

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

APRIL 15, 1977

The meeting was called to order at 8:50 a.m. Senator Close was in the chair.

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

ABSENT: Senator Gojack

SB 482 Revises provisions relating to forfeiture of bail upon breach of conditions.

Mike McGroarty, Deputy District Attorney stated that this bill deals with rather comprehensive revision of the bail bond forfeiture statutes in the State of Nevada. It provides a good method to forfeit bail bonds, which the state does not presently have. The present statute is a combination of Federal forfeiture and California forfeiture and because they are two different systems the system we have right now does not work. This bill would cut down the burden of the court by about 50%, as it makes an automatic forfeiture for all bonds below \$500, where a defendant skips on his bail. Notice is given to the surety at the time this happens.

Senator Close asked what if the guy is in jail in another state and you can never bring him back, what is the provision for that?

Mr. McGroarty stated that there is no provision to cover that. Under the present statute there is, but under this bill there isn't and he believes this is a better situation. The theory behind bailbonds is to release the person into the custody of the surety, the surety is supposed to keep track of that person. If he goes to another jurisdiction and commits a crime and is convicted, the surety has failed, when it allowed him to leave the jurisdiction in which he was released.

Senator Bryan stated it would be helpful to have some background on the problems they are having.

Mr. McGroarty stated that in the past two years he has handled all bailbonds for Clark County. Last year, April thru June, he did a study of bail bonds, and in Justice Court, Las Vegas Township, approximately 100 defendants skipped bail each month. That represents approximately \$100,000 in liability. Under present statute it states,

"upon such conditions the court may impose, set aside a forfeiture if it appears that the justice does not require the enforcement of the forfeiture". Under this system of the \$100,000 that goes into forfeiture approximately \$5,000 is collected, that is only 5%. 95% are set aside, or reinstated, as some courts call it. There are no guidelines to the court, there is no standard, structure or way to predict if a bond will be forfeited. No case law in this state to determine in what case the bond will be forfeited.

Senator Sheerin asked if the bond is \$500 or more are they given 90 days?

Mr. McGroarty stated the average bail bond is \$1,000 that would be 50% of all the bonds would be forfeited immediately.

Senator Sheerin asked if this gives the surety a chance to exonerate it if the bond is under \$500 at anytime?

Mr. McGroarty stated the way this is worded he believes that he has 90 days to file a defense. Most of the motions to set aside are filed after the expiration of the present 90 day statutory limitation period. It just automatically seems to come back on calendar 90 days after failure to appear. At this point a continuation may be asked for, in which a surety or defense attorney may file a defense to the forfeiture. At this point it is continued another week, then it is continued for a week for the state to answer. So we are talking about around 120 days before we can get it on for forfeiture.

Senator Hernstadt stated that his reason for asking for this to be drafted and introduced, was in Southern Nevada there have been numerous stories of abuse of bonding. There was one Justice of the Peace, who as he left office, exonerated a slew of bonds in chambers. The purpose of this bill is to put guidelines on as to when bonds can be exonerated and clarifying the forfeiture provisions. They have found over the years you do need stricter controls and clarity as to when things can be forfeited and this tracks the Federal proceedings. He feels the whole point of bonding is to produce the accused at the appointed time and place. If the bonding company isn't going to lose anything, then they will have no incentive to produce the accused at the appointed time and place.

Senator Close asked why they have mandated the Commissioner of Insurance to notify the surety? That puts a great burden on him and there should be a fiscal note attached to this, as it will surely cost more than \$2,000 a year to have the Commissioner notify every bailbondsman of the forfeited bonds.

Mr. McGroarty stated that it is the surety and there are only three or four of them that write throughout the state. They are independent of the bondsman. They have to keep an address on record with the Commissioner of Insurance. As it is now

an address will change once or twice a quarter on a surety and the court clerks are not informed of the new address changes and consequently the surety never finds out.

Dick Rottman, Insurance Commissioner stated that this notification creates a problem. He stated his staff has informed him that they would have to ask for a fiscal note on this as they are not staffed for such procedures. He also feels that the \$500 or less might create a hardship on people who are arrested and want bail for the smaller sum. This could create substantially more underwriting going on and also the guy would have to sit in jail longer.

Mr. McGroarty stated that he knows for a matter of fact that to have to calendar a matter 90 days down the line causes a problem for the clerk. She has to pull those files, hold them separately and track them. This bill would eliminate 50% of the cases that she presently has to pull. The court would only have one hearing to forfeit a bail bond instead of the three it would take with the 90 day notice.

Senator Close asked if one of the problems was that when the court notifies the bailbondsmen, that the surety, who ultimately pays the bond never gets notified?

Mr. Rottman stated that there is another bill that gives notice directly to the surety and not to the bail agent and that would take care of that particular problem. If you notify the surety, you can bet that within 5 minutes that the agent will know. The problem now is that some of the courts will not cooperate in actually sending it to the surety, they want to send it to the agent.

Senator Dodge felt that if you notified the bondsman, then the surety would get the message right away anyway.

Senator Bryan stated that there is also a problem with the setting of dates. No one notifies the surety if the hearing is moved back or moved ahead.

Mr. McGroarty stated that there is a vast difference between a bondsman and a surety. The way the statute is now you must give notice to the surety, and in every case they are out of state. The bondsman is only the agent for the surety for a limited purpose and that is to file the bail bond.

Senator Bryan stated his point is that no one is getting any notice. The bondsman, the surety, no one gets notified. Unless you go every day and check everyone of the cases, there is no way to ascertain the date.

Mr. McGroarty stated he didn't feel we wanted to put the burden of notification upon the courts as they already have enough to do.

Senator Bryan stated that when you are talking about an automatic forfeiture, and that happens frequently, someone has got to be notified.

Senator Dodge said why don't you put in on the DA's office?

Mr. McGroarty stated they don't have a problem in District Court, only Justice Courts. He feels perhaps people pay more attention to district courts.

Senator Close asked how many suretys work in the state?

Mr. Rottman stated that there are about a dozen. He also brought out the fact that all the clerks have to do at any-time if there is any doubt about an address, is to pick up the phone, call our Las Vegas office and check the address. The surety does not move around much. Now an agent that may represent Wilshire today may represent Allied tomorrow or next year, but Allied has not moved their office since they were admitted.

Mr. McGroarty disagreed with this statement as he has found it difficult to keep track of the address of the surety.

Senator Close stated he felt the problem was that a lot of these agents are not dependable. They run up hugh amounts of forfeitures and then they walk away from it and the poor old surety gets wiped out.

Senator Dodge stated that if we are going to pass this bill, and he is not too sure there aren't too many ramifications, then we either work it out on the basis of some type where the Insurance Commissioner isn't going to be impacted financially in his office, or forget it.

Senator Ashworth stated he cannot support this bill unless the clerk is responsible for notifying the surety. And if the law says that now then we merely amend out the portion where it says the Commissioner has to notify them.

SB 455 Changes number of justices of the peace allotted to certain townships and establishes staggered terms for justices of the peace.

Ed Schorr stated he had a fiscal note to submit to the Committee (see exhibit A). What he did was take AB 35 which consolidated municipal courts into justices courts and pick-ed up the figures of operating costs of \$184,000 per justice court and used that to come up with this fiscal note of \$368,000 to add two new justices courts. Subsequently he got a wire from Clark County with an estimate indicating that it would cost approximately 1.2 million dollars to add two new justices to the justice court in Clark County. These figures include adding new costs to the DA's office, the public defender, the Las Vegas Metro PD, etc. which he

believes are more a function of an increased case load, then they would be of adding two new justices. So on the last page he took the figures from Clark County and added in the space allocation and indirect cost and it now comes up to \$583,000.

AB 239 Provides for special guardianships for persons of limited capacity.

Carol Senary, Director of Social Services for the Division of Mental Hygiene and Mental Retardation submitted her testimony in support of this bill (see exhibit B). She stated also that the theory was in lieu of a total mental incompetency finding, that we are attempting to set up a partial limited guardianship. Also, if a person wanted to become a guardian we would plug in the 13.5 to watch the relationship between the special guardian and the ward. The guardian would still be appointed by the court and they would be reviewing these yearly reports and so forth. If anything went wrong during the entire procedure they would be able to report back to the court or take whatever steps necessary to correct it.

Senator Dodge asked why they didn't just let the representatives of the public agencies be the guardians.

Bob Price, Assemblyman District 17 stated that from a public viewpoint there is quite a skepticism about having public agencies become the guardians for individual people and especially if you happen to be dealing with the mental health department. So they tried to answer the question raised by even the most severe critics and eventually we put an agency at the bottom of the priority list to become a special guardian. They can still do it, but we felt that if anyone else were available that we should use them.

Senator Dodge asked if they had benefit of law in other states when working on this.

Mrs. Senary stated that California's conservatorship was one of a number of state legislation that was reviewed. The recommended alternative that is coming out for most advocacy groups and the direction most states are taking is this. However, this bill has taken its own trend based on the number of persons in our state and tailoring it to our needs.

Senator Bryan stated he had a problem where it states that the notice that is to be served upon the ward must be served by a non-uniformed person, and also having all contents of the documents read to the proposed ward.

Mr. Price stated that they did not want a person unduly upset or scared by having a policeman or that type of person show up. Also in the reading, this is an attempt to try

and provide as many rights and protections as you can. This would be to have someone actually read this to him and try to get him to understand.

Senator Bryan stated they should have some input from the counties on this as there was really great fiscal impact.

Mr. Price stated he felt Carol's estimate was a little high.

Senator Dodge stated even if you have 50 persons that is \$15,000.

Mr. Price stated that you are only talking about indigent people. In answer to a question he stated the two qualified persons was set up so you would have the experts in the specific area he was alleged to be deficient in, and it would still go back to a court decision.

Mrs. Senary stated that if the court appoints the examining team it would be much as occurs in the juvenile court system, they would be responsible for payment of those persons.

Senator Close stated he felt this was a good bill but had considerable fiscal impact and they better get busy on a fiscal note. For this bill to be successful it would have to go through Finance, they will not pass it without that consideration.

Senator Bryan stated he agreed. The way it reads, it gives the impression that it is to be paid by the county. You would have attorneys fees, witness charges, presumably examination fees and all of those would be chargeable against the counties.

Senator Close stated he would recommend that you either get a fiscal note on this bill or the Committee would have to kill it. There is no way we can pass a bill that has a fiscal impact of over \$2,000 without a fiscal note attached.

As they had to go into session, the meeting was adjourned at 10:30 a.m.

Respectfully submitted,


Virginia C. Letts, Secretary

APPROVED:

SENATOR MELVIN C. CLOSE, JR., CHAIRMAN

FISCAL NOTE

BDR 1-1470
 A.B. _____
 S.B. 455

Date Transmitted _____

• STATE AGENCY ESTIMATES Date Prepared _____

Agency Submitting _____

Revenue and/or Expense Items	Fiscal Note 1976-77	Fiscal Note 1977-78	Fiscal Note 1978-79	Continuing
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Total	_____	_____	_____	_____

Explanation (Use Continuation Sheets If Required)

Local Government Impact YES NO
 (Attach Explanation) Signature _____
 Title _____

• DEPARTMENT OF ADMINISTRATION COMMENTS Date _____

Signature _____
 Title _____

• LOCAL GOVERNMENT FISCAL IMPACT Date April 8, 1977
 (Legislative Counsel Bureau Use Only)

Under this bill, the number of Justices of the Peace in the Las Vegas Township Justice's Court will be increased from 4 to 6. The additional costs will be the responsibility of Clark County. Clark County has advised that the current operating cost is \$184,00 per year per Justice of the Peace. Assuming that this cost applies to the proposed new Justices, the annual cost of this measure will be \$368,000.

Signature E.D. Schon
 Title Deputy Fiscal Analyst

Office of the County Administrator

CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA

January 31, 1977

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CHAIRMAN

DAVID B. CANTER
VICE-CHAIRMAN

SAM BOWLER
ROBERT N. BROADBENT
MANUEL J. CORTEZ
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GEORGE F. OGILVIE
COUNTY ADMINISTRATOR

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FEB 3 1977

OFFICE OF FISCAL ANALYSIS

Mr. Ed Schorr, Deputy Fiscal Analyst
Legislative Council Bureau
Legislative Building, Capitol Complex
Carson City, Nevada 89710

SUBJECT: BDR 1-61 - Consolidation of Municipal into Justice Courts

Dear Mr. Schorr:

The financial impact of this bill is estimated as follows:

1. Increase from four to seven justices of the peace
 - a. Operating cost/court = \$184,000
 - b. Operating cost of 3 additional courts = \$552,000
2. Increase in D.A. budget
 - a. Present operating cost of D.A. associated with 4 justice courts is 35% of budget or \$757,323.
 - b. Operating cost for 3 additional courts is approximately \$568,000.
3. Increase in Public Defender's budget
 - a. Present operating cost for 4 justice courts is 45% of budget or \$415,166.
 - b. Impact for 3 additional courts is approximately \$312,000.
 - c. Loss of revenue to Public Defender for representation of indigents in municipal court - \$60,000.
4. Overhead impact for additional space, maintenance, etc. is 12.19% of increased operating cost: (1,432,000) - \$174,560.

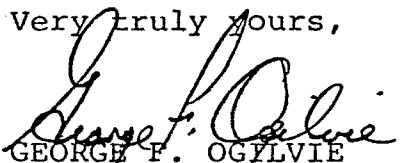
Mr. Ed Schorr
January 31, 1977
Page Two

Total budget impact is estimated as follows:

Justice Court	\$ 552,000
D.A.	568,000
Public Defender	372,000
Overhead.	<u>174,560</u>

TOTAL: \$1,666,560

Very truly yours,


GEORGE F. OGILVIE
County Administrator

GFC/kh

Office of the County Administrator

CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA

COMMISSIONERS

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GEORGE F. OGILVIE
COUNTY ADMINISTRATOR
Phone: 386-4011

April 13, 1977

RECEIVED
LEGISLATIVE COUNSEL BUREAU

APR 14 1977

OFFICE OF FISCAL ANALYSIS

Mr. Ed Schorr
Legislative Counsel Bureau
Carson City, Nevada 89710

Dear Mr. Schorr:

Attached are the worksheets for fiscal note supplied by Clark County on SB 455.

Very truly yours,

George F. Ogilvie

GEORGE F. OGILVIE
County Administrator

GFO/ef
Enc.

STAFF REPORT

SUBJECT: Fiscal Impact of S.B. 455

The fiscal impact of two more justices of the peace for Las Vegas Township has been estimated at \$1,177,642. This estimate has been arrived at as follows:

Justice Court

Personnel

- 2 Bailiffs
- 2 Justices
- 2 Legal Process Clerks
- 4 Legal Secretaries
- 4 Clerk Typist I

238,575

Supplies

9,750

Services

218,650

Capital Equipment

14,600

S/T

481,575

District Attorney

Personnel

- 4 Attorney
- 1 Legal Secretary
- 1 Clerk II
- 2 Investigators
- 1 Law Clerk

246,900

Supplies/Services

26,800

Capital Equipment

7,500

S/T

281,200

Public Defender

9 personnel

195,734

Supplies

2,000

Services

10,000

Capital Equipment

7,500

S/T

215,234

L.V. Metropolitan Police Department

2 Corrections Officers

26,600

Supplies

200

Capital Equipment

400

S/T

27,200

Space

Justice Court

7,050 ft.² at \$7/year 49,350

District Attorney

990 ft.² at \$7/year 6,930

Public Defender

990 ft.² at \$7/year 6,930

S/T \$ 63,210

Indirect Cost (11.2% of operating expense) 109,223

Grand Total: 1,177,642

/kh

SB 455

JUSTICES' COURT COSTS

<u>ITEM</u>	<u>1977-78</u>
Personnel (14 new positions)	\$ 238,575
Supplies	9,750
Services	218,650
Capital Equipment	14,600
Space	49,350
Indirect Costs	<u>52,410</u>
Total	\$ 583,335

My name is Carol Senary. I am Director of Social Services for the Division of Mental Hygiene and Mental Retardation and I am here to testify in support of A.B. 239. I will be speaking to the purpose, targeted population, special features in the design of the measure and identifying the numerous contributors and supporters of this bill.

A. DEVELOPMENT OF A.B. 239 AND LIST OF SUPPORTIVE PERSONS OR GROUPS

Special guardianship has been developing through a wide range of input over the past year. Contributors include:

Division of Mental Hygiene and Mental Retardation

Legal Aid Society of Washoe County represented by Scott Jordan

Nevada Association of Retarded Citizens, Executive Director Susan Haas

Washoe Association of Retarded Citizens Advisory Board

Assembly Judiciary Committee

Many additional persons have reviewed and expressed support of

A.B. 239:

State Developmental Disabilities Council

The Honorable John C. Gabrielli

The Honorable Stanley Smart

Attorney Richard Donaldson of Las Vegas

Deputy Attorney General Shirley Smith

Health Planning and Resources

State Aging Services

Rick Kuhlemy, Governor's Committee on Employment of the Handicapped and representative of Veteran's groups

B. PURPOSE OF LEGISLATION

1. Provides an alternative to general guardianship.

A.B. 239 will provide an alternative to existing general guardianship (NRS 159) for adult persons "of limited capacity" who require some assistance in decision making, but who are able to maintain authority over other areas of life. Special guardianship is tailored to the specific areas of need of the ward.

2. Protects ward's rights

In a general guardianship proceeding, the ward is legally declared incompetent. This determination results in the denial of certain basic rights and leaves other areas in question. Following are some specific references:

- a. Denial of a driver's license NRS 483.250
- b. Exempt from qualification to act as juror NRS 6.010
- c. Voter registration subject to cancellation NRS 293.540
- d. Marriage subject to annulment NRS 125.330
- e. Right to leave a will jeopardized because definition of "who is of sound mind" NRS 193.210
- f. Denial of right to sell possessions (which might be defined as "junk") NRS 647.050

3. Assures due process

In general guardianship, there is often a tendency to assume the ward's incompetence to understand and participate in proceedings, therefore, insufficient attention is given to the ward's right to due process.

C. TARGET POPULATION

Adult persons who for reasons of mental retardation, mental illness, alcohol or drug abuse or increased age require the assistance of another person to make decisions would benefit from a special

guardianship. These decisions can include choosing a place of residence, approving a treatment or habilitation plan, budgeting finances, consenting to surgery or other specific areas where limitation has been determined.

An estimate of the numbers of persons who would benefit from a special guardianship is difficult to ascertain. It is certain that a portion of the 101 petitions for general guardianships filed in Washoe County during 1976 would be better served by a special guardianship. In Clark County there are no figures available as petitions for general guardians are not logged separately from other probate matters.

Among the persons identified as mentally retarded, it is estimated that at least 100 persons statewide would require a special guardianship hearing over the next two years. Statistics on other handicapping conditions are not readily available.

D. SPECIAL FEATURES OF SPECIAL GUARDIANSHIP, WHICH DIFFER FROM GENERAL GUARDIANSHIP PROCEEDINGS

1. Proposed ward is treated as competent throughout hearing with special attention given to appointment of counsel, and other assurances of due process (Sec. 4, 5, 8).
2. An interpreter is appointed when proposed ward is unable to understand or communicate in the English language (Sec.9).
3. Consideration is given first to the ward's preference in appointment of the special guardian (Sec. 12).
4. Attention is given to protection of confidential nature of information without precluding persons acting in the ward's best interest (Sec. 17).

5. Appointment of a review, in addition to a special guardian, further ensures protection of the ward's interests (Sec. 13.5).
6. The role of the special guardian is one of assisting the ward in decision-making in preference to substitute decision-making which encourages the ward's development toward self reliance.