

MINUTES

Assembly Judiciary Committee
March 14, 1977
8:00 a.m.

Members Present: Chairman Barengo
Vice Chairman Hayes
Mr. Price
Mr. Coulter
Mrs. Wagner

Mr. Ross
Mr. Polish
Mr. Banner

Members Absent: Mr. Sena

Chairman Barengo brought this meeting to order at 8:00 a.m. for the main purpose of committee action.

COMMITTEE ACTION:

Assembly Bill 264, Mrs. Wagner moved that they DO PASS, Mr. Polish seconded the motion. The motion carried unanimously.

Assembly Bill 265, Mrs. Hayes moved for a DO PASS, Mr. Coulter seconded the motion. The motion carried unanimously.

Assembly Bill 221, Mr. Banner moved for an INDEFINITE POSTPONEMENT, Mr. Polish seconded the motion. The motion carried unanimously.

Assembly Bill 267, Mrs. Wagner moved for a DO PASS AS AMENDED, Mrs. Hayes seconded the motion. The motion carried unanimously. Mr. Andy Grose took this bill with him at this time to correlate amendments.

Assembly Bill 269, Mr. Ross moved for a DO PASS, Mr. Banner seconded the motion. The motion carried unanimously.

Assembly Bill 270, Mrs. Hayes moved for a DO PASS, Mr. Ross seconded the motion. The motion carried unanimously.

Assembly Bill 266, Mr. Ross moved for an INDEFINITE POSTPONEMENT, Mrs. Wagner seconded the motion. Mrs. Hayes and Mr. Price voted NO. Mr. Sena was absent. The motion carried.

Assembly Bill 8, Mr. Coulter moved for a DO PASS AS AMENDED, Mr. Ross seconded the motion. Mrs. Hayes voted NO. Mr. Sena was absent. The motion carried.

Assembly Bill 36, Mr. Ross moved for a DO PASS, Mrs. Wagner seconded the motion. The motion carried unanimously.

Assembly Bill 38, Mrs. Hayes moved for a DO PASS AS AMENDED, Mr. Polish seconded the motion. The motion carried unanimously.

Assembly Bill 43, Mrs. Hayes moved for a DO PASS, Mr. Ross seconded the motion. The motion carried unanimously.

Assembly Bill 160, Mr. Banner moved for a DO PASS AS AMENDED, Mr. Price seconded the motion. The motion carried unanimously.

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Assembly Bill 93 was referred to a study committee.

Assembly Bill 239, sub-committee chairman, Assemblyman Price, handed to the committee copies of proposed amendments to this bill which are attached hereto and marked as Exhibit "A". He discussed some problems with the committee and addressed some questions to Dr. Ken Sherigan of the Nevada Mental Hygiene Division of Reno and to Mr. Frank Daykin of the Legislative Counsel Bureau.

Assembly Bill 40, the chairman asked some questions of Mr. Frank Daykin on some proposed amendments to this bill. Chairman Barengo asked, at the pleasure of the committee, that Mr. Daykin draw up two amendments

Assembly Bill 62, Mr. Ross advised the committee that the sub-committee recommends that the concepts contained in A.B. 62 be part of a comprehensive study of real property ownership transferring in liens that should be used as an interim study committee which would give forth to legislation in the next session. Mr. Ross moved for an INDEFINITE POSTPONEMENT of A.B. 62, Mr. Polish seconded the motion. The motion carried unanimously. Mr. Ross then moved that the committee have a RESOLUTION prepared for an interim study committee to study the transferring, ownership, liens, encumbrances and notices of real property, Mr. Polish seconded the motion. The motion for this Assembly Joint Resolution carried unanimously. Chairman Barengo gave Mr. Ross the responsibility of getting said resolution.

Assembly Bill 78, after lengthy discussion it was decided to hold this bill while Mrs. Wagner and Mrs. Hayes obtain an amendment to this bill which would prohibit the use of state resources for outside employment.

Assembly Bill 247, Mr. Price, sub-committee chairman on this bill, advised the committee of further information in this matter.

Assembly Bill 182, referred to a study committee, by motion of Mr. Ross and seconded by Mrs. Wagner. The motion carried unanimously.

Assembly Bill 240:

The committee received testimony on this from Dr. Ken Sherigan of the Division of Mental Hygiene and Mental Retardation, stating that this A.B. 240 is proposed by the Division. He stated that it does essentially, two things, the first of which is in section one of the first page and it merely makes the language of the statute clearer in stating that a person who is admitted to a mental health facility is presumed competent to exercise his rights unless there is a separate judicial hearing. The second item in this bill is section 3 on the second page and it repeals parts of NRS 41 which are seen as incompatible with the 1975 statute. He explained in detail those parts of NRS 41 to which he was referring. Dr. Sherigan did want to make it clear that although A.B. 239 was introduced along with A.B. 240, they are two different bills totally independent of one another. He supports both bills being passed. Considerable discussion and questioning by the committee followed.

There being no further business at hand, Mr. Ross moved for adjournment and Mr. Polish seconded the motion. Chairman Barengo adjourned this meeting at

11:30 a.m.

Respectfully submitted,

Anne M. Peirce

Anne M. Peirce

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Line 2 Section 1. Chapter 159 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to (18) 17, inclusive, of this act.

Insert after Line 2 Declaration of Legislative Intent
The intent of the legislation in Sections 2 to 17, inclusive, of this act, 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.

Line 3 Sec. 2. As used in sections 2 to [18] 17, inclusive, of this act, unless the context otherwise requires.

Lines 7-10 Sec. 2.2 A person is of "limited capacity" if [he] the person is an adult and is 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.

HOLD CAN we have a way for future claim by concerned parties

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.

Line 23-24 Sec. 3.2(d) A statement by the proposed special guardian indicating that if appointed [he] the designee will serve.

Insert after Line 24 Sec. 3.2(e) A statement of the specific qualifications of the proposed special guardian.

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.

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.

Lines 11-12 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.]

Line 22 Sec. 6.1 The court shall order an examination of the proposed ward if [none was] an examination pursuant to subsection 2 was not performed within 1 year prior to the filing of the petition.

Line 25 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.

HOLD

Lines 28-29 Sec. 6. [3] In the case of a proposed ward who is mentally retarded one of the examiners shall be a psychologist.

Lines 30-32 Sec. 6. [4] 3. 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.

IF WHICH ONE IS A M.A. OR P.H.Y

see page 2
line 2

Line 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 record.
HOLD

Insert after Line 3 Sec. 8.5 A proposed ward who, because of a hearing or speaking impairment, cannot readily understand or communicate in the English language or cannot understand the proceedings, shall be entitled to an interpreter appointed by the court to interpret the testimony of the proposed ward to the court and to interpret the proceedings to the proposed ward.

Lines 5 - 7 Sec. 9.1(a) To each witness subpoenaed the fees and mileage prescribed by law, [and, in the case of a person employed by a unit of local government or the state, to the employing unit or state agency a reasonable sum for the witness' services and for travel; and]

Line 8 - 10 Sec. 9.1(b) To the proposed ward's attorney, when appointed by the court, a reasonable sum for travel and [for each day or portion thereof] compensation for time actually employed in court or actually consumed in preparing for the hearing[,] pursuant to the schedule set forth in NRS 7.125; except the total fee for the attorney in any one special guardianship proceeding shall not exceed \$300; and

Insert after Line 10 Sec. 9.1(c) To the proposed ward's interpreter, when appointed by the court, a reasonable sum for travel and compensation for services and expenses pursuant to NRS 50.050.

Line 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.

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.

Lines 19 - 21 Sec. 10. [3] 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.]

Lines 22 - 24 } Sec. 10. [4] 3. 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.
HOLD

Lines 25 - 28 Sec. 10. [5] 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.]

Insert after Line 24 Sec. 10. [5] 4. 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.

Insert before Line 29 Sec. 10.5 Said written report shall be served on the ward either in person or by mail at least fifteen days prior to the courts determination. The ward or a person acting on the ward's behalf shall have the right to submit to the court any information which would assist the court in making its determination. If the ward or a person acting on the ward's behalf requests a hearing before the court on the issue of the continuation or modification, the court shall hold such a hearing as soon as is practical.

Line 36 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.

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

LIN 50 exempt service providers except as last resort
"conflict of interest"-2-

Page 3 Sec. 12.2[f. Any qualified interested person or [his] the person's
Line 50 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.

Line 7 Sec. 13.3 Inform the ward of [his] the right to request termination or
modification of the guardianship.

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.

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:

Line 13 - Sec. 14. [3. Approve the sale or encumbrance of the ward's personal or real
14 property.]

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.

Lines 15 - Sec. 14. [4. Take possession of the personal property of the ward and
18 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.]

Insert after Line 14 Sec. 14.4. Approve the disposal of assets or income beyond that part needed
for the 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.

Line 22 Sec. 14. [7. Consent to the ward's sterilization.]

Line 23 Sec. 14. [8]7. Consent to surgical operations [.] except for the purpose
of sterilization. *specific?*

Line 24 Sec. 14. [9. Consent to the adoption of the ward.]

Lines 37 - Sec. 16. [2 When a ward whose right to consent to surgery has not been
45 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.]

Line 46 Sec. 16. [3]2. A person who consents to the performance of a surgical
operation pursuant to the provisions of this section is not civilly or crim-
inally liable for the performance or the manner of performing such operation.

Lines 49 - Sec. 16. [4]3. A person who acts within the scope of the authority conferred
50 by such consent in the course of discharging [his] of official duties is not
Page 5 civilly or criminally liable for the performance of such operation. [but]
Lines 1 - However, this exemption does not affect any liability which may be incurred
3 as a consequence of the manner in which the operation is performed.

Lines 4 - Sec. 16. [5 Consent for surgery for a mentally retarded or mentally ill
6 person committed or voluntarily admitted to a state facility is governed by
the provisions of NRS 433.484.]

Lines 7 - Sec. [17. A ward under the age of 18 years shall not be sterilized unless
22 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.]

Line 23 Sec. [18] 17.1. The special guardian retains the powers granted until
termination or modification thereof by the court.

Line 37 Sec. [19] 18. NRS 159.017 is hereby amended to read as follows:

Line 42 Sec. [20] 19. NRS 159.031 is hereby amended to read as follows:

Line 47 Sec. [21] 20. NRS 159.035 is hereby amended to read as follows:

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Line 10 Sec. [22] 21. NRS 159.055 is hereby amended to read as follows: