

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
April 14, 1981

The Senate Committee on Judiciary was called to order by Vice Chairman Keith Ashworth, at 8:00 a.m., Tuesday, April 14, 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 Keith Ashworth, Vice Chairman
Senator Don Ashworth
Senator William H. Hernstadt
Senator William J. Raggio
Senator Sue Wagner
Senator Jean Ford

COMMITTEE MEMBERS ABSENT:

Senator Melvin D. Close, Jr., Chairman

STAFF MEMBER PRESENT:

Sally Boyes, Secretary

SENATE BILL NO. 149:

Revises provisions relating to abuse and neglect of children.

Senator Ford asked for the welfare representatives to speak in regard to the amendments of the bill and to state the recommendations on the minimum things that needed to be adjusted in the bill.

Ms Gloria Handley, Welfare Division, stated Section 2 is primarily to bring some of the language from NRS. 200 which is the child abuse reporting law, into Chapter 62. Senator Don Ashworth asked why that was being done. Ms Handley stated it was for uniformity; bringing the juvenile court act into conformity with the 200 section.

Senate Committee on Judiciary
April 14, 1981

Senator Don Ashworth asked if this was in relation to the changes of the bill. Ms Handley replied this section was what was remaining in the bill. Senator Don Ashworth asked what changes would be in the bill.

Senator Wagner asked if the language in Section 2 is the same language that is found in Section 200. Ms Mary Lee stated the content was the same but there may be a difference in language. The major change in Section 2 was the reference to Attorney General was deleted. The language in regard to Christian Science was deleted because there is standard language in Section 200.

Vice Chairman Ashworth made a summary of all changes. He stated in Section 2 the reference to the Attorney General being able to file petitions was deleted. In Section 3 the request was made for it to be deleted. Senator Wagner asked why the section should be deleted. Ms Handley stated because it would create more problems than it would resolve. Vice Chairman Ashworth stated Sections 4 and 5 would be deleted, the brackets on Section 6, line 7 would be removed, line 14 would have new language, Section 8 would be deleted, Section 9 would be deleted and Section 10 would be left in tact except for "or a meeting taken into protective custody", Section 11 and Section 12 would be deleted, Section 13 would be reworded, sub-section 2 the word severely would be added. The new language was retained up to the end of the sentence ending in the word behavior. The rest was struck. Some additional language was added. On page 9, new language was deleted on line 5, on sub-section 4 the new language was retained. On page 11 the last paragraph is deleted. Ms Handley stated that was correct.

Senator Wagner asked what is important in this bill. Ms Handley stated the purpose of the bill now refers to the use of the hot lines, the definition of sexual exploitation and the use of the central registry for applicants of licensing for foster homes and adoptive applicants.

Ms Lee stated language has been added to Chapter 62 cross-referencing it to Chapter 200. Currently Chapter 62 does not refer to child abuse only child neglect. This will make the two more uniform.

Senate Committee on Judiciary
April 14, 1981

Senator Don Ashworth stated NRS 200.5085 is the section that refers to Christian Science situations.

Mr. John Mendoza, District Judge, Las Vegas, stated he felt a problem of the bill has to do with Federal regulation. A source of this bill was the Model Act to Free Children. This act involves the termination of parental rights. Also, the ABA studies on abuse and neglect are a source of this bill. It does not appear placing Section 2 in Chapter 62 is an appropriate place. Chapter 62 is a procedural act, it is not an act of substance. He feels it should be placed in Chapter 200 as reference is made in that chapter for this situation. Mr. Mendoza feels there will be a conflict between the sections. Chapter 200 has a definition of child abuse and neglect. All the provisions of 200 have been imposed under Chapter 62. He stated the language in the proposed bill deviates from the language in 200.

Vice Chairman Ashworth asked if the purpose of this bill being presented was because some mandates from the Federal Government would be coming and some money would also be coming. Now the regulations have not been passed. Is this the reason why this bill was presented like this because all these things were not needed now because the Federal Government changed it's requirements.

Ms Handley said the Federal money still existed, but the department still does not qualify for the money because the law does not meet the requirements. Senator Ashworth asked if the requirements would be met if the amendments were accepted. Ms Handley stated no.

Mr. Mendoza asked Mr. Olson what it would take for Nevada to comply to Federal regulation. He stated that Nevada substantially complies at this point. There are two areas that Nevada does not comply; the Guardian ad Litem Provision and the Religious Accetption Provision. Mr. Mendoza stated he feels that is covered in Section 200.5085. The Guardian ad Litem provision is the only one that may not be covered. Senator Ashworth stated that provision was in another area. Mr. Mendoza stated it could be placed in NRS 200 or in Chapter 62. He proposed to have the bill amended or to add a provision to cover the Guardian at Litem Section.

Mr. Mendoza stated in Clark County a CASA Program has started. This is a Court appointed special advocate program. This is done through the court and is actually appointing a Guardian

Senate Committee on Judiciary
April 14, 1981

ad Litem. It is funded through the county, at least the administrator is. They are appointed in all welfare cases in which there is a request. There are now 75 guardians in only two to three months operation. There will be possibly 150 to 200 of these guardians.

Vice Chairman Ashworth asked if it would be possible for the division to get in touch with Mr. Mendoza and work out the recommended amendments to this bill.

Mr. Mendoza stated he felt this bill could be amended and it may take some joint work on it. He said there are three areas he felt needed amending; the first being the Guardian ad Litem aspect.

Senator Hernstadt asked how much money would the department get if the Guardian ad Litem provision is instituted.

Ms Handley stated it would be somewhere between \$50,000 and \$60,000. Senator Hernstadt asked how much would that cost the county if there were more with a need for this than those that had asked for it. Mr. Mendoza stated there are between 400 to 500 wards in Clark County, there are 70 guardians already appointed and the rest would have to be appointed.

Senator Hernstadt if the attorneys involved in this donated their time. Mr. Mendoza stated no, they are paid. The Eighth Judicial Court in Las Vegas is under a Federal mandate. It is required in every contested case, where the parents are indigent, to appoint counsel for the parents. The children can be appointed for with out regard to indigency. Attorneys are appointed for the parents and a Guardian ad Litem for the children. This is a volunteer program so the guardians do not get pay.

Senator Hernstadt asked if the program is expanded and the department receives the \$60,000, who pays for that expansion. Would this cost be on the county.

Senator Ford stated the Guardian ad Litem provision was in the original bill.

Ms Handley stated the proposal did not require the guardian be

Senate Committee on Judiciary
April 14, 1981

an attorney. The way the bill was written, a social worker could be appointed as guardian and that would be acceptable to the Federal Government.

Vice Chairman asked is the cost effectiveness worth the price the county would have to pay. Would it cost \$ 100,000 to get \$60,000 from the government.

Senator Ford stated that was the reason the Guardian as Litem was deleted.

Mr. Mendoza stated the bill should be more explicit as to who may serve as a guardian. Judges can already order attorneys for children. He stated the other areas he would like to see worked on refer to the definition of mental injury which appears in Section 8, sub-section 2 of the bill, page 6. The language reads "mental injury means a severe injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment of his ability to function within his normal range of performance or behavior." The problem is what is severe mean. The question is, is there an injury. If there is, does that injury impair any function. He felt the word severe should be struck. The second area that should be addressed is that of the physical injury. He stated he objected violently to this definition. The standard requirement would be death, disfigurement or the impairment of any bodily function or organ of the body. The child would have to be half dead before there would be intervention.

Mr. Mendoza suggested a different language. He stated the areas of in injury and if the physical injury is limited he felt child abuse and neglect would be set back many years. He suggested deleting the word physical.

Senator Raggio stated he felt this was a means of injury and not a definition of injury. Ms Handley stated part 1 of Section 8 gave a broad definition of child abuse and neglect and it does refer to the phrase physical or mental injury.

Mr. Mendoza stated when there are specifics, limits are set and more exceptions are found. He stated he wanted the whole thing deleted on physical injury.

Vice Chairman Ashworth asked if the bill was worth saving. Mr.

Senate Committee on Judiciary
April 14, 1981

Mendoza stated he felt it was but that there were very few portions worth saving.

Vice Chairman Ashworth suggested a meeting between the division and Mr. Mendoza to work on the amendments of this bill and the wording of it. He stated after that meeting, another hearing could be set up for discussion on it.

ASSEMBLY BILL 254:

Allows the appointment of artificial persons as court reporters.

Mr. Rich Molezzo stated he supports the bill. He is a court reporter. This bill has been referred as the clean up bill in the assembly. There is one sentence is added to conform to the workability that has been going on for the last 20 years or more in most of the courts. The way the statute is written now it states one, as official per department. That is usually done in states that have salaries. The larger counties in Nevada do not have salaries. The courts have been handled by free lance agencies or two or three officials that have worked for the court. This amendment is making the statute comply with the existing practice.

Chairman Ashworth asked if there was any controversy on this bill. Mr. Molezzo stated there was none that he knew of.

Senator Hernstadt asked if this bill would cost the counties any money. Mr. Molezzo stated there was no cost to the county. He feels over the years it has saved the state of Nevada thousands of dollars because no salaries are involved.

ASSEMBLY BILL 270: (Exhibit D)

Broadens eligible substitutes for police judges.

Judge Morrison, Sparks Municipal Court, stated the City Attorney sent a letter to Senator Melvin Close stating the support of this bill. The City Attorney was instrumental in drawing this bill up along with Mr. Sader. It should be pointed out that NRS 266.575 provides that the mayor may appoint in writing a justice of the peace in the county to serve as pro-tem municipal court judge. In Sparks, Reno and North Las Vegas the law has been found unworkable. It is not followed. The judges usually appoint a local attorney to serve as a judge, occasionally a non-lawyer with some familiarity of rules and evidence. He stated because the court he presides in has

Senate Committee on Judiciary
April 14, 1981

grown so large, it has become impossible for a situation to be worked out with the justice of the peace because of the difference in work schedules. He stated a case was lost last year, a traffic citation, with an attorney sitting as pro-tem. Over the years, due to the fact that a justice could not be appointed, someone else was appointed with the consent of the mayor. The fact was the case went to district court, Judge Bean ruled the case out due to the fact that a justice of the peace was not sitting on this case. The alcohol program which requires an applicant to be under the jurisdiction of the court for three years, NRS 458.300, is another point. After an applicant completes the course, the case is dismissed. What is happening is some of the people are falling off the program; either the person is picked up for drunken driving some place else or they do not participate in the program. At the beginning the plea is not guilty and the waiver is signed for a speedy trial. When a person falls off the program, they are still entitled to a speedy trial. The attorney states the judge is aware of the client being an alcoholic and feels the judge will be prejudiced in hearing the case; this makes the judge step down. This bill is a necessity. In regard to adult residents, those individuals will be sent to college to have training in rules of evidence so they would be qualified.

Senator Raggio asked if the letter sent to Senator Close has the approval of the City Council. He also asked if other cities were appointing attorneys under this same principal. Judge Morrison stated yes.

Senator Wagner asked if this procedure was a normal practice. Judge Morrison stated it was not. This procedure has come about over the years. Now the courts have become more complicated; that is the reason for the education for the adult residents that are appointed to sit in pro-tem. It will not be the average person sitting in pro-tem.

Senator Ford stated this bill did not state there should be any training.

Mr. Jim Spoo, Assistant City Attorney in Sparks, stated the intent of the bill is primarily a technical type of amendment. It is endorsing what is already taking place. The bill is not intending to address the underlying qualifications of judges. The common sense of a person appointing a police judge would not allow someone off the street to sit in. The practice has been to appoint an

Senate Committee on Judiciary
April 14, 1981

attorney. Senator Raggio stated this practice was used when the judge is on vacation, when there is a vacancy or if there is a challenge.

Senator Ford asked what kind of cases come before a police judge. Judge Morrison stated they are city ordinances that are passed by the city council; dru ken driving, assault and batteries, traffic citations. Senator Ford asked if a person could be sentenced to jail. Judge Morrison stated yes but consideration is taken into account for a person to have an attorney.

Mr. Spoo stated that as the law is currently written, NRS.266.575, it is unworkable. The only thing the law allows is for a justice of the peace to come in and serve. It is also an impractical matter for the mayor to intercede. The current law cannot be followed. He referred to the case that had been thrown out of court and stated there would be numerous problems if that were publically known to any extent.

Senator Ford asked if two police judges were ever considered. Mr. Spoo stated there would be a problem with additional salary with the city council.

Judge Morrison stated there would be a problem using attorneys because occasionally several have to called before one can be found to sit in. He stated a two court system would be very beneficial and that situation could be very near if a prior bill is passed making a demand for jury trials. This would increase the work load tremendously. Mr. Spoo stated a list of attorneys was compiled so a selection could be made when the judge is not in attendance.

ASSEMBLY BILL 277: (Exhibit E)

Specificially includes public defender as "public officer" to limit his liability.

Mr. Bill Dunseath, Public Defender Office, Reno, stated the object of this bill is to place the public defender offices in Nevada within the statute that is being amended, to allow for limited liability for them and the deputies. A good portion of case law throughout the country states that the public defender or his deputy when he is appointed by the county but finds himself in a client-attorney relationship, he no longer is an officer of the county. This would leave the public defenders outside the statutes of limits of liability. It is difficult situation to be an officer of the county and find out there is no protection. He stated he was sued last year.

Senate Committee on Judiciary
April 14, 1981

Senator Raggio asked if there would be a conflict of interest if a suit is brought against a public defender and the district attorney is put in the position of representing the public defender in the same decision. Mr. Dunseath stated that was possible but the district attorney usually does not represent a person in that situation; it is handled by insurance attorneys. Conflict of interest is not a problem.

Senator Wagner asked if anyone else was in this situation besides public defenders. Mr. Dunseath stated there specific statements in the provision that immunize certain officers. He stated the public defenders should be the only ones involved in this bill.

Vice Chairman Ashworth stated the position of the N.I.C. client representative could be affected by this bill and asked Mr. Dunseath to look into that possibility.

Mr. Dunseath stated that Bill Kern also supports this bill as amended.

Mr. Gregory Damm, representing the State Public Defender, stated he concurred with all the statements made by Mr. Dunseath. In addition the public defender's office requested an opinion from the Attorney General's office to clarify this point, opinion number 80-13, dated April 24, 1980, the Attorney General's office has come to the conclusion that the State Public Defender and his deputies, acting in the course of employment, are public officers. If the opinion is challenged, the courts could come to a different conclusion. If this matter is clarified by the legislature that possibility would be removed. He stated he had personal involvement with a situation in which an inmate law clerk at the Nevada State Prison prepared two Federal civil rights suits against him and the office of the State Public Defender. A request was made for assistance of the Attorney General's office for representation. Two civil deputies represented the case and the two suits were dismissed. The State Public Defender's Office previously requested approval for funds for the purchase of malpractice insurance from the budget division. The request was denied. This situation should be provided for and looked into.

ASSEMBLY BILL 254:

Senator Don Ashworth moved to Do Pass A. B. 254.

Senator Sue Wagner seconded the motion.

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

Senate Committee on Judiciary
April 14, 1981

ASSEMBLY BILL 270:

Senator Don Ashworth moved to Do Pass A.B. 270.

Senator William Raggio seconded the motion.

Those in favor were Senator Don Ashworth, Senator Raggio, Senator Wagner and Senator Keith Ashworth.

Those opposed was Senator Jean Ford. (Senator Melvin Close and Senator William Hernstadt were absent for the vote.)

The bill passed 4 to 1.

ASSEMBLY BILL 277:

Senator Don Ashworth moved to Do Pass A.B. 277.

Senator Sue Wagner seconded the motion.

The motion carried unanimously. (Senator Melvin Close was absent for the vote.)

There being no further business, the meeting was adjourned at 9:30 a.m.

Respectfully submitted by:

Sally Boyes
Sally Boyes, Secretary

APPROVED BY:

Melvin D. Close, Jr.
Senator Melvin D. Close, Jr., Chairman

DATED: April 16, 1981

SENATE AGENDA

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213
Day Tuesday, Date April 14, Time 8:00 a.m.

S. B. No. 149--Revises provisions relating to abuse and neglect of children.

A. B. No. 254--Allows the appointment of artificial persons as court reporters.

A. B. No. 270--Broadens eligible substitutes for police judges

A. B. No. 277--Specificially includes public defender as "public officer" to limit his liability.

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

S. B. 254

SENATE BILL NO. 254—COMMITTEE ON JUDICIARY

FEBRUARY 18, 1981

Referred to Committee on Judiciary

SUMMARY—Makes various provisions for discharge from parole and probation. (BDR 14-779)

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 parole and probation; providing for discharge from parole or probation under certain conditions; 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 176.245 is hereby amended to read as follows:
- 2 176.245 Every defendant:
- 3 1. [Whose probation has been revoked; or
- 4 2.] Whose term of probation has expired, whose whereabouts are
- 5 unknown, and for [whose arrest] whom a warrant of arrest has been
- 6 issued [, shall] ; or
- 7 2. *Who has been convicted of a subsequent offense and received a*
- 8 *sentence of 1 year or more,*
- 9 *may be given a dishonorable discharge.*
- 10 SEC. 2. NRS 213.110 is hereby amended to read as follows:
- 11 213.110 1. Subject to the provisions of NRS 213.120, the board
- 12 [shall have power to establish rules and] *may adopt* regulations under
- 13 which any prisoner who is [now or hereafter may be] imprisoned in the
- 14 state prison, or in another jurisdiction as provided in NRS 176.045, may
- 15 be allowed to go upon parole outside [of] the buildings or inclosures
- 16 [,] *but is required* to remain, while on parole, in the legal custody and
- 17 under the control of the board and subject at any time to be taken within
- 18 the inclosure of the state prison.
- 19 2. The board, for good cause and in order to permit induction into
- 20 the military service of the United States, may suspend paroles during the
- 21 period of the parolee's active service after induction into the military
- 22 service.
- 23 3. *If a prisoner has been sentenced to consecutive terms of imprison-*
- 24 *ment and the second or subsequent term is equal to or greater than the*

1 *first term, the board may dispense with parole for the first term and per-*
2 *mit the prisoner to begin serving the next term. The board may take this*
3 *action after the prisoner has served a period of time which would have*
4 *made him eligible for parole on the original sentence except for the sub-*
5 *sequent sentence or sentences.*

6 SEC. 3. NRS 213.115 is hereby amended to read as follows:

7 213.115 1. Notwithstanding the provisions of any other law, any
8 prisoner may be released conditionally on parole at the request of the
9 appropriate authority of another jurisdiction for prosecution for any
10 crime of a magnitude equal to or greater than that for which he was
11 imprisoned, as determined by the severity of the sentences for the two
12 crimes. If after such a conditional parole and prosecution by another
13 jurisdiction: [such]

14 (a) *The prisoner is found not guilty of the crime as charged, he [shall,]*
15 *must, pursuant to the board's written order, be returned to the actual*
16 *custody of the warden of the Nevada state prison and shall serve such*
17 *part of the unexpired term of his original sentence as may be determined*
18 *by the board.*

19 (b) *The prisoner is convicted in the other jurisdiction and sentenced to*
20 *a term which is equal to or greater than the term or total of the terms*
21 *of his Nevada sentences, the board may discharge the prisoner from the*
22 *conditional parole to serve his sentence in the other jurisdiction.*

23 2. *If a person has been released on parole by this state and he is*
24 *thereafter sentenced in another jurisdiction to a term or terms which are*
25 *equal to or greater than the total of the term or terms of his Nevada sen-*
26 *tence, the board may discharge him from his parole to serve his sentence*
27 *or sentences in the other jurisdiction.*

A. B. 270

**ASSEMBLY BILL NO. 270—ASSEMBLYMEN SADER,
MELLO AND WESTALL**

MARCH 4, 1981

Referred to Committee on Judiciary

SUMMARY—Broadens eligible substitutes for police judges. (BDR 1-1012)

**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 police judges; broadening the group of persons eligible to substitute for them; 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.** Chapter 5 of NRS is hereby amended by adding thereto
2 a new section which shall read as follows:
3 **1.** *Whenever a police judge is disqualified from acting in a case pend-*
4 *ing in the municipal court or is unable to perform his duties because of*
5 *his temporary sickness or absence, he shall, if necessary, appoint:*
6 **(a)** *A member in good standing of the State Bar of Nevada;*
7 **(b)** *An adult resident of the city; or*
8 **(c)** *A justice of the peace of the county,*
9 *to act in his place.*
10 **2.** *A person so appointed must take and subscribe to the official oath*
11 *before acting as a police judge pro tempore. While acting in that capacity,*
12 *he is entitled to receive a per diem salary set by the city council. The*
13 *annual sum expended for salaries of police judges pro tempore must not*
14 *exceed the amount budgeted for that expense by the governing body.*
15 **3.** *If an appointment of a police judge pro tempore becomes neces-*
16 *sary and the police judge fails or is unable to make the appointment, the*
17 *mayor shall make the appointment.*
18 **SEC. 2.** NRS 266.575 is hereby repealed.

A. B. 277

**ASSEMBLY BILL NO. 277—COMMITTEE ON
GOVERNMENT AFFAIRS**

MARCH 4, 1981

Referred to Committee on Judiciary

SUMMARY—Specifically includes public defender as “public officer”
to limit his liability. (BDR 3-877)

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 public defenders; specifically including a public defender in the definition of “public officer,” to make clear that he is covered by the limitations on liability applicable to public officers generally; 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 41.0307 is hereby amended to read as follows:
2 41.0307 As used in NRS 41.031 to 41.039, inclusive, “public officer”
3 or “officer” includes [a]:
4 1. A member of a part-time or full-time board, commission or similar
5 body of the state or a political subdivision of the state which is created by
6 law. “Employee” includes an employee of any such board, commission or
7 similar body.
8 2. A public defender and any deputy or assistant attorney of a pub-
9 lic defender.