

Members Present:

Chairman Hayes  
Vice Chairman Stewart  
Mr. Banner  
Mr. Brady  
Mr. Coulter  
Mr. Fielding  
Mr. Horn  
Mr. Malone  
Mr. Polish  
Mr. Prengaman

Members Absent:

Mr. Sena

Guests Present:

Loretta Bowman  
Melvin Close  
Michael de la Torre  
Holli Elder

Janet Fish  
Susan Haase

Gloria Handley  
Fred Hillerby  
Bill Isaeff  
Scott Jordan  
Larry Ketzenberger  
W. LaBadie  
Nellis S. Laird  
Bill Macdonald  
Sam Mamet  
L. J. McGee

Mike Melner

Jack Middleton

Ted Oleson  
Jim Pollard

Orvis E. Reil  
Gloria Ross

Joan Swift  
Chauncey Veatch

Clark County Clerk  
Senator  
Crime Commission  
Developmental Disabilities  
Advocate's Office  
Welfare Division  
Nevada Association for Retarded  
Citizens  
Welfare Division  
Nevada Hospital Association  
Nevada Attorney General and NCUA  
Law Center for Disabled  
Las Vegas Metro Police Department  
Welfare Division  
NRTA/AARP Joint Legislative Committee  
Humboldt County District Attorney  
Clark County  
Nevada Bankers Association Trust  
Committee  
Deputy Attorney General, Welfare  
Division  
Mental Hygiene/Mental Retardation  
Division  
American Civil Liberties Union  
Developmental Disabilities  
Planning Council  
NRTA/AARP Joint Legislative Committee  
Developmental Disabilities  
Planning Council  
Clark County Recorder  
Division for Aging Services

Chairman Hayes called the meeting to order at 8:08 a.m.

ASSEMBLY BILL 173

Provides protective services and placement to certain adults.

Ms. Fish said that this bill covers a situation where a person is unable or unwilling to accept protective services and placement where a person's physical and mental health is in danger. She said that the bill would provide a legal basis for providing these services. If the situation would warrant it, the case could be taken to court.

Mr. Stewart asked if a person who needed service, but did not want it, could be forced through a court order obtained by the Welfare Division to accept the service. Ms. Fish answered that if a person did not want service and was able to make that determination, the Welfare Division would leave them alone. She said that if there was a situation where a person was incoherent because of illness, the Welfare Division would like to be able to get him into medical care.

Ms. Fish discussed cost estimates of going to court to be able to provide protective services to those who needed it (Exhibit A).

Ms. Fish then discussed several cases in which this type of bill could have been helpful, and she gave information to the Committee regarding those and several others (Exhibit B).

Ms. Fish said that usually the situations she encountered were that people were willing to accept the services offered by the Welfare Division.

In reference to Page 3, Section 15, Mr. Brady asked when the requirement of paying for services would apply. Ms. Fish said that when the income is above income eligibility, the court would order those individuals to make payment.

Mr. Stewart said that he could see the Welfare Division needing a temporary order for protective services. However, he said that if a person was able to say they were not willing to accept services, he did not feel they should be forced to accept them.

Chairman Hayes asked how many people might be affected by this bill. Ms. Fish answered that in a one-year period, 92 individuals had received protective services from the Welfare Division. Clark County Social Services had provided these services for 185 individuals (See Exhibit I).

Mr. Mamet said that Clark County would support this bill. He said the bill would give unqualified legal and statutory base that really does not exist at the present in providing protective services.

ASSEMBLY BILL 511

Provides procedure for appointment of guardians of adults and establishes special guardianships for persons of limited capacity.

Mr. McGee, as a representative of the Trust Committee of the Nevada Bankers Association, said he had problems with the definition of the person who would meet the criteria of this bill. He said that there had been good experience with the present law, but the present proposed bill was rather complex and costly.

Mr. McGee said that this bill only allows for a seven-day appointment of a guardian. He said that the present statute allowing only six months has been troublesome at times. He said that this particular provision did not include banks who could be appointed as guardians. He said this bill was something making a law that was working more complicated.

Mr. Pollard gave a brief overview of the bill. He said that without a provision for guardianship, a mentally disabled person must be declared fully competent or fully incompetent. He said this bill would allow these people to live a relatively normal life with their disability.

Mr. Jordan presented a written statement (Exhibit C) to the Committee.

Ms. Ross discussed amendments proposed to A.B. 511 (Exhibit D).

Mr. Jordan said that the State Public Defender was in favor of the concept of this bill, but he said they were not too happy about extra work it would cause. He said that the present provision of a six-month guardianship without a hearing was much too long. He said that cases have come up where guardians have been appointed without the knowledge of the individual involved.

Mr. Jordan presented written testimony in this regard submitted from John G. Heike, Litigation Coordinator, Washoe Legal Services (Exhibit E).

The Committee was in recess at 9:07 a.m. and reconvened at 9:12 a.m.

Mr. Veatch presented written testimony to the Committee (Exhibit F).

Mr. Oleson said he strongly supported this bill because it would increase the procedural protection of a ward in establishing guardianship. He said this bill would provide a ward's right in a court hearing. He stated that the bill was important to all Nevadans to protect their civil rights.

Mr. Banner told of an individual he had assisted several years ago who had been the victim of someone declaring him incompetent. He said he went through the proceedings to have the declaration of incompetency reversed, and then moved the man to Las Vegas. After he was in Las Vegas, Mr. Banner said the man was not able to care for himself. He said, therefore, that he took care of the man but with no legal basis. He said the concept of limited guardianship was important to a person who is assisting someone else.

Mr. Middleton said that in the programs offered by the Mental Hygiene/Mental Retardation Division there are a number of mentally retarded adults who need protection through guardianship. He said that this need varies from total to very minimal. He said that under existing statutes it is not possible for a person to have any rights if he is declared incompetent. Many retarded persons need not have full guardianship. He said that passage of this bill would be a real improvement in the statutes governing mentally retarded people in the State.

ASSEMBLY BILL 669

Allows service of summons on trial jurors by ordinary mail.

Miss Bowman stated that the purpose of this bill is to eliminate the cost of sending certified letters for jury summonses. She said that the purpose of sending certified letters in the past was to insure that the person to whom a summons was addressed actually received the summons. She said that the post office has discontinued delivery of certified mail to an individual only. She said that the estimated annual savings with passage of the bill would be \$11,271 in Clark County.

ASSEMBLY BILL 684

Provides for disposition of vehicles forfeited for use in illegal transportation of controlled substances.

Mr. Ketzenberger said that presently when vehicles which have been seized in narcotics crimes are sold, the money from the sale goes to the State Distributive School Fund. He said this bill would change this so that the money would go to fund programs in each county regarding drug abuse and enforcement of laws governing controlled substances.

Mr. Stewart asked how much money would be involved. Mr. Ketzenberger said that he was told in Clark County there would be 10 to 12 vehicles seized in a year's time.

Mr. de la Torre said that years ago, schools were doing most of the programs regarding drug abuse. He said that presently most of the programs are being conducted by law enforcement agencies. He felt this was the justification for transferring this money.

ASSEMBLY BILL 546

Expands membership of medical-legal screening panels to include hospital administrators.

Chairman Hayes said that an amendment had been prepared for this bill.

Mr. Banner moved to Amend, and Do Pass A.B. 546 As Amended; Mr. Polish seconded the motion.

Mr. Coulter said that this would place two doctors, two hospital administrators, and two attorneys on this panel. He said that this seemed to create an imbalance because hospital administrators would probably take a medical viewpoint on the side of the doctors.

The suggestion was made that the panel consist of one hospital administrator, two doctors, and three attorneys. Mr. Hillerby said that this type of arrangement would cause him some concern. He said that if the suggested procedure was a concern of the Committee, he would suggest that the voting procedure be addressed. He said that if a matter concerned doctors, then it could be mandated that the hospital administrators not vote. Likewise, if the matter concerned a hospital's liability, the doctors would not vote.

Chairman Hayes said that she would tend to agree with Mr. Coulter.

Mr. Banner withdrew the motion.

After the meeting, Mr. Hillerby presented a proposed amendment (Exhibit G) to satisfy any objections from the Committee.

SENATE BILL 9

Revises criminal penalties.

Senator Close distributed copies of the Study of Crimes and Punishments, Bulletin No. 79-18 of the Legislative Commission. He said that this study was the basis for S.B. 9. He said that this bill attempts to conform prison sentences with monetary fines. He said that the study committee had found that with some felony crimes, monetary penalties were very high. With other felonies, he said that there were no monetary penalties at all.

Senator Close said that prosecuting attorneys and defense attorneys also took part in the interim committee's work, and they helped in pointing out inconsistencies in the law.

Mr. Coulter stated his concern that parts of this bill seemed to be moving in an opposite direction from other states. Two

crimes which he mentioned were possession of marijuana and the infamous crime against nature.

Senator Close said that monetary penalties were added on the crimes mentioned by Mr. Coulter so that a person convicted under those statutes would not necessarily have to go to prison. He said that a judge would be able to suspend a prison sentence. He said it was his feeling that the new language offered in S.B. 9 should remain to provide uniformity in the law, and if there was a move to remove other statutes from the law totally, it should happen in another bill.

ASSEMBLY BILL 684

Mr. Ketzenberger presented copies of a proposed amendment to this bill (Exhibit H).

The meeting was adjourned at 10:15 a.m.

Respectfully submitted,

*Carl R. Ruthstrom, Jr.*

Carl R. Ruthstrom, Jr.  
Secretary

COST ESTIMATES     A.B. 511

A search of the court files in Washoe and Clark Counties has revealed that over an almost two year period an average of 6 adult guardianship cases per month in Clark County and an average of 3 adult guardianship cases per month in Washoe County were filed. It is estimated that 2 cases per month are filed in all other counties.

Some of these cases were never heard either because the proposed ward died or for other unknown reasons. In Washoe County 20 cases out of 62 filed, or almost one-third, were never heard in court.

COST PER CASE

Court Investigator	\$200.00
27 Hours Social Worker III @ \$6.68/hr.	
5 Hours Legal Steno. @ \$4.30/hr.	
Attorney	\$100.00
Stenographic record	25.00
Based on \$200/day	
	<hr/>
TOTAL	\$325.00

Cost Clark County (72 cases per year)	\$23,400.00
Cost Washoe County (36 cases per year)	11,700.00
Cost other counties (24 cases per year)	7,800.00
	<hr/>
	\$42,900.00

This estimate does not take into account those cases which did not go to court inasmuch as it is impossible to determine at what stage of the proceedings the case was dropped and it can therefore not be predicted what investigator time or attorney time would be necessary for those cases.

CASE EXAMPLES:

Referral from doctor

Situation: Elderly man, bedridden, diabetic, catheter, etc.

Lived in 6 Mile Canyon with no telephone, or transportation

Wife and stepdaughter were deaf mutes

Step grandson lived next door--also no phone and only transportation was a horse and a backhoe.

Public Health Nurse accompanied worker

Family cooperative--didn't know how to care for him ie. personal care, cleaning of the catheter, turning patient to prevent bedsores, etc.

Didn't know how to have him admitted to a nursing home. Doctor who saw him was not on staff at Carson Tahoe--had only stopped in to see him as a favor--~~was to go to Carson Tahoe~~  
~~shack~~

Stepson-in-law would be home in a few days and would transport patient in his truck--RN said this would be okay.

Since there were no beds (SN) available in Carson family agreed to go to Reno.

Washoe Med. was advised that the patient would be brought to emergency and would be applying for SAMI

Follow-up: Family was advised of procedures. Contact with Washoe Med. in a few days confirmed that the family did follow through.

Referral from Nevada Home Health Agency

Situation: Elderly man, bedridden, living in "shack" behind son and daughter-in-laws home.

Alone all day except for visits from NHHA. Had been in Carson Con--Medicare payments for NHHA visits were almost exhausted.

RN accompanied worker. Frail elderly man, unable to respond, unable to get out of bed, other family members gone all day, residence was cold.

Some food in living quarters but unable to get to it. Glass of water next to bed but not able to reach it. RN stated man was dehydrated. Patient had catheter.

RN at Carson Con stated that family insisted on patient's release--should not have been discharged. Medicare was running out.

Daughter-in-law was hostile. Said patient couldn't afford nursing home. Procedures for applying for SAMI were explained--several times.

Doctor called and was hostile. Daughter-in-law had called him. Doctor knew patient was very ill but had not seen him for a month or so. Agreed to admit patient to hospital but follow up confirmed that he did not.

Family refused to discuss situation any further--NSWD had to drop case.

After 2 or 3 months family finally had patient admitted to SN. Applied for SAMI, was approved for medical coverage--man died shortly after admission to SN.



Referred by Care and Share

Elderly lady who lived in a house that had no heat for two years and the water pipes had recently broken.

Social worker was accompanied by police since lady did not want help.

House was flooded, food in the refrigerator was moldy, walls of house were black from grime, and the lady was black with grime from lack of bathing.

Neighbor advised worker that there was a brother-in-law in the area. He advised that there was nothing he could do.

After much persuasion (several hours), the lady agreed to let the worker call an ambulance. Admitted to hospital for ulcerated ankles, malnutrition, and toe nails that were curled under so far that they were cutting the flesh. After 3 days she was transferred to SN.

Referred by Senior Citizen Group

Female deaf mute who was bedridden

Worker was admitted to home by person from the Sr. Citizen Grp. The lady appeared to be malnourished, weighed about 60 # and was in severe pain. She had advanced cancer and was unable to get up and fix meals, etc. She communicated with the worker by notes. She knew she needed to be in the hospital but did not want to leave her possessions until her sister arrived. After she was assured that her possessions would be protected and her sister would be notified, she agreed to go to the hospital.

Referred by trucking company

Elderly man had been sleeping under semi truck for 6 days in a storage yard. Trucking company requested his removal. Although truckers had left food for him, he was not eating.

The police and worker took him to the hospital where he was admitted for malnourishment and dehydration. He was later referred to Adult Group Care and eventually went to live with his family.

Referred by landlady

Family exploiting elderly lady who speaks only Polish. Family takes the lady's Soc. Sec. check, but not providing adequate clothing or food. Was keeping her in a room in the basement and she was eating cooked cucumber skins.

The family refused services and would not let the worker in the home. The worker was unable to confirm the report.

Referred by Doctor

Man in his 70's had recent cataract surgery and doctor requested follow-up.

Worker found the man depressed because of his physical limitations--mainly not able to get downtown when he wanted to in order to visit cronies and play black jack.

He was offered homemaker, home delivered meals, medical transportation, and nursing services to administer eye medications. The man refused all services.

After several attempts, the worker backed out. However, the man agreed to let worker inform the son who he had not seen for 2 years. The family got involved and the problems were resolved. The man went back for the second cataract surgery. This time, with the support of his family, he let the division provide supportive services upon release from the hospital.

# LAW CENTER FOR THE DISABLED

EXHIBIT C  
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790 SUTRO STREET  
RENO, NEVADA 89512  
(702) 329-1511

SCOTT T. JORDAN, ESQ.  
EXECUTIVE DIRECTOR

BEN M. ARAI, ESQ.  
STAFF ATTORNEY

TESTIMONY OF SCOTT JORDAN CONCERNING A.B. 511 BEFORE THE ASSEMBLY JUDICIARY  
COMMITTEE.

APRIL 11, 1979.

For the second consecutive legislative session, a bill has been introduced which would significantly change Nevada's guardianship statutes. This ongoing concern over guardianship legislation reflects the fact that serious defects exist in the currently existing legislation, defects which profoundly affect the legal rights of the parties concerned, and especially the proposed ward. Specifically, there is a lack of procedural due process protections in current law which allows the law to be abused. Further, current law requires the complete abdication of legal rights when a guardian is appointed. There is no ability to fashion an order which is tailored to the special needs of the specific person involved. This indicates a lack of recognition that there is a continuum of functioning abilities among disabled persons or others needing the assistance of a guardian; it may also violate the Constitutional right to receive treatment and services in the least restrictive appropriate setting by depriving a ward of more rights than is necessary.

A.B. 511 seeks to remedy these defects. I would like to very briefly describe the procedures set out in A.B. 511.

A. The bill provides that a guardianship petition must set forth specific facts concerning the guardianship, including the names of relatives of the proposed ward, the reason the guardianship is requested, and the specific powers requested (Section 3). Under current law, the petition need only set forth the names and addresses of the proposed guardian and ward and a general statement that a guardian of the person, estate, or both is requested.

TESTIMONY OF SCOTT JORDAN

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B. A notice or citation, setting forth specifically the rights of the proposed ward, must be served on the proposed ward and her close relatives. (Sections 4 and 5). Under current law, the citation need only state the date and time of the hearing, and is served only on the proposed ward. As a result, the proposed ward often never sees the notice, or does not understand it. No effort need be made under current law to assist the proposed ward in understanding the citation.

C. An investigator is appointed by the Court, whose function is to explain the proceedings to the proposed ward and make a nonpartisan assessment of the need for guardianship services and the qualifications of the proposed guardian to act. The investigator reports to the Court and provides information otherwise unavailable to the Court (Section 6). Under current law, there is no similar role, and the Courts are therefore often forced to make decisions concerning guardianship petitions with little or no accurate information, and often without seeing or meeting the proposed ward.

D. The ward must be present in court for the hearing (barring medical necessity) and has the right to be represented by counsel (Sections 8 and 10). These fundamental due process rights do not exist under current law. Without them, the ward's ability to take an active part in the proceedings which concern him are seriously curtailed.

E. Emergency temporary guardianships can be appointed for only a seven day period without a hearing, and the necessity for the appointment must be demonstrated. Emergency powers may be extended upon a finding of need by the Court (Section 7). In one of the most abused and dangerous provisions in the current law, a person may be appointed temporary guardian by court order without notice

TESTIMONY OF SCOTT JORDAN

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or a hearing of any kind, and such temporary order can be in effect for up to six months. Under such an order, the temporary guardian has the powers of a full guardian, and can intervene in the personal or financial affairs of the ward. Often, the ward does not know such an order exists until the guardian exercises his power under it. The new provision would shorten the time drastically, while still allowing a speedy proceeding in emergency situations.

F. Under A.B. 511, a court, after the hearing, may find the proposed ward to be incompetent or to be of limited capacity, or to be competent. If the court finds the ward to be incompetent, a guardian may be appointed with full powers over the person or estate of the ward. A finding of limited capacity allows the appointment of a guardian with only those powers required by the condition of the ward. Such a finding does not deprive the ward of his civil rights, as does a finding of incompetency. Such a scheme recognizes the fact that there is a continuum of levels of ability among persons in need of some assistance, and offers the flexibility to assure that the order meets the needs of the ward without being overly restrictive. The ward thus maintains as much freedom and decision-making power as she is able to manage, and in many cases can learn and progress to the point where, ultimately, guardianship is no longer needed. In my work with the mentally disabled, I have been involved in several cases in which special guardianship would have been appropriate. Current law, however, has no provision for the appointment of such a guardian. The scheme as proposed in A. B. 511 would foster the independence and growth of those in need of some assistance, which would result in more independent, productive, and satisfying lives for the persons concerned.

At this time, I would be happy to answer any questions you may have concerning this bill.

AMENDMENTS  
A.B. 511

Amend Section 6, Page 3, line 2 by inserting after "ward" the words "If the proposed ward does not have an attorney, the resource person shall so inform the Court, who shall immediately appoint the public defender or other attorney to represent the proposed ward. The proposed ward shall bear the cost of such legal service if able."

Amend Section 6, line 48 by inserting after "guardianship." a new subsection 3: "3. The court investigator shall interview the person seeking appointment as guardian and in his report to the court state any objection to this person being appointed as guardian."

Amend Section 6, line 49 by deleting "(3)" and inserting the number "4".

Amend Section 7, Page 3, line 17 by inserting after "subsection 2" the words "and after notice to the persons, agencies, and corporations entitled to notice under Section 3."

Amend Section 10, Page 4, line 19 by inserting after "guardian," the words "(i) An interpreter, if necessary, to assure that the proposed ward understands the proceedings."

Amend Section 11, Page 4, line 27 by inserting after "estate." a new subsection to read:

- "4. The court's order appointing a guardian shall include the following information:
- (a) The name of the guardian and the ward;
  - (b) The findings of fact which support each grant of authority to the guardian;
  - (c) The authorities which the guardian will have over the affairs of the ward;
  - (d) The amount of bond required, or that no bond is required of the guardian.

Amend Section 13, Page 4, line 45 by inserting after "public" the word "guardian-ship".

Amend Section 17, Page 5, by deleting lines 31 through 42 and inserting the words "1. The court may grant a special guardian fo a person of limited capacity the powers necessary to protect the ward from serious physical illness, injury, or disease and to provide him with medical care and mental health treatment for his physical and mental health."

Amend Section 18, Page 5, line 48 by inserting after "court." the words "A court shall not empower a guardian to admit a ward to a mental health or mental retardation facility unless it finds that the requirements for involuntary civil commitment pursuant to applicable state statute have been met."

Amend the bill by inserting a new section to be designated as section 33, following section 32, to read:

Section 33. NRS 260.030 is hereby amended to read as follows:

260.030 1. The public defender shall be a qualified attorney licensed to practice in this state.

2. The public defender shall [,when designated pursuant to NRS 171.188, represent, without charge, each indigent person who is under arrest and held for a public offense.]:

(a) When designated pursuant to NRS 171.188 represent without charge, each indigent person who is under arrest and held for a public offense;

(b) When designated pursuant to NRS Chapter 159, represent, without charge, each indigent person who is the subject of a guardianship proceeding.



## WASHOE LEGAL SERVICES

150 North Center St. • Reno, Nevada 89501  
Phone (702) 786-2695

TESTIMONY TO THE NEVADA LEGISLATURE ON  
A.B. 511, APRIL 11, 1979. WRITTEN TESTIMONY  
OF JOHN G. HEIKE, LITIGATION COORDINATOR,  
WASHOE LEGAL SERVICES, RENO, NEVADA

Over the past twenty months I have been involved on a weekly basis with guardianships in the State of Nevada. The Nevada guardianship law, as it is presently constituted, encourages unwanted and involuntary interference in the lives of the elderly citizens of Nevada. The basic reason for this interference is that legislators and judges throughout the country share a widely held belief about aging that physical and mental deterioration are inevitable, that elderly persons reach a point where they are incapable of caring for themselves and must be protected or they will injure themselves, squander their meager resources or fall prey to designing persons. The truth is quite different. Deterioration is not inevitable. The vast majority of elderly persons are in good health. Moreover, most diseases suffered by the elderly can be treated successfully. This is particularly true of the mental problems experienced by some elderly persons. Contrary to the common belief that the mental problems of the elderly

are the product of the hardening of the arteries of the brain and, therefore, untreatable, most of their mental problems are produced partly by the loneliness, depression, and grief common among older persons. Furthermore, many symptoms such as loss of memory and disorientation thought to be indicative of "senility", actually are caused by physical factors such as malnutrition, infections, and heart disease and can be eliminated or vastly improved. Indeed, the very concept of senility is a myth. In his Pulitzer Prize winning book, Why Survive: Being Old In America, Dr. Robert N. Butler, reknown psychiatrist, calls senility a "waste-basket term" used carelessly to characterize the behavior of the old. See also, Butler and Lewis, Aging and Mental Health: Positive Psycho-Social Approaches (1973). It has no medical meaning and is offensive and destructive because it interferes with proper diagnosis and understanding of the real problems of the elderly, most of which can be solved.

Thus, these "protective" laws are based on what is largely a false premise. Moreover, little thought is given to the real consequences of this unwanted intervention. Some elderly persons sent to mental hospitals quickly die as the result of the trauma produced by this transplantation. Those who survive languish in dingy back wards where they seldom receive treatment. Persons declared incompetent in Nevada are



stripped of their fundamental citizenship if a guardianship of their person is obtained. They can no longer vote, make a will, drive a car, buy or sell property, or chose where to live. Their lives and property are managed by guardians who frequently care little about their well-being and who sometimes steal their money.

In this testimony I discuss Nevada's laws concerning guardianship and related associations with the Nevada commitment to mental institutions, focusing on the operations and ~~deficiencies of the present statutes and the procedural safe-~~guards for persons subjected to these provisions.

#### HISTORY

Designed to provide care for individuals incapable of caring for themselves, guardianship has its roots in old English law. See, F. Lindman and D. McIntyre, The Mentally Disabled and the Law 7 (1961). Traditionally, guardianship has been closely linked to mental incompetence. And unfortunately, the legislative counsel bureau has continued to perpetuate this through the use of the term incompetence in A.B. 511. Utilizing its parens patriae power, the state declares a person to be incompetent and in need of the protection of a guardian. Thus, the focus of guardianship largely is on the individual and his or her need for protection from

his or her own incapacity. See, Reagan, Protective Services for the Elderly: Commitment, Guardianship and Alternatives, 13 Wm. & Mary L.Rev. 569 (1972). Although the precise form of guardianship has changed through the years and varies from state to state the two basic types of guardians that originated are still the only types of guardians that may be obtained in Nevada - guardians of the property and personal guardians. See, Fraser, Guardianship of the Person, 45 Iowa L.Rev. 239 (1960); Fratcher, Powers and Duties of Guardians of Property, 45 Iowa L.Rev. 264 (1960). And in Nevada, it is possible to vest guardians with the combined power over both person and property.

Civil commitment largely is a function of the police power of the state, focusing on the need of society to be protected from persons who are dangerous to others. To a lesser degree, civil commitment also is justified by the state's parens patriae power in so far as it protects the individual who is dangerous to himself. The differences in purpose and legal justification for guardianship as opposed to civil commitment have resulted in differences in the way these laws are administered.

#### RIGHTS IN GUARDIANSHIP PROCEEDINGS

Before turning to an examination of Nevada's guardianship provisions it is appropriate to examine the assumptions

which underlie guardianship laws. In theory, a guardianship is invoked to protect the person who is the subject of the guardianship proceeding - either to preserve his or her property until such time as the person regains the ability to manage that property or to protect the person himself. Mounting evidence belies these hopeful assumptions, however. See, A. Mitchell, Involuntary Guardianship for Incompetents: A Strategy for Legal Services Advocates, 12 Clearinghouse Review 451 (1978). Quite often guardianships are invoked for the benefit of persons other than the ward. A study of New York's guardianship law, for example, revealed that guardianship proceedings were instituted primarily for the benefit of two groups: presumptive heirs of the ward who were concerned that the ward might dissipate his assets leaving nothing for the heirs to inherit, and the state, which initiated guardianship proceedings to gain control of the assets of patients of state mental hospitals. G. Alexander and T. Lewin, The Aged and Surrogate Management 67 (1972); Note, The Disguised Oppression of Involuntary Guardianship: Have the Elderly Freedom to Spend? 73 Yale L.J. 676 (1964). In addition, studies have shown that a guardianship does not operate to improve the wards standard of life. Indeed, the few studies which have been conducted on this subject indicate that persons subjected to guardianship die sooner than do similarly situated persons left to their own devices. See, Alexander, Life, Liberty, and Property Rights for the Elderly, 17 Ariz. L.Rev.

267 (1975). Moreover, the assumption that guardianship operates to benefit the ward ignores the profound psychological impact of the declaration of incompetence which accompanies the appointment of a guardian, a factor recognized by the United States Court of Appeals for the Second Circuit in Dale v. Hahn, 440 F.2d 633 (2d Cir. 1971).

Although the plaintiff requests recovery of money alleged to be illegally spent by the [guardian], any right she may have to the money is not the critical interest sought to be protected. The important ones are, rather, those affected by the declaration that she will be incompetent to handle her own affairs. The stigma of incompetency, the implication that she has some type of mental deficiency, with attendant untrustworthiness and irresponsibility, and the consequences to her reputation and her normal human relationship with others in her community involve more than a property right.

#### NEVADA'S GUARDIANSHIP LAWS

The present Nevada statutory scheme allows for the traditional appointment of a guardian of the estate or a guardian of the person or both. The person who may petition the court for the appointment of a guardian merely has to fulfill minimum qualifications within Nevada Revised Statutes §159.059 and then satisfy the court that they fall within a specific line of preferences within Nevada Revised Statutes §159.061. The Nevada statutes in §159.051 allow the Nevada

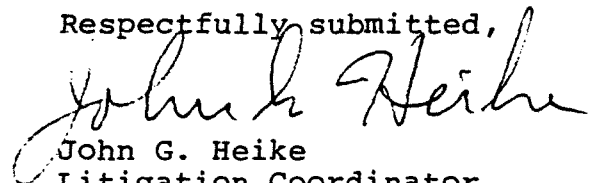
district court to appoint a temporary guardian "with such notice as the Court may order or without notice" for an extended period which lasts up to six months.. The pure surface meaning of the Nevada statutes is more seriously implicated, as far as the rights of the elderly are concerned, by examining a survey which was done by the staff of the Senior Legal Assistance Program of Washoe Legal Services between February, 1977, and September, 1978, of the Washoe County Courthouse Public Records. During this time period there were twenty adult temporary guardianships that were granted in the district court. All of the proceedings took place with only the presence of the judge and the counsel representing the proposed guardian. There was no notice in any case to any ward. There was no allowance of representation by a legal counsel or lay advocate in any case. Nor did the court even attempt to appoint a guardian ad litem which in most jurisdictions is a standardized procedure for the protection of the proposed ward. During this same time period there were thirteen permanent guardianships which were correctly imposed within the Nevada statutes. Of those thirteen only three of the guardianships actually had the proposed ward present in court so that they could know what was occurring and in only one of those three cases was there any counsel present to represent the proposed ward. An additional group of nine supposed permanent guardianships were obtained whereby the statute was not even facially complied with because the

purported notices did not even purport to have been provided within the 20 day period that is required under present law.

CONCLUSIONS

As should be apparent from this presentation the procedural deficiencies in the Nevada guardianship law are extremely serious. At a minimum the proposed statute, A.B. 511, provides for increased protections on: 1. the nature and content of the petition for guardianship; 2. the nature and content of the notice which must be provided to the proposed ward; 3. the requirement that the proposed ward in fact be present at the hearing to determine his competency; 4. that there be appointment of counsel such that the proceeding is no longer ex parte but is in fact adversarial; 5. that the burden of proof be sufficiently strenuous, i.e., by clear and convincing evidence; 6. the provision of a right to trial by jury on the determination of someone's competence which affects so closely their basic civil rights.

Respectfully submitted,

  
John G. Heike  
Litigation Coordinator  
WASHOE LEGAL SERVICES

WRITTEN TESTIMONY TO THE NEVADA STATE LEGISLATURE  
BY CHAUNCEY VEATCH, DIRECTOR, LEGAL SERVICES DEVELOPMENT  
DIVISION FOR AGING SERVICES  
STATE OF NEVADA  
CARSON CITY, NEVADA  
BEFORE ASSEMBLY JUDICIARY COMMITTEE  
April 11, 1979

The presentations made by those who have preceded me are more than adequate to present the reasons for passage of this bill.

I wish therefore merely to amplify several points. Elderly persons who are thought to be unable to manage their personal or financial affairs in their own best interests are subject to the imposition of "protective services" designed to protect them from themselves and from unscrupulous third parties.

Regrettably our American system is replete with legal, social, and economic barriers to elderly self reliance. Mandatory retirement, the Social Security program and certain pension plans, all contribute to the proliferation of elderly persons bereft of the ability to provide for their own financial welfare.

Outside the economic sphere, the continued presence of a work ethic which equates an individual's productivity with his worth and a youth-orientation which often links activity and vitality with youth, and senility with old age, go further toward conditioning elderly persons to adopt for themselves the role which society has trained them to accept.

In the past these policies and prejudices affected a relatively small portion of the population. At the turn of the century, three million persons over the age of 65 made up only 4% of the total population. It is now estimated that by 1985 there will be 25 million Americans over the age of 65.

Therefore the purpose of this bill is threefold: (1) to emphasize what has often been ignored in guardianship proceedings, namely that the declaration of incompetency coincident with most guardianships is an event of great consequence for the individual, (2) to demonstrate the striking absence of procedural formality amidst which incompetency determinations are currently made, and to examine the "best interests" doctrine and, (3) to demonstrate how poorly the "best interests" doctrine has served the elderly in guardianship matters.

AMENDMENT TO A.B. 546

Page 3, lines 8-12, delete [the administrators for the legal and medical professions and the administrator for the hospital administrators shall each select two persons from among those not challenged from the list of persons serving from the profession or occupation he represents.]

Page 3, lines 8-12, substitute "the administrator for the legal profession shall select two persons and the administrators from the medical profession and hospital administrators shall each select one person from among those not challenged from the list of persons serving from the profession or occupation he represents."



AB684

— 2 —

- 1 to the orders and decrees of the court having jurisdiction over the for-  
 2 feiture proceedings. When property is seized under the provisions of  
 3 NRS 453.011 to 453.551, inclusive, the division or other agency  
 4 may:
- 5 (a) Place the property under seal;
  - 6 (b) Remove the property to a place designated by the agency seizing  
 7 the property; or
  - 8 (c) Remove it to an appropriate location for disposition in accord-  
 9 ance with law.
- 10 5. When property ~~other than a vehicle~~ is forfeited under the pro-  
 11 visions of NRS 453.011 to 453.551, inclusive, the appropriate law  
 12 enforcement agency may:
- 13 (a) Retain it for official use;
  - 14 (b) Sell that which is not required to be destroyed by law and which  
 15 is not harmful to the public;
  - 16 (c) Remove it for disposition in accordance with the law.
- 17 ~~6.~~  
 18 The proceeds from the sale of any property under the provisions of  
 19 ~~subsection 5 shall~~ ~~this subsection~~ must be used for payment of all  
 20 proper expenses of the proceedings for forfeiture and sale, including  
 21 expenses of seizure, maintenance of custody, advertising and court costs.  
 22 Any balance remaining ~~shall~~ must be deposited in the ~~state~~ permanent  
 23 school fund.]
- 24 6. If a vehicle which is forfeited under the provisions of NRS 453.  
 25 011 to 453.551, inclusive, is not encumbered, the law enforcement  
 26 agency may retain it for official use. If such a vehicle is encumbered and  
 27 the proceeds from its sale will exceed the balance owing to all secured  
 28 claimants and the costs of the forfeiture, the law enforcement agency  
 29 may:
- 30 (a) Acquire title to the vehicle and retain it for official use; or
  - 31 (b) Sell the vehicle and credit any surplus from the sale to the county  
 32 treasury for exclusive use in the prevention of drug abuse and enforce-  
 33 ment of the laws governing controlled substances.]

appropriate government treasury for the  
 exclusive use by the law enforcement agency  
 in the prevention of drug abuse and  
 enforcement of the laws governing controlled  
 substances.

BDR 38-367  
NRS 431

PROTECTIVE SERVICES FOR ADULTS

Currently the Welfare Division and Clark County Social Services are providing protective services for adults and both agencies have encountered problems which would be minimized if there was some authority to act on behalf of the adult.

This legislation will provide a mechanism for reporting incidents of suspected abuse or neglect, immunity from reporting, and a legal base for investigating the complaint by either the Welfare Division or a county agency as stated in Section 18 of BDR 38-367.

This legislation will also enable the Welfare Division to provide appropriate in-home care or out-of-home placement for persons who are physically or mentally unable to care for themselves and are unable to participate in the planning process.

In-home care could include such services as arranging for home delivered meals, grocery shopping, meal preparation, housekeeping and personal hygiene care. Out-of-home placement could include arranging for admission to an Adult Family Care Home, Adult Group Care Facility, Intermediate Care Facility, Skilled Nursing Facility, or hospital.

The division recognizes that there are adult citizens who may be in need of protective services. These services should, to the maximum degree of feasibility, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, neglect and abuse. This chapter is designed to establish those services and assure their availability to all persons when in need of them, and to place the least possible restriction on personal liberty.

As of 1976, 46 states provided adult protective services as part of their Title XX Comprehensive Annual Services Program Plan. Out of 36 states responding to a survey completed by the State of Virginia in December 1977, 17 states had legislation governing the provision of this service.

Adult Protective Services provided by:

NSWD	10/1/77 - 9/30/78	
Las Vegas	14	
Reno	71	
Carson	1	
Elko	5	
Fallon	1	
Total	92	(unduplicated count)

Clark County Social Services (all areas of the county)  
7/1/77 - 6/30/78

185 Seniors