

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON HUMAN RESOURCES AND FACILITIES

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
February 26, 1981

The Senate Committee on Human Resources and Facilities was called to order by Chairman Joe Neal at 8:08 a.m., Thursday, February 26, 1981, in Room 323 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Joe Neal, Chairman
Senator James N. Kosinski, Vice Chairman
Senator James H. Bilbray
Senator Richard E. Blakemore
Senator Wilbur Faiss
Senator Virgil M. Getto

STAFF MEMBER PRESENT:

Sheba L. Frost, Secretary

SENATE BILL NO. 258 -- "Provides for necessary medical treatment of persons involuntarily admitted to mental health facilities before arrival at facility."

Mr. Jack Clarke of the Northern Nevada Association of Certified Psychologists, said that the association he represents supports S.B. No. 258.

Mr. Martin E. Gutride, also of the Northern Nevada Association of Certified Psychologists, read a statement into the record on S.B. No. 258. (See Exhibit C.) In the statement, Mr. Gutride suggested that the passage of this bill might result in the education of police groups toward recognizing when medical intervention is necessary prior to transfer to the mental health facilities. Senator Kosinski commented that S.B. No. 258 does not mandate that these groups be educated in this respect, and perhaps it would be more effective to work with the police on this issue, rather than put this into the statutes.

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Senator Bilbray concurred that it would be difficult to expect that law enforcement officers will be able to know when an individual's behavior results from mental disorders or abuse of drugs. The senator also pointed out that this would affect the budgets of the law enforcement offices because the hospitals would charge their costs back to them each time a transport was made.

Mr. Gutride said that the concern of the association he represents is not only with whether an individual needs physical or mental assistance, but rather with the person who does have mental disorders and immediate physical problems as well, i.e., skin lacerations, stomach pains, etc. These individuals will eventually need treatment at the mental health facility, but their initial need is assistance with their physical ailments.

SENATE BILL NO. 259 -- "Requires notice and opportunity for a hearing before transfer of a mentally ill or mentally retarded person from one facility to another."

Mr. Gutride read a statement into the record on S.B. No. 259. (See Exhibit D.) His association's primary concern is the current lack of rights for the patient or his family/guardian in appealing a transfer from one mental health facility to another. Mr. Gutride suggested that five days notice of the transfer, and five days in which to appeal should be adequate.

Senator Kosinski said that if this matter is a problem, then perhaps it could best be handled internally through the administration of the state mental health institute by regulation. Mr. Gutride said that the division of mental hygiene may intend not to transfer patients. However, due to lack of beds, etc., the division will transfer, and S.B. No. 259 would be the patient's only recourse.

Senator Getto asked if it was not sometimes necessary to transfer patients as a part of their treatment. Mr. Gutride said he has observed that most transfers are not based on the patient's need, but rather because of "administrative pressures."

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SENATE BILL NO. 260 -- "Revises procedures for admission to state facilities for mentally ill and mentally retarded."

Mr. Gutride read a statement into the record on S.B. No. 260. (See Exhibit E.)

Senator Kosinski asked who the "petitioner" is in Section 6, page 2, of S.B. No. 260. Mr. Gutride responded that the "petitioner" is defined as several different persons under NRS 433A. Senator Kosinski asked what occurs when the administrator refuses to approve an admission to a state facility at this time. Mr. Gutride did not know if any procedure is currently available. Senator Kosinski said he would direct these questions to representatives of the mental hygiene division.

SENATE BILL NO. 261 -- "Provides for treating certain involuntarily committed mentally ill persons without their consent under certain circumstances."

Mr. Gutride read a statement into the record on S.B. No. 261. (See Exhibit F.)

Mr. Jack Clarke read into the record a letter from Dr. Donald A. Molde, M.D., President of the Nevada Psychiatric Association, which gives the association's support of S.B. No. 261. (See Exhibit G.)

Senator Kosinski commented that prior to becoming a legislator he had worked on the provisions in the statutes regarding patients' rights. The senator said that S.B. No. 261 appears to eradicate the major portions of that legislation. The senator said that he personally would be reluctant to place the proposals of S.B. No. 261 into the law when it apparently will nullify NRS 433.534; this statute provides the circumstances under which a client's rights may be denied.

Chairman Neal asked representatives from the state division of mental hygiene and mental retardation to comment on the bills for this date's agenda.

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S.B. No. 258

Mr. Ken Sharigian, deputy administrator for the division of mental hygiene and mental retardation, said the division's main concern with S.B. No. 258 is which entity will be responsible for the cost of the medical care. Mr. Sharigian said to Senator Getto that he was personally unaware of any patient's health being endangered because he/she was transported to the mental health facility instead of being taken to a hospital.

S.B. No. 259

Mr. Sharigian said that the division opposes S.B. No. 259. Mr. Sharigian said that transfers do occur. However, 12 months ago the average number of persons being transferred from Clark County to the mental health institute (Sparks, Nevada) was approximately 18 per month; but, with program changes instituted in the last 6 months, this has been reduced to 1 per month. And, consideration is given to whether the individual has family or social contacts in the area. Mr. Sharigian said that if S.B. No. 259 should pass, it might prohibit necessary transfers of patients, i.e., a patient who has threatened or attempted to harm a staff member and needs placement in a more secure facility.

S.B. No. 260

Mr. Sharigian said the division has also requested similar legislation outlining procedures for admission to state facilities as an involuntary commitment. He said that the division does not approve of some of the changes proposed by S.B. No. 260. On page 8, line 48, the proposed language repeals the client's rights section of the statutes. And, on page 8, lines 21-44, this language prohibits the admission of any child to any state facility without the express order of the courts. Therefore, even volunteer treatment must be authorized by the courts.

Dr. Don Payne of the division of mental hygiene and mental retardation, said on page 1, line 8, there should be an additional criteria of "there should be

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no less restrictive alternative available in the individual's home community for the admission of children." On page 2, line 7, and on page 5, all references to the voluntary admission of children may not be critical to this provision as age is not a major factor in admissions. One of the key factors which is not mentioned, and is necessary, is the issue of guardianship for adult mentally retarded persons. Dr. Payne said that in most instances an individual over the age of 18 years who is competent to request his admission at a state operated facility probably ought not be admitted. If the individual is not capable of requesting his own admission, there is presently no one with legal status to make that request on his behalf unless the individual has been judged "incompetent" by a separate legal proceeding.

Senator Kosinski suggested that rather than introduce a separate bill from the division, on this same issue, the committee could request that the changes discussed by Dr. Payne be integrated into S.B. No. 260.

S.B. No. 261

Mr. Sharigian said that the division does support the concept of S.B. No. 261. However, a procedure for treating involuntarily committed mentally ill persons already exists in the current statutes. He said that there are two major difficulties with S.B. No. 261: (1) There is no mechanism for oversight, as the decision for treatment is only made by the treatment staff; and (2) there is no prohibition on the type of treatment that can be imposed.

Mr. Sharigian responded to Senator Kosinski that a client who was in a violent state could be treated by the clinicians through the client's denial of rights. However, this rarely occurs and is reviewed by the division's central office, the division's administrator and the division's advisory board on mental health and mental retardation.

Chairman Neal called on Mr. Mike Melner, representing the American Civil Liberties Union of Nevada, to next address the bills on this dates agenda.

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Mr. Melner said that his comments on the four bills of this date's agenda represent the ACLUN's concern with civil liberties' issues.

S.B. No. 258

Mr. Melner said that this bill does not clarify who will be liable for the medical costs incurred. He said that it should be defined whether these costs will be the responsibility of the county or the state.

S.B. No. 259

Mr. Melner said that this legislation may be necessary because the division may make "paternal" decisions for clients who may in fact be able to make these decisions for themselves. He said that, "transfer decisions are sometimes made as management decisions, not as treatment decisions." Mr. Melner said that perhaps these decisions could be made by an "outside" panel of psychiatrists, or someone who is qualified to decide the level of an individual's illness and whether a transfer is necessary.

S.B. No. 260

Mr. Melner said the ACLUN supports the concept of some form of admission's procedure with considerations given to rights of the clients.

S.B. No. 261

Mr. Robert Linderman, a member of the ACLUN, Northern Nevada Chapter, said that clients do have a right to make decisions about their own medical care. Mr. Linderman said that this decision should be made in accord with a legal guardian. He also suggested that any rights given to patients to refuse treatment should also be given to inmates at the Nevada State Prison.

Mr. Keith MacDonald, medicaid section of the state welfare division, commented on S.B. No. 259 that there are implications of fiscal impact to the welfare division. Mr. MacDonald questioned which entity would be responsible for the costs involved when a guardian is appointed to represent a client in an appeal's hearing. And, he said that the transfer agreements may also bear fiscal impact.

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Mr. Corey Creasey, representing Douglas County, noted that in related legislation regarding medical costs for indigents, Senate Bill No. 166, the responsibility for costs will be transferred from the counties to the state. In S.B. No. 260, page 3, Section 9, lines 28-34, it is proposed that expenses incurred by legal counsel will be the responsibility of the county. Mr. Creasey said that the counties hope that S.B. No. 166 will supercede this requirement.

Mr. Louis Richnak, medical director for the state's Lakes Crossing mental health facility, spoke in opposition to S.B. No. 261. Mr. Richnak said that S.B. No. 261 fails to discern between medical/organic bases of mental illness and psycho/socio bases. Mr. Richnak concurred with Mr. Linderman's comments that a legal guardian be appointed on behalf of the patient.

Mr. Patrick Pine, representing Clark County, concurred with Mr. Creasey that the counties are seeking resolution to their present responsibility for medical costs in mental health care. Mr. Pine said that he is attempting to meet with the health care groups, state representatives and county representatives to reach a compromise on this issue. Mr. Pine also commented that Clark County takes no position on S.B. No. 261.

Mr. Larry Ketzenberger, Las Vegas Metropolitan Police Department, said that the department is concerned with the last sentence of S.B. No. 258, "The custodian remains responsible for the person committed until he reaches the mental health facility." Mr. Ketzenberger questioned which entity would be responsible for this financial costs.

Mr. John Chappell, president of the Northern Nevada Psychiatric Society, commented on each of the bills for this date's agenda.

Mr. Chappell said on S.B. No. 258 that this bill places an unfair burden on the police to request them to make decisions about which type of treatment is required. However, it would be of "great public service" if transportation were provided from facility to facility when the cause arose.

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On S.B. No. 259, the society Mr. Chappell represents basically supports this bill. He concurred with Mr. Melner's earlier comments that decisions by the division of mental hygiene and mental retardation are made on a management rather than a treatment basis.

Regarding S.B. No. 260, Mr. Chappell said the society supports this bill. However, the society suggests that admission decisions should be made with medical or clinical input rather than just by the division's administrator.

Senate Bill No. 261 is also supported by the society. However, in accord with comments made by Dr. Richnak, there should be recognition of the increasing evidence that many mental illnesses have a biological component. And, when treatment decisions are made, a psychiatrist not directly involved with the patient, could give an objective diagnosis. Mr. Chappell said the society also supports having a guardian assigned to the patient, when necessary, in order to have that patient's interests represented in his/her treatment.

Mr. Jim Doornink, psychologist in Carson City, commented on S.B. No. 261, specifically the section dealing with a multi-disciplinary team evaluating treatment for patients. Mr. Doornink said that each member of the team will make a decision based on the direction of his/her professional training. Therefore, this approach provides the most comprehensive treatment.

Senator Kosinski asked in regard to S.B. No. 259, what would be the result of including the issue of facility transfer among the client's rights in NRS 433.484. The senator said a statement as to why the rights were denied would be included in the client's file. He suggested that this would allow an administrative review as well as a position by the client. Mr. Sharigian of the division of mental hygiene and mental retardation said this would be reasonable.

Chairman Neal assigned Senators Kosinski and Bilbray to a subcommittee on S.B. No. 260, along with representatives of the division of mental hygiene and mental retardation, the Nevada Psychiatric Association, and the Northern Nevada Association of Certified Psychologists. Each of the entities present accepted Senator Kosinski's proposed

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compromise on S.B. No. 259. The following motions were made on the two remaining bills for this date's agenda:

S.B. No. 258

Senator Kosinski moved to Indefinitely Postpone Senate Bill No. 258.

Senator Getto seconded the motion.

The motion carried. (Senator Blakemore was absent for the vote.)

S.B. No. 261

Senator Kosinski moved to Indefinitely Postpone Senate Bill No. 261.

Senator Getto seconded the motion.

The motion carried. (Senator Blakemore was absent for the vote.)

There being no further business, the meeting adjourned at 10:25 a.m.

Respectfully submitted by:


Sheba L. Frost, Secretary

APPROVED BY:


Senator Joe Neal, Chairman

3-9-81

SENATE AGENDA

COMMITTEE MEETINGS

EXHIBIT A

Committee on Human Resources and Facilities, Room 323.

Day Thursday, Date February 26, Time 8:00 a.m.

S. B. No. 258--Provides for necessary medical treatment of persons involuntarily admitted to mental health facilities before arrival at facility.

S. B. No. 259--Requires notice and opportunity for a hearing before transfer of mentally ill or mentally retarded person from one facility to another.

S. B. No. 260--Revises procedures for admission to state facilities for mentally ill and mentally retarded.

S. B. No. 261--Provides for treating certain involuntarily committed mentally ill persons without their consent under certain circumstances.

Mr. Chairman and Esteemed Members of the Senate:

Senate Bill 258 is supported by the Northern Nevada Association of Certified Psychologists because it may save human lives. At the present time, our statutes allow for people to be picked up off the streets or out of their homes and businesses and transported to a mental health facility if they show evidence of serious mental illness. Unfortunately, the signs of serious mental illness are often almost identical with the signs of serious physical illness. Hallucinations, delusions, screaming, depression, disorientation and bizarre behavior can accompany a variety of physical states such as the injection or withdrawal from drugs and alcohol, metabolic disturbances, stroke and seizure activity, and so on. Taking someone to the mental hospital can result in precious minutes lost from lifesaving medical procedures which may have to be instituted.

In addition, when someone is picked up because of suspected mental illness, obvious physical complaints the person may have, such as bad stomach cramps, chest pains, dizziness, even broken bones, cuts and bruises, may be overlooked in the rush to get him or her to the mental hospital.

There are many times every year when people like those described above are brought to the mental health facilities of this State

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and they must immediately be rerouted to local hospital emergency rooms. In each case, precious minutes could be lost from the needed medical care, not to mention the additional trouble, confusion and uncertainty caused to the patient and those transporting him or her.

Senate Bill 258 requires that, if serious medical problems are suspected, medical treatment is sought before proceeding to a mental health facility. With the passage of this bill, we might expect the beginning of some real education programs, particularly with such groups as Police and Sheriffs who are often the ones who bring people from the streets to mental health facilities. Their increasing ability to recognize when medical intervention may be of primary importance could help them to save more lives and waste less time in executing their difficult responsibilities.

We urge passage of Senate Bill 258.

Thank you.

Martin E. Gutride, Ph.D.

MARTIN E. GUTRIDE, PH.D.
Nevada Certified Psychologist

SENATE BILL 259

EXHIBIT D

Mr. Chairman and Esteemed Members of the Senate:

Senate Bill 259 is supported by the Northern Nevada Association of Certified Psychologists because it is designed to uphold some civil rights of those incarcerated in mental health and mental retardation facilities. At the present time, our statutes allow for the Administrator or Medical Director to transfer a mentally ill or mentally retarded patient from one facility to another. Sometimes these transfers are necessary because one facility provides a type of treatment which the patient needs but which is not provided in his or her present facility. Sometimes these transfers are necessary because of available bed space. Sometimes fiscal or jurisdictional issues determine transfers such as whether a Veteran should be treated in a Veteran's Hospital as opposed to a State facility. While all of these may be good reasons for transfers, what is sorely missing from the statutes is the involvement of the patients and/or patient's family, guardians, etc. in the process. Many patients do not want to go from one facility to another and, often, for good reasons. These include being further away from family, the trust they have built up in the staff with whom they have been working, the familiarity and comfort with their present surroundings, and so on. These issues would be important to the average man on the street. They are doubly important for distressed, hurting, insecure people in our mental health and retardation facilities.

Senate Bill 259 does not prevent transfers but it does give the patient or guardian an opportunity to formally register opposition if he or she has any and to be heard impartially. It further assures that the patient's reason for opposing would be weighed against the administrative reasons for authorizing the transfer.

We recognize that this step in the transfer process could create difficulty in moving people around the system, particularly when issues such as overcrowding or finances are dictating the moves. Senate Bill 259 requires twenty (20) days written notice to the patient and twenty (20) additional days in which the patient may request a hearing on the proposed transfer. This may be far longer than necessary and we would support a speedier process, in recognition of the Division of Mental Health and Mental Retardation's frequent need to move people through the system in order to meet the pressures on the system. We very much feel, however, that the thrust of Senate Bill 259 to give the patient and his guardian a voice, rather than leaving them as so much cattle to be herded about, is highly appropriate. We therefore urge passage of this bill.

Thank you.

Martin E. Gutride, Ph.D.
MARTIN E. GUTRIDE, PH.D.
Nevada Certified Psychologist

Mr. Chairman and Esteemed Members of the Senate:

Senate Bill 260 is supported by the Northern Nevada Association of Certified Psychologists because it promotes the civil rights of the mentally retarded. Our present statutes do not detail a procedure for the ⁱⁿvoluntary admission of someone to a mental retardation facility. They simply give the Division Administrator the power to develop regulations in concert with the Courts. In contrast, Section 433A of the Mental Health Law describes, in great detail, the procedures by which someone can be involuntarily committed to a mental health facility. These procedures spell out the patient's legal rights to counsel, hearings, examinations, etc. and further specify the length of the commitment periods. It is clear to us that a mentally retarded person should be afforded the same legal rights under the law as a mentally ill person. Senate Bill 260 is modeled on the NRS433A language and we find it to be an exceedingly well written document. It not only clearly spells out a reasonable procedure for involuntary commitment, but it also clarifies the equally vague procedure in our present statutes for voluntary admission to a mental retardation facility.

We would anticipate that those who oppose Senate Bill 260 might argue that having to go through Court procedures will only cause delay and anguish for families and others who are desperately trying to get a retarded person into treatment. We are sensitive

to that consequence but feel that basic human rights is sometimes all an individual has left when everything else is slipping from his or her grasp. The mentally ill are enabled by statute to maintain this level of personal dignity and we urge the adoption of Senate Bill 260 so the mentally retarded are equally enabled.

Thank you.

Martin E. Gutride, Ph.D.
MARTIN E. GUTRIDE, PH.D.
Nevada Certified Psychologist

SENATE BILL 261

EXHIBIT F

Mr. Chairman and Esteemed Members of the Senate:

Senate Bill 261 is supported by the Northern Nevada Association of Certified Psychologists because it provides for the treatment of those who most need it in a way that is sensitive to human rights. Our present statutes allow for the involuntary commitment of people to mental health facilities but say little about their treatment once they have arrived. Generally, people are involuntarily committed either when they are too disturbed to recognize their need for treatment or when they are incarcerated in jail but require treatment at a mental health facility. The former is called a civil commitment and is described in NRS 433A and the latter is called a criminal commitment which is described in NRS 175 and NRS 178. Even though the assumption is made that these people must be committed because they are so disturbed, there is no corresponding assumption that they must be treated whether or not they recognize the value of or accepts such treatment. Thus, under present law, a committed person can say to his treaters, "I don't want your medicine or your therapy, I just want to be left alone", and there is little the treaters can do. The statutes do allow, in emergency situations, for a physician to impose treatment against someone's will, if the patient's health is endangered, but that is the only exception. The paradox is that there has recently been successful lawsuits in this Country for incarcerations in which no treatment occurred. Thus, the dual dilemma of not being able to force treatment but having to provide

treatment is truly mind boggling.

The American Psychiatric Association recently responded to this problem by generating a set of conditions which seemed reasonable indications of the need for treatment against someone's will. The conditions speak for the severity of mental illness, the patient's ability to comprehend and assess the need for, benefits and risks of treatment or non treatment, and the likelihood of harm to self and others if treatment is not given. All conditions must be met before treatment could be instituted against the patient's will. Senate Bill 261 incorporates these conditions and further mandates that it is the responsibility of a multi disciplinary team, as opposed to a single physician in the existing statutes, which must determine the need for and execute the involuntary treatment. Thus, Senate Bill 261 not only clearly delineates the specific, documentable conditions which must be in evidence to warrant involuntary treatment, but also leaves the decision process to several people from several disciplines rather than one person alone. Multi-disciplinary group decisions practically guarantees that every alternative will be explored before involuntary treatment is instituted.

It is for this reason that we believe Senate Bill 261 assures treatment for those who truly need it in a way that is quite sensitive to the basic human rights. We urge its passage.

Thank you.

Martin E. Gutride, Ph.D.
MARTIN E. GUTRIDE, PH.D.
Nevada Certified Psychologist

Donald A. Molde, M.D.
Jack F. Clarke, Ph.D.
100 W. Grove, Suite 250
Reno, Nevada 89509

EXHIBIT G

February 24, 1981

Senator Joe Neal
Chairman, Human Resources Committee
Nevada State Legislature
Carson City, Nevada

RE: SB261

Dear Senator Neal:

This letter is to indicate that the Nevada Psychiatric Association supports Senate Bill 261. It is essential that involuntary commitment of a mental ill person to the Division of Hygiene and Mental Retardation carry with the commitment the authorization from the Court to provide necessary treatment to improve the person's condition.

The reason that commitment laws have existed for so many years in this country is because certain forms of mental illness affect thinking and judgment of an individual in such a way that they cannot make rational decisions for themselves regarding treatment alternatives. Furthermore, a commitment which does not imply the authorization for treatment will quickly turn the mental hospitals of this country into warehouses just as they were prior to 1952 when the use of Thorazine as the prototype anti psychotic medication was introduced into this country.

I can also assure you that the Psychiatrists within the Division of Mental Hygiene and Mental Retardation would greatly appreciate the passage of this legislation such that current ambiguity as it exists in the Nevada Revised statutes regarding this matter would be eliminated.

Sincerely,



DONALD A. MOLDE, M.D.
President,
Nevada Psychiatric Association

DAM/jr