

PRESENTATION TO THE SENATE PUBLIC WELFARE STANDING COMMITTEE

10:00 A.M., October 6, 1967

Mr. Chairman, Members of the Senate Public Welfare Standing Committee:

The Minnesota Mental Retardation Planning Council and the Minnesota Association for Retarded Children are most appreciative of your committee's decision to study during the interim existing laws and proposals for new legislation which affect the mentally retarded of Minnesota. We also fully support the possible plan of your committee to work and study in this area in conjunction with a subcommittee of the Senate Judiciary Committee.

We also appreciate the opportunity of suggesting some areas of the Law and the Mentally Retarded which your committee may wish to consider for study.

I. All Minnesota Statutes affecting the mentally retarded should be collected and analyzed to determine those which are antiquated, ambiguous, inconsistent with each other, or in violation of the constitutional and civil rights of the retarded, and to further determine what new legislation may be necessary to safeguard and protect such rights.

Naturally, some of our statutes which date back to 1917 are out of date with present knowledge concerning the capabilities of the mentally retarded and the necessary education, training, treatment, care and other services from which they can derive great benefit. Other laws are inconsistent with each other or are ambiguous. Some laws fail to safeguard and protect the rights of the retarded.

II. A Mental Retardation Act combining all laws which affect the retarded would be ideal; if this should be deemed impractical, such an act which would combine all laws relating to the responsibility of the Minnesota State and County Departments of Public Welfare should be adopted.

The advantages of such an act would be identical to those evidenced in the relatively new Criminal Code or Juvenile Court Act.

III. There are at least four broad areas of the law which definitely need study at this time: Commitment and Guardianship of the Person and Estate, Constitutional and Civil Rights, Criminal Law and Administration of the Law.

Time and space will not permit either a thorough or specific analysis of all of the laws in any one of the four areas. I will, therefore, make only a few suggestions for study within the first two broad areas.

A. Commitment and Guardianship of the Person and Estate

1. Commitment

Recommendation: The 1969 Session should amend The Minnesota Hospitalization and Commitment Act, Chapter 638-H.F. 395 of 1967 Minnesota Session Laws, to exclude the retarded and simultaneously adopt a new act to include only the retarded.

Reasons:

- a. The original act and the present act were designed for the mentally ill and inebriates and not for the retarded.

- b. The mentally ill committed directly to our institutions and hospitals are usually adults and require short term medical and hospital treatment. The mentally "retarded" are committed to the guardianship of the Commissioner of the Minnesota Department of Public Welfare and are usually children who require long term residential care, training, education, vocational training and, in some cases, medical and hospital treatment of a completely different type.
- c. There is potentially great danger of unlawful commitment of the mentally ill and little, though some, danger of same with respect to the retarded.
- d. Frequently the mentally ill may be dangerous to themselves or others at the time of commitment; whereas, rarely would this be so in the case of the retarded.
- e. In addition to the June, 1967 Department of Public Welfare's Analysis of said Act, the following provisions contained therein are clearly inappropriate for the retarded:
Section 3. Informal hospitalization by consent * * ., Sec. 7. Judicial commitment.

Sec. 15. Discharge., Section 16. Review Board., Sec. 17. Rights of Patients.

It is also not clear what legal rights a person under guardianship as mentally deficient may have. Likewise, there are no provisions for a periodic mandatory review of each institutionalized retarded person.

If the committee so desires, I shall be pleased to provide a more detailed explanation of the specific sections of the act which are either inappropriate or inapplicable to the retarded.

2. Guardianship of the Person.

Further study should be made concerning the relative rights, duties and responsibilities of the Commissioner as legal guardian of the person and the parents as natural guardians of the person. Likewise, upon the death of both parents, it may be most desirable to have the commissioner act as legal guardian of the person but also permit a responsible relative or friend or association to act as a limited guardian of the person.

3. Guardianship of the Estate.

Present laws subjecting the estate of a retarded person to a claim by the state for the cost of care of such person should be reviewed in order

to insure that the retarded patient may not only have adequate funds for personal needs during his confinement in a state institution or boarding home but also have funds available to assist him upon discharge from said institution or other residential facility. Present law appears to be out of date and unrealistic.

B. Constitutional and Civil Rights - other than Guardianship.

1. A Bill of Rights should be adopted by our legislature for mentally retarded persons whether they reside in our state owned and operated hospitals or institutions, in a residential facility within the community, or in their parents' homes.

Too frequently the following list of rights which we take for granted are denied the mentally retarded and especially those who reside in our state institutions. Although emphasis will be given to the institutionalized retarded, many of these rights are of equal importance to the community resident retarded person.

- a. The right to be both admitted and discharged from an institution.
- b. The right to receive reasonable medical and hospital care from licensed physicians and accredited hospitals.

- c. The right to privacy which cannot be assured in barnlike, overcrowded facilities with such a shortage of staff as to permit many to remain nude all day and some to stand nude in long lines for long periods of time just to get a bath.
- d. The right, if able, to be trained to toilet, feed and clothe himself, to sit, to stand and to walk.
- e. The right to a free public education, which said right is either totally denied for many or limited to an hour or two per day for most now receiving same.
- f. The right to recreational opportunity as opposed to being forced to stay inside the dormitory day in and day out.
- g. The right to receive vocational training and work opportunities.
- h. The right of a working patient to receive a fair wage (not \$1.00 or \$2.00 per month) based upon the difference between the fair value of his services and the fair cost of his care provided by the institution (not an average cost per patient).
- i. The right to expect one's parents will be immediately notified in the event of serious injury or illness.
- j. The right to not be subjected to unreasonable risk of physical violence or injury by disturbed or delinquent patients which results from insufficient supervision or . improper placement within a dormitory.

There are undoubtedly other rights which I have forgotten to list which deserve your consideration.

2. Laws relating to marriage, divorce, annulment, custody

of children, voting, adoption of retarded children,
driving licenses and sterilization and others
should be reviewed.

IV. Consideration should be given to a recommendation to the
1969 Legislature that an Interim Commission be established with
sufficient funds to employ proper staff and meet monthly in order
to accomplish the most difficult and complex work outlined above.

May I again thank you for the opportunity of presenting
these suggestions for your consideration.

Melvin D. Heckt