MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
May 18, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 8:10 a.m., Monday, May 17, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator William J. Raggio
Senator Jean Ford
Senator Sue Wagner

COMMITTEE MEMBERS ABSENT:

Senator Don W. Ashworth
Senator William H. Hernstadt

STAFF MEMBER PRESENT:

Shirley LaBadie, Committee Secretary

ASSEMBLY BILL NO. 531--Requires semiannual judicial hearings after placement of foster child.

Mr. Michael Fondi, Carson City District Judge, stated he had provided a letter to the committee with reference to A. B. No. 531. See Exhibit C attached hereto. Mr. Fondi stated he was opposed to the bill because it requires a mandatory hearing at least semi-annually. The judge now has the option to do this semi-annually or as often as he deems necessary. This bill imposes additional duties on the judges and many of the judges outside of the larger jurisdictions do all of the juvenile matters themselves. They do not have a special master and this would create additional burdens. The bill also requires reports and very specific information in them from the child protective officer and it adds the welfare worker, and so forth. Severe budget cuts have occurred and approximately 35 positions will have to be eliminated. One of those positions is the probation officer.

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Chairman Close advised the committee they had processed a similar bill which was S. B. No. 578.

Mr. Fondi said he did not see any problem with the existing law. It is totally adequate to have a semi-annual review but without having to hold a hearing. He said the hearing are being held now as often as necessary to find a placement for a child. He advised the committee prior to Judge Mendoza being the juvenile court judge in Las Vegas, he had been doing reviews as a courtesy basis rather than transport juveniles back to Las Vegas. He said in working with the welfare department, they will pursue every alternative to put a child back into his home. Every child in a foster home or institution costs the state money. Mr. Fondi said this bill would make it mandatory and impose additional duties on the courts and probation departments and is not a proper solution to the problem. The fiscal impact will be greater because of the court calendars and hearings. He said some parts of the state have different resources and they are limited in some areas.

Senator Keith Ashworth asked if a population clause would help. Mr. Fondi said from his standpoint, it would be acceptable. Mr. Fondi added there is not a fiscal note on the bill and that is not right because there would be an impact.

Judge John Mendoza, 8th Judicial District, Las Vegas, stated he wanted to respond to comments of Judge Fondi. He said the bill was not drafted in the way he had requested, therefore, changes had been made. He said the letter which Judge Fondi had introduced indicated Judge Griffin in support also. Judge Mendoza indicated Judge Griffin opposed to A. B. No. 531. He said he had talked to Judge Griffin and he had explained the changes. Judge Mendoza said in talking to Judge Griffin, Judge Griffin had authorized him to represent to the committee that he did not object to the bill. Judge Fondi stated this had not been indicated to him, in fact Judge Griffin had requested his name be included on the letter presented to the committee in opposition to A. B. No. 531.

Judge Mendoza stated these types of hearing have been conducted in Carson City for the last four years. Judge Ray, a referee appointed by the judges has conducted hearings the same as those in Clark County. Judge Ray had informed him that there would be no increase in cost or fiscal impact to him. There has been no fiscal impact in Clark County. Judge Mendoza said he had the support of the welfare department in Clark County. They had devised the forms and plans which are currently being used.

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Judge Fondi stated he took issue with two things stated by Judge Mendoza. A formal hearing is not required in every case, only when warranted or necessitated. Also the last words he had with Judge Griffin was to speak in opposition to the bill and Judge Griffin agreed with him.

Senator Raggio advised the committee a letter from Judge Bowen, Washoe County had been placed before them which stated Judge Bowen was in opposition to A. B. No. 531. See Exhibit D attached hereto.

Judge Mendoza informed the committee the bill as drafted is the way the current system is in Clark County, with the exception they do not mandate the presence of the children. They do not bring children back to Clark County to a hearing. In Washoe county it is done on a select basis. In Nye and Mineral county Judge Becho conducts the full hearings as is done in Clark County.

Judge Mendoza stated with regard to S. B. No. 578 which is a similar bill, it does not comply with federal law. Judge Mendoza stated testimony had been given as to an increase in paperwork. He did not feel this would be a problem. Caseworkers have to prepare written reports for the court now. A judicial review is required and there have been two interpretations of this. Some have interpreted it to mean a paper review. All of them interpret it to mean a written social report and a written review report. This is required under all circumstances. The intent of the bill is to conform with federal law and good practice.

Judge Mendoza stated in breaking down the total reviews and the time spent, it approximates six minutes a case. Chairman Close asked how much time would be involved to have a social worker prepare a report. Judge Mendoza answered it would be approximately two hours because they are doing it already. This bill only requires that additional matters would be put in the review. The form is not being changed. Judge Mendoza referred to the form and presented a copy to the committee. See Exhibit E attached hereto. He said the Welfare Division had a turnover of 140% in two years in personnel. In asking workers for the treatment plan or case plan, they would state they did not know because they had not read through the case notes. What is being codified into law is that there shall be a case plan and review system. The federal law requires that for Nevada to be able to receive $900,000 in foster care, there has to be a state plan which is uniform. Judge Mendoza presented the committee with a copy of the federal statute which provides that the plan be effective in all political subdivision of the state and administered by them and mandatory to them all. See Exhibit F attached hereto.

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Judge Mendoza stated S. B. No. 578 is incomplete and is not in conformity with the federal law. It does not conform because the law requires annual reviews after the eighteen months review. The misconception of the Welfare Division is that they are entitled to review annually. This is not true, that came from the C. F. R. which has not been approved. It is not in the federal statutes that there can be annual review. They specify a six month review, then it requires an eighteen month dispositional hearing. He reviewed the federal regulations in this respect.

Judge Mendoza further stated S. B. No. 578 does not provide for procedural safeguards which are required by federal law. He said this legislature needs to approve a bill or lose federal funds in the amount of approximately $900,000.

Senator Keith Ashworth stated there would be a fiscal impact because of the bill because an attorney has to make up the report. Judge Mendoza stated, no a caseworker does the report. Attorney generals would not be required to be present under this bill. The only areas which may have an impact are Washoe and the smaller counties.

Senator Wagner asked if the juvenile court judge in Washoe had been advised of A. B. No. 531. Judge Mendoza stated yes, Chuck McGee had been called and he agreed with the philosophy of the bill but had concern with the number of hearings. He had received a distorted view about the number of hearings. He was concerned with the length of time. Judge Mendoza stated Mr. Sprinkle had told him about the lengthy hearings and that is not the case. He said there are some cases with longer hearings, but overall they are relatively short. An attorney representing the welfare division had indicated there would be several hundred additional cases needing hearings every few months. This is not the case, there would not be that many cases.

Senator Ford stated she did not see any requirements in A. B. No. 531 for an administrative review. Judge Mendoza stated it could be one or the other, however it does not spell that out in the law. Senator Ford suggested it be put in the law to provide for an administrative review.

Ms. Gloria Handley, Nevada State Welfare Division stated she would like to address the question of what is not required by Public Law 96.272. Under Section 471a, states in order for a state to be eligible for payments under this plan, it shall have a plan approved by the secretary which---then the requirements are listed. When the federal law addresses the state plan, it relates to the document which the welfare division prepares and submits to H.H.S for their approval. However it has not been

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approved but the money is being received now. Much of the federal requirements do not become effective until October 1, 1981. An entire new plan is being submitted.

There are three basic requirements to be met. One is a case plan which does not need to be contained in state law. The next requirement is that there be a six month review, either a judicial or an administrative review. There appears to be no provision that an administrative review must be provided for in state law. The administrative review is far less expensive than the judicial review. The third requirement is in relation to the eighteen month dispositional hearing. The interpretation on this hearing is that it must occur eighteen months after a child has been in foster care. The law does not state there must be an annual hearing thereafter but it does state periodically thereafter and it does appear that one year is periodic.

Senator Ford asked if it would be feasible to write into law the provision for administrative review. Ms. Handley answered there is possibility the law will self-destruct if a block grant funding goes into effect. There will probably be a 10% cut back in social services staff as of July 1, 1981, based on the governor's recommended budget.

Chairman Close stated Judge Mendoza had indicated there would be no additional costs for operating this program. Mr. William LaBadie, Nevada State Welfare answered there is no question but there would be additional costs. More staff time will be involved in Washoe and the smaller counties. They project approximately a $96,000 increase in cost. There is a tremendous staff time cost in Clark County. An additional attorney will be needed to represent the department in court.

Mr. Wilbur H. Sprinkle, Deputy Attorney General, Counsel for the Nevada State Welfare Division, stated 90% of his time is spent on juvenile matters. In Washoe County there are four deputy district attorneys which spend their time exclusively in juvenile matters. Nevada State Welfare only has the services of one attorney, myself. He stated another attorney would definitely be needed.

Senator Ford asked if the fiscal impact had been presented to the Finance Committee. Mr. LaBadie responded it was mentioned in the Assembly Judiciary Committee but a note had not been prepared. Ms. Handley stated one of the problems with this law is that final regulations have never been approved by the Secretary of H. H. S. The regulations which came out in December have been scrapped and will be rewritten. It is difficult to build a program when the final requirements are not available.

Chairman Close stated he would like some kind of recommendation which would be to the best interest of the child. Ms. Handley stated the welfare department has reduced the median length of care for a child to approximately 13 months. Therefore very few of the children are staying in care beyond eighteen months. On comparison on a nationwide basis, it was two and one-half years based on 1977 statistics.

Senator Raggio questioned the administrative review and if it would meet the criteria of the federal law. Ms. Handley stated she felt it would. There is an administrative review board set up in all of the district offices except Winnemuca and Ely. Senator Raggio asked if this would meet the requirements of the law. Judge Mendoza answered yes, but asked if a review of approximately 1,000 cases would be done. He said the statute reads a review has to be made every six months. Ms. Handley stated she agreed with that statement.

Senator Wagner asked if an administrative review could be used in the smaller counties and Washoe. Judge Mendoza stated the reports will have to be prepared regardless. He did not see any problem with the law if that is the decision of the committee. He said the law requires a case plan which must be reviewed. It has been found that agencies of the welfare division have not been doing this. Under the present review system, an outsider must be present at the hearing to moniter the agencies.

Senator Raggio stated he was concerned with putting these requirements into state law. There may be a funding problem in the future. He felt a minimal which is required to be in the statute and leave the rest to conformity by the appropriate agencies and allow them some flexibility if there is a change.

Judge Mendoza outlined some of the requirements of the federal law which had been incorporated in A. B. No. 531. In regard to a hearing, it must be contained in a statute. Senator Raggio stated if it is placed in state law, the agency is compelled to follow it until the legislature meets again. Judge Mendoza said it is mandated or advisable, that is the best approach.

Judge Mendoza mentioned a letter from the Welfare Divison in regard to an increase in adoptions of special needs children in southern Nevada. It had been accomplished in large part by community support. He stated this occurred from the adoption of the plan. Ms. Mary Lee, Nevada State Welfare stated the division had increased the amount to be paid for adoption subsidities. Because of this, more foster parents felt they could afford to adopt. This is one of the reasons for the increase.

Senator Wagner stated from listening to the testimony that Judge Mendoza wanted to moniter the agency, but had not stated it was for the best interest of the child, although may have been implied. She stated it appears that Judge Mendoza and the Welfare Division are advisorys in every bill that comes before the committee. It appears to be a territorial struggle. Judge Mendoza stated he did not feel that way, he had the best interest of children in mind. He felt the proposed bill, S. B. No. 578 would provide for an eighteen month hearings, then set forth a case plan. This would destroy a child's opportunity to be adopted. Judge Mendoza stated it is tough when you proposed a bill and have opposition to it.

Mr. Sprinkle said he had an additional comment that S. B. No. 578 would go to an eighteen month review. There is a six month review law in the statutes now, do not forget that. Every judicial court in the state is required to conduct a review of every child's case every six months. This is not just Nevada Welfare Division involved, but also Washoe County. Judge Bowen the juvenile judge of Washoe County is opposed to A. B. No. 531, as well is Master McGee. Any figures which have been contributed to him were not presented by him. The number of cases the welfare division has is only one component part of the whole juvenile justice system of northern Nevada.

Senator Ford asked if it would be advisable to require a written report. Mr. LaBadie stated he was not aware of any office which the court does not require a written report. It goes through the master or judge, then a formal hearing can be called if necessary. Judge Mendoza stated in his testimony that Judge Becho holds formal hearings, he does not. His office was called and he follows the same procedures as most small counties. A written report from the caseworker every six months is required, then reviewed by the judge. He asked that the division not be binded into a law which they cannot follow because the money or staff is not available.

Ms. Lee stated there has been a recent change in the philosophy so far as children in the childrens home in the past few years. They are being freed and placed for adoption in greater numbers, while in the past they were staying in the homes or returned to their own home and not being freed for adoption. That has made a large impact on the program. Senator Wagner suggested then the plan used in Clark County was not the only reason.

Judge Mendoza stated the procedures in the childrens home were changed because it had suggested it to the director. Judge Mendoza referred to a case in which a child had been in fifteen different homes. This occurred because of poor placement and

inconsistent casework. This resulted because of an agency failure and he stated this is still happening.

Mr. Frank Sullivan, Chief Probation Officer, Washoe County, stated he had spoke with Judge Bowen and Judge Bowen is opposed to A. B. No. 531 and the inclusion of a hearing and all people having to be notified. There is a cost factor involved with a judge, district attorney, or public defender when they have to be brought in. People are notified now but no hearing is being held. Another objection to the bill is if a parent does not come to the hearing, parental rights can be terminated. This is page 2, line 39 of the bill.

Senator Ford asked how the judge would conform to the federal law if he is opposed to the bill. Mr. Sullivan stated in working with Judge Bowen, he found that he would probably say he would not follow the law. He said a review can be done whenever the judge feels it is necessary.

ASSEMBLY BILL NO. 533--Clarifies circumstances under which bail may be denied on charge of first degree murder.

Mr. Ray Jefferson, Clark County District Attorney Office, stated the bill is a codification of a July 21, 1980 Supreme Court case. See Exhibit G attached hereto. The wording of the bill says it limits and this means everyone must be admitted to bail, except in a case where the proof is evident and the presumption strong of an aggravating circumstance which is a prerequisite before the jury can impose the death penalty. He said the Nevada constitution in Article I, Section 7, provides that bail must be admitted except in capital offenses. If language could be substituted on line 4 of the bill, and read arrested for a capital offense, and delete murder of the first degree, then if at a later time an offense is made punishable by death by this body, then it would not have to be changed. He felt the constitutional language should be used which deals with the penalty rather than talking about the offense. He said in talking with the assembly committee, they have indicated they are in agreement.

ASSEMBLY BILL NO. 481--Makes various administrative changes to law regulating juvenile correctional institutions.

Mr. Frank Carmen, Administrator, Youth Services Division, State of Nevada, stated he had requested A. B. No. 481. The first section deals with the Nevada Youth Training Center and the next section deals with the Girls Training Center in Caliente.

He said the changes have come about because of the legislative audit bureau's recommendation. Specifically on the contracting with coaches, the superintendent can only pay overtime to those people who are willing to coach. He is setting a limit on that of 80 hours which amounts to $800. There is concern by the auditors, those who are coaching could in fact return to the state and sue them for the additional money above the 80 hours they have put into coaching. It would be better to contract for someone for a flat fee beyond their salary to coach a sport. Presently under a contract agreement, the employee would not be able to back out as easily. This would allow them to find persons willing to sign a contract to coach.

Mr. Carmen referred to Section 3, subsection 2 of the bill. He said it was amended from the original bill. They had asked for language which would specifically spell out that the chief probation officer in any county would be the one responsible for collecting the fees. When a child is ordered placed in a training center, the judge orders the parents to pay a maintenance fee. 75% of the parents do not make those payments. It was requested by the Governor's Management Task Force that the youth services division institute some kind of inhouse policy to collect those fees. The estimated amount is $40,000. He said they were somewhat successful in this but in some cases people ignored letters from the division or the attorney general office. He said it was better to get the district attorney or chief probation in the individual county to enforce the judge's order. That was amended out and now says those payments will be made to the superintendent of the school and it is left up to the division.

He said the last change is in in Section 6, subsection 3 which changes the language to read youth parole bureau, rather than school.

SENATE BILL NO. 35--Redefines "cheating" and increases penalties for gaming offenses. (Exhibit H)

Senator Ford moved to amend and Do Pass S. B. No. 35

Senator Wagner seconded the motion.

The motion carried. (Senators Hernstadt and Don Ashworth were absent for the vote.

Chairman Close asked for a motion to approve the minutes.

Senator Raggio moved to approve the minutes of April 28, 29, and 30, May 1, 4, 5, 6, 7, 8, 12 and 13, 1981.

Senator Ford seconded the motion.

The motion carried.

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SENATE BILL NO. 670--Reduces showing required in hearing on notice of pendency of action affecting real property. (Exhibit I)

Chairman Close advised the committee Frank Daykin had proposed some amendments to S. B. No. 670 and asked that the committee accept the amendments and vote the bill out of committee.

Senator Raggio moved to amend and do Pass S. B. No. 670.

Senator Wagner seconded the motion.

The motion carried. (Senators Hernstadt and Don Ashworth were absent for the vote.

There being no further business, the meeting adjourned at 10:00 a.m.

Respectfully submitted:

Shirley LaBadie, Secretary

APPROVED BY:

Senator Melvin D. Close, Chairman

DATE: May 28, 1981

1994

SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.

Day Monday, Date May 18, Time 8:00 a.m.

A. B. No. 481--Makes various administrative changes to law regulating juvenile correctional institutions.

A. B. No. 531--Requires semiannual judicial hearings after placement of foster child.

A. B. No. 533--Clarifies circumstances under which bail may be denied on charge of first degree murder.

A. B. No. 560--Makes various administrative changes concerning commission on crimes, delinquency and corrections.

ATTENDANCE ROSTER FOR COMMITTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY

DATE: May 18, 1981

EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
J. Mendoza	8th Jud D. Ct	642-9090
Mary Lee	State Welfare 251 Jeanell CC	885-4771
Bill Spaulding	Welfare Dep A.G.	3237606
Gloria Handley	Welfare Division	885-4771
Michael Fondi	District Court Judge - CC	882-1619
[illegible]	welfare	4771
David Sullivan	Washoe Co Probation	785-4275
FRANK CARMEN	NEW. South Services Division	885-5952
E. Springer	Supreme Court	885 5190
Ron Fellers	Clark Co DA's office	3864011
BART JACKA	DMV	~~385~~ 885-5375
Michael de la Torre	Dept. of Law Enforcement Assist	885-4404

1996

First Judicial District Court
Carson City & Storey County
State of Nevada

Michael E Fondi
District Judge

198 N Carson Street
Carson City, Nevada 89701
(702) 882-1619

April 29, 1981

EXHIBIT C

William Labadie
Deputy Administrator
for Social Services
Nevada State Welfare
251 Jeanell, Room 6
Carson City, Nevada 89701

Re: AB 531

Dear Mr. Labadie:

At your request, Judge Michael R. Griffin and I have each reviewed AB 531.

It is our mutual opinion that this legislation is unnecessary and will prove unduly burdensome upon our Court by requiring semi-annual hearings as opposed to reviews of foster homes or other similar institutional placements.

We believe the law as it exists at the present time is totally adequate to meet our responsibilities and needs in this area.

Judge Griffin has authorized me to speak on his behalf and express that our sentiments are the same on this piece of legislation.

It also appears to us that the provisions which would require written reports from our probation officers or welfare workers or others involved in these placements are extremely burdensome. It would probably result in the necessity to employ many more people to prepare these reports and check out the facts that would be required to be contained therein than we are presently able to employ. The obvious

result would be increased budget problems on both the local and state level which I believe should and can be avoided, at the present time given the economic outlook of the state and local governments.

Sincerely,

MICHAEL E. FONDI
District Judge

MEF:mw

GRANT L. BOWEN
JUDGE, DEPARTMENT NO. 1
SECOND JUDICIAL DISTRICT COURT
RENO, NEVADA 89504
May 13, 1981

EXHIBIT D

The Honorable William J. Raggio
Nevada State Senate
Capitol Complex
Carson City, Nevada 89710

Dear Bill:

Assembly Bill No. 531 has just been brought to my attention. A copy of the Bill is attached for your easy reference.

In conjunction with all other people connected with the administration of juvenile matters and as the Judge presiding over the Juvenile Department here in Washoe County, I am concerned about this proposed legislation. If the Bill passes, I understand that we would have to have several hundred additional hearings every few months. The burden that would impose on our Juvenile Justice System would be intolerable, and I don't think it is necessary.

Please compare Senate Bill No. 578, a copy of which is also attached. I am told that this legislation has already been approved by both the Senate and the Assembly. It requires a dispositional hearing within eighteen (18) months of the first placement and annually thereafter.

For your information, we do conduct more frequent reviews whenever it appears to be indicated and I feel that the discretion to hold the hearings should remain with the Judge and the Juvenile Master.

I will list without much comment several other problems I have with Assembly Bill No. 531:

1. There appears to be no funding attached to this legislation and the agencies involved tell me that the financial impact would be a very substantial one.

2. The Bill appears to require specific findings according to several categories. In this respect, the review hearing has more specific findings than the original placement order and I question the necessity.

3. The legislation requires a "recording." Our experience with recordings in the local courts has been poor.

4. Under subsection 5, the Rules of Evidence are not applicable. In my experience, the Rules of Evidence contribute to an orderly presentation and do not depart from the proper scope of the hearing.

In summary, I think that the implementation and scheduling of hearings to review long term placements of children should remain within the sound discretion of the Juvenile Court. I think Assembly Bill No. 531 too narrowly circumscribes that discretion and creates unnecessary court time and expense. I would appreciate your sharing my views with your colleagues in the Senate and particularly the Judiciary Committee.

With best wishes and kind regards, I am

Sincerely yours,

Grant Bowen

GLB:db

Attachments

EXHIBIT E

CASE NO. J8244

DEPT. NO. V

MAY 14 2 07 PM '81

JANEY CHRISTENSEN

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK
SITTING IN SEPARATE SESSION AS A JUVENILE COURT

In the Matter of:

THOMAS , Age 16 years,
Date of Birth: July 16, 1964
, Age 14 years,
Date of Birth: May 17, 1967

Minors.

TREATMENT PLAN AND FORMAL COURT REVIEW
May 19, 1981

I. REASON FOR CUSTODY AND WARDSHIP: On February 28, 1972, and were made Wards of the Court and custody was given to Nevada State Welfare Division for appropriate placement due to Mrs. 's lack of supervision of the subject minors. Their father is deceased and parental rights of Mrs. were terminated on March 8, 1974.

II. TERMS OF COURT ORDER: Custody was to remain with Nevada State Welfare Division for appropriate placement.

III. OBJECTIVE OF THE DIVISION:

A. Proper care and placement of and during the time they are in custody of the Division.

IV. THE SPECIFIC STEPS TO ACHIEVE THE OBJECTIVE: and have remained in the home of their brother-in-law and sister, and since the last Formal Review. Mrs. is the payee for the boy Social Security benefits of $267.50 each per month. The Nevada State Welfare Division provides medical coverage through the Title XIX Program however no foster home payment is made to Mr. and Mrs at this time.

With respect to housing, income, employment, and overall stability

ATTORNEY GENERAL'S OFFICE
LAS VEGAS, NEVADA
101 LV

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of the family unit, there have been no changes. The boys are well adjusted and happy, and their needs are well meet.

Both boys are performing satisfactorily in school. attends Valley High School and will be graduated in May, 1982. He would like to go to college but lacks the financial resources to pay the tuition and book costs. He has considered joining the Armed Services in order to take advantage of educational benefits offered upon completion of a tour of duty. Mrs is somewhat fearful of his doing so because of his possible involvement in armed combat. At her request information was provided to regarding financial aid that may be available so that he could go to college directly from high school without having to join the Army. , is presently considering this option as well as the Armed Services. Mrs. has stated that finds high school unchallenging but has realized the necessity of going and finishing.

attends Cannon Junior High School and is performing satisfactorily also.

Neither boy presents discipline or behavior problems.

The possiblity of the adoption of the boys by Mr. and Mrs. has been at issue for some time. Mr. and Mrs. and the boys do not want adoption under any circumstances and feel antagonized by the Division's bringing the matter to there attention repeatedly. Mrs. feels she needs the medical benefits provided by Nevada State Welfare Division custody as the boys, unless adopted, are not eligible for coverage under her insurance plan. Benefits through her husbands employment were discontinued approximately six months ago and have not yet been resumed. The boys would have no eligibility anyway unless adopted.

The income of the boys makes them ineligible for ADC, therefore, Title XIX eligibility can not be provided through this program. The boys' good health makes Title XIX by virtue a disability impossible.

A subsidy has been discussed, the Division has offered to assist in securing legal representation to begin the adoption process at little or no cost, and it has been explained that the boys need not drop other family ties or change their surnames. Every option has been explored to render the family more accepting of adoption as a vehicle for terminating the involvement of the Division and the Court in their lives. The District Office Manager has personally counseled them regarding this.

The family does not want adoption under any circumstances presented and their objections to this are philosophical and not only financial. The boys and Mr. and Mrs. . feel adoption by one's sister is inappropriate, particularly at their present ages. They do not see their legal status as a problem.

V. SPECIFIC THE ROLE OF THE DIVISION: The Divisions plan for the children is to leave them in placement with their sister Mr. , to honor the commitment made years ago to continue their medical coverage, and to assist with college planning. Although adoptive profiles on both boys were circulated at the time they became free, efforts to recruit an alternative placement will not be made due to the boys' feelings in the matter at this time.

VI. MONITORING AND IMPLEMENTING THE TREATMENT PLAN: A file will be kept at the Division Offices on and . It will include all court records, as well as any record of services rendered by the Division or other agencies. Also, the file will include a record of all contacts with Mr. and Mrs. as well as with anyone else relevant to the case.

Copies of all relevant reports and papers will be attached to the Formal Review filed with the Court each six months. In this manner the Court will also be made aware of any progress or deficiencies as they occur.

WHEREFORE, the Division respectfully

/////

RECOMMENDS that and remain Wards of the Court and in the custody of the Nevada State Welfare Division; it is further

RECOMMENDED that this case be reviewed in six months.

Respectfully submitted,

Karen Popo
District Office Manager II
Nevada State Welfare Division

By: Joan E. Pritchard
Joan E. Pritchard
Social Work Supervisor

Submitted by:

RICHARD H. BRYAN
Attorney General, State of Nevada

By: Joan E. Pritchard for Suzanne P. Warren
Deputy Attorney General
Counsel to Welfare Division
700 Belrose Street
Las Vegas, Nevada 89107

ATTORNEY GENERAL'S OFFICE
LAS VEGAS, NEVADA
103 LV

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ADOPTION ASSISTANCE AND CHILD WELFARE ACT OF 1980

EXHIBIT F

Public Law 96-272
96th Congress
An Act

To establish a program of adoption assistance, to strengthen the program of foster care assistance for needy and dependent children, to improve the child welfare, social services, and aid to families with dependent children programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act, with the following table of contents, may be cited as the "Adoption Assistance and Child Welfare Act of 1980".

TABLE OF CONTENTS

TITLE I—FOSTER CARE AND ADOPTION ASSISTANCE

FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

SEC. 101. (a)(1) Title IV of the Social Security Act is amended by adding at the end thereof the following new part:

"PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

"PURPOSE; APPROPRIATION

"SEC. 470. For the purpose of enabling each State to provide, in appropriate cases, foster care and adoption assistance for children who otherwise would be eligible for assistance under the State's plan approved under part A (or, in the case of adoption assistance, would be eligible for benefits under title XVI), there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1980) such sums as may be necessary to carry out the provisions of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans under this part.

"STATE PLAN FOR FOSTER CARE AND ADOPTION ASSISTANCE

"SEC. 471. (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

"(1) provides for foster care maintenance payments in accordance with section 472 and for adoption assistance payments in accordance with section 473;

"(2) provides that the State agency responsible for administering the program authorized by part B of this title shall administer, or supervise the administration of, the program authorized by this part;

"(3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

"(4) provides that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this title, under title XX of this Act, and under any other appropriate provision of Federal law;

"(5) provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

"(6) provides that the State agency referred to in paragraph (2) (hereinafter in this part referred to as the 'State agency') will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

"(7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

"(8) provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, C, or D of this title or under title I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

"(9) provides that where any agency of the State has reason to

believe that the home or institution in which a child resides whose care is being paid for in whole or in part with funds provided under this part or part B of this title is unsuitable for the child because of the neglect, abuse, or exploitation of such child, it shall bring such condition to the attention of the appropriate court or law enforcement agency;

"(10) provides that the standards referred to in section 2003(d)(1)(F) shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this title;

"(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance payments to assure their continuing appropriateness;

"(12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness;

"(13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this title, which shall be conducted no less frequently than once every three years;

"(14) provides (A) specific goals (which shall be established by State law on or before October 1, 1982) for each fiscal year commencing with the fiscal year which begins on October 1, 1983) as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care with respect to whom assistance under the plan is provided during such year) who, at any time during such year, will remain in foster care after having been in such care for a period in excess of twenty-four months, and (B) a description of the steps which will be taken by the State to achieve such goals;

"(15) effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home; and

"(16) provides for the development of a case plan (as defined in section 475(1)) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 475(5)(B) with respect to each such child.

"(b) The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section. However, in any case in which the Secretary finds, after reasonable notice and opportunity for a hearing, that a State plan which has been approved by the Secretary no longer complies with the provisions of subsection (a), or that in the administration of the plan there is a substantial failure to comply with the provisions of the plan, the Secretary shall notify the State that further payments will not be made to the State under this part, or that such payments will be made to the State but reduced by an amount which the Secretary determines appropriate, until the Secretary is satisfied that there is no longer any such failure to comply, and until he is so satisfied he shall make no further payments to the State, or shall reduce such payments by the amount specified in his notification to the State.

"FOSTER CARE MAINTENANCE PAYMENTS PROGRAM

"SEC. 472. (a) Each State with a plan approved under this part shall make foster care maintenance payments (as defined in section 475(4)) under this part with respect to a child who would meet the requirements of section 406(a) or of section 407 but for his removal from the home of a relative (specified in section 406(a)), if—

"(1) the removal from the home was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 471(a)(15) have been made;

"(2) such child's placement and care are the responsibility of (A) the State agency administering the State plan approved under section 471, or (B) any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 471 has made an agreement which is still in effect;

"(3) such child has been placed in a foster family home or child-care institution as a result of a determination referred to in paragraph (1); and

"(4) such child—

"(A) received aid under the State plan approved under section 402 in or for the month in which court proceedings leading to the removal of such child from the home were initiated, or

"(B)(i) would have received such aid in or for such month if application had been made therefor, or (ii) had been living with a relative specified in section 406(a) within six months prior to the month in which such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made.

"(b) Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is—

"(1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or nonprofit private child-placement or child-care agency, or

"(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or nonprofit private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term 'foster care maintenance payments' (as defined in section 475(4)).

"(c) For the purposes of this part, (1) the term 'foster family home' means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and (2) the term 'child-care institution' means a nonprofit private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

"(d) For purposes of titles XIX and XX, any child with respect to whom foster care maintenance payments are made under this section shall be deemed to be a dependent child as defined in section 406 and shall be deemed to be a recipient of aid to families with dependent children under part A of this title.

"ADOPTION ASSISTANCE PROGRAM

"SEC. 473. (a)(1) Each State with a plan approved under this part shall, directly through the State agency or through another public or nonprofit private agency, make adoption assistance payments pursuant to an adoption assistance agreement in amounts determined under paragraph (2) of this subsection to parents who, after the effective date of this section, adopt a child who—

"(A)(i) at the time adoption proceedings were initiated, met the requirements of section 406(a) or section 407 or would have met such requirements except for his removal from the home of a relative (specified in section 406(a)) as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child, or

"(ii) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits,

"(B)(i) received aid under the State plan approved under section 402 in or for the month in which court proceedings leading to the removal of such child from the home were initiated, or

"(ii)(I) would have received such aid in or for such month if application had been made therefor, or (II) had been living with a relative specified in section 406(a) within six months prior to the month in which such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made, or

"(iii) is a child described in subparagraph (A)(ii), and

"(C) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

"(2) The amount of the adoption assistance payments shall be determined through agreement between the adoptive parents and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

"(3) Notwithstanding the preceding paragraph, (A) no payment may be made to parents with respect to any child who has attained the age of eighteen (or, where the State determines that the child has a mental or physical handicap which warrants the continuation of assistance, the age of twenty-one), and (B) no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents. Parents who have been receiving adoption assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.

"(4) For purposes of this part, individuals with whom a child (who has been determined by the State, pursuant to subsection (c), to be a child with special needs) is placed for adoption, pursuant to an interlocutory decree, shall be eligible for adoption assistance pay-

State and the Secretary as to the number of such children (with respect to whom foster care maintenance payments were not made) for any fiscal year, then until the beginning of the fiscal year immediately following the fiscal year in which the dispute is finally resolved, determinations under subparagraphs (B) and (C) shall be made on the basis of the number of such children claimed by the State.

"(E) The Secretary shall promulgate an interim allotment amount for purposes of this paragraph for each fiscal year for each State exercising its option to have its allotment determined under this paragraph, based on the most recent satisfactory data available, not later than six months after the beginning of such fiscal year. The amount of such allotment shall be adjusted, and the final allotment amount shall be promulgated, based on the most recent satisfactory data available, not later than nine months after the end of such fiscal year.

"(6) Except in the case of a State which loses the option of having its allotment determined under paragraph (5) by reason of the provisions of paragraph (5)(C), and subject to the provisions of such paragraph (5)(C), the amount of any allotment as determined in accordance with subparagraph (A), (B), or (C) of paragraph (3) for any fiscal year for any State shall be determined in accordance with the provisions of such subparagraph, without regard to the amount of such State's allotment for any prior fiscal year as determined in accordance with another such subparagraph.

"(c)(1) Except as provided in paragraphs (3) and (4), for any of the fiscal years 1981 through 1984 during which the limitation under subsection (b)(1) is in effect, sums available to a State from its allotment under subsection (b) for carrying out this part, which the State does not claim as reimbursement for expenditures in such year pursuant to subsection (a) of this section, may be claimed by the State as reimbursement for expenditures in such year pursuant to part B of this title, in addition to sums available pursuant to section 420 for carrying out part B.

"(2) Except as provided in paragraphs (3) and (4), for any of the fiscal years 1981 through 1984 during which the limitation under subsection (b)(1) is not in effect, a State may claim as reimbursement for expenditures for such year pursuant to part B of this title, in addition to amounts claimed under section 420, an amount equal to the amount by which the State's allotment amount for such fiscal year (as determined under subsection (b)(3)) exceeds the amount claimed by such State for such fiscal year as reimbursement for expenses relating to foster care under subsection (a); except that the total amount claimed by such State for such fiscal year under this paragraph, when added to the amount that such State receives for such fiscal year under section 420, may not exceed the amount that would have been payable to such State under section 420 for such fiscal year if the relvant amount described in subsection (b)(2)(A) had been appropriated for such fiscal year.

"(3) The provisions of paragraphs (1) and (2) shall not apply for any fiscal year with respect to any State which, with respect to such fiscal year, exercised its option to have its allotment amount determined under subsection (b)(5).

"(4)(A) No State may claim an amount under the provisions of this subsection as reimbursement for expenditures for any fiscal year pursuant to part B of this title to the extent that such amount, plus the amount claimed by such State for such fiscal year under section 420, exceeds the amount which would be allotted to such State under part B if the amount appropriated under section 420 were $141,000,000, unless such State has met the requirements set forth in section 427(a).

"(B) If, for each of any two consecutive fiscal years, there is appropriated under section 420 a sum equal to $266,000,000, no State may claim any amount under the provisions of this subsection as reimbursement for expenditures for any succeeding fiscal year pursuant to part B of this title unless such State has met the requirements set forth in section 427(b).

"(C) If, for each of any two fiscal years during which the limitation under subsection (b)(1) is not in effect, the total amount claimed by a State as reimbursement for expenditures pursuant to part B under this subsection and under section 420 equals the amount which would be allotted to such State for such fiscal year under part B if the amount appropriated under section 420 were $266,000,000, such State may not claim any amount under the provisions of paragraph (2) as reimbursement for expenditures for any succeeding fiscal year pursuant to part B of this title unless such State has met the requirements set forth in section 427(b).

"DEFINITIONS

"SEC. 475. As used in this part or part B of this title:

"(1) The term 'case plan' means a written document which includes at least the following: A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the judicial determination made with respect to the child in accordance with section 472(a)(1); and a plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

"(2) The term 'parents' means biological or adoptive parents or legal guardians, as determined by applicable State law.

"(3) The term 'adoption assistance agreement' means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the amounts of the adoption assistance payments and any additional services and assistance which are to be provided as part of such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

"(4) The term 'foster care maintenance payments' means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

"(5) The term 'case review system' means a procedure for assuring that—

"(A) each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child,

"(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship, and

"(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis); and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents.

"(6) The term 'administrative review' means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

"TECHNICAL ASSISTANCE; DATA COLLECTION AND EVALUATION

"SEC. 476. (a) The Secretary may provide technical assistance to the States to assist them to develop the programs authorized under this part and shall periodically (1) evaluate the programs authorized under this part and part B of this title and (2) collect and publish data pertaining to the incidence and characteristics of foster care and adoptions in this country.

"(b) Each State shall submit statistical reports as the Secretary may require with respect to children for whom payments are made under this part containing information with respect to such children including legal status, demographic characteristics, location, and length of any stay in foster care.".

(2)(A) Effective with respect to expenditures made after September 30, 1980, section 408 of the Social Security Act is, subject to subparagraph (B), repealed.

(B) The repeal made by subparagraph (A) shall not be applicable in the case of any State for any quarter prior to the first quarter, which begins after September 30, 1980, in which such State has in effect a

96 Nev., Advance Opinion 154

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE APPLICATION OF LEONARD KNAST, FOR A WRIT OF HABEAS CORPUS, PETITIONER.

No. 12576

July 21, 1980

EXHIBIT G

Original proceeding in habeas corpus.
Writ granted.

Johnson, Belaustegui & Robison, Reno, and *Puccinelli & Puccinelli,* Elko, for Petitioner.

Thomas L. Stringfield, District Attorney, Elko County, for Respondent.

OPINION

Per Curiam:

By way of petition for a writ of habeas corpus, Leonard Knast challenges the refusal of the district court to grant him release on bail pending his trial on open murder charges. *See* NRS 34.530. The state contended that aggravating circumstances which would justify imposition of the death penalty were present under NRS 200.033(8). However, the district court in denying bail held that it need not determine whether the death penalty could be imposed in the case, but only whether the proof were evident or the presumption great that petitioner would be convicted of first degree murder. Because of the substantial question presented concerning the interpretation of Nev. Const. art. 1, § 7, which provides for an absolute right to bail "unless for Capital Offenses when the proof is evident, or the presumption great," we ordered repondent to file an answer addressed to the question of whether the writ should issue.

Punishment should follow conviction, not precede it. Ex Parte Wheeler, 81 Nev. 495, 406 P.2d 713 (1965). The right to bail is consonant with the presumption of innocence that attaches to all defendants prior to conviction. *Id.* Our constitution admits of but one exception to the right, a capital case where the proof is evident or the presumption great. Howard v. Sheriff, 83 Nev. 48, 422 P.2d 538 (1967); Ex Parte Wheeler, *supra,* State v. Teeter, 65 Nev. 584, 200 P.2d 657 (1948).

In St. Pierre v. Sheriff, 90 Nev. 282, 524 P.2d 1278 (1974), we held that one accused of first degree murder had an absolute right to bail because, at the time, death was not an available punishment for the crime. To hold to the contrary, we stated, "would be saying that first degree murder . . . is a capital crime for purposes of bail, but is non-capital for purposes of punishment." *Id.* at 285, 524 P.2d at 1279.

Subsequent to our decision in *St. Pierre*, the legislature amended the murder statutes. 1977 Nev. Stats. ch. 585, at 1541-6. In doing so, the legislature again made the death penalty an available punishment for first degree murder. However, the punishment may be inflicted only if at least one of the aggravating circumstances listed in NRS 200.033 is found. Thus, even if the proof is evident or the presumption great that petitioner has committed first degree murder, without an aggravating circumstance the case cannot be considered a capital one. Absent a finding that the proof is evident or the presumption great that such a circumstance is present, bail cannot be constitutionally denied.[1] The district court, in ruling to the contrary, erred.

Accordingly, we grant the writ of habeas corpus entitling petitioner to release upon the posting of reasonable bail in an amount to be set by the district court unless, upon reconsideration, the district court determines that bail can be denied because the proof is evident or the presumption great that the aggravating circumstances designated in NRS 200.033(8) were present.

MOWBRAY, C. J.
THOMPSON, J.
GUNDERSON, J.
MANOUKIAN, J.
BATJER, J.

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[1]We note that at the time *St. Pierre* was decided, NRS 200.030 provided that murders committed under certain circumstances were "capital murder" for which the penalty was death. By the 1977 amendments, the legislature introduced a system of greater flexibility to be utilized when considering the death penalty. In accomplishing this objective, the legislature abolished the crime of "capital murder" and made first degree murder, when any aggravating circumstances were not outweighed by any mitigating circumstances, punishable by death. The same substantive result could have been reached had the legislature retained the crime of "capital murder" and redefined it in terms of aggravating and mitigating circumstances. Had this been done, it is clear that without an aggravating circumstance, *St. Pierre* would require that petitioner be admitted to bail. We see no reason why what is essentially a matter of form should affect so substantial a right as the right to bail.

SPO, CARSON CITY, NEVADA, 1980

EXHIBIT H

(REPRINTED WITH ADOPTED AMENDMENTS)
THIRD REPRINT

S. B. 35

SENATE BILL NO. 35—COMMITTEE ON JUDICIARY

JANUARY 21, 1981

Referred to Committee on Judiciary

SUMMARY—Redefines "cheating" and increases penalties for gaming offenses. (BDR 41-206)

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 gaming; revising the definition of offenses; increasing certain 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. (Deleted by amendment.)

SEC. 2. Chapter 465 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act.

SEC. 3. *As used in this chapter:*

1. "Cheat" means to alter the selection of criteria which determine:

(a) The result of a game; or

(b) The amount or frequency of payment in a game.

2. The words and terms defined in chapter 463 of NRS have the meanings ascribed to them in that chapter.

SEC. 4. *1. Any person who violates any provision of NRS 465.070 to 465.085, inclusive, shall be punished:*

(a) For the first offense, 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.

(b) For a second or subsequent violation of any of these provisions, by imprisonment in the state prison for not less than 1 year nor more than 10 years, and may be further punished by a fine of not more than $10,000. The court shall not suspend a sentence of imprisonment imposed pursuant to this paragraph, or grant probation to the person convicted.

2. Any person who attempts, or two or more persons who conspire, to violate any provision of NRS 465.070 to 465.085, inclusive, each shall be punished by imposing the penalty provided in subsection 1 for the completed crime, whether or not he personally played any gambling game or used any device to cheat or facilitate cheating.

SEC. 5. NRS 465.070 is hereby amended to read as follows:

465.070 [1. Every person in a licensed gaming establishment who, by color, or aid of any trick or sleight-of-hand performance, or by any fraud or fraudulent scheme, cards, dice or device, wins or attempts to win for himself or for another, or unlawfully delivers or attempts to deliver to another any money or property, or representative of either, 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.

2. Every person who entices or induces another, upon any pretense, to go to any place where any gambling game, scheme or device, or any trick, sleight-of-hand performance, fraud or fraudulent scheme, cards, dice or device is being conducted or operated; or while in such place entices or induces another to bet, wager or hazard any money or property, or representative of either, upon any such game, scheme, device, trick, sleight-of-hand performance, fraud or fraudulent scheme, cards, dice or device, or to execute any obligation for the payment of money, or delivery of property, or to lose, advance, or loan any money or property, or representative of either, 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.] *It is unlawful for any person:*

1. To alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is made sure but before it is revealed to the players.

2. To place a bet after acquiring knowledge, not available to all players, of the outcome of the game or other event which is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing a bet contingent upon that outcome.

3. To claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a gambling game, with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won.

4. Knowingly to entice or induce another to go to any place where a gambling game is being conducted or operated in violation of the provisions of this chapter, with the intent that such other person play or participate in that gambling game.

SEC. 6. NRS 465.080 is hereby amended to read as follows:

465.080 1. It is unlawful for any *licensee, employee or other* person [playing any licensed gambling game:

(a) To use bogus or] *to use* counterfeit chips [, or to substitute and use in any such game cards or dice that have been marked, loaded or tampered with;

(b) To employ or have on his person any cheating device to facilitate cheating in such games; or

(c) To use any fraudulent scheme or technique, including but not limited to purposefully breaking or damaging any part of any slot machine or otherwise causing the machine to malfunction, to facilitate the alignment of any winning combination or the removal of money from the machine.] *in a gambling game.*

2. It is unlawful for any person, in playing or using any [slot

machine] *gambling game* designed to *be played with,* receive or be operated by *chips or tokens approved by the state gaming control board or by* lawful coin of the United States of America:

(a) Knowingly to use other than *chips or tokens approved by the state gaming control board or* lawful coin, legal tender of the United States of America, or *to use* coin not of the same denomination as the coin intended to be used in [such slot machine, except that in the playing of any slot machine, it is lawful for any such person to use tokens or similar objects therein which are approved by the state gaming control board;] *that gambling game;* or

(b) To use any [cheating or thieving] device [, including but not limited to tools, drills, wires, coins attached to strings or wires or electronic or magnetic devices, to unlawfully facilitate aligning any winning combination or removing from any slot machine any money or other contents thereof.] *or means to violate the provisions of this chapter.*

3. It is unlawful for any person, not a duly authorized employee of a [licensed gaming establishment] *licensee* acting in furtherance of his employment within such establishment, to have on his person or in his possession [while on the premises of such establishment any cheating or thieving device, including, but not limited to, tools, wires, drills, coins attached to strings or wires, electronic or magnetic devices to facilitate removing from any slot machine any money or other contents thereof.] *any device intended to be used to violate the provisions of this chapter.*

4. It is unlawful for any person, not a duly authorized employee of a [licensed gaming establishment] *licensee* acting in furtherance of his employment within such establishment, to have on his person or in his possession while on the premises of any licensed gaming establishment any key or device known to have been designed for the purpose of and suitable for opening [or] , entering *or affecting the operation of* any [slot machine, or] *gambling game,* drop box [.

5. Any violator of the provisions of this section 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.

6. As used in this section, the term "slot machine" has the meaning ascribed to it in NRS 463.0127.] *or any electronic or mechanical device connected thereto, or for removing money or other contents therefrom.*

5. Possession of more than one of the devices described in this section permits a rebuttable inference that the possessor intended to use them for cheating.

SEC. 7. NRS 465.083 is hereby amended to read as follows:

465.083 [1. It is unlawful:

(a) To conduct, carry on, operate, deal or allow to be conducted, carried on, operated or dealt any cheating or thieving game or device; or

(b) To deal, conduct, carry on, operate or expose for play any game or games played with cards, dice or any mechanical device, or any combination of games or devices, which have in any manner been marked or tampered with, or placed in a condition, or operated in a manner, the result of which:

(1) Tends to deceive the public; or

(2) Tends to alter the normal random selection of criteria which determine the result of the game.

2. The use of marked cards, loaded dice, plugged or tampered-with machines or devices to deceive the public is expressly made unlawful.

3. Any person who violates the provisions of this section 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.] *It is unlawful for any person, whether he is an owner or employee of or a player in an establishment, to cheat at any gambling game.*

SEC. 8. NRS 465.085 is hereby amended to read as follows:

465.085 1. It is unlawful to manufacture [or sell or to possess with intent to defraud:

(a) Any cheating or thieving game or device;

(b) Any game or games played with cards, dice or any mechanical device;

(c) Any combination of such games or devices; or

(d) Any bogus or counterfeit chip, which may have in any manner been marked or tampered with to deceive the public.

2. Any person who violates the provisions of this section 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.] *, sell or distribute any cards, chips, dice, game or device which is intended to be used to violate any provision of this chapter.*

2. It is unlawful for any person to instruct another in cheating or in the use of any device for that purpose, with the knowledge or intent that the information or use so conveyed may be employed to violate any provision of this chapter.

SEC. 9. NRS 465.101 is hereby amended to read as follows:

465.101 1. [As used in this section:

(a) "Establishment" has the meaning ascribed to it in NRS 463.0109.

(b) "Licensee" has the meaning ascribed to it in NRS 463.0119.

2.] Any licensee, or his officers, employees or agents may question any [individual] *person* in his establishment suspected of violating any of the provisions of [NRS 465.070 or 465.080.] *this chapter.* No licensee or his officers, employees or agents is criminally or civilly liable on account of any such questioning.

[3.] *2.* Any licensee or his officers, employees or agents who have probable cause for believing that there has been a violation of [NRS 465.070 or 465.080] *this chapter* in his establishment by any person may take such person into custody and detain him in the establishment in a reasonable manner and for a reasonable length of time. Such *a* taking into custody and detention does not render [such] *the* licensee or his officers, employees or agents criminally or civilly liable for false arrest, false imprisonment, slander or unlawful detention unless [such] *the* taking into custody and detention are unreasonable under all the circumstances.

[4.] *3.* No licensee or his officers, employees or agents are entitled to the immunity from liability provided for in this section unless there is

displayed in a conspicuous place in his establishment a notice in boldface type clearly legible and in substantially this form:

Any gaming licensee, or his officers, employees or agents who have probable cause for believing that any person has violated any provision of [NRS 465.070 or 465.080] *this chapter* prohibiting cheating in gaming may detain such person in the establishment for the purpose of notifying a peace officer.

SEC. 10. NRS 207.080 is hereby amended to read as follows:

207.080 1. For the purpose of NRS 207.080 to 207.150, inclusive, a "convicted person" is defined as:

(a) Any person who, before, on or after March 15, 1955, was or is convicted of an offense punishable as a felony in the State of Nevada, or who has been or who is hereafter convicted of any offense in any place other than the State of Nevada, which offense, if committed in the State of Nevada, would be punishable as a felony.

(b) Any person who, before, on or after March 15, 1955, was or is convicted in the State of Nevada, or elsewhere, of the violation of any law, whether the violation is or is not punishable as a felony:

(1) Relating to or regulating the possession, distribution, furnishing or use of any habit-forming drug of the kind or character described and referred to in the Uniform Narcotic Drug Act.

(2) Regulating or prohibiting the carrying, possession or ownership of any concealed weapon, or deadly weapon, or any weapon capable of being concealed, or regulating or prohibiting the possession, sale or use of any device, instrument or attachment designed or intended to be used for the purpose of silencing the report or concealing the discharge or flash of any firearm.

(3) Regulating or prohibiting the use, possession, manufacture or compounding of tear gas, or any other gas, which may be used for the purpose of temporarily or permanently disabling any human being.

(c) Any person who, before, on or after March 15, 1955, was or is convicted of a crime in the State of Nevada, under the provisions of one or more of NRS 122.220, 201.120 to 201.170, inclusive, 201.249, 201.-251, 201.270, 201.360 to 201.400, inclusive, 201.420, 202.010, 202.-040, 202.055, 202.200 to 202.230, inclusive, 212.170, 212.180, 433.564, 451.010 to 451.040, inclusive, 452.300, 462.010 to 462.080, inclusive, [465.030 to] 465.070 [,] *to 465.085,* inclusive, 646.010 to 646.060, inclusive, 647.095, 647.100, 647.110, 647.120, 647.130, 647.-140 and 647.145, or who, before, on or after March 15, 1955, was or is convicted, in any place other than the State of Nevada, of an offense which, if committed in this state, would have been punishable under one or more of such sections.

(d) Any person who, before, on or after March 15, 1955, was or is convicted in the State of Nevada or elsewhere of any attempt or conspiracy to commit any offense described or referred to in NRS 207.080 to 207.150, inclusive.

2. Any person, except as set forth in NRS 207.090 to 207.150, inclusive, whose conviction is or has been set aside in the manner provided by law shall not be deemed a convicted person.

SEC. 11. NRS 465.030, 465.040, 465.050 and 465.060 are hereby repealed.

SEC. 12. Section 1 of chapter 272, Statutes of Nevada 1981, is amended to read as follows:

Section 1. NRS 207.080 is hereby amended to read as follows:

207.080 1. For the purpose of NRS 207.080 to 207.150, inclusive, a "convicted person" is: [defined as:]

(a) Any person [who, before, on or after March 15, 1955, was or is] convicted *in the State of Nevada* of an offense punishable as a felony [in the State of Nevada, or who has been or who is hereafter] *or* convicted [of any offense] in any place other than the State of Nevada [, which offense, if committed in the State of Nevada, would be punishable as a felony.] *of a felony or any other offense which is punishable by imprisonment for 1 year or more.*

(b) Any person [who, before, on or after March 15, 1955, was or is] convicted in the State of Nevada, or elsewhere, of the violation of any law, whether the violation is or is not punishable as a felony:

(1) Relating to or regulating the possession, distribution, furnishing or use of any habit-forming drug of the kind or character described and referred to in the Uniform Narcotic Drug Act.

(2) Regulating or prohibiting the carrying, possession or ownership of any concealed weapon, or deadly weapon, or any weapon capable of being concealed, or regulating or prohibiting the possession, sale or use of any device, instrument or attachment designed or intended to be used for the purpose of silencing the report or concealing the discharge or flash of any firearm.

(3) Regulating or prohibiting the use, possession, manufacture or compounding of tear gas, or any other gas, which may be used for the purpose of temporarily or permanently disabling any human being.

(c) Any person [who, before, on or after March 15, 1955, was or is] convicted of a crime in the State of Nevada, under the provisions of one or more of NRS 122.220, 201.120 to 201.170, inclusive, 201.249, 201.251, 201.270, 201.360 to 201.400, inclusive, 201.420, 202.010, 202.040, 202.055, 202.200 to 202.230, inclusive, 212.170, 212.180, 433.564, 451.010 to 451.040, inclusive, 452.300, 462.010 to 462.080, inclusive, 465.070 to 465.085, inclusive, 646.010 to 646.060, inclusive, 647.095, 647.100, 647.110, 647.120, 647.130, 647.140 and 647.145, or [who, before, on or after March 15, 1955, was or is] convicted, in any place other than the State of Nevada, of an offense which, if committed in this state, would have been punishable under one or more of [such] *those* sections.

(d) Any person [who, before, on or after March 15, 1955, was or is] convicted in the State of Nevada or elsewhere of any attempt or conspiracy to commit any offense described or referred to in NRS 207.080 to 207.150, inclusive.

2. Any person, except as set forth in NRS 207.090 to 207.150, inclusive, whose conviction is or has been set aside in the manner provided by law shall not be deemed a convicted person.

SEC. 13. This act shall become effective upon passage and approval.

EXHIBIT I

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT **S. B. 670**

SENATE BILL NO. 670—COMMITTEE ON JUDICIARY

MAY 11, 1981

Referred to Committee on Judiciary

SUMMARY—Reduces showing required in hearing on notice of pendency of action affecting real property. (BDR 2-2092)

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 real property; clarifying the showing required in a hearing on a notice of pendency of an action; providing an alternative; 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 14.015 is hereby amended to read as follows:

14.015 1. After a notice of pendency of an action has been recorded with the recorder of the county, the defendant or, if affirmative relief is claimed in the answer, the plaintiff, may request that the court hold a hearing on the notice, and such a hearing must be set as soon as is practicable, taking precedence over all other civil matters except a motion for a preliminary injunction.

2. Upon [5] *15* days' notice, the party who recorded the notice of pendency of the action must appear at the hearing and, through affidavits and other evidence which the court may permit, [prove by a preponderance of evidence] *establish to the satisfaction of the court* that:

(a) The action is for the foreclosure of a mortgage upon the real property described in the notice or affects the title or possession of the real property described in the notice;

(b) The action was not brought in bad faith or for an improper motive;

(c) [Probable cause exists to believe that he will prevail in the action and will be entitled to relief affecting the title or possession of the real property;

(d)] He will be able to perform any conditions precedent to the relief sought in the action insofar as it affects the title or possession of the real property; and

[(e)] *(d)* He would be injured by any transfer of an interest in the property before the action is concluded.

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3. In addition to the matters enumerated in subsection 2, the party who recorded the notice must establish to the satisfaction of the court either:

(a) That he is likely to prevail in the action; or

(b) That he has a fair chance of success on the merits in the action and the injury described in paragraph (d) of subsection 2 would be sufficiently serious that the hardship on him in the event of a transfer would be greater than the hardship on the defendant resulting from the notice of pendency,

and that if he prevails he will be entitled to relief affecting the title or possession of the real property.

4. The party opposing the notice of the pendency of an action may submit counteraffidavits and other evidence which the court may permit.

[3.] *5.* If the court finds that the party who recorded the notice of pendency of the action has failed to [prove] *establish* any of the matters required by subsection 2, the court shall order the cancellation of the notice of pendency and shall order the party who recorded the notice to record with the recorder of the county a copy of the order of cancellation. The order [shall] *must* state that the cancellation has the same effect as an expungement of the original notice.

[4.] *6.* If the court finds that the party who recorded the notice of pendency of the action has [proved] *established* the matters required by subsection 2, the party opposing the notice may request the court to determine whether a bond in an amount to be determined by the court would provide adequate security for any damages which the party who recorded the notice might incur if the notice were so canceled and the party opposing the notice did not prevail in the action. If the court determines that a bond would provide adequate security, the party opposing the notice may post a bond or other security in the amount determined by the court. The court shall then order the cancellation of the notice of pendency and shall order the party opposing the notice to record with the recorder of the county a copy of the order of cancellation. The order [shall] *must* state that the cancellation has the same effect as an expungement of the original notice.

[5.] *7.* If a certified copy of the court's order for cancellation of the notice of pendency of the action is recorded with the recorder of the county in which the notice was recorded, the notice and order shall not be deemed to constitute constructive or actual notice of the action, any matters relating to the action, or any of the matters referred to in the notice or the order, and the order and notice do not create any duty of inquiry on the part of any person thereafter dealing with the property.

SEC. 2. This act shall become effective upon passage and approval.