MEMBERS PRESENT: Chairman Stewart
Vice Chairman Sader
Mr. Thompson
Ms. Foley
Mr. Beyer
Mr. Price
Mr. Malone
Mrs. Cafferata
Ms. Ham
Mr. Banner

MEMBERS ABSENT: Mr. Chaney

GUESTS PRESENT: Mr. Fred Weldon, Research
Gloria Handley, Nevada State Welfare
W. Labadie, Nevada State Welfare
M. Katz, Youth Services Division
Bing Oberle, Dept. Human Resources
Ken Sharigian, Div. Mental Hygiene & Mental Retardation
Ned Solomon, Clark County Juvenile Court
Frank Carmen, Director, Youth Services Div.
Mike Brown, Administrator, Court System
Larry Ketzenberger, LV Metro Police Dept.
Claudia K. Carmier, Deputy A.G., Welfare
Senator Jean E. Ford

The Chairman called the meeting to order at 8:03 a.m. He indicated that the two bills to be heard this morning deal with the area of juvenile delinquency. These bills originated out of an interim study committee on juvenile delinquency. Mr. Stewart introduced Senator Ford, who has a study under way of the structure of the juvenile courts.

AB 19 Authorizes youth services division of Department of Human Resources to require submission of statistics on juvenile offenses.

Senator Jean Ford, Clark County District 3, stated that the Committee she chaired prepared a report relating to the organization and financing of the juvenile court. She indicated there had been big questions raised regarding the relationship of the court to local government in a number of areas relating to personnel, expenditure of monies, who has the final say, etc. Her committee did not get into programming per se, except for a further understanding of those questions relating to organizing and financing. She indicated that it was an extremely frus-

trating experience in that they found they could not get the data needed to resolve the question between Courts and local government. Questionnaires were sent out and found that people did not look at the terms the same way; some juvenile court districts, probation officers, etc. do no keep statistics at all. While they were able to get some information from some parts of the State, they could get no information from others. The data was just not available for making large policy decisions which need to be made in solving some existing problems. It was therefore concluded that there needed to be some way of gathering statistics in a continuing manner and the dissemination of the data gathered. Senator Ford read the following recommendation of her committee:

> "The Legislature should provide by law for the reporting of data on the operations of juvenile courts and require compliance with regulations adopted by the Youth Services Division of the Department of Human Resources for that purpose. The Division should be required to disseminate those collected data to local governments, courts, and others to whom it would be of use."

Senator Ford indicated that AB 19 partially addresses this questions and that it was her understanding that there would be proposed amendments possibly to clarify the types of data and who should actually do the reporting. She further stated her support of that. She noted the lack of a requirement in the proposed bill for dissemination back to local government and the courts and felt that was essential in the bill. She urged an amendment to include dissemination.

Mr. Sader asked to whom the dissemination should be sent. Senator Ford felt that it should be sent at least to local governments, counties which are paying the bills in the program, the courts themselves, and available to the general public. She also suggested it be sent to public libraries for easier access to the public. She felt the key groups involved and Legislative Counsel Bureau should definitely have the information available for the making of policy decisions.

Upon a question from Chairman Stewart about which courts should have the information, Senator Ford indicated it should be those responsible for juvenile action.

The Chairman then asked Fred Weldon to give information on AB 19.

Fred Weldon, Research Division, Legislative Counsel Bureau, indicated that on this study, ACR 34, Mr. Stewart was the Chairman and Mr. Malone was one of the members. Mr. Weldon staffed the study. He stated that in AB 19 his group found that the statistics available were either not in a usable form or were not gathered in such a way that different jurisdictions could be compared. The study (8110) shows the statistics they obtained and it can be seen that it is difficult to make any sense from them.

Mr. Weldon stated that the decision was made that the central agency responsible for gathering the various statistics should be the Youth Services Division. He noted that the subject bill gives the Youth Services Division the authority to make regulations which would require district judges, sheriffs, and chiefs of police to keep and report statistics in the format that the Youth Services Division would require. Mr. Weldon commented that the police and sheriffs are currently voluntarily collecting data under an FBI system, but although some of the terms used are defined, they are not uniformly used which ultimately throws the statistics off. Therefore, the proposed bill gives authority for the Youth Services Division to set up a uniform system through the courts and the police and sheriffs.

Mr. Sader asked if there was going to be testimony by the juvenile judges and it was noted that there was someone from juvenile court as well as Youth Services Division.

When asked by Mr. Malone what his opinion of the dissemination was, Mr. Weldon stated that he felt the Youth Services Division would disseminate the information whether told to do so or not. He said that if it was mandatory, there should be a statement included stating that the information should be disseminated back to local governments and district juvenile courts. He did not feel it was necessary to send it to other places.

Mr. Sader asked if the collection of data might have a positive impact on future federal grants. Mr. Weldon did not know, but assumed that the collection of accurate data would have have ramifications across the boards on anything attempted to be done, but he didn't know specifically if it would add to the grant money.

Mr. Beyer expressed concern over the question of to what degree the Youth Services Division would have authority to write certain regulations, law and policy. Mr. Price answered by saying that every agency has to propose regulations which must then be formally heard and approved. Mr. Stewart further clarified

by stating that the State has a Legislative Commission that approves and reviews all regulations. He indicated that this authority given in the bill is very limited in that it goes only to adopting regulations for acquiring statistics and directions as to the kind of statistics to be collected.

Mr. Banner asked if the Chairman felt there would be cooperation from the judges in collecting the data. Mr. Stewart thought there was an amendment which would deal with that.

Ms. Ham asked why the records hadn't been kept previously and Mr. Stewart said that some of the agencies do keep the records, however there are some reluctant to keep the information and it then comes in various forms which makes accumulation difficult.

Ms. Ham questioned if some of the reluctance by various agencies to keep records was because of the time factor. Mr. Weldon stated that when he discussed the matter at a meeting of the chief probation officers, some of the rural probation officers made the point that they kept records adequate for themselves, but that because of their large caseloads they felt pressured when forced to keep more records. Mr. Weldon indicated that one of the reasons for leaving this open to the Youth Services Division and not tying them down on what they would require was so that they could use their judgment and modify it to suit the different counties. He further indicated that the terms were used differently in the different areas.

Ms. Ham asked if the forms should be standardized to relieve the problem and Mr. Stewart said he thought one of the things the Youth Services Division would do would be to develop those types of forms.

Frank Carmen, Director, Youth Services Division, testified next on AB 19 with the assistance of Michael Katz, his Deputy Administrator. Mr. Carmen expressed the support of the Youth Services Division to the basic intent of the bill, but suggested that some of the language be changed to extent that he did not feel it was necessary for Youth Services to have the authority to try and order judges, etc., to provide them with statistics. He stated that in most cases the Sheriffs' Departments are providing the criminal data needed to the FBI and other agencies. He indicated that the Youth Services simply needed some kind of authority to require the juvenile probation officers, the chief juvenile probation officers or the directors of the juvenile courts throughout the state to provide them with precise data in an orderly fashion. He

reiterated that one of the major problems was that there were not precise definitions regarding the type of information required. When one juvenile court reports arrest information, they may include all traffic offenses and another juvenile court does not. The statistics received are very ineffective. They can determine the total number of juveniles brought to the attention of the juvenile courts statewide, but there is no idea how often each individual was brought before the court. There is no statewide definition of recidivism or return rates. He mentioned that they would like some input from the various juvenile courts as to what they would like to see, develop some kind of data form that is simple. It is not the intent of the Youth Services that the bill be seen as a threat to any juvenile courts; it should be a cooperative effort throughout the state.

Mr. Carmen pointed out that Michael Katz is the expert within the Youth Services Division in the area of data processing and the types of forms to be developed and kinds of information which they presently have the capability of gathering. He asked Mr. Katz to make his comments.

Mr. Katz stated that within the juvenile justice system there is a state system and a local system, with nine judicial districts throughout the state. Each judicial district has contained within it the juvenile probation department with a chief probation officer in each of the counties. He indicated that within the state system there were four institutions, a parole division and a child care services bureau. Mr. Katz indicated that Youth Services has been working with local probation for years in many respects in that they provide them money through probation subsidy and, as a result of that, there is a real reporting system which includes a handwritten tally of the numbers. It is, therefore, not a new idea to gather and share statistics. The main goal is to eliminate some of the problems and uniform definitions. The Youth Services would provide forms which ask for specific data from all the districts. Mr. Katz pointed out that Clark County is the only district court which has a computerized information system. All other counties, including Washoe County, does it by hand. He stated that a large portion of their workload could be eliminated by filling out the forms and having a monthly or quarterly report printed out by the computer. It would also enable the provision of separate information reports as requested. He stated that presently there is an information system which is being finalized which basically reports the Youth Services part of the system, i.e. once the child is adjudicated and committed to an institution. As a comparison, 250 to 300 children in the Youth Services system per year compared to 25,000 at the local levels where the data is not complete.

Mr. Katz pointed out that district judges, sheriffs and police are not the people who should provide the information requested. The information should come from the chief probation officer. The police and sheriffs report to the FBI and Youth Services has that information available through the Crime Commission. The judges already report to the administrative offices of the courts. Therefore, that information need not be duplicated. The probation could report to Youth Services all the juvenile activity, including the activity of the juvenile judge, i.e. the number of hearings and the types. A main objective would be to eliminate duplicating information.

Mr. Katz mentioned that the fiscal impact is not addressed in the bill and should be thought about. He said that a project of that magnitude is going to have a fiscal impact. To take on this obligation would require additional funds for computer time.

When Mr. Sader asked for an estimate of the fiscal impact, Mr. Katz stated that Central Data Processing advised adding on the the existing system, which would require approximately $10,000 in one-time programming costs, and then approximately $1.50 per name per year operating costs. With consultation with local probation, it would depend upon how sophisticated a system would be necessary. He cited as guidelines, 40,000 names a year ($60,000) or as low as 10-12,000 names a year.

Mr. Carmen indicated that one of the reasons the program has not been instituted before is the fiscal impact of it. That is another reason the system as it exists is piece-meal. He stated that there is a continuing demand for data even though the Youth Services Division is very new, only having been created by the Legislature in 1979. Prior to 1979, there was still a demand for some type of central data collection. People within the State who were associated with youth and community programs were seen as the individuals who should be collecting data and they did make efforts to do so. He stated that the State is as close right now to having central data collection and dissemination as it has ever been in regards to Youth Services.

When asked by Chairman Stewart if the program was mentioned in the budget at all, Mr. Carmen indicated it was not. He stated that there was a request for increased data processing funds, but it was reduced. The request was to primarily continue the existing in-house data.

Mr. Stewart then asked if he was correct in understanding that if the bill was passed requiring the statistics to gathered, it would initially cost $10,000 to start the program and $60,000 a year to keep the statistics. Mr. Katz indicated that $60,000 was a maximum figure. Mr. Carmen suggested that the figures be checked with Central Data Processing. He felt that a $70,000 figure was quite high in terms of the fact that $60,000 buys quite a bit of computer time. It was therefore his recommendation that during sub-committee hearings, CDP be asked to provide cost information to the committee for this type of system.

Mr. Stewart indicated that the bill may have to be referred to Ways and Means. Mr. Stewart asked about the type of information already being gathered and Mr. Katz stated that the Youth Services keeps its own for the state system and gets summary statistics from Clark County.

Mr. Carmen stated that as a result of giving the counties money under the probation subsidy, they are required as a part of the audit process to supply Youth Services with basic data, but those statistics deal primarily only with cases related to probation subsidy monies or restitution monies. Therefore, the only information gathered is for juveniles who have been arrested and placed on probation subsidy or youth restitution (work) projects. Sometimes there are figures received which are incidental to other crime statistics. He pointed out that the fiscal impact is important only to note that if the Youth Services Division is going to be seen as the agency responsible for collecting the necessary data, there has to be some kind of financial capabilities given to them to do the job correctly. The alternative is a manual gathering of the information since there would be no funds to pay for computer time.

Mr. Stewart asked what kinds of statewide statistics are currently being kept and what kinds of information was expected to be collected under the subject bill. He further wanted to know what use would be made of those statistics.

Mr. Carmen stated that the current primary information was in-house, dealing with the number of youth committed to the Nevada Youth Training Center, the Nevada Girls' Training Center, the number of children on parole, the recidivism rate (back to the institutions), arrest rate, parole. There is very little, if any, total runs on any statewide crime statistics. Mr. Katz

pointed out that Youth Services would receive an annual report from the local probation department which states the number of referrals in different categories received in a given year. The information is a summary statistic giving a general picture, but it does not provide any specifics. An example is the number of times a particular individual comes through the system. They know the total number only. He further indicated that the specifics they are asking for are required for grants and various committees. Mr. Katz stated that the figures he previously gave represent a total operational cost for the system, that is, from the time of printing the form, providing the districts with the form, getting the form back, keypunching the information, getting a print-out and mailing the print-out to the districts.

Mr. Beyer asked for an explanation of who makes use of the data compiled and what happens on the local level to prevent the youths from getting into trouble and to reduce the numbers over a period of time. Mr. Carmen responded by stating that the data is primarily used as management information hopefully to adjust the programs and design new programs. Examples given were that an indication in Clark County was that 50% of the juveniles given judicial reprimands were returning to the system. The question was then which juveniles were given judicial reprimands. The judges indicated they were going to petty larceny offenders, children caught shoplifting. As a result of that information, Youth Services designed a petty larceny program using the existing personnel. A six to eight week program was designed for these juveniles which was mandatory before a judge gave a reprimand. Therefore, every time a juvenile was arrested for petty larceny there was an immediate consequence -- a six week program with the parents, films, weekend work, etc. At the end of the six week period the juvenile went to the judge for the reprimand. As a result, the recidivism dropped to 5%. Another example cited was restitution of victims.

Mr. Katz commented that the collection of specific data was basically a management tool which allowed the Division to make projections, aided in designing budgets, helped in analyzing existing programs. Mr. Carmen again pointed out that the major difficulty would come with defining the terms used in the forms distributed to the districts.

Mr. Beyer asked if it was important that every county in the state provide the statistics requested. Mr. Carmen stated that yes it was important, but not vital. It is important in bringing the juvenile justice system together. Without all the counties participating in the program, the data would be incomplete.

Mr. Carmen concluded by saying that the system without implementing the bill would be no worse off. If the bill were passed and there were a fiscal note, the system would be very much benefitted. He pointed out that the reason the bill came about was that committees like the one Mr. Stewart chaired could not get the information they required on a statewide basis. They could get FBI figures, but not the detail needed to make decisions.

For clarification, Mr. Stewart asked if it was the suggestion of the Youth Services Division that the language of the bill be changed to remove district judges, sheriffs and chiefs of police as people from whom the information be gathered and substitute chief juvenile probation officers. Mr. Carmen stated it was.

Ned Solomon, Deputy Director, Clark County Juvenile Court, testified next in support of AB 19. Mr. Solomon stated that as a probation officer who has been in the system for a number of years, it was somewhat embarrassing to appear before some of the committees who were looking at juvenile activities within the state and be unable to present a picture which clearly showed the juvenile activities throughout the state. He said it was felt as a need for a collection of material agreed upon, compiled in a central source and available to give a view throughout the state. He indicated that the problem seemed to be centered in the small counties where facilities and staff were not available to collect the data and keep it in an orderly fashion. He noted that all counties, through the statutes, have juvenile probation committees or the capability for such a committee and the responsibility of that committee is to prepare an annual report to be submitted to the court and filed as a public document with the clerk of the court. The difficulty arises with the lack of resources in the smaller areas. An example given was in the case of one probation officer servicing one or more counties either by himself or with one assistant and, in some cases, with no clerical support. He stated that Clark County has developed a very sophisticated system which still has not reached their expectations. He said that in order to further improve their system a software system called "Culprit" has been purchased, allowing on-line capabilities thereby permitting them to draw out a report without having to go through Data Processing. They are also looking at a software package called "SPSS" which massages the data and interprets it into a language usable by managers.

Mr. Solomon stated that the system was used through the Clark County central computer. This year they pay $96,000 for the use of the computer and analyst time. Next year the cost is

projected at $123,000. There is also a staff of eight people who input and output the data. Part of the cost involves an on-line tracking system. When a juvenile is first brought in, he is put on the computer and then tracked through the whole system. The system includes detention, full court hearings, entering pleas, contested hearings, sentencings, continuing on through the institutions. There is no central definition used throughout the state presently in existence, which is necessary and which AB 19 would help provide for. There is no provision stating the kind of information needed for the system. Another necessity would be a timeframe within which to have the information turned in.

Mr. Solomon asked that where chief juvenile probation officers had been inserted in the wording after the deletion of "district judges, sheriffs and chiefs of police", director of juvenile courts in counties larger than 250,000 be inserted as well (1(a) and 2). He also asked that a public hearing be added as well as a combined report be disseminated to the submitting chief probation officers and director of juvenile courts within an appropriate timeframe.

Mr. Stewart stated that in reference to the hearing of the adopted regulations, it would be governed by the Administrative Procedure Act. He further asked if Mr. Solomon's association couldn't undertake the task of agreeing on uniform terms and forms. Mr. Solomon indicated that it could be done, but was not currently on the agenda. He indicated that he would make the suggestion to Bill Lewis, the President of the organization.

Mr. Sader asked if the other counties would actually use the information gathered. Mr. Solomon felt the value would be to look at the information on a statewide basis, particularly when coming to the Legislature. It would provide the information necessary to make a determination on other changes requested.

Mike Brown, State Court Administrator, testified that he had no opposition to the amendments suggested in prior testimony. He pointed out that if the program were to be instituted, there would have to be funding. He stated that with the court system the statistics were not very useful at the top, but that the value came from having statewide input to create a better system at the local level. He felt that the deletion of the judges from the bill was good due to the fact that they did not have the means or the time to collect statistics.

Mr. Sader asked if the statistics Mr. Brown was charged with compiling would be duplicated by those covered in the subject bill. He stated at this point there was no duplication, but

if the capability existed and if there were a statewide statistical system, there would be duplication.

Mr. Sader asked if Mr. Brown anticipated duplication. Mr. Brown said not. He stated that these statistics would probably come from the county, probation officers, County Welfare and County Data Processing; not from the court itself. He indicated that those types of statistics were not a high priority in the court.

The Chairman closed the hearing on AB 19 proceeded to AB 18.

AB 18 Clarifies jurisdiction of judges of juvenile courts.

Fred Weldon indicated that AB 18 was a result of the study discussed earlier. He said he would characterize AB 18 as something of a clean-up measure. He outlined the three points of the bill: Section 1 speaks to the judges of juvenile courts being able to administer restitution programs where juveniles pay back the victims to some degree for the crimes committe. Under (g) of the second page, the bill allows the court to require a child to participate in a restitution program. Under (d) on page two, the original law allowed the court to direct a parent to refrain from doing something bad, but did not specifically state the court could take a positive action to require a parent to do something positive. In both cases, the restitution and positive action, there are restitution programs in existence and the courts are directing parents to take positive action at this time. In effect, these measures are to emphasize the importance of these programs and to make it clear that the judges have the authority do it.

The Chairman asked why the bill limited the restitution to victims of crimes against property. Mr. Weldon stated he did not know why the limitation. He assumed that it was because it is easier to fix an amount on crime against property as opposed to a crime against a person. He suggested that Mr. Stankow be contacted with that question.

Ken Sharigian, Deputy Administrator of the State Division of Mental Hygiene and Mental Retardation, stated that he was representing that division as well as the Department of Human Resources. He indicated there was concern with 2(b) on page 2, lines 6 through 8. The language states ". . . or order the person to take any action which the court deems necessary. . .". Mr. Sharigian stated that if the intent of the Legislature is

that the court can order a child into a treatment program which is full, or order to one of the public service agencies a child for correction of a problem and the program and resources are not available, the result would be a fiscal note on this bill. He indicated that if this specifically related to parents or guardians, and if the guardian were not a public agency, there would be no problem with the bill.

Mr. Sader asked if this was because a requirement like this would require the expenditure of state funds in the event a state agency was a guardian. Mr. Sharigian gave as an example the event of the Las Vegas Mental Health Center being given guardianship over a child with a very specialized mental health problem. He indicated that the programs could be filled and the child ordered to the facility would have to be placed out of state. He stated the division was not budgeted to do that. He also stated that the same situation occurs with the State Welfare Division.

Mr. Sader asked if the primary concern was that the court might order out of state treatment. Mr. Sharigian indicated that was one concern and that the court might order a specific type of treatment which the court felt was needed by the child and that type of program might not exist within the system. The result would be the need for new staff, resources, changes in full programs, etc.

Mr. Sader asked if there would be opposition if there were an amendment to the effect that if the State were guardian, the Administrator of State Mental Hygiene and Health have the authority to place that child within the existing system. Mr. Sharigian said that would be acceptable provided they were not obligated to provide a certain type of treatment outside the resources available. He indicated he did not know what Welfare's position would be on that.

Mr. Bill Labadie, of Nevada State Welfare, stated that Welfare felt there were better ways to amend the bill. He stated that prior to the O'Brien decision, State Welfare was given custody of a child and ordered by the court to place the child in a residential facility in Utah. He further stated that after placing the child in that facility and upon investigation of the facility, it was found that the program did not benefit the child. Upon a rehearing before the court, the child was ordered to be maintained within that facility for a period of approximately six months at quite an expense. He agreed with Mr. Sharigian that this bill could give the court the authority to make these agencies do anything they wanted. He felt that

they would be reduced to the capacity of fiscal agents -- having custody and paying the bills. If the wording were modified to reflect only the natural parent, then there would be no problem with the agencies.

Mr. Sharigian pointed out that an impact of this type of situation was that Mental Health had to lay-off a couple of staff members to pay for an out-of-state placement.

Mr. Labadie indicated this was a common occurrence prior to the the O'Brien decision where the agencies were specifically ordered to do specific things, in spite of the fact that it wasn't for the best interests of the child and the fact that the agencies weren't budgeted for that type of treatment.

Upon a question from Mrs. Cafferata, Mr. Stewart indicated that it was his understanding that the bill originated from a request by a juvenile judge in Las Vegas who was ordering parents to take certain steps to help their children and felt that there should be statutory authority to support his actions. Mr. Labadie stated that his agency had no problem with the bill as long as it was restricted to the natural parent. Mr. Banner felt there would be a problem if the natural parent couldn't afford the suggested treatment. He mentioned the possibility of the natural parent being in contempt of the judge's order in the event he did not have money available. Mr. Labadie stated that in most cases the State would be picking up the tab anyway, but that they wanted to be the agency responsible for making the determination of where the child should be placed and what's in the best interests of the child and not be ordered to pay something that they were not budgeted for.

Mr. Labadie specified, upon a question from the Chairman, that the language objected to was ". . . or order the person to take any action which the court deems necessary to bring about an improvement in the child." Mr. Stewart indicated that "deems necessary" is limited by later language in the bill. Mr. Sharigian explained that the typical feeling from the court was that a lack of resources within the agency was no excuse, causing the agency to go to Interim Finance to seek money to carry out the court order or be held in contempt of court. The O'Brien decision now suggests that they would not be in violation of law, but the proposed bill might make them in violation.

Claudia K. Cormier, Deputy Attorney General, Welfare Division, spoke to alert the committee to the O'Brien v. District Court decision, copies of which are attached as EXHIBIT A. Stated that the language "any action which the court deems necessary"

may create problems in light of the O'Brien decision. In O'Brien, the juvenile court had ordered a child placed in the custody of the Division of Mental Hygiene and Mental Retardation and further ordered that the Division was to place the child in an out-of-state facility. The Division appealed on a Writ of Prohibition to the Nevada Supreme Court which essentially ruled that this action was beyond the jurisdiction of the juvenile court and an intrusion of the "Separation of Powers Doctrine". They further ruled that the juvenile court was not powered to place children in any facility or program, but once it placed the child with a State agency such as Mental Hygiene and Mental Retardation, it could not substitute its judgment for that of the agency for the particular program into which the child would be placed. She suggested that the committee might want to have its assistants analyze the decision.

Bing Oberle, Deputy Director, Department of Human Resources, clarified the position of the Department of Human Resources on AB 18. He stated that they were not against but were in favor of restitution programs and, in fact, ran those programs. He indicated that their concern was the language under (d) which they felt was vague. It was their feeling that the language was a "wholesale power for the judge" to say he wanted a particular child to have transactional analysis, yoga, etc., and have the power to require it in spite of the fact that the agency was not budgeted and did not have the personnel for that type of treatment. They felt that by subsection (c), the court already has the power to "order such things as medical, psychiatric, psychological, . . . care". He stated that they were particularly bothered by the words "take any action". Philosophically, their argument was that they do not believe judges have the power to be clinicians. It was felt that was the province of the administrative and clinical executive branch of the government. There was no objection to the judge ordering the child's problem being ameliorated. The objection arose when the judge orders specific treatment. It was not felt that judges had the type of expertise to order a specific treatment. Mr. Oberle asked that the language in subsection (d) simply be removed. He pointed out that the agencies were working very closely with the courts in terms of trying to deal with the problems of abuse and neglect. It was simply their opinion that the judiciary should not become a clinician.

Mr. Price indicated that he would like to hear testimony from the judge to find out why he felt this bill was necessary.

Chairman Stewart stated that he thought the judge's initial request had to do with ordering parents to attend various programs provided for the juvenile. He asked if there would be any objection to any language which ordered parents to attend programs with the juvenile to improve his conduct or eliminate juvenile delinquency. Mr. Oberle indicated they would be very much in support of that kind of language. He also mentioned the Youth Resources Panel, comprised of every one of the Department's division, Administrator or Deputy Administrator, plus the Department of Education. The panel deals with the cases which come before the court or the division as multi-problem cases. A complimentary system is currently be set up in Las Vegas which includes the juvenile court system to deal with this problem on a local level, thereby expediting most of the problems from which this particular bill resulted.

Ned Solomon, Clark County Juvenile Court, suggested that on page 1, line 4 and page 2, line 20, the language "against property" be removed from the text due to the fact that there are young people who inflict bodily harm upon others, for which a dollar figure can be set. He felt that "against property" was a limitation which would hinder administration.

Mr. Solomon further indicated that the other language should not be limited to natural parents, but should be directed to parents, guardians, custodians, etc. He noted that a large number of the young people referred to them were not living with their natural parents for various reasons. He further clarified that their intent was to have the parents, guardians, etc., provide support to the juvenile in getting him to various places required, reporting to work programs, etc. Mr. Solomon further stated that the restitution program was a very successful program, used partly in conjunction with Youth Services who provide the grant for the program. He mentioned the existence of the Victim's Assistance Program where identifiable victims were provided a certain amount of restitution, depending upon the juvenile's ability to make repayment. Complete restitution by the juvenile's parents would have to come as a result of a civil action against the parents by the victim.

Frank Carmen, Director, Nevada Youth Services, pointed out that if the basic intent of the bill is to allow the judge to have the authority to order a juvenile into a restitution program, it is effectively taken care of in sub-paragraph (g), whereby it is indicated that the judge has the power to require the juvenile to participate in a program designed to provide restitution to the victim. He felt the bill was a very clean bill with just the opening remarks in section 1

and in section (g). He felt any addition to section (d) could be eliminated and satisfy the State's concerns as well as make it an effective bill for the judge.

The Chairman then concluded the hearings on AB 18 and 19 and called a five minute recess before continuing on to committee business.

The meeting reconvened at 9:50 a.m. The Chairman brought it to the attention of the committee members that a coffee service had been acquired for the committee room. He also mentioned that Taxation used the committee room as well and he had asked them to contribute to the cost of the service, which would run about $45 a month. It was determined that those who drank coffee would contribute to pay for the service, and a figure of $5.00 each was arrived at. It was decided that only committee members and staff would be allowed to use the service and the general public would not be encouraged to make use of it.

Chairman Stewart then told the members that he had some bills which the Attorney General had requested introduction and hearing on which he brought to the committee for introduction. The first one* "permits the Attorney General and District Attorneys to issue subpoenas commanding the production of materials; and providing other matters properly relating thereto." The second one** "provides punishment for participation in a criminal syndicate" and the third one† "amends certain provisions relating to controlled substances and dangerous drugs". He said he would like to introduce them as a committee, however, if there were any objections he would put his own name on them.

On a motion made, seconded and unanimously consented to, the meeting was adjourned at 10:00 a.m.

Respectfully submitted,

Jo Ann M. Martin
Committee Stenographer

*AB 54
**AB 52
†AB 53

1·10

EXHIBIT A

DR. GWEN O'BRYAN, ADMINISTRATOR OF THE DIVISION OF MENTAL HYGIENE AND MENTAL RETARDATION OF THE DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF NEVADA, AND THE DIVISION OF MENTAL HYGIENE AND MENTAL RETARDATION OF THE DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF NEVADA, PETITIONERS, v. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, DEPARTMENT XI; AND THE HONORABLE ADDELIAR D. GUY, JUDGE THEREOF, RESPONDENTS.

No. 11201

May 16, 1979

594 P.2d 739

Original proceeding by the State of Nevada seeking to prohibit the enforcement of an order by the juvenile division of the district court, Eighth Judicial District Court, Clark County; Addeliar D. Guy, Judge.

Original proceeding was brought by the State seeking to prohibit enforcement of an order by the juvenile division of the district court. The Supreme Court, BATJER, J., held that juvenile court had no authority to make order placing custody of juvenile in the Administrator of the Division of Mental Hygiene and Mental Retardation and at the same time order that the juvenile be placed in an out-of-state facility.

Writ granted.

Richard Bryan, Attorney General, and *Emmagene Sansing*, Deputy Attorney General, Carson City, for Petitioners.

Thomas W. Biggar, Las Vegas, for Respondents.

1. INFANTS.

Juvenile court had no authority to make order placing custody of

juvenile in the Administrator of the Division of Mental Hygiene and Mental Retardation and at the same time order that the juvenile be placed in an out-of-state facility. NRS 62.040, 62.040, subd. 1(a), 62.200, subd. 1(c), 62.240, 62.300.

2. INFANTS.

Though juvenile division of district court possesses independent authority to place minors in an out-of-state facility, once the court grants custody of the child to the Division of Mental Hygiene and Mental Retardation, court loses jurisdiction to substitute its determinations, appraisals and conclusions for those of the Division, though the courts always possess authority to set aside decisions of the Division if they are arbitrary or illegal. NRS 34.010 et seq., 62.040, 62.200, subd. 1(c), 62.240.

3. COUNTIES.

If district court removes custody of juvenile from the Division of Mental Hygiene and Mental Retardation and directly places the juvenile in an out-of-state facility, the cost of such care will be a proper charge against the county of the juvenile's legal residence. NRS 62.240, subd. 2.

OPINION

By the Court, BATJER, J.:

The minor (the Juvenile) here involved is a 16 year old female who exhibits antisocial and destructive behavior; is subject to severe depression; and has a history of illegal drug use. Some of her depressions have resulted in her cutting her skin until she draws blood. Her psychiatric diagnosis is "adjustment reaction of adolescence associated with depression". On February 23, 1978, she was declared to be a neglected child, made a ward of the juvenile court, pursuant to NRS 62.040(1)(a), and ordered placed in the Las Vegas Comprehensive Mental Health Center until she reached the statutory age. Subsequently, she was ordered placed in the Nevada Mental Health Institute in Sparks, Nevada. These institutions were unable to beneficially treat her because she continually ran away.

[Headnote 1]

On September 28, 1978, a hearing was held in juvenile court to determine the future course of treatment for the Juvenile. At the outset of the hearing, the district judge indicated that he was predisposed to place her in the Ingleside Mental Health Center in Rosemead, California.[1] Dr. O'Bryan testified that she believed the Juvenile should remain in Nevada because (1)

[1]This California facility was one of five institutions recommended by psychiatrists employed by the petitioners. The other four facilities were: (1) Good Shepard Home, Las Vegas; (2) Caliente School for Girls; (3) Reno Mental Health Center; and (4) Las Vegas Mental Health Center.

even if she was placed in California, there was nothing to prevent her from again running away, therefore, it was better to leave her in Nevada where the authorities were familiar with her problems; (2) the long-term forced confinement envisioned by the district judge could be counterproductive; and (3) adequate facilities for treatment of her problems exist in Nevada. Even though Dr. O'Bryan opposed the placing of the Juvenile in a facility outside of Nevada, the district court ordered (1) her placed in the custody of the Administrator of the Division of Mental Hygiene and Mental Retardation (2) for placement at the Rosemead, California, facility (3) with cost of such treatment to be paid by the Division. Petitioners argue that the juvenile court had no authority to make such an order. We agree.

This case is distinguishable from In re Two Minor Children v. Second Judicial District Court, 95 Nev. 225, 592 P.2d 166 (1979), because there the district court directly placed the custody of the minor children in the out-of-state facility and the only duty that was left to the Administrator of the Division was to transport the minors to the facility. *See* NRS 62.300[2]. Here, on the other hand, the custody of the Juvenile was "given" to the Administrator. After imposing that responsibility upon the Administrator, the district judge then ordered the Juvenile to be placed at the Rosemead facility.

[Headnote 2]

Although the juvenile division of the district court possesses independent authority to directly place minors in an out-of-state facility, NRS 62.040; NRS 62.240; NRS 62.200(1)(c), once the court grants custody of the child to the Division, the court loses jurisdiction to substitute its determinations, appraisals and conclusions for those of the Division. In Galloway v. Truesdall, 83 Nev. 13, 31, 422 P.2d 237, 249 (Nev. 1967), this Court said:

> The courts must be wary not to tread upon the prerogatives of other departments of government or to assume or utilize any undue powers. If this is not done, the balance of powers will be disturbed and that cannot be tolerated for the strength of our system of government and the judiciary itself is based upon that theory.

Cf. Jones v Beame, 380 N.E.2d 277 (N.Y. 1978); Blaney v. Commissioner of Correction, 372 N.E.2d 770 (Mass. 1978).

---

[2]NRS 62.300 provides:

> "It is hereby made the duty of every public official and department to render all assistance and cooperation within his or its jurisdictional power which may further the objects of this chapter."

We do not imply that the Division's action could ever be above judicial review or beyond the scope of the extraordinary writs, NRS ch. 34. Our courts will always possess the authority to set aside decisions of the Division if they are arbitrary or illegal.

[Headnote 3]

As long as custody and disposition remain with the Administrator of the Division, it will be responsible for consequential expenses. If the district court removes custody from the Division and directly places the Juvenile in an out-of-state facility, the cost of such care will be a proper charge against the county of the Juvenile's legal residence. NRS 62.240(2); In re Two Minor Children, *supra*.

The juvenile division of the district court is prohibited from seeking to enforce its order entered on September 28, 1978, in District Court Case No. J16882, Eighth Judicial District Court, Clark County, State of Nevada.

MOWBRAY, C. J., and THOMPSON, GUNDERSON, and MANOUKIAN, JJ., concur.
