined, and shall order sterilization only if it finds that sterilization is in the ward's best interest.>

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1 SUBMITTED BY:
2 SCOTT JORDAN,
3 Staff Attorney
4 WASHOE LEGAL SERVICES
5 150 N. Center, Suite 306
6 Reno, Nevada 89501
7 (702) 786-2695

8 TESTIMONY TO THE ASSEMBLY JUDICIARY
9 COMMITTEE IN SUPPORT OF ASSEMBLY BILL 239, AS AMENDED

10 * * * *

11 Assembly Bill 239 will, if passed, prove beneficial to
12 those persons in need of some assistance in making decisions which
13 seriously affect their lives. The bill has significant advantages
14 over the existent guardianship provisions of the law and would
15 provide the law with greater flexibility to deal with individual
16 situations which arise.

17 The new law would provide for the appointment of a special
18 guardian, whose duties in assisting the ward would be clearly
19 enunciated. The special guardian would be charged to act on be-
20 half of the ward only in those area where the ward was found to be
21 unable to make decisions for himself. This would result in the
22 ward retaining as many rights and privileges as the ward would be
23 able to handle. Thus, a ward's rights would not be taken from
24 him or her unless it were necessary. The ward could continue to
25 make decisions affecting her own life to the maximum possible
26 extent. Not only would this protect the ward's legal rights, but
27 it would have the added advantage of allowing the ward freedom to
28 grow, to learn, and to improve the ability to handle his own
29 affairs.

30 Assembly Bill 239 also allows for the appointment of a
31 special guardian without a judicial finding of incompetence, as is
32 needed in the present law before a general guardian can be

1 appointed. The removal of this stigma from those who are not in
2 fact legally incompetent would encourage those persons who need
3 it to seek the assistance of a special guardian. It would also
4 enhance the dignity of those human beings who are attempting to
5 confront the daily problems of living a normal, productive life.

6 The procedures set out in the bill are intended to protect
7 the legal rights of proposed wards. When a petition for appoint-
8 ment of a special guardian is filed, the proposed ward must be
9 represented by counsel. An examination and determination must be
10 made by two experts as to the need for a special guardian. The
11 petition must state the specific areas of need and, thus, the
12 limitations of the role the guardian will play. The confidentiality
13 of the entire proceeding is protected.

14 The appointment of a special guardian may be made only by a
15 judge after a court hearing. The court's order will specify what
16 powers the special guardian will have. The guardian has the
17 further obligation to make periodic determinations of the continued
18 need for a special guardian and to account for the funds and
19 assets of the ward, if they are within the special guardian's
20 duties. The entire procedure was created to protect the rights
21 of the proposed ward, while at the same time providing the flexi-
22 bility and freedom to be able to deal with a variety of situations.

23 The tone and intent of the entire bill, as has been
24 previously mentioned, is to allow the ward as much independence,
25 dignity, and freedom as possible. The provisions concerning safe-
26 guards against sterilization in the original draft were an excep-
27 tion, because it was felt that stringent controls against sterili-
28 zation abuse for persons of limited capacity were necessary. The
29 need for strong controls over sterilization remain. However, I
30 feel that they should not be included in legislation creating
31 special guardianship; rather, they should come as separate legis-
32 lation. For this reason, I support the amendments of AB 239 which

1 delete Section 17 relating to sterilization.

2 AB 239 provides a useful and much-needed alternative to
3 general guardianship proceedings for those persons who are not
4 legally incompetent but who are in need of some assistance in
5 their daily lives. The bill recognizes the continuum of ability
6 possessed by retarded persons or others of limited capacity, and
7 it seeks to protect both their rights and their dignity. General
8 guardianships will still exist for those in need of them. AB 239
9 will allow people with some limitation to get the assistance they
10 need to live independent and productive lives. I urge its passage

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700 Cassaza Drive Reno, Nevada 89502

To the Nevada Assembly - February 24, 1977
Committee on the Judiciary

STATEMENT ON ASSEMBLY BILL 239

A.B. 239 came to our attention shortly after Feb. 1, 1977 among a number of mental health proposals. It was given our routine examination for its stated purpose - Special Guardianship for persons of limited capacity, which excited no particular regard. After reading four pages of seemingly good intentions, dubiously executed, we discovered, sleeping unannounced, on page five Section 17 a truly portentous piece of threatened legislation. Nothing less is presented than the ground-work for a program of sexual sterilization of the mentally retarded. We were indeed stunned, but moved at once to find the source and thrust propelling this design.

On Monday, Feb. 7, 1977 we spoke to a top official of the Nevada Division of Mental Hygiene and Mental Retardation. He declared that the Division had initiated A.B. 239, and it had his personal approval. He further stated that the Legal Aid Society had assisted in drawing it up. We contacted the head of Legal Aid, who reported no knowledge of Sect. 17, declared it "grim" and stated he would direct the staff attorney working with the Division to contact us. Said attorney contacted us and reported that he had worked on A.B. 239, but had urged the deletion of Section 17.

We contacted concerned citizens, teachers, professionals, legislators and clergymen in the community, and on Feb. 9, 1977 we spoke again to that same top official. The official informed us at once that the Division was moving to delete Section 17, and he suggested we contact Carol Senary, Division Director of Social Services, for details. Ms. Senary subsequently wrote us mentioning a number of amendments the Division was recommending for A.B. 239, including the deletion of Sect. 17.

We declare Section 17 to be a dangerous and incompetent proposal. Periodically in the history of care of the retarded naive movements for their sexual sterilization as a measure of prevention have been attempted. Aside from the scientific unsoundness of such measures

EXHIBIT 404

retardation having many causes, and most retardates being born to non-retarded parents, this is an inhuman, brutal and hazardous step in the direction of state control over human life. Sterilization of retardates has historically lead to state sterilization of the mentally ill, then to sterilization of prisoners, then to sterilization of political prisoners, and the political dissidents. In Nazi Germany the sterilization of the retarded and mentally ill lead to their being the first victims of the extermination gas chambers - to which we may add - the victims gave their official consent. Robert Plotkin, Staff Attorney Mental Health Law Project, has stated, "Diminished capacity can negatively affect a person's ability to resist coercive pressures and to fully understand the likely consequences of his decision."

"Several studies indicate that the retarded may be more vulnerable to threats, pressure and subtle coercions than other groups; a fairly common characteristic of retardation is a desire to please authority figures."

"Diminished capacity of these groups takes on even greater importance when they are confined in institutions, with the substantial direct and indirect pressures inherent in their situation."

The above must be considered in the light of the Division pressing for a presumption of competence for the involuntarily committed, which would place the retarded and others directly on this spot.

The Division has been charged with being tops in public relations and bottom in public information. Most certainly such legislation should never have been proposed without full public opportunity to know, participate and resolve. We urge our legislators to reject this bill as a Pandora's Box.

Lolly Giudici
President

February 24, 1977

Statement to the Nevada Assembly Committee on the Judiciary

Herbert M. Schall PH.D

I would like to call your attention to some of the character and provisions of A.B. 239 (apart from section 17 on Sterilization). Special guardianship for specific incompetency in critical areas of living for those not generally incompetent has been an ideal among those opposed to unjustified restriction of liberties. By pressing for such legislation an agency may enhance its image as progressive, but without an adequate scientific, professional, and legal foundation laid beforehand, the consequence can be massive, frustrating vexatious litigation to further burden our courts. Such a foundation requires research to obtain essential scientific data and collaborative study by agency and outside community professionals in law, mental health and the concerned public. Subsequent to initiating the introduction of A.B. 239, Nevada Division MH/MR discovered grounds for 22 amendments other than that on section 17. Additional defects are readily apparent.

1. The bill and its division proposed amendments are vague as to the persons subject to it's intent. Seemingly the relevant population are to be labeled "Wards" - those to be subjected to guardians because their own decisions may imperil their own provision of food, clothing and shelter, justifying adjudication as being of "Limited Capacity." Because some such of their decisions may come under this judgment, these could include:

1. Retardates in and outside of institutions.
2. Mental patients in and outside of institutions.
3. Alcoholics in and outside of institutions.
4. Controlled substance abusers in and out of institutions.
5. Geriatric patients in and out of institutions and nursing homes.
6. Prisoners with or without psychiatric or retardation problems.
7. Habitual gamblers,

8. And within the terms of section: 3 of this bill; Anyone that an interested person petitions for the court to adjudicate as being of "Limited Capacity". Management of property in a manner that may imperil food, clothing and shelter has been specified as an "incapacity" in section; 2.2 and Division amendments. Surely an interested

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and responsible creditor or collection agency may petition for a guardian to manage the finances of a debtor who has been making decisions imperiling his food, clothing and shelter. Or his Bookie? Indeed, the law has no penalty for abuse of petition!

Section: 6.2 lacks specifications for standards of professional expertise in relevant areas. For example: who is to render professional judgement of financial incapacity? Additionally will it be financial conduct or other behavior that will serve as a basis of evaluation? Such questions can be raised for each area of incapacity, a number of which are yet to be scientifically studied.

Section: 8.2 gives the court the right to exclude the public and the media. Should not a person who is facing a major curtailment of his liberty have the protection of an "Open Hearing" to insure he does not suffer "Star Chamber Proceedings". The Division may argue it wishes to spare the subject embarrassment, but justice and freedom have always been worth such embarrassment.

Section: 12F states that a guardian can be any qualified interested person or his nominee. We would certainly believe this should not include someone with a financial conflict of interest with the Ward or if the Ward is a resident in a state facility anyone financially or otherwise affiliated with the State Administration! The term qualified also lacks adequate explanation.

Section: 15 would permit special guardians to authorize medical and psychiatric experimentation on their Wards with the approval of two relevant professionals. This section violates professional standards and Federal Law on the protection of patients and is unconscionable. Any two professionals at a residents institution could promote the exploitation of Wards as Guinea Pigs. Nevada Division MH/MR has been repeatedly condemned for illegal experimentation on patients. Is it now seeking to establish unsound legislative authority for such infamous conduct ?

Additional time of the committee could be spent exploring defects in this law, but enough has been presented in conjunction with the soaring list of amendments to conclude that this bill is not fit for salvage!

Herbert M. Schall Ph.D.

Feb. 24, 1977