

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session
March 4, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:05 a.m. on Monday, March 4, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Nicole J. Cannizzaro, Chair
Senator Dallas Harris, Vice Chair
Senator Marilyn Dondero Loop
Senator Melanie Scheible
Senator Scott Hammond
Senator Ira Hansen
Senator Keith F. Pickard

COMMITTEE MEMBERS ABSENT:

Senator James Ohrenschall

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nicolas Anthony, Committee Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

James W. Hardesty, Justice, Nevada Supreme Court
Dan Musgrove, Valley Health System; Nevada Hospital Association
James P. Conway, Executive Director, Washoe Legal Services
Jim Berchtold, Legal Aid Center of Southern Nevada
Karen Kelly, Public Guardian, Clark County
Rick Porzig, President, National Alliance on Mental Illness Nevada

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Joan Hall, President, Nevada Rural Hospital Partners
Kimberly M. Surratt, Nevada Justice Association
Homa S. Woodrum, Chief Advocacy Attorney, Aging and Disability Services
Division, Department of Health and Human Services

CHAIR CANNIZZARO:

We will open the hearing on Senate Bill (S.B.) 20.

SENATE BILL 20: Revises provisions relating to guardianships. (BDR 13-493)

JAMES W. HARDESTY (Justice, Nevada Supreme Court):

In the Seventy-ninth Legislative Session, at the request of the Supreme Court's Permanent Guardianship Commission, the Legislature enacted many reforms to the guardianship process. The Commission and the Guardianship Compliance Office were created in the Seventy-ninth Session and are managed by the Administrative Office of the Courts. Kate McCloskey is the Compliance Office Manager, overseeing a hotline, auditors and investigators on behalf of protected persons.

The Commission identified a funding source, which the Legislature approved. It assured attorney representation in adult guardianship proceedings for proposed protected persons.

One of the recommendations from the 2017 Commission was the Court establish a permanent commission. After the Seventy-ninth Legislative Session, the Court set out three objectives for the Commission: adopt Statewide rules, adopt Statewide forms to be used by anyone with or without an attorney and develop follow-up legislation to reforms adopted in 2017.

Senate Bill 20 is the work product of the Commission plus recent suggestions from contributors to and stakeholders in the guardianship process. The Court enacted some of the Statewide rules approved by the Commission. There are six to eight others being presented to the Court for adoption. The Legal Aid Center of Southern Nevada (LACSN) and the Commission have developed 83 Statewide forms for use in the guardianship process. The forms are helpful, especially in facilitating pro per work in the area.

You have the Commission's proposed amendment ([Exhibit C](#)). Its intent is to bring the language of S.B. 20 into line with recommendations finalized by the

Commission after the bill draft request (BDR) was submitted to the Legislative Counsel Bureau by the Court. The original BDR was not in compliance with the National Conference of Commissioners on Uniform State Laws, Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

The proposed amendment, [Exhibit C](#), to S.B. 20 retains the definitions in sections 6 and 12 for the purpose of BDR 13-164 that addresses the creation of supported decision-making agreements. The elimination of sections 13 to 23 should alleviate fiscal concerns voiced by county governments. The proposed amendment addresses concerns raised by hospital representatives regarding the transfer of proposed protected persons out of acute care facilities during the pendency of guardianship. Proposed new language in section 23.1 addresses issues raised in S.B. 116.

BILL DRAFT REQUEST 13-164: Legislative Committee on Senior Citizens, Veterans and Adults With Special Needs (NRS 218E.750) Enacts provisions governing supported decision-making agreements.

SENATE BILL 116: Provides for the selection of a proxy decision-maker to make medical treatment decisions for certain adult patients who lack the capacity to provide consent to or refusal of medical treatment. (BDR 40-524)

The proposed amendment, [Exhibit C](#), seeks to increase the recording fee that supports representation of protected persons and to expand the use of an existing fee-funded account held by courts to allow for supportive additional representation and self-help in minor guardianships.

When all the reforms were enacted in 2017, the Court's primary focus was on the appointment of investigators in minor guardianship proceedings. The Compliance Office has taken over a number of those investigations. What we need in minor guardianship proceedings are lawyers and self-help assistance providers. The Commission is proposing a \$1 increase to the fee source to be channeled into those uses at the discretion of judges hearing minor guardianship proceedings.

Section 1 of S.B. 20 amends *Nevada Revised Statutes* (NRS) 159 to address the concept of successor guardian. This originated in Commission discussions about the value of having successors in place. Section 3 addresses the

appointment of temporary substitute guardians not to exceed 6 months under certain conditions. In the proposed amendment, section 23.1, subsection 4 deals with the ability of petitioners to discharge proposed protected persons from healthcare facilities to effect transfers to more appropriate facilities. The language provides a structure for what those petitions must include.

The proposed amendment's section 23.2, subsection 3 relates to the authority of temporary guardians. Section 23.2, subsection 10 states, "A court may consider the actual actions taken by a temporary guardian to carry out requested activities for the benefit of the protected person." An area of concern for the Commission was the use of temporary guardians. They had been used too frequently and were problematic. The 2017 revisions to NRS 159 had significantly curtailed their use, but there is a middle ground. Subsection 10 addresses that middle ground by reducing the use of temporary guardians while still providing accountability with respect to their involvement.

The proposed amendment's section 23.3, subsections 2 and 3 relate to court appearances by protected persons. Not all court notices or appearances are necessary by protected persons, especially if they are represented by counsel. The Commission wants to permit, in limited circumstances, waivers by counsel of their clients' court appearances. The Commission wants to allow for telephone or audiovisual videoconferences because many protected persons are better suited to participating in that manner. For people having serious behavior issues, court appearances may be problematic; the experience of going to court may make their circumstances worse.

In section 25, sections 3 through 6 of the proposed amendment, [Exhibit C](#), the Commission provides for certain emergency circumstances with useful and necessary provisions. In section 26, subsection 3, paragraph (c), the Commission inserts "supported living arrangement" to the list of places where protected persons may reside that must be included in guardians' reports on protected persons' conditions. The court may waive requirements for the filing of condition reports under certain circumstances, listed in section 26, subsection 6, if "such service is detrimental to the physical or mental health of the protected person." These provisions are intended to incorporate more flexibility into the process. There are still many strict compliance requirements judges must impose on guardians, counsel and other participants in the process.

At the Commission's request, the Legislature clamped down hard on the disposition of protected persons' personal property. The proposed amendment's section 27, subsection 6 is intended to allow for relaxation in that area while recognizing spouses, children, parents and others who may wish to claim certain private property. The Commission created a priority in an attempt to avoid disputes in court and give people the option to acquire that property at fair market value.

Section 30 of the proposed amendment, [Exhibit C](#), may look like a duplication of section 2, subsection 1, and section 3, subsection 1; however, section 30 refers to minor guardianships. In section 31.1, subsection 2, we added the word "telephone ... or other real-time audio-visual means" to a provision about court proceedings not attended by minor protected persons. In section 31.2, subsection 3, the fee is raised from \$5 to \$6 for court document recording. In section 31.2, subsection 3, paragraph (a), the fee remitted to county treasurers is increased from \$3 to \$4 to be used at the courts' discretion to provide for attorneys and self-help assistance for minors.

SENATOR HARRIS:

In the proposed amendment to S.B. 20, sections 13 through 23 remove the option to provide protective orders as a less restrictive means than guardianship. Does the Court believe the cost-benefit analysis of that change is not worth it? Do you think this is something you should try to do as a worthwhile idea, but you met some resistance to it?

JUSTICE HARDESTY:

Are you talking specifically about the elimination of section 13?

SENATOR HARRIS:

Yes. The concept seems like a good idea, and the fiscal note states it will relieve fiscal concerns voiced by counties. Is that the only reason we are removing it? Is it still a good idea, something we should have tried before? What other motivations are behind the removal?

JUSTICE HARDESTY:

The motivation is to increase supported decision-making. The change reduces the involvement of the courts in the protective arrangement process, increases the ability of protected persons to have more choices as to whom they want to

work with and allows less restrictive alternatives so the concerns of protected persons can be more closely focused upon. An example of that is in section 6.

Not every case requires a full-blown guardianship proceeding. The supported decision-making process focuses on individuals' needs and then provides for appointment of personnel to address those needs. The counties' fiscal issue is eliminated because offices of public guardians are not involved. The amount of court involvement is also reduced. From a policy standpoint, this approach is superior.

SENATOR PICKARD:

Section 23.2, subsection 3 of the proposed amendment states, "The authority of the temporary guardian shall be limited to that necessary to perform actions necessary to ensure the protected person's health, safety or care." I see nothing like this in S.B. 20's retained language dealing with financial issues. Are temporary guardians limited just to "health, safety or care" of protected persons, or does that also include their finances?

JUSTICE HARDESTY:

As allowed by courts, temporary guardians may be appointed to deal with fiscal issues. Other sections of the proposed amendments expand this to healthcare issues, not limited to making applications to "Medicaid or other appropriate assistance, coverage or support."

SENATOR PICKARD:

Section 23.3, subsection 2, deals with the ability of courts to allow protected persons to not participate directly in court hearings. In subsection 3, an exception is made when the protected person is not in the State. Does it provide that a court cannot move forward unless the protected person is actually participating in the hearing unless he or she is out of the State?

JUSTICE HARDESTY:

The only proposed change to subsection 3 is to change its number from subsection 5 to subsection 3. The language of NRS 159.0535 would be retained. The purpose is to allow for an exception in temporary, general guardianships in certain circumstances when protected persons cannot attend court hearings.

One of the key requirements the Court implemented in the Seventy-ninth Legislative Session was an insistence that protected persons be in court where judges can see them. That is still our preference, but over the last 18 months, there have been instances when it was not in some protected persons' best interest to be in court, such as someone with a behavioral issue or who is seriously medically incapacitated. Nevertheless, we want to take advantage of the available technology. In rural counties, some protected persons are faced with a serious burden if they must come to court, especially if there is a jurisdictional change. These determinations are made by the judge, who must have adequate information demonstrating the cause for a lack of personal appearance in his or her court.

SENATOR PICKARD:

When I looked at provisions in S.B. 20 that allow hearings to move forward without the participation of protected persons, it reminded me of one of my recent cases. The person had dementia and was unable to attend court, becoming quite agitated whenever it was discussed. While I see the difficulties that may arise if a protected person is not in court, in my recent case it would have been helpful. As NRS stands, even if the proposed amendment is approved, protected persons must participate. Is there a means by which courts could allow cases to progress without protected persons' participation? As I read [Exhibit C](#), that would not be the case.

JUSTICE HARDESTY:

In section 23.3, subsection 1, paragraph (c) of the proposed amendment, if the protected person is represented by counsel, the attorney can waive the individual's court appearance. In the case you described, you could have waived your protected person's appearance, depending on the nature of the hearing.

Generally, the provision is focused on the initial court appearance when the guardianship determination will be made. Thereafter, if the protected person has counsel, under the proposed amendment, his or her counsel can waive the appearance.

SENATOR PICKARD:

I incorrectly read the provision as only the protected person, not his or her counsel, could waive the appearance.

SENATOR HAMMOND:

Section 31 of the proposed amendment was not in S.B. 20. In section 31.2, the filing fee would go from \$3 to \$4. In some cases, guardianship would be replaced by a protective arrangement. Will that increase the number of cases, or will some simply not rise to the level and needs of guardianship?

JUSTICE HARDESTY:

When the \$3 fee was established, it was based on an estimate of what would be available Statewide to provide counsel for adult guardianships. The amount the fee generates in the rural counties is insufficient. Washoe County has covered the costs of appointed counsel; in Las Vegas, LACSN cannot cover all of its counsel costs using the fee but does so with other resources.

The glaring gap in the 2017 effort was providing legal, investigatory and other self-help services for minors. A \$1 increase in the fee to provide those services is a huge step in the right direction, although it will not get the job done. I hope between a combination of work by the Guardianship Compliance Office's investigative services and fees to allow attorneys and self-help assistance, minors will be adequately protected.

In Clark County alone, there were probably 8,000 pending minor guardianship cases needing review; Washoe County had 1,000 to 1,500 such cases. Those filings continue at a steady pace. The fee has nothing to do with the number of cases but everything to do with the ability to provide new services.

SENATOR HAMMOND:

Just because we are not calling every case a guardianship, we will not see an increase in the fee. The fee is actually to cover everything that has been happening, aside from the issue of guardianships versus protective arrangements. Is that correct?

JUSTICE HARDESTY:

Yes. The effort by judges away from guardianships will reduce the number of cases. Instead of going through a full-blown guardianship, many supported decision-making agreements could be entered into outside of the guardianship proceeding. This would allow courts to close some guardianship cases since there would be an alternative. The fee will only go to existing minor guardianship cases for minor protected persons not getting the same services as are adults.

CHAIR CANNIZZARO:

In the proposed amendment's section 23.1, you added language about expedited hearings. Legislators had lengthy discussions in the Seventy-ninth Session about the way guardianships are granted and how to ensure there are sufficient protections to prevent abuse of the system, including putting people into unnecessary guardianships or into them in an expedited fashion.

The section provides for expedited hearings. Would that open up a loophole to allow for quicker appointments of guardians? How will the changes be implemented while keeping in mind broader policy concerns about abuse and people being put into guardianships unnecessarily?

JUSTICE HARDESTY:

Many times the Commission saw examples of protected persons being transferred between facilities without the knowledge of their families or courts or with any accountability. Sometimes, transfers took place at the direction of guardians whom protected persons did not even know or had had appointed without their knowledge. That dynamic has been completely changed.

There are a number of examples in the last 18 months in which individuals would be better served by being transferred to a different facility. The focus of the proposed changes to section 23.1 is to ensure that all relevant parties know transfers will take place and the circumstances behind them. Now, courts are in a position to make decisions about transfers.

I understand your point about expedited hearings. We included in the section's language "the petitioner shall apply for an expedited hearing to determine the appropriateness of that transfer." The Legislature cannot direct the Judicial Branch when to hold hearings; that is a separation of powers issue. Apart from that, the court is mindful if protected persons are in certain facilities but would be better served in other facilities, perhaps at reduced cost, we should all act on that.

Mechanically, the most likely petitioner for an expedited hearing would be a hospital. The extensive list in section 23.1, subsection 4, paragraphs (a) through (f) is what hospitals must provide as proof of the need for transfers to everyone connected to hearings. Everyone involved now knows of the problem and potential solution, and judges can make informed decisions. Transfers must

occur relatively quickly; the longer someone sits in a hospital, the less benefit that is to a protected person.

SENATOR HANSEN:

In the proposed amendment's section 31.2, the recording fee goes from \$5 to \$6. Is that for every document recorded by county clerks? How much money will that bring in?

JUSTICE HARDESTY:

The Guardianship Compliance Office did a detailed study of every district court and county of how much was being generated from the fees. I can get that to you. The Committee needs to know that, even with existing funds, Washoe County is almost breaking even on covering cases and needs grant money. Southern Nevada has many more cases and needs more attorneys than it has resources. Rural counties are way behind in necessary funding. The additional dollar is critical to services for minors, who have very little funding.

SENATOR HANSEN:

The extra \$1 will go into a fund exclusively used by district courts. The proposed amendment's section 31.2, subsection 3, paragraph (2), subparagraph (c) adds, "attorneys for protected minors and proposed protected minors in minor guardianship proceedings, and self-help assistance in minor guardianship proceedings." How are those people currently compensated?

JUSTICE HARDESTY:

They are not compensated because there is not enough money to even hire them. Investigators are provided by courts in some instances, but many other services are provided by the Statewide Guardianship Compliance Office. The fee is intended to provide compensation for attorneys and self-help assisters.

The money generated in each judicial district is used only for that district. In the Eleventh Judicial District Court, consisting of Lander, Pershing and Mineral Counties, the districts' entire funding is generated by the \$3 fee. Often, the county treasurer offices were unsure how the money was supposed to be used or allocated, so it sat unused. The Commission is trying to reach out to those counties with instructions. In all counties, there is an accounting for the distribution and allocation of funds, as monitored by the audit. Contracts have been entered into between judges and service providers.

DAN MUSGROVE (Valley Health System; Nevada Hospital Association):

The guardian system has impacted all Nevada hospitals. One of the unintended consequences of the inability to appoint temporary guardianships has been a delay for protected persons waiting for hospital discharge decisions. Of the 81 cases Valley Health System had in 2018, the delay was from 28 to 32 days.

The decision to move protected persons out of acute care hospitals is appropriate because the longer an individual stays in acute care, that begins to work against his or her health. There are other facilities that can provide more long-term and better care than our acute care facilities.

Our hospitals do so much due diligence in trying to find decision makers for protected persons. These are people who cannot make these decisions themselves and have no one to speak for them. The guardian system is critical.

Section 23.1, subsection 4 of the proposed amendment has steps hospitals want to follow when discharging protected persons to ensure judges have the information to know when transfer decisions are appropriate.

JAMES P. CONWAY (Executive Director, Washoe Legal Services):

Washoe Legal Services supports S.B. 20. We represent about 600 protected persons in adult guardianship cases in the First, Second, Third and Ninth Judicial District Courts. We are hoping the increased funding in the amendment, [Exhibit C](#), will allow us to add another full-time attorney. We have 3 full-time attorneys and 1 legal assistant to handle our 600 cases.

Senator Hansen, in Washoe County the \$3 fee to provide attorneys for adult guardianship cases generates from \$2,200 to \$2,400 per month for Washoe Legal Services.

SENATOR PICKARD:

I would like to know how many cases that \$2,200 to \$2,400 per month covers.

JIM BERCHTOLD (Legal Aid Center of Southern Nevada):

As an attorney, I represent adults, seniors and people with disabilities who are facing or are under guardianship. I am a member of the Guardianship Commission. When the requirement for appointment of counsel was passed in the Seventy-ninth Legislative Session, LACSN was asked to provide

representation for protected persons. We have 9 attorneys representing more than 1,500 people in the guardianship system.

There has been a sea change in guardianship in Nevada because of the 2017 changes, and the State is being held up as an example for other states.

CHAIR CANNIZZARO:

A lot of work has been done to provide representation for protected persons that has prevented abuses in the guardianship system. Before then, protected persons had to navigate the complicated system with no counsel whatsoever. Senate Bill 20 will help minors move through the system.

MR. BERCHTOLD:

In minor guardianship cases, there may not be the need for representation in every case. Often, grandparents seek guardianship over grandchildren because parents are out of the picture. If there is money involved or some kind of contest in guardianship cases, use of an attorney to represent minors can be invaluable. Broadening representation from just legal to self-help services, including social workers, will greatly benefit minors.

KAREN KELLY (Public Guardian, Clark County):

You have my letter of support ([Exhibit D](#)). Specifically, the changes relating to section 25 of S.B. 20 are necessary to enable a guardian to move a protected person without providing a 10-day notice in certain circumstances. Currently, a ten-day notice of move must be provided to all involved parties, including the court, before a protected person can be moved to a new residence. At the Clark County Public Guardian's Office, approximately 90 percent of the moves are a result of hospitalizations or placement in short-term acute care and rehabilitation facilities.

In the last 18 months, several issues have arisen. *Nevada Revised Statutes* stipulates ten days' notice is to be given once a placement is found. I have yet to find a provider willing to hold a bed for ten days without payment. Protected persons are not always discharged from the hospital to the same facility they had been residing in. If Medicaid is the primary payer source, those beds are not held by a facility when a person goes to the hospital, so once the protected person is ready for discharge, there are not always Medicaid beds available in the same facility, and a new placement must be found.

Excessive time spent in the hospital while waiting for the ten-day noticing period is not only detrimental to the protected person's health, it could cost his or her estate if insurance companies will not pay for time spent unnecessarily in the hospital.

The proposed amendment to section 25 will add exceptions to the 10-day noticing period, specifically if the move is due to a discharge or admittance from or to a hospital or to a rehabilitation center, or if the move is pursuant to a written recommendation from a physician. Additionally, the guardian will still be required to notify any family members, persons of natural affection and the appointed attorney when a protected person is admitted to a hospital, rehabilitation center or long-term care facility, or if there is any other change in his or her residence. These changes will allow a guardian to move a protected person quickly when it is in his or her best interest, while still keeping all interested parties updated as to the whereabouts of the protected person.

Section 27 of the proposed amendment clarifies how personal property is to be managed when claims to it are received from multiple family members of a protected person. The Clark County Public Guardian's Office has had cases in which family members have requested the same items of personal property. When no agreement can be reached as to who should receive the items, court instruction is then necessary. This change would provide the direction needed on how to manage disputed items of personal property.

RICK PORZIG (President, National Alliance on Mental Illness Nevada):

The National Alliance on Mental Illness (NAMI) Nevada supports S.B. 20. It will provide courts flexibility to order protective arrangements alternative to guardianship. This is in the best interest of NAMI's constituents, be they individuals living with mental illness or their family members.

JOAN HALL (President, Nevada Rural Hospital Partners):

Nevada Rural Hospital Partners represents the State's 12 critical access hospitals and their associated long-term care facilities. Rural hospitals have the same issues as their urban counterparts when patients need a different level of care. Sometimes the time awaiting guardianship is detrimental to patients' care.

KIMBERLY M. SURRATT (Nevada Justice Association):

The Nevada Justice Association supports S.B. 20, but we expressed some concern to the Commission that section 23.3, section 2, the teleconferencing

and telephone court appearances provision, remains in the amended bill. In the family law arena, there are many severely mentally unstable clients who are unnecessarily burdened by being dragged into court. We have rural clients who need treatment in Reno or Las Vegas, while their cases are in rural courts. Dragging them all the way to Reno, Winnemucca or Elko for hearings that may last just five minutes to determine they are unstable and need to remain in treatment is hardly viable.

HOMA S. WOODRUM (Chief Advocacy Attorney, Aging and Disability Services Division, Department of Health and Human Services):

I am the attorney for the rights of older persons and persons with physical, intellectual or related disabilities in the Aging and Disability Services Division, Department of Health and Human Services. As amended, S.B. 20 reflects a person-centered, evidence-based approach to guardianship. We appreciate that the proposed amendment protects the rights of other residents in supported-living arrangements from being disclosed in unrelated guardianship proceedings.

The bill's provision on removing protective arrangements helps cement the importance of counsel and due process when guardianships become necessary. My Division is one of the grant sources, under the Older Americans Act of 1965, for representation in Washoe County guardianships. We train rural Nevadans in guardianship procedures.

JUSTICE HARDESTY:

The collaborative process behind S.B. 20 has been an effort to reform a significant area of the law. As Mr. Berchtold said, Nevada is now a national leader in the guardianship law arena.

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CHAIR CANNIZZARO:

Seeing no more business before the Senate Committee on Judiciary, this meeting is adjourned at 9:06 a.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	4		Attendance Roster
S.B. 20	C	19	James W. Hardesty / Nevada Supreme Court	Proposed Amendment
S.B. 20	D	1	Karen Kelly / Clark County Public Guardian's Office	Letter of Support