

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

FEBRUARY 2, 1977

The meeting was called to order at 9:00 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
 Senator Bryan
 Senator Dodge
 Senator Foote
 Senator Sheerin
 Senator Gojack
 Senator Ashworth

ABSENT:

SB 130 Prescribes treatment program for persons found not guilty by reason of insanity.

Ken Sharigian, Division of Mental Hygiene and Mental Retardation testified before the Committee in support of this measure. He presented for the Committee's review a letter from Charles R. Dickson, Administrator of the Division of Mental Hygiene and Mental Retardation, which outlines their reasons for supporting this bill. (see attached Exhibit A) He stated that SB 130 is designed to fill a gap in the present Nevada Revised Statutes. At the present time, persons found not guilty by reason of insanity can only be placed in a mental health facility through typical civil commitment and in some cases these commitments are not restrictive enough. This bill will create an alternative status for persons found not guilty by reason of insanity. Essentially, each person so judged would be committed for 30 days of treatment planning and evaluation. Evaluation would be done by a professional staff as to treatment needs of the client, the requirements for security and the availability of appropriate services.

In response to a question from Senator Close as to whether or not the District Attorney's Association had been consulted on this, Mr. Sharigian stated that conceptually they were in agreement but that he had not spoken directly with them on this. Senator Close therefore suggested that he contact them and get their input on this.

Senator Dodge expressed concern over the fact that the mental institution would be able to keep an individual for the entire length of his sentence. Mr. Sharigian stated that they have to report to the court every 6 months on the progress of the individual and therefore they would only keep the individual as long as was deemed necessary.

SB 130 Senator Close felt that if someone were in the program for several years that it would become very burdensome and expensive to report back to the court every 90 days and he suggested that perhaps 180 days would be sufficient unless a specific petition is made to the court for some other reason. He further commented that he did not feel the court would always be able to act within 10 days from the date of the report and should perhaps be extended.

In response to a question by Senator Close as to the meaning of "regularly" on page 2, line 37, Mr. Sharigian stated that there would be no specific time lined in and that it related only to persons on an "outpatient" basis. It was his feeling that they would follow the same guidelines as used in reporting to the court on persons not on an outpatient basis.

After further discussion, it was the decision of the Committee to withhold action on this matter until testimony could be obtained from the District Attorney's office.

SB 134 Amends procedures concerning persons incompetent to stand trial.

Ken Sharigian testified on behalf of this measure. He distributed for the Committee's review diagrams of the present procedure for return of persons incompetent to stand trial and the proposed procedure for return of persons incompetent to stand trial. (see attached Exhibit B. Also see attached Exhibit A for reasons in support of this measure from Charles R. Dickson)

He stated that the purpose of this bill was to establish a more expeditious way of returning persons to trial when they are ready for trial.

Following a brief discussion, it was the decision of the Committee to withhold action on this matter until testimony could be obtained from the District Attorney's office.

SB 131 Provides for period of parole to be shortened by amount of good behavior credits and other credits earned in prison.

A. A. Campos, Chief Parole and Probation Officer testified on behalf of this measure. In explaining the deletion of "irrespective of" on page 2, line 13 Mr. Campos stated that the length of a persons parole is not the critical factor but rather the critical adjustment period is usually during the first phase of parole; the first 90-120 days. If they do well during that period of time, in all probability they will do well on parole and therefore there is no real reason for having that person on parole for a long, extended period of time.

SB 131 He felt that the law as it presently stands is discriminatory in nature because it only applies to people who accept parole. He cited instances where people have rejected parole because of this law. This works against public safety because parole provides a better means of re-entry into society than simply expiring the sentence and walking out of prison. The critical factor of this bill however, is that the law presently provides two different expiration dates on a persons term. There is one expiration date from prison and another one from parole. In the event, while on parole, he reaches the expiration of his prison sentence but not the expiration of his parole and violates his parole, he cannot be returned to prison.

Following a brief discussion, Senator Gojack moved a do pass. Seconded by Senator Foote. Motion carried unanimously. Senator Dodge was absent from the vote.

SB 133 Expands police powers of field agents and inspectors in Motor Carrier Division of Department of Motor Vehicles.

Howard Hill, Director of Motor Vehicles; William R. Goddard, Motor Carrier Division; and Winston W. Richards, Motor Carrier Division testified before the Committee on behalf of this measure.

Mr. Hill informed the Committee that in the middle 60's, Nevada phased out what was known as a "port of entry" system because there were more roads entering the state than they had official ports of entry for. In its place, the Department established within the Motor Carrier Division, field agents. There are currently 27 field agents who patrol the state and in addition they license vendor stations that sell permits to trucks that come into the state.

The problem they are encountering and the purpose of this bill is that they have discovered some inadequacies in the law in that the field agents do not have the authority they need to enforce the statute.

The purpose of the bill is not to give the field agents any more authority to act as highway patrolmen, but rather to give them the authority to enforce the statutes as far as trucks.

In response to a question by Senator Close as to why the Motor Carrier Division would want to get involved in these other areas that are already assigned to the highway patrol, Mr. Richards stated that in emergency situations they felt they should have the necessary authority to act. He cited instances where it would be helpful to both the Motor Carrier field agents and the highway patrol if they were able to act in these situations, especially in the rural areas of the state.

SB 133 Senator Foote observed that for a number of years there have been long discussions as to raising the number of people in the highway patrol and there has been much resistance to that. It was her feeling that this bill, in effect, adds 27 new members to the highway patrol. Mr. Richards replied that they do not want to get away from their main function of commercial licensed vehicles but that if, during the course of their main duties they come across a situation, that they be able to assist or handle an actual crime that might occur in their presence. At the present time they can only make a citizen's arrest.

Senator Sheerin concurred with Senator Foote and further commented that field agents presently have all the powers of a peace officer and that this bill goes even beyond that. It would give them the power of a peace officer under all other laws of the state which would include county sheriffs, as well as highway patrolmen.

Daryl E. Capurro, Managing Director of the Nevada Motor Transport Association testified before the Committee. He expressed the same concerns voiced by the Committee members on the extension of power being granted by this bill. He had no concern over the present administration's interpretation of the bill but he stated that he could not be sure that in the future, it would not be handled differently.

Cathy Valenta-Weise, Deputy Attorney General representing the Department of Motor Vehicles, indicated that there were a few structural problems with the bill. On page 1, line 18, "and" should be changed to "or" in that in defending this matter, there would be a very difficult problem in determining whether or not a Motor Carrier Field Agent properly used his discretion in determining whether the offense was committed not only in his presence but "and upon the highway" or "and adjacent to the highway." Additionally, on page 2, lines 11 through 18 are improperly referenced. Chapter 482 deals with licensing motor vehicles. The testimony today indicated that they would like the power to impound a vehicle and that power comes under NRS 484.397 not in Chapter 482.

After further discussion, Senator Foote moved to indefinitely postpone the measure.

Seconded by Senator Ashworth.

Senator Close indicated that there were several good points to the bill and that perhaps the Committee should try to amend it to retain those.

Senator Foote withdrew her motion to indefinitely postpone.

Senator Ashworth felt that the bill was only making 27 new highway patrolmen and he was opposed to it. He therefore

SB 138 moved to indefinitely postpone.
The motion died for lack of a second.

The Committee will review this matter at a latter date.
No action was taken at this time.

SB 150 Abolishes punitive damages in civil actions.

See minutes of meeting of February 1, 1977 for additional testimony.

David W. Hagan, Nevada State Bar testified before the Committee on this measure. He stated that it was not the State Bar's function to take a position one way or the other on a plaintiff's or defendant's bill. It is however, their policy to assist whenever they can in the administration of justice insofar as the enactment of legislation is concerned. For this reason, they oppose the bill. Exemplary damages have been a part of our common law for a couple of hundred years and the imposition of exemplary damages against an oppressor who has been fraudulent or malicious is intended both to call public attention to that person's anti-social behavior and to teach the wrong-doer the lesson that such conduct is not tolerated. The doctrine exists for the protection of society. Not every civilly actionable wrong has a criminal counterpart. If you were to make all civilly fraudulent and malicious conduct a crime, you would place an enormous burden on the legislature in simply catagorizing it and an even greater burden on public prosecutors. Moreover, it would create the risk that such conduct would go unpunished civilly and criminally with no compensation to the victim. We should be wary of tampering with long-standing legal doctrines out of fear that we will cause some imbalance elsewhere.

Peter Echeverria testified in opposition to this matter. He cited the case of Nevada Cement Company and the punitive damages awarded therein.

After a brief discussion, it was the decision of the Committee to study this matter further before taking final action.

Senator Close presented for Committee introduction those bills pertaining to medical malpractice.
Committee approval for introduction was unanimous.

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Senator Close presented for Committee introduction the following:

BDR 2-343 Measures judgment debtor's exemption from exemption upon his vehicle by his equity in it.

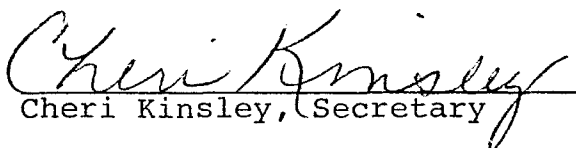
Approved unanimously for Committee introduction.

Limits acceleration of debts and obligations secured by deeds of trust when they are sold or transferred.

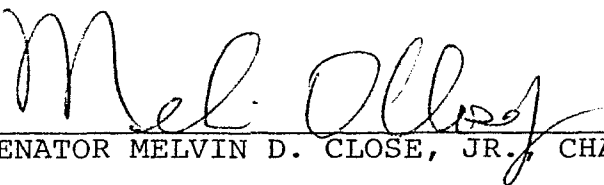
Senator Ashworth opposed Committee introduction and it was therefore denied.

There being no further business, the meeting was adjourned.

Respectfully submitted,


Cheri Kinsley, Secretary

APPROVED:


SENATOR MELVIN D. CLOSE, JR., CHAIRMAN



STATE OF NEVADA
DIVISION OF MENTAL HYGIENE
AND MENTAL RETARDATION

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MIKE O'CALLAGHAN
Governor

CHARLES R. DICKSON, Ph.D.
Administrator

MENTAL HYGIENE AND
MENTAL RETARDATION

JACK MIDDLETON
Associate Administrator for
Mental Retardation

February 2, 1977

Senator Melvin Close, Chairman
Senate Judiciary Committee
Nevada State Legislature
Carson City, Nevada 89701

Dear Senator Close:

The Division of Mental Hygiene and Mental Retardation, as a result of its one year experience with the operation of Lake's Crossing Center for the Mentally Disordered Offender, is proposing Senate Bills 130 and 134. These bills are designed to assist the mentally disordered offender program in providing the most efficient and effective methods of treatment for persons in the State of Nevada who have mental health problems and who are also in contact with the criminal justice system.

Senate Bill 130

Senate Bill 130 pertains to persons judged not guilty by reason of insanity. At the present time, persons so judged may only be placed in a mental health facility through the use of civil commitment type procedures. Senate Bill 130 proposes an alternative admission status for these persons.

The bill provides for a 30 day observation and treatment planning period for all persons judged not guilty by reason of insanity. These persons could be placed at a Division of Mental Hygiene and Mental Retardation facility, in most instances Lake's Crossing Center for the Mentally Disordered Offender. During this time, the person's treatment needs, security requirements and availability of appropriate services would be evaluated and a report sent to the court. The court using this evaluation would be able to make any necessary commitments for service. In some cases, commitment for treatment may not involve residential service, but less restrictive types of care such as partial hospitalization or outpatient therapy.

If the person judged not guilty by reason of insanity were committed to a residential program under the procedures proposed by Senate Bill 130, the court would be informed of progress every 90 days. The commitment would not extend beyond 180 days, but could be renewable up to the period of time for which the person might be maximumly sentenced if found guilty. Unlike present civil commitments, the person in a residential setting, on the basis of procedures proposed by Senate Bill 130, could not be placed on convalescent leave or released to the community without the prior approval of the court. Thus, this bill provides for a more restrictive commitment than is presently available.

Senator Melvin Close
February 2, 1977
Re: Senate Bills 130 and 134.
Page Two

In summary, Senate Bill 130 is designed to fill a gap in present Nevada law by creating a special admission status and procedure for persons who are judged not guilty by reason of insanity so that their special interests, as well as the interests of the community, are met.

Senate Bill 134

Senate Bill 134 is concerned with persons incompetent to stand trial. It is felt that a process of efficient return of these individuals to the courts should be developed. In many cases, the person who has been treated and is ready for return to trial must remain in Lake's Crossing Center for the Mentally Disordered Offender while a sanity commission composed of three private physicians convenes, evaluates him and provides a report to the court. On the basis of our experience, the amount of time required for the sanity commission to accomplish its task, report to the court and for the court to order the individual's return for trial has averaged 86 days. Since the opening of Lake's Crossing Center in February, 1976, 11 persons have met this category of having completed treatment and awaiting the sanity commission's findings. By multiplying these 11 persons times the average waiting period of 86 days, a total of 946 client days is obtained. These 946 client days represent a period of time during which persons deemed by treatment staff as ready for trial occupy bed space at the Lake's Crossing Center program. If these 946 client days were available for treatment of persons requiring services, it is estimated that seven additional persons could have been treated by Lake's Crossing Center since its opening. These figures are based on 11 months of program activity (February, 1976 through December 31, 1976). Since the initial capacity of Lake's Crossing Center had purposely been kept below maximum, it can only be anticipated that this number will increase in the future as the program increases its occupancy to maximum in July, 1977.

Lake's Crossing Center has professional staff competent to make clinical evaluations of an individual's readiness for trial. Senate Bill 134 would therefore eliminate the need for a sanity commission and require a report only by agency professional staff. The bill does, however, permit a review by outside professionals if the court questions the report of the agency professional staff. The bill also states that a person can be judged competent to stand trial if his mental disability is successfully being treated with medication. It is believed that this legislation would allow for a more efficient return of individuals to court, and thereby free additional bed space for other individuals in need of services.

I respectfully urge your positive review of these two legislative proposals. I and my staff would be most happy to provide additional information which you might require.

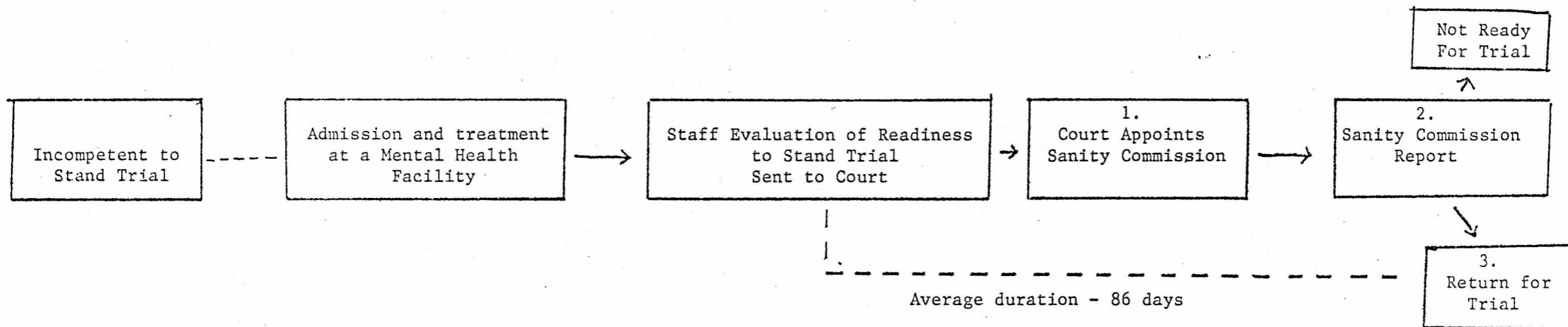
Respectfully submitted,

Charles R. Dickson

Charles R. Dickson, Ph.D.
Administrator

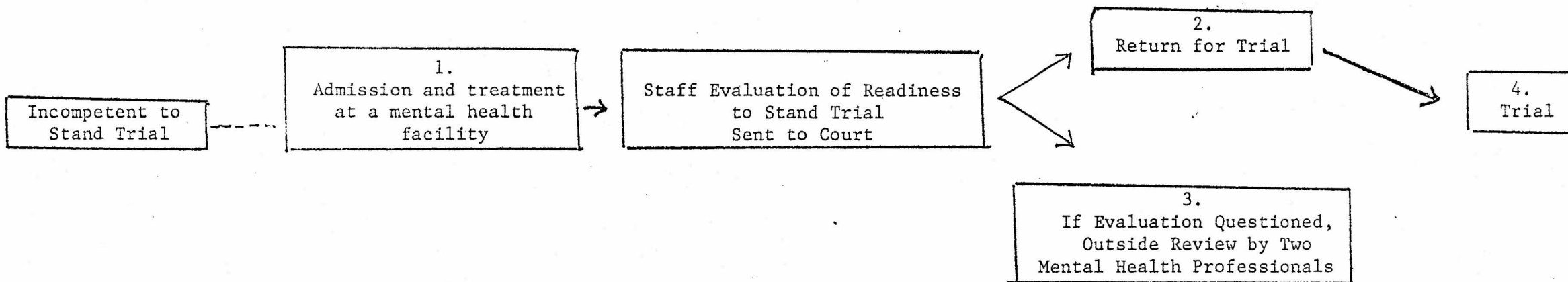
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cc: Senate Judiciary Committee Members.

PRESENT PROCEDURE FOR RETURN OF PERSONS INCOMPETENT TO STAND TRIAL
(NRS 178.425 - 178.465)



1. Sanity commission must be appointed within 20 days of court's receipt of Division staff evaluation.
2. Sanity commission must examine the individual and report findings to the court within 20 days of court appointment.
3. If individual is evaluated as ready for trial, the trial date must be set for within 60 days of sanity commission report. Individual must be returned for trial no more than 30 days prior to the trial date.

PROPOSED PROCEDURE FOR RETURN OF PERSON INCOMPETENT TO STAND TRIAL (S.B. 134)



1. Maximum period of two years or maximum sentence for alleged offense, whichever is less.
2. Return must be within ten days of receipt of evaluation.
3. If evaluation is questioned, outside review report must be returned to the court within five days of court's request, and if ready for trial return within ten days.

4. Trial date must be set within 30 days of court order for the individual's return for trial.