

**MINUTES OF THE MEETING**

**OF THE**

**LEGISLATIVE COMMITTEE TO STUDY THE FEASIBILITY OF**

**ADOPTING A PROGRAM OF OUTPATIENT**

**CIVIL COMMITMENT FOR THE MENTALLY ILL**

**(Senate Concurrent Resolution No. 60, File No. 146, *Statutes of Nevada 1997*)**

**October 29, 1997**

**Carson City, Nevada**

The first meeting of the Legislative Committee to Study the Feasibility of Adopting a Program of Outpatient Civil Commitment for the Mentally Ill was held on Wednesday, October 29, 1997, commencing at 9 a.m., in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, and video conferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Pages 2 and 3 contain the "Meeting Notice and Agenda."

**COMMITTEE MEMBERS PRESENT IN CARSON CITY:**

Assemblywoman Vivian L. Freeman, Chairwoman

Senator Maurice E. Washington

Assemblyman Donald (Don) G. Gustavson

Assemblyman David E. Humke

**COMMITTEE MEMBERS PRESENT IN LAS VEGAS:**

Senator Raymond D. Rawson

Assemblyman Harry Mortenson

**COMMITTEE MEMBERS ABSENT:**

Senator (Jack) John B. Regan

Senator Randolph J. Townsend

**LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:**

Juliann K. Jenson, Senior Research Analyst

Jan K. Needham, Principal Deputy Legislative Counsel

Charmaine L. Clark, Deputy Legislative Counsel

Robert A. Guernsey, Principal Deputy Fiscal Analyst

Nenita Wasserman, Senior Research Secretary

**MEETING NOTICE AND AGENDA**

Name of Organization: Legislative Commission's Committee to Study the Feasibility of Adopting a Program of Outpatient Civil Commitment for the Mentally Ill (S.C.R. 60)

Date and Time of Meeting: Wednesday, October 29, 1997

8:30 a.m.

Place of Meeting: Legislative Building

Room 4100  
401 South Carson Street  
Carson City, Nevada

Note: Some members of the committee may be attending the meeting, and other persons may observe the meeting and provide testimony, through a simultaneous video conference conducted at the following location:

Grant Sawyer State Office Building  
Room 4412  
555 East Washington Avenue  
Las Vegas, Nevada

## **AGENDA**

### **I. Introductions and Opening Remarks**

Assemblywoman Vivian L. Freeman, Chairwoman

### **II. Background Information Regarding 1997 Legislation on the Mentally Ill**

Juliann K. Jenson, Senior Research Analyst, Legislative Counsel Bureau

### **III. Special Presentations**

#### **A. Report Regarding the Organization of the Mental Hygiene and Mental Retardation Division, Department of Human Resources**

Carlos E.  
Brandenburg,  
Ph.D.,  
Administrator,  
Mental  
Hygiene and  
Mental  
Retardation  
Division

#### **B. Report Regarding the Legal Issues Surrounding Civil Commitment**

Cynthia Pyzel, Senior Deputy Attorney General, Office of the Attorney General

### **\*IV. Discussion of Future Topics and Future Meetings**

### **\*V. Direction to Staff**

### **VI. Public Testimony**

### **VII. Lunch**

VIII. Tour of the Nevada Mental Health Institute, 480 Galletti Way, and Lake's Crossing Center for the Mentally Disordered Offender, 500 Galletti Way, Sparks, Nevada

Participants on the tour will meet at 1:30 p.m. at the Nevada Mental Health Institute

### **IX. Adjournment**

\*Denotes items on which the committee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, Capitol Complex, Carson City, Nevada 89701-4747, or call Nenita Wasserman, at 684-6825, as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; Carson City Courthouse, 198 North Carson Street; Legislative Building, Room 1214, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Grant Sawyer State Office Building, 555 East Washington Avenue; Clark County Office, 500 South Grand Central Parkway.

## **INTRODUCTIONS AND OPENING REMARKS**

Assemblywoman Vivian L. Freeman

The Chairwoman called the first meeting of the Legislative Commission's Committee to Study the Feasibility of Adopting a Program of Outpatient Civil

Commitment for the Mentally Ill to order and noted Senators (Jack) John B. Regan and Randolph J. Townsend were excused. Introductions of committee and staff members were made to the audience.

## **BACKGROUND INFORMATION REGARDING 1997 LEGISLATION**

### **ON THE MENTALLY ILL**

Juliann K. Jenson

Ms. Jenson (identified on page 1) provided an overview of mental health issues from the 1997 Legislative Session which included the following points:

- The care and treatment of the mentally ill traditionally has been a state responsibility. This issue is continually reviewed by state legislatures and includes topics such as constitutional concerns, crime, health care, housing, involuntary and voluntary commitment, medical needs, and the reform of public systems that treat and care for mentally disabled individuals.
- The mentally ill population affects many different state and local agencies such as Nevada's Department of Prisons; the Division of Parole and Probation of Nevada's Department of Motor Vehicles and Public Safety; the Mental Hygiene and Mental Retardation Division (MH/MR) and Welfare Division of Nevada's Department of Human Resources; courts; law enforcement agencies; and the Medicaid program.
- The Nevada Legislature has conducted several studies on this subject which include Legislative Counsel Bureau Bulletin No. 10, *Survey of the Nevada Hospital of Mental Diseases* (1950), and Legislative Counsel Bureau Bulletin No. 97-7, *Treatment of Mentally Ill Offenders*.
- Most recently, the following measures were enacted into law:
  1. Senate Bill 319 (Chapter 652, *Statutes of Nevada 1997*):
    - a. Establishes a program for assertive community treatment (PACT) in Washoe County.
    - b. Makes appropriations to the MH/MR Division and establishes programs regarding mental health. Appropriations also were made for the purchase of additional vehicles.
      - c. Authorizes the MH/MR Division to accept and use certain donations, gifts, and grants for programs that provide services to mentally ill or mentally retarded people.
    - d. Appropriates funds for the operation of transitional housing facilities in Clark and Washoe Counties.
    - e. Appropriates funds to the State Public Works Board, Nevada's Department of Administration, for the renovation of Building 7 at the Nevada Mental Health Institute (NMHI) in Sparks, Nevada, for a crisis unit that will provide emergency psychiatric services.
  2. Assembly Bill 375 (Chapter 688, *Statutes of Nevada 1997*) makes various changes concerning mental health care. The bill:
    - a. Enumerates the rights of a person who enters a mental health facility voluntarily or involuntarily.
    - b. Specifies the procedures for converting a client to involuntary status after being admitted voluntarily to a facility.
    - c. States that a client has the right not to be admitted to a mental health facility under false pretenses or as the result of any improper unethical lawful conduct on the part of the facility to collect money from the client's insurance company.
    - d. Establishes a client's right to be given documentation regarding a facility's discharge policy.
    - e. Seeks to make changes to the voluntary commitment process by limiting the ability of a facility to hold a client solely for the purpose of exhausting available insurance benefits through the emergency admittance process.
- Assembly Bill 521 (Chapter 586, *Statutes of Nevada 1997*) incorporates federally mandated provisions regarding mental health parity provisions for group health plans.
- Assembly Bill 670 (Chapter 478, *Statutes of Nevada 1997*) includes funding for a new inpatient hospital at the Nevada Mental Health Institute for approximately \$10.8 million.
- Senate Concurrent Resolution No. 60 of the 1997 Legislative Session authorizes a study of the feasibility of outpatient civil commitment for the mentally ill in Nevada.

Chairwoman Freeman commented that:

- The states of Missouri, New York, and North Carolina have completed pilot programs and studies regarding outpatient civil commitment for persons who are mentally ill.
- The S.C.R. 60 study is budgeted for \$9,950, which should allow the committee to hold five meetings.
- Among other things, the committee will address constitutional rights, housing, and outpatient civil commitment for mentally ill persons.

Exhibit A is an information packet prepared by staff for use by the subcommittee members during this meeting. Please see the "List of Exhibits" for details of its contents.

## **SPECIAL PRESENTATIONS**

### **REPORT REGARDING THE ORGANIZATION OF THE MENTAL HYGIENE AND MENTAL RETARDATION DIVISION, DEPARTMENT OF**

## HUMAN RESOURCES

### Carlos E. Brandenburg

Carlos E. Brandenburg, Ph.D., Administrator, Mental Hygiene and Mental Retardation Division, Department of Human Resources, introduced Mike Torvinen, CPA, Administrative Services Officer IV, and Cynthia Pyzel, Chief Deputy Attorney General, of the MH/MR Division. Dr. Brandenburg referred the committee to a handout titled "Division of Mental Hygiene and Mental Retardation, SCR 60" which is (Exhibit B). Please see Exhibit B for details. He provided an overview of organizational structure and explained that:

- The mission of the MH/MR Division is to work in partnerships with advocates, consumers, and family members to provide treatment and services for mentally ill and mentally retarded citizens in the State of Nevada in the least restrictive environment.
- The MH/MR Division receives oversight from the Commission on Mental Health and Mental Retardation. The commission is a legislatively mandated body and is composed of seven individuals appointed by the Governor. The commission develops policies and procedures for the MH/MR Division of the Department of Human Resources.
- Under the Commission on Mental Health and Mental Retardation, there is a Northern Advisory Board and a Southern Advisory Board. All advisory board members are appointed by the commission and provide input concerning local mental health and mental retardation issues.
- The Mental Health Council is a federally mandated entity that is funded by a federal block grant. The council addresses mental health services for adults and children in Nevada.
- The Administrator and Deputy Administrator of the MH/MR Division serve at the pleasure of the Governor and the Director of the Department of Human Resources.
- Cynthia Pyzel, Chief Deputy Attorney General, and Joyce Borkenhagen, Deputy Attorney General, provide legal services for the MH/MR Division in northern and southern Nevada, respectively.
- The schematics of service systems provided by the MH/MR Division is shown on page 2 of Exhibit B.

Continuing, Dr. Brandenburg reviewed the services and average caseloads of the NMHI which are shown in Exhibit A. He advised that:

- The NMHI is currently licensed for 74 beds. The 1997 Legislature authorized a 90-bed inpatient unit that is being designed.
- Services such as a "medication clinic" are provided by NMHI for clients who receive medication on an outpatient basis. The medication clinic has a caseload of approximately 1,266 individuals per month.
- Outpatient counseling is provided for patients through mental health counselors, psychologists, or social work staff members who meet with an average of 236 individuals monthly.
- Case management services are available 24 hours a day, seven days a week. This assistance involves intensive monitoring of the day-to-day activities of clients in the community.
- Psychosocial rehabilitation services provide clients with independent living skills. This program currently serves 160 individuals at NMHI.
- Vocational services trains clients to become employed and live independently.
- A variety of housing services are offered such as transitional or supervised apartments, supported living arrangements (SLA), shelter, and other care.
- The case management program determines at which level of housing clients are placed. The case manager is the liaison between the client and the various housing delivery systems.

Responding to Chairwoman Freeman's question concerning the effectiveness of the crisis observation unit, Dr. Brandenburg replied it has been beneficial from a variety of reasons which included:

- Law enforcement can take clients to this location.
- In most cases, staff are able to stabilize clients within 72 hours and provide outpatient, transitional housing, or case management services. These services are cost-effective when compared to hospital stays.

Mr. Humke noted that the 1997 Legislature provided resources to the MH/MR Division and requested that the committee tour the SNAMHS.

Addressing Senator Washington's statement that many homeless people suffer from mental illness, Dr. Brandenburg advised that:

- The division is developing a partnership with the Washoe County Sheriff's Office to provide a crisis observation unit for the homeless population.
- The proposed crisis observation unit in Northern Nevada would provide psychiatric services 24 hours, seven days a week. Medical services for the unit would be provided through the University of Nevada School of Medicine. Project Restart has been contracted to provide outreach services for the unit, which would include two social work positions.

According to Dr. Brandenburg:

- The NMHI is accredited by the Joint Commission on Accreditation of Health Care Organizations (JACO) and is certified by the Health Care Financing Administration (HCFA) of the United States Department of Health and Human Services. The NMHI is in the process of receiving JACO certification for its hospital.
- There are 16 rural clinic sites in Nevada. This figure includes the Mesquite and Pahrump facilities which are scheduled to open in January 1998 and July 1998, respectively.

- Rural Clinics, MH/MR Division, serves adolescents, adults, and children in rural Nevada. The monthly outpatient client caseload is approximately 2,352. The services provided by Rural Clinics include: (1) case management; (2) forensic assistance; (3) a medication clinic; (4) outpatient counseling; and (5) psychosocial rehabilitation. Referrals are usually received from private for-profit hospitals.

Dr. Brandenburg then discussed Lake's Crossing Center for the Mentally Disordered Offender (hereinafter referred to as Lake's Crossing in these minutes) which is located in Sparks, Nevada. He noted that Lake's Crossing:

- Provides services to mentally disordered offenders who are adjudicated incompetent to stand trial. These offenders are remanded to the facility by a district court for evaluation, retention, or stabilization.
- Contains 36 beds and an addition is under construction which will provide 12 more beds.
- Provides detention services to Washoe County and the City of Las Vegas.

Responding to questions posed by Senator Washington, Dr. Brandenburg covered the following points:

- The 12 new beds at Lake's Crossing will not accommodate sexual offenders. The beds will strictly be used for mentally ill offenders.
- The MH/MR Division will not be providing services to sexual predators at this time. The question of civil commitment of sex offenders will most likely be discussed during the 1999 Legislative Session. Representatives of the MH/MR Division have reservations about assuming responsibility for this population.

#### Mike Torvinen

Mike Torvinen, CPA, Administrative Services Officer IV, MH/MR Division of the Department of Human Resources, explained the pie charts provided in Exhibit B. These charts address:

- Budgeted funding sources for the MH/MR Division for Fiscal Year (FY) 1998 and FY 1999;
- Federal revenue for agencies within the MH/MR Division for FY 1998 and FY 1999; and
- The distribution of costs for the MH/MR Division, as well as its mental health and mental retardation agencies, for FY 1998 and FY 1999.

Please see Exhibit B for complete details of this information.

Addressing questions posed by Chairwoman Freeman, Mr. Torvinen covered the following points:

- A large percentage of funding for the MH/MR Division comes from the state General Fund because many of the patients who are admitted to the agency's mental health clinics have exhausted their financial resources. Private patients at clinics generally use their own resources.
- The MH/MR division utilizes an ASA 400 computer with Aines Software. This program enables the agency to track clients and their medications.

### **REPORT REGARDING THE LEGAL ISSUES SURROUNDING CIVIL COMMITMENT**

#### Cynthia Pyzel

Cynthia Pyzel (previously identified on page 7) stated that she and Joyce Borkenhagen, (previously identified on page 7) are assigned to address the legal issues encountered by the MH/MR Division in its attempt to improve the lives of mentally ill and mentally retarded clients. She commented that:

- "Liberty interest" is a fundamental American principle which means that every citizen in the United States, as a free adult, has the right to choose and pursue their own interests. There is a balance as to when society has the right to interfere with one's liberty interest.
- Most of Nevada law regarding mental health is found in Title 39, "Mental Health and Mental Retardation," of the *Nevada Revised Statutes* (NRS). The legislative intent of this title appears in NRS 433.003, "Declaration of legislative intent."

According to Ms. Pyzel, the following items may justify an interference with a person's "liberty interest.":

1. *Parens Patriae* refers to the role of a state to act as guardian to a person with mental disabilities.

It is Ms. Pyzel's opinion that "*parens patriae*" must be carefully defined and regulated to ensure that a state does not interfere with a person's liberty interest.

2. "Police power" is the inherent power of a government to exercise reasonable control over persons and property within its jurisdiction in the interest of the general security, health, safety, morals, and welfare except where legally prohibited.

Ms. Pyzel reviewed the following United States Supreme Court cases which established guidelines regarding mental hygiene and mental retardation:

- *Connor v. Donaldson*, 422 U.S. 563 (1975). This case basically states that the liberty interest of a person should not be interfered with unless that person is of danger to themselves or others by virtue of mental illness. Further, this case decided that a person cannot be involuntarily committed unless treatment is provided. This finding was affirmed in two other Supreme Court decisions: *Hendricks v. Kansas*, No. 95-1469 (1997) and *Romeo v. Youngberg*, 457 U.S. 307 (1982) where the court decided that treatment must be provided within the bounds of professional judgment.

Ms. Pyzel advised that the Fourteenth Amendment to the *United States Constitution* provides that no ". . . State shall deprive any person of life, liberty, or property without due process of law." She stated that:

- Substantive due process was established in the U.S. Supreme Court case of *Jackson v. Indiana*, 406 U.S. 715 (1972). This case decided that the nature and duration of mental health commitments must bear some reasonable relation to the purpose for which the individual was committed.

There is no "one" right way to provide due process. A balance is required to ensure there are adequate procedures to minimize the risk of arbitrary or erroneous deprivations of liberty.

Regarding the S.C.R. 60 Committee, Ms. Pyzel recommended:

- The committee should review the definition of mental illness and the use of the term "gravely disabled." The term "gravely disabled" is meant to describe a general condition of a person who generally is unable to meet basic needs. In these situations, the state has the right to interfere. The 1989 Session of the Nevada Legislature eliminated "gravely disabled" and redefined "mentally ill" persons in the NRS.
- The following types of mental illness may be subject to civil commitment laws: (1) depression; (2) mood disorders such as bipolar (manic depression); and (3) psychosis.
- Conditions that do not qualify as a "mental illness" are: alcohol impairment, Alzheimer's disease, dementia, drug impairment, mental retardation, organic brain syndromes, personality disorders, and traumatic brain injury. However, if any of these conditions are compounded by a mental illness, civil commitment laws may be applicable.

Mr. Humke referred to a case in the State of Illinois that, in his opinion, may serve as an example as to whether Nevada should change its involuntary commitment law. He explained that in this particular situation, a 51-year-old woman's family is attempting to have her incarcerated under the state's civil involuntary commitment statute. He noted that she has been involved in a "standoff" with law enforcement officials for 38 days and apparently has not been a harm to herself or others. This case illustrates the complexities of civil commitment and covers issues such as who has the authority to impose involuntary commitment and under what circumstances.

Dr. Brandenburg pointed out that:

- Many states have found that mental health systems focusing on individuals in a community-based setting reduces the need for involuntary treatment. The State of Nevada must determine if it should direct its attention toward new laws or on more comprehensive community-based programs for the mentally ill.
- The MH/MR Division has adopted a policy whereby any client who is involuntarily committed can only be discharged under a convalescent leave status.

Senator Washington expressed concern about a mentally ill female who was found slain in a restroom in Reno, Nevada. Ms. Pyzel explained that appropriate treatment is provided to mentally ill individuals on both a involuntary or voluntary basis. Although reasonable steps may be taken, she said, no one can ensure a person's safety or well-being.

#### **PUBLIC TESTIMONY**

There was no one from the public who wished to testify.

#### **DISCUSSION OF FUTURE TOPICS AND FUTURE MEETINGS**

##### **AND**

#### **DIRECTION TO STAFF**

The committee scheduled its next meeting for Wednesday, January 8, 1998, at 8:30 a.m., in the Grant Sawyer State Office Building in Las Vegas. A simultaneous video conference of the meeting will be conducted at the Legislative Building in Carson City.

#### **ADJOURNMENT**

There being no further business to come before the committee, Chairwoman Vivian L. Freeman adjourned the meeting.

Respectfully submitted,

Neita Wasserman

Senior Research Secretary

APPROVED BY:

\_\_\_\_\_  
Assemblywoman Vivian L. Freeman, Chairwoman

Date: \_\_\_\_\_

#### **LIST OF EXHIBITS**

The meeting packet of information provided to the committee members by staff contains the following documents from Carlos E. Brandenburg, Ph.D., Administrator, Mental Hygiene and Mental Retardation Division, Nevada's Department of Human Resources:

Exhibit A-1 - A letter dated October 10, 1997, addressed to Juliann K. Jenson, Senior Research Analyst, Research Division, Legislative Counsel Bureau, from Mike Torvinen, CPA, Administrative Services Officer IV, Mental Hygiene and Mental Retardation Division of the Department of Human Resources. Attached to the letter are organization and statistical charts for the Lake's Crossing Center in Sparks, Nevada Mental Health Institute, the Mental Hygiene and Mental Retardation Division's Rural Clinics program; and Southern Nevada Adult Mental Health Services in Clark County.

Exhibit A-2 - A newspaper article titled, "Care for mentally ill examined" from *the Las Vegas Review-Journal*, dated October 27, 1997.

Exhibit B - This exhibit was provided by Carlos E. Brandenburg, Ph.D., Administrator, Mental Hygiene and Mental Retardation Division, Nevada's Department of Human Resources. A document titled "Mental Hygiene and Mental Retardation, SCR 60."

Exhibit C is the "Attendance Record" for this meeting.

Copies of the materials distributed in the meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the library at (702) 684-6827.