

MEMBERS PRESENT: Chairman Stewart  
Vice Chairman Sader  
Mr. Thompson  
Ms. Foley  
Mr. Beyer  
Mr. Price  
Mr. Chaney  
Mr. Malone  
Mrs. Cafferata  
Ms. Ham  
Mr. Banner

MEMBERS ABSENT: None

GUESTS PRESENT: S. Morrow, Nevada Appeal  
Russ Nielsen, UPI  
Janet Fish, NV State Welfare Division  
Mike Harper, NV State Welfare Division  
Betty Mayer, PTA  
Bill Furlong, NV State Welfare Division  
Sharon McDonald, Welfare - Deputy Attorney  
General  
Claudia Cormier, Welfare - Deputy Attorney  
General  
Gloria Handley, NV State Welfare Division  
W. LaBadie, NV State Welfare Division  
W. H. Roanhaus, Division for Aging  
Jane Hirsch, Division for Aging  
Celia P. Norton  
Juanita Tumbleson  
John Garrison, PTA  
Cecilia Colling, UNR Intern (Coulter)  
Marian Hurst, NV State Welfare Division  
Pat Gothberg, Nevada Nurses' Association  
B. N. Curran, Clark County District Attorney  
Office  
Bruce Laxalt, Washoe County District Attorney  
Kathleen T. Collins, PTA  
Steve Coulter, Assemblyman  
Dorothy Kosck, Nevada Appeal  
Georganne Greene, NV State Board of Nursing  
Lee Adler, Reno Gazette

Chairman Stewart called the meeting to order at 8:05 a.m., noting the first bill to be heard would be AB 157.

AB 157: Requires report of abuse and neglect of older person and provides penalty therefor.

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First to testify was Mr. Steve Coulter, Assemblyman for Washoe County District No. 27, who introduced the bill. Mr. Coulter passed out copies of press stories, EXHIBIT A, which had influenced his thinking on this subject.

Mr. Coulter outlined the problem involved here, as well as the public's growing perception of it. He noted that to date two States, Connecticut and Massachusetts, have enacted elderly abuse legislation establishing a mandatory reporting system. He added that during a eight month period during 1978, there were 600 reported cases of abuse in Connecticut, 474 of which were substantiated.

Mr. Coulter proceeded to describe several abuse cases. He pointed out that Crisis Call Line in Reno, which deals almost exclusively with suicide cases, gets two to five calls a month regarding abuse of elderly in Reno, and the Clark County Protection Services handled 189 new long term abuse and neglect cases in fiscal year 79-80, during which time there were also over 1,017 short term cases.

Although there are few statistics currently available for this problem in Nevada, Mr. Coulter said that it has been determined from the information available that, in this State, the average age of the abused person was 74 years, 70% were white, 50% of the victims had lived in Las Vegas 10 years or more; thus it is not a transient situation.

Mr. Coulter noted that possible objections to this law are very similar to those previously raised concerning child abuse legislation, and are just as invalid now as then. He added that AB 157 is modeled very closely after the existing child abuse reporting laws.

Next Mr. Coulter stated that since having the bill drafted he has been considering certain changes to it. He suggested that Aging Services might be best qualified and prepared to investigate abuse complaints and this Division has expressed willingness to assume this responsibility.

Mr. Coulter summarized by noting that it is impossible to say how much of a problem elderly abuse is, as there are no reliable statistics available on this subject; thus, AB 157 is the first step in determining how common this abuse is and formulating a means of preventing it from occurring in the future.

Mr. Sader asked about the fiscal note to which Mr. Coulter replied he was not certain of the fiscal impact since after drafting the bill Aging Services agreed they could handle the situation with little need for additional personnel; the current fiscal note involved the Welfare Division, who would have needed several additional employees to handle this added responsibility.

Several portions of the bill were questioned by members of the Committee, and Mr. Coulter explained their meaning and/or intent as follows:

Page 1, line 16: "'Abuse and neglect of an older person' means the nonaccidental physical or mental injury...of an older person". Regarding mental injury, this would undoubtedly have to be defined by a court of law, as it is difficult to define it here.

Page 1, line 17: "by a person who is responsible for the older person's welfare" implies the individual caring for the older person.

At this point Mr. Coulter noted that the above terminology closely follows that in the Connecticut, Massachusetts, and/or child abuse laws, and that these other two States, to date, have had no real problem in enforcing these laws.

Page 2, line 1: "A report must be made promptly" is taken directly from the child abuse law and the word promptly is simply there to expedite the reports as quickly as possible, avoiding long delays.

Page 2, section 4: This is the portion which should be considered for possible amendment to require reporting to the Aging Services vice Welfare Division. Mr. Coulter was not sure which Division would be better equipped to handle this, and suggested a subcommittee might want to look into this possibility further.

Page 2, lines 16-29: Health professionals, attorneys and clergy are required to report abuse cases; Mr. Sader seriously questioned whether this might be a violation of their right to privileged information. Mr. Coulter stated this terminology existed in the child abuse statute, and to date has caused no problems.

Mr. Coulter clarified he would suggest removing Welfare from the chain of those to whom reports may be submitted. Reports should be filed with the Department of Human Resources (Aging Services), police departments, or sheriff's offices. Aging Services Division would then undertake the investigation of the complaint. He added that Aging Services currently has two ombudsmen investigating similar complaints against Nursing Homes, and that with the addition of one more individual this Division feels it could handle the added workload, which is currently guesstimated at circa 1,200 cases a year.

It was suggested that sexual abuse, which is contained in the child abuse law, be added to AB 157 as well.

Page 1, lines 15-19 and Page 4, lines 25-28: Mr. Coulter explained there is no conflict here: abuse results in a gross misdemeanor charge, while if there is substantial abuse the penalty goes up to 1 to 20 years in jail.

Page 4, lines 16-17: This should be amended to read "Any person who knowingly and willfully violates sections 4 to 9, inclusive..."

Page 4, lines 14-15: This portion specifically includes those instances of privileged information cited by Mr. Sader. This language is included in the child abuse law, and there has been no problem with it there; however, Mr. Coulter suggested that if the language really bothers Mr. Sader, perhaps both laws should be examined.

It was agreed that the bill needed close scrutiny and some amending, and that the subcommittee should take care of this.

It was also suggested that several of the points raised during Mr. Coulter's testimony also occurred during discussion of the child abuse law during the last legislative session, and that it might be advisable to review the minutes of that meeting, and possibly for the meeting involving the limited custody bill which was also discussed during the last session.

Next to testify was Mr. Wally Roanhaus, Assistant Administrator, Division of Aging Services, who favored the bill.

Mr. Roanhaus noted that the Division of Aging Services currently gets involved in some instances of elderly abuse, but that they really do not have any kind of mandated responsibility in many cases. AB 157 would be useful in giving authority to specific agencies to take care of such situations.

Mr. Roanhaus noted that the Division currently has two ombudsmen on board, both of whom are totally funded by the federal government. These two individuals, along with one additional person, could probably handle the additional responsibility of investigating elderly abuse complaints under AB 157, at least for the first year or two. He added that he doubted the addition of these duties would affect the federal funding, but he was not positive of this. He said he would check as to whether or not this would be in violation of the federal grants and would report back to the Committee on this.

Mr. Roanhaus explained that once a complaint is received, under AB 157, the Division would investigate the complaint, and depending upon the circumstances found, take appropriate action. This could include removing the person from their current location. This raised the need for authorization in AB 157 to remove such individuals from their homes, as well as for a designated location where these people can be housed. Presently the Division requires either medical or court authorization to place people in either nursing homes or hospitals.

Mr. Beyer raised the issue of additional fiscal impact in those cases where an individual is removed from their home, as the State would then be required to relocate them, be it in a nursing home, or group home, or whatever.

In reply to Mrs. Cafferata Ms. Jane Hirsch, a nursing home ombudsman for the State of Nevada who accompanied Mr. Roanhaus, noted that there are currently 45 group homes being monitored by Aging Services Division, with a total population of about 1,200 people. Ms. Hirsch noted that during the last reporting quarter there were 19 complaints received, of which at least 13 were considered valid.

In reply to Ms. Ham, Ms. Hirsch noted that when a person is removed from their home, there are several alternatives to being placed in a nursing home or hospital. These alternatives include services which would enable the individual to live alone: home health care, home chore agencies, Meals on Wheels, etc. She added that many elderly are not aware of these options.

Ms. Hirsch explained that the 13 cases verified by the Division as valid consisted of several types of problems, including financial problems, depression, physical abuse, etc. She added that these complaints are more apt to come from relatives than from the elderly person involved.

Mr. Roanhaus said that he felt his agency is ready and able to take on the responsibilities of AB 157. He felt the additional cost of this to his Division would be approximately \$35,000, including one additional employee, travel and office space.

Following a ten minute break Mr. Bruce Laxalt, Chief Deputy of the Washoe District Attorney's Office, came forward to testify in favor of this bill.

Regarding the criminal provisions of AB 157, Mr. Laxalt said his office has no problems with these provisions; in fact his office supports them. Mr. Laxalt also noted that the language of the child abuse statute has worked well and believes it will not cause any problems in the elderly abuse statute.

Mr. Laxalt told Mr. Sader he knew of no instance where a person was prosecuted for not reporting child abuse, nor was he aware of any cases reported in violation of the privileged information right. He added he would not necessarily know if this right had been violated, however.

In reply to Mr. Stewart, Mr. Laxalt said his office had not had occasion to prosecute any elderly abuse cases, undoubtedly because there is currently no vehicle for bringing such cases to his attention.

Regarding section 11 of this bill, Mr. Stewart asked about the difference between abuse, battery and assault. Mr. Laxalt explained that there could well be legal conflict between AB 157 and the assault and battery statutes. Basically, assault is an attempted battery; battery is a touching of a person which is unconsented to by that person; and abuse and/or unjustifiable physical pain has been previously defined in child abuse cases

as anything which leaves a mark. Mr. Laxalt felt that AB 157 would come into play in cases of neglect (i.e., where there is no physical touching) and/or in those instances where violence goes beyond a mere battery and becomes a pattern of batteries.

Mr. Laxalt told Mrs. Cafferata that there have been all kinds of cases prosecuted under the child abuse laws, from cases of neglect where the child is found to be living in an unfit place or has been injured as a result of neglect, to cases of abuse where the child has been burned by cigarettes or beaten, etc.

Ms. Celia Norton came forward next to testify in favor of this bill. Ms. Norton noted that she had a great deal of experience working with the elderly: she was a public health nurse in Chicago, she was the adult health consultant.

Ms. Norton related several experiences she had involving elderly abuse and the problems encountered in remedying these situations. She noted this was something which many people try to ignore, and it must not be.

Mr. Beyer wondered if it might not be better to have this problem handled at the local level rather than at the State level. Ms. Norton replied that people take care of their own, therefore if problems can be handled at the local level, it would be quicker and simpler and people wouldn't get lost in the bureaucracy.

Next to testify was Ms. Pat Gothberg of the Nevada Nurses' Association. Ms. Gothberg said the Association had closely studied this bill and was in favor of it. She noted that with no reporting requirement, there is little inclination for people to report abuse of the elderly.

In reply to Mrs. Cafferata, Ms. Gothberg said that as far as she knew, there have been no problems to date regarding the possible violation of medical record confidentiality in connection with reporting child abuse.

Ms. Georganne Greene from the Nevada State Board of Nursing testified she was in favor of this bill with the following amendment: addition to lines 45 and 46 on page 2 of "b) any abuse involving a licensed person shall be reported to the licensing board". Ms. Greene explained this would allow the board to monitor the activities of any suspect individual and could help prevent the hiring of a person who has a record of such activity, since these people need only report convictions for felonies, not for other crimes. In addition, it would allow the board to take disciplinary action when warranted.

Mr. Bill LaBadie from Nevada State Welfare Division testified that his office favors this bill and would be happy to work with a subcommittee and Aging Services Division in order to

clarify any problems and/or questions which may arise concerning this bill and any amendments thereto. He noted that if the Welfare Division is assigned investigative or other responsibilities in connection with this bill additional staff would be required, but the Division is more than willing to do whatever is necessary to get this bill passed.

Mr. Stewart asked what the Welfare Division currently did if they found an elderly person being abused and that person did not want to leave their home. Mr. LaBadie noted that if they or Protective Services hear of such a case, there is nothing the Division can do. Counseling can be offered, etc., but if the person does not want to leave, they cannot force him to.

Mr. LaBadie added that AB 157 does not give any attention to self abuse, of which there are many more instances. He explained this involved people living in a bad environment, or who drink their money away, don't eat properly, etc.

In reply to Mr. Beyer it was explained that the Welfare Division does work with the various local agencies and that they also refer cases to County agencies, etc. It was noted that Welfare works especially with the rural Counties, where other types of services may be lacking.

Mr. LaBadie noted that even under the current child abuse law the Welfare Division does not have authority to remove an individual from their home, this must be done by a law enforcement authority. The same would be true with AB 157.

Mr. LaBadie told Mrs. Cafferata that in terms of success in preventing child abuse, which is difficult to measure, he felt the Division was having some success, although it is on the rise. He explained that he feels evidence of success can be seen in the number of prosecutions and convictions; he believes the threat of imprisonment is a deterrent in such crimes.

As there was no further testimony on AB 157 Chairman Stewart closed the public hearing on this bill. He then appointed a subcommittee to review possible changes to this bill: Ms. Foley, Chairman; Mr. Sader and Mr. Beyer.

The next bill to be heard was AB 158.

AB 158: Revises statutes relating to aid to and support of dependent children.

Marian Hurst of the State Welfare Division came forward to testify first on this bill. She noted that she would only be testifying on sections 1 and 2 of the bill; other representatives from the Division would testify on the other sections.

Ms. Hurst noted that the intent and purpose of these two sections of this bill was to bring the Nevada Law relative residency

requirements for the Aid to Dependent Children Program into conformance with the federal regulations relating to that ADC program and with the U.S. Constitution.

Ms. Hurst stated durational residency requirements such as are stated in the current State law for the ADC program were found to be unconstitutional by the Supreme Court of the U.S. in 1969 in the case of Shapiro v. Thompson. Since then the federal government has changed its regulations to conform to the intent of the Supreme Court, and AB 158 is an attempt to change the Nevada law to read the same as the federal regulations.

Ms. Hurst explained that because the ADC program is a federal program the Division must abide by their regulations, thus the Nevada law as currently written has not been enforceable for several years. Ms. Hurst submitted a copy of the U.S. Supreme Court decision as well as of the revised federal regulation on residency requirements as EXHIBIT B.

Mr. Stewart questioned the definition of "assistance unit", pointing out that although federal regulations require that the individuals involved must be relatives or step-relatives, the Statute does not state this. Ms. Hurst stated that since the federal law limits who can be in the assistance unit, it was not necessary to indicate this in AB 158.

Next to testify was Mike Harper, Supervisor Welfare Fraud Investigator. Mr. Harper noted that page 2, section 3 of this bill was intended to increase the penalty for fraudulently receiving welfare assistance from a gross misdemeanor to a felony. He explained this change would bring existing welfare statutes into conformance with general statutes under NRS 205. In addition, the change will provide necessary enforcement powers and criminal penalties to help combat welfare fraud in Nevada.

Mr. Harper said that AB 158 would increase the number of convictions, the number of court ordered restitutions, and ultimately result in significant savings to the State.

Mr. Harper explained to Mr. Price that this bill would result in more convictions because it is the policy of the Welfare Division to refer only felonies to the District Attorney for prosecution, since the District Attorney gives felonies priority over gross misdemeanors. Thus, more felony prosecution referrals would result in more convictions.

Mr. Harper also explained that most fraud cases have not involved an individual attempting to get more money in order to benefit the children, but instances of unreported income; i.e., double dipping. He noted that under the other statutes anything over \$100 is a felony. AB 158 would bring this statute in line with those other laws.



It was pointed out to Mr. Harper that the cost to the State of incarceration for a felony is \$12,000 per year. Mr. Harper replied that most convictions have received suspended sentences with probation and with restitution. Concerning the impact of additional prosecutions on the local courts, and the additional costs involved, Mr. Harper did not know if the increase in prosecutions would be great enough to require additional personnel. He added that the District Attorneys have indicated total cooperation in these prosecutions.

The issue of whether a person can collect welfare after being convicted of defrauding the State Welfare Division was raised. Ms. Hurst came forward to note that it is illegal to cut off an individual's welfare for such a crime; the person can defraud over and over again and still collect welfare. A State law to prevent someone from returning to the program until they make restitution to the State for fraud would go against federal laws, and because the ADC program is a federal program, the federal would supersede the State law.

Ms. Hurst further explained that the only time welfare can be cut off is if it is discovered that someone is currently collecting income which had not been reported; i.e., if the individual is in the process of defrauding the State, the payments are stopped. Normally, however, fraud is discovered after the fact; i.e., the person was working six months ago and collecting welfare at the same time, but is no longer working. In these cases, the payments are continued and all the Division can do is investigate and determine if and what kind of legal action should be taken.

Ms. Hurst stressed that the reason the Division wants to see this crime raised to a felony is because there are always going to be people in the welfare system who maliciously and intentionally try to defraud the system. This group, while a minority, will nevertheless always exist, and there must be some kind of deterrent for these people. The fact that a felony conviction makes it much more difficult to get a work card in this State will have an impact on many of these people.

In reply to Mrs. Cafferata, Mr. Harper said that there were 29 criminal prosecutions last year, 18 of which resulted in conviction and the remaining 11 are pending court action at this time. He estimated circa 700 fraud referrals were investigated last year.

Mr. Chaney pointed out that since felony convictions do impact on other aspects of an individual's life (can't get a work card, can't get ADC, etc.), perhaps the deterrent potential--which has not worked in other crimes--is not so great as the potential for creating more problems with these individuals.

The last two individuals to testify on this bill were Ms. Sharon McDonald, Welfare Deputy Attorney General, and Mr. Bill Furlong of the Nevada State Welfare Division.

Mr. Furlong pointed out that up until now the District Attorney has, in some cases, used the grand larceny statute to prosecute appropriate high value loss or welfare fraud cases, and that it has been brought to their attention that they can no longer do this as there are statutes which deal with welfare fraud. Thus the need for raising the crime to a felony.

Mr. Furlong and Ms. McDonald then reviewed additional changes which they felt should be made to AB 158, explaining the reasons for their suggestions. See EXHIBIT C.

As there was no further testimony on this bill, Chairman Stewart declared the public hearing on AB 158 closed. He then appointed a subcommittee to review those changes which had been recommended: Mr. Stewart, Chairman; Mr. Chaney and Ms. Ham.

Ms. Foley then moved for adjournment, as there was no further business, seconded by Mr. Sader and unanimously passed. The meeting adjourned at 10:50 a.m.

Respectfully submitted,

*Pamela B. Sleeper*

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Assembly Attache

# Battered elderly go unnoticed

Nevada State Journal

Dec. 3, 1979

BALTIMORE (AP) — While child abuse and wife beating have drawn considerable attention, another serious family problem — battered grandparents — has gone mostly unnoticed, a researcher says.

Abuse of the elderly may be as severe as child abuse, said Marilyn R. Block, a researcher for the University of Maryland's Center on Aging.

"It's sort of at the stage that child abuse was 20 years ago. People are horrified at the notion," said Ms. Block, who conducted a one-year, federally funded study of the elderly.

Most of the abuse was psychological rather than physical, she found. And, although the elderly were more likely to seek help than members of other abused groups, they were usually unsuccessful in getting it.

Most physical abuse involved neglect and blows resulting in welts and bruises rather than bone fractures.

"It seems to be slapping, shov-

ing and shaking rather than being hit with a fist," she said.

She added, however, the study did uncover some cases of beatings, fractured skulls and bones and being tied to a bed or chair.

Psychological abuse centered on verbal assaults, threats and fear. She also said some elderly people are isolated while their money and property is being stolen or misused by their children.

Other elderly persons are denied medication, treatment, eye glasses and false teeth, she said.

Ms. Block noted there are questions still to be answered, such as how many of the abused grandparents had abused their children and how many deaths result from abuse of the elderly.

She said abuse of the elderly can be harder to identify because senior citizens are not as visible to the public.

"If an elder stays in the house for a year, who's going to notice?" she said. "It makes it easier to ignore the problem."

She said abuse of the elderly can

be linked to Americans' stereotype of senior citizens.

"To be old is to be a burden, to be senile, to be useless. Most Americans don't like old people, don't want to be around them and they don't want to be bothered with them," she said.

She added that an adult offspring caring for a sick parent or grandparent expects the patient to be strong and when that's not true, the elder is "punished . . . for not behaving properly."

Ms. Block's study, conducted with a \$100,000 grant from the federal Administration on Aging, showed the typical abuser of the elderly was white, middle-aged, middle-class, female and Protestant. In addition, the abusers were most frequently adult children of the abused.

The victims, with an average age of 84 years and in poor health, were generally white, physically disabled, female, Protestant and lower-class to middle-class.

# Domestic violence *Nevada* against elderly *Sinclair* getting attention *Journal* 1979

BY GEORGE ESPER

**B**OSTON — An elderly woman is tied in her bed and left a loaf of bread for the weekend while her granddaughter's family goes camping. Her great-grandchildren hideously chop off her hair.

A son beats his mother for making herself a cup of coffee without his permission. She is forced to sleep in the basement with no bed and barely any blankets. She is yelled at and told how stupid and worthless she is.

A college student pushes his mother and father down the stairs at different times because he is upset about his father's drinking and because they have not given him the money he's been asking for. The mother suffers a broken arm, the father a fractured skull.

Case histories that dramatize a situation that's beginning to get increasing attention.

"Domestic violence against the elderly is a burgeoning national scandal," says Rep. Mario Biaggi, D-N.Y. chairman of the House Subcommittee on Human Services.

Biaggi says that until public hearings by House committees in the last year and a half, there had been no effort at federal initiatives because mistreatment of the elderly hadn't even been recognized as a widespread problem. Only now is specific legislation being considered.

James A. Bergman, regional director of Legal Research and Services for the Elderly in Boston, says many of the remedies for elderly abuse cases must originate with state and local action.

He says only about a fourth of the states have laws requiring doctors, nurses, social workers, police officers and others to report elderly abuse cases; to require an investigation and to provide such services as counseling, homemaking, transportation, legal counsel and emergency financial assistance to the victims.

"If we don't get laws passed similar to child abuse reporting laws, agencies are severely limited in their ability to help the victims," says Bergman.

Many people who suspect mistreatment of an elderly person are reluctant to report it because they don't want to get involved in a family dispute and fear being sued if they are wrong. Nor are professionals used to recognizing elder abuse.

Mandatory reporting laws would make them take a closer look and would give them immunity from civil suits. Such legislation would allow officials to determine whether there has been abuse or neglect, to remove the elderly victim from their environment.

"It's a multiple step solution," says Bergman. "First there has to be recognition that it exists because until that happens we'll find that easily three-quarters of the people who are victimized won't



come forward and even ask for help.

"There's a need for developing services not currently available. One thing we need is counseling programs for victims and abusers because a lot of it can only be worked out when the victim and abuser admit the situation and start talking through why it might be happening."

Unless severe harm has been done, Bergman feels counseling is a better alternative than filing criminal charges because the abused generally are unwilling to go to court.

"Even if the victim does go to court and there is a conviction, will it do anything? The odds are probably that they're going to be put on probation or parole by the court and they'll go right back home. So they've been convicted, but they're living in the same setting with the very person who testified against them."

There are no firm statistics on the number of elderly people abused by family members. Many victims don't want to talk about it or prosecute the offenders because of family ties. They are afraid of being treated worse or being removed from home and put in a nursing home.

A study of more than 2,000

George (Continued from page 1F)

for the adults by Dr. Richard Gelles, a University of Rhode Island sociologist, projects that a half million people over 65 are physically abused by family members each year. Biaggi says other studies put the number closer to a million.

"We are in the infancy of finding out what the incidence of abuse is," says Dr. Thomas H. D. Mahoney, secretary of the Massachusetts State Department of Elder Affairs. "This is the tip of the iceberg."

Bergman notes that the problem has come to light only in the last year or two, coinciding with the recent legislation enacted by the few states that have mandatory reporting laws.

Sociologists and social workers say elderly abuse is similar to child abuse, caused by stresses stemming from the demands of caring for the elderly, from worries over money. Some families, says Bergman, have a history of violence.

There are different forms of abuse.

Bergman says that in a Massachusetts survey of data from more than 300 persons working with the elderly, it was found that between 40 and 50 per cent of the victims were battered and had bruises, welts, cuts, punctures, bone fractures and dislocations and burns.

Other types of abuse included verbal harassment, withholding of food, mismanaging the victim's money, confinement, over-sedation and sexual abuse.

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Shapiro V. Thompson  
US Conn Dist Cal & Pa  
1969 89S Ct 1322, 394 US  
618 22 L. Ed 2d 600

EXHIBIT B

October term 1968

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394 US at 641

The Supreme Ct of the US in Shapiro Vs. Thompson  
394US618

decided 4/21/69

Found that to impose a durational residency requirement  
was a violation of Equal Protection Clause of the 14th  
Amendment

US Supreme Court  
Report states cite  
as 89S.Ct 1322 (1969)

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§ 233.40 Residence.

(a) Condition for plan approval. A State plan under title I, IV—A, X, XIV, or XVI of the Social Security Act may not impose any residence requirement which excludes any individual who is a resident of the State except as provided in paragraph (b) of this section. For purposes of this section:

(1) A resident of a State is one: (i) Who is living in the State voluntarily with the intention of making his or her home there and not for a temporary purpose. A child is a resident of the State in which he or she is living other than on a temporary basis. Residence may not depend upon the reason for which the individual entered the State, except insofar as it may bear upon

whether the individual is there voluntarily or for a temporary purpose; or

(ii) Who, is living in the State, is not receiving assistance from another State, and entered the State with a job commitment or seeking employment in the State (whether or not currently employed). Under this definition, the child is a resident of the State in which the caretaker is a resident.

(2) Residence is retained until abandoned. Temporary absence from the State, with subsequent returns to the State, or intent to return when the purposes of the absence have been accomplished, does not interrupt continuity of residence.

(b) Exception. A State plan under title I, X, XIV, or XVI need not include an individual who has been absent from the State for a period in excess of 90 consecutive days (regardless of whether the individual has maintained his or her residence in the State during this period) until he or she has been present in the State for a period of 30 consecutive days (or a shorter period specified by the State) in the case of such individual who has maintained residence in the State during such period of absence or for a period of 90 consecutive days (or a shorter period as specified by the State) in the case of any other such individual. An individual thus excluded under any such plan may not, as a consequence of that exclusion, be excluded from assistance under the State's title XIX plan if otherwise eligible under the title XIX plan (see 42 CFR 436.403).

[FR Doc. 80-12333 Filed 4-21-80; 8:45 am]

BILLING CODE 4110-07-M

XIX plan (see 42 CFR 436.403).

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EXHIBIT C

Sec 5. NRS 425.350 is hereby amended to read as follows:

425.350 Assignment of rights to support; appointment of administrator as attorney in fact; enforceability, amount of support (debt) rights.

1. A parent has duties to support his children which include, but are not limited to:

(a) Any duty arising at common law or under NRS 126.241.

(b) Any duty arising under an order made pursuant to NRS 201.020.

2. Except as limited by this section, 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 all rights to support from any other person which the 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.] family member or dependent child for whom the applicant or recipient is applying for or receiving assistance. 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. The amount of the assigned support rights shall not exceed the amount of public assistance [provided or to be provided.] paid or to be paid to the assistance unit. The division shall attempt to notify the responsible parent as soon as possible after assistance begins that the child is receiving public assistance.

[2.] 3. 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 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] assistance unit.

[3.] 4. The support rights assigned under subsection [1] 2 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.] 5. The amount of [this] a support [debt] right is:

(a) The amount specified in a court order of support [;] accrued and unpaid for 6 years preceding the commencement of the action for its enforcement; or

(b) if there is no court order of support, or if any court order provides that no support is due, not more than the amount determined in accordance with a formula adopted by the division pursuant to regulations promulgated by the Secretary of Health [Education and Welfare] and Human Services for the 3 years preceding the commencement of the action for its enforcement, less any amounts paid during that period.

[5.] 6. The assignment provided for in subsection [1] 2 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.

425.350, 1., Defines a parent's duty to support his/her child(ren). It statutorily establishes a child's right to support.

This provision will strengthen the prosecutor's position when arguing in behalf of children that have had their rights compromised away by previous inactions or inappropriate actions by their past representatives.

425.350, 2., This clarifies the assignment statute, providing that the assignment is an asset of the applicant or recipient, and that such applicant or recipient has assigned such assets to the State of Nevada; and, that the division must apply any collections from such assigned support against the balances of any unreimbursed assistance of the assistance unit. This will increase the Nevada AFDC collections by approximately \$5,000 annually, and will keep us in compliance with those federal regulations identified in Section 1.

425.350, 3., This changes the existing Section 2 to 3, and aligns payments against the assistance unit.

425.350, 4., This changes the existing 3 to 4, and aligns it with new assignment proposal.

425.350, 5., The existing statute provides a definition of "support debt", which is redefined in NRS 425.360. This has caused confusion as to the proper definition of "support debt", and provided no clear definition of how to calculate the "support rights" that are being assigned to the division.

The proposal made in section 5 identifies how to determine the particular support obligation, and the period that must be used in assessing the value of an assignment. The statutes of limitations specified in NRS 11.255 and 11.190 are applied as to when a court order exists, and as to when no court order exists.

The clarification of the procedures to be followed in establishing the amount of a support right would significantly increase the amounts of recovery of past support made by the division. It would also provide the prosecutors with authority to argue in behalf of children who have had their rights to support compromised away by past representatives. Too often these children end up on the public assistance rolls, and the parent or parents point to previous compromises that agreed to terminate the obligations of the absent parent to support the child(ren).



Sec. 6. NRS 425.360 is hereby amended to read as follows:

425.360 Creation of support debt; subrogation of division; when support debt may not be incurred.

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 (,) to the assistance unit; or
  - (b) The amount of support rights established pursuant to 425.350.
2. The division is (subrogated to the right of) entitled to the amount to which a dependent child or a person having the care, custody and control of a dependent child (to) would have been entitled for support and may 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 the public assistance unit. If a court enters judgment for an amount of support to be paid by a responsible parent, the division is (subrogated to) entitled to the amount of the debt created by such judgment to the extent of public assistance paid (,) to the assistance unit, and the judgment awarded shall be deemed to be in favor of the division. This (subrogation) entitlement applies but is not limited to a temporary (spouse support) order (,) for spousal support, a family maintenance order or an alimony order, whether or not allocated to the benefit of the child on the basis of providing necessities for the caretaker of the child, up to the amount paid by the division in public assistance to or for the benefit of (a dependent child.) the assistance unit. 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.

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425.360, 1., defines a "support debt", and changes (a) to the amount of assistance paid to the assistance unit, which tracks with the provisions of 425.350. The provisions of (c) and (d) also track with this same statute.

These provisions would increase the Nevada AFDC accounts receivable significantly, and would increase our AFDC collections by approximately \$5,000 annually. They would also change the untenable condition created by 1. (c), which requires that the responsible parent agree with the division before a debt could be established.

425.360, 2., clarifies the existing section, and clearly establishes that recovery collections are balanced against public assistance provided the assistance unit.

425.360, 3., No changes.

Sec. 7. NRS 425.400 is hereby amended to read as follows:

425.400 Division may establish registry; requests for information and assistance; immunity from action for damages for disclosure; availability of records.

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 as authorized by NRS 425.260 to 425.440, inclusive, 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
- (d) Financial and credit institutions; and
- (e) both public and private utilities.

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. A disclosure made in good faith pursuant to this subsection does not give rise to any action for damages for the disclosure.

3. Any record established pursuant to the provisions of this section is available only to: (the)

- (a) The attorney general; (, a)
- (b) A district attorney; (or a)
- (c) A court having jurisdiction in a paternity, support or abandonment proceeding or action; (, or to an)
- (d) The resident parent, legal guardian, attorney or agent of a child who is not receiving aid to dependent children pursuant to Title IV of the Social Security Act (42 U.S.C. §§ 601 et seq.); or
- (e) 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. 8. Section 2 of this act shall become effective upon passage and approval.

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425.400, 1., No changes.

425.400, 2., Extends authorization to request locate and financial information from financial and credit institutions, and public utilities. The financial and credit institutions would be a major resource in improvement of financial assessments. Such improvements could significantly increase our collections.

425.400, 3., Extends the use of parent locate functions to the resident parent or other representative of the child, which will bring us into compliance with 45 C.R. 302.35.