MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON HUMAN RESOURCES AND FACILITIES

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
April 28, 1981

The Senate Committee on Human Resources and Facilities was called to order by Vice Chairman James N. Kosinski at 8:11 a.m., Tuesday, April 28, 1981, in Room 323 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Joe Neal, Chairman
Senator James N. Kosinski, Vice Chairman
Senator Richard E. Blakemore
Senator Wilbur Faiss
Senator Virgil M. Getto
Senator James H. Bilbray

STAFF MEMBERS PRESENT:

Connie S. Richards, Committee Secretary

SENATE BILL NUMBER 573 (EXHIBIT C)

Mr. Jack Porter, Director, Department of Museums and History said the purpose of Senate Bill No. 573 is to permit the Department of Museums and History to deposit certain money in the state treasury and to allocate the interest earned to the department. This was requested by the Senate Finance Committee on February 26. It requires an amendment to NRS 356.087 to enable the department to deposit funds with the state treasurer and distribute the interest to the institutions on a quarterly basis.

Mr. Porter said the department believes that Senate Bill No. 573 will benefit both the institutions and the state, as it enables the department to approach private foundations for additional funds and to provide them with the assurances that both the funds and the accrued interest will go to the benefit of the agency rather than being deposited in the state general fund.

Vice Chairman Kosinski asked Mr. Porter whether he had

spoken with Mr. Crossley about the bill.

Mr. Porter said he had spoken with Mr. Crossley and he and Mr. Barrett both indicated that they feel this bill will provide "an overall cleaner operation to the department".

SENATE BILL NUMBER 574

Mr. John Frankovich, Attorney representing Sahara Tahoe Hotel and Casino spoke in support of Senate Bill No. 574. He explained that the federal clean air act was adopted in the early 1970s. It basically required states to develop plans for air pollution control which would cause the states to comply with established federal ambient air standards. The federal Environmental Protection Agency set these standards and each state had the obligation to develop its own plan which had to be approved by the EPA in order for them to meet those standards established by the federal government. The federal EPA also adopted a form or standard set of regulations which state that if states wish to adopt those standards, the EPA would automatically approve them. That plan adopted by the federal EPA in 1972 included a provision for indirect source review which is a review of an establishment that does not pollute but attracts automobiles that do pollute e.g. hotels, shopping centers, parking garages. Nevada was one of eight states adopting the standards mandated by the EPA or similar standards, including indirect source review in which an indirect source is required to acquire a permit from the state environmental protection commission before an indirect source may be constructed, including a parking garage in the case of the Sahara Tahoe Hotel and Casino.

Mr. Frankovich said many states felt the indirect source review was an "unneccessary hardship" and too theoretical and speculative as to whether this type of control would be effective and consequently, 42 states did not enact an indirect source review within their implementation plan. The states appraoched Congress on the matter and asked that body to "get the EPA off our backs". Congress asked the EPA to back off the indirect source review and the other states passed implementation plans which do not include indirect source review. Nevada had adopted a plan that included indirect source review and under the law at that time, it could not be revoked by the State of Nevada with-

out the approval of the EPA (EPA approval was required for any amendments to the plans). Congress effectively suspended all federal EPA indirect source review in 1977 and amended the clean air act to specifically tell the federal government to stay out of the indirect source review as it applies to the states. In 1975 Nevada passed a statute (NRS 445.493) which stated if the federal government did not adopt or approved and implemented indirect source review plans by January 1, 1977, the State of Nevada would have no authority to review them. Subsequently the federal government was not able to implement plans and January 1, 1977, the state agencies in Nevada lost all authority to review indirect sources. The 1975 amendment was then submitted to the EPA for approval; in 1977, the statute amended NRS 445.493 changing it to its present form which states that no agency in the state of Nevada has authority to review indirect sources. Amendments to change this were submitted to the EPA in 1977, but to date the EPA has not acted upon it. Sahara Tahoe received approval from the TRPA (Tahoe Regional Planning Agency) as well as Douglas County to construct a parking garage on the facility. After those approvals were obtained, the State of California instituted a litigation against the Sahara Tahoe, attacking the approval of the parking garage on a variety of grounds one of which was that the EPA had not approved the indirect source reviews that were in effect at that time and for that reason, Sahara Tahoe should be subject to the review. The State of Connecticut had a similar case in which environmental groups filed a case against a possible indirect source and a decision was made (The Manchester Case) which stated that until the EPA approved the deletion of indirect source review, it remains a part of the state's plan even though the state legislature may say the state cannot review them (and the state legislatures do have the authority to direct the agencies not to review the indirect sources). Federal Court Judge Reed has indicated he will rule the same in the case in Nevada though he has dismissed the other litigations against the Sahara Tahoe. He also indicated that it will be necessary for the Sahara Tahoe to obtain an air registration certificate. The problem exists that the state cannot issue such a certificate because the agencies do not have the authority (NRS 445.493); the EPA will not issue such a certificate (or at least have not to date), though the EPA claims they will approve the amendments.

The Sahara has waited for four years for the amendments to be approved by the EPA.

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Mr. Frankovich said Senate Bill No. 574 would give the department of environmental commission the authority to review indirect sources until such time as the EPA approves the amendments to the plan or until such time as it is no longer necessary for the EPA to approve the amendments.

Mr. Frankovich offered some suggested amendments to Senate Bill No. 574 and asked the committee to consider the bill, with the amendments, favorably. (Suggested amendments are Exhibit D.)

Mr. Bill Huss, Attorney representing Harrahs Tahoe reiterated what Mr. Frankovich had said and asked the committee to vote favorably on the bill.

Mr. Dick Serdoz, Air Quality Officer, State of Nevada, Department of Conservation and Natural Resources and Division of Environmental Protection said the department does not have funds to implement a bill such as Senate Bill No. 574 at this time. He said monies were not allocated for such provisions in the current budget or ~~the~~ in the proposed budget that has already been submitted for fiscal year 1981-82.

Senator Bilbray suggested an application fee be put in the bill to cover the implementation of the bill. He observed that if the indirect source paid money up front and paid additional fees as they occur, all costs incurred would be covered and at the same time would keep the bill from the finance committee and would not alter the budget.

Mr. Serdoz said it would take the agency at least 30 days to review each case, an additional 30 days for questions, and probably a total of 180 days to determine whether approval should be given.

Senator Kosinski asked Mr. Serdoz to meet with Mr. Frankovich and Mr. Huss to review any possible alternative programs that may be workable both for the agency as well as the indirect sources themselves. He asked them to return to the committee with any recommendations they may be able to make on Friday, May 1 at 8:00 a.m.

Ms. Irene Porter, Nevada Home Builders Association told the committee that the legislature did not originate the bill on its own but was "stampeded by well meaning people" and threatened with loss of federal highway funds in this state into

passing the original legislation. She said the legislature didn't like it at that time.

Ms. Porter suggested the use of private consulting firms who are experts in the field to be hired through the department and paid by the indirect sources. Those firms could be hired for a short period of time and eliminate the six month processing time quoted by Mr. Serdoz.

Ms. Porter said changing the word "interstate" to "bi-state" might keep the bill out of a Colorado River problem (the Colorado River compact involves several states), thus restricting the bill to Lake Tahoe.

Mr. Steve Balkenbush, Deputy Attorney General representing the Division of Environemtnal Protection observed that the state has been sued in similar circumstances in the Tahoe basin on reviews made by the state agency. He said the manner in which the review is to be made must be able to withstand judicial scrutiny.

Mr. Michael Sullivan, Supervisor, Environmental Affairs for Sierra Pacific Power Company spoke in support of Senate Bill No. 574 and suggested an amendment for the committee's consideration. (See Exhibit E.)

SENATE BILL NUMBER 576 (EXHIBIT F)

Mr. Keith MacDonald, Nevada State Welfare Division spoke in support of Senate Bill No. 576. He said the head of the department, Mr. Ace Martelle also conveyed his support. He presented suggested amendments to the committee for members consideration as well as a chart that shows states which have provided for fraud of providers giving services of care to welfare recipients. (See Exhibit G.)

Chairman Joe Neal returned to the chair at this time.

ASSEMBLY BILL NUMBER 158 (EXHIBIT H)

Ms. Sharon McDonald, Deputy Attorney General and Mr. Bill Furlong, Chief, Support Enforcement, Welfare Division provided information relative to Assembly Bill No. 158 to the committee. (See Exhibit I.)

Senator Bilbray moved to "Do Pass" Assembly Bill No. 158.

Senator Faiss seconded the motion.

The motion carried unanimously.

SENATE BILL NUMBER 315

The committee reviewed the amendment for Senate Bill No. 315. The members agreed that the amendment was written as prescribed by the committee.

The Chairman asked the committee to consider the following bill draft request for a committee introduction:

BILL DRAFT REQUEST NUMBER 39-560--Requires that court order for involuntary admission to mental health facilities be based on clear and convincing evidence. (SB 612)

Senator Kosinski moved to give Bill Draft Request No. 39-560 a committee introduction.

Senator Bilbray seconded the motion.

The motion carried. (Senators Getto and Blakemore were not present for the vote.)

SENATE BILL NUMBER 433

Senator Bilbray moved to "Do Pass" Senate Bill No. 433.

The motion died for the lack of a second.

SENATE BILL NUMBER 573 (EXHIBIT C)

Senator Bilbray moved to "Amend and Do Pass" amending the bill to conform with existing law (to eliminate the conflict).

Senator Kosinski seconded the motion.

The motion carried. (Senators Getto and Blakemore were not present for the vote.)

SENATE BILL NUMBER 576 (EXHIBIT F)

Senator Faiss moved to "Amend and Do Pass" Senate Bill No. 576 with the amendment suggested by the

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Welfare Division.

Senator Bilbray seconded the motion.

Senator Kosinski pointed out that the first suggested change should also be made on page 2, line 1 after the word "care".

Senator Faiss moved to include Senator Kosinski's change.

Senator Bilbray seconded the motion.

The motion carried. (Senators Blakemore and Getto were not present for the vote.)

There being no further business, the meeting adjourned at 9:36 a.m.

Respectfully submitted:

Connie S. Richards

Connie S. Richards, Committee Secretary

APPROVED BY:

Senator ~~Joe Neal~~, Chairman

DATE: April 30, 1981

SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on Human Resources and Facilities, Room 323

Day Tuesday, Date April 28, Time 8:00 a.m.

S. B. No. 573--Permits department of museums and history to deposit certain money in state treasury and allocates interest earned on deposit to department.

S. B. No. 574--Extends review of indirect sources of air pollution by certain state agencies.

S. B. No. 576--Provides penalty for fraud committed by physician providing care for medically indigent.

ATTENDANCE ROSTER FO[illegible] COM[illegible]TTEE MEETINGS

SENATE COMMITTEE ON HUMAN RESOURCES AND FACILITIES

DATE: April 28, 1981

EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
DICK SERDOZ	DEP - AIR QUALITY - 201 S FALL	885-4670
JOHN FRANKOVICH	241 RIFO RENO	
Scott Miller	State Museum	885-4810
Jack Porter	Dept of Museums & History	" 427
[illegible]	Historical Museum & Research	885-4720
John R. Bravo	Welfare Division	885-4771
MICHAEL P. SULLIVAN	SIERRA PACIFIC POWER CO RENO	789-4894

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EXHIBIT C

S. B. 573

SENATE BILL NO. 573—COMMITTEE ON FINANCE

APRIL 21, 1981

Referred to Committee on Human Resources and Facilities

SUMMARY—Permits department of museums and history to deposit certain money in state treasury and allocates interest earned on deposit to department. (BDR 33-1759)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to the department of museums and history; permitting the department to deposit certain money in the state treasury; allocating the interest earned on those deposits to the department; exempting that money from the requirements of the state budget act; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 381.090 is hereby amended to read as follows:

381.090 1. In addition to such [funds] *money* as may be dedicated, granted or otherwise received by the museum from private [individuals, firms, associations or corporations, funds] *persons, money* to carry out the provisions of NRS 381.010 to 381.190, inclusive, [shall] *must* be provided by legislative appropriation from the state general fund, and [shall] *must* be paid out on claims as other claims against the state are paid.

2. The director may audit and approve all bills, claims and accounts of the Nevada state museum.

3. All [moneys] *money* and property received by the museum through any grant, bequest or devise, and the proceeds from memberships, sales, interest or dividends from any sources other than appropriation by the legislature, are under the control of the director. The director [shall place such moneys in savings] *may deposit the money in:*

(a) Savings institutions to draw interest or be expended, invested and reinvested pursuant to the specific instructions of the donor, or, where no such specific instructions exist, in the sound discretion of the director. [Such moneys shall be budgeted and]

(b) The state treasury for credit to the state museum account which is hereby created in the state general fund.

All money received must be expended, within any limitations which may have been specified by particular donors, at the discretion of the director.

SEC. 2. NRS 353.253 is hereby amended to read as follows:

353.253 1. Every agency, department and institution of the State of Nevada shall deposit all [moneys] *money* received from the Federal Government, the counties or other sources, in the state treasury as provided in NRS 353.250 unless otherwise provided by law. These deposits may be made to work program accounts directly or to holding accounts. Nothing in this subsection [shall be construed to require] *requires* any agency, department or institution to deposit any [moneys] *money* in the state treasury which [are] *is* not required by law to be so deposited.

2. Transfers from holding accounts must be made to support approved work programs, and [shall] *must* be accomplished not later than the last working day of the month following each fiscal quarter. No provision of this chapter [shall be construed to authorize or direct] *authorizes or directs* the transfer, expenditure or reversion of any [moneys] *money* received from the Federal Government contrary to the conditions upon which the [same were] *money was* received or to any federal law or regulation respecting the accountability therefor.

3. On or before the last working day of the month following the 4th quarter of each fiscal year, transfers [shall] *must* be made so that all federal, county or other [funds that have] *money that has* been matched or otherwise earned for the completed fiscal period [shall] *will* have been moved to the proper work program account.

4. Any balance remaining in [such] *the* work program accounts [shall revert] *reverts* to the major state fund source supporting the agency, department or institution.

5. This section [shall] *does* not apply to the board of regents of the University of Nevada and the [Nevada state museum.] *department of museums and history.*

SEC. 3. NRS 356.087 is hereby amended to read as follows:

356.087 1. Except as provided in subsections 2 and 3, all interest paid on money belonging to the State of Nevada must be deposited in the state general fund.

2. At the end of each quarter of each fiscal year, the state treasurer shall:

(a) Compute the proportion of total deposits of state money pursuant to the provisions of this chapter which were attributable during the quarter to the state highway fund, the motor vehicle fund and the taxicab authority fund created by NRS 408.235, NRS 482.180 and NRS 706.8825, respectively;

(b) Apply such proportion to the total amount of interest paid during that quarter to the state treasurer on deposits of state money; and

(c) Credit to the state highway fund and the taxicab authority fund an amount equal to the amount arrived at by the computation in paragraph (b).

3. The proportionate shares of the interest earned and received by:

(a) The dairy commission fund;

(b) The legislators' retirement fund;

(c) The public employees' retirement fund;

(d) The state permanent school fund;
(e) The silicosis and disabled pension fund;
(f) *The state museum account;*
(g) The wildlife account; and
[(g)] *(h)* The Colorado River resources fund, the Colorado River research and development fund, the Eldorado Valley development fund, the Fort Mohave Valley development fund and other special revenue fund, capital projects construction fund, trust fund, enterprise fund or agency fund for which the division of Colorado River resources of the department of energy is responsible,

must be accounted for as separate income and assets of those respective funds and [account.] *accounts.*

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EXHIBIT D

PROPOSED AMENDMENTS TO S.B. 574

AN ACT relating to air pollution; extending the review of indirect sources by certain state agencies; and providing other matters properly relating thereto.

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

Section 1. NRS 445.493 is hereby amended to read as follows:

445.493 1. No regulation adopted pursuant to any provision of NRS 445.401 to 445.601, inclusive, may be enforced as to indirect sources if it is more stringent with respect to the size cutoffs established for designated areas pursuant to the United States Clean Air Act of 1963 and the rules and regulations adopted in furtherance thereof.

2. Except as provided in [subsection 3,] subsections 3 and 4, if the United States Environmental Protection Agency delays the effective date for enforcement of its indirect source regulations beyond January 17, 1977, the authority of a state agency or district board of health to review new indirect sources [shall expire.] expires. Those projects approved [prior to] before that date [shall] must continue under the guidelines established in their permit.

3. If the federal indirect source regulations become effective after January 17, 1977 [,then:] :

(a) The authority of a state agency to review new indirect sources may be exercised only:

(1) In the enforcement of the federal indirect source regulations; and

(2) To the extent enforcement by the state agency is required by the federal act.

(b) The governing body of each county and each [incorporated] city may enforce within its jurisdiction the federal indirect source regulations or any indirect source regulations it adopts which are no more strict than the federal indirect source regulations, to the extent [such] that local enforcement is not inconsistent with the requirements of the federal act.

4. The department and the commission may review indirect sources proposed to be constructed after June 30, 1981, and which are to be located within any region of the State for which there has been created by interstate compact a regional planning agency, until:

(a) The provisions of subsection 2 are approved by the United States Environmental Protection Agency as a modification of the state's implementation plan; or

(b) The approval of the United States Environmental Protection Agency for the deletion of indirect source review from the state's implementation plan becomes otherwise unnecessary.

In the Matter of)
SB 574, Noticed)
for hearing before the)
Committee on Human Resources)
and Facilities April 28, 1981)

EXHIBIT E

STATEMENT

My name is Michael Sullivan. I am the Supervisor of Environmental Affairs for Sierra Pacific Power Company. Our business address is P.O. Box 10100 Reno, Nevada 89520.

I am here today to propose a minor amendment to this bill, in the interest of solving the present problem with developers in the Tahoe Basin, while excluding the remainder of the State from the focus of the solution and likewise limiting the budget required to implement this provision.

Having discussed the intent of this Bill with The Division of Environmental Protection Staff, it is clear that the "problem" is confined to the Lake Tahoe Basin. Apparantly, since the U.S. Environmental Protection Agency has not had time to approve the State's S.I.P. (State Implementation Plan) amendment for the Lake Tahoe Basin, deleting "Indirect Source" review, these old regulations which were repealed by the State Environmental Commission (whose Statutory authority to administer this program expired on January 17, 1977) are still enforceable in the eyes of the Tahoe Regional Planning Agency.

As written, the bill is applicable state wide which I don't think is its intent. Along with subjecting all qualifying developers in the state to indirect source review in this interum period until EPA approves the Nevada SIP for the Lake Tahoe Basin, The Division of Environmental Protection will no doubt have to staff up to administer this program.

We propose the following amendment. NRS445.493

4. The department and the commission may review any property . . . <u>within the Lake Tahoe Basin</u> . . . which becomes an indirect source after June 30, 1981, unless:

Thank you for your consideration

EXHIBIT F

S. B. 576

SENATE BILL NO. 576—COMMITTEE ON JUDICIARY

APRIL 21, 1981

Referred to Committee on Human Resources and Facilities

SUMMARY—Provides penalty for fraud committed by physician providing care for medically indigent. (BDR 38-1634)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to state aid to the medically indigent; providing penalties for fraud committed by a physician; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 428 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. A provider of medical or remedial care who contracts with the division pursuant to NRS 428.330 shall not knowingly:

(a) Obtain or attempt to obtain by deception any payment to which he is not entitled.

(b) Apply for or accept any payment to which he is not entitled.

(c) Accept any payment in an amount greater than that to which he is entitled.

(d) Falsify any report or document required by this state or the Federal Government relating to payments for services rendered and supplies furnished by the provider.

2. In addition to the penalties prescribed in chapter 205 of NRS, a provider of medical or remedial care who willfully violates the provisions of subsection 1 is liable for:

(a) An amount equal to three times the amount unlawfully obtained;

(b) Not less than $500 for each act of deception; and

(c) Any reasonable expense incurred by the state in enforcing this section.

3. The state welfare administrator may terminate a contract entered into pursuant to NRS 428.330, and refuse to renew it for at least 5 years upon the conviction of or upon entry of judgment against a provider of medical or remedial care or his authorized agent or officer for any violation of this section.

4. A provider of medical or remedial care who unknowingly accepts a payment in excess of the amount to which he is entitled is liable for the repayment of the excess amount.

5. The attorney general shall cause appropriate legal action to be taken on behalf of the state to enforce the provisions of this section.

6. Any penalty collected pursuant to this section is hereby appropriated to provide medical aid to the indigent.

EXHIBIT G

Amendments - S.B. 576

Lines 3,4 page 1.

1. A provider of medical (or) care, remedial care, or other services who contracts with the Divison pursuant to NRS 428.330 shal not knowingly:

Lines 6,7 page 2.

6. Any penalty collected pursuant to this section is hereby appropriated to provide medical aid to the indigent (.)through programs administered by the State of Nevada Welfare Division.

EXHIBIT G

	Repayment	Penalty	Interest	Recovery Costs	Fine	Imprisonment
Washington	x	x	x		x	
Oregon	x	x		x	x	x
California	x	x			x	x
Idaho	x	x	x			
Illinois	x	x	x		x	
Ohio	x	x	x	x	x	
Tennessee	x				x	x
Michigan	x	x			x	x
Mississippi	x	x			x	x
Massachusetts	x	x			x	
Maryland	x				x	x
New York	x		x			

EXHIBIT H

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

A. B. 158

ASSEMBLY BILL NO. 158—ASSEMBLYMAN STEWART

FEBRUARY 13, 1981

Referred to Committee on Judiciary

SUMMARY—Revises statutes relating to aid to and support of dependent children. (BDR 38-184)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to dependent children; revising statutes relating to the program for aid to dependent children; liberalizing residency requirements to carry out federal court decisions; amending provisions relating to the duty of support and the collection of support; broadening the availability of records in the central registry on deserting responsible parents; providing penalties; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 425.060 is hereby amended to read as follows:

425.060 Assistance [shall] *must* be provided any dependent child who is otherwise eligible [who:

1. Has resided in the state for 1 year immediately preceding the application for such assistance; or

2. Was born within 1 year immediately preceding the application for such assistance if the parent or other relative with whom the child is living has resided in the state for 1 year immediately preceding the birth; or

3. Was born within 1 year immediately preceding the application for such assistance if the parent or other relative with whom the child is living has resided in the state for 1 year immediately preceding the application.] *if:*

1. He is living in this state and he or the caretaker relative with whom he lives is living in this state voluntarily with the intention of making his home in this state and not for a temporary purpose; or

2. At the time of application, he is living with a caretaker relative who:

(a) Is living in this state;

(b) Is not receiving assistance from another state; and

(c) Entered this state with the promise of a job or is seeking employment in this state.

SEC. 2. NRS 425.250 is hereby amended to read as follows:

425.250 1. [Any] *Every* 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] *and designedly, by any false pretense, false or misleading statement, impersonation or misrepresentation, obtains monetary or any other assistance having a value of $100 or more, whether by one act or a series of acts,* with intent to *cheat, defraud or* defeat the purposes of NRS 425.010 to 425.250, inclusive, [is guilty of a gross misdemeanor.] *shall be punished by imprisonment in the state prison for not less than 1 year nor more than 10 years, or by a fine of not more than $10,000, or by both fine and imprisonment, and be required to make full restitution of the monetary loss or monetary value of services so fraudulently obtained, if it can be done.*

2. For the purposes of subsection 1, whenever a recipient of assistance under the provisions of 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] *the* 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] *the* payment was fraudulently received.

SEC. 3. NRS 425.350 is hereby amended to read as follows:

425.350 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 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] *must* not exceed the amount of public assistance provided or to be provided. *The division shall attempt to notify the responsible parent as soon as possible after assistance begins that the child is receiving public assistance.*

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.

[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 support debt 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 Resources for the 3 years preceding the commencement of the action for its enforcement, less any amounts paid during that period.*

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.

SEC. 4. NRS 425.360 is hereby amended to read as follows:

425.360 1. Any payment of public assistance creates a support debt to the division by the responsible parent, *whether or not the parent received prior notice that his child was receiving public assistance. The support debt is* 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 the formula adopted by the division pursuant to regulations promulgated by the Secretary of Health and Human Resources or* under any written agreement between the division and a responsible parent.

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 public assistance. 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, 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 necessaries 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 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. 5. NRS 425.400 is hereby amended to read as follows:

425.400 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 [.] ;

(d) Financial institutions and entities which are in the business of providing credit reports; and

(e) Public 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. 6. Section 1 of this act shall become effective upon passage and approval.

(30)

EXHIBIT I

RICHARD H. BRYAN
ATTORNEY GENERAL

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
WELFARE DIVISION
HEROES MEMORIAL BUILDING
CAPITOL COMPLEX
CARSON CITY 89710
TELEPHONE (702) 885-5035

WILBUR H. SPRINKEL
CLAUDIA K. CORMIER
SHARON L. McDONALD
Deputy Attorneys General

April 24, 1981

The Honorable Joe Neal
Chairman
Committee on Human Resources
Nevada State Legislature
Carson City, Nevada 89710

Re: A.B. 158

Dear Senator Neal:

At the work session held on April 23, 1981, certain members of your committee had further questions regarding A.B. 158. I would hope the following answers those questions:

1. Revision to NRS 425.060.

   a. Attached as Exhibit "1" is a copy of the Social Security Act of 1935, specifically Sec. 402(b), which allows a one-year residency requirement (durational residency) as a condition for welfare eligibility. This federal statute has not been amended or revised, despite the fact that it has been deemed unconstitutional by the U. S. Supreme Court. As you know, Supreme Court case law is superior to any federal or state law which may be in conflict with the holding in a Supreme Court case.

   b. Attached as Exhibit "2" are the first three pages of Shapiro v. Thompson, a 1969 Supreme Court case which involved a constitutional challenge to the one-year residency requirements for welfare eligibility that existed in the state statutes of Connecticut, Pennsylvania and the District of Columbia. Those state statutes were similar to the current NRS 425.060, and they were all based on Section 402(b) of the Social Security Act; 402(b) itself was not challenged. The Supreme Court struck down those specific state court statutes saying that any durational residency requirement (i.e., one year) as a condition precedent to welfare eligibility is unconstitutional as a violation of the right to travel,

EXHIBIT I

equal protection and due process under the U. S. Constitution. Therefore, a logical extension of the holding in Shapiro would dictate that all states which have a one-year residency requirement as a condition for welfare eligibility are not in compliance with federal law and the U. S. Constitution. The specific holding in Shapiro is delineated at pp. 619 and 620 of the copies attached.

c. Attached as Exhibit "3" is a copy of 45 CFR 233.40(a), the federal regulation which governs the state plans. As you can see, this regulation is in compliance with Shapiro and in fact, the language proposed for NRS 425.060 is very similar to the federal regulation.

It is the desire of the Welfare Division to be in compliance with U. S. Supreme Court and federal guidelines in the operation of its program in Nevada. As you know, if we are out of compliance, federal participation monies will be withheld from Nevada.

2. As to Senator Kosinski's question regarding the language "caretaker relative," I am attaching as Exhibit "4" a copy of Sec. 406 of the Social Security Act. Sec. 406(a) describes the bloodlines necessary to qualify as a relative and Sec. 406(c) uses the language "relative with whom any dependent child is living." It was thought by the Welfare Division that the words "caretaker relative" were less cumbersome than the words underlined above, inasmuch as they mean the same thing. To specifically answer Senator Kosinski's question, a child who is living with a "friend," who is not a blood relative, or who has not qualified legally as a foster parent, is not eligible for ADC in Nevada.

3. Regarding the new language used at NRS 425.400(3)(d), I am attaching as Exhibit "5" Section 453 of the Social Security Act. Subsection (c)(3) delineates to whom information may be released. As you can see, the language in the Nevada statute is identical to the federal statute.

I am delivering sufficient copies of this letter for all of your Committee members.

If you have any further questions, I would be happy to answer them.

Very truly yours,

RICHARD H. BRYAN
Attorney General

By: Sharon L. McDonald
Sharon L. McDonald
Deputy Attorney General
Counsel to Welfare Division

SLM:dcm

Attachments

EXHIBIT I

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law. Information respecting recipients.

(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is— Notification to State agency of suspension of payments; when.

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

TITLE IV—GRANTS TO STATES FOR AID TO DEPENDENT CHILDREN

Title IV—Grants to States for aid to dependent children.

APPROPRIATION

Appropriation.

SECTION 401. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy dependent children, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $24,750,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Board, State plans for aid to dependent children. Amount authorized. Post, pp. 1113, 1603. Availability.

STATE PLANS FOR AID TO DEPENDENT CHILDREN

State plans for aid to dependent children. Requirements.

SEC. 402. (a) A State plan for aid to dependent children must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim with respect to aid to a dependent child is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; and (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports.

(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve any plan which imposes as a condition of eligibility for aid to dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application Approval of plan by Board.

Exhibit "1"

1133

 EXHIBIT I

for such aid, or (2) who was born within the State within one year immediately preceding the application, if its mother has resided in the State for one year immediately preceding the birth.

Payment to States.

PAYMENT TO STATES

Amount to be paid quarterly.

SEC. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to dependent children, for each quarter, beginning with the quarter commencing July 1, 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-third of the total of the sums expended during such quarter under such plan, not counting so much of such expenditure with respect to any dependent child for any month as exceeds $18, or if there is more than one dependent child in the same home, as exceeds $18 for any month with respect to one such dependent child and $12 for such month with respect to each of the other dependent children.

To be one-third of amount expended under State plan.

When more than one dependent child.

Method of computing and paying amounts.

(b) The method of computing and paying such amounts shall be as follows:

Estimates to be submitted prior to beginning of quarter.

Basis of estimates.

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than two-thirds of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of dependent children in the State, and (C) such other investigation as the Board may find necessary.

Certification of amount by Board; adjustments.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

Payments; prior audit waived.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified.

Operation of State plans.

OPERATION OF STATE PLANS

Payments withheld when State not complying with approved plan; notice and hearing.

SEC. 404. In the case of any State plan for aid to dependent children which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence requirement prohibited by section 402 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 402 (a) to be included in the plan;

 EXHIBIT I

for such aid, or (2) who was born within the State within one year immediately preceding the application, if its mother has resided in the State for one year immediately preceding the birth.

Payment to States.

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Amount to be paid quarterly.

SEC. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to dependent children, for each quarter, beginning with the quarter commencing July 1, 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-third of the total of the sums expended during such quarter under such plan, not counting so much of such expenditure with respect to any dependent child for any month as exceeds $18, or if there is more than one dependent child in the same home, as exceeds $18 for any month with respect to one such dependent child and $12 for such month with respect to each of the other dependent children.

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Payments; prior audit waived.

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Operation of State plans.

OPERATION OF STATE PLANS

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SEC. 404. In the case of any State plan for aid to dependent children which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence requirement prohibited by section 402 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 402 (a) to be included in the plan;

administering or supervising the administration of the plan of another State under this part—

(A) in locating a parent residing in such State (whether or not permanently) against whom a petition has been filed in a court of competent jurisdiction of such other State for the support and maintenance of a child or children of such parent with respect to whom aid is being provided under the plan of such other State, and

(B) in securing compliance or good faith partial compliance by a parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of a child or children of such parent with respect to whom aid is being provided under the plan of such other State;

and (23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted; and (24) if an individual is receiving benefits under subchapter XVI of this chapter, then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this subchapter and his income and resources shall not be counted as income and resources of a family under this subchapter.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes as a condition of eligibility for aid to families with dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth.

(c) The Secretary shall, on the basis of his review of the reports received from the States under clause (15) of subsection (a) of this section, compile such data as he believes necessary and from time to time publish his findings as to the effectiveness of the programs developed and administered by the States under such clause. The Secretary shall annually report to the Congress (with the first such report being made on or before July 1, 1970) on the programs developed and administered by each State under such clause (15).

Aug. 14, 1935, c. 531, Title IV, § 402, 49 Stat. 627; Aug. 10, 1939, c. 666, Title IV, § 401, 53 Stat. 1379; 1946 Reorg.Plan No. 2, § 4, eff.

EXHIBIT

Subsec. (a). Pub.L. 87-543, §§ 103, 104(a)(3)(A), (5)(A), 106(b), substituted "aid and services to needy families with children" for "aid to dependent children", in the opening provisions, and "aid to families with dependent children" for "aid to dependent children" wherever appearing in pars. (4), (7) to (10), added the provision respecting the consideration of expenses reasonably attributable to the earning of income and the exception provision in par. (7), and added par. (13).

Subsec. (b). Pub.L. 87-543, § 104(a)(3)(B), substituted "aid to families with dependent children" for "aid to dependent children".

1956 Amendment. Subsec. (a)(12). Act Aug. 1, 1956 added par. (12).

1950 Amendment. Subsec. (a). Act Aug. 28, 1950, § 321(a), (b), substituted in par. (4) "provide for granting * * * with reasonableness" for "provide for granting to any individual, whose claim with respect to aid to a dependent child is denied, an opportunity for a fair hearing before such State agency", and added pars. (9) to (11).

Subsec. (b)(2). Act Aug. 28, 1950, § 321(c), prevented denial of aid in cases where the child of parents normally resident in the State happens to be born across the State line.

1939 Amendment. Subsec. (a). Act Aug. 10, 1939 amended par. (5) generally and added pars. (7) and (8).

Effective Date of 1972 Amendment. Section 299E(c) of Pub.L. 92-603 provided in part that the amendment to subsec. (a)(13)(A) by section 299E(c) of Pub.L. 92-603 shall be effective Jan. 1, 1973.

Section 414(b) of Pub.L. 92-603 provided that: "The amendments made by subsection (a) [enacting subsec. (a)(24) of this section] shall be effective on and after January 1, 1973."

Effective Date of 1971 Amendment. Section 3(c) of Pub.L. 92-223 provided that: "The amendments made by this section [enacting subsec. (a)(19)(G) of this section and sections 603(c), (d), 631(b), (c), 632(f), and 634(b) of this title; amending subsec. (a)(15), (19)(A)-(C), (F) of this section and sections 607(b)(2)(A), (c), 630, 632(b)(1), (3), (d), 633(a), (b), (e), (1), (2)(A), (B), (f)-(h), 635(a), (b), 636(b), 638, 639, 641(a), 642, 643, and 644(a), (c)(1), (d) of this title; and repealing subsec. (a)(19)(E) of this section and section 633(e)(3) of this title] shall, except as otherwise specified herein, take effect on July 1, 1972."

Effective Date of 1968 Amendment. Section 201(g) of Pub.L. 90-248 provided that:

"(1) The amendments made by subsections (a), (b), (d), (e), and (f) of this section [to subsecs. (a)(13) to (18), (c) of this section and sections 603(a)(3), (c), 606(d) and 608(d) of this title] shall be effective July 1, 1968 (or earlier if the State plan so provides); except that (A) if on the date of enactment of this Act [Jan. 2, 1968] the agency of a State referred to in section 402(a)(3) of the Social Security Act [subsec. (a)(3) of this section] is different from the agency of such State responsible for administering the plan for child-welfare services developed pursuant to part B of title IV of the Social Security Act [part B of this subchapter] the provisions of section 402(a)(15)(F) of such Act [subsec. (a)(15)(F) of this section] (added thereto by subsection (a) of this section) shall not apply with respect to such agencies but only so long as such agencies of the State are different, and (B) if on such date the local agency administering the plan of a State under part A of title IV of such Act [this part] in a political subdivision is different from the local agency in such subdivision administering the State's plan for child-welfare services developed pursuant to part B of title IV of such Act [part B of this subchapter] the provisions of such section 402(a)(15)(F) [subsec. (a)(15)(F) of this section] shall not apply with respect to such agencies but only so long as such local agencies are different.

"(2) The amendment made by subsection (c) [to section 603(a)(3)(A) of this title] shall apply with respect to services furnished after June 30, 1968, or furnished after such earlier date as the State plan may provide with respect to the amendment made by paragraph (1) of this subsection."

Section 202(b) of Pub.L. 90-248 provided that amendment of subsec. (a)(7) and enactment of subsec. (a)(8) of this section by such section 202(b) shall be effective July 1, 1969.

Section 204(c)(1) of Pub.L. 90-248 provided that: "The amendment made by subsection (b) [enacting subsec. (a)(19) of this section] shall in the case of any State be effective on July 1, 1968, or if a statute of such State prevents it from complying with the requirements of such amendment on such date, such amendment shall with respect to such State be effective on July 1, 1969; except such

EXHIBIT 1

amendment shall be effective on
the case of any State), but no
April 1, 1968, if a modification
State plan to comply with such
ment is approved on an earlier da

Amendment of subsec. (a)(5) by
210(a)(2) of Pub.L. 90-248 effec
1, 1969, or, if earlier (with resp
State's plan approved under th
on the date as of which the
tion of the State plan to com
such amendment is approved.
tion 210(b) of Pub.L. 90-248,
as a note under section 302 of t

Section 211(a) of Pub.L. 90-
vided in part that enactment o
(a)(21) and (22) shall be effectiv
1969.

Effective Date of 1965 Am
Section 403(b) of Pub.L. 89-97
in part that the amendment o
(a)(7) of this section by said
403(b) was effective Oct. 1, 1965.

Section 410 of Pub.L. 89-97 pr
part that the amendment o
(a)(7) of this section by said se
was effective July 1, 1965.

Effective Date of 1962 Amendm
actment of subsec. (a)(13) and
ment of subsec. (a)(7) of this s
sections 103, 106 of Pub.L. 87-543
July 1, 1963, see section 202(a)
87-543, set out as a note unde
302 of this title.

Effective Date of 1956 Am
Amendment of this section by
1, 1956 effective July 1, 1957, se
314 [315] of Act Aug. 1, 1956, set
note under section 302 of this titl

Effective Date of 1950 Am
Subsecs. (a) and (c) of section 3
Aug. 28, 1950, provided in p
amendments of subsections (a)
of this section shall become effe
1, 1951.

Effective Date of 1939 Am
Amendment by Act Aug. 10, 19
subsec. (a)(7) and (8) was made
July 1, 1941, by section 40(b)
Aug. 10, 1939. Subsec. (a)(5) wa
ed by said Act without specific
as to effective date.

Transfer of Functions. F
powers, and duties of Secr
Health, Education, and Welfa
subsec. (a)(5)(A) of this secti
ferred to United States Civi
Commission, see section 1228(a)
of this title.

All functions of the Federal
Administrator were transferre

SHAPIRO, COMMISSIONER OF WELFARE OF CONNECTICUT *v.* THOMPSON.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT.

EXHIBIT I

No. 9. Argued May 1, 1968.—Reargued October 23-24, 1968.—Decided April 21, 1969.*

These appeals are from decisions of three-judge District Courts holding unconstitutional Connecticut, Pennsylvania, or District of Columbia statutory provisions which deny welfare assistance to persons who are residents and meet all other eligibility requirements except that they have not resided within the jurisdiction for at least a year immediately preceding their applications for assistance. Appellees' main contention on reargument is that the prohibition of benefits to residents of less than one year creates a classification which constitutes an invidious discrimination denying them equal protection of the laws. Appellants argue that the waiting period is needed to preserve the fiscal integrity of their public assistance programs, as persons who require welfare assistance during their first year of residence are likely to become continuing burdens on welfare programs. Appellants also seek to justify the classification as a permissible attempt to discourage indigents from entering a State solely to obtain larger benefits, and to distinguish between new and old residents on the basis of the tax contributions they have made to the community. Certain appellants rely in addition on the following administrative and related governmental objectives: facilitating the planning of welfare budgets, providing an objective test of residency, minimizing the opportunity for recipients fraudulently to receive payments from more than one jurisdiction, and encouraging early entry of new residents into the labor force. Connecticut and Pennsylvania also argue that Congress approved the imposition of the one-year requirement in § 402 (b) of the Social Security Act. *Held:*

*Together with No. 33, *Washington et al. v. Legrant et al.*, on appeal from the United States District Court for the District of Columbia, argued May 1, 1968, and No. 34, *Reynolds et al. v. Smith et al.*, on appeal from the United States District Court for the Eastern District of Pennsylvania, argued May 1-2, 1968, both reargued on October 23-24, 1968.

Exhibit 11-2

(2)

Syllabus.

1. The statutory prohibition of benefits to residents of less than a year creates a classification which denies equal protection of the laws because the interests allegedly served by the classification either may not constitutionally be promoted by government or are not compelling governmental interests. P. 627.

2. Since the Constitution guarantees the right of interstate movement, the purpose of deterring the migration of indigents into a State is impermissible and cannot serve to justify the classification created by the one-year waiting period. Pp. 629–631.

3. A State may no more try to fence out those indigents who seek higher welfare payments than it may try to fence out indigents generally. Pp. 631–632.

4. The classification may not be sustained as an attempt to distinguish between new and old residents on the basis of the contribution they have made to the community through the payment of taxes because the Equal Protection Clause prohibits the States from apportioning benefits or services on the basis of the past tax contributions of its citizens. Pp. 632–633.

5. In moving from jurisdiction to jurisdiction appellees were exercising a constitutional right, and any classification which penalizes the exercise of that right, unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional. P. 634.

6. Appellants do not use and have no need to use the one-year requirement for the administrative and governmental purposes suggested, and under the standard of a *compelling* state interest, that requirement clearly violates the Equal Protection Clause. Pp. 634–638.

7. Section 402 (b) of the Social Security Act does not render the waiting-period requirements constitutional. Pp. 638–641.

(a) That section on its face does not approve, much less prescribe, a one-year requirement, and the legislative history reveals that Congress' purpose was to curb hardships resulting from excessive residence requirements and not to approve or prescribe any waiting period. Pp. 639–640.

(b) Assuming, *arguendo*, that Congress did approve the use of a one-year waiting period, it is the responsive *state* legislation and not § 402 (b) which infringes constitutional rights. P. 641.

(c) If the constitutionality of § 402 (b) were at issue, that provision, insofar as it permits the one-year waiting period, would be unconstitutional, as Congress may not authorize the States to violate the Equal Protection Clause. P. 641.

EXHIBIT I

5. The waiting-period requirement in the District of Columbia Code, adopted by Congress as an exercise of federal power, is an unconstitutional discrimination which violates the Due Process Clause of the Fifth Amendment. Pp. 641–642.

No. 9, 270 F. Supp. 331; No. 33, 279 F. Supp. 22; and No. 34, 2[illegible] F. Supp. 65, affirmed.

Francis J. MacGregor, Assistant Attorney General of Connecticut, argued the cause for appellant in No. 9 on the original argument and on the reargument. With him on the brief on the original argument was *Robert K. Killian*, Attorney General. *Richard W. Barton* argued the cause for appellants in No. 33 on the original argument and on the reargument. With him on the brief on the original argument were *Charles T. Duncan* and *Hubert B. Fair*. *William C. Sennett*, Attorney General of Pennsylvania, argued the cause for appellants in No. 34 on the original argument and on the reargument. With him on the brief on the reargument was *Edgar R. Casper*, Deputy Attorney General, and on the original argument were *Mr. Casper* and *Edward Friedman*.

Archibald Cox argued the cause for appellees in all three cases on the reargument. With him on the brief were *Peter S. Smith* and *Howard Lesnick*. *Brian L. Hollander* argued the cause *pro hac vice* for appellee in No. 9 on the original argument. With him on the brief were *Norman Dorsen* and *William D. Graham*. *Mr. Smith* argued the cause for appellees in No. 33 on the original argument. With him on the b[illegible] were *Joel J. Rabin*, *Jonathan Weiss*, and *Joseph F. Du[illegible]n*. *Thomas K. Gilhool* argued the cause *pro hac vice* for appellees in No. 34 on the original argument. With him on the brief were *Harvey N. Schmidt*, *Paul Bender*, and *Mr. Lesnick*.

Lorna Lauhead Williams, Special Assistant Attorney General, argued the cause for the State of Iowa as *amicus curiae* in support of appellants in all three cases on the original argument and on the reargument. With

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her on the briefs o[illegible]
Turner, Attorney Ge[illegible]

Briefs of *amici cur[illegible]* were filed by *Dav[illegible]* *Ruth M. Ferrell*, De[illegible] of Delaware; by [illegible] *Winifred A. Dun[illegible]* *Charles S. Lope[illegible]* *C. Martin*, Attorney [illegible] Attorney General A[illegible] Attorney General [illegible] *Bailey*, Assistant At[illegible] Texas; and by *Th[illegible]* *Elizabeth Pal[illegible]* State of California.

Briefs of *amici cur[illegible]* were filed by *Arth[illegible]* Aid Association; by [illegible] Society of Alameda C[illegible] *Olrand*, *Laurence R.* the American Civil *amicus curiae* in supp[illegible] by *John F. Nagle* fo[illegible] Blind. Briefs of *am[illegible]* in all three cases were [illegible] *Buchsbaum* for the C[illegible] *Robison*, *Carlos Jer[illegible]* can Jewish Congress [illegible] and *Leah Marks* for t[illegible] and Law et al.

MR. JUSTICE BRENN[illegible] Court.

These three a[illegible] reargument. 392 U[illegible] from a decision of [illegible]

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§ 233.30 Age.

(a) *Condition for plan approval.* A State plan under title I or XVI of the Social Security Act may not impose any age requirement of more than 65 years.

(b) *Federal financial participation.* (1) Federal financial participation is available in financial assistance provided to otherwise eligible persons who were, for any portion of the month for which assistance is paid:

(i) In OAA or AABD with respect to the aged, 65 years of age or over;

(ii) In AFDC, under 18 years of age; or under 21 years of age if a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;

(iii) In AB or AABD with respect to the blind, any age;

(iv) In APTD or AABD with respect to the disabled, 18 years of age or older.

(2) Federal determination of whether an individual meets the age requirements of the Social Security Act will be made according to the common-law method (under which a specific age is attained the day before the anniversary of birth), unless the State plan specifies that the popular usage method (under which an age is attained on the anniversary of birth), is used.

(3) The State agency may adopt an arbitrary date such as July 1 as the point from which age will be computed in all instances where the month of an individual's birth is not available, but the year can be established.

§ 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).

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XIX plan (see 42 CFR 436.403).

*SSA-AT-79-30
7-17-79
Effective 10-15-79
and SSA-AT-80-17
5-16-80

*SSA-AT-80-17 (OFA)
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tive as provided in section 1111, or in the imposition of criminal or civil penalties authorized under State law if it is determined by a court of competent jurisdiction that such relative is not using or has not used for the benefit of the child any such payments made for that purpose; and the provision of such services or advice by the State agency (or the taking of the action specified in such advice) shall not serve as a basis for withholding funds from such State under section 404 and shall not prevent such payments with respect to such child from being considered aid to families with dependent children.

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Definitions

Sec. 406. When used in this part—

(a) The term "dependent child" means a needy child (1) 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, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;

(b) The term "aid to families with dependent children" means money payments with respect to, or (if provided in or after the third month before the month in which the recipient makes application for aid) 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 (1) money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 407), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 402(a)(7)) which do not meet the preceding requirements of this subsection but which would meet such requirements except that such payments are made to another

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individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approval under section 402 includes provision for—

(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

(B) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary;

(D) aid in the form of foster home care in behalf of children described in section 408(a); and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made.

Payments with respect to a dependent child which are intended to enable the recipient to pay for specific goods, services, or items recognized by the State agency as a part of the child's need under the State plan may (in the discretion of the State or local agency administering the plan in the political subdivision) be made, pursuant to a determination referred to in clause (2)(A), in the form of checks drawn jointly to the order of the recipient and the person furnishing such goods, services, or items and negotiable only upon endorsement by both such recipient and such person; and payments so made shall be considered for all of the purposes of this part to be payments described in clause (2). Whenever payments with respect to a dependent child are made in the manner described in clause (2) (including payments described in the preceding sentence), a statement of the specific reasons for making such payments in that manner (on which the determination under clause (2)(A) was based) shall be placed

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in the file maintained with respect to such child by the State or local agency administering the State plan in the political subdivision.[1]

(c) The term "relative with whom any dependent child is living" means the individual who is one of the relatives specified in subsection (a) and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home.

(d) [Repealed].[2]

(e)(1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child

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[1] Subsection (b) was amended by sec. 3(a) of P.L. 95-171.

[2] In the case of Guam, Puerto Rico, and the Virgin Islands, section 406(d) reads as follows:

"(d) The term 'family services' means services to a family or any member thereof for the purposes of preserving, rehabilitating, reuniting, or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum self-support and personal independence.".

(D) describes the projected resource requirements for staff and other needs, and the resources available or expected to be available to meet such requirements.

(E) contains an implementation plan and backup procedures to handle possible failures.

(F) contains a summary of proposed improvement of such management system in terms of qualitative and quantitative benefits, and

(G) provides such other information as the Secretary determines under regulation is necessary.

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(2)(A) The Secretary shall through the separate organizational unit established pursuant to subsection (a), on a continuing basis, review, assess, and inspect the planning, design, and operation of, management information systems referred to in section 455(a)(3), with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under paragraph (1) and the conditions specified under section 454(16).

(B) If the Secretary finds with respect to any statewide management information system referred to in section 455(a)(3) that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automatic data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.[1]

(e) The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 455(a)(3).[2]

Parent Locator Service

Sec. 453. (a) The Secretary shall establish and conduct a Parent Locator Service, under the direction of the designee of the Secretary referred to in section 452(a), which shall be used to obtain and transmit to any authorized person (as defined in subsection (c)) information as to the whereabouts of any absent parent when such information is to be used to locate such parent for the purpose of enforcing support obligations against such parent.

(b) Upon request, filed in accordance with subsection (d) of any authorized person (as defined in subsection (c)) for the most recent address and place of employment of any absent parent, the Secretary

[1] Subsec. (d) was added by sec. 405 of P.L. 96-265 effective July 1, 1981.
[2] Subsec. (e) was added by sec. 455 of P.L. 96-265 effective July 1, 1981.

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shall, notwithstanding any other provision of law, provide through the Parent Locator Service such information to such person, if such information—

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(1) is contained in any files or records maintained by the Secretary or by the Department of Health, Education, and Welfare; or

(2) is not contained in such files or records, but can be obtained by the Secretary, under the authority conferred by subsection (e), from any other department, agency, or instrumentality, or the United States or of any State.

No information shall be disclosed to any person if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. The Secretary shall give priority to requests made by any authorized person described in subsection (c)(1).

(c) As used in subsection (a), the term "authorized person" means—

(1) any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under such plans to seek to recover any amounts owed as child support (including, when authorized under the State plan, any official of a political subdivision);

(2) the court which has authority to issue an order against an absent parent for the support and maintenance of a child, or any agent of such court; and

(3) the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving aid under part A of this title) (as determined by regulations prescribed by the Secretary) without regard to the existence of a court order against an absent parent who has a duty to support and maintain any such child.

(d) A request for information under this section shall be filed in such manner and form as the Secretary shall by regulation prescribe and shall be accompanied or supported by such documents as the Secretary may determine to be necessary.

(e)(1) Whenever the Secretary receives a request submitted under subsection (b) which he is reasonably satisfied meets the criteria established by subsections (a), (b), and (c), he shall promptly undertake to provide the information requested from the files and records maintained by any of the departments, agencies, or instrumentalities of the United States or of any State.

(2) Notwithstanding any other provision of law, whenever the individual who is the head of any department, agency, or instrumentality of the United States receives a request from the Secretary for information authorized to be provided by the Secretary under this section, such individual shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality with a view to determining whether the information