

MINUTES OF THE  
MEETING OF THE SENATE COMMITTEE  
ON JUDICIARY

SIXTY-FIRST SESSION  
NEVADA STATE LEGISLATURE  
May 21, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 8:05 a.m., Thursday, May 21, 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 Jean E. Ford  
Senator William J. Raggio  
Senator William H. Hernstadt  
Senator Sue Wagner

GUEST ASSEMBLYMAN:

Mr. Robert M. Sader, Washoe County, District 32

STAFF MEMBERS PRESENT:

Sally Boyes, Committee Secretary

ASSEMBLY JOINT RESOLUTION NO. 14: (Exhibit C)

Proposes constitutional amendment to provide that records and proceedings of commission on judicial discipline are open to public.

Mr. Guy Shipler, Judicial Discipline Commission, stated the amendments on the bill were put in at the request of this commission. He stated the last amendment on page three, line seven through 13 indicate that when an order is issued for a hearing it becomes public; this means the record becomes public before the hearing. This would become highly damaging. Senator Raggio stated the

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records of the hearing should be open. Mr. Shipler agreed. He felt the first clause should be deleted and say records made at that time and all records subsequent to the hearing. Senator Raggio stated the word "reprimand" should be added on page one, line seven. Mr. Shipler agreed to that amendment.

ASSEMBLY JOINT RESOLUTION NO. 14:

Proposes constitutional amendment to provide that records and proceedings of commission on judicial discipline are open to public.

Senator Wagner asked what effect would there be on the proposed constitutional amendment. Mr. Shipler stated should that become public knowledge that a hearing has been ordered, the media might assume that at that point the meeting would become public. That would destroy the entire purpose of the hearing. Senator Keith Ashworth stated he felt the Judicial Commission should continue the way it always has in this matter.

Senator Hernstadt moved to amend and do pass A.J.R. No. 14.

Senator Wagner seconded the motion.

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

SENATE BILL NO. 670:

Reduces showing required in hearing on notice of pendency of action affecting real property.

The committee agreed to take this bill off the Secretary's Desk and put it on the General File.

ASSEMBLY BILL NO. 270:

Broadens eligible substitutes for police judges.

The committee discussed N.R.S. 575. Senator Wagner stated she had objection to allowing anyone, adult or whatever, to substitute. Senator Keith Ashworth requested the decisions that had to be made on the bill be divided into two parts; one regarding

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the panel member so a substitute could be chosen and the other regarding the salary payment.

Senator Hernstadt moved to amend the bill to allow for a substitute to be chosen from a panel.

Senator Wagner seconded the motion.

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

Senator Hernstadt moved to leave the repealer of N.R.S. 266.575 in the bill.

Senator Wagner seconded the motion.

The motion carried with Senator Keith Ashworth opposing the motion. (Senator Ford was absent for the vote.)

ASSEMBLY BILL NO. 362:

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

Senator Hernstadt stated under the Federal Credit Reporting Act, a person can stop payment on a check that was issued for car repair. This cannot be done away from a person's hometown. Senator Raggio stated there should be something in the bill that would require the price of labor to be stated. Senator Wagner stated this bill applies to everything, not just labor on autos. Senator Hernstadt stated the bill was too broad.

ASSEMBLY BILL NO. 425:

Substantially revises procedure regarding incompetency of criminal defendants.

Assemblyman Robert Sader stated in the Jackson vs. Indiana case there were two constitutionally unpermissible problems in the statutes; due process and equal protection. This is why the bill relates to incompetency laws in N.R.S. 175.178 and the civil commitment procedures of N.R.S. 433 A. That case says to satisfy due process of law there must be a commitment standard

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and a standard of retaining people who are incompetent to stand trial; this requires a determination of whether or not that person can obtain competency to stand trial in the foreseeable future. Procedural guidelines are set up to accomplish that which require period review. He stated insanity is a defense to a crime at the time it was committed. Incompetency is a question of inability to stand trial at the time. They are very different standards. A person could be retained civilly should they be found to be dangerous to themselves or others. Should a person be found to be incompetent to stand trial, this state has the Mc Naughton Rule and it is included in this bill. That rule requires should a person be unable to comprehend whether or not the crime committed was right or wrong, then they would not be able to stand trial. That would also include the lack of being able to assist in their own counsel. A.B. 425 is simply trying to meet the constitutional guidelines. Senator Raggio stated the Mc Naughton rule is the realization of right and wrong. Competency does not have any elements of knowing right from wrong; it pertains to the ability to stand trial and assist in defense. Mr. Sader stated existing statute uses the term incompetency and insanity as the same thing. Mr. Sader stated that in A.B. 425, the language was changed to state incompetency as incompetency and insanity would not be used in the same manner. Senator Raggio asked if Judge Trevine agreed with the first reprint. Mr. Sader stated he did with the exception of some reservations on N.R.S. 433 A, as does Mr. Sharigian. He wondered if it was necessary to put those provisions in but he does agree with the changes to N.R.S.178.

Mr. Frank Daykin, Legislative Counsel, stated he had some misgivings about the term right and wrong as it relates to incompetency to stand trial; he felt not knowing the difference between right and wrong was appropriate to the test of criminality of the act. He felt the same inconsistency existed in the present law. He felt the case of Jackson dealt basically with the issue of commitment to custody because he could not be tried and then the standard of release; if a person cannot be tried, he cannot be held indefinitely.

Mr. Sader stated he had no problem with omitting the question of right and wrong as a test of competency. Senator Raggio stated the confusion should be cleared up totally. Mr. Daykin said he felt the bill could be cleaned up to weed out the confusion in regard to the test of competency. Mr. Sader stated there has to be a balance of the test procedures as well as the release of the

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person; otherwise there will be a violation of equal protection. Mr. Daykin stated a court order would not be necessary, but the procedures must be the same for the civilly incompetent and the criminally incompetent. Senator Hernstadt asked if there was a concept of law whereby a person could be deemed guilty but insane. Mr. Daykin stated he felt that could not be used because it would not hold up in court. He stated he had check that type of case and each time the case was mythical. Chairman Close asked Mr. Daykin to review the wording in the bill and unscramble it so it will relate to competency and insanity as separate terms. Chairman Close suggested notification to the judges involved in the case, that a release would be made in a case; this would require the judge to notify to the concerned parties, what should happen in the case and eliminate unnecessary steps for court trials and other events that would have to occur. Mr. Sader stated the district attorney could be notified and then the court could handle it otherwise should it so choose. The committee agreed that a 10 day notice would be sufficient time for notification. Chairman Close asked Mr. Daykin to review S.B. 248 in regard to wording in it also.

ASSEMBLY BILL NO. 336:

Requires standard form to record convictions and permits use of form to prove prior convictions.

Mr. Sader stated this bill was an attempt to standardize procedures throughout the state for convictions so that the people that have to incarcerate criminals have an easier time with the paper work that is involved. There was no opposition to the bill. Chairman Close asked who would make the statements that are referred to on page one, line 17. Mr. Sader stated there was no testimony in opposition to the bill, but a week after the bill was processed, the court clerk contacted him and stated this would cause a tremendous work burden in paper work to go back into the files and make that statement. Senator Raggio stated this was necessary because a prior conviction may be necessary in court; the easiest way would be through a certified copy of a previous conviction. He stated it would not be that difficult of a problem because the court clerk could make the notations on the face of the pleading at the time the matter is heard in court. Chairman Close asked Mr. Sader to notify the court clerk of the status of this bill and if she had objections to it, to notify

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the committee what the objections were.

ASSEMBLY BILL NO. 269:

Permits district attorney to refer person suspected of child abuse or neglect to social agency for treatment or counseling.

Mr. Sader stated this bill was requested by the operators of the child abuse hot line services. The district attorney of Washoe county did protest the bill. There is no mandate in the bill for treatment instead of prosecution; it is the descretion of the district attorney to determine that. He stated it is modled after California statute. He stated the Washoe county district attorney felt the prosecution should be handled first then use sentencing as a lever to require treatment. The philosophy of the Washoe District Attorney was that he personally would not use the bill; he did not want other district attorneys to make use of the bill either.

ASSEMBLY BILL NO. 534:

Revises procedure for certain injunctions and repeals certain sections or crimes relating to exhibition and sale of obscene materials to minors.

Mr. Sader stated the most important thing in this bill was the change in the standard of obscenity. He stated Jan Stewart was the driving force behind this bill and it was his testimony that was primary in the Assembly. The N.R.S. statutes 201.262 were read in regard to the definition of obscenity.

ASSEMBLY BILL NO. 531:

Requires semiannual judicial hearings after placement of foster child.

Mr. William LaBadie, Welfare Division, stated he asked Audrey Barker, Chief of the Children's Bureau, Division 9, to testify on this bill. He felt since that bureau would be responsible for carrying out that legislation, they should have the opportunity to discuss it. He also felt it would be helpful on this bill as well as several other bills.

Ms. Audrey Barker stated there are three parts to the Child Welfare Services; one, to make needed improvements in the child welfare services in the state as well as social services in the state;

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secondly, to strengthen and improve the foster care and maintenance and assistance program to needy children; third, to institute a federal system of payment for adoption assistance for children with special needs. Adoption assistance involves a special type of child, not all adoptions. By October, 1982, the state law must include annual goals for reducing the number of children remaining in foster care over 24 months. Chairman Close asked if that was the only requirement. Mr. Barker stated yes, it was, but the goals must be specific and there must be a specific number of children. She stated the issue has to be in state law; regulations can be instituted in the departments to help in the application of this law. Ms. Barker stated she personally would not put into state law items one through ten of the bill because once things are put into state law a department is bound to those restrictions. Senator Wagner asked if the things that had been told to the committee on lines 10 - 12, page two, as far as there being required by law, are actually not required. Ms. Barker stated they are not required by Federal law or state law. Chairman Close asked which type of review worked better, a court hearing or an administrative hearing. Ms. Barker stated from her personal experience as a trained social worker, foster care worker and supervisor, the periodic administrative review was more beneficial for the child because it is a continuing process. Should it be a court review, there would be a tremendous burden on the agency as well as the court case load. This applies to all children, not a specific number or few children. Senator Raggio asked if periodic had been defined to mean every six months. Ms. Barker stated yes. Senator Ford stated the law makes it optional: it could be a court review or an administrative review. Ms. Barker stated that state law could also make it optional if it would be workable.

There being no further business, the meeting adjourned at 10:30 a.m.

Respectfully submitted by,

Sally Boyes  
Sally Boyes, Secretary

APPROVED BY:

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

DATE: May 30, 1981

SENATE AGENDA

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213

Day THURSDAY, Date MAY 21, 1981, Time 8:00

WORK SESSION



SENATE COMMITTEE ON JUDICIARY

DATE: May 21, 1981

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NAME

ORGANIZATION & ADDRESS

TELEPHONE

GUY SHAPIRO

JUDICIAL DISCIPLINE Comm

BOB SASSER

ASSEMBLY MAN. DIST. 30 WELLES

BILL LABADIE

WELFARE DIV

ADAM BARKER

HEALTH & HUMAN SERVICES  
CHIEF SUPERVISOR

(REPRINTED WITH ADOPTED AMENDMENTS)

SECOND REPRINT

A. J. R. 14

ASSEMBLY JOINT RESOLUTION NO. 14—ASSEMBLYMEN  
DINI, MELLO, GLOVER, MAY, MARVEL, ROBINSON,  
PRENGAMAN AND THOMPSON

JANUARY 29, 1981

Referred to Committee on Judiciary

**SUMMARY**—Proposes constitutional amendment to provide that records and proceedings of commission on judicial discipline are open to public. (BDR C-528)

**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.

**ASSEMBLY JOINT RESOLUTION**—Proposing to amend section 21 of article 6 of the constitution of the State of Nevada, relating to the judicial department, by limiting the circumstances under which the records and proceedings of the commission on judicial discipline are confidential, and extending the commission's jurisdiction over judges of lower courts.

- 1     *Resolved by the Assembly and Senate of the State of Nevada, jointly,*  
2     That section 21 of article 6 of the constitution of the State of Nevada be  
3     amended to read as follows:  
4     SEC. 21. 1. A justice of the supreme court, [or a] district judge,  
5     *justice of the peace or municipal or police judge* may, in addition to the  
6     [provision] *provisions* of article 7 for impeachment [.] *and removal,*  
7     be censured, *reprimanded,* retired or removed by the commission on judi-  
8     cial discipline. A justice or judge may appeal from the action of the  
9     commission to the supreme court, which may reverse such action or take  
10    any alternative action provided in this subsection.  
11    2. The commission is composed of:  
12    (a) Two justices or judges appointed by the supreme court;  
13    (b) Two members of the State Bar of Nevada, a public corporation  
14    created by statute, appointed by its board of governors; and  
15    (c) Three persons, not members of the legal profession, appointed by  
16    the governor.  
17    The commission shall elect a chairman from among its three lay mem-  
18    bers.  
19    3. If at any time the State Bar of Nevada ceases to exist as a public  
20    corporation or ceases to include all attorneys admitted to practice before  
21    the courts of this state, the legislature shall provide by law, or if it fails  
22    to do so the court shall provide by rule, for the appointment of attorneys

1 at law to the positions designated in this section to be occupied by mem-  
2 bers of the State Bar of Nevada.

3 4. The term of office of each appointive member of the commission,  
4 except the first members, is 4 years. Each appointing authority shall  
5 appoint one of the members first appointed for a term of 2 years. If a  
6 vacancy occurs, the appointing authority shall fill the vacancy for the  
7 unexpired term. An appointing authority shall not appoint more than  
8 one resident of any county. The governor shall not appoint more than  
9 two members of the same political party. No member may be a member  
10 of a commission on judicial selection.

11 5. The [supreme court] *commission* shall make appropriate rules for:  
12

13 (a) [The confidentiality of all proceedings before the commission,  
14 except a decision to censure, retire or remove a justice or judge.

15 (b) [The grounds of censure.

16 [(c)] (b) The conduct of investigations and hearings.

17 6. No justice or judge may by virtue of this section be:

18 (a) Removed except for willful misconduct, willful or persistent failure  
19 to perform the duties of his office or habitual intemperance; or

20 (b) Retired except for advanced age which interferes with the proper  
21 performance of his judicial duties, or for mental or physical disability  
22 which prevents the proper performance of his judicial duties and which  
23 is likely to be permanent in nature.

24 7. Any person may bring to the attention of the commission any  
25 matter relating to the fitness of a justice or judge. The commission shall,  
26 after preliminary investigation, dismiss the matter or order a hearing to  
27 be held before it. If a hearing is ordered, a statement of the matter  
28 [shall] *must* be served upon the justice or judge against whom the pro-  
29 ceeding is brought. The commission in its discretion may suspend a jus-  
30 tice or judge from the exercise of his office pending the determination of  
31 the proceedings before the commission. Any justice or judge whose  
32 removal is sought is liable to indictment and punishment according to  
33 law. A justice or judge retired for disability in accordance with this sec-  
34 tion is entitled thereafter to receive such compensation as the legislature  
35 may provide.

36 8. If a proceeding is brought against a justice of the supreme court,  
37 no justice may sit on the commission for that proceeding. If a proceeding  
38 is brought against a district judge, no judge from the same judicial dis-  
39 trict may sit on the commission for that proceeding. If an appeal is taken  
40 from an action of the commission to the supreme court, any justice who  
41 sat on the commission for that proceeding is disqualified from participat-  
42 ing in the consideration or decision of the appeal. When any member of  
43 the commission is disqualified by this subsection, the supreme court shall  
44 appoint a substitute from among the eligible judges.

45 9. The commission may:

46 (a) Designate for each hearing an attorney or attorneys at law to act  
47 as counsel to conduct the proceeding;

48 (b) Summon witnesses to appear and testify under oath and compel  
49 the production of books, papers, documents and records;

1 (c) Grant immunity from prosecution or punishment when the com-  
2 mission deems it necessary and proper in order to compel the giving of  
3 testimony under oath and the production of books, papers, documents  
4 and records; and

5 (d) Exercise such further powers as the legislature may from time to  
6 time confer upon it.

7 10. *The records of an investigation of the fitness of a justice or*  
8 *judge by the commission are confidential unless and until the contents are*  
9 *revealed in a hearing. The records made during the hearing are open to*  
10 *the public. The deliberations of the commission are confidential. The*  
11 *commission shall provide by rule for preserving the confidentiality of*  
12 *records and proceedings when required by this subsection and permitting*  
13 *their inspection when required by this subsection.*