

Revised

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
March 2, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 9:00 a.m., Monday, March 2, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator William J. Raggio
Senator Jean E. Ford
Senator William H. Hernstadt
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Iris Parraguirre, Committee Secretary

SENATE BILL NO. 225:

Specifies number of jurors in civil actions.

S. B. No. 225 was discussed on February 27, 1981. The committee moved to Do Pass on that date.

SENATE BILL NO. 226:

Requires notice of proceeding for appointment of guardian be given to next of kin.

Chairman Close stated he felt the addition of subsection (1) under 2(b) would be burdensome since it requires service upon the parents, children, brothers and sisters of an incompetent.

Senator Don Ashworth suggested it should be one service and not a multitude of services.

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Chairman Close stated the first persons to be notified should be the spouse and children. He suggested amending 2(b)(1) to read, "Upon the spouse and children of majority age, regardless of where they reside, and if there are no children, then upon the parents or brothers or sisters."

Methods of service of citation were discussed. Senator Don Ashworth quoted NRS 159.053, attached hereto as Exhibit C. He stated he did not agree with the requirement of formal service of process, and it could be expensive outside the state of Nevada. He suggested the use of certified mail, return receipt requested.

SENATE BILL NO. 226 (Exhibit D)

Senator Don Ashworth moved to amend and Do Pass S. B. No. 226.

Senator Keith Ashworth seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 227: (Exhibit E)

Revises procedure for instructions to jury in criminal trials.

Mr. Bill Kern of the Clark County District Attorney's Office stated they are in favor of S. B. No. 227. He stated it would make the judges' jobs easier by requiring them to sign the instructions in bulk rather than signing each individual instruction, since there may be as many as 100 instructions in a criminal trial. Mr. Kern stated they are somewhat concerned about line 4, subsection 1 and would prefer to change the word "shall" to "must" or leave the wording as it was.

Chairman Close indicated he did not agree with lines 6 through 8 on page 2. Mr. Kern explained that the amendment would prevent the judge from giving "off-the-cuff" answers to questions by jurors after instructions have been settled. From the standpoint of prosecution, they have two problems. One is that the judge may say something that undermines the prosecution in the eyes of the jury or, secondly, he may say something that would make it stronger from the standpoint of the prosecution, in which case the defendants would have grounds for appeal.

Senator Don Ashworth stated he saw nothing wrong with lines 6 through 8 as long as the parties agree to oral instructions.

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SENATE BILL NO. 227

Senator Keith Ashworth moved to Do Pass S. B. No. 227.

Senator Don Ashworth seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 234:

Creates legislative interim committee on prisons.

Senator Wagner stated the concept in S. B. No. 234 is not unusual. There are also a number of interim committees established in NRS currently, one dealing with the PERS system and in Government Affairs, there are several pending actions. She stated in no way is S. B. No. 234 intended to be a harassment but is intended to be helpful to the prison system. Budgetary problems are apparent and the violence that has occurred at the prisons is becoming worse. A number of recommendations have been made dealing with the way the prisons have used their money. Money has been appropriated for educational purposes but has been used for something else, as an example. Some concern has been expressed about an interim committee, especially one that has no sunset date; however, Senator Wagner suggested having the legislation expire July 1, 1983, unless it was found important enough to continue.

Senator Wagner discussed the fact that there is a computer room at the prison full of computer software, costing about \$50,000, which no one knew about. She stated it was set up by High Sierra Software, Inc., who set it up with the aid of an inmate, Norman Hunt, who was in protective custody. Senator Wagner read a letter from High Sierra Software, Inc., which was to be the sole distributors of the software programs from the prison. Because of the involvement of a correctional officer of the prison and his wife, Warden Wolff decided to discontinue the computer room and the production of the software within the prison system. No mention of the computer room had ever been made, it did not appear in the budget and, obviously, people bought the computer hardware under another category of funding. Apparently, in September of 1980 the prison system authorized by Director Charles Wolff gave consent for Norman H. Hunt to produce computer software within the computer room of Unit 5, Northern Nevada Correctional Center.

Senator Wagner suggested S. B. No. 234 be sent to Senate Finance and a sunset amendment be placed on it, having it expire July 1, 1983.

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Senator Raggio stated he felt the system of making appointments of committees should be through the Legislative Commission and they should all be made uniform. He enumerated the number of ways the prison system has been improved in the past 15 years. He stated some of the problems are never going to be solved and there will always be someone to complain. It would be very difficult to find a replacement for Warden Wolff and being Warden is a rough job. No matter what is done, there will be criticism. There will always be budget problems because there is no way to anticipate the prison population.

Senator Wagner stated there are ways to project inmate population and this was found out during the overview of the subcommittee. She stated many of the budget problems were straightened out due to the work of the interim subcommittee following the past legislative session. The director of the prisons and the subcommittee worked well together and everything was supported by most people in the community. Senator Wagner suggested amending S. B. No. 227 and referring it to Finance.

Senator Ford felt S. B. No. 227 should include a statement of the kind of work that would be done by the committee. Senator Wagner stated they could delineate the areas that should be examined.

Senator Raggio stated he would possibly support a study committee but felt, since there is a prison board, they should be doing the work. Senator Wagner replied they had the prison board when they had budgetary problems.

Chairman Close suggested the bill be held for a couple of days.

SENATE BILL NO. 188:

Makes various changes concerning custody of children in cases of parents' separation or divorce.

Chairman Close stated S. B. No. 188 is a joint child custody bill. Two changes from the California law are on page 1, paragraph 3 and page 2, starting on line 15. He stated he felt the bill should allow the court to consider the joint custody and sole custody. To require a presumption of joint custody removes the judge's discretion to decide what is best for the child.

Senator Ford stated the first consideration should be whether joint custody is a viable alternative.

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Senator Raggio stated he felt the first consideration of the court should be to award joint legal custody and within that joint custody framework, the court could make the order it wants as to physical custody. The requirements of S. B. No. 188, Section 2, would apply only when the parties are unable to agree and go to court. At that point, the court should consider joint custody as the first alternative. He felt the amendments were necessary to break down some of the resistance that has been apparent concerning joint custody.

Chairman Close stated in order to have effective joint custody, the parents have to be very compatible. If they are not, there will be constant friction over the children. He felt there was strong language on page 2, starting on line 21, requiring the judge to give a reason for denying joint custody when one parent requests it.

Senator Don Ashworth asked how the situation can be resolved when the parents are equally competent to have custody but they cannot agree. Chairman Close stated that would be a situation where the judge has to decide what is best for the child.

SENATE BILL NO. 188

Senator Keith Ashworth moved to delete lines 15, 16 and 17 on page 2, amend and Do Pass.

Senator Don Ashworth seconded the motion.

The motion carried.

During further discussion, Chairman Close stated the proposed amendment to S. B. No. 188 goes farther than the law which any state has adopted. He quoted from the California law as follows:

"There shall be a presumption affecting the burden of proof that joint custody is in the best interest of a minor child where the parents have agreed to an award of joint custody or so agree in open court to having a hearing for the purpose of determining the custody of the minor child or children of the marriage.

"Upon application of either parent, joint custody may be awarded at the discretion of the court in other cases. For the purpose of assisting the court in making a determination wherein an award of joint custody is appropriate under this subdivision, the court may direct an investigation.

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"If the court declines to enter an order once one parent has asked for joint custody, the court shall state in its decision the reasons for the denial of the award of joint custody where one parent only has requested it."

Chairman Close stated he had no objection to the California law or to the presumption under the California law where both parents agree.

Joint custody in the California law is defined as follows:

"For the purpose of this section, joint custody means an order awarding custody of a minor child or children to both parents in providing that physical custody shall be shared by the parents in such a way as to insure the child or children of frequent and continuing contact with both parents, provided, however, that such order may award joint legal custody without awarding joint physical custody."

Senator Ford stated the option of joint custody should be discussed with the parents by the judge or the attorney.

Senator Raggio suggested changing the amendment to read, "The first consideration of the court shall be joint custody unless the court finds some reason joint custody should not be granted."

Chairman Close stated if the court awards joint custody where the parties do not agree and do not want it, the child or children will be the ones who have problems.

SENATE BILL NO. 188

Senator Ford moved to reconsider the actions of the committee on S. B. No. 188 for the purpose of including back into the bill lines 15 through 17 on page 2.

Senator Raggio seconded the motion.

The motion carried. (Chairman Close and Senator Don Ashworth voted against the motion.)

Senator Ford moved to Do Pass S. B. No. 188.

Senator Raggio seconded the motion.

The motion carried. (Chairman Close and Senator Don Ashworth voted against the motion.)

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SENATE BILL NO. 170:

Limits special provisions for public officers relating to justifiable homicide.

Chairman Close explained Senator Neal suggested the brackets on line 9 be omitted and a bracket be inserted on line 13, taking out subparagraph (c) and (d).

Senator Keith Ashworth moved for indefinite postponement of S. B. No. 170.

Senator Don Ashworth seconded the motion.

The motion carried. (Senator Ford voted against the motion.)

SENATE BILL NO. 47:

Provides for protection of agricultural activities from lawsuits.

Senator Wagner stated it was her understanding that under S. B. No. 47 some new procedure or method of spraying could not be instituted because it was not the common practice previously.

Senator Raggio stated what bothered him about S. B. No. 47 was the change in the public nuisance section. He explained that a public nuisance is anything that involves safety, health, comfort or repose.

Chairman Close stated in reviewing other similar bills, they contain the following: (1) Require that the operation has been in effect for more than one year; (2) That the activity which is being complained of is substantially unchanged from what it was when the individuals first occupied the house; (3) That whatever the homeowners are complaining about was not a nuisance when it began; (4) That the farm is not being operated negligently or improperly; (5) It is consistent with good agricultural practice; and (6) that it was established prior to the change in the surrounding area.

Senator Ford stated she did not agree with the language that if they are not violating any federal, state or local law, it is presumed to be good agricultural practice.

Chairman Close stated there would be further discussion on S. B. No. 47 at a later date.

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There being no further business, the meeting was adjourned at
10:55 a.m.

Respectfully submitted by:

Iris Parraguire
Iris Parraguire Secretary

APPROVED BY:

M. D. Close
Senator Melvin D. Close, Chairman

DATE: Mar. 9, 1981

AMENDED SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.

Day Monday, Date March 2, Time 9:00 a.m.

AMENDED MEETING SCHEDULE

S. B. NO. 225--Specifies number of jurors in civil actions.

S. B. NO. 226--Requires notice of proceeding for appointment of guardian be given to next of kin.

S. B. NO. 227--Revises procedure for instructions to jury in criminal trials.

S. B. NO. 234--Creates legislative interim committee on prisons.

GUARDIANSHIPS

159.055

custody and control of the ward before the appointment of the temporary guardian, and after a hearing the court may for good cause shown extend the duration of the temporary guardianship until a permanent guardian can be appointed. The temporary guardian is subject to such terms and conditions as the court may prescribe in the order of appointment and, except as otherwise provided in the order and in this section, is subject to the provisions of this chapter.

(Added to NRS by 1969, 414; A 1979, 994)

159.053 Service of citation; appearance.

1. The citation shall be served by the sheriff of the county where the person to be served is found, or by his deputy, or by any citizen of the United States over 21 years of age, not a party to or interested in the proceeding. Where the service of citation is made outside of the United States, after any order of publication, it may be served either by any citizen of the United States over 21 years of age or by any resident of the country, territory, colony or province who is over 21 years of age and not a party to or interested in the proceeding.

2. If personal service of the citation is had within the state in which the proceeding is pending, it shall be served at least 20 days prior to the date set for the hearing.

3. If any person on whom the citation is to be served resides out of the state, has departed from the state, cannot, after due diligence, be found within the state or conceals himself to avoid the service of citation, and where it is proven, by affidavit, to the satisfaction of the court or judge, that a petition for appointment of a guardian has been filed and that the person to be served with a citation is one of the persons set forth in NRS 159.047, service of citation shall be made in the manner provided by N.R.C.P. 4(e). In all such cases, the citation shall be served upon such person at least 20 days prior to the date set for the hearing.

4. Service of citation is not necessary on a person or an officer of an institution who has signed the petition or a written waiver of service of citation or who makes a general appearance.

5. If the proposed ward is receiving moneys paid or payable by the United States through the Veterans' Administration, a copy of the citation shall be mailed to any Veterans' Administration office in this state.

(Added to NRS by 1969, 414)

159.055 Order of appointment.

1. If it appears to the court that the allegations of the petition are sufficient and that a guardian should be appointed for the proposed ward, the court shall make an order appointing a guardian. The order shall:

(a) Specify whether the guardian appointed is guardian of the person, of the estate, or of the person and estate;

(b) Specify whether the ward is an incompetent or minor;

S. B. 226

SENATE BILL NO. 226—COMMITTEE ON JUDICIARY

FEBRUARY 12, 1981

Referred to Committee on Judiciary

SUMMARY—Requires notice of proceeding for appointment of guardian be given to next of kin. (BDR 13-643)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to guardianships; requiring notice to be given to the next of kin in a proceeding for the appointment of a guardian; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. NRS 159.047 is hereby amended to read as follows:
2 159.047 1. Except as otherwise provided in NRS 159.049 to 159.-
3 053, inclusive, the court, upon the filing of a petition under NRS 159.-
4 045, shall direct the clerk to issue a citation setting forth a time and place
5 for the hearing and directing the persons or institutions referred to in
6 subsection 2 to appear and show cause why a guardian should not be
7 appointed for the proposed ward.
8 2. A citation issued under subsection 1 [shall] *must* be served:
9 (a) If the proposed ward is an incompetent: [, on any person or an
10 officer of any institution having the care, custody or control of the incom-
11 petent, and on the incompetent.
12 (b) If the proposed ward is a minor, on any person or an officer of
13 any institution having the care, custody or control of the minor, and if
14 the minor is 14 years of age or older, on the minor.]
15 (1) *Upon the parents, children, brothers and sisters of the incompe-*
16 *tent who are residents of this state;*
17 (2) *Upon any person or officer of an institution having the care, cus-*
18 *tody or control of the incompetent; and*
19 (3) *Upon the incompetent.*
20 (b) *If the proposed ward is a minor:*
21 (1) *Upon the parents of the minor;*
22 (2) *Upon any person or officer of an institution having care, custody*
23 *or control of the minor; and*
24 (3) *If the minor is 14 years of age or older, upon the minor.*

S. B. 227

SENATE BILL NO. 227—COMMITTEE ON JUDICIARY

FEBRUARY 12, 1981

Referred to Committee on Judiciary

SUMMARY—Revises procedure for instructions to jury in criminal trials.
(BDR 14-699)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to criminal trials; revising the procedure for giving instructions to the jury; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. NRS 175.161 is hereby amended to read as follows:
2 175.161 1. Upon the close of the argument, the judge shall charge
3 the jury. He may state the testimony and declare the law, but [shall]
4 may not charge the jury in respect to matters of fact. [; such charge
5 shall] *The charge must* be reduced to writing before it is given; and [in]
6 no [case shall any] charge or instructions *may* be given to the jury other-
7 wise than in writing, unless by the mutual consent of the parties. If either
8 party [request] *requests* it, the court must settle and give the instructions
9 to the jury before the argument begins, but this [shall] *does* not prevent
10 the giving of further instructions which may become necessary by reason
11 of the argument.
12 2. In charging the jury, the [court] *judge* shall state to them all such
13 matters of law [as it shall think] *he thinks* necessary for their information
14 in giving their verdict.
15 3. Either party may present to the court any written charge, and
16 request that it [may] be given. If the court thinks it correct and pertinent,
17 it must be given; if not, it must be refused.
18 4. [Upon each charge so presented and given, or refused, the court
19 shall endorse its decision, and shall sign it. If part be given and part
20 refused, the court shall distinguish, showing by the endorsement what
21 part of the charge was given and what part refused.] *An original and one*
22 *copy of each instruction requested by any party must be tendered to the*
23 *court. The copies must be numbered and indicate who tendered them.*
24 *Copies of instructions given on the court's own motion or modified by*

1 the court must be so identified. When requested instructions are refused,
2 the judge shall write on the margin of the original the word "refused" and
3 initial or sign the notation. The instructions given to the jury must be
4 firmly bound together and the judge shall write the word "given" at the
5 conclusion thereof and sign the last of the instructions to signify that all
6 have been given. After the instructions are given, the judge may not
7 clarify, modify or in any manner explain them to the jury except in writ-
8 ing unless the parties agree to oral instructions.

9 5. After the jury has reached a verdict and been discharged, the orig-
10 inals of all instructions, whether given, modified or refused, must be pre-
11 served by the clerk as part of the proceedings.

12 6. Conferences with counsel to settle instructions must be held out
13 of the presence of the jury and may be held in chambers at the option
14 of the court.

15 [5.] 7. When the offense charged carries a possible penalty of life
16 without possibility of parole a charge to the jury that such penalty does
17 not exclude executive clemency is a correct and pertinent charge, and
18 [shall] must be given upon the request of either party.