

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

APRIL 16, 1977

The meeting was called to order at 8:02 a.m. Senator Close was in the chair.

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

ABSENT: None

AB 8 Permits voluntary cessation of life-sustaining procedures for terminally ill persons.

The Committee went through the amendments (see exhibit A) to see what changes were made and to see if there were any others to be made.

Senator Dodge raised the question that he felt there should be a witness in the holographic situation.

Senator Sheerin brought up the fact that the time element should not be left in as suggested by the bill drafters, the date should be sufficient.

After some discussion the Committee concurred that it should not be in there as it could be knocked out if the guy didn't put the time in and felt it was a trap.

Senator Close thought that where the wording had been taken out "with the application of life sustaining procedures would serve only to prolong the moment of my death", that should be left in. The Committee concurred.

Senator Dodge moved amend and do pass.  
Seconded by Senator Bryan.  
Motion carried unanimously.

AB 268 Specifies conditions under which persons under disability may recover damages for parents' or guardians' failure to bring medical malpractice action.

Senator Bryan stated that we left the question as to whether he has the right to sue a 3rd person unanswered.

Shirly Smith, Deputy Attorney General stated that she would just like to say that the prisoners do need their civil ability to sue while in prison

Senator Bryan stated that Frank Daykin looked at that particular provision to be sure, so the way to handle that is under the civil limitation action section in chapter 11 as to when the statute of limitations is tolled.

Senator Dodge stated we are talking about a fairly narrow area here where people are in public custody, so you are talking about a fairly limited number that had damage at birth. He also feels the warden should be out of this altogether. It has been pointed out to him that there are a lot of other situations that weren't even addressed in this bill. For example the girls and boys that are under age.

Senator Sheerin stated that if the prisoner has the ability to sue, the statute is not tolled and there is no problem. He was also in favor of taking the warden out.

Senator Bryan stated that if you recall that the reason for getting into this was that the tolling of the statute of limitations extends the tail.

Senator Close stated that this section really is not limited, it talks about the parent, guardian or custodian.

Senator Bryan stated to clarify this, the way the old law was, the statute was tolled until the minor was 18 and then the statute of limitations ran, which was three years. So there was a total of 21 years. The insurance company didn't know when that claim would ever be made, so we tried to clarify this by putting the 10 year limitation. So when you take away the right of the child or the ward to sue, in this situation you have a person who is in custody and you have to provide some mechanism for that child so the statute doesn't run against him. So last session we said it has to be the duty of that person in charge of that facility.

Senator Sheerin stated that you are still one step away from the intent of this bill and that is when in prior legislation we said that the custodian had to bring suit. The question that was unanswered was suppose the custodian does not bring the suit, what positive action does the board have against the custodian for not bringing action? The point is that the ward does have the cause of action of negligence, we don't need to create a statutory cause of action and we don't need the bill. The only reason for the bill is to get the warden out, so we can take him out and forget the rest of the bill.

Senator Bryan stated then we should amend expressly that section of the law, which is not in this bill, which states statutorially that the statute of limitations is told during the period of confinement.

Senator Dodge said then we should go into the bill on page 1 sub 3 and delete the balance of the existing language, and delete all those warden, administrator of the mental hygiene and retardation and so on, including sub 4.

Senator Sheerin stated you can't do that. You are taking away from the ward so he doesn't have the full use of his statute of limitations. And if the guardian makes a mistake you are not giving the ward a cause of action back against the guardian.

Senator Close stated that means that the child who is say 2 years old has a tolling of the statutes until he is 18, and that is what we have already done.

Senator Bryan stated that he felt the whole point was to toll the statutes, go back to NRS 319.75 and put it in there specifically for just these limited children with damage. If you do that you don't have to get into the imposing of liability of the administrator. If you take away the child's cause of action away from him and do not provide a remedy in case that cause of action is improperly maintained by the parent or legal gaurdian, I think you may constitutionally loose the whole concept of the law.

Senator Close stated they why can't you put in there to provide that there is no remedy for whatever situation you are thinking about.

Senator Bryan didn't think you can do that legally. You are saying in effect that the child shall never have a cause of action.

Senator Sheerin stated what you are doing is in a malpractice situation, you are shortening the statute of limitation on children and yet in all other areas of the law, if he is disabled the statute in fact is tolled. That is unequal legislation.

Senator Bryan stated that he felt this was a policy question and I think we would be satisfied if Daykin opines that you can't constitutionally do it, so why don't we discuss this with Frank.

Senator Close stated then we will do these three things. We will take out the warden entirely. We take out the State custodian and toll the statute while the child is in custody in this state, And then the question is can you take away the parents liability or the legal guardian, and on that one we will have to find out.

AB 353 Removes permit requirements for foreign copromoters of boxing and wrestling programs.

Senator Close stated that the policy question here is do we want to charge the guy from out of state \$100 to promote a boxing match and the local guy \$25.

Senator Bryan moved do kill.  
Seconded by Senator Ashworth.  
Motion carried unanimously.

AB 418 Eliminates jurisdiction of juvenile division of district court over child previously certified for trial as adult.

See minutes of 4/6/77 for action on this bill.

Senator Close stated he wanted to go over some of the amendments. He stated that what we had wanted to do was to be able to bring the age back down after the child had been certified as an adult once, and the language here does not seem to do that.

Senator Bryan stated they had wanted to use the law presently in the statutes on the child from 16 to 18, only clarify that in some cases he can be certified back down to a juvenile.

Senator Close stated then what we should say is at the discretion of the court he may be certified downward.

SB 211 Permits capital leasing of gaming equipment.

Senator Close stated that the Assembly had amended this and they should look over the amendments as this will amend NRS 671. The Committee concurred with the amendments.

See minutes of 4/6/77 for action on this bill.

SB 387 Provides for organization of commission on judicial selection.

See minutes of 3/30/77 for action on this bill.

This was amended by the Assembly and Senator Close asked the Committee to check over these, the Committee concurred with the amendments.

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

Senator Close stated he thought we should pass this out with one JP. The actual cost ~~of this is~~ \$184,000 per JP and he feels this is warranted and justified. Their calanders are 6 to 7 months in advance, we in this Committee talk about quick justice and that is not quick justice.

Senator Bryan made a motion that they amend and do pass, with the one judge mandated on or before July 1, 1978.

The motion was seconded and the vote was as follows:

AYE: Senator Bryan	NAY: Senator Ashworth
Senator Close	
Senator Dodge	
Senator Foote	
Senator Gojack	
Senator Sheerin	

SJR 25 Memorializes Congress to raise threshold for reporting gaming payouts for income tax purposes.

Senator Sheerin moved do pass.  
Seconded by Senator Dodge.  
Motion carried unanimously.

SB 426 Limits civil actions based upon products liability.

See minutes of 4/11/77 for testimony.

Senator Gojack stated she had talked to Mr. Bender after the hearing and he had stated that four other states have similar statutes, and in Utah one has just passed two houses. In Florida the statute of limitations goes 12 years.

Senator Close stated then perhaps what we should do is divide this bill and take the statute of limitations on the one hand and take the rest of the bill.

Senator Sheering stated the only part of the bill he liked was section 4, so he moved amend and do pass striking all but Section 4.

Senator Ashworth seconded the motion.  
Motion carried unanimously.

SB 469 Changes monetary limitation on tort liability of State and its political subdivisions.

See minutes of 4/14/77 for testimony.

Senator Close stated he felt that \$50,000 would be defensible.

Senator Ashworth moved we amend and do pass and re-refer to Finance.

Seconded by Senator Dodge.  
Motion carried unanimously.

SB 290 Expands provisions relating to medical records as evidence.

See minutes of 3/17/77 for testimony.

Senator Close stated that Raggio says what we are doing with this bill is conforming medical records to business records. The business records rule works very well and which is a copy that is certified. Also on page two line 8 he would like

the have "licensed nurse" added.

Senator Ashworth moved amend and do pass.  
Senator Gojack seconded the motion.  
The motion carried unanimously.

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

Senator Close stated he thought the bill had some merit but perhaps we needed more testimony.

Senator Dodge stated he felt the bill was good but we are getting into so many complications with notices.

Senator Bryan stated he had a call from a bondsman in Las Vegas who stated he would like to come up and testify on this bill.

After some discussion the Committee decided to hold this bill.

See minutes of 4/15/77 for testimony.

SB 506 Extends homestead exemption to certain mobile homes.

Senator Close stated that this merely extends the homestead rights to mobile home owners.

Senator Dodge stated that maybe this was a move in the right direction, as there is a real inconsistency in the law regarding mobile homes. People live in them as their home home and yet we assess them as vehicles.

Senator Close stated there is a provision in NRS 115.060, subsection 2 that deals with disposition in case of death, but it says "the exemption made by this chapter shall not extend to unmarried persons", now we made the distinction a couple of years ago to go with "single person" also. So there is an inconsistency in the law dealing with unmarried individuals. So if we pass this we will tack it onto that, and if we are not going to pass it we will amend it and take care of it that way. He feels that we should make it consistent for a single person to file for a homestead.

Senator Ashworth moved do pass.  
Senator Dodge seconded the motion.  
Motion carried unanimously, Senator Sheerin was absent from the vote.

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

Senator Dodge stated he felt that this bill went to the question of how far should we be our brothers keeper and

he was not enthused about it.

Senator Ashworth moved to indefinitely postpone.  
Senator Gojack seconded the motion.

Senator Bryan stated he had talked with these people that were here on this and felt they were misinformed early on. They were under the impression that under the general guardianship law that there were provisions at the present time for appointments or guardians and court expense and all that. So in developing this concept for the special or limited guardian they thought this was just an extension of the existing law. When in fact it is quite a radical departure from it and would be a tremendous cost to the county. He feels it is a good bill but it is just too late in the session to even begin to do anything with this.

Motion was voted on and carried unanimously, Senator Sheerin was absent from the vote.

AB 342 Relaxes requirements for certificate of permission to perform marriages and repeals county clerk's authority to prescribe additional regulations.

See minutes of 4/11/77 for testimony.

Senator Dodge moved do pass.  
Seconded by Senator Gojack.  
Motion carried unanimously, Senator Sheerin was absent from the vote.

AB 405 Establishes civil actions against state as specialized functions of district court and adds state-supported judge in first district.

Judge Frank Gregory stated that this bill, as it now stands amended, is exactly the thing he requested originally to be introduced. It provides for a second judge in the 1st judicial district and it would become effective upon the creation of a vacancy in office. We have a problem in the 1st judicial district, and it has been a problem since the 9th district was created. Prior to setting up the 9th district, which encompasses Douglas and Lyon counties, we had a first district of 5 counties with 2 judges, we were able to interchange, balance and offset amount the counties. Now the whole problem is concentrated in the first district which is Carson City and Storey counties. The big burden comes in Carson City and there is only one judge to do it. My calendar is now set on criminal cases into November of 77. At the present time I am facing, by reason of indictments by the Grand Jury, somewhere between 19 and 34 major cases, capital murder cases arising out of the prison riot of last October. If they break down to where there has to be 34 separate trials, each trial will take about three

weeks. If there can be one trial to hear all together, this will stretch 3 or 4 months. This is on top of everything else that is pending in court now. I started asking for help 2 years ago and I have gotten some temporary relief from other judges, and I have compiled a note on this. In the fiscal year 1971-72, in the first judicial district court in Carson City we had a total of 883 cases filed, 597 of them were heard. To give a comparison, in the year 1975-76 there were filed a total of 1,309 cases and I was able to hear 800 of them. In that same year visiting judges heard approximately 100. This situation is worse even then that reflects, because we were not getting civil cases to trial. The statistics that I have reflect a great number of civil cases, uncontested divorce cases. But for the criminal trials in 71-72 we had filed 78 criminal cases and 741 civil cases and 47 in juvenile division and 17 habeas and post convictions. In 75-76 there were filed 110 criminal cases, 1,007 civil cases, 118 juvenile cases and 74 habeas and post conviction matters. That represents an increase in the filings of 41% in the criminal, 35% in the civil and 151% in the juvenile and a grand total of 335% in the matter of habeas and post conviction matters. In those same 5 years the number of criminal hearings presented by the AG's office on matters arising from state functions primarily out of the prison, increased 414% from 7 to 36. The habeas and post conviction matters increased from 13 to 63 or 285% and on our trials, the criminal cases that were heard arising out of the AG, were 414% and out of the Carson City DA's office 48%. The number of trials that actually occurred arising out of the AG's office increased 300% and out of the DA's office in Carson 91%. I feel that we are not being fair to the civil litigant, people have civil rights too. Accident cases, contract cases those things, we can't get to trial. I set my calendar 2 and 3 cases deep every day, and all the briefs and outside work is done at home, at night and on week-ends. I am required by statute to give priority to criminal cases and next to that come cases involving state agencies, such as cases out of the public services commission or Sierra Pacific or gaming cases. So the poor little guy that has a debilitating accident on the street can never get his case to trial. The bill as amended will provide the second judge and will become effective if there is a vacancy in the office, and in this case I would have to consider resigning otherwise it would not become effective until the next election and I don't feel we can wait that long.

Mike Fondi, Carson City District Attorney stated that it is in the constitution, section 6 article 4 that provides you cannot create a new judgeship until a vacancy occurs or the expiration of a term.

Senator Bryan stated that there have been a number of judges added in Clark and Washoe just since I have been in the



Legislature and I don't think any of us were aware of this.

Mike Fondi stated that everyone has now been re-elected, the only problem there might be is with Judge Guy, whose position was created last session.

Judge Gregory stated that the reason he would have to consider resigning is if this drags on until 79, when his term is up, the calendar will be in an almost hopeless situation.

Thelma Calhoun, Mayor Pro Temp for Carson City stated she only had a brief statement and that was the City did not have sufficient funds in the budget to cover this position. The Legislature has done nothing but cut their budget and so speaking on behalf of Carson City they opposed this bill on that basis.

Henry Etchemendy, City Manager for Carson City stated that the Board of Supervisors has been in support of the second District Judge for this district. They do have a couple of situations facing them. One is the overwhelming load of cases as actions against the State of Nevada, which originated in the prison. No other court faces this problem. This is an impact on Carson City, when you consider that around 85% of the cases are State related. Also we feel that 405 before it was amended was valid because it provided that the State picked up the total expense of that one District Judge, that was just the on-going day to day expense of the clerical help, the bailiffs, court reporters, etc. That has been amended out.

Senator Dodge asked if the State is subject to the same filing fees as everyone else?

Judge Gregory stated that they do not pay any filing fees on cases instigated by the State, nor do they pay any fees on the matters that come up for review, as if the personnel board has an action, or things of that nature.

Senator Bryan asked if it was their wish then to process this bill in the amended form, even though it doesn't do what you want it to do?

Mr. Fondi stated that would have to be their position. If we wait until 79 it couldn't be effective until 81.

Senator Ashworth asked about the in lieu taxes.

Mr. Fondi stated that they had requested a new formula for the taxes, it was passed in the Assembly but shot down in Senate Finance. The old formula was the State pays on the real estate valuation, which is land and improvements. If their real estate valuation exceeds 17% of the private real estate valuation, they pay only on that portion that is over 17%. What happened several years ago, when our claim

to the state was around \$200,000, it has now diminished to where during the current fiscal year the total bill was around \$105,000 and that was split between the city and the schools.

Senator Ashworth asked what the impact on Carson City would be if this bill were passed in it's present form.

Mr. Etchemendy stated that the impact, as originally written would be in January of 79, that first half of the year would be around \$78,000. However the next fiscal year and each succeeding year, you would not have the first year costs of building a courtroom, the annual cost would be about \$105,000. If the bill is passed as it is now and we have two judges at the first year, we are not prepared for that. We don't have the funds in our budget, we could do it only by going to short term financing and amend our budget and move our money around and not do certain things for the city and put it back into District Court.

Senator Dodge stated he felt that the State really should pick up part of this tab, especially if they aren't paying filing fees.

Senator Ashworth asked what the cost of the courtroom would be, perhaps the State could help on this one shot deal.

Mr. Etchemendy stated that we do have costs that were developed in our estimate and to make this effective, both of the court rooms should be in the same building. So what we would do is move out the Assessor and the JP. The Auditors office would be remodled into a courtroom and the Auditor would move down where the Assessor is and the JP and the Assessor would move out into rented areas. So a hasty calculation based on a recent job we had, would only be about \$13,000. However, renting space on the outside would add to this then, of an annual rental of approximately \$30,000.

Senator Ashworth stated that he feels we should process this bill and send it back to Finance and see if we can't get that one time appropriation from the State to help remodel and relocate.

Senator Close stated he didn't feel we should jeopardize this bill.

Senator Sheerin stated that we do have a fiscal problem at this point, but there is a bill AB 40 which is similar to 405 so why can't we get that bill and make the changes there?

Senator Close stated he felt we should go as a Committee and talk to Finance and request them to consider the plight of Carson City and the cost implication of the new Judge and get the money for them.

Senator Dodge moved that we do pass this first reprint and re-refer to Finance and if it is agreeable with the Chairman to try to arrange a time at which point these people can come in and let's discuss this as a Committee with the Finance Committee.

Senator Bryan seconded the motion.  
Motion carried unanimously.

BDR 16-1884 Senator Close stated he has received a bill here from Bart Jacca dealing with pandering. The language presently says "shall dully persuade, encourage, inveigle or entice a female person to engage in" he wants to add in there "or compels to continue as a prostitute".

Senator Dodge moved to have Committee introduction of this bill.  
Seconded by Senator Foote.  
Motion carried unanimously.

Senator Close stated at this time he would like the Committee to approve the minutes from February 15 thru March 28. Senator Foote so moved. The motion was seconded by Senator Ashworth and carried un-  
imously.

There being no further business at this time the meeting was adjourned at 10:20 a.m.

Respectfully submitted,

  
Virginia C. Letts  
Virginia C. Letts, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN

Adopted <input type="checkbox"/>	Adopted <input type="checkbox"/>	Amendments to Assembly / <del>Series</del>
Lost <input type="checkbox"/>	Lost <input type="checkbox"/>	Bill / <del>XXXXXX</del> No. <u>8</u> (BDR 40-580)
Date: _____	Date: _____	Proposed by <u>Committee on Judiciary</u>
Initial: _____	Initial: _____	
Concurred in <input type="checkbox"/>	Concurred in <input type="checkbox"/>	
Not concurred in <input type="checkbox"/>	Not concurred in <input type="checkbox"/>	
Date: _____	Date: _____	
Initial: _____	Initial: _____	

1977 Amendment No. 93

Amend section 1, page 1, line 2, delete "20," and insert "16,".

Amend sec. 2, page 1, line 3, delete "20," and insert "16,".

Amend sec. 2, page 1, line 4, delete "9," and insert "7,".

Amend sec. 4, page 1, line 10, delete the period and insert:

"directing that when he is in a terminal condition, life-sustaining procedures shall not be applied."

Amend the bill as a whole, delete sec. 5 and renumber sections 6 and 7 as sections 5 and 6.

Amend sec. 6, page 1, delete lines 15 through 17 and insert:

"or supplant a vital function."

Amend sec. 6, page 1, line 18, delete "is used."

Amend the bill as a whole, delete sec. 8 and renumber sections 9 through 11 as sections 7 through 9.

Amend sec. 10, page 2, delete lines 10 through 12 and insert:

"Sec. 8. Any adult person may execute a declaration directing that when he is in a terminal condition, life-sustaining procedures be withheld or withdrawn from him. The person shall execute the declaration".

Amend sec. 10, page 2, line 17, delete "or the" and insert:

"or of the hospital or other".

Amend sec. 11, page 2, line 23, after "Date" insert "and time".

Amend sec. 11, page 2, delete lines 26 through 30 and insert:

"1. If at any time I am in a terminal condition and my death is imminent because of an incurable disease, illness or injury, I direct that

life-sustaining".

Amend sec. 11, page 2, line 33, delete "In the absence of ability" and insert: "If I am unable".

Amend sec. 11, page 2, line 35, delete "physicians" and insert: "attending physician".

Amend sec. 11, page 2, delete lines 40 through 42.

Amend sec. 11, page 3, delete line 2 and insert "ants."

Amend sec. 11, page 3, line 3, after "declaration" insert:

", or a copy thereof signed by the declarant and the witnesses,".

Amend the bill as a whole, delete sec. 12 and renumber section 13 as section 10.

Amend the bill as a whole, delete sec. 14 and renumber sections 15 through 20 as sections 11 through 16.

Amend sec. 15, page 3, line 31, delete "hospital," and insert: "hospital or other health and care".

Amend sec. 15, page 3, line 33, delete "qualified patient" and insert: "patient in a terminal condition who has a declaration in effect".

Amend sec. 15, page 3, line 35, delete "10 to 18," and insert "8 to 14,".

Amend sec. 16, pages 3 and 4, delete lines 37 through 49 on page 3 and lines 1 through 7 on page 4 and insert:

"Sec. 12. 1. If a patient in a terminal condition has a declaration in effect, his attending physician shall give weight to the declaration as evidence of the patient's directions regarding the application of life-sustaining procedures, but the attending physician may also consider other factors in determining whether the circumstances warrant following the directions."

Amend sec. 16, page 4, line 8, delete "4. No hospital," and insert:  
"2. No hospital or other health care".

Amend sec. 19, page 4, line 31, delete "10 to 14," and insert "8 to 10,".

Amend sec. 20, page 4, line 34, delete "10 to 18," and insert "9 to 14,".

Amend the bill as a whole, insert a new section, to be designated as section 17, following section 20, to read:

"Sec. 17. An instrument executed before July 1, 1977, which clearly expresses the intent of the declarant to direct the withholding or withdrawal of life-sustaining procedures from him when he is in a terminal condition shall, if executed in a manner which attests voluntary execution, be given the same effect as a declaration prepared and executed in accordance with sections 2 to 16, inclusive, of this act."

Amend the title of the bill to read:

"AN ACT relating to life-sustaining procedures; permitting any adult person to direct cessation of such procedures for himself if he has or develops a terminal condition; and providing other matters properly relating thereto."