

House Judiciary Committee Meeting
Friday, March 15, 1963

The House Judiciary Committee met Friday, March 15, 1963, in Room 523 at 8:45 A.M. with Chairman Clyde Hill presiding. Twelve members were present. Members Arthur, Davis, Euler, Gastl, Malone, Tillotson, Van Cleave and Williams were absent. Charles V. Hamm, General Counsel, State Board of Social Welfare; Marvin E. Larson, State Director of Social Welfare; and Dr. Robert A. Haines, Director of Institutions of Social Welfare were present concerning House Bills 346, 347 and 348.

Chairman Hill called the meeting to order. He stated that the committee will take up where they left off in the explanation of House Bill No. 347, an act relating to the probate code; and pertaining to mentally ill persons and their hospitalization; amending sections 59-2007, 59-2268, 59-2274, 59-2276, 76-1222 and 76-1223 of the General Statutes of 1949 and sections 59-2003, 59-2260, 59-2261, 59-2264 and 59-2271 of the General Statutes Supplement of 1961, and repealing said original sections and also repealing sections 59-2004, 59-2005, 59-2262, 59-2263, 59-2272, 76-1227 and 76-1233 of the General Statutes of 1949 and sections 59-2001 and 59-2002 of the General Statutes Supplement of 1961.

Marvin E. Larson, State Director of Social Welfare, stated that the old law permitted referral without notice to the patient. This provides notice to the patient. He pointed out that the new language in reference to the notice is on page 5, lines 50 through 60. He went on to read this section through line 73 and said this is a change because it wasn't clear in the old law just when the examination should be given.

Dr. Robert A. Haines, Director of Institutions of Social Welfare, pointed out that they would like to add after the period after the word "hearing" in line 85 of Section 5, "Unless the patient accepts continued treatment on a voluntary basis, in which case the court shall terminate the proceeding and dismiss the application."

Mr. Crossan stated that this is fine in 9/10 of the cases, but what about the contested case. He wanted to know why not make them come in and present it properly.

Chairman Hill clarified what point Mr. Crossan was making. He stated that if you apply the regular rules, but in the customary case that we have, they kind of throw the rules away.

Mr. Crossan asked why not be bound by the technical rules of evidence. He said that nobody thinks of the unusual case.

Charles V. Hamm, General Counsel, State Board of Social Welfare, stated that a report that has been made under the court shall be admitted.

Mr. Crossan asked if there is fraud, if you are going to let everything in. He stated that where you get the real bitter contest, there are no rules.

Mr. Hamm stated that when you get to that contested point, you end up with a jury trial. He said that this is provided in Section 8, starting with line 26.

Mr. Skoog pointed out that it is going to proceed informally unless there is contest.

Mr. Hamm asked if they didn't think there will be a jury trial anyway if it is contested.

Mr. Skoog gave reference to line 31, of Section 7. He stated that this provides that the person shall not be required to be present. He stated that in some cases, it is most important to have the person present.

Mr. Hamm said that the fellow will have an opportunity to be present, but doesn't have to be. He stated that this is just a restatement of our present law.

Mr. Skoog stated that many times during the proceedings it isn't possible to see him.

Mr. Hamm said that it is your experience that the judge will go out to the hospital. He said that in many cases they have to return the patient. There are a few patients that they don't think should be put in an ambulance and taken to court. And, there are some patients whose condition would become worse if this were done to them. Mr. Hamm stated that Judge Riddel thinks they should be required to be present, but answers it by the referee law.

Mr. Liebert stated that actually where these patients are up at the hospital and you don't want to return them, the probate courts in these counties don't want to handle it. He said the old law should be left such as they can go back for full treatment.

Mr. Hamm stated they tried to add a little strength to make it a requirement for the judge to hear.

Chairman Hill stated that that is quite a problem for all of us who are some distance from the hospital. He went on to state that he thinks it is of wide enough concern that we ought to get this thing fixed up so that it is workable.

Mr. Skoog stated that if it is inconvenient for the people, then the patient isn't present. He stated that he doesn't think the presence will change the order or anything, but that it is important in many cases for them to see the patient.

Mr. Liebert stated that you can protect the difficult case with the law and yet accomplish the routine and ease of handling the other cases. We should have to resume a little bit of extra responsibility. If we have to pay, then that is part of it. Don't see any reason to change the law.

Mr. Hamm stated that there is no change in the law.

Mr. Crossan pointed out that there is a change in regard to the informal hearing.

Mr. Edwards gave reference to lines 31, 32, 33 and 34 of page 8, Section 7. He asked if they have had trouble with people being curious and crowding around and all. Mr. Hamm said they had not. He went on to say they could strike this out. Mr. Edwards stated that it gripes him to see them exclude people.

Mr. Hamm stated that this hospitalization will not determine this man incompetent. He went on to explain the bill. He said that in Section 8 we have the question of jury trial. We have changed the word "jury" to "commission". He stated that there is not a lot of strong feeling on this. He explained that it is proposed by the model act.

Mr. Crossan asked if there would be any objection to changing it back to "jury". Mr. Hamm stated that there would be no objection to this.

Mr. Hamm went on to explain that Section 8 is identical with what we currently have and just changing some words. We are getting away from charging the person with a crime of being insane. Mr. Skoog pointed out that two lines have been added at the end of Section 8. Mr. Hamm explained that this was in another statute and they have just put it here.

Mr. Hamm read Sections 9 and 10.

Mr. Edwards stated that this is not finding the person incompetent, but just determining whether he needs hospitalization. Mr. Hamm said this is correct.

Mr. Hamm said that Section 11 is a restatement of our present law. He said they have one suggested amendment to change in lines 5 and 8 "state" hospital to "psychiatric" hospital.

Mr. Crossan objected to Section 9, Transportation. He said that this is inadequate. Chairman Hill stated that an amendment would be worked out which will prove satisfactory to everyone.

Mr. Hamm stated that they have taken the word "insane" out all the way through the bill. He asked if there were any questions on this. There were none. Mr. Hamm stated that Section 12 might cause some controversy. It was primarily designed to take care of weekend cases. He stated that it was put in because it was the request of several judges. He went on to explain just how it works.

Mr. Skoog stated that this is a good thing. He gave an example of a case in which this occurs.

Mr. Crossan stated that you are putting a jurisdictional power in the hands of some superintendent of a hospital. Mr. Hamm stated that this is done in most states which have enacted a new code.

Mr. Liebert asked if this would be a general hospital. Mr. Hamm said yes, if they have psychiatric facilities. He stated that this is defined on page 2. Chairman Hill gave an example of such a case. He stated that they are talking about a holding unit until you can start proceedings. Mr. Liebert wanted to know what the hospitals think of this method. Dr. Haines stated that he has not talked to them in Kansas, but of the ones he talked to in Ohio, some will do it and some won't. He stated that it is a thing that is coming in the mental health field. Mr. Crossan gave an example of a case where this could present problems. Mr. Skoog stated it has problems, but it is alright. He said that everything in this field has problems.

Mr. Hamm went on to read and explain the remainder of Section 12. Mr. Skoog asked if this requires personal examination by the physician to make this petition. Mr. Hamm said that it does.

Mr. Hamm referred to Section 13. He stated that this is an order being made by the probate judge after an order has been filed. He referred to lines 4 and 5 of this section and stated that this is "placed under protective custody" used only as a last resort. This is to protect the general hospital. Mr. Skoog asked if it isn't true that as a matter of practice, you can clam down almost anybody. Dr. Haines said that this is true.

Section 14. Mr. Hamm explained that this has to do with the method of having a probate court hearing. This sets out a procedure and is a similar procedure to the one which got him into the hospital. At the present time, there isn't a specific procedure set out. Other than that, it is very similar to our present law. Mr. Liebert asked where it is filed.

Mr. Hamm stated that Section 17 sets this out. He then explained just how this works. He also stated that perhaps this isn't written as well as it should be. Mr. Liebert asked if this is what you want to do in every case. Mr. Hamm stated that frankly he didn't know if they gave much thought to this. He stated that you could file it in either county. Mr. Liebert stated that he didn't know if it is written so that you could or not. Chairman Hill stated that this gives the alternative. Mr. Liebert stated that there is no way to transfer venue. You couldn't file it in the county where he is hospitalized if his original hearing was in his own county. Chairman Hill stated that we would want to make another alternative in Section 14. Mr. Crossan argued against this. Mr. Hill then explained. Mr. Crossan stated that if you provide that this can be done, then the order needs to be filed to clear up that record.

Mr. Skoog stated that it is much more beneficial to have this at the hospital if that is where the man wants to be heard.

Mr. Hamm stated that Section 15 is the same principle that we already have.

Section 16 sets out what the judge will do when he receives an order of absolute discharge.

Section 17 permits the hospital to place patients out on a convalescent status.

Mr. Liebert made reference to line 7 of Section 16. He stated that they have struck out "capacity" and that this bothers him. Dr. Haines stated that the person is not incompetent unless he was judged this by a separate hearing. Chairman Hill explained that under this procedure, you are not getting to incapacity, just hospitalization. You are setting up a separate action and a separate proceeding. He asked if this bill proposed to, in the guardianship phase, if you have two procedures here and have to appoint a guardian, repeal any sections that have to do with restoration of incapacity. Mr. Hamm explained how this is handled in the companion bill. Repealing or amending isn't going to hurt you any.

Mr. Skoog wanted to know how it is handled if the superintendent says we want to absolutely discharge this patient and the family says they don't want him discharged. You have given the power to the superintendent. Dr. Haines stated that the family might try to influence the superintendent.

Mr. Liebert asked what the companion bill is. Dr. Haines pointed out that it is House Bill No. 348.

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Mr. Hamm stated that Section 18 is repetition of our current law.

Chairman Hill asked what is the experience if my probate judge wants to request that the hearing be held in another county. Mr. Crossan stated that you can't. You have to file a new petition. Mr. Hill asked if the judges are cooperative. Mr. Hamm stated that the judge has the petitioner sign two petitions. He then explained how this works. Chairman Hill asked if the petition has to be signed by a resident of that county. Mr. Hamm said no.

Chairman Hill asked the gentlemen appearing and the members of the committee if they will be available for a meeting Monday, March 18, 1963, at 7:00 P.M. Everyone was agreeable.

The meeting adjourned at 10:00 A.M. to meet Monday, March 18, 1963, at 7:00 P.M. in Room 523.

Respectfully submitted,
Clyde Hill, Chairman

Minutes approved:

H B 347 Sec. 5 line 83 and 84. Add: Unless the patient accepts continued treatment on a voluntary basis, in which case the court shall terminate the proceeding and dismiss the application.

Sec. 13, line 4. Add: "psychiatric" between "a" and "hospital"

Page 10, Sec. 11 line 5 and 8. Change "state hospital" to "psychiatric" hospital.