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

MEMBERS ABSENT: None

GUESTS PRESENT: Barbara Weinberg, Nevada Housing Coalition
Chris Broderick, LV Review Journal
Vickie Demas, Mobile Home Owners League
Shannon Zivic, Mobile Home Owners League
Roy L. Torvinen
Ken Sharigian, Mental Health & Mental Retardation
B. Laxalt, Washoe County D.A.
Brooke Nielsen
Robert Linderman, American Civil Liberties Union

Chairman Stewart called the meeting to order at 8:05 a.m. and asked for testimony first on AB 425.

AB 425: Substantially revises procedure regarding incompetency of criminal defendants.

Assemblyman Bob Sader stated that AB 425 was requested by he and Judge Torvinen, the district attorneys and several defense attorneys who work in the areas of mental retardation and psychological problems. This bill attempts to address the problem raised by a Supreme Court decision which made our laws on incompetency to stand trial unconstitutional. Currently, our laws are closely patterned after other laws which have been specifically declared unconstitutional. As a result, there has been a great deal of difficulty dealing with people who have been adjudicated incompetent to stand trial. Mr. Sader stated this bill may require some close attention to understand the constitutional principles and how the bill must be amended.

Judge Roy Torvinen, District Judge for Washoe County, stated that his only interest in AB 425 is that it is needed as a result of the problems created by Jackson v. Indiana decided in 1972. The problem was brought to his attention through the case of The State of Nevada v. Ramsey. Ramsey was a highly retarded individual

who had been incarcerated after criminal charges in Las Vegas resulting from sexual molestation tendencies. He had several counts of this nature and had been committed to the Nevada Mental Health Institute.

Jackson v. Indiana states that if an individual is being held as incompetent to stand trial and it is determined that there is no probable likelihood of competency, it is unconstitutional to continue to hold the individual on a criminal charge. The individual must either be released or be civilly committed to an institution.

Jackson and Powell v. Florida, a Circuit Court of Appeals case, allow that if there is a determination that the individual who is incompetent to stand trial is dangerous, he may be held in a secure setting or under a criminal charge pending a determination that he can stand trial. The reason Judge Torvinen asked for this legislation is that Ramsey, on the basis of a Writ of Habeas Corpus asserting his rights under Jackson v. Indiana, was released from the Lakes Crossing facility. Within a month or two, he committed the same crime again, molesting a small child left unattended on the grounds of the mental health institute in Sparks. The statutes currently do not work with the mandates of Jackson v. Indiana.

Judge Torvinen stated that the Senate had passed SB 248 which has very little relationship to addressing the problem. SB 248 provides a procedure for release of prisoners who have been found not guilty by a jury by reason of insanity, which is not addressed by AB 425. Our statute now says that if an individual is found not guilty by reason of insanity, that is the same as if the person is insane and is committed to the Administrator of the Department of Mental Hygiene and Mental Retardation to be held according to law. That means that whenever a psychiatrist says the individual is no longer crazy, he can be released. Judge Torvinen felt the judiciary should have a hand in determining when a person is released. NRS 175.521 should be amended as a part of AB 425 to provide that a sanity commission be impaneled and that the judge can make a determination whether the person ought to be discharged after the report of the insanity commission.

To Chairman Stewart's question, Judge Torvinen stated that SB 248 does some other things which he felt disastrous. It requires a review of everyone committed by the sanity commission every 6 months. He felt that unnecessary and that when the Administrator says the person is competent to stand trial or is no longer insane or dangerous to society, he should report that and the sanity commission should be impaneled. AB 425 should be amended to include NRS 175.521 or the first section of SB 248.

Mr. Price asked if leaving the decision to the Administrator entirely without any time limitations might work to the detriment

of society. Judge Torvinen stated that the law now requires with regard to civil commitments that they should also have the 6 month review requirement. The Administrator reviews everyone there every six months and if his determination is that there has been a change, they should be released. That triggers the forming of a sanity commission. Mr. Price suggested the possibility of the Administrator being incompetent in his duties or biased and felt there should be an outside board to review the Administrator's reports and recommendations every year.

Judge Torvinen had Mr. Sader distribute EXHIBIT A which is his recommended amendments to AB 425. When a person is charged with a crime or convicted and found not guilty by reason of insanity, who should make the determination that they are no longer a danger to society? This is a problem which has arisen across the nation between courts, state administrators and judges for many years. It was Judge Torvinen's opinion that a person outside the administrative medical staff of institutions should make that decision in conjunction with the courts. The courts and judges are trained and have a responsibility to look not only to the best interests of the individual involved, but to the interests of society and the victims that there may be. Whereas, the medical people and psychiatrists are trained to look only from the viewpoint of the person they are treating. The amendments suggested insure that the decision after a sanity commission is impaneled and reports rests with the courts and that the bill specifically provide that the Administrator render his opinion that the person does or does not have a reasonable likelihood that he'll ever be competent to stand trial and whether or not he's a danger to society. The bill, in its present form, does not specifically address those issues in the earlier stages, i.e. the report stage of the Administrator. When the staff psychiatrists and psychologists make their reports every six months, if the report suggests a change or the finding that the individual may never be competent to stand trial, then the sanity commission must be impaneled and the judge must determine if he will ever be competent to stand trial and if he's a dangerous person. If he's not dangerous and never will be competent, the Supreme Court has said he has to be released from the criminally secure facility.

Judge Torvinen continued by saying that the rationale behind releasing this type of individual from a secure institution is that the person will not have the same opportunities afforded him as the general civilly committed population.

Mr. Sader stated that the current statutes do not meet constitutional muster. This is a situation where the laws must be amended so that the judges are no longer confronted with cases where they can do nothing. They must be able to institutional-

ize these individuals and deal with them civilly, rather than leave it as it is now, or on the other hand, have them stuck in an institution for an indefinite period of time for a crime they've never been convicted of.

For explanation to Chairman Stewart and the committee, Judge Torvinen stated that if an individual is found incompetent to stand trial, he is sent to a criminally secure mental facility. He is kept there until determined to be competent to stand trial. An individual who stands trial and is found not guilty by reason of insanity is sent to a criminally secure mental facility until he is found to no longer be insane, which could be two weeks after the trial. Judge Torvinen gave an example of the first type of situation as the case of the young man who murdered his family and was found incompetent to stand trial. He is currently in Lakes Crossing and has a Writ of Habeas Corpus in the Supreme Court for release since he will never be competent to stand trial. Mr. Sader gave an example of a retarded individual who was committed to Lakes Crossing after committing a minor offense and should not be in that type of institution.

Bill Curran of the Clark County District Attorney's office joined with Judge Torvinen's testimony. He added that this is an area where the state is rather severely deficient both in the standpoint of the law being up to date with current constitutional standards, as well as the fact that we are far behind in facilities adequate to deal with people in these cases. Mr. Curran agreed totally with the philosophy of AB 425, but felt that the technical draftsmanship of the bill was very poor grammatically. He commented that he had not yet seen the Judge's amendments. He suggested a sub-committee be appointed or a new hearing so that the recommended amendments could be considered.

Mr. Curran stated that since the only in-custody facility in the state is in Washoe County and that since most offenders come from Southern Nevada, the present law and practice is that all hearings and notices are done in Northern Nevada by judges who do not have personal familiarity with the case and district attorneys who are not personally familiar with the cases. He commented that the notices received by his office are xerox copies and appear very inconspicuous and there was a case three years ago when the notices and letters slipped through and an individual convicted of murder was released and murdered two other individuals. He added that frequently, an individual will be found competent to stand trial after a period of time and sent back to Southern Nevada to stand trial. During the time that elapses and through lack of constant treatment and exposure to a more unstable environment, by the time the individual goes before the judge he is once again incompetent and sent back to Northern Nevada.

Mr. Curran continued by saying that he considers this one of the most glaring areas where the Legislature must address itself both in terms of providing facilities for the care and treatment of these people and in bringing the laws current with constitutional standards and providing procedural avenues to require participation by everyone involved and knowledge of what is taking place. He stated his people would work with a sub-committee. He further suggested that Judge Babcock also be contacted to work with the sub-committee since he has a great deal to do with these cases.

Ken Sharigian, Deputy Administrator for the Department of Mental Hygiene and Mental Retardation, stated his office is in support of the concepts of AB 425. He added that his office would like to participate in a sub-committee.

Mr. Sharigian referred to page 3, line 30 of the bill which amends present practice for impaneling of a sanity commission. At the present time, after the clinical staff at Lakes Crossing finds someone ready to return for trial, they notify the District Court and the court impanels a sanity commission composed of three physicians, at least one being a psychiatrist, who have an independent review of the individual's status. If they agree with the findings, the person is returned to trial. The amendment in AB 425 would indicate that even if the person is not found competent to stand trial, there is a sanity commission impaneled every six months. Mr. Sharigian did not have any objection to that, but pointed out that there may be a minor fiscal impact on the State since the cost of the sanity commission is charged to the State. This bill would increase the number of sanity commissions which are not budgeted for at this time. He did comment that it would be a minor issue involving about $5,000 to $10,000 a year.

At page 5, lines 42 through 45, in reference to persons who are civilly committed, the new language suggests that anyone who is found likely to harm others be maintained in a secure facility. Mr. Sharigian had no objection to that but stated that there is one facility which is medium security (Lakes Crossing) which has only 32 beds. 115 days of last year it was over capacity. When it is over capacity, staff get hurt and patients get hurt. As far as civil commitments are concerned, secure would be a locked facility. If this refers exclusively to Lakes Crossing, there would be an increase to the state in building more secure settings of that type. A locked facility less secure would be like the Las Vegas Mental Health Center which is locked from a perimeter. The question is which type of facility is required for civil commitments.

Mr. Sharigian continued by saying that there is no procedure identified in the bill on how it is determined that someone is likely to harm others and who is civilly committed. He commented that there are a whole range of people such as those who have kept hostages. These are obviously likely to harm others. On the other hand, there is the case of an acute drug overdose where for two or three days the individual acts out generally towards everyone and calms down after being detoxified. There is no definition about who goes where and no procedural guidelines for determining that. That would also relate to a potential fiscal impact in administering the language.

Mr. Sader felt that determination would be a clinical decision made by mental health care professionals. Mr. Sharigian felt the language seems to suggest that at the time of civil commitment a determination is made and that it be a judicial decision.

At page 6, lines 9, 10 and 45, there is reference to striking mental health professional and putting in practitioners of the healing arts. Mr. Sharigian stated that NRS 33 defines a mental health professional as a psychiatrist, psychologist or social worker and that healing arts is defined to be more generic, including podiatrists, pharmacists, etc. He felt it might not be a good idea to strike mental health professionals when mandating certain groups to evaluate mental processes. That also appears at lines 1 and 2 of page 7.

Mr. Sharigian stated he had mentioned only concerns and that his department feels AB 425 is a good bill.

To Mr. Price's question on whether the defendant is required to be present during the court review, Mr. Sharigian stated it is not always the case but that it was his understanding by law that they should be present. He explained that with a person civilly committed, if the civil commitment needs to be extended after six months, there must be a review in court. In the case of the person who is incompetent to stand trial, they must go back to the district court for the competency hearing.

To Miss Foley's questions, Mr. Sharigian stated that if there is a finding of not guilty by reason of insanity, it is treated as a civil commitment. If that person is found to meet the criteria where he can't be held against his will, the court must be notified 10 days prior to release and he may be released if there is no response. An example of this is where a crime has been committed under the influence of PCP and is later detoxified. According to present statute, this would apply to someone who committed murder.

Bruce Laxalt of the Washoe County District Attorney's office stated that their office agrees with the testimony of Mr. Curran and Judge Torvinen, and specifically that NRS 175.521 be amended into AB 425 to require that after an acquittal by reason of insanity, a judicial determination based upon the findings of a sanity commission be made. With respect to the issue of the dangerousness of the individual to society, he agreed that should be made based upon expert advice by the court rather than an Administrator.

Mr. Laxalt commented his office would like input into any sub-committee assigned. He added that as presently drafted, the bill makes a rather substantial change in the procedure for determining the competency of an individual. He referred to page 2, lines 24 through 29, Section 5, subsection 3. At the present time, if a person is found through reasonable cause incompetent to stand trial, he is involuntarily committed to Lakes Crossing for an examination by the doctors there. This usually takes about a month. Reports are then made to the court determining competency. If he is found incompetent, he is then committed to Lakes Crossing until such time as he becomes able to stand trial. Under this section of the bill, a person may be released on the street if found incompetent and is not a danger to society. He is then instructed to report on an out-patient basis. Mr. Laxalt opposed this first because it is very difficult to be incompetent to stand trial. If a person is found to be incompetent, he is very severely disabled. Mr. Laxalt felt it unrealistic to assume that a person in this condition would be able to move toward competency on an out-patient basis. He added that the bill also presupposes a desire on the part of a defendant to become competent. There is every incentive for a person to feign incompetency or to malinger since it's nicer at Lakes Crossing than in jail. The goal of the entire procedure is to make that person mentally able to stand trial. He asked that the sub-committee very seriously consider deleting this provision and retaining the current procedure where this type of individual is in custody of the jail or the institution.

Mr. Sader felt this to be a clinical determination and that in some cases the doctor might prefer the individual to be in a home environment. Mr. Laxalt felt that in most if not all cases, Lakes Crossing is the best place for the individual to regain competency.

AB 204: Empowers attorney general to subpoena documents.

Chairman Stewart reminded the committee that AB 204 had been amended and referred back to the committee. He then asked for action. Mr. Sader moved DO PASS AB 204 as amended, seconded by Mrs. Cafferata and carried by majority vote, Mr. Chaney, Mr. Thompson, Miss Foley, Mr. Beyer and Mr. Price being absent.

AB 362: Increases penalties for issuing checks and other instruments without sufficient funds.

Mr. Stewart stated this bill had been amended and passed but that there had been a request for another amendment to the bill by the Retail Association which would add labor or services to the language of the bill, making it illegal to stop payment for services with intent to cheat or deprive. This would fall under Section 3.

Mr. Sader moved AMEND AB 362, seconded by Mr. Malone, and carried by majority vote, Mr. Thompson, Miss Foley, Mr. Beyer and Mr. Price being absent.

Chairman Stewart next asked for committee introduction of BDR 16-695* and explained that two years ago there were laws passed dealing with obscenity. Since that time the Supreme Court has ruled that if an injunction is requested, there must be a hearing on the merits. That ruling requires an amendment to the law, which this bill does.

Mrs. Cafferata moved for introduction, seconded by Mr. Sader, and carried by majority vote, Mr. Thompson, Miss Foley, Mr. Beyer and Mr. Price being absent.

AB 425: Substantially revises procedure regarding incompetency of criminal defendants.

Robert Linderman, a registered lobbyist for the American Civil Liberties Union of Nevada, stated his organization is in agreement with most of the bill and is making a step in the right direction in dealing with the person who is incompetent. Mr. Linderman stated that one of the better points of the bill is to allow people who are not dangerous but who are incompetent to stand trial to obtain out-patient psychiatric care, as in the case of a mentally retarded person being arrested for shoplifting. This person is obviously not dangerous and probably living with his parents. To send him to Lakes Crossing or another institution may be counter productive. Mr. Linderman added that the provision where a person cannot be held in custodial care for longer than their period of incarceration for the accused crime is a step in the right direction and is very consistent with the caselaw.

One objection of Mr. Linderman's is that on page 5, lines 42 to 45, where it states that a person likely to harm others must be in a secure facility, there should be a definition of "secure facility". He added that some people may be potentially dangerous unless they take their medication every day. In that case, a less restrictive environment such as the civil facilities might be allowable. He stated they would be opposed if this language requires Lakes Crossing or a facility like it.

*AB 534

Mr. Linderman concluded by saying that his people would like to participate in the sub-committee.

Chairman Stewart appointed a sub-committee consisting of Mr. Sader and Miss Foley. Mr. Sader indicated he would contact all of those who requested in-put in the sub-committee.

AB 432: Makes various revisions to law governing mobile home parks.

Shannon Zivick of the Mobile Home Owners League appeared with Vickie Demas to testify to AB 432. Mrs. Zivick stated that she had talked with Mr. Stubbs, President of the Park Owners Association, and reviewed the remaining portion of this bill and had come to some agreements on the bill. She referred first to page 6, line 39, item 3 and 4, dealing with extra charges for guests, children, pets, storage and security. She stated that adding these fees to the rents makes the amount quite large. She suggested that it not be necessary to pay for children and pointed out that other states do not allow an extra charge for children. To the charges for pets, Ms. Zivick felt that if the park owners are going to charge fees for pets, they should provide a service for the pets since they do nothing to earn the $10 per month for pets that they never see. She suggested they provide a run for the pets.

Mrs. Zivick next testified in accordance with EXHIBIT A of the April 20 minutes, starting at page 6, Section 14 of the Exhibit. The following are the exceptions which arose in her testimony and which are not included in the Exhibit.

To Page 7, line 36 of the bill regarding late charges on rent, Mrs. Zivick stated that Mr. Stubbs would be requesting that the park owners be able to assess $1.00 per day in late charges for rent. She stated she would not be opposed to that.

To page 2, line 5, it had been agreed that guests not be required to be registered before 48 hours due to the problem with weekends, evenings and getting hold of management. To page 7, line 41 of the bill, Mr. Stubbs agreed with Mrs. Zivick to forego the requirement for guest charges for the one month. This is based on the motel/hotel law which makes a guest a permanent resident after one month. This would all be subject to the approval of the park owner, i.e. that he approves the guest being a resident.

To Section 19, Mrs. Zivick stated that Mr. Stubbs had a suggestion she felt would simplify the problem. At page 9, if any one of the three services (gas, water, electricity) was not functioning, this would define "unfit for occupancy".

Mrs. Zivick stated the only area left to cover is mediation, which she requested be discussed on Friday. She indicated she would have amendments prepared to discuss at that time.

Due to the time, Chairman Stewart adjourned the meeting and announced that AB 432 would be continued on Friday morning.

Respectfully submitted,

Jor Jan M. Martin
Committee Stenographer

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: April 21, 1981

SUBJECT: AB 204: Empowers attorney general to subpoena documents.

MOTION:

DO PASS XX AMEND XX INDEFINITELY POSTPONE ___
RECONSIDER ___

MOVED BY: Sader SECONDED BY: Cafferata

AMENDMENT:

Amended by previous action.

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Thompson	ABSENT		___	___	___	___
Foley	ABSENT		___	___	___	___
Beyer	ABSENT		___	___	___	___
Price	ABSENT		___	___	___	___
Sader	XX	___	___	___	___	___
Stewart	XX	___	___	___	___	___
Chaney	ABSENT		___	___	___	___
Malone	XX	___	___	___	___	___
Cafferata	XX	___	___	___	___	___
Ham	XX	___	___	___	___	___
Banner	XX	___	___	___	___	___
	___	___	___	___	___	___
TALLY:	6	___	___	___	___	___

ORIGINAL MOTION: Passed _____ Defeated _____ Withdrawn _____

AMENDED & PASSED XX AMENDED & DEFEATED _____
AMENDED & PASSED _____ AMENDED & DEFEATED _____

ATTACHED TO MINUTES OF April 21, 1981

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: April 21, 1981

SUBJECT: AB 362: Increases penalties for issuing checks and other instruments without sufficient funds.

MOTION:

DO PASS ___ AMEND XX INDEFINITELY POSTPONE ___
RECONSIDER ___

MOVED BY: Sader SECONDED BY: Malone

AMENDMENT:

Include labor and services under Section 3.

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Thompson	ABSENT					
Foley	ABSENT					
Beyer	ABSENT					
Price	ABSENT					
Sader	XX					
Stewart	XX					
Chaney	XX					
Malone	XX					
Cafferata	XX					
Ham	XX					
Banner	XX					
TALLY:	7					

ORIGINAL MOTION: Passed _____ Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____
AMENDED & PASSED _____ AMENDED & DEFEATED _____
AMENDED XXX

ATTACHED TO MINUTES OF April 21, 1981

EXHIBIT A

COMMENTS RE: AB 425

FROM: ROY TORVINEN

DATE: APRIL 14, 1981

Page 2, Section 7, Line 33. Section 6 should be deleted by the Bill. I see no reason to amend NRS 178.430. The prosecution is suspended during out-patient treatment and the defendant is not confined, the bail should remain in effect to assure his continued cooperation for treatment and return to court upon a declaration of his competency.

Page 3 (Section 7), Lines 7-14. The six month and periodic evaluations by the administrator should include his opinion as to whether there is a substantial probability that the defendant will not attain competency to stand trial in the foreseeable future.

Page 3, Section 9, Line 30. I interpret the amendments to NRS 178.455 as requiring a sanity commission hearing every time the administrator does an evaluation for every defendant committed as incompetent to stand trial. I strongly oppose this approach as not necessary and being a substantial burden on the taxpayers as well as unnecessary taking of valuable court time. The sanity commission should only be impaneled if the administrator is of opinion that the defendant is of sufficient mentality to stand trial or is of the opinion that there is a substantial probability that the defendant will not attain competency to stand trial in the near future.

Page 4, Lines 4 and 5 (Section 9). This language should be modified to reflect the test found in Jackson v. Indiana, that is, it should provide that the sanity commission render its opinion as to whether there is a substantial probability that the

defendant will not attain competency to stand trial in the foreseeable future.

Page 4, Section 10, Lines 35-39. I see no reason why the district judge should make a finding that the defendant is "making progress towards attaining competency". That concept is very nebulous and not required by any constitutional mandate. Lines 35 through 39 should be amended to provide:

> "(a) Competency or incompetency;
>
> (b) If incompetent, whether there is a substantial probability that the defendant will not attain competency to stand trial in the foreseeable future, and whether the defendant is a danger to society.

Page 4, Lines 41-45. This sentence is incomplete. It requires the district court to forward to the district court which ordered the defendant committed but the sentence does not specify what is supposed to be forwarded. Apparently it should refer to an order finding the defendant competent to stand trial; I am not sure.

Page 5, Lines 10-12. Again, the language, "but making progress towards attaining competency" is unnecessary and should be deleted.

Page 5, Lines 13-20. That language should be amended to provide that if the defendant is found to be a danger to society his commitment should continue.

Page 5, Lines 21 -28. I am not sure there should be a limitation on the number of years that a person can be held if he is dangerous. For example where a person is charged with a commission of a murder and the Grand Jury transcript shows the evidence is strong and the presumption great and the psychiatrists

and the court feel he would likely commit another murder if released, in my view he should not be released, even though he has been incarcerated for more than ten years.

Page 5, Section 11, Lines 29, et seq. In view of the suggested amendments to the preceding portion of AB 425, I see no reason why it is necessary to amend Chapter 433A. In the past the Legislature has taken the attitude that it is up to the administrator of the division to keep persons committed to his custody (civilly) in the most appropriate facility and if his judgment is flawed in that regard he takes the responsibility. With regard to people committed civilly who do not have any pending criminal charges against them, the court need not be involved in their release.

AB 425 does not address the problem raised with regard to NRS 175.521. That statute provides that when a person is acquitted of a criminal charge, by reason of insanity, he must be committed to the custody of the administrator of the Mental Hygiene and Mental Retardation Division until he is regularly discharged therefrom in accordance with law. I have suggested that NRS 175.521 be amended to provide that the administrator report to the court every six months as to whether or not the defendant continues to be insane and whether or not he is a danger to society. If the report is favorable to the defendant a sanity commission be impaneled and the court determine whether or not the defendant should be discharged from the commitment. SB 248 attempts to accomplish some of these objectives. However, SB 248 contains other provisions which I feel would be disasterious to the efficient administration of the criminal justice system. You might, however, want to add to any amendment to NRS 175.521 the confinement limitations similar to that found in AB 425. Perhaps an amendment to NRS 175.521 could be made a part of AB 425 by amendment.

- END -