

The meeting was called to order at 10:00 a.m., Senator Close was in the Chair.

PRESENT: Senator Close  
Senator Hernstadt  
Senator Don Ashworth  
Senator Dodge  
Senator Ford  
Senator Raggio  
Senator Sloan

ABSENT: None

SB 88 Allows costs to prevailing defendant in certain actions.

Mike Griffin, District Judge, Carson City, testified that Judge Thompson had requested this bill be passed. This bill corrects a minor omission of the last session under NRS Section 18.020. This bill will allow the defendant to recover certain costs when he prevails in a law suit.

Senator Hernstadt asked if these costs were just filing fees and court fees, or if it covers attorneys fees?

Judge Griffin stated that attorneys fees are provided for in another section. This bill only addresses itself to the recovery by the defendant of reasonable court costs, which was omitted when the statute was amended.

Senator Raggio stated that elsewhere in the statutes there is a provision that sets forth allowable costs, and there has to be a cost bill filed with the court.

No action was taken on this bill at this time.

SB 89 Specifies when monetary judgments for minors may be paid to parents or must be paid to appointed guardians.

Barbara Bailey, representing The Nevada Trial Lawyers Association, testified that she was here speaking on behalf of the association in support of SB 89. It has been brought to the attention of the Association that when attorneys are handling cases involving minors, and the minor is awarded a judgment, the attorneys have been in the situation where the parent has squandered the judgment previously awarded to the minor. This bill, basically, gives the court the right to make sure the judgment to the minor is handled properly by the court appointing a guardian.

Senator Close asked in what case could you sue without a guardian ad litem being appointed?

Senator Raggio stated that in recovery, the guardian ad litem is not sufficient to handle the estate, because

there has to be a guardian for the estate to receive the proceeds. The guardian ad litem has a limited purpose of only bringing the action.

Senator Close stated he would probably think Senator Raggio was right, except on lines 3 and 4 it states "whenever a judgment for the sum of money is entered in favor of a minor, for who no guardian ad litem has been appointed". Senator Close stated he could not conceive of a situation where you would have a suit brought on behalf of a minor without a guardian ad litem.

Senator Hernstadt asked what the trial lawyers position was on appointing a responsible guardian. There might be a situation in which a child of a banker is awarded \$50,000, and he would be a responsible person. On the other hand the parent could be a compulsive gambler that shouldn't be responsible for 10¢. Senator Hernstadt feels that some language should be put in the bill to avoid excessive charges in trying to account for the money.

Miss Bailey stated that the Association of Trial Lawyers feels that this should be left to the discretion of the courts. The courts should make the decision whether a parent or an objective third party should be appointed as a guardian.

Senator Close stated he would think a judgment involving a minor must be held by a guardian, with annual reports to the court, regardless of amount.

Judge Griffin stated that this bill was drawn up at the request of the District Judges of Clark County. They feel part of the problem with the present statutes is that if a case is filed by the guardian ad litem, and there is a compromise of that claim that is approved by the Court, there is no requirement of the Nevada law to impose a guardianship upon those funds. If we have a guardian ad litem, who compromises a claim for \$200,000 on behalf of a minor, at settlement the guardian ad litem disappears and the minor obtains the funds. In other words, there is no accountability down the road.

Senator Raggio asked why you don't have to distinguish between a guardian of a person and a guardian of an estate. For example, if a minor has a guardian of his person, you still need a guardian of his estate to handle the recovery. Ordinarily when you have a claim it is just a matter of custody.

Judge Griffin stated the whole thrust of the bill is to have some accountability for funds that are dispersed to a minor. The court should at least appoint someone to be responsible for that dispersment.



Senator Ford asked at what point does the accountability use up the funds? Perhaps there needs to be a minimum.

Judge Griffin stated that the \$1,500 in the bill is not of great concern to Judge Thompson, but the Judge does feel it should be greater than that. By the time you get fees and costs on the compromise, you may have less funds than what you settle for. Judge Griffin feels that if you have something around \$3,000 for a figure, that would be the type of thing the court would want to appoint a guardian for. Anything less than this would just be eaten away with accounting procedures.

Senator Close stated that he really had no problem with the bill if the wording "ad litem" was taken out. The guardian ad litem disappears after the case has been tried and finalized. The language should read "for whom no guardian has been appointed". That would be the guardian appointed to take care of the funds after finalization. The guardian ad litem is appointed just for bringing up the suit. The guardian and the guardian ad litem are two different things.

Senator Raggio asked what would happen if a minor were to receive benefits in an insurance policy, without a judgment? Should we try to cover that too?

Senator Ashworth stated in a case like that the insurance company would protect itself, and probably require that a guardian be appointed for the estate of the minor.

Judge Griffin stated that in most insurance cases the compromise is approved by the court, so the court will be involved one way or the other. If the words "the court approves the compromise of the minors claim", were added, this would give the court the authority to say even under these circumstances you will establish a guardianship.

Senator Dodge stated he felt that whoever was paying out the money would want to have court approval to monitor the claim.

Judge Griffin stated that their concern is that, say you have a \$100,000 settlement for a minor's injury from an insurance company, the way the law reads, it does not impose any limitation on those funds. Mom and Dad could go out and buy two new cars if they want to, without answering to anyone.

Senator Close stated that under NRCP 17C the language reads: "whenever an infant or incompetent person has representative, such as a general guardian, the representative may sue or defend on behalf of the infant, if an infant does not have a duly appointed representative, he may sue by his next friend or by guardian ad litem. The court shall

appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action, or shall make such other order as it deems proper". So, this says that if you are a minor you must have a guardian ad litem. If the infant is under 14 years of age, then the application is a relative or friend of the infant. If the infant is above 14 years, then the child has something to say as to the person who is representing him.

Frank Daykin of the Legislative Counsel Bureau stated that the guardian ad litem is appointed for a minor who is a defendant. The next friend brings an action for the minor who is a plaintiff, and merely asserts that he is the next friend of the minor. Unless that is in some way successfully challenged in court, he goes through that way.

Senator Close stated that this bill then establishes a guardian if the minor receives more than \$1,500, because the guardian ad litem and the next friend both terminate on settlement.

Senator Hernstadt stated that with the costs of filing documents and court costs there should be something done to make these costs less expensive. As it stands now there is little left after these costs when you have a low figure.

Mr. Daykin stated that is the reason for establishing a fairly high threshold of what can be paid out, without the appointment of a guardian. As far as reducing the expenses of guardianship, if you do so, the real cost of guardianship tends to be the bond and the allowances to the guardian. You can't do much as to what surety companies charge for a bond, and unless you, as a matter of law, authorize the courts to dispense with it, you are not going to get at the main charge. Also, legal fees are high and you can't do much about that either. The procedure, when properly used, is complicated enough so that in a large county, the person is not going to go through it alone. In small counties in Ohio, the probate court takes them by the hand and leads them through, and I am sure that is the case in some small counties in this state. Mr. Daykin stated that the accounting procedures are really rather simple, all you have to do is file an accounting which is one piece of paper showing the receipts, disbursements, if any, and assets on the end or balance of the savings account.

As there were other bills to hear, no action was taken on this bill at this time.

SB 87 Eliminates certain requirements for restoration of civil rights of convicted persons.



Wylie Peebles with the Department of Parole and Probation, stated he would be testifying for Mr. Campos, who had to be in Las Vegas. The Department of Parole and Probation has no objection to this bill as far as the restoration of civil rights to these people. However, in Subsection 1 of Section 1, we do not see where this would have much effect on the procedures as being practiced today. There has not been a case in the last 15 years or so, where a pardon has been granted that civil rights have not been restored. There could be one possible impact under this bill. Throughout the law, it refers to requirements and the only requirements in this section are the requirement where the language is being deleted. The main concern of our department is, the way this bill is worded. It would not require sex offenders to register, or ex-felons to register, or things of that nature. We do feel that possibly the Committee should have some input from law enforcement.

Senator Hernstadt questioned what rights were being restored, and what rights were not being restored.

Mr. Peebles stated that there are several sections in the law which address themselves to the restoration of rights. However, I am not sure myself just what all these rights are. For example, could a person be convicted of a sex crime and have a consecutive sentence for the use of a deadly weapon, be paroled from the sex offense to his second sentence, complete that, be paroled and have his civil rights restored upon release from prison, and not have to register?

Senator Close stated that if we adopt the language as Senator Neal recommends, immediately after a pardon has taken place, without any lapse of time, and regardless of the status of the person's record, if he comes back in and applies for restoration of his civil rights, he has them immediately restored, without any restrictions.

Mr. Peebles stated he is not concerned with the pardon, only the people paroled or released by expiration of sentence.

Senator Raggio stated that he is not aware of a specific section which remove civil rights upon conviction, except perhaps by custom or inference. However, there are under the statutes the right to restore them. So he has never been really sure just what rights you do lose or where the authority for that is.

Senator Neal stated that this bill has been around since 1973. At that time the language Mr. Peoples spoke of was removed, and at that at that time the law required 10 years to get their rights restored. Each session thereafter the time limit was reduced until its present limit of 5 years. The bill is not a new concept and the only difference is the removal of the time limit in which a person could apply for the restoration of their rights.

Senator Close asked what requirements had to be met, under Section 3, line 25, if you are removing the requirements.

Senator Neal stated that you were not meeting any requirements, because now you want to relieve him of all the disabilities he had, in terms of not having those rights restored, just as any other citizen.

Senator Close stated then, if we take out the language on line 20 and 21, there is no requirement remaining in Section 3. Once he has gotten out of jail, he is entitled to have his rights restored to him, because there are no requirements that he has not met.

Senator Ford stated she felt then the whole thing would have to be changed. If you are removing the time frame, and you have served your sentence and been released there would be no reason to refuse.

Senator Dodge questioned if there would be a situation where the pardon had been received and civil rights aren't restored. Is there a reason to preserve this in the law?

Bryn Armstrong, Chairman of the Nevada Board of Parole Commissioners, stated the only enlightenment he could give on this bill, is that he has had only one case in which the board of Parole Commissioners, upon application, restored the civil rights of a person who had completed all the present requirements under the law. The investigation was made by the Board of Parole and Probation to establish the person's status, and then all the paper work was done.

Senator Raggio asked how frequently is an actual pardon granted?

Mr. Armstrong stated to his knowledge, not often. Most of the cases he has dealt with have been a modification of a sentence. The Board has acted mainly to make a person who is not eligible for parole eligible. It may have been a sentence that was changed from life without possibility of parole to life with the possibility of parole. It may have been a relatively long sentence and

and the Pardons Board has made the person immediately eligible for consideration.


Geno Menchetti from the Attorney General's Office, stated that this bill is talking about three different things. There is the pardon, the completion of parole, and just walking after the sentence is served. Each one would then become automatic under this bill. There are statutes that state you cannot vote and cannot hold office under certain misdemeanors and all felonies. There are a number of boards that will not issue you a license based upon these things. However, with ex-felons the registration comes into play, because as I read these statutes, all disabilities are relieved. I have no objections, except the Board of Pardons, which is the Governor and five Supreme Court Justices, may have cases where they may not want to restore rights. This would take away some discretion on their part.

Senator Raggio stated he felt that perhaps Counsel should tell the Committee before another hearing on this matter, just what rights are involved, before we talk about automatic restoration of civil rights in just any case.

Senator Close stated that if this was the consensus of opinion they would take no action at this time.

The meeting was adjourned at 10:59 a.m.

Respectfully submitted,

  
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Virginia C. Letts, Secretary

APPROVED:

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Senator Melvin D. Close, Chairman