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# Welfare Reform: California Meets The Challenge

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*California's welfare reform program, which included the Welfare Reform Act of 1971, constituted one of the most comprehensive and far-reaching, as well as controversial, social reforms in the history of the State. In its July 1972 issue the Pacific Law Journal published an article, authored by Senator Anthony Beilenson and Larry Agran, which presented the viewpoint of those opposed to many of the major provisions of the welfare reform program. The following article presents the viewpoint of those supporting that program. The authors were intimately involved in the planning, legislative negotiations, implementation, and litigation relating to the welfare reform program. Herein, they summarize the program, major provisions of the Welfare Reform Act, and discuss several of the significant court actions challenging those provisions.*

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## INTRODUCTION

In its July 1972 issue, the *Pacific Law Journal* presented an article by a state legislator and his aide entitled "The Welfare Reform Act of 1971."<sup>1</sup> The article purported to be a scholarly statement of welfare reform in California. It was, in fact, an adversary commentary by opponents of welfare reform at the state level. The article characterized the Welfare Reform Act of 1971<sup>2</sup> as an interim step pending federal assumption of all welfare administration and financing.<sup>3</sup> Such characterization could not be more incorrect.

The Welfare Reform Act, as passed by the legislature and signed into law by Governor Ronald Reagan on August 13, 1971, was the product of the most intensive debates and negotiating sessions ever entered into by the executive and legislative branches in the State of California.<sup>4</sup> The content of the Act evidenced a major compromise between the Governor and the legislature in the pursuit of welfare reform designed to retain administrative and financial responsibility at the state level.

The critical need for welfare reform in California was obvious. The blueprint for welfare reform was presented by Governor Reagan in his March 3, 1971, message to the California Legislature.<sup>5</sup> Supporting the Governor's concern for the "moral and administrative disaster"<sup>6</sup> of the system were the statistics of crises. At the time there were approximately 2.3 million Californians receiving welfare benefits.<sup>7</sup> Ten years earlier in 1961, the welfare caseload in California was only 620,000.<sup>8</sup> In 1970 alone the number on welfare increased by 20 percent. By far the most explosive growth occurred in the Aid to Fami-

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1. Beilenson & Agran, *The Welfare Reform Act of 1971*, 3 PAC. L.J. 475 (1972).

2. S.B. 796, CAL. STATS. 1971, c. 578, at 1136.

3. Beilenson & Agran, *supra* note 1, at 502.

4. CAL. STATE DEPT' OF SOCIAL WELFARE, WELFARE REFORM IN CALIFORNIA . . . SHOWING THE WAY 9 (1972) [hereinafter cited as WELFARE REFORM IN CALIFORNIA].

In September 1972 the Office of Management and Budget of the Executive Office of the President undertook an extensive study of California's Welfare Reform Program. The study team, composed of representatives of the Office of Management and Budget, U. S. Department of Health, Education, and Welfare, U. S. Department of Labor, State Department of Social Welfare, and the State Department of Finance, spent several weeks identifying and analyzing California's Welfare Reform Program. Utilizing the work of this team, the State Department of Social Welfare prepared the cited document which summarizes the problems and efforts to reform welfare in the State of California.

5. Governor Ronald Reagan's message to the California Legislature, *Meeting the Challenge: A Responsible Program for Welfare and Medi-Cal Reform*, Mar. 3, 1971, contained in, JOURNAL OF THE CALIFORNIA ASSEMBLY 699-880 (Reg. Sess. 1971).

6. *Id.* at 711.

7. Evans, *Welfare Reform Revisited*, 3 CAL. J. 352, 356 (1972).

8. JOURNAL OF THE CALIFORNIA ASSEMBLY 715 (Reg. Sess. 1971).

lies with Dependent Children Program (AFDC) which increased by almost 40 percent during the same year.<sup>9</sup> California's welfare caseload had been growing at the rate of 40,000 per month,<sup>10</sup> and the rate of growth was constantly increasing.<sup>11</sup> The California Department of Social Welfare had estimated that welfare, if not reformed, would cost in excess of \$3 billion—in combined federal, state, and county funds—during fiscal year 1971-72. The State Legislative Analyst contended further that the Department's estimates were \$134 million too low.<sup>12</sup> The circumstances portended either gigantic state and local tax increases or the continued diminution of other vitally needed public programs and projects.<sup>13</sup>

### A. Federal Scene

The welfare picture during 1970 was also dismal at the national level. The Department of Health, Education, and Welfare described the existing system during mid-1970 as an unqualified failure and predicted that its future would indeed be worse, not better.<sup>14</sup>

The welfare problem had become so complex, confused, indeed chaotic, that most professionals involved with it had settled into an attitude of utter despair. At their annual meeting the National Council of State Welfare Administrators adopted a resolution urging that the federal government relieve the state of the burden of managing the unwieldy welfare system and that in its stead a national welfare system be substituted, financed entirely by the federal government and administered by the Department of Health, Education, and Welfare.<sup>15</sup>

State governments throughout the country were finding the system totally unmanageable and growing uncontrollably. In California, where the welfare system is supervised by the state and is administered by the 58 county jurisdictions, counties—feeling their positions to be untenable—outlined their solution for the problems of public

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9. CAL. STATE DEP'T OF SOCIAL WELFARE, PUBLIC WELFARE IN CALIFORNIA table 1 (Jan. 1971).

10. Governor Ronald Reagan, Statement to Senate Finance Committee, Feb. 1, 1971, in WELFARE REFORM IN CALIFORNIA 151. See also CAL. STATE DEP'T OF SOCIAL WELFARE, PUBLIC WELFARE IN CALIFORNIA, 1970-71 (1971).

11. For example, the annual growth rate increased from a range of 8-13% in fiscal year 1968-69 to a peak of 24% in fiscal year 1970-71. WELFARE REFORM IN CALIFORNIA 87.

12. WELFARE REFORM IN CALIFORNIA 9.

13. Robert B. Carleson, Director of Social Welfare, California Successes in Welfare Reform, Mar. 1972, at 1.

14. *Hearings on H.R. 16311 before Senate Comm. on Finance*, 91st Cong., 2d Sess., June 11, 1970.

15. Nat'l Council of State Welfare Administrators, Resolution at Annual Meeting, Washington, D.C., Mar. 2, 1971.

welfare in a document entitled *Public Welfare—Time for Change*.<sup>16</sup> The report, a compilation of the problems of managing the welfare system and recommendations for improving it, was tied together by the recurring theme that the counties of California no longer wanted to manage the welfare system.

### B. *The Federal Response*

Responding to the national welfare crisis, President Richard M. Nixon, in a speech to the nation on August 8, 1969, declared:

What began on a small scale in the depression 30's has become a monster in the prosperous 60's. The tragedy is not only that it is bringing states and cities to the brink of financial disaster, but also that it is failing to meet the elementary human, social and financial needs of the poor.

The President proposed that the existing welfare system be abolished and replaced with a federally administered Family Assistance Program (FAP). The federal government would pay a welfare family of four, with no outside income, a basic grant of \$1,600 per year. States would be permitted to supplement that amount. Recipients would be provided much greater income exemptions—the present exemption of the first \$30 per month plus one-third of the remainder would be replaced by an exemption of the first \$60 plus one-half of the remainder. The President conceded that initially, at least, FAP would be even more costly than the existing system. The FAP concept was embodied in H.R. 1, the omnibus congressional welfare bill.<sup>17</sup> This new proposal was widely viewed as a panacea to the problems which had plagued the states and their counties. It was endorsed by many state<sup>18</sup> and local agencies.<sup>19</sup>

Throughout the welfare system the President's message brought a sense of relief. Since many states and local jurisdictions had already given up any hope of managing the welfare system, the tendency developed to assume the President's plan would be enacted into law. The result was the abandonment of many reform efforts pending the anticipated federal take-over. A number of active supporters of the President's plan considered any effort to reform the existing welfare system to be a challenge to the federal take-over. Thus they actively

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16. CAL. COUNTIES WELFARE MODERNIZATION TASK FORCE, PUBLIC WELFARE—TIME FOR CHANGE 8 (County Supervisor's Ass'n of Calif., Sacramento, Apr. 1, 1970).

17. H.R. 1, 92d Cong. (1971-72), originally introduced as, H.R. 16311, 91st Cong. (1969-70).

18. Nat'l Council of State Welfare Administrators, *supra* note 15.

19. CAL. COUNTIES WELFARE MODERNIZATION TASK FORCE, *supra* note 16, at 16.

opposed state reform efforts, fearing that state success would jeopardize the passage of the federal proposal.

For the foregoing reasons, initial opposition to the federal plan was limited. One of the few opponents who viewed this plan as totally disruptive to American social and economic traditions was Governor Ronald Reagan of California. In leading the early opposition to the President's solution (H.R. 1), Governor Reagan indicated that he shared the President's desire for welfare reform but that he had serious reservations regarding the plan that had been developed.<sup>20</sup>

The Governor's strongest opposition was aimed at the proposal to federalize the administration of all welfare programs and to provide a "guaranteed annual income" at a set level to all persons throughout the country. He also stressed the lack of a stimulus for family responsibility and the absence of a meaningful work requirement.<sup>21</sup>

### C. *The California Response*

Declaring the solution to the welfare problem to be his number one priority, Governor Reagan, on August 4, 1970, sent a letter to his cabinet and senior staff announcing the formation of a task force to study California's public assistance programs.<sup>22</sup> The task force, appointed in August 1970, consisted of key members of the State Administration, assisted by attorneys and fiscal experts from the state and private sector.<sup>23</sup> Over 700 in-depth interviews were conducted with persons involved in the welfare system. Federal officials were consulted. Painstaking reviews were made of state and federal statutes and regulations. Extensive organizational, fiscal, and legal analyses were also undertaken. By December 1970 the task force had completed its work and relayed its findings and proposals to Governor Reagan and the Director of Social Welfare for their use in developing a comprehensive welfare reform program.<sup>24</sup>

The Governor's strategy for welfare reform was of necessity a total

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20. WELFARE REFORM IN CALIFORNIA 151.

21. *Id.* at 152.

22. Governor Ronald Reagan, Memorandum to Cabinet and Senior Staff, The Number One Priority, Aug. 4, 1970.

23. The task force consisted of Ned Hutchinson, Governor Reagan's Appointment Secretary; the late Jerry Fielder, Director of the State Department of Agriculture; John Mayfield, Assistant Director of the State Department of Conservation; and Robert B. Carleson, at the time, Chief Deputy Director of the State Department of Public Works. For assistance Mr. Carleson called upon Ronald A. Zumbrun, an attorney, and John A. Svahn, an administrative analyst, both from the Department of Public Works. Another unit of the task force was headed by Los Angeles attorney Neil Papiano. See WELFARE REFORM IN CALIFORNIA 202.

24. Top staff were assigned to administer the reforms, including one of the Governor's strongest cabinet members, James Hall. See WELFARE REFORM IN CALIFORNIA 9.

strategy. Piecemeal legislation had been tried and had failed. The stated objectives of the reform were:<sup>25</sup>

1. Cap the uncontrolled growth in the cost of welfare.
2. Reduce the welfare rolls to those strictly entitled to be there.
3. Reform the state/county system for the administration of the program in the future.
4. Require those able to work to do so or to seek work.
5. Increase assistance to the truly needy.
6. Strengthen family responsibility.

The approach differed markedly from that undertaken in several other states. Whereas some states were eliminating entire programs (such as to families with unemployed fathers, AFDC-U) or rolling back grants across the board,<sup>26</sup> California's reform planners chose to "purify" the system. The goal was to preclude or uproot those from the system who legally "didn't belong there," while making grants more equitable—even increasing them as warranted—to eligibles who did belong.

#### *D. Philosophy of Reform*

A full appreciation of the problem confronting California in its efforts to accomplish major welfare reform requires an understanding of the sharply conflicting philosophies involved. Historically, there had developed a polarization of positions as to welfare programs resulting from the clash of divergent views.

Diametrically opposed philosophically were those who advocated complete eradication of welfare programs and those who envisioned welfare as a method to restructure society through a redistribution of the wealth. Less extreme, but still divergent, were the views of those who saw welfare as a panacea to many of the nation's social ills and those who felt welfare was a symptom of the problems rather than a solution. In line with these theories were the advocates of unlimited spending to resolve these social problems, as contrasted with the advocates of a definite limit on the monies to be allocated to welfare. Over the years these forces had compromised on welfare programs. The result was often disastrous.<sup>27</sup>

In an attempt to reform this type of welfare system into one which would more equitably provide assistance to the truly needy, the Governor's reform effort centered on four major program changes:

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25. *Id.* at 10.

26. Evans, *Welfare Reform Revisited*, 3 CAL. J. 352 (1972).

27. See text accompanying notes 5-8 *supra*.

1. Eliminate the Maximum Participation Base with its open-end budget in favor of an equitable apportionment with a modified closed-end budget.
2. Sustain an intensive effort to reduce the welfare rolls through a tightly controlled qualification program to provide for only those entitled to participate.
3. Assist those able to work to become economically self-supporting through a comprehensive work experience program.
4. Eliminate aspects of the welfare system which weakened family responsibility and intensify efforts to collect child support.

### 1. *MPB v. Equitable Apportionment*

The disparity between the need of the recipient and the aid provided to him was in part the result of state law which arbitrarily limited the total amount that could be paid to any family group under the Aid to Families with Dependent Children (AFDC) program.<sup>28</sup> This ceiling was known as the Maximum Participation Base (MPB).<sup>29</sup>

The limitation imposed by the MPB operated to limit the dollar amount of the grant paid to any individual recipient rather than to limit the dollar resources available to any such recipient from all sources. Thus, in a comparison of two recipients, one with outside income, the other with none, both could qualify for the maximum cash grant with the result that the recipient with outside income would receive a substantially higher total income. Therefore, elimination of the MPB was a keystone of the Governor's reform.<sup>30</sup> Once this was achieved, it would be possible to equitably apportion budgeted dollars to provide more assistance to those who, through no fault of their own, had no other source of income.

Equitable apportionment is a percentage approach in which all recipients have an equal percentage of their unmet needs met by the welfare grant. Working recipients still would retain partial income exemptions and other work incentives. If during a fiscal year more money within the appropriation was found to be available than had been estimated, the percentage of needs met by the grants would be increased on a quarterly basis by raising the equitable apportionment factor, and therefore, the grant levels. If it were found that less money was available than anticipated, grant levels could be reduced to ensure the availability of funds for all welfare recipients throughout

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28. CAL. WELF. & INST. CODE §11450, as amended, CAL. STATS. 1968, c. 1467, at 2933.

29. MPP 44-313 (superseded Oct. 1, 1971).

30. JOURNAL OF THE CALIFORNIA ASSEMBLY 728 (Reg. Sess. 1971).



the entire year.<sup>31</sup> However, it was expressly provided that grants could not go below existing payment levels.<sup>32</sup> In addition, the apportionment factor would have applied to all recipients, not just those, as in the present system, whose unmet needs exceeded the MPB.

Equitable apportionment would establish an incentive to control welfare costs so that the grant level to needy recipients could be maximized. Under the existing procedure no such incentive existed because any savings realized would be returned to the general fund. This system encouraged growth because the funds for such growth would be made available, and such growth automatically justified increased levels of staff.

The equitable apportionment system also would provide, for the first time, some rational control in welfare financing. The attitudes and incentives of all those involved, including the recipients, administrators, workers, courts, and taxpayers, would be redirected toward one goal: to distribute the appropriated funds in the most equitable and meaningful manner possible—recognizing that inappropriate distribution would reduce the funds otherwise available to meet the needs of deserving recipients. Strict control would result in more funds being distributed to those in need.

## *2. Closed v. Open-End Budget*

The history of the California welfare legislation and administration has been a history of open-end appropriations funding the welfare program. The argument for eliminating the open-end welfare budget was that welfare should be treated like every other public need and should be required to accept the fiscal responsibilities applicable to all other state programs. A primary reason for the runaway welfare system that existed was that it had been given a blank check. There was no motivation to keep within budgetary limitations. It was argued that once welfare was made subject to budget realities, those administering the program would be redirected toward assuring that funds be distributed only to the needy.

Under Article IV, Section 10, of the California Constitution, the Governor is given the authority to "reduce or eliminate one or more items of appropriation while approving other portions of a bill." The exercise of this constitutional authority served as a tactical mechanism for implementing the Governor's welfare reform plan.

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31. S.B. 545, 1971 Regular Session.

32. *Id.*

The budget approved by the legislature on July 2, 1971,<sup>33</sup> provided a specific appropriation for welfare. At the same time, "open-end" language had been added that "the Controller shall approve expenditures in those amounts made necessary by changes in either caseload or payments, or both, which are in excess of Budget Bill estimates for 1971-72 and funds necessary to make such expenditures are hereby appropriated in addition to any other appropriation contained in this item."<sup>34</sup> On July 3, 1971, Governor Reagan eliminated this open-end appropriation language from the Budget Act<sup>35</sup>—acknowledging at the time that the specific appropriation that had been made by the legislature was \$108 million below that which would be required if welfare reform legislation were not enacted without delay. The Governor thereby gave the legislature a choice—either reform the welfare system, or appropriate an additional \$108 million to fund the existing system.

## REFORM OF THE WELFARE SYSTEM

### A. *Administrative Implementation of Welfare Reform*

The welfare reform program consisted of both administrative and legislative changes. Administrative reform, under the leadership of newly appointed State Director of Social Welfare Robert B. Carleson, had already begun in January 1971, months before the Welfare Reform Act of 1971 became effective on October 1, 1971. The effectiveness of these administrative changes is shown by the fact that between March and October the welfare rolls decreased by 161,000 people.<sup>36</sup> The details of these administrative reforms are thoroughly discussed in the 202-page report resulting from an extensive study during late 1972 by the Office of Management and Budget of the Executive Office of the President.<sup>37</sup>

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33. S.B. 207, 1971 Regular Session.

34. This bill provided the most open-ended budget ever attempted for welfare; but see S.B. 50, 1972 Regular Session.

35. If the open-end language for welfare contained in the Budget Act was sufficient to constitute a valid appropriation, it was subject to veto by the Governor. However, if this open-end language was insufficient to meet the requirements for a valid appropriation, then the open-end provision would be ineffective and welfare expenditures would be subject to the specific budgetary limitations also contained in the Act. There are several California cases which support an argument that open-end appropriation language is inadequate to constitute a valid appropriation. *Wood v. Riley*, 192 Cal. 293, 219 P. 966 (1923); *Ingram v. Colgan*, 106 Cal. 113, 117, 38 P. 315, 320 (1894); *Ryan v. Riley*, 65 Cal. App. 181, 197, 223 P. 1027, 1036 (1924); see also *CWRO v. Carleson*, 4 Cal. 3d 445, 458, 482 P.2d 670, 677, 93 Cal. Rptr. 751, 758 (1971).

36. CAL. STATE DEPT OF SOCIAL WELFARE, PUBLIC WELFARE IN CALIFORNIA table 1 (Mar. 1972); table 1 (Oct. 1972).

37. WELFARE REFORM IN CALIFORNIA 11-13.

*B. Welfare Reform Act of 1971*

*1. Negotiations Preceding the Act*

By March 1971 when Governor Reagan presented his reform proposals to the legislature and the public, many of the administrative and regulatory changes were under way and the focus of the welfare reform battle shifted to the legislature. Resistance to the reform program came from welfare rights organizations, social workers' unions, supporters of H.R. 1 and political opponents of the Governor.

Shortly after the Governor's welfare reform message, he appointed a citizen's committee which developed 120 local committees designed to persuade the legislature to produce welfare reform legislation.<sup>38</sup> After months of hearings, debates, and delays, in late July of 1971 the Speaker of the Assembly, Bob Moretti, headed a team to negotiate with Governor Reagan on the provisions which were later to become the Welfare Reform Act of 1971. Following a week of intensive negotiations between the teams headed personally by Governor Reagan<sup>39</sup> and Speaker Moretti,<sup>40</sup> and ten days of further negotiations by the remainder of the two teams, a compromise welfare reform act was agreed upon.

*2. Welfare Reform Act Provisions*

A major feature of the Act was the change in the method for calculating grants. It generally had been conceded that there was a great disparity among families with needy children, the result being that families with other income and resources were receiving at least 100 percent of their unmet needs while totally destitute families were receiving only 61-71 percent of their minimum needs for survival.<sup>41</sup>

The original solution presented through S.B. 545, authored by Senator Clair Burgener, was equitable apportionment. The eventual solution enacted in the Welfare Reform Act was the specification of the exact amount of need that would be met for all recipients on an equal basis.<sup>42</sup> A standard amount was specified which, when combined

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38. *Id.* at 16.

39. The negotiators for the Administration were Governor Ronald Reagan, Edwin Meese, III, Executive Assistant to the Governor, Robert Carleson, Director of Social Welfare, and Ronald Zumbun, Deputy Director for Legal Affairs with the Department of Social Welfare.

40. The five-member negotiating team appointed by Robert Moretti, Speaker of the Assembly, included Speaker Moretti, Assemblymen Leo McCarthy, John Burton, William Bagley, and Senator Anthony Beilenson. All of the legislative team members had actively opposed or criticized the Governor's welfare program.

41. DIVISION OF BUDGET AND CONTROLS, CAL. STATE DEP'T OF SOCIAL WELFARE, SEPTEMBER 1971 WELFARE SURVEY 22 (Mar. 1972).

42. CAL. WELF. & INST. CODE §11450.

with the value of food stamps, equaled what the legislature determined to be the full need for all recipients.<sup>43</sup> Destitute families without any resources were thereby raised from the statutory level of 61-71 percent of need to a position that, considering the availability of food stamps, was equal to 100 percent of their recognized needs.<sup>44</sup> Recipients with outside income were reduced to this same level. Income and other resources were more fully recognized, although the work incentive exemptions were maintained. There was no fiscal impact because the shift resulted in no increase or decrease in costs to the taxpayer. In other words, at no additional cost to the taxpayer destitute families with needy children had their grants increased by approximately 30 percent of the amount previously specified by the California Legislature.

Other increased AFDC benefits were provided under the Welfare Reform Act at no additional cost to the taxpayer. Thus, destitute children could receive special need allowances in addition to their basic grant.<sup>45</sup> An annual cost-of-living increase in grants beginning July 1973 was provided for the first time in state law for needy children.<sup>46</sup> It also was provided that if the federal government cashed out the food stamp program as proposed, AFDC grants would automatically increase to a level equal to 100 percent of need.<sup>47</sup> Recipients also remained eligible for significant work incentives, food stamps, full medical benefits, free social services, and other benefits when available, such as public housing and free legal services. The features that allowed the additional increases at no cost to the taxpayer were a tightening of recognized work-related expense deductions for income recipients,<sup>48</sup> an administratively efficient flat-grant system,<sup>49</sup> and a fuller recognition of recipient income.<sup>50</sup> The Welfare Reform Act also contained significant cost saving features relating to absent parent support, relative responsibility, elimination of abuses and loopholes, and other matters unrelated to the grant structure.

In its final form, the Act retained most of the Governor's original proposals. The equitable apportionment/modified closed-budget method was not adopted. As will subsequently be discussed, however, many of the elements of this concept are present within the Act.

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43. CAL. WELF. & INST. CODE §11452.

44. DIVISION OF BUDGET AND CONTROLS, *supra* note 41, at 23.

45. CAL. WELF. & INST. CODE §11450(d).

46. CAL. WELF. & INST. CODE §11453.

47. CAL. WELF. & INST. CODE §11453.1.

48. CAL. WELF. & INST. CODE §11451.6.

49. CAL. WELF. & INST. CODE §11450.

50. CAL. WELF. & INST. CODE §11451.6.

### *3. Implementation of the Welfare Reform Act*

Most of the 84 sections of the Welfare Reform Act were implemented by the October 1, 1971, operative date provided in the Act. Many were self-implementing and required no regulatory treatment. As of November 1, 1971, 73 percent of the sections of the Act were fully operative, and by March 1972 over 95 percent had been implemented or were in effect.<sup>51</sup> Some aspects of the Reform Act required federal action before implementation.<sup>52</sup> These were presented to the federal authorities; the implementing regulations were drafted and awaited federal action.

The problems of implementing the law were complicated by actions of certain members of the legislature. On October 19, 1971 (19 days after the Act's operative date) Senator Beilenson introduced Senate Concurrent Resolution 132, which would have directed the welfare policy standing committee in each house to investigate the implementation of the Welfare Reform Act. The resolution failed to pass the assembly and was never adopted.

Senator Beilenson appointed a subcommittee of his Senate Health and Welfare Committee which was joined by several members of the Assembly for a joint "investigation" of implementation of the Reform Act. Supporters of welfare reform were not allowed to participate.<sup>53</sup> The proceedings generated a heated atmosphere which resulted in adverse comments directed toward officers of the state department responsible for and heavily involved in the Act's implementation.<sup>54</sup> The result was the further consumption of departmental time and energy thereby impeding the implementation of reform.

#### THE JUDICIAL BATTLE

After many long months of careful planning, followed by more months of negotiation and drafting of legislation, welfare reform was ready to meet the challenge of intensive opposition. That the opposition from the welfare lobby would be intensive had already been demonstrated by their reaction to the implementation of the administrative

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51. WELFARE REFORM IN CALIFORNIA 19.

52. CAL. WELF. & INST. CODE §11267 (limiting AFDC eligibility to those whose gross income did not exceed 150% of their needs), §§11325-11327 (creating a community work experience program).

53. Senator Lou Cusanovich, Vice Chairman of the Senate Health and Welfare Committee, expressly requested to participate but was not allowed to do so by the committee chairman.

54. *Hearings before the Joint Subcomm. on Welfare Reform of the Senate Comm. on Health and Welfare*, Nov. 2, 1971, at 21, 34; Nov. 22, 1971, at 24, 25, 27, 39-42.

reforms.<sup>55</sup>

### A. Legislative Intent

As the Welfare Reform Act was implemented and its reforms began to take effect, the interpretation of specific provisions of the Act became another source of controversy. Recognized opponents of the philosophy of the reform act attempted to interpret legislative intent contrary to the understanding many supporters of the reform effort had of the legislative intent.<sup>56</sup> For example, Senator Beilenson published a letter in the *Senate Journal* on September 21, 1971, designed "to advise my colleagues as to a number of provisions in S.B. 796, the Welfare Reform Act."<sup>57</sup> In reply the Vice Chairman of the Senate Health and Welfare Committee, Senator Lou Cusanovich, challenged the letter noting that it was "interesting and, of course, enlightening that Senator Beilenson took it upon himself to inform us as to just what this body intended in passing out S.B. 796, particularly since his revelations follow enactment by over five weeks." He concluded with the statement:

Finally, for whatever purposes Senator Beilenson has chosen to state what our "intent" was in enacting certain provisions of the Welfare Reform Act, I feel compelled to bring to the attention of this body the fact that the legislative intent was not as stated in the Senator's September 21, 1971, letter.<sup>58</sup>

It is submitted that Senator Beilenson's law journal article was another attempt to establish that the legislative intent was other than that actually held by the California Legislature. An example of the non-objectivity of the article is the discussion dealing with the issue of the extent to which the State Director of Social Welfare can have access to relevant information pertaining to the actual income of welfare recipients. The issue involved whether the consent of the recipient must be obtained prior to inspecting records already in the possession of the State of California. In ruling in favor of the State Director, Justice

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55. For example, during the spring of 1971, the California Welfare Rights Organization (CWRO) distributed a document entitled *CWRO Spring Offensive*. The express goal of the document was to jam the administrative hearing process of the State Department of Social Welfare. Recipients were urged to file appeals whether or not they had received notice of any intended adverse action from the welfare agency. This interesting document also contained numerous inflammatory and inaccurate statements.

56. Carleson, *The Real Answer to Welfare Reform*, HUMAN EVENTS, Apr. 8, 1972, at 11.

57. The statements of legislative intent related to personal property reserves, future grant levels, relationship of the Act to the proposed federal Family Assistance Plan (H.R. 1), inability to effectively secure child support, and recognition of a wife's community property interest as a resource.

58. JOURNAL OF THE CALIFORNIA SENATE 8487-88 (Reg. Sess. 1971).

Bertram D. Janes, on behalf of the Court of Appeal, Third Appellate District, referred to the subject law review article as follows:

Golden Gate [Welfare Rights Organization] has drawn our attention to a recent law review article, "The Welfare Reform Act of 1971," co-authored by one of the state senatorial co-authors of subdivision (e). (3 Pacific L.J. 475 (1972).) The article is cited for the proposition that access to relevant information is allowed by subdivision (e) only "in those individual cases where there is substantial reason to suspect welfare fraud" and that "exploratory searches" are not thereby authorized. Although the article uses such language of limitation (p. 491), subdivision (e) does not; and the unofficial law review material, published long after the enactment of the subdivision, cannot be considered as a statement of legislative intent.<sup>59</sup>

In the case of *Alice v. State Department of Social Welfare*,<sup>60</sup> Senator Beilenson attempted to introduce evidence in support of the petitioners contending that Section 39.01 of the Welfare Reform Act of 1971 was intended to allow unwed, pregnant minors to obtain abortions financed by public welfare monies without consideration of financial need by precluding the welfare agency from determining whether parental resources were available to the minor. The same statement of intent is contained in his law journal article.<sup>61</sup> In ruling for the state, the court rejected this interpretation and held that the proposed evidence of legislative intent by the Senator and his aide was inadmissible, citing *Ballard v. Anderson* wherein a letter by the same legislator to the *Hastings Law Journal* was disclaimed when litigation proceedings developed.<sup>62</sup>

In *Wheat, et al. v. Hall, et al.*,<sup>63</sup> the implementation of Section 24.2 of the Welfare Reform Act dealing with limitations on the market value

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59. *Carleson v. Superior Court*, 27 Cal. App. 3d 1, 9 n.11, 103 Cal. Rptr. 824, 830 n.11 (1972).

60. Superior Court of Sacramento County, No. C 210579, Mar. 26, 1972.

61. Beilenson & Agran, *supra* note 1, at 488.

62. In 1967, the *Hastings Law Journal* staff had relied on a letter from the same legislator concerning the intent of the California Legislature in enacting the Therapeutic Abortion Act. In 1971, the California Supreme Court in *Ballard v. Anderson* disregarded the language of the *Hastings Law Journal* commentary. In doing so, Justice Stanley Mosk stated,

Any authoritative impact of the quotation from a legislative source is dissipated by the sworn declaration of Senator Beilenson executed on November 3, 1970: "I was the principal author of the Therapeutic Abortion Act of 1967 . . . . My administrative assistant responded to the inquiries of the *Hastings Law Journal* by letter, signing my name, in the course of which he made the statement . . . printed at . . . [page] 254 . . . . I did not write that letter, sign it, nor make that statement . . . . I do not share the above opinion expressed and would in fact have advanced a contrary opinion at the time . . . ."

4 Cal. 3d 873, 881, 484 P.2d 1345, 1351, 95 Cal. Rptr. 1, 7 (1971).

63. Superior Court of Los Angeles County, No. C 22662, Feb. 9, 1972.

of personal property was preliminarily enjoined based on the same legislator's declaration under oath that the term "market value" as used in the Act was intended to mean "equity value." In ruling, the court stated,

However, the law's policy of liberality as set forth in the *Rojas* case and Senator Beilenson's declaration, particularly the last paragraph on page 2, tip the scales in plaintiff's favor.<sup>64</sup>

In reversing the lower court's order granting a preliminary injunction, Justice Robert S. Thompson of the Court of Appeal, Second Appellate District, declared,

In an effort to avoid the construction of the phrase "market value" as used in section 11155 which is compelled by the statutory scheme read as a whole, respondents rely upon a declaration of Senator Anthony C. Beilenson, author of the Welfare Reform Act of 1971 which amended section 11155 to its present form. Two considerations bar that tactic. First, the competency of such a declaration is very doubtful except as rebuttal to other published statements of the intent of an individual legislator. (*Rich v. State Board of Optometry*, 235 Cal. App.2d 591, 603 [45 Cal. Rptr. 512]; cf. *Ballard v. Anderson*, 4 Cal.3d 873, 881 [95 Cal. Rptr. 1, 484 P.2d 1345].) Second, the declaration itself states that the problem of the treatment of encumbrances in the determination of market value did not occur to Senator Beilenson but that if it had he would have adopted respondents' view. To interpret legislation on the basis of an afterthought of the author of a bill in a manner contrary to all indications of the intent of other legislators who voted for it, is to permit the author, by the expedient of filing a declaration with a court, to accomplish a one-man amendment.<sup>65</sup>

Even though such efforts have appeared to distort the legislature's true intent, the entire problem is not intrinsically difficult to solve. The law regarding use by the courts of extrinsic aids to assist in statutory construction is relatively clear. If the meaning of the statute is evident on its face, there is no room at all for any extrinsic evidence as to its meaning.<sup>66</sup> Most provisions of the Welfare Reform Act are quite clear.<sup>67</sup>

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64. Letter from Judge Robert A. Wenke to counsel, Mar. 9, 1972, clarifying judgment.

65. 32 Cal. App. 3d 928, 939, — Cal. Rptr. —, — (1973).

66. *Case v. City of Los Angeles*, 218 Cal. App. 2d 36, 42, 32 Cal. Rptr. 271, 275 (1963).

67. However, parts of the personal property section are an exception to this statement. See *Hearings before the Joint Subcomm. on Welfare Reform of the Senate Comm. on Health and Welfare*, Nov. 22, 1971, at 52.



If further clarification of legislative intent is deemed necessary, legislative committee reports and other such matters may be considered. Statements in legislative committee reports concerning statutory objectives and purposes which are in accord with a reasonable interpretation of the statute will be considered by the courts. It will be presumed that the legislature adopted the proposed legislation with the intent and meaning expressed in those reports.<sup>68</sup> The only official report concerning the Act is the Legislative Counsel's Digest which contains numerous descriptions and discussions of key concepts prior to the adoption of the Act. In addition, the Governor's description and discussion of the key concepts had been presented to the legislature and were made a part of its record in the adoption of the Act.<sup>69</sup> Presented with this background, the courts should not have a difficult task in ascertaining the legislative intent in the passage of the Act.

Opponents of reform had relied on the key provisions of the Act being invalidated by the courts as inconsistent with federal law or regulation. Supporters were confident that the Act had a sound legal basis. At this point it is interesting to note that the welfare rights attorneys who actively assisted in the redrafting process were among the first to challenge the redrafted proposals in court.<sup>70</sup> Of the over 80 elements in the bill, only 12 have been challenged in court. All but one were sections rewritten by the legislative staff during the final phase of negotiation. Of special interest is the fact that "legislative intent" has been one of the crucial issues in many of these cases. It appears that at least some of the reworded sections lend themselves to a more difficult solution in determining the true intent of the legislature than in the original proposals. In the vast majority of cases, however, the courts have readily ascertained the legislative intent as held by the reform advocates.<sup>71</sup>

#### *B. Work-Related Expenses—The First Court Test*

The Welfare Reform Act of 1971 added Section 11451.6<sup>72</sup> to the Welfare and Institutions Code providing that work-related expenses as deductions from earned income be limited to a standard allowance set by the legislature at \$50 per month plus reasonable and neces-

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68. *Maben v. Superior Court*, 255 Cal. App. 2d 708, 713, 63 Cal. Rptr. 439, 442 (1967).

69. JOURNAL OF THE CALIFORNIA ASSEMBLY 669-880 (Reg. Sess. 1971).

70. Carleson, *supra* note 56.

71. Of the first fifteen legal challenges considering the merits of the Welfare Reform Act, fourteen were resolved in favor of the State. Some are pending further appeal. WELFARE REFORM IN CALIFORNIA 133-50. Only the section establishing an emergency residency requirement was invalidated. *Brown v. Carleson*, Superior Court of Sacramento County, No. 217636 (1972).

72. CAL. STATS. 1971, c. 578, at 1160.

sary costs of child care. The policy behind this provision was to eliminate the combination of legal loopholes which allowed many persons with substantial income to obtain aid from a welfare system intended to aid only the truly needy. Under the former regulations a welfare recipient was allowed to deduct hundreds of dollars in work-related expenses from gross income prior to determining whether he was eligible for assistance.<sup>73</sup>

The first lawsuit to seriously affect the implementation of the Welfare Reform Act was *Conover v. Hall*,<sup>74</sup> a class action filed in Sacramento by the Alameda Legal Aid Society on September 22, 1971, seeking to restrain implementation of the work-related expense provision. It was alleged that such a limitation was contrary to the requirements of the Social Security Act. Specifically, it was argued that Section 402(a)(7) of the Social Security Act precluded the State from setting a ceiling or maximum upon work-related expenses. Plaintiffs alleged that the \$50 allowance was a maximum grant which did not take into consideration their true expenses. The Sacramento County Superior Court issued a temporary restraining order prohibiting implementation of this aspect of the Welfare Reform Act. The counties had already closed out their computer runs based on the State Director's September 2 instructions. However, the State had not formally filed its implementing regulation on work-related expenses. A writ of supersedeas was sought by the State. The State argued that the language of Section 11451.6 ("shall be limited to a standard allowance of fifty dollars (\$50.00) per month") did not constitute a limitation of work-related expense in violation of federal law, but rather, merely established a standard allowance for work-related expenses for purposes of administrative convenience. The amount of the standard deduction was not in issue, but would have to be based on a valid statistical average.<sup>75</sup> However, the average would now be the minimum required by federal law rather than the maximum.<sup>76</sup>

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73. The recipient may deduct car payments, automobile repairs, cleaning of clothing worn to work, transportation expenses (gas and oil), union dues, clothing necessary for a job (uniforms), child care payments, all involuntary payroll deductions, including federal income taxes, social security taxes, and in California, state disability deductions.

JOURNAL OF THE CALIFORNIA ASSEMBLY 755 (Reg. Sess. 1971).

74. Superior Court of Sacramento County, No. 215815, Sept. 22, 1971.

75. *Rosado v. Wyman*, 397 U.S. 397 (1970). In *County of Alameda v. Carleson*, 5 Cal. 3d 730, 748 n.20, 488 P.2d 953, 966 n.20, 97 Cal. Rptr. 385, 397 n.20 (1971), the California Supreme Court discussed a former standard \$25 deduction for personal expenses attributable to employment and held "The administrative convenience afforded by a standard allowance in a reasonable amount provides justification for deviating from the general principle that only those expenses actually incurred may be deducted from income."

76. Prior to the Welfare Reform Act, Section 11008 of the Welfare and Institutions Code required that to "the maximum extent permitted by federal law, earned

On September 28, 1971, the Court of Appeal, Third Appellate District, issued an order staying the Sacramento County Superior Court's temporary restraining order. The State's regulations were filed and implementation of reform proceeded. Subsequently, the superior court issued a preliminary injunction which was dissolved by the court of appeal. In ruling, Justice Edwin J. Regan declared,

The federal statute in question is ambiguous. As we read the statute, there is no mandate by Congress that a participating state *must* deduct *all* work-related expenses. We think there is merit in the argument that the California Legislature has imposed a statewide *standard* rather than an alleged maximum. . . . We think the California statute, insofar as it sets a statewide standard exclusive of child care costs, comports to federal law and thus find no invalidity.<sup>77</sup>

The use of this fixed standard will significantly simplify the administration of eligibility and grant calculations, while at the same time establishing reasonable fiscal control.

### C. *The Revised Grant Schedules—A Step Towards Equitable Apportionment*

Another early major lawsuit involved the new grant schedules under Section 28 of the Reform Act<sup>78</sup> which raised the grants to totally destitute children while reducing grants to those children whose parents have other resources. The legal action sought extraordinary relief to block the reduction and was filed initially with the California Supreme Court on August 30, 1971, as *Villa v. Hall*.<sup>79</sup> Petitioners attacked Section 28 as invalid under the requirements of Section 402 of the Social Security Act.

Section 402(a)(7) provides that in determining the need of an AFDC recipient any income of the recipient must be taken into consideration. Petitioners argued that this section required that, in calculating the actual amount of grant, outside income had to be considered in relation to and subtracted from the standard of need since the

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income of a recipient . . . shall not be considered income or resources of the recipient, and shall not be deducted from the amount of aid to which the recipient would otherwise be entitled." An example of this prior application is illustrated in the case of County of Alameda v. Carleson, 5 Cal. 3d at 742, 488 P.2d at 961, 97 Cal. Rptr. at 383. Section 20.5 of the Welfare Reform Act amended Section 11008 to delete the requirement that earned income be disregarded "to the maximum extent permitted by federal law" and substituted a provision requiring that earned income be disregarded only to the extent *required* by federal law.

77. *Conover v. Hall*, 28 Cal. App. 3d 676, 685 (1972) (petition for hearing granted, California Supreme Court).

78. CAL. WELF. & INST. CODE §11450.

79. 6 Cal. 3d 227, 490 P.2d 1148, 98 Cal. Rptr. 460 (1971).

standard of need was the determinant of eligibility.<sup>80</sup>

Section 402(a)(10) provides that all individuals wishing to make application for AFDC shall have the opportunity to do so and further requires that AFDC be furnished with reasonable promptness to all eligible individuals. Petitioners argued that Section 28 of the Reform Act operated to deny aid to families whose incomes fell between the maximum grant level and the standard of need. Since such families were concededly needy, they were, it was argued, entitled to money payments by the terms of Section 402(a)(10) of the Social Security Act.

The State argued that while eligibility would be based on need,<sup>81</sup> the amount of the cash grant would be ascertained by subtracting income from the grant schedule.<sup>82</sup> A recipient might be eligible for food stamps, medical care, special needs allowance, and other benefits, even though the basic grant computation was zero. Inasmuch as the California Supreme Court had not issued temporary relief, it was expected that the new grant schedules would be implemented on October 1, 1971.

On the afternoon of September 29, 1971 (the day before welfare checks were to be mailed), the Clerk of the California Supreme Court called the Attorney General's Office to advise that the court had just ordered that, pending final determination of the proceeding, Section 28 of the Welfare Reform Act of 1971 was stayed. To maintain the status quo, the court had stayed the increase in aid to the totally destitute children as well as the reductions to those families with other resources.

This ruling had the legal effect of eliminating the authority for state participation in the AFDC program as well as the counties' authority to pay AFDC grants, since the statute<sup>83</sup> superseded by Section 28 was no longer in effect and the applicable regulation lapsed the preceding day.<sup>84</sup> On September 30, 1971, Attorney General Evelle J. Younger personally advised the supreme court of the situation, and the court modified its order so as to reinstate the superseded statute and

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80. In California, the difference between the standard need and maximum aid was set at the computed value of food stamps. The effect was that each recipient would have his full need met by a combination of grant and food stamps.

81. CAL. WELF. & INST. CODE §11452.

82. CAL. WELF. & INST. CODE §11450(a).

83. CAL. WELF. & INST. CODE §11452, *enacted*, CAL. STATS. 1965, c. 1784, at 4014, *repealed*, CAL. STATS. 1971, c. 578, *effective*, Aug. 13, 1971.

84. CAL. GOV'T CODE §11422.1 provides that no regulation adopted as an emergency regulation shall remain in effect more than 120 days unless certain procedures are followed. As MPP 44-313 was adopted as an emergency regulation on June 1, 1971, it expired by operation of law on September 28, 1971.

restore the basis for the old regulation.<sup>85</sup>

On December 6, 1971, the California Supreme Court granted petitioners extraordinary relief in the form of mandamus to compel the director to administer the state Aid to Families with Dependent Children program (AFDC) so that nonexempt income earned by an AFDC recipient would be deducted from the higher standard of need table of Welfare and Institutions Code Section 11452 and not from the standard of assistance table of Section 11450.<sup>86</sup>

The director petitioned the United States Supreme Court for certiorari, and on June 7, 1972, that Court granted the writ, vacated the opinion of the California Supreme Court, and remanded the matter for further consideration in the light of *Jefferson v. Hackney*.<sup>87</sup> On remand, the California Supreme Court unanimously concluded that the similarity of the California system to that of Texas, as approved by *Jefferson*, required that Section 28 of the Welfare Reform Act be upheld.<sup>88</sup>

Section 28 of the Welfare Reform Act of 1971 was the first step toward the equitable apportionment of welfare grants among recipients according to their actual need. Given the limited dollar amount available from the already overburdened taxpayer, the preference of one class of welfare recipients—those with income—over another—those without income—was not only inequitable, but also restricted the level of welfare payments.<sup>89</sup> With the partial equalization of these two classes as provided in Section 28, the welfare dollars which formerly were provided as a bonus to those with income could be used to increase the grant levels for the more needy recipients.

#### D. Mid-Month Grant Adjustment—Another Loophole Closed

The *Villa* case precipitated a crisis relating to mid-month grant adjustment. Prior to the Welfare Reform Act, welfare department regulations required that AFDC aid be paid in two equal monthly installments.<sup>90</sup> Because of this equal payment rule, a county was prevented from reducing a mid-month payment after having found the grant to

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85. 6 Cal. 3d at 237, 490 P.2d at 1155, 98 Cal. Rptr. at 467.

86. 6 Cal. 3d 227, 490 P.2d 1148, 98 Cal. Rptr. 460 (1971).

87. 406 U.S. 965 (1972). In *Jefferson* the court held that Texas could subtract outside income from the standard of need after that standard had been reduced by a percentage factor. The Court ruled that the system did not violate any provision of the Social Security Act. 406 U.S. 535 (1972).

88. *Villa v. Hall*, 7 Cal. 3d 926, 500 P.2d 887, 103 Cal. Rptr. 863 (1972).

89. In *Jefferson* the Court pointed out that as an alternative to fuller recognition of outside income Texas would be forced to reduce welfare grants to those who need the benefits most. 406 U.S. at 541.

90. MPP 44-315.

be excessive or even unjustified. Instead, it was compelled to wait until the first of the following month to take appropriate action.

The situation became critical when the California Supreme Court's order of September 29 and 30, 1971, in *Villa* reduced the level of payment to two-thirds of the AFDC recipients after many of the first of the month checks were already in the mail, thereby creating a massive overpayment of welfare funds. The counties had no authority to pay excessive grants.<sup>91</sup> There also was the prospect of personal liability of the county directors on their fidelity bonds.<sup>92</sup> To recompute two-thirds of the checks would mean that checks could not be mailed on time. To temporarily suspend checks without notice also might conflict with a September 28, 1971, federal court order requiring advance notice<sup>93</sup> and could constitute a contempt of court. To reduce the second equal payment of AFDC checks to compensate for the overpayment would violate state regulations<sup>94</sup> and also raised the issue of a contempt of the federal court order.

To remedy this situation and to implement Section 20.3 of the Welfare Reform Act, the Director of Social Welfare enacted MPP 44-315 which provided that aid need not be paid in equal installments.<sup>95</sup> This meant that the overpayments could subsequently be adjusted on October 15 without legally constituting a reduction requiring a 15-day prior notice. This restricted the incidence of overpayments and underpayments by allowing necessary adjustment on the first payment date after 15 days' notice had been given rather than requiring the lapse of up to an entire month before adjustment could be made. This regulatory change also restricted future overpayments by allowing mid-month adjustment without notice, provided the total amount of aid paid during the month was at least equal to the preceding month.

A class action, *Caruso v. Carleson*,<sup>96</sup> was instituted in the Sacramento County Superior Court attacking the regulation on the grounds that it conflicted with federal law and the 15-day notice provision of MPP 22-022.1. The issue was: When a county welfare department makes a determination of a reduction, suspension, or termination of assistance in a given case, and based on that determination, the county

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91. CAL. CONST. art. XIII, §25.

92. CAL. GOV'T CODE §1505.

93. *Wheeler (Palladino) v. Montgomery*, U.S. Dist. Ct., N.D. Cal., Civ. No. 48303, order of Sept. 28, 1971.

94. MPP 44-315.512.

95. As an emergency solution, the Director, at approximately 11:00 p.m., Friday, October 1, 1971, filed MPP 44-315 with the Secretary of State thereby eliminating the regulatory requirement. By Monday checks were mailed in all counties except in one in which they were mailed Tuesday.

96. Superior Court of Sacramento County, No. C 217308, Nov. 12, 1971.

gives a written notice of such to the recipient, as of what date can the reduction, suspension, or termination become effective? The director contended that pursuant to federal and state regulations, and consistent with the requirements of due process,<sup>97</sup> the previously noticed "adverse action" may be implemented at the time of the *first* "payment date" which falls *more than 15 days after* the giving of the notice. Judge Irving H. Perluss of the Sacramento County Superior Court sustained the director's interpretation and dismissed the complaint. No appeal was taken.

*E. In-Kind Income—The Unborn Child*

Before the adoption of the Welfare Reform Act of 1971, California utilized a schedule of coded AFDC costs whereby each specific need of every member of the family budget unit, varying in accordance with age and sex, had to be identified and aggregated. Pursuant to the former system of computing the payment to the welfare family, \$21 per month was added to the family budget for an unborn child, "effective the month verification of pregnancy" was made.<sup>98</sup> There was also provision under the former system for \$9 per month for therapeutic diet beginning with the fourth month of pregnancy,<sup>99</sup> if a doctor recommended it,<sup>100</sup> but this sum was not available if the family had any liquid assets or was already receiving a maximum grant.<sup>101</sup>

After the Welfare Reform Act, a new formula was applied.<sup>102</sup> It provided that an unborn child was to be counted in determining family size, but "in-kind" income of the unborn was to be deducted from the amount of the family grant inasmuch as the fetus had no housing, utilities, food, or clothing needs. This action was taken because the director had the duty, imposed by both federal and state law,<sup>103</sup> to take into account any "resources" available to the unborn child. MPP 44-115.95 provided:

When an unborn child is included in the FBU (AFDC Family Budget Unit), the in-kind deduction shall be the total of the amounts by which the above in-kind values for housing, utilities, food, and clothing are increased as a result of including the unborn in the FBU.

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97. This requirement of prior notice (and an opportunity for a hearing) is imposed by principles of due process as announced by the United States Supreme Court in *Goldberg v. Kelly*, 397 U.S. 254 (1970).

98. MPP 44-212.62.

99. MPP 44-265.212.

100. MPP 44-265.211.

101. MPP 44-265.1.

102. MPP 44-213.31.

103. 42 U.S.C. §602(a)(7); 45 C.F.R. §233.20(a)(3)(ii)(a); CAL. WELF. & INST. CODE §§10554, 11008.

Such values were spelled out in the regulation. Additionally, the director greatly liberalized payment of the \$9 per month for therapeutic diet. The new regulation no longer required the family to exhaust its liquid assets before it was eligible for this extra compensation. Also, it was no longer subject to the MPB or the three-month waiting period. All that is now required is a doctor's recommendation that the extra diet be given. The mother-to-be also has her medical expenses paid under the Medi-Cal program and is eligible for food stamps.

At least one county misapplied the new formula and deducted the parent's as well as the unborn's housing, utilities, food, and clothing allowance as in-kind income. In such cases, the grant was less, by reason of the deduction of "in-kind" income, than the grant received prior to the pregnancy. As soon as the director was made aware of this, he directed the preparation of remedial regulations to assure that grants would be increased by the addition of the unborn child.<sup>104</sup> Pending issuance of said regulations, he ordered retroactive adjustment of all grants to correct the problem.<sup>105</sup>

Before the new regulations were issued, a class action was instituted in the Shasta County Superior Court challenging the validity of MPP 44-115.95.<sup>106</sup> Plaintiffs claimed that federal and state law prohibit the payment of less than the full increment of maximum aid to an eligible needy person, even if the recipient is unborn. Plaintiffs' motion for a preliminary injunction was denied, the court holding that to afford the unborn child full status as an additional member of an AFDC family "defies common sense."<sup>107</sup>

The California Welfare Rights Organization and individual welfare recipients sought a writ of mandate and/or prohibition and a temporary stay order from the Court of Appeal, Third Appellate District.<sup>108</sup> The court issued an order to show cause, but refused to grant the stay. An attempt to obtain a stay from the California Supreme Court also met with failure.

On March 23, 1973, the court of appeal denied the petitioners writ of mandate. Two crucial conclusions were made. The first related to legislative intent in passage of the Welfare Reform Act and its judicial interpretation. As Presiding Justice Frank J. Richardson, speaking for the court, stated,

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104. Affidavit of Director Robert B. Carleson filed in *Shelton v. Babiarz*, Superior Court of Shasta County, No. 45154, Aug. 14, 1972.

105. Letter from Director Robert B. Carleson to Shasta County Welfare Director, June 22, 1972.

106. *Shelton v. Babiarz*, Superior Court of Shasta County, No. 45154, Aug. 14, 1972.

107. *Id.*, ruling upon a motion to strike complaint.

108. *CWRO v. Brian*, 31 Cal. App. 3d 265, 107 Cal. Rptr. 324 (1973) (petition for hearing filed with the California Supreme Court).



The acceptance of such a wooden and mechanical contention (the plaintiffs), in our view, could handcuff the administrators of public welfare systems to constrict their actions well beyond the clearly expressed legislative intent. It would add a mask blinding them to reality. No valid public purpose can be served by such an approach, nor is it dictated by any legislative or judicial expression.<sup>109</sup>

The second conclusion observed the amount of discretion the Act provides the director of the welfare department. The court declared:

We find no legislative requirement of identical treatment of the born and the unborn as recipients under the flat-grant program. The administrator of the program, while recognizing the eligibility of the unborn, has elected by regulation to treat the born and the unborn differently by increasing the family allowance for the latter in an amount less than the full increment of an additional person in being. In doing so, he has recognized the mother's physical contribution to the unborn during pregnancy in the form of resources or "income in kind." We see nothing capricious in such action. Accepting the latitude afforded the administrator of a complex welfare program within limits imposed by the constitution and federal and state laws, we conclude that he has such discretion.<sup>110</sup>

This decision affirmed the concept of in-kind income and also emphasized that the director has a sufficient amount of discretion to enforce the reform act through "common sense" regulations without having to resort to expending "public funds for a fiction." It is of interest to note that petitioners went to great length, both in and out of court, to paint a frightening picture. They claimed the regulation denied the fetus of welfare recipients the essential nourishment needed for healthy development. The result would be a tidal wave of defective, demented, and deformed children.<sup>111</sup> In fact, under the regulations, the monies made available to the welfare recipients exceeded the amounts specified by both federal and state authorities as necessary for a good nutritional diet.<sup>112</sup>

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109. *Id.* at 275-76, 107 Cal. Rptr. at 331.

110. *Id.* at 280, 107 Cal. Rptr. at 333-34.

111. While the case was pending, Senator George R. Moscone conducted a series of hearings in which an attempt was made to portray the regulations as depriving the mother and fetus of essential nourishment and resulting in the birth of mentally and physically defective children. See *Hearings before Subcomm. on Nutrition and Human Needs of Senate Comm. on Health and Welfare*, Oct. 4, 10, 26, Nov. 29, 1972.

112. The U. S. Department of Agriculture calculations show that a pregnant woman requires food costing an additional \$6.45-7.31 per month. CONSUMER & FOOD ECONOMICS RESEARCH DIV., AGRIC. RESEARCH SERVICE, U.S. DEP'T OF AGRIC., FAMILY ECONOMIC REVIEW (Oct. 1964); (Mar. 1972). The Department of Social Welfare regulations provided an additional \$19.00 (including therapeutic diet).

### F. In-Kind Income—The Multiple Grant Household

A key concern of welfare reform was meeting recipient need while conserving the available public funds. A significant number of California welfare recipients share living arrangements with others who also receive public assistance. This resulted in a pyramid of separate welfare grants which did not take into account the lesser costs that result from shared living expenses.<sup>113</sup>

In 1971 the Department of Social Welfare issued regulations on grant computation for cases in which recipients share living arrangements.<sup>114</sup> Both the 1970 regulations and the amended regulations concern only the calculation of housing-utility allowances in shared living arrangements. To prevent recipients of aid from receiving amounts in excess of their actual need, the benefits derived from shared living arrangements were recognized as income. The basis of the concept of in-kind income is the economies of scale—*i.e.*, the more individuals that reside in a given living unit, the lower the per individual cost.

These regulations were challenged in a class action entitled *Cooper v. Carleson*.<sup>115</sup> The plaintiffs argued that the concept of in-kind income conflicted with federal law. They claimed the Social Security Act permitted consideration only of income actually received. It was further alleged that the state regulations had the effect of dictating the manner in which a recipient had to spend his grant and were therefore contrary to federal regulations. Judge George E. Paras, of the Sacramento Superior Court, in a ruling which the court of appeal characterized as “extensive, thorough and well reasoned,”<sup>116</sup> rejected the attack on the regulation and held it a valid recognition that where “two separate category recipients combine in one household, an excess of payments results. . . .”<sup>117</sup>

On appeal, the decision of the trial court was upheld. The court of appeal quoted Chief Justice Burger’s concurring opinion in *Carleson v. Remillard*, in which he stated:

“[I]t would be curious, indeed, if two ‘pockets’ of the same government would be required to make duplicating payments for welfare.

“The administrative procedures to give effect to this process may be cumbersome, but the right of the State to avoid overlapping

113. JOURNAL OF THE CALIFORNIA ASSEMBLY 763 (Reg. Sess. 1971).

114. MPP 44-207.23, 44-212.2, 44-212.14.

115. Superior Court of Sacramento County No. C 219145, Oct. 19, 1971.

116. 31 Cal. App. 3d 546, 560, 107 Cal. Rptr. 502, 512 (1973) (petition for hearing filed in California Supreme Court).

117. Superior Court of Sacramento County, No. C 219145, Oct. 19, 1971.

*benefits for support should be clearly understood.*"<sup>118</sup>

The court of appeal then declared,

[R]ecipients of aid are thus prevented from receiving amounts in excess of their actual need by treating as income the benefits derived from shared living arrangements. This is not a legally impermissible assumption of income. It assures that a needy child's actual housing and utility needs are met, while at the same time preventing duplicate welfare payments. A contrary interpretation would be most illogical as it would sanction excessive grants to welfare recipients whose needs are satisfied, rather than protecting the welfare program against a wasteful double payment for a single need.<sup>119</sup>

Reduction of these duplicate payments provides the State with the opportunity to increase aid to those who are the most needy—one of the primary objectives of the reform effort.

### G. *Child Care Services*

Section 18.3 of the Welfare Reform Act of 1971 required each county to provide "child care services for former, current, and potential recipients of public assistance who certify that if provided such services they will accept or maintain employment or training and who further certify that without such services they would be unable to accept or maintain employment or training."<sup>120</sup>

In an attempt to show that the director was enforcing only those portions of the Welfare Reform Act that he favored while refusing to implement those sections he disfavored, a suit was instituted in the Sacramento County Superior Court.<sup>121</sup> It was specifically charged that the director refused to adopt the enabling regulation necessary to put this child care program into effect. The charge was without foundation in fact. The regulations which petitioner alleged needed to be promulgated had, in fact, been promulgated.<sup>122</sup> The director had notified the counties of their respective allocations and had requested the counties to submit child care proposals.<sup>123</sup>

Judge Robert K. Puglia expressly took judicial notice of the department's regulations and directions and sustained the director's de-

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118. 31 Cal. App. 3d at 554, 107 Cal. Rptr. at 507, quoting from, 406 U.S. 598, 604 (1972).

119. 31 Cal. App. 3d at 557, 107 Cal. Rptr. at 509.

120. CAL. WELF. & INST. CODE §10811.

121. CWRO and Lopez v. Carleson, Superior Court of Sacramento County, No. 217499, May 25, 1972.

122. MPP 30-350.

123. Letter from Deputy Director, Operations, Department of Social Welfare, to all county welfare directors, Dec. 21, 1971.

murrer without leave to amend and dismissed the action with prejudice.<sup>124</sup> Although a notice of appeal was filed, it was subsequently dismissed.

#### *H. Earnings Clearing System—Providing a Deterrent*

An essential element of welfare reform's goal of a tightly controlled qualification program was the method to verify recipient income. In Governor Reagan's message "Meeting the Challenge," he proposed a system which would permit the State to cross-check Social Security numbers of welfare recipients and applicants with State Franchise Tax Board, Federal Internal Revenue Service, and unemployment insurance records to assure that the income status of the recipient conformed to the facts the recipient reported.<sup>125</sup>

This proposal became an important part of the Welfare Reform Act of 1971. Section 1094 of the Unemployment Insurance Code was amended to grant authority to the Director of the State Department of Social Welfare to review reports of earnings of workers submitted by employers to the Department of Human Resources Development for maintenance of unemployment insurance records. Pursuant to this statutory authority,<sup>126</sup> in December 1971 the Director of Social Welfare, Robert B. Carleson, inaugurated the Earnings Clearance System, a computerized method for checking earnings reported to county welfare departments by California recipients of AFDC. The system operates as follows:

On a quarterly basis, the Department of Social Welfare sends to the Department of Human Resources Development the social security numbers of all persons, 16 years of age or older, who received AFDC during the second prior quarter. The Department of Human Resources Development matches the social security numbers against its files showing wages reported to it by employers as having been paid during the second and third quarters to persons with those numbers. The Department of Human Resources Development transmits this information to the Department of Social Welfare which distributes it to the county welfare departments for comparison with earnings reported by recipients for investigation and possible referral to the district attorney.

The first reports, for the quarter of April to June, 1971, were released to the counties in late December 1971. Preliminary results established that it was an invaluable tool in uncovering welfare fraud.

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124. *CWRO and Lopez v. Carleson*, Superior Court of Sacramento County, No. 217499, May 25, 1972.

125. *JOURNAL OF THE CALIFORNIA ASSEMBLY* 809 (Reg. Sess. 1971).

126. *CAL. UNEMP. INS. CODE* §1094.

On February 1, 1972, a suit was filed by the Golden Gate Welfare Rights Organization of San Francisco against the Director of Social Welfare.<sup>127</sup> A temporary restraining order was issued without notice the same day, followed by a preliminary injunction restraining the Department of Social Welfare from acquiring additional information from the Department of Human Resources Development through the newly inaugurated system, and restraining the department from using the information previously obtained.

The gist of the plaintiff's attack was that the system violated federal regulations which restricted the verification of applicants' and recipients' information to that reasonably necessary to ensure the legality of program expenditures. The extensive scope of the new system was alleged to be contrary to the import of the federal regulations. Success in this attack would have prevented effective supervision of the welfare program and seriously crippled welfare fraud investigations.

The Director of the Department of Social Welfare moved to vacate the injunction and was joined by the then Secretary of the Department of Health, Education, and Welfare, Elliot Richardson, who filed pleadings in support of the system. The trial court refused to dismiss the suit or vacate the preliminary injunction.

Stymied by the trial court's injunction against use of this promising fraud detection system, the director petitioned the Court of Appeal, Third Appellate District, for extraordinary relief.<sup>128</sup> The court issued an order to show cause and temporarily stayed the preliminary injunction. Golden Gate Welfare Rights Organization immediately moved to have the California Supreme Court assume jurisdiction and to reinstate the injunction. The supreme court refused to do so. The removal of judicial restraint permitted the issuance of a new computer run and cleared further exchange of information.

On August 3, 1972, the court of appeal ruled for the State and permanently stayed the preliminary injunction recognizing that it was

eminently fair—and simply common sense—for the executive branch of the State of California to verify the legality of past AFDC payments by recourse to information which it has lawfully acquired and which is lawfully available for that purpose. Neither sound business practice nor the law demands less care if public confidence in the AFDC programs is to be maintained.<sup>129</sup>

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127. *Golden Gate Welfare Rights Organization v. Carleson*, Superior Court of Sacramento County, No. C 219492, Mar. 2, 1972.

128. The court, citing *Mooney v. Pickett*, 4 Cal. 3d 669, 675, 483 P.2d 231, 234, 94 Cal. Rptr. 279, 282 (1971), found that a public interest in a speedy determination of the issues compelled it to assume jurisdiction. *Carleson v. Superior Court*, 27 Cal. App. 3d 1, 4, 103 Cal. Rptr. 824, 827 (1972).

129. 27 Cal. App. 3d at 10, 103 Cal. Rptr. at 831.

On October 5, 1972, the California Supreme Court denied a petition for hearing. The Earnings Clearance System has proven to be so successful<sup>130</sup> in ensuring more accurate reporting of income that it is used as a model by other states.

*I. The Community Work Experience Program—Providing a Goal*

The California welfare reform program recognized that there were thousands of able-bodied, employable individuals on the AFDC rolls. Meaningful welfare reform required that the maximum possible effort be made to assist those able to work to become economically self-supporting by making acceptance of employment a condition of welfare eligibility.<sup>131</sup> California's Employables Program separated employable AFDC recipients from those who were aged, handicapped, or required at home, and provided special employment counseling.

The Welfare Reform Act established a definite priority for employable AFDC recipients.<sup>132</sup> Immediately upon application for benefits, they were required to register with the Department of Human Resources Development (HRD), the state department providing employment services. If no job was available, they were to be referred to specialized training, such as the Work Incentive Program (WIN). If neither a job nor training was available, the recipient was expected to participate in a Community Work Experience Project.<sup>133</sup>

The Community Work Experience Program (CWEP) was established to provide a transitional step between welfare and employment.<sup>134</sup> CWEP was designed to provide for the development of employability through actual work experience and training. The experience and work habits gained in CWEP would provide a track record for the participant, increasing his potential value in the private and public employment sectors.

In addition, CWEP would perform public services needed by the community which would not otherwise be accomplished. Only those services which would meet an otherwise unfulfilled public need would qualify for CWEP so that existing jobs in the public and private sectors would not be jeopardized. Organized labor was urged to as-

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130. Statistics submitted by all 58 California counties following a thorough review of 7,999 cases indicated apparent grant overpayments resulting from unreported income by recipients in 3,311 cases. An additional 384 cases remain unchecked at this writing. The overpayment incidence among those cases checked is in excess of 41%. Supporting data indicates the average overpayments ranged between \$460 and \$500 during the study quarter. WELFARE REFORM IN CALIFORNIA 69.

131. WELFARE REFORM IN CALIFORNIA 33.

132. CAL. WELF. & INST. CODE §11325.

133. WELFARE REFORM IN CALIFORNIA 33-34.

134. JOURNAL OF THE CALIFORNIA ASSEMBLY 777 (Reg. Sess. 1971).

sist in ensuring that existing patterns of employment were safeguarded and in identifying appropriate work projects.<sup>135</sup>

As described in the Welfare Reform Act,<sup>136</sup> CWEP projects would include activities in the field of health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, and public safety. Obviously the benefits to the community would be significant, but even more significant would be the benefits to the participant. Rather than a passive acceptance of a welfare dole, the CWEP participant would play an active role in bettering the community and would be able to see the results of his efforts. In addition to establishing in the participant the feeling of dignity that comes from doing meaningful work, CWEP would strengthen the family relationship by reestablishing the participant's role as the breadwinner of the household and providing an image of the work ethic with which impressionable children could identify.

California implemented CWEP through a federally-approved demonstration project. The program required participants to spend a maximum of half-time (80 hours a month) engaged in useful public service projects. While participating in CWEP the recipient remains on welfare and continues to receive employment and social services. The fact that such participation is, at the maximum, half-time enables the participant to continue to actively seek employment during the remaining times.<sup>137</sup>

Within hours of federal authorization to proceed with CWEP, the State filed an action for declaratory relief in the United States District Court.<sup>138</sup> The State was seeking a declaration that CWEP does not conflict with any provision of the Social Security Act or the United States Constitution. It was an unusual action in that the State named as defendant the California Welfare Rights Organization in an effort to avoid the threat of injunction. Surprised by the State's action,<sup>139</sup> CWRO failed to make an immediate response. Meanwhile, the phased implementation of CWEP proceeded on schedule.

Litigation on CWEP is still pending. However, a recent United States Supreme Court decision<sup>140</sup> may have a far-reaching effect in the eventual outcome of the challenge to CWEP's legality. New York has

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135. *Id.* at 778.

136. CAL. WELF. & INST. CODE §11325.

137. WELFARE REFORM IN CALIFORNIA 36.

138. *Hall v. CWRO*, U.S. Dist. Ct., C.D. Cal., No. 72-1278, June 8, 1972.

139. *Sacramento Bee*, June 10, 1973, at 27, col. 1.

140. *N.Y. State Dep't of Social Services v. Dublino*, 41 U.S.L.W. 5047 (U.S. June 21, 1973).

instituted a program similar to CWEP which was attacked on both due process grounds and preemption of state work rules by the federal work incentive program (WIN). The Supreme Court reversed the lower court's finding that the WIN regulations preempted the New York Work Rules, and ruled that the Social Security Act permitted complimentary state work programs and incident procedures even if they become conditions for continued eligibility.<sup>141</sup> Since the issues in the California case are similar, the State's position has been considerably strengthened by this decision. Meanwhile, CWEP is demonstrating that work requirements in conjunction with increased counseling result in a significant reduction in the number of able-bodied recipients on the welfare rolls.

### *J. Family Responsibility*

Another important theme of welfare reform was the need to establish and enforce the principle that family members are responsible for the support of relatives. In its simplest form, the argument was that every dollar contributed by the relative of a person on the welfare rolls was a dollar saved the taxpayer. However, the welfare reform goals went farther and identified the family as the basic unit in society, emphasizing increased dependence upon the family and eliminating aspects of the welfare system that constituted incentives to break up the family unit.

The following major categories bear on family responsibility:

1. Absent parents, who are held to be responsible for the financial support of their issue;
2. Adult children of aged parents, who are held to be responsible for reasonable contributions to the support of their parents;
3. Stepfathers, who are held to be indirectly responsible for the support of their nonadoptive stepchildren as a consequence of California's community property laws;
4. Parents of unwed minor mothers, who remain responsible for the support and guidance of their offspring; and
5. Non-needy relatives, whose contributions to the resources of a child are to be considered in determining the child's need.

#### *1. Absent Parent Child Support*

In July 1972, 1,272,151 persons, or 62.7 percent of the statewide welfare population of just over two million cash grant recipients, were

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141. *Id.* at 5052.



enrolled under the AFDC-FG welfare category.<sup>142</sup> There were 392,880 AFDC-FG welfare cases in that month. This is the largest single public welfare program in the State of California and provides cash assistance for over 900,000 children.<sup>143</sup>

A major eligibility requirement for the AFDC-FG program is that the child or children in the family unit must be deprived of at least one parent.<sup>144</sup> It is usually the father who is absent from the family group. Although a small percentage of the absent fathers in this caseload are dead, incapacitated, imprisoned, or deported, about 80 percent, or 314,000, are absent because of divorce, separation, or desertion, or because they were never married to the mother of the AFDC child.<sup>145</sup>

During the fiscal year 1969-70, less than 15 percent of the absent parents contributed to the support of children enrolled in AFDC.<sup>146</sup> The average monthly payment for those who did contribute amounted to \$74.95.<sup>147</sup> More astounding was the fact that many of the absent fathers were employed and capable of providing some support.<sup>148</sup>

In California, primary responsibility for child support enforcement activities rests with local administrations and county agencies.<sup>149</sup> Basic statutes establishing the authority of county welfare departments and district attorneys—which designated the latter as primarily responsible for child support enforcement—were enacted in 1951.<sup>150</sup> By 1965 county welfare departments had been given responsibility for identifying and locating absent parents, determining the ability to pay child support, obtaining voluntary support agreements, and exploring possibilities of family reconciliation.<sup>151</sup> The system was apparently based on the principle that if an absent father voluntarily cooperated in establishing how much he was able to pay and then actually paid, it was unnecessary and inappropriate to refer the case to the district attorney as a law enforcement matter. In only about one-third of the welfare cases was there a court order for child support, but social workers were reluctant to refer even these cases to the district attorney as long as the father paid something, or looked like he might eventually be convinced to pay something.<sup>152</sup> The statute which required re-

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142. WELFARE REFORM IN CALIFORNIA 90 n.7.

143. *Id.* at 38.

144. *Id.*

145. *Id.*

146. CAL. STATE SOCIAL WELFARE BOARD, FINAL REPORT OF THE TASK FORCE ON ABSENT PARENT CHILD SUPPORT 12 (Jan. 1971).

147. WELFARE REFORM IN CALIFORNIA 38.

148. *Id.*

149. *Id.* at 39.

150. *Id.*

151. *Id.*

152. *Id.* at 40.

ferral of recalcitrant cases to the district attorney within 45 days<sup>153</sup> was more often than not ignored. Many and perhaps most district attorneys looked upon child support cases as low priority matters when compared to their criminal caseloads. In many cases they completely abdicated their statutory duty to collect child support, viewing the welfare program as a relief mechanism for absent parents, many of whom had their own financial problems with second families.<sup>154</sup>

A critical element of the reform package was to convince county authorities and the public that enforcing child support obligations is a law enforcement function rather than social case work. The Welfare Reform Act of 1971 shortened the time limit for mandatory referral of cases to the district attorney from 45 to 30 days,<sup>155</sup> and gave district attorneys authority to demand immediate referral of all absent parent welfare cases, thus placing full responsibility for child support in the law enforcement office.<sup>156</sup>

Failure to provide support has long been cause for criminal action in California.<sup>157</sup> District attorneys, however, were now encouraged to look toward civil remedies as well as the traditional criminal one.<sup>158</sup> The goal was to establish in each of the counties a program centralized in the district attorney's office and tailored to provide the appropriate remedy for each nonsupporting absent parent case. Those who were regularly employed in good jobs could be reached through a civil judgment or through a stipulated judgment which can be enforced by means of a wage assignment or attachment proceeding.<sup>159</sup> Those who willfully refused to provide support could be prosecuted criminally for failure to provide.<sup>160</sup> The objective in such cases is to obtain a judgment and a suspended jail sentence; the absent father would stay out of jail only so long as he paid the child support ordered by the court.<sup>161</sup>

The Welfare Reform Act provided an incentive to induce district attorneys to take an active part in pursuing absent parents. Welfare AFDC cash grants are funded 50 percent by the federal government, 34 percent by the state, and 16 percent by the county.<sup>162</sup> Since child support payments to families on welfare are treated as income, cash

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153. CAL. WELF. & INST. CODE §11476, as enacted, CAL. STATS. 1965, c. 1784, at 4016.

154. WELFARE REFORM IN CALIFORNIA 40.

155. CAL. WELF. & INST. CODE §11476.

156. *Id.*

157. CAL. PEN. CODE §270.

158. WELFARE REFORM IN CALIFORNIA 40.

159. *Id.*

160. CAL. PEN. CODE §270.

161. WELFARE REFORM IN CALIFORNIA 40.

162. *Id.* at 41.

grants are reduced in a like amount. Formerly, counties received only 16 percent of such recoveries, notwithstanding the fact that all administrative and enforcement costs had to be paid for at the county level. This made an already unpopular program costly. The Welfare Reform Act established the Support Enforcement Incentive Fund (SEIF) which appropriates state funds to the extent of 21.25 percent of the amounts collected from absent parents which reduce a welfare grant.<sup>163</sup> The county may now receive 37.25 percent (21.25 percent and 16 percent) which equals 75 percent of the nonfederal share of the amounts of current child support collected from absent parents.<sup>164</sup> The Act also provided that the state would pay one-half of the non federally funded, reimbursed administration costs.<sup>165</sup> Since the costs of collection on the average represent only 10-15 percent of the support payments,<sup>166</sup> there is a significant incentive to improve collections. This has been reinforced by efforts of the Department of Social Welfare to have all SEIF payments allocated to the district attorney's office and to other county offices directly involved in tracking and collecting from absent parents.<sup>167</sup> In addition, the State Director of Social Welfare distributed a monthly report on all SEIF collections in all counties to all district attorneys, county welfare directors, and the chairman of each county board of supervisors. Also, the Welfare Reform Act makes a deserting parent liable in the form of a civil debt for the cost of welfare furnished his family in his absence to the extent he is reasonably able to pay.<sup>168</sup> Counties are allowed to retain 50 percent of all such back support collected.<sup>169</sup>

Other changes in the law required an absent parent to file a complete financial statement with the county when an application for welfare is submitted on behalf of his children<sup>170</sup> and required social security numbers of both parents to be entered on birth certificates.<sup>171</sup> Social security numbers were also required on the statement of facts supporting eligibility for welfare payments.<sup>172</sup> Technical changes provided for more effective use of procedures by which the earnings of an absent parent can be attached,<sup>173</sup> and child support payments were given a "preferred creditor" classification, which takes precedence

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163. CAL. WELF. & INST. CODE §15200.1.

164. CAL. WELF. & INST. CODE §11457.

165. *Id.*

166. WELFARE REFORM IN CALIFORNIA 41.

167. *Id.*

168. CAL. WELF. & INST. CODE §11350.

169. CAL. WELF. & INST. CODE §11457.

170. CAL. WELF. & INST. CODE §11353.

171. CAL. HEALTH & SAFETY CODE §10125.

172. CAL. WELF. & INST. CODE §11265.

173. CAL. WELF. & INST. CODE §11489.

over other court attachments.<sup>174</sup> The amount of earnings that are exempt from attachment was reduced.<sup>175</sup> In addition, the California Civil Code was amended to permit the courts to order absent parents to enter into a wage assignment<sup>176</sup> and to pay to the county reasonable attorneys' fees and court costs arising out of any child support proceeding.<sup>177</sup>

In order to bring pressure to bear on county welfare departments and especially on district attorneys, where the primary obligation rests, drafters of the Welfare Reform Act included a provision which requires the grand jury in every county to appoint an auditor to conduct an annual review of the county's child support collection program.<sup>178</sup> The auditor must file a copy of his annual report with the county's board of supervisors and with the State Department of Social Welfare. Since district attorneys are elected officials responsible to the taxpayers, the grand jury auditor requirement has particular significance.<sup>179</sup>

On March 7, 1973, the Family Responsibility Act of 1972,<sup>180</sup> authored by Senators Howard Way and Clair W. Burgener, became effective. This act includes needed child support changes which were originally proposed at the time of the Welfare Reform Act of 1971, but were not included in the final version.<sup>181</sup> The 1972 Act represents a continuation of the original reform effort and includes the following provisions:

1. Priority to child support over debts to creditors;<sup>182</sup>
2. Award of attorneys' fees and court costs to the prevailing party in a modification proceeding;<sup>183</sup>
3. The county of residence of an illegitimate child is proper venue for trial of a paternity or child support action;<sup>184</sup>
4. A California child support order may be transferred from the original county to any county in California where the plaintiff has moved and a child support enforcement action initiated thereon;<sup>185</sup>
5. Any agreement for support between an absent parent and the welfare department is void to the extent it is not consistent

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174. *Id.*

175. *Id.*

176. CAL. CIV. CODE §4701.

177. CAL. CIV. CODE §248.

178. CAL. WELF. & INST. CODE §10602.5.

179. WELFARE REFORM IN CALIFORNIA 43.

180. S.B. 184, CAL. STATS. 1972, c. 1118.

181. Family Responsibility Act of 1971, S.B. 544, 1971 Regular Session.

182. CAL. CIV. CODE §4700.

183. *Id.*

184. CAL. CODE CIV. PROC. §395.

185. CAL. CODE CIV. PROC. §1681.

with an existing court order;<sup>186</sup>

6. A financial referee may be appointed to make recommendations to the court as to proper amount of child support.<sup>187</sup>

## 2. *Responsible Relatives*

An important theme occurring through California's efforts at welfare reform is the need to establish and enforce the principle that family members are responsible for the support of relatives.<sup>188</sup> The Governor's welfare reform legislation, as introduced,<sup>189</sup> revised the statutory OAS responsible relative scale so as to require adult children of OAS recipients to make reasonable contributions toward the support of their parents. The Welfare Reform Act of 1971, as enacted, not only amended Civil Code Section 206 to affirm the duty of a child to support his parents, but also amended the Welfare and Institutions Code to further increase the maximum amount that an adult child must contribute toward the support of his parent receiving OAS.<sup>190</sup> The Director of Social Welfare was granted authority to establish the "responsible relative's scale" in amounts less than the statutory maximum.<sup>191</sup>

Under both the former and the new laws, all children of OAS recipients were potentially liable for a contribution to their parents. The former law stipulated that the contribution could be made either to the recipient or to the county welfare department.<sup>192</sup> Under the new law, contributions were to be made directly to the county.<sup>193</sup> Under the former as well as the new law, the amount of liability was determined by a contribution scale based on the adult child's net monthly income (gross income minus 25 percent) and the number of people dependent upon that income.<sup>194</sup>

The former and new laws both contained provisions for a reduction in the relative's contribution in cases where hardship could be demonstrated to the county.<sup>195</sup> In addition, if the adult child is still dissatisfied, he may appeal his required contribution to the State Social

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186. CAL. WELF. & INST. CODE §11476.

187. CAL. CODE CIV. PROC. §1769.

188. JOURNAL OF THE CALIFORNIA ASSEMBLY 793 (Reg. Sess. 1971).

189. S.B. 544, 1971 Regular Session, as introduced, Mar. 9, 1971.

190. CAL. WELF. & INST. CODE §12101.

191. This authority was utilized on May 30, 1972, by the Director of Social Welfare in adopting regulation MPP 43-109 setting a scale lower than the statutory maximum and at a level consistent with that initially introduced by the Governor.

192. CAL. WELF. & INST. CODE §12101, as enacted, CAL. STATS. 1965, c. 1784, at 4026.

193. CAL. WELF. & INST. CODE §12101.1.

194. CAL. WELF. & INST. CODE §12101.

195. *Id.*

Welfare Department in order to reduce his liability.<sup>196</sup>

Under the former law, the amount of the required contribution seldom, if ever, exceeded the amount of the cash grant. The new regulations provided that the relative's contribution shall be limited by the amount of the cash grant,<sup>197</sup> even though the law permitted establishment of a liability against the cost of medical and other services received by the OAS parent.<sup>198</sup>

A class action, *Dykstra v. Carleson*,<sup>199</sup> was commenced in the Sacramento County Superior Court seeking to enjoin the state from requiring adult children to make financial contributions to their parents' support. It was alleged that the OAS relatives' responsibility provisions<sup>200</sup> were unconstitutional in that they were discriminatory and in violation of the equal protection clause of the fourteenth amendment of the United States Constitution and Article I, Sections 11 and 21 of the California Constitution. Plaintiffs also argued that the support of the elderly was a broad societal obligation.

A temporary restraining order was issued by the superior court. The director sought a writ of prohibition from the Court of Appeal, Third Appellate District. That court issued an order to show cause and stayed the superior court proceedings. Subsequently, the court of appeal agreed with the director's position and held the provisions constitutional.<sup>201</sup>

This case is of importance, not only because of the more than 750,000 responsible offspring who are affected, but even more so because of the conflicting philosophies. One view espoused the long-honored principle of family responsibility and the strong belief that relieving adult children of the legal duty to assist parents is only one step removed from discharging the parents from their responsibility to provide for their minor children. In contrast, those who opposed this philosophy argue that society as a whole has the duty of support. They would by-pass the family and, by so doing, down-grade it and its place in our social structure.

Speaking for the court of appeal, Justice Leonard M. Friedman commented,

In establishing the OAS program, the Legislature was at liberty to hold down the public cost. As recognized by California case law, section 206 was itself an effort to reduce the public cost of

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196. CAL. WELF. & INST. CODE §12100.

197. MPP 43-109.

198. CAL. WELF. & INST. CODE §12101.

199. Superior Court of Sacramento County, No. 216141, Oct. 5, 1971.

200. CAL. WELF. & INST. CODE §§12101, 12101.1, 12107.

201. *Carleson v. Superior Court*, 23 Cal. App. 3d 1068, 100 Cal. Rptr. 635 (1972).

dependency. By assuming the burden of supporting needy parents through the OAS program, the state undertook an *in loco parentis* role. Section 206 had traditionally permitted a dependent parent to sue his children for support. To conserve the expense of the OAS program, the relatives' responsibility law utilized a similar device, in effect subrogating the government to the tradition-supported claim of the parent whose needs it had met.

The legislative choice was neither arbitrary nor unique. Quite aside from the law's artificial contrivances, social custom produces a two-way flow of financial support between the generations, its rise and ebb responding to shifting states of dependency. To conserve the public treasury, organized society transforms this custom into a duty, enforced by legal sanctions, criminal as well as civil. The state stimulates by appropriate sanctions the flow of financial assistance from parent to dependent child. Sanctions which assure the reverse flow from adult offspring to dependent parent represent the reverse of the selfsame policy. That one tradition traces its lineage through the common law, the other through an act of Parliament, is hardly crucial. Publicly enforced filial responsibility is no more unique, no more arbitrary, than publicly enforced parental responsibility. When the state extended support to dependent parents through the OAS program, the relatives' responsibility provisions did no more than embrace an existing principle and add the government to those who might utilize it.<sup>202</sup>

A petition for hearing in the California Supreme Court was granted on July 7, 1972. Oral argument was heard on October 10, 1972. At this writing, no final decision has been rendered.

### *3. Parental Responsibility and the Unwed Minor*

The question of parental support for unwed minor mothers who receive AFDC as the parent of an AFDC child first became an issue in December 1970. Before that time, welfare regulations had been silent on the need to explore the resources of the mother's parents to determine whether they were in a position to provide her subsistence and medical care.

On December 9, 1970, the Director of the Department of Social Welfare sent to all county welfare directors a letter<sup>203</sup> instructing them to advise the unwed minor, who sought welfare, of the legal responsibility of her parents for her support and the responsibility of the natural father for the support of the unborn child.<sup>204</sup> Further, they

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202. *Id.* at 1083-84, 100 Cal. Rptr. at 643-44.

203. Letter from Director, Department of Social Welfare, to all county welfare directors, Dec. 9, 1970.

204. MPP 42-513.1.

were to determine what contribution the minor was in fact receiving from her parents and the natural father of her child. They were also to determine ability to support. If the applicant refused to provide the necessary information or refused to consent to her parents or the natural father being contacted regarding their obligation, she was to be found ineligible.<sup>205</sup> The directors also were to advise the minor that the matter would be referred to the district attorney for action to legally determine paternity.<sup>206</sup>

State Senator Anthony Beilenson characterized this directive as an attempt to circumvent the law.<sup>207</sup> In truth, it merely advised the applicants that like all other welfare applicants, they must furnish the information needed to establish their eligibility—in this case the names of their parents and the extent of their support. Again, as with all other welfare applicants, if they refused to divulge the information, their applications were denied.<sup>208</sup>

In reaction to this directive, a class suit, *Alice v. State Department of Social Welfare*,<sup>209</sup> was instituted in the Sacramento County Superior Court on behalf of three pregnant minors who wanted abortions, but did not want their parents to know about it. They asked the court to prevent welfare authorities from ascertaining the financial responsibility of parents for unwed pregnant minors. Indeed, they wanted to prohibit the authorities from checking with the parents of the unwed pregnant minor to learn if she was in fact eligible for AFDC.

Along with a variety of constitutional arguments, they claimed that Section 14010 of the Welfare and Institutions Code prohibited inquiry into their parents' ability and intent to provide support.<sup>210</sup> However, Judge B. Abbott Goldberg ruled:

As long as MEDI-CAL benefits for these abortions are tied to eligibility for AFDC, the applicant's resources must be explored. One of these resources is what her parents may provide for her even though they are not required to pay for her abortion, and even though they may not be asked to pay for it. The consent to parental contact is not being sought for those purposes; it is sought to determine the unwed mother's income. The actual contact may not be made depending on the facts for each case.

The petitioners say that Section 14010 prohibits inquiry into what the parents will provide, in the language of the regulations, as

205. MPP 44-103.21.

206. CAL. WELF. & INST. CODE §11476.

207. Beilenson & Agran, *supra* note 1, at 488.

208. MPP 44-103.2.

209. Superior Court of Sacramento County, No. 210579, Mar. 26, 1972 (notice of appeal filed).

210. Beilenson & Agran, *supra* note 1, at 488.



“unconditionally available income,” which the daughter must accept as a condition of eligibility. But nothing in Section 14010 imposes such a prohibition, and the Court cannot rewrite the section to make it reach this result.<sup>211</sup>

In upholding the action of the director, the court went on to find that his action did not violate the constitution or any federal or state law, nor “contravene any public policy declaration of the Legislature of the State of California.”<sup>212</sup>

This decision further enhanced the potential of the system to distribute maximum available resources to those entitled to them while at the same time providing responsible control over the method of qualifying only truly needy recipients.

#### *4. Community Property Interest*

In his blueprint for welfare reform,<sup>213</sup> the Governor referred to the situation that a stepfather generally had no legal responsibility to support his wife’s children from a previous marriage.<sup>214</sup> Even though the stepfather earned a substantial salary (in which the wife had a community property interest of one-half),<sup>215</sup> owned considerable property which he used for the family’s benefit, and, in fact, acted as the head of the family unit in all respects, the children could still qualify for AFDC and receive full aid including Medi-Cal benefits, food stamps, and other benefits.

Recognizing that a mother has a duty to support her minor children, the Welfare Reform Act amended the Civil Code<sup>216</sup> to provide that the wife is entitled to the management and control of her share of the community property to the extent necessary to fulfill this duty of support. In order to protect low income families, the law provides that for purposes of determining the amount of the wife’s community property interest which is liable for support of her children, the wife’s interest extends to her husband’s earnings after any of his prior support liabilities (the liability to his own children by a previous marriage) and \$300 of gross monthly income has been excluded. The law further authorized the wife to bring an action in the superior court to enforce her right to this community property interest. Although the law specified that it did not relieve the natural father of any legal

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211. *Alice v. State Dept of Social Welfare*, Superior Court of Sacramento County, No. 210579, Mar. 26, 1972, intended decision at 4-5.

212. *Id.* (a notice of appeal has been filed).

213. JOURNAL OF THE CALIFORNIA ASSEMBLY 791 (Reg. Sess. 1971).

214. *Lewis v. Martin*, 397 U.S. 552 (1970).

215. CAL. CIV. CODE §5105.

216. CAL. CIV. CODE §5127.5.

obligation to support his children by the liability for support which it imposed, any amount actually contributed by the natural father would reduce the liability of the wife's community property interest in the stepfather's earnings.

Pursuant to the new law, the Department of Social Welfare implemented regulations providing that an AFDC grant could be reduced in an amount equal to the wife's calculated community property interest in the stepfather's earnings.<sup>217</sup> The law and regulations were almost immediately challenged in a class action brought in the Sacramento County Superior Court, *Camp v. Carleson*.<sup>218</sup> Although the court found that the Department of Social Welfare could not presume that any part of the stepfather's income was available to the mother for the support of the stepchildren, the court held that it was not necessary to establish the amount of the stepfather's income actually received by the wife; only the amount that is available for her use need be established. Once this has been done, this amount may be treated as income of the wife, and the AFDC grant may be reduced accordingly. Availability of the income may be shown by demonstrating that the wife has access to such things as joint checking or savings accounts, credit cards or department store accounts, or that the stepfather's income is used to provide food, housing, clothing, utilities, transportation, or other living expenses of the stepchildren.<sup>219</sup> The state is appealing that portion of the court's order which precludes the presumption of the natural parent's community property interest.

##### 5. *The Non-Needy Relative*

The director also promulgated regulations which required that county welfare departments, in computing the extent of need (and indirectly the amount of the welfare grant) of children living with "non-needy relatives,"<sup>220</sup> recognize and consider the resources available to such a child represented by the value of housing<sup>221</sup> and utilities<sup>222</sup> which the child shares with the non-needy relative. However, the non-needy relative and child would be credited with all increased costs.<sup>223</sup> The effect of implementation of these regulations was to reduce the amount of welfare assistance in such cases when the child has available to him the "resource" of shared housing and/or utilities with the relative.

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217. MPP 43-113, 44-133.

218. Superior Court of Sacramento County, No. 216154, Feb. 15, 1972.

219. *Id.* at 4.

220. MPP 44-115.6.

221. MPP 44-115.91.

222. MPP 44-115.92.

223. MPP 44-115.6.

Federal law requires states "in determining need . . . [to] take into consideration any other income and resources of any child or relative claiming aid."<sup>224</sup>

A class action, *Waits v. Carleson*,<sup>225</sup> was filed in the Alameda County Superior Court. It was contended that these regulations were invalid on a variety of constitutional and federal and state statutory grounds. Perhaps most substantial of Waits' allegations was that the regulations conflicted with a regulation of the United States Department of Health, Education, and Welfare prohibiting, generally, the "assumption of availability of income."<sup>226</sup> The superior court found that the regulations were in violation of the California Welfare and Institutions Code and further violated the Social Security Act and the implementing HEW regulations.

The State appealed to the Court of Appeal, First Appellate District, and that court<sup>227</sup> found the regulations to be valid except insofar as they (1) purport to deny non-needy relatives the reasonable value or cost of housing and utilities furnished dependent children and (2) purport to create a rebuttable presumption that such housing and utilities are furnished without increased cost to the non-needy relative.

There are some internal inconsistencies within the *Waits* opinion, and its conclusion may be in conflict with the *Brian*<sup>228</sup> and *Cooper*<sup>229</sup> decisions of the Court of Appeal, Third Appellate District, which upheld regulations dealing with the unborn child and other in-kind income regulations. Subsequent to the *Waits* decision, HEW issued its opinion that the non-needy relative in-kind income deduction regulations conform to federal law and regulations.<sup>230</sup> A petition for hearing was granted by the California Supreme Court. Subsequently, it also granted hearings in the *Brian* and *Cooper* cases.

#### WELFARE REFORM RESULTS

The California welfare reform program started in January 1971 with administrative and regulatory changes. The rolls had been growing

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224. Social Security Act §402(a)(7).

225. Superior Court of Alameda County, No. 418746, Nov. 24, 1971.

226. 31 Cal. App. 3d 153, 107 Cal. Rptr. 117 (1973).

227. *Id.*

228. 31 Cal. App. 3d 265, 107 Cal. Rptr. 324 (1973).

229. 31 Cal. App. 3d 546, 107 Cal. Rptr. 502 (1973).

230. Letter from Philip J. Rutledge, Acting Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, to state Welfare administrators, Mar. 27, 1973.

at the rate of approximately 40,000 persons per month. The Legislative Analyst had projected a continued and even accelerated growth, notwithstanding any changes that could be made at the state or county levels. In fact, the Legislative Analyst estimated that welfare costs would exceed the Governor's budget estimate by \$134 million.<sup>231</sup> As reported in the *California Journal*, it soon became apparent that the Legislative Analyst's estimate was wrong and the Governor's budget estimate was right.<sup>232</sup> If anything, the Governor's budget estimate was too high!<sup>233</sup>

The rolls had continued their upward climb through March 1971 when an abrupt reversal took place. In April 1971 there was a large drop in the number of persons on the welfare rolls in California. This was followed by an actual reduction in each month's welfare rolls for eight straight months. In December the rolls remained steady, and in January 1972 they dropped again.

In March 1971 California's welfare rolls had risen to a total of 2,293,280, having doubled in three years; but by March 1972 this figure had not only stopped rising, it had fallen to 2,161,050. By September 1972 the total number of recipients was down to 2,062,411, a reduction of 230,869. The caseload continued to decline, and by the end of February 1973 the caseload had been reduced to 2,019,702, for a total reduction of 273,578.<sup>234</sup> By July 1973 the caseload dropped below 2 million, to 1,941,096 for a total reduction of 352,184 since March 1971.<sup>235</sup>

"Merely stopping the previous upward caseload trend would be something to be proud of," said Governor Reagan on October 1, 1972, the first anniversary of the effective date of the Welfare Reform Act of 1971. "The fact that we have been able to roll back the caseload to the extent we have is far more than we could possibly have hoped for."<sup>236</sup> The Governor further noted that in achieving these reductions, California had not resorted to the kind of measures applied by the few other states that had succeeded in cutting welfare costs: a 20 percent across-the-board cut in grants in Kansas; a house-to-house search for nonsupporting fathers in Nevada; and termination of grants to families with unemployed fathers in New Jersey. On the contrary,

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231. WELFARE REFORM IN CALIFORNIA 9.

232. Evans, *supra* note 7, at 355.

233. *Id.*

234. CAL. STATE DEP'T OF SOCIAL WELFARE, PUBLIC WELFARE IN CALIFORNIA table 1 (Mar. 1971); table 1 (Mar. 1973).

235. CAL. STATE DEP'T OF SOCIAL WELFARE, PUBLIC WELFARE IN CALIFORNIA table 1 (July 1973).

236. Evans, *supra* note 7, at 352.

California had stopped runaway welfare costs while at the same time substantially increasing the grants to truly needy families.<sup>237</sup>

Because of the success of California's welfare reform program and the concomitant embarrassment to those who have opposed it and those who supported a federal takeover, there has been a concerted effort by many people, including some legislators and some county welfare directors, to discredit the effects of the Governor's reforms.<sup>238</sup> However, as documented in a thorough analysis by the *California Journal* in December 1972, "the statistics themselves appear undisputable."<sup>239</sup>

It will be impossible now or in the future to determine what each individual element of the reform program, either administrative or legislative, specifically contributed to the success, because so many of the reforms overlap and interrelate. The only way to keep score is to look at the actual caseload and cost in comparison with what they were projected to be. At the same time, one must note the increased benefits now received by the truly needy remaining on the rolls. The following figures reflect the success of the program as of June 30, 1973:

1. 785,000 fewer persons on the rolls than had been projected, without reforms, by even the most conservative estimates.<sup>240</sup>
2. 352,184 fewer recipients on the rolls than in March 1971.<sup>241</sup>
3. \$1 billion less than would have been spent if rolls had continued to grow.<sup>242</sup>
4. Increased benefits of over 30 percent to truly needy families, including automatic cost of living increases beginning July 1, 1973. Aged, Blind, and Disabled grants increased in December 1971, October 1972, December 1972, and June 1973.<sup>243</sup>
5. Of the first 15 legal challenges to reach the merits of the Welfare Reform Act, 14 were resolved in favor of the State.<sup>244</sup>

#### A. Impact of Welfare Reform

Statistics alone are not the entire story of welfare reform. Of equal, if not more, significance is the psychological effect the reform effort has had on the welfare system itself. The ability to efficiently and

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237. *Id.*

238. Beilenson & Agran, *supra* note 1, particularly at 502.

239. Evans, *supra* note 7, at 352.

240. WELFARE REFORM IN CALIFORNIA 22.

241. CAL. STATE DEP'T OF SOCIAL WELFARE, PUBLIC WELFARE IN CALIFORNIA table 1 (Mar. 1971); table 1 (Mar. 1973); table 1 (July 1973).

242. WELFARE REFORM IN CALIFORNIA 80.

243. *Id.* at 19, 22.

244. WELFARE REFORM IN CALIFORNIA 133-50.

effectively control the administration of the system was indicated by the success of the Earnings Clearance System.

In Los Angeles County alone, the system, in the brief span of its initial five months (September 1972 to January 1973), has contributed to court orders or voluntary agreements for the restitution of welfare payments in the amount of \$1,846,701.<sup>245</sup> Even more important than the dollar recovery is the deterrent factor. The great amount of publicity afforded the Earnings Clearance System in the court battles has put the would-be welfare defrauders on notice that there now is a substantial risk of discovery. This in turn leads to more accurate reporting of income by the lower income recipient and a drop-out from the welfare program by the high income recipient. The net effect, of course, of less money being paid to the non-needy is the availability of more money for the truly needy.

The mid-month grant adjustment program is another successful example of the ability to administratively control wasteful overpayments. As programs such as these two become established, the reform effort is realizing that California's administrative system for welfare can provide the proper structure for a well-run program. In fact, recent changes, such as the standard work-related expenses deduction and flat grant standards, will allow administrative expenses to be reduced and yet improve the control over the grant to the individual recipient so as to ensure that the correct grant is made.

Welfare reform also has been a major factor in assisting employable welfare recipients to achieve self-support through provisions of work requirements in conjunction with increased employment counseling. In the 15 counties participating in CWEP to date, almost 6,700 persons have entered employment, approximately 2,700 have been placed in training, and over 1,500 placements have been made in CWEP activities.<sup>246</sup>

Other provisions of the Act reinforced the counties' efforts to ensure that absent parents contribute to the support of their needy children. In fiscal year 1969-70 the State Social Welfare Board conducted a child support survey in welfare cases in California. They found that 14.7 percent of absent parents contributed \$36.5 million during that period. Conducted pursuant to Section 10602.5 of the Welfare and Institutions Code, the first annual grand jury audit revealed that for fiscal year 1971-72, after only nine months of the Welfare Reform Act

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245. Letter from David E. Todd, Fraud Task Force Coordinator, to Ronald A. Zumbun, Apr. 25, 1973.

246. CAL. STATE DEP'T OF HUMAN RESOURCES DEVELOPMENT, REPORT 508 at 2 (June 1973).

provisions being operative, child support was being collected in 24.1 percent of the cases, reflecting almost a 40 percent improvement, and the collections for that period had risen to an excess of \$50 million. During the first year of the operation of the Welfare Reform Act, child support staffs were increased statewide by nearly 300 positions, and numerous counties converted to the immediate referral system. At this writing, Los Angeles, with over 40 percent of the caseload, is undergoing a conversion to the immediate referral as a direct result of the incentives in the Welfare Reform Act.<sup>247</sup>

The savings effected by the Act, as passed on to the recipients in the form of grant increases, has engendered a *de facto* equitable apportionment system. Although equitable apportionment was not adopted in its proposed form, the basic objective of redirecting the efforts of all those involved into distributing appropriated funds in a more equitable manner is found throughout the Welfare Reform Act. Examples of such changes are the revised method of grant computations, increased grants for the destitute, work-related expense exemptions, and consideration of in-kind income in determining the recipient's grant.

#### *B. The Federal Acknowledgement*

The predictions made by many federal officials that a successful reform program on the local level might jeopardize the passage and implementation of the federalized program proposed by the President proved to be correct. During the two and a half years following the initial move of Governor Reagan to reform the California welfare system, the opposition which he led to the federalized program gained momentum. As a result, the President substantially reversed his position. In his statement to Congress of March 1, 1973, the President indicated that he had abandoned his proposals for federalization of the biggest categorical assistance program, the Aid to Families with Dependent Children program; and he indicated that instead he would seek legislative and administrative reforms to strengthen the role of the states and local government in administering the welfare program.<sup>248</sup>

The success of the California welfare reform program has had a substantial impact on the President's program for modification of the

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247. Interview with William R. Knudson, Secretary, Social Welfare Board, California State Department of Social Welfare, July 20, 1973.

248. See Message from the President of the United States to the Congress, Mar. 1, 1973.

welfare system.<sup>249</sup> On March 1, 1973, H.E.W. Secretary Casper Weinberger appointed California State Welfare Director Robert B. Carleson to the position of U.S. Commissioner of Welfare and Special Assistant to the Secretary for Welfare matters. In so doing, Secretary Weinberger acknowledged the California accomplishments and indicated that Carleson would be given the assignment to provide assistance to governors in welfare management and reform initiatives at the state level and to "help governors initiate their own welfare reform similar to the effort he directed so successfully for Governor Reagan in California."<sup>250</sup>

California has demonstrated that, even under the present system, a state has the flexibility to make significant reforms if it is willing to take on the task instead of giving up and shifting the burden to the federal level. California has demonstrated to the country that welfare can be reformed!

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249. The President's program ran into a long succession of setbacks in the Congress. First introduced as H.R. 16311 and then re-introduced as H.R. 1, the bill twice passed the House of Representatives, but each time failed to gain the votes necessary in the Senate to effect passage. Finally in 1972, a bill entitled H.R. 1 passed Congress and was signed by the President. The bill, significantly different than the President's original H.R. 1, effected the federalization of the adult aid categories, but left the major public assistance category, Aid to Families with Dependent Children, intact and administered by the states.

250. Announcement from the Office of the Secretary, U. S. Department of Health, Education, and Welfare, Mar. 1, 1973.