

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

APRIL 4, 1977

The meeting was called to order at 8:05 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
 Senator Bryan
 Senator Dodge
 Senator Foote
 Senator Sheerin
 Senator Gojack
 Senator Ashworth

ABSENT:

SB 286 Provides for recovery of welfare payments made for dependent children.

For further discussion of this measure, see minutes of meetings for March 17, March 21, March 22, March 28 and April 1, 1977. Also see attached Exhibit A for the draft of the measure in its amended form.

Acel Martelle, Deputy Administrator for Assistance Payments; Dale Landon, Chief of Support Enforcement; and Robert Ulrich, Deputy Attorney General, Welfare Division continued discussion with the Committee.

SECTION 53

Senator Dodge: Does this act in the nature of a continuing assignment. Under an execution or attachment, all you can attach is whatever is currently due. It isn't really a continuing assignment.

Senator Bryan: My concern is that the responsible parent has to live too. It seems to me that the amount of the assignment ought to take that into consideration.

Mr. Martelle: That is really a court decision.

SECTION 54

Senator Close: The payments are to go to the county clerk's office?

Mr. Landon: It depends on the collecting agency. This section is for when there is no address and they cannot determine where the payment should go.

Senator Close: Then why are we giving notice to the employer rather than the court. It says "and" so you would have to notify both the court and the employer. In Las Vegas, if the money goes to the clerk's office there is no reason to notify the employer. This should be made discretionary so that if payments are going to the clerk's office, the recipient mother would only have to notify them, rather than the clerk and the employer.

Senator Dodge: On page 17, where the mother takes off and here whereabouts are unknown, have you provided in here for the responsibility of any accruals? There has been an accrual for 90 days and you have returned the money and suddenly she surfaces and wants the money. Are you saying that he is not obligated to pick up the back part because of that.

Mr. Landon: If those monies were directed to the welfare division because of past assistance rendered, then the money would be diverted to the welfare department. If she was a non-assistance case then the money would be hers. I don't know of any method where you would hold this money in abeyance.

Mr. Martelle: This doesn't relieve the responsibility relative to payment. It strictly says that if you can't find them, you will return it to the employee. If she surfaces again and asks for enforcement of the court order, it would be enforced.

Senator Dodge: What about subsection 3 then. Who is the defaulting parent? Is it the mother who doesn't leave her address or is this the responsible parent.

Mr. Landon: It is the responsible parent.

Amend to say "responsible parent" and delete "defaulting parent."

SECTION 12

Senator Close: In subsection 4, paragraph (b) regarding the formula (see Exhibit G of March 21 minutes), what consideration do you make on the other obligations of the responsible parent if there is no court order.

Mr. Landon: We have a formula for that also.

Senator Dodge: Maybe we ought to take the formula into consideration; make it discretionary and say "not more than."

SECTION 13

Mr. Ulrich: Subsection 1, repayment of public assistance creates a support debt to the division by the responsible parent. Under definition of responsible parent, that could include the custodial parent. Subsection 2 limits the subregation rights to the extent of payment of any public assistance debts (see

attached Exhibit B) and subsection 3 limits it to the non-custodial parent. If you are receiving welfare on behalf of the child, you cannot be indebted under this section for the time period during which you are receiving welfare.

SECTION 32

Mr. Ulrich: Bob Holland and I drafted a carte blanche immunity for everyone supplying information. See attached Exhibit C. This would also be included in Section 53.

Senator Close: I have a question on whether we want to allow wage assignments on non-welfare cases. There is no wage assignment permitted in Nevada law. It was taken out years ago because there were too harsh. I really wonder if we want to extend those to non-welfare cases. It goes beyond any concept presently in the law.

Senator Bryan: But this assignment can only come about through a court order and it also allows for review by the court for modification if the situation so warrants.

Following a brief discussion, Senator Bryan moved to amend and do pass. Seconded by Senator Gojack. Motion carried unanimously. Senators Ashworht and Sheerin were absent from the vote.

SB 394 Provides for temporary replacement of officers disqualified from adjudicating contested cases before administrative agencies.

Bill Cozart, Nevada Association of Realtors stated that the way the wording is now, it might unnecessarily delay these types of hearings. As an example, the Real Estate Advisory Commission is made up of 5 members; it only takes 3 for a quorum. If one of those individuals is disqualified it will take in excess of probably 30 days in order for the governor to appoint someone to take his place. It really isn't necessary since they only have to have 3 for a quorum. He suggested, on line 18, changing the "shall" to "may."

Senator Bryan stated that if you make it optional as to whether they get a replacement, it destroys the bill. He also expressed concern that there is no mechanism that provides for a procedure to affirmatively disqualify, as opposed to self-disqualification, of an agency or board member. The language "or is disqualified" suggests that there is some procedure. He suggested including the language "pursuant to the provisions of NRS 233B.122." That would narrow the focus.

SB 394 Gerry Lopez, Statute Reviser, informed him that 233B.122 would apply only if they were disqualified; if there was a procedure provided by law for their disqualification. NRS 233B.122 doesn't provide a procedure, it simply forbids them from participating. It assumes that there is a procedure for disqualifying someone. If in fact there is not procedure anywhere in the law, then there would be no triggering.

Senator Bryan responded that if that is true, then the language "or is disqualified" should be deleted.

In further amendment to the bill, the Committee decided to reduce the number of working days for notifying someone that they have been disqualified to 3; and to 5 working days in which the Governor must appoint a replacement. They also wanted to include an internal reference to NRS 233B.122 on line 4 after the word "case."

Senator Bryan moved to amend and do pass.

Seconded by Senator Gojack.

Motion carried unanimously. Senator Ashworth was absent from the vote.

SB 407 Exempts school secretaries from jury duty during school year.

Senator Dodge moved to indefinitely postpone.

Seconded by Senator Gojack.

Motion carried unanimously. Senator Ashworth was absent from the vote.

SB 130 Prescribes treatment program for persons found not guilty by reason of insanity.

For testimony on this measure, see minutes of meeting for February 24, 1977.

Senator Sheerin moved to indefinitely postpone.

Seconded by Senator Gojack.

Motion carried unanimously. Senator Ashworth was absent from the vote.

AB 369 Raising limitation on number of permitted days of racing.

Assemblyman Nash Sena stated that this bill was passed in 1975 but the time period was inadvertently put in at 100 days instead of 300. It had been their intention, and testimony from the racing commission indicated, that it was to be 300 days.

In response to a question from Senator Sheerin as to increased

AB 369 competition of the limit were raised to 300 days, Mr. Sena stated that there is a provision in the Henderson City Charter which prohibits the building of any track within 100 miles of an existing track.

The committee requested Mr. Sena review the minutes from last session on this matter and report back, with Assemblyman Jack Jeffrey for further consideration.

No action was taken at this time.

SB 220 Provides conditions for imposition of capital punishment.

For discussion on this measure, see minutes of the following meetings:

February 23 and 24, 1977
March 10, 11, 14, 16, 30 and 31, 1977
April 1

Senator Bryan moved to amend and do pass.
Seconded by Senator Ashworth.
Motion carried. The vote was as follows:

VOTING AYE:	Senator Close	VOTING NAY:	Senator Gojack
	Senator Bryan		
	Senator Dodge		
	Senator Foote		
	Senator Sheerin		
	Senator Ashworth		

SB 413 Makes substantial changes in procedure for disciplining physicians.

Bill Isaeff, Deputy Attorney General informed the committee that this replaces SB 191 (for testimony on that measure, see minutes of meetings for 2/15, 3/2, 3/3 and 3/8/77).

Page 6, section 12, in speaking with Gerry Lopez, Statute Reviser, he confirmed that this bill would carry out my interpretation of NRS 233(b)127(3) that the board already has the summary suspension power. It even beefs it up a little more by also giving some power to go to court in appropriate circumstances. I questioned why, if we had the summary suspension power we would ever go to court to suspend a license prior to hearing. Mr. Lopez was of the opinion that there was no harm done in having it both ways. The authority given to the court to get it to cause an automatic limitation of practice or to prohibit some type of unprofessional conduct is new authority and one that I think that the Board should have.

Section 19, page 7, line 46, I suggested including "imposing probations." In section 20 you have a reference to probation but not in section 19. This would conform the two. Mr. Lopez was of the opinion that only if you have actually interfered

Senate Committee on Judiciary

SB 413 with his practice in one way or another, which probation presumably does not, should you have to file that with the county recorder. I took the position that this was public notice that this man's license in some way had been touched by an action of the Board of Medical Examiners and if he was placed on probation that would likewise be something that should be recorded and made public notice.

Section 20, page 8, line 2 after "license has been" we should insert "limited." This section appears to leave out one of the types of action that the Board can take. I am sure that you would expect the judicial review to apply if the practice has been limited in any way.

Section 20, page 8, subsection 4, lines 15-16, I discussed with Mr. Lopez if this wasn't a carry over from the old law. He said it was and agreed that it should be removed. It would require the agency to petition for review of its own decision.

Senator Bryan: On lines 21-23 on page 5, it says the "Board shall not initiate disciplinary action on the ground of unprofessional conduct if the supporting facts constitute gross or repeated malpractice or professional incompetence." Why is the Board precluded from initiating disciplinary action there?

Mr. Isaeff: I spoke with Mr. Lopez about this because I felt it meant that I could not charge an individual with gross malpractice and unprofessional conduct in the same complaint, particularly if the same set of facts might warrant both charges. His explanation to me was that they would not be able to dump a serious case of gross malpractice into the unprofessional conduct category. Early in the game when they make the decision as to whether they are going to make the referral to the Attorney General or keep it to themselves under the unprofessional conduct they shall not if the alleged supporting facts would justify the gross or repeated malpractice which must go to the Attorney General for investigation.

Section 13, the only part of this section that I see as really useful to the Board is the first part which says that the Board may seek a court order to enjoin any unprofessional conduct which is harmful to the public or to limit the doctor's practice. I prefer the internal references.

Section 14, I had suggested the possible insertion of language after "confidential" on line 14 that said ", except to the extent necessary for the conduct of an investigation," because it is almost physically impossible to conduct one of these investigations without occasionally naming the doctor that you are involved with, particularly to a professional witness with whom you may be reviewing records. That is the way I have been interpreting it for the past 2 years.

Section 20, subsection 2, this is the language that grows out of the problem we had with the court staying the effectiveness of the Board's order. It states her that it is effective from the date that the secretary certifies the order until the order is modified or reversed by the court as provided by law. On line

SB 413 Mr. Lopez: In section 12, where we say "for disciplinary action" that phrase is used in two other instances here. On line 5, page 6 "proceed with appropriate disciplinary action as provided by law" the reason I had inserted that is because I was keeping in mind that summary suspension power that is available in 233(b) as well as the disciplinary action provided in 630. Mr. Daykin pointed out that that really isn't necessary. We could leave out "as provided by law" and say "proceed with appropriate disciplinary action", and the only action that would be appropriate would be action authorized by law.

Senator Close: We want to include the internal reference. If you say "provided by law" it implies that you have to look someplace else.

Mr. Lopez will draft the amendments suggested and report back to the committee.

No action was taken at this time.

There being no further business, the meeting was adjourned.

Respectfully submitted,


Cheri Kinsley, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN

SENATE BILL NO. 286--COMMITTEE ON JUDICIARY

March 1, 1977

Referred to Committee on Judiciary

SUMMARY--Provides for recovery of welfare payments made for dependent children. (BDR 38-273)

FISCAL NOTE: Local Government Impact: No.
State or Industrial Insurance Impact: No.

AN ACT relating to dependent children; providing for the recovery of aid to dependent children from responsible parents; providing for the establishment of paternity; delegating certain powers and duties to the department of human resources; and providing other matters properly relating thereto.

WHEREAS, The failure of parents to provide adequate financial support and care for their children is a major cause of financial dependency and a contributing cause of social delinquency; common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency; and the increasing workload of courts, district attorneys and the attorney general has made such remedies uncertain, slow and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is constrained to provide public assistance grants for basic maintenance requirements when parents fail to meet their primary obligations; and

WHEREAS, Persons legally responsible for the care and support of children within the state should be required to assume their legal obligations in order to reduce the financial cost to the State of Nevada in providing public assistance funds for the care of children, thereby relieving at least in part the burden presently borne by the people of this state through welfare programs; and it is, therefore, the responsibility of the State of Nevada, through the prosecuting attorneys and the welfare division of the department of human resources, to conserve the expenditure of public assistance funds whenever

possible in order that such funds shall not be expended if there are private funds available or which can be made available by judicial process or otherwise to partially or completely meet the financial needs of the children of this state; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED
IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 425 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 36, inclusive, of this act.

Sec. 2. As used in sections 2 to 36, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 3. "Administrator" means the state welfare administrator.

Sec. 4. "Assistance" and "public assistance" mean any payment made by the division to or on behalf of a child pursuant to the provisions of Title 38 of NRS.

Sec. 5. "Court order" means any judgment or order of a court of competent jurisdiction of the State of Nevada or an order of a court of comparable jurisdiction of another state ordering payment of a set or determinable amount of support money.

Sec. 6. "Dependent child" means any person, who is not otherwise emancipated, self-supporting or a member of the armed forces of the United States, who is:

1. Under the age of 21 years and who is receiving or has received assistance from the division pursuant to Title 38 of NRS; or

2. Under the age of 18 years and for whom the division is required to secure support or establish paternity.

Sec. 7. "Division" means the welfare division of the department of human resources.

Sec. 8. [Deleted.]

Sec. 9. "Prosecuting attorney" means the district attorney of any county or of Carson City, or the attorney general if the district attorney fails to act. The attorney general may assist the district attorney upon request.

Sec. 10. "Responsible parent" means the natural or adoptive parent of a dependent child, or any person who is responsible for the support of a dependent child by law, contract or order of a court of competent jurisdiction.

Sec. 11. [Deleted.]

Sec. 12. 1. By accepting assistance in his own behalf or in behalf of any other person, the applicant or recipient shall be deemed to have made an assignment to the division of any and all rights to support such applicant or recipient may have in his own behalf or in behalf of any other person for whom assistance is applied for or received from any responsible parent. Rights to support include, but are not limited to, accrued but unpaid support payments and support payments to accrue during the period for which assistance is provided. However, the amount of the assigned support rights shall not exceed the amount of public assistance provided or to be provided.

2. The recipient shall also be deemed without the necessity of signing any document, to have appointed the administrator as his true and lawful attorney in fact with power of substitution to act in his name, place and stead to perform the specific act of endorsing any and all drafts, checks, money orders or other negotiable instruments representing support payments which are received as reimbursement for the public assistance money previously paid to or on behalf of each recipient.

3. The support rights assigned under subsection 1 constitute a support debt owed to the division by the responsible parent. The support debt is enforceable under all processes provided by law. The division, through the prosecuting attorney, may also represent the recipient when the amount of the support rights exceeds the amount of the support debt.

4. The amount of this support debt is:

- (a) The amount specified in a court order of support; or
- (b) If there is no court order of support, an amount determined in accordance with a formula adopted by the division pursuant to regulations promulgated by the Secretary of Health, Education and Welfare.

5. The assignment provided for in subsection 1 is binding upon the obligor upon service of notice thereof in the manner provided by law for service of civil process or upon actual notice thereof.

Sec. 13. 1. Any payment of public assistance creates a support debt to the division by the responsible parent in an amount equal to the least of:

- (a) The amount of assistance paid;
- (b) The amount due under any court order; or
- (c) If there is no court order, to the amount due under any written agreement between the division and a responsible parent.

2. The division is subrogated to the right of a dependent child or a person having the care, custody and control of a dependent child to prosecute or maintain any support action or execute any administrative remedy existing under the laws of this state to obtain reimbursement of money expended for public assistance. If a court enters judgment for an amount of support to be paid by a responsible parent, the division is subrogated to the debt created by such judgment and the judgment awarded shall be deemed to be in favor of the division. This subrogation applies but is not limited to a temporary spouse support order, a family maintenance order or an alimony order, whether or not allocated to the benefit of

the child on the basis of providing necessaries for the care-taker of the child, up to the amount paid by the division in public assistance to or for the benefit of a dependent child. The division may petition the appropriate court for modification of its order on the same grounds as a party to the action.

3. Debts under this section may not be incurred by a parent or any other person who is the recipient of public assistance for the benefit of a dependent child for the period when the parent or other person is a recipient.

Sec. 14. 1. Whenever the division provides public assistance on behalf of a child, the division and the prosecuting attorney shall take appropriate action to establish paternity and to enforce the responsible parent's duty to pay for the care, support and maintenance of the dependent child.

2. As to any other child under the age of 18 years, the division and the prosecuting attorney, if required by the Social Security Act (42 U.S.C. §§301 et seq.), upon application therefor, may take appropriate action to establish paternity and to enforce the responsible parent's duty of support.

Sec. 15. [Deleted.]

Sec. 16. The division is released from liability for improper receipt of money pursuant to this act upon return without interest of any money so received.

Sec. 17. [Deleted.]

Sec. 18. [Deleted.]

Sec. 19. [Deleted.]

Sec. 20. [Deleted.]

Sec. 21. [Deleted.]

Sec. 22. [Deleted.]

Sec. 23. [Deleted.]

Sec. 24. [Deleted.]

Sec. 25. Whenever, as a result of any assignment or action, support money is paid by the responsible parent, such payment shall be made through the division upon written notice by the division to the responsible parent, or to the clerk of the

court or district attorney if appropriate, that the child for whom a support obligation exists is receiving public assistance, or that the division has undertaken to secure support for the child for whom a support obligation exists.

Sec. 26. All money collected in fees, costs, attorney's fees, interest payments, incentive payments, as defined in 42 U.S.C. 658, or other payments received by the administrator which cannot be identified as to the support account to which it should be credited, shall be transferred by the administrator or his designee to the general fund of the State of Nevada.

Sec. 27. [Deleted.]

Sec. 28. Any money received by the division under sections 2 to 36, inclusive, of this act shall be distributed pursuant to regulations adopted by the division which shall be so drawn as to qualify the State of Nevada for federal grants under Title IV of the Social Security Act (42 U.S.C. 601, et seq.).

Sec. 29. [Deleted.]

Sec. 30. 1. The district attorney is responsible for establishing paternity and securing support pursuant to this chapter in cases referred by the division.

2. If a district attorney fails or refuses to perform this duty in a particular case in which assistance is granted, or in which establishment of paternity or enforcement of support is required, the attorney general may undertake to perform this duty and may exercise in connection therewith all powers of the district attorney provided by law.

Sec. 31. [Deleted.]

Sec. 32. 1. The division may establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting responsible parents, to coordinate and supervise departmental activities in relation to deserting responsible parents and to assure effective cooperation with law enforcement agencies.

2. To effectuate the purposes of this section, the administrator or a prosecuting attorney may request all information and assistance from the following persons and entities:

(a) State, county and local agencies;

(b) Employers, public and private; and

(c) Employee organizations and trusts of every kind and description.

All of these persons and entities, their officers and employees, shall cooperate in the location of a responsible parent who has abandoned or deserted, or is failing to support his child and shall on request supply the division and the prosecuting attorney with all information on hand relative to the location, income and property of such parent.

3. Any record established pursuant to the provisions of this section is available only to the attorney general, a district attorney or a court having jurisdiction in a paternity, support or abandonment proceeding or action, or to an agency in other states engaged in the establishment of paternity or in the enforcement of support of minor children as authorized by regulations of the division and by the provisions of the Social Security Act.

Sec. 33. [Deleted.]

Sec. 34. Any support debt due the division from a responsible parent which the administrator deems uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. At any time after 1 year from the date a support debt was incurred, the administrator may charge off as uncollectible any support debt upon which the administrator finds there is no available, practical or lawful means by which the debt may be collected.

Sec. 35. 1. The responsible parent of a legitimate child or a child whose paternity has been judicially determined and for whom assistance is granted shall complete a written statement, under oath of:

(a) His current monthly income and his total income over the past 12 months;

(b) The number of dependents for whom he is providing support;

(c) The amount which he is contributing regularly toward the support of any child for whom assistance is granted;

(d) His current monthly living expenses; and

(e) Such other information as is pertinent to determining his ability to support his children.

2. The statement shall be provided upon demand made by the division, any support enforcement agent of the state or a prosecuting attorney. Additional statements shall be filed:

(a) Annually thereafter with the division until such time as the child is no longer receiving assistance; and

(b) Whenever there is a material change in the information given in the statement required under this section.

3. Failure of the responsible parent to comply fully with this section is a misdemeanor.

4. Any responsible parent who swears falsely to a material fact in any written statement required by this section is guilty of perjury.

Sec. 36. It is the purpose of sections 2 to 36, inclusive, of this act that children be promptly maintained insofar as possible from the resources of responsible parents. The remedies provided in sections 2 to 36, inclusive, of this act are cumulative and in addition to any other remedy provided by law.

Sec. 37. NRS 425.010 is hereby amended to read as follows:

425.010 [This chapter] NRS 425.010 to 425.250, inclusive, may be cited as the Aid to Dependent Children Act. [of 1955.]

Sec. 38. NRS 425.020 is hereby amended to read as follows:

425.020 1. [It is the object and purpose of this chapter to provide assistance for children whose dependency is caused by circumstances defined in subsection 5 of NRS 425.030, and to keep children in their own homes wherever possible.

2.] The provisions of this chapter shall be liberally construed to effect its stated objects and purposes.

[3. Nothing contained in this chapter shall be construed

as affecting] 2. NRS 425.010 to 425.250, inclusive, do not affect the right of the welfare division to be solely responsible for determining the eligibility of applicants under [this chapter.] NRS 425.010 to 425.250, inclusive.

Sec. 39. NRS 425.030 is hereby amended to read as follows:

425.030 As used in [this chapter:] NRS 425.010 to 425.250, inclusive, unless the context otherwise requires:

1. "Applicant" means any person who has applied for assistance under [this chapter.] NRS 425.010 to 425.250, inclusive.

2. "Assistance" means money payments with respect to, or medical care in behalf of, or any type of remedial care recognized under state law in behalf of, a dependent child, [or dependent children,] and includes money payments or medical care or any type of remedial care recognized under state law for any month to meet the needs of the relative with whom any dependent child is living if money payments have been made with respect to such child for such month.

3. "Board" means the state welfare board.

4. "Department" means the department of human resources.

5. "Dependent child" means:

(a) A needy child under the age of 18 years, or under the age of 21 years if found by the department to be regularly attending a school, college or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment, who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew or niece, in a place of residence maintained by one or more of such relatives as his or their own home; or

(b) A child removed from the home of a relative designated in paragraph (a) after April 30, 1961, as a result of a judicial determination that continuance in the home of the relative would be contrary to his welfare for any reason, and

who has been placed in foster care as a result of such determination, if the child was receiving aid to dependent children in or for the month in which the court action was initiated or would have received aid to dependent children if the application had been made, or who lived with a relative designated in paragraph (a) within 6 months prior to the month in which court action was initiated, and who would have received aid to dependent children in the month court action was initiated if he were still living with the relative and application for assistance had been made, provided the custody of such child has been placed with the welfare division by court order.

6. "Director" means the director of the department of human resources.

7. "Recipient" means any person who has received or is receiving assistance.

8. "Welfare division" means the welfare division of the department of human resources.

Sec. 40. NRS 425.050 is hereby amended to read as follows:

425.050 Application on behalf of a child for assistance under [this chapter] NRS 425.010 to 425.250, inclusive, shall be made to the welfare division. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the welfare division, and shall contain such information as may be required by the application form.

Sec. 41. NRS 425.080 is hereby amended to read as follows:

425.080 1. [No assistance under this chapter shall] Assistance under NRS 425.010 to 425.250, inclusive, shall not be granted or paid to any dependent child who owns, or whose needy relative owns, personal property or marketable non-income-producing real property, the combined cash value of which exceeds \$500 at the time application for assistance is made, or while in receipt of such assistance. For each additional dependent child in the same home or in the same family, the \$500 limitation herein described may be increased by \$150.

2. For the purposes of [this chapter, "personal property" shall] NRS 425.010 to 425.250, inclusive, "personal property" does not include clothing, furniture, household equipment, foodstuffs and means of transportation found by the welfare division to be essential for the well-being of the child or his needy relative.

Sec. 42. NRS 425.110 is hereby amended to read as follows:

425.110 1. All grants of assistance made under [this chapter] NRS 425.010 to 425.250, inclusive, shall be reconsidered by the welfare division as frequently as may be required in order to verify continuing eligibility for assistance. [under this chapter.] After such further investigation as the welfare division may deem necessary, the amount of assistance may be changed, or assistance may be entirely withdrawn if the welfare division finds that the circumstances warrant such action.

2. The state welfare administrator, or his designated representative, [shall have full authority to] may issue subpoenas requiring the attendance of witnesses before the division at a designated time and place, and further requiring the production of books, papers and records relative to the eligibility or continued eligibility for such assistance, and with reference to all matters relevant thereto, and in furtherance of the investigation by the welfare division, to administer oaths and take testimony thereunder.

3. If the witness fails to appear or refuses to give testimony, or to produce books, papers and records as required by the subpoena, the district court in and for the county in which the investigation is being conducted [shall have power to] may compel the attendance of witnesses, the giving of testimony and the production of books, papers and records, as required by the subpoena.

4. If the recipient refuses to appear, or to give testimony, or to produce books, papers and records, or should the recipient fail or refuse to cooperate by refusing to allow other witnesses freely to testify, or to produce books, papers or records, or by encouraging other witnesses to fail

or refuse to appear, or to testify, or to produce books, papers or records, the welfare division [is authorized and empowered to] may terminate and withdraw all assistance from the recipient, pursuant to law.

Sec. 43. NRS 425.120 is hereby amended to read as follows:

425.120 1. If an application is not acted upon by the welfare division within a reasonable time after the filing of the application, or is denied in whole or in part, or if any grant of assistance is modified or canceled, under any provision of [this chapter,] NRS 425.010 to 425.250, inclusive, the applicant or recipient [shall have the right to] may appeal to the welfare division and [the right to] may be represented in such appeal by counsel.

2. The welfare division shall provide an opportunity for a fair hearing of such [individual's] person's appeal and shall review his case in all matters in respect to which he is dissatisfied.

3. [If such individual feels himself] A person aggrieved by the decision of the welfare division in respect to his case [he shall have the right,] may, at any time within 90 days after the mailing to him, by [registered or] certified mail, of written notice of the decision, [to] petition the district court of the judicial district in which he resides to review such decision and the district court [shall have jurisdiction to] may review the decision on the record of the case before the welfare division, a copy of which shall be certified as correct by the state welfare administrator and filed by the welfare division with the clerk of the court as part of its answer to any such petition for review. The district court shall either affirm the decision of the welfare division, or, if it concludes that the findings of the welfare division are not supported by evidence or that the welfare division's decision is arbitrary, capricious or otherwise contrary to law, reverse the decision and remand the case to the welfare division for further proceedings in conformity with the decision of the court.

Sec. 44. NRS 425.200 is hereby amended to read as follows:

425.200 1. The state welfare administrator shall furnish to the state controller a full, true and correct list of recipients entitled to assistance, and of the monthly amount to be paid to each of them from the aid to dependent children fund, certified to by him as being a full, true and correct list of such recipients and the amount to which each of them is entitled under [this chapter.] NRS 425.010 to 425.250, inclusive. The list [shall be] is subject to revision by the state welfare administrator to make it conform to such changes as may be made pursuant to the terms of [this chapter.] NRS 425.010 to 425.250, inclusive.

2. Immediately after the warrants payable to recipients have been drawn, the state controller shall deliver or mail them to the welfare division. Immediately thereafter the welfare division shall mail them to the individual recipients. The facilities of the central mailing room shall be used.

3. The books, records and accounts of the state controller and the state treasurer relating to the aid to dependent children fund shall be open to inspection and subject to audit by officers and agents of the United States.

Sec. 45. NRS 425.210 is hereby amended to read as follows:

425.210 Assistance awarded [by this chapter] under NRS 425.010 to 425.250, inclusive, is not transferable or assignable at law or in equity and none of the money paid or payable under this chapter [shall be] is subject to execution, levy, garnishment, attachment or other legal process, or to the operation of any bankruptcy or insolvency law.

Sec. 46. NRS 425.150 is hereby amended to read as follows:

425.150 1. [Whenever a person applies] Upon approval of an application for assistance pursuant to [this chapter,] NRS 425.010 to 425.250, inclusive, on behalf of a child whose parent has deserted or is not supporting such child, the welfare division [shall immediately] may notify the district attorney of the county, or, if the district attorney is not the appropriate official, the proper Indian tribal official,

that approval of such application has been made.

2. At the time of such application the welfare division shall inform the applicant of his duties pursuant to NRS 425.145 and request that such applicant comply therewith.

3. The notice provided for in subsection 1 shall include a statement that such applicant has been informed of his duties and requested to comply therewith pursuant to subsection 2.

Sec. 47. NRS 425.130 is hereby amended to read as follows:

425.130 [No assistance will] Assistance shall not be furnished any [individual under this chapter] person under NRS 425.010 to 425.250, inclusive, with respect to any period with respect to which he is receiving supplemental security income pursuant to Title XVI of the Social Security Act (42 U.S.C. §1381 et seq.), or with respect to any period with respect to which he is receiving aid to dependent children from any other state.

Sec. 48. NRS 425.140 is hereby amended to read as follows:

425.140 All assistance awarded under [this chapter shall be deemed to be] NRS 425.010 to 425.250, inclusive, is awarded and [to be] held subject to the provisions of any amending or repealing act that may [hereafter] be enacted, and no recipient [shall have] has any claim for assistance or otherwise by reason of his assistance being affected in any way by an amending or repealing act.

Sec. 49. NRS 425.145 is hereby amended to read as follows:

425.145 1. [An] As a condition of eligibility for assistance to the person with whom any dependent child is living, each applicant for or recipient of assistance, or a person making application for or receiving assistance on behalf of a child, shall [assist and cooperate fully with] furnish his social security account number and that of any responsible parent, if known, and assist and cooperate fully with the welfare division, the attorney general, any support enforcement agent of the state, and the district attorney of the county of the applicant's or recipient's residence in

establishing the paternity of such child and in the locating or apprehending of and the taking of legal action against a deserting or nonsupporting parent of such [applicant or recipient.] child.

2. [An applicant for or recipient of assistance] Assistance pursuant to [this chapter] NRS 425.010 to 425.250, inclusive, may be denied [such assistance] by the welfare division or such assistance may be discontinued by the welfare division [for:] to the person with whom any dependent child is living for:

(a) Failure or refusal to disclose information known to the applicant or recipient, or the person making application or receiving assistance on behalf of a child, necessary for the establishment of paternity of such child or the location or apprehension of a deserting or nonsupporting parent; or

(b) Failure or refusal of any such person to cooperate with [the district attorney of the county of the applicant's or recipient's residence,] any of the specified authorities in the taking of recommended legal action against a deserting or nonsupporting parent[.]; or

(c) Failure or refusal of any such person to furnish the required social security account numbers.

Sec. 50. NRS 425.250 is hereby amended to read as follows:

425.250 1. Any person who knowingly obtains, by means of a willfully false statement or representation or by impersonation or other fraudulent device, assistance of the value of \$100 or more to which he is not entitled or assistance of the value of \$100 or more in excess of that to which he is entitled, and with intent to defeat the purposes of [this chapter,] NRS 425.010 to 425.250, inclusive, is guilty of a gross misdemeanor.

2. For the purposes of subsection 1, whenever a recipient of assistance under the provisions of [this chapter] NRS 425.010 to 425.250, inclusive, receives an overpayment of benefits for the third time and such overpayments have resulted

from a false statement or representation by such recipient or from the failure of the recipient to notify the welfare division of a change in his circumstances which would affect the amount of assistance he receives, a rebuttable presumption arises that such payment was fraudulently received.

Sec. 51. [Deleted.]

Sec. 52. Chapter 31 of NRS is hereby amended by adding thereto the provisions set forth as sections 53 to 55, inclusive, of this act.

Sec. 53. 1. In any proceeding where the court has ordered a parent to pay any amount for the support of a minor child, the court may order the parent to assign to the county clerk or county officer designated by the court to receive such payment, or to the state welfare administrator in support enforcement cases arising under the provisions of chapter 425 of NRS, that portion of salary, wages or commissions of a parent due or to be due in the future which will be sufficient to pay the amount ordered by the court for the support, maintenance and education of the minor child. Such order operates as an assignment and is binding upon any existing or future employer of the defaulting parent upon whom a copy of such order is served. Any such order may be modified or revoked at any time by the court. The employer shall cooperate with and provide relevant employment information to the prosecuting attorney for the purpose of enforcing the child support obligation.

2. In any proceeding where a court makes or has made an order requiring payment of child support to a parent receiving welfare payments for the maintenance of minor children, the court shall direct that payments of support be made to the welfare division of the department of human resources, and the district attorney may appear in any proceeding to enforce such order.

Sec. 54. 1. The parent to whom support is ordered to be paid shall notify the court and the employer of the parent

ordered to pay support, by any form of mail requiring a return receipt, of any change of address within a reasonable period of time after any such change. In instances in which payments are ordered to be made to a county officer designated by the court, the parent to whom support is ordered to be paid shall notify the court and such county officer, by any form of mail requiring a return receipt, of any address change within a reasonable period of time after any such change.

2. If the employer or county officer is unable to deliver payments under the assignment for a period of 3 months because of the failure of the person to whom support has been ordered to be paid to notify the employer or county officer of a change of address, the employer or county officer shall not make any further payments under the assignment and shall return all undeliverable payments to the employee.

3. Upon a petition by the defaulting parent, the court shall terminate an order of assignment of salary or wages if there are 18 continuous months of full payment under the assignment or the employer or county officer is unable to deliver payments under the assignment for a period of 3 months because of the failure of the person to whom support has been ordered to be paid to notify the employer or county officer of a change of address.

Sec. 55. 1. [Deleted.]

2. The provisions of sections 53 to 55, inclusive, of this act apply to all money received by any person as a pension, or as an annuity or retirement or disability or death or other benefit, or as a return of contributions and interest thereon from the United States government, or from the state, or any county, city or other political subdivision of the state, or any public trust, or public corporation, or from the governing body of any of them, or from any public board or boards, or from any retirement, disability, or annuity system established by any of them pursuant to statute.

3. When a certified copy of any order of assignment is served on any public entity described in subsection 2, other than the United States government, that entity shall comply with any request for a return of employee contributions by an employee named in the order by delivering the contributions to the clerk of the court from which the order issued, unless the entity has received a certified copy of an order terminating the order of assignment. A court may not directly or indirectly condition the issuance, modification or termination of, or condition the terms or conditions of, any order for the support of a minor child upon the issuance of such a request by such an employee.

4. Upon receipt of money pursuant to sections 53 to 55, inclusive, of this act, the clerk of the court, within 10 days, shall send written notice of that fact to the parties and any agency through whom payments have been ordered under this section. Such money is subject to any procedure available to enforce an order for child support, but if an enforcement procedure is not commenced within 60 days after the date when the notice of receipt is sent, the clerk shall, upon request, release the money to the defaulting parent.

Sec. 56. [Deleted.]

Sec. 57. [Deleted.]

Sec. 58. [Deleted.]

Sec. 59. [Deleted.]

Sec. 60. NRS 425.220 and 425.230 are hereby repealed.

Sec. 61. 1. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

2. If any method of notification provided for in this act is held invalid, service as provided for by the laws of the State of Nevada for service of process in a civil action shall be substituted for the method held invalid.

P.L. 93-647, as amended, requires states to undertake to establish paternity and enforce child support in ADC cases and, when requested, in non-ADC cases. Failure to conform results in loss of federal ADC matching funds. The purpose of S.B. 286 is to conform to this federal mandate and to provide the legal tools necessary to efficiently cause dependent children to be maintained insofar as possible from the resources of their responsible parents. S.B. 286 is thus intended to provide cost-beneficial reductions in welfare rolls by causing parents to meet their primary obligation to support their dependent children.

The provisions of S.B. 286, summarized below, are not provided for in Nevada Law:

Sections 2 through 11. Provide definitions.

Sec. 12. (1). Required by 42 U.S.C. 602(a)(26), 45 C.F.R. 232.11. Provides that receipt of ADC assigns by operation of law existing and future support rights up to amount of ADC received. Eliminates current cumbersome administrative procedure.

(2) Provides administrator with power of attorney to endorse and negotiate child support checks. Reduces loss of collections by eliminating the need to forward or return checks for payee endorsement or correction.

(3) Required by 42 U.S.C. 656(a), 45 C.F.R. 302.32. Provides that assigned support rights are a support debt owing the state to amount of ADC paid.

(4) Required by 42 U.S.C. 656(a), 45 C.F.R. 302.53. Provides for determining amount of support debt from H.E.W. approved formula in absence of court order.

Sec. 13. Provides that payment of ADC makes the state a creditor of the responsible parent. Welfare Division is

also subrogated to the support rights of the child.

Sec. 14. Required by 42 U.S.C. 654(6), 45 C.F.R. 302.33. Provides that the Welfare Division is responsible for enforcing support obligations owed a dependent child.

Sec. 16. Provides for return by Welfare Division of improperly received funds.

Sec. 25. Required by 42 U.S.C. 654(5), 45 C.F.R. 302.32. Provides for routing support payments through the Welfare Division for distribution to parties entitled thereto.

Sec. 26. Provides that all unidentifiable monies will be transferred from the Welfare Division to the General Fund.

Sec. 28. Required by 42 U.S.C. 657, 45 C.F.R. 302.51. Provides for distribution as required by federal law of all monies received.

Sec. 30. Required by 42 U.S.C. 654(1) & (7), 45 C.F.R. 302.10 & .34. Provides duties of prosecuting attorneys for consistent statewide operation of support enforcement program.

Sec. 32. Required by 42 U.S.C. 654, 45 C.F.R. 302.35 and 303.3. Provides for a central state child support enforcement organizational unit and parent locate function.

Sec. 34. Provides for removal of uncollectible support debts from accounting records.

Sec. 35. Adapted from Calif. Welf. & Institutions Code §11353 and R.C. Wash. 74.20.260. Provides for prompt reporting by responsible (legitimate or judicially determined) parent of his financial ability to support his dependent child(ren).

Sec. 36. Declaration of legislative purpose that children be promptly maintained insofar as possible from the resources of responsible parents.

Secs. 37 - 48 & 50. Billdrafter's technical amendments.

Sec. 49. Required by 42 U.S.C. 1302, 45 C.F.R. 232.10 & .12. Provides that applicant or recipient must cooperate with child support enforcement requirements as a condition of ADC eligibility.

Sec. 53-55. Adapted from Calif. Civ. Code §4701. Provides for court-ordered wage assignments.

Sec. 60. Repeals obsolete ADC recoupment statutes superseded by S.B. 286 provisions.

Sec. 61. Severability section.

. . . to the county, but if the welfare division of the department of human resources provides any services to the child, then the support shall be paid to the welfare division to the extent of the services provided by it to the child.

Add to SB 286, Section 32, subsection 2, the following sentence at the end of subsection 2:

Good faith disclosure of information pursuant to this subsection bars any liability for its disclosure.