

The meeting was called to order at 9:00 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

AB 714 Requires parents to pay for counsel appointed to represent their child in certain circumstances unless they are indigent.

Judge Roy Torvinan, Second Judicial District, testified in support of this measure. He stated that most states have a provision somewhat similar to this. The existing law provides that a child is entitled to an attorney even though the parents may not be indigent. Judge Torvinan stated that the reason for that was that in some cases, the interests of the parents may not be those of the child and the parents will refuse to obtain counsel for the child. This bill will provide that the court will assess attorney's fees against the parents.

Senator Sloan moved to report AB 714 out of committee with a "do pass" recommendation.

Seconded by Senator Hernstadt.

Motion carried unanimously. Senator Ford was absent from the vote.

SB 541 Provides for determination of mental competency of juvenile offenders.

Judge Charles Springer, Juvenile Court Master, Washoe County, testified in support of this measure. He stated that one of the principle reasons for this bill was that the courts need some immediate way of attending to juveniles that have mental problems. He further stated that this bill will clearly indicate who is responsible in such cases.

Senator Close stated that there was some concern among the committee about allowing the court to order out-of-state placements where the State is responsible for the payment of those placements.

Stan Peck, Assistant Chief Deputy District Attorney, Civil Division, Washoe County, testified that this bill had been drafted as a result of the decision in Dickson v. Second Judicial District Court, 94 Nev. Adv. Opn. 61 (1979). The principle matters considered in the court's decision were 1) whether or not the juvenile court had the authority to make out-of-state placements without the approval of the Administrator of the Mental Hygiene and Mental Retardation Division; and 2) whether or not the county or state would be responsible for the payment of the cost.

He stated that there were 2 decisions in this matter. The first decision found that the court, in its inherent powers, had the authority to make the placement.

In its second decision, it held that the county was responsible for the payment of the cost.

Mr. Peck stated that the county was opposed to the payment of the cost. The particular case cited cost \$33,236 for the placement of two minor children.

Dr. Bing Oberle, Ph. D., Acting Administrator, Division of Mental Health and Mental Retardation; and Emmagene Sansing, Deputy Attorney General, assigned to the Division, testified in support of this measure. For their comments and estimated cost of the program, see attached Exhibits A and B, respectively.

Bob Edmundson, Deputy Director, Department of Human Resources and Facilities, concurred with Dr. Oberle and Ms. Sansing's testimony.

Frank Sullivan, Chief Probation Officer, Washoe County, stated that the issue was being clouded as to retardation, emotionally disturbed, etc. He wanted the committee to realize that this bill speaks only to the question of competency.

He further stated that in his 19 years as a probation officer, the Dickson was the first of its kind that he has ever encountered.

The committee agreed to the need for this measure but felt that it more appropriately belonged in the Finance Committee.

No action was taken at this time.

AB 392 Provides for establishment of policies and procedures to govern visitation of offenders in prison.

Don Rhodes, Chief Deputy Research Director, testified in support of this measure. For his comments, see attached Exhibit C.

Mike Medema, Department of Prisons, stated that they had no objections to this bill. However, he informed the committee that if this bill were passed, it would be necessary to repeal NRS 209.423 which says that the superintendent shall establish policies in this area. He further stated that this is presently covered under Visiting Procedure No. 328, which has been adopted by the Prison Board and revised as recently as January 15, 1979.

Senator Sloan stated that this was not necessary as it is constitutionally mandated that prisoners shall have visitation rights.

Senator Raggio moved to indefinitely postpone AB 392.

Seconded by Senator Sloan.

Motion carried unanimously. Senator Ford was absent from the vote.

AB 199 Prohibits probation for a second or subsequent conviction of any felony.

Assemblyman Nick Horn, District 15, testified in support of this measure. For his comments, see attached Exhibit D.

Larry Ketzenberger, Las Vegas Metropolitan Police Department, concurred with Mr. Horn's testimony.

Mike Medema, Nevada Department of Prisons, testified in support of this measure. He stated that Director Charles Wolff indicated that this would not have a significant impact on the prison system or their budget. Mr. Medema pointed out to the committee that on line 10, with regard to the 5 years after prior conviction, it should be made clear as to whether this is 5 years from the date of conviction or 5 years from release from prison.

Senator Raggio stated that although he agreed with the concept of the bill, he has some difficulty with depriving the court of the ability to judge the seriousness of the second offense and the interim period since the prior conviction.

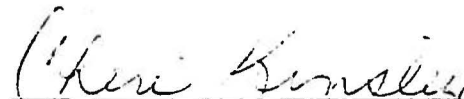
He also felt that this would encourage plea-bargaining. He stated that as a practical matter, the courts generally give a person a prison sentence on a second felony conviction.

He requested that the committee withhold action on this measure until testimony could be taken from some judges.

No action was taken at this time.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Cheri Kinsley, Secretary

APPROVED:

Senator Melvin D. Close, Jr., Chairman



ROBERT LIST
Governor

STATE OF NEVADA
DIVISION OF MENTAL HYGIENE
AND MENTAL RETARDATION

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Administrator

Associate Administrator for
Mental Health

JACK MIDDLETON
Associate Administrator for
Mental Retardation

May 2, 1979

MEMORANDUM

To: Bing Oberle, Ph.D., Acting Administrator
Division of Mental Hygiene and Mental Retardation

From: Emmagene Sansing, Deputy Attorney General *ES*
Division of Mental Hygiene and Mental Retardation

Subject: S.B. 541

You have asked for my comments regarding S.B. 541. They are as follows.

- A. Dickson v. Second Judicial District Court, 94 Nev. Adv. Opn. 61 (1979) concluded that juveniles charged with delinquent acts have the constitutional right to treatment. This bill provides statutory authority for such procedure.
- B. The Dickson case is limited to juveniles who are charged with delinquent acts and who is found to be a threat to himself and to society. With juveniles, a child may be incompetent but not be dangerous to himself or the community. Such juveniles may not need a secure residential facility and could be treated as outpatients. The bill provides no procedure to determine dangerousness or to consider the least restrictive environment.
- C. The bill refers to Chapter 178 for procedures to be followed. NRS 178.425 provides that if the person is found "insane" he is committed to the custody of the administrator for detention and treatment at the Nevada state prison or at a facility operated by the Division. Section 2 creates an exception by providing the court may order involuntary placement in a private, out-of-state facility when it finds state and local facilities are insufficient. Section 2 makes no provision for input from the administrator regarding state facilities. It is conceivable non-Division professionals could determine the juvenile is incompetent and dangerous and that no facilities are appropriate without ever giving the Division the opportunity to develop an appropriate in-state treatment plan.

Under NRS 433A.430, the administrator has the discretion to place a mentally ill person in an out-of-state facility. The problem with

Dr. Oberle
May 2, 1979
Page Two

this statute is that no monies have been appropriated for such treatment. If monies are appropriated and juvenile incompetents are placed in the custody of the administrator, the administrator could then make the decision as to appropriate placement. To quote from Chief Justice Cameron Batjer's dissent in Dickson: "The decisions to provide mental health service, which and how many services, and to provide and where and how to provide them, are legislative and executive functions requiring a balancing of public interests which the courts are neither authorized nor suited to direct." Section 2 as proposed divests the administrator of his discretion to determine the most appropriate treatment while leaving the Division with the costs.

- D. In referring to Chapter 178, S.B. 541 may create problems with the release of juveniles who are detained as being incompetent. Under Chapter 178, a person is detained until the administrator determines the person is competent, at which time a sanity commission is appointed. A sanity commission is composed of three physicians, at least one of whom is a psychiatrist, who examine the person. If it determines he is competent when he is returned to trial on the criminal acts. If he is incompetent he remains in custody.

The problem arises where the person is incompetent and will never be competent. No procedure is provided for the periodic review or release of such person. In Jackson v. Indiana, 406 U.S. 715 (1972), the U.S. Supreme Court ruled that an incompetent person cannot be held longer than the reasonable period of time necessary to determine whether there is a substantial probability he will attain capacity in the foreseeable future. If determined the person will not attain competency, he/she should be civilly committed, if appropriate, or released.

The above-mentioned argument is presently before the Second Judicial District Court in two Petitions for A Writ of Habeas Corpus (Jerome Ramsey and Blake Speers, presently in custody of Lake's Crossing).

With juveniles, some procedure should be provided for periodic review and release, especially if juveniles are in custody in some distant out-of-state facility. Neither S.B. 541 nor Chapter 178 provide for such review.

The sanity commission does not periodically review the client since it is called only after the administrator determines the person is competent. In addition, costs of calling a sanity commission are expensive and borne by the Division.

- E. Section 2 specifically mentions "private, out-of-state facility." No mention is made of a "public," out-of-state facility which may be appropriate.

Dr. Oberle
May 2, 1979
Page Three

F. Section 3 of S.B. 541 is superfluous. Involuntary commitments for juveniles is already provided for in Chapter 433A. Under the Juvenile Court Act, Chapter 62, a juvenile court has jurisdiction over a child because he (1) has committed a delinquent act, (2) is neglected, (3) is in need of supervision, or (4) is in need of commitment to an institution for the mentally retarded. Using the term "mental competency" in regard to juveniles other than those charged with delinquent acts is irrelevant and confuses matters. I would recommend deletion of Section 3 or, at the minimum, a deletion of "mental competency." The section might also be changed to refer to children suffering from "emotional disturbance" or "mental illness." The terms "emotional disturbance" and "mental illness" are used and defined in Chapters 433 and 433A; "mental competency" is not.

I hope the above comments will be helpful to you in your analysis of the bill.

ES:ve



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Associate Administrator for
Mental Retardation

May 2, 1979

Phase-in schedule for maintaining 25 out-of-state NP/MR residential beds. (Placement of two clients per month, average length of stay: 15 months)

A. First Year

Client #	Bed #	Months Served	Placement Cost @ \$2500/month
1,2	1,2	12	60,000
3,4	3,4	11	55,000
5,6	5,6	10	50,000
7,8	7,8	9	45,000
9,10	9,10	8	40,000
11,12	11,12	7	35,000
13,14	13,14	6	30,000
15,16	15,16	5	25,000
17,18	17,18	4	20,000
19,20	19,20	3	15,000
21,22	21,22	2	10,000
23,24,25	23,24,25	1	7,500

Total 1st Year Placement
Costs \$392,500

Client #	Bed #	Months Served	Placement Cost @ \$2500/month
1,2	1,2	3	15,000
3,4	3,4	4	20,000
5,6	5,6	5	25,000
7,8	7,8	6	30,000
9,10	9,10	7	35,000
11,12	11,12	8	40,000
13,14	13,14	9	45,000
15,16	15,16	10	50,000
17,18	17,18	11	55,000
19,20	19,20	12	60,000
21,22	21,22	12	60,000
23,24,25	23,24,25	12	90,000
26,27	1,2	9	45,000
28,29	3,4	8	40,000
30,31	5,6	7	35,000
32,33	7,8	6	30,000
34,35	9,10	5	25,000
36,37	11,12	4	20,000
38,39	13,14	3	15,000
40,41	15,16	2	10,000
42,43	17,18	1	5,000

Total 2nd and Subsequent
Year Placement Costs \$750,000

May 2, 1979 (cont.)

2.

B. Other Costs: Per Year

1. Placement travel: client and 2 chaperones going	\$15,000
client and 1 chaperone returning estimate \$600 per bed per year	
2. In-state travel	1,200
3. Staff travel for program evaluation	7,500
4. Normalization travel (pays for home visits 2 times a year on sliding scale based on parents/guardians ability to pay) estimate \$300/ bed/year	7,500
5. Client competency and other evaluation prior to placement. Estimate \$300/bed/year	7,500
6. 1.0 FTE Central Office Coordinator and fringe \$18,500 + \$2,775 = \$21,275	21,275
7. Office expense @1,600/year	1,600
8. Clerical office + salary and fringe	<u>5,800</u>
	Per Year <u>\$67,375</u>

Budget Recap

A. 1979-80

1. Placement Costs	\$392,500
2. Other Costs	<u>67,375</u>
3. Total	\$459,875

B. 1980-81

1. Placement Costs	\$750,000
2. Other Costs	<u>67,375</u>
3. Total	\$817,375

C. Biennium Grand Total

\$1,277,250

A.B. 392
(BDR 16-75)

INMATE VISITATION

AS THE MEMBERS OF THE COMMITTEE RECALL, THE INTERIM STUDY OF THE CONDITION OF THE PRISON MANDATED BY A.C.R. 1 OF THE 1977 LEGISLATIVE SESSION, WAS AN OUTGROWTH OF CONCERN ABOUT ESCAPES, ASSAULTS ON PRISONERS AND STAFF AND OTHER EVENTS AT THE PRISON WHICH RAISED MANY QUESTIONS ABOUT THE OPERATION OF THE DEPARTMENT.

IN LINE WITH ITS MANDATE, THE INTERIM SUBCOMMITTEE EVALUATED THE ENTIRE OPERATION AND ADMINISTRATION OF THE DEPARTMENT AND CAME UP WITH SEVERAL RECOMMENDATIONS FOR CHANGES IN THE LAW. A.B. 392, RELATING TO INMATE VISITATION POLICIES, REFLECTS ONE OF THE SUBCOMMITTEE'S RECOMMENDATIONS. PERHAPS ONE OF THE MOST IMPORTANT ACTIVITIES TO ANY INMATE IS VISITING WITH HIS FAMILY AND FRIENDS. ABRIDGEMENT OF AN INMATE'S VISITATION RIGHTS CAN LEAD TO SERIOUS MORALE PROBLEMS AND GENERAL INMATE UNREST.

VIRTUALLY EVERY STATEMENT ON VISITATION BY PRISON OFFICIALS, CORRECTIONAL STANDARDS AND DRAFT MODEL LEGISLATION, EVERY NATIONAL STUDY AND EVERY MAJOR TEXTBOOK ON CORRECTIONS, STRESS THE CRITICAL NATURE OF INMATE VISITATION BOTH IN TERMS OF THE REDUCTION OF TENSION INSIDE THE PRISON AND IN FACILITATING THE REHABILITATION OF THE PRISONER BY STRENGTHENING HIS OR HER TIES WITH SOCIETY.

SEVERAL PERSONS APPEARING BEFORE THE SUBCOMMITTEE EXPRESSED THE VIEW THAT INMATE VISITING PRIVILEGES AT THE DEPARTMENT ARE TOO RESTRICTIVE AND TEND TO DISCRIMINATE AGAINST CERTAIN INMATES AND VISITORS. THE SUBCOMMITTEE BELIEVED THAT THE CRITICAL VALUE FOR OFFENDERS OF A PROGRAM OF VISITING WITH RELATIVES AND FRIENDS IS CLEAR AND OBVIOUS. IT THEREFORE RECOMMENDED:

THE STATE BOARD OF PRISON COMMISSIONERS ADOPT REGULATIONS NECESSARY TO ESTABLISH REASONABLE INMATE VISITATION POLICIES AND PROCEDURES. THE SUBCOMMITTEE FURTHER RECOMMENDED THAT SUCH REGULATIONS SHOULD BE (1) MADE AVAILABLE TO ALL STAFF MEMBERS, INMATES AND THEIR VISITORS, AND (2) REVIEWED ANNUALLY AND UPDATED AS NEEDED.

A.B. 392 REFLECTS THE SUBCOMMITTEE'S RECOMMENDATION.

IT IS UNDERSTOOD THAT THE DEPARTMENT OF PRISONS HAS MOVED TO DEVELOP REGULATIONS AND POLICIES IN SEVERAL AREAS INCLUDING INMATE VISITATION SINCE THE SUBCOMMITTEE MADE ITS RECOMMENDATIONS. THIS SPEAKS WELL OF THE CURRENT PRISON ADMINISTRATION.

THE SUBCOMMITTEE FELT, HOWEVER, THAT CERTAIN CRITICAL MATTERS RELATING TO THE PROPER OPERATION OF THE PRISON SHOULD BE SPECIFIED IN THE LAW. INMATE VISITATION IS ONE OF THOSE AREAS.

AS THE COMMITTEE CAN SEE, A.B. 392 GIVES THE BOARD OF PRISON
COMMISSIONERS LATITUDE IN SETTING INMATE VISITATION POLICIES.
THE SUBCOMMITTEE THROUGH THE BOARD SHOULD HAVE THIS LATITUDE
TO MEET CHANGING CONDITIONS. IT ALSO FELT, HOWEVER, THAT THE
PARAMETERS FOR INMATE VISITATION SHOULD BE SPECIFIED IN NRS
209.

THANK YOU.

STATEMENT BY ASSEMBLYMAN NICK HORN
ON A.B. 199

I BELIEVE WE ARE DOING A DISSERVICE TO THE CITIZENS OF NEVADA WITH OUR REVOLVING DOOR APPROACH TO THE SENTENCING OF CRIMINALS. THAT IS WHY I INTRODUCED A.B. 199, WHICH PROHIBITS PROBATION FOR SECOND OR SUBSEQUENT CONVICTIONS OF ANY FELONY WITHIN FIVE YEARS OF A PRIOR CONVICTION.

IN REVIEWING VARIOUS PUBLICATIONS ON CRIMINAL BEHAVIOR AND IN TALKING TO LAW ENFORCEMENT OFFICIALS, IT HAS BECOME CLEAR TO ME THAT PRIOR CRIMINAL RECORD, NOT SURPRISINGLY, IS ONE OF THE BEST INDICATORS OF FUTURE CRIMINAL BEHAVIOR. BRIEFLY, THE LIKELIHOOD OF RECIDIVISM INCREASES WITH THE NUMBER OF PRIOR ARRESTS, WITH THE NUMBER OF PRIOR PENAL COMMITMENTS, WITH THE NUMBER OF PREVIOUS FELONY CONVICTIONS, AND WITH THE SERIOUSNESS AND FREQUENCY OF PRIOR CRIMINAL ACTS.

A.B. 199 DEALS WITH THIS FACT OF LIFE. IF YOU GET CONVICTED OF A SECOND FELONY WITHIN FIVE YEARS - YOU GO TO PRISON.

THERE IS SCARCELY ANY EVIDENCE TO SUPPORT THE PROPOSITION THAT WOULD BE CRIMINALS ARE INDIFFERENT TO THE RISKS ASSOCIATED WITH A PROPOSED COURSE OF CRIMINAL ACTION. CRIMINALS MAY BE WILLING TO RUN GREATER RISKS THAN THE AVERAGE CITIZEN. BUT, IF THE EXPECTED COST OF CRIME GOES UP, THEN THE POTENTIAL CRIMINAL, UNLESS HE OR SHE IS AMONG THE SMALL FRACTION OF CRIMINALS WHO ARE UTTERLY IRRATIONAL, ENGAGES IN LESS CRIME.

I BELIEVE A.B. 199, WITH ITS MESSAGE OF CERTAINTY OF PUNISHMENT FOR REPEAT OFFENDERS, WILL ACT AS A DETERENT TO CRIME.

THE FISCAL IMPACT OF A.B. 199 WOULD BE INSIGNIFICANT. THE PRISON AND OUR FISCAL STAFF AGREE ON THIS ASSESSMENT. OF THE 1,652 PERSONS GIVEN PROBATION IN 1978, ONLY ABOUT 60 WOULD HAVE BEEN AFFECTED BY A.B. 199.

MR. A.A. CAMPOS, CHIEF OF THE DEPARTMENT OF PAROLE AND PROBATION, HAS ESTIMATED THAT ABOUT 20 OF THESE PROBATIONERS WILL VIOLATE PROBATION OR COMMIT ANOTHER CRIME AND GO TO PRISON. THEREFORE, AT CURRENT COMMITMENT RATES, THE MAXIMUM EFFECT A.B. 199 WOULD HAVE ON THE PRISON POPULATION WOULD BE ABOUT 20 TO 40 ADDITIONAL INMATES A YEAR. THIS SMALL NUMBER OF INMATES COULD BE ABSORBED INTO THE PRISON SYSTEM AT NO INCREASED COST. WARDEN WOLFE TESTIFIED BEFORE ASSEMBLY WAYS AND MEANS, HE HAD NO OBJECTION TO A.B. 199 AND LITTLE OR NO FISCALLY IMPACT.

I AM EXTREMELY CONCERNED ABOUT THE MONETARY AND SOCIAL COSTS CRIME HAS ON THE CITIZENS OF NEVADA. WE ARE PAYING A HIGH PRICE FOR LAWS WHICH PERMIT PROFESSIONAL CRIMINALS TO REMAIN ON THE STREETS. AT THE MINIMUM, A.B. 199 WILL GIVE NEVADANS A RESPITE FROM THE HIGH SOCIAL AND ECONOMIC COSTS OF THE CRIMES COMMITTED BY CERTAIN PERSONS IN THIS STATE.

MR. MIKE DE LA TORRE, DIRECTOR OF THE NEVADA DEPARTMENT OF LAW ENFORCEMENT ASSISTANCE STATED:

NOT WITHSTANDING THE ACCURACY OR INACCURACY OF FIGURES WHICH MAKE AN EFFORT TO DEPICT THE COST OF OPERATING ANY CRIMINAL JUSTICE SYSTEM, THE SOCIAL COST OF CRIME SHOULD BE OF PARAMOUNT CONCERN. NO ONE REALLY KNOWS WHAT CRIME COSTS, BECAUSE RECORDS DON'T TAKE INTO ACCOUNT SUCH THINGS AS THE COST OF SECURITY DEVICES, INSURANCE OR HOSPITALIZATION. ALSO, NO ONE CAN ACCOUNT FOR THE COST OF FEAR, TRAUMA OR THE LOSS OF LOVED ONES AND COMPANIONS. HOW DO YOU MEASURE THE DISRUPTION OF ONE'S LIFE STYLE FROM A ROBBERY OR SEXUAL ASSAULT?

ACCORDING TO NEVADA STATISTICS, THE VALUE OF PROPERTY STOLEN IN 1976 FROM BUGULARIES, ROBBERIES AND LARCENCY TOTALED \$25 MILLION. FROM 1970 TO 1976, NEVADA'S POPULATION INCREASED BY ABOUT 27 PERCENT. DURING THE SAME TIME VIOLENT CRIME INCREASED 115 PERCENT AND PROPERTY CRIME 76 PERCENT.

A.B. 199 IS A NEEDED PIECE OF LEGISLATION. IT SENDS OUT A LOUD AND CLEAR MESSAGE TO CAREER CRIMINALS THAT NEVADA WILL NO LONGER JUST SLAP THE WRISTS OF REPEAT OFFENDERS.

I ASK FOR YOUR YEA VOTE ON A.B. 199.