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

MEMBERS ABSENT: None

GUESTS PRESENT: Bill Furlong, Welfare Division
John DuBois, Assemblyman
Marian Hurst, Welfare Division
Beverly Miles, Clark County Managers
Nancy Fryer

Chairman Stewart called the meeting to order at 8:10 a.m. He stated that since AB 246 and SB 252 were similar and related to the same topic the Committee would hear testimony on both of these bill combined.

AB 246: Adds to provisions for assignment of wages of responsible parent for child support.

SB 252: Strengthens provisions for assignment of earnings in child support cases and revises provisions for reciprocal enforcement of support.

Assemblyman John DuBois, of District 2 in Clark County, testified first in favor of AB 246. He was accompanied by Mr. Bill Furlong, of the Child Support Enforcement Program in the Department of Human Resources. Mr. DuBois explained that AB 246 would make it easier, in those cases where child support has been awarded, for the parent who has custody of the child to receive support in cases where there has been a default by the responsible parent. He noted that this bill has three advantages: 1) it relieves the judicial system from an already overcrowded schedule, i.e., it streamlines the operations for child support; 2) it can save the state and federal government millions of dollars which are now being paid to families with dependent children--AFDC (Aid to Families with Dependent Children); and 3) it helps the victim involved who is the child who is completely dependent upon support money.

Mr. DuBois further noted that the single parent family is the fastest growing poverty group in America today. He added that

with the current divorce rate and illegitimate birth rate, it is estimated on a nationwide basis that half of all the children born today will spend their adolescence in female-headed households. He added that usually the money for support is there, it is just that the responsible party refuses to make payments. Since the parent who has custody often cannot afford the cost nor the time consumed to pursue the matter, this individual ends up on welfare, which is supported by the taxpayers.

Mr. DuBois pointed out that one of the first acts of this Legislature was to pass an emergency bill (SB 119) which allocated several million dollars directly for AFDC families. This underlines the fact that there is a growing problem involved here.

AB 246 would, at the time that a court awards child support in either a divorce case or legal separation, allow the court order to act as a contingent assignment to provide for future support of minor children. Thus, if the parent entitled to the support does not receive it within a 60 day period within 12 months, either consecutively or accumulatively, then that parent could simply apply to the court for a wage assignment. This would result in the responsible party being notified for their due process of law and to argue their case, if they so desired. If there is no hearing required or if the court finds in favor of the plaintiff, then the assignment of wages upon the employer would go into effect within one week. Thus, this process eliminates the expense and the time delays (which could go into months) involved in current procedures. Additionally, it gives to the State agency which is charged with Child Support Enforcement Program a very effective tool.

Mr. DuBois went on to note that, to date, sixteen states have adopted similar legislation, and that in almost every case these states have found it to be very successful. The model law is in the State of Utah, where, in fiscal year 1982 it is estimated they will collect 65% of their child support through this program.

Mr. DuBois said AB 246 is similar and was introduced coincidentally to SB 252, although there are several differences. He went on to say that Mr. Furlong would explain these differences.

In reply to Mr. Sader, Mr. DuBois said AB 246 was fashioned after the Utah law, which has been refined since its original passage. He explained that he had given the bill drafters copies of both the Utah law and the laws of several other states, and they had used all of these in drafting AB 246. Mr. DuBois noted that the Utah law also allows, and to a certain extent encourages the responsible parent to voluntarily assign his wages at the time support is determined, thus eliminating future problems. This procedure, it was pointed out, benefits all: the child, the parents, and the courts because it reduces the possibility of future problems.

Mr. Furlong explained some of the differences between AB 246, which amends NRS 125 (the divorce statute), and SB 252, which amends NRS 130. He said that, basically, the difference is that AB 246 concerns in-state divorce cases, while SB 252 concerns out-of-state cases. He then went through the bills, outlining specific similarities and differences. (See EXHIBIT A.)

Mr. Furlong noted he felt the real strength is in the court's ability to provide wage assignments in those cases where an absent parent becomes the equivalent of two months delinquent in support payments.

Mr. Thompson expressed concern that it is extremely difficult to prove that an employer has fired an individual for something like assignment of wages if the employer wants to use some other pretense for the firing; however, the additional burden on the employer vis-a-vis assignment of wages could result in just this happening. He wondered if there shouldn't be some provision in these bills to guarantee the rights of the employee in addition to what they already contain.

Mr. Furlong explained that it was felt the bills contained sufficient protection for an employee who is disciplined or discharged due to assignment of wages: the employer can be held responsible for any back pay to the employee, as well as for any damages done to the employee. Mr. Thompson felt these protections were insufficient.

Mr. Furlong went on to note that another protection for the employee is education of the public and the employer to show that wage assignment actually benefits all concerned since it prevents future legal problems and also the possible fleeing of the employee who has gotten behind on support payments.

It was additionally pointed out that SB 252 contained better provisions regarding this matter than did AB 246, and since it is possible the former could be postponed indefinitely while the latter passed, Mr. Thompson felt AB 246 should be amended to better protect the employee.

Mr. Furlong then cited examples of jurisdictions currently using wage assignments which have had absolutely no problem with employer-employee relations; in fact, the employers have welcomed this program.

Mr. Furlong explained to Mr. Chaney that what these bills are attempting to do is describe a process that will bring about greater efficiency within the judicial process in examining non-support payments. He said that the difference between the AFDC and the ADC programs could best be described by Mrs. Marian Hurst, the Deputy Administrator of Assistance and Payments.

Mrs. Hurst explained that AFDC permits the state to take the option to provide assistance to intack families where both parents are present in the household and one is unemployed. In Nevada, we have only ADC which aids those children who are deprived of parental support because one parent is either deceased, absent or incapacitated.

Mr. Price then pointed out that Chapter 125 of the NRS deals with the divorce of all individuals, not just those on welfare. Thus, 99% of those involved would not impact on the welfare system. In addition, it was pointed out to Mr. Price that under the Uniform Reciprocal Enforcement Support Act (URESA) there is an avenue for collecting support payments from out-of-state parents. Mr. Price noted that neither of these two bills would affect out-of-state cases, however.

Mr. Furlong told Mr. Price he did not believe the $200 fine cited in section 1, subsection 4 of AB 246 could be levied on the Federal Government. He said there were statutes which allow assignments to be made against federal employees, however.

In reply to Mr. Price's question regarding the priority of assignments, Mr. Furlong admitted this was not mentioned in these bills and that it should be. Mr. DuBois said this is specified in a number of statutes, and that it should be included in these bills as the first priority.

Mr. Stewart wondered if URESA applied to intra-county couples. Mr. Furlong said that in Nevada it does and he cited NRS 130. He further explained that under the proposed bills all that was needed to use this procedure was an established support obligation within Nevada.

Mr. Furlong and Mr. DuBois both said they had no problem with amending the bills to specify those punitive actions to be taken against any employer who is proven to have fired an employee due to the wage assignment. Mr. DuBois went on to note that based on the research he did in connection with this bill he has found that employers, especially the large corporations, favor this type of legislation. He felt the smaller businesses would present the bigger problem.

Mr. Furlong reiterated that these bills constitute an efficiency measure for the court. He noted that if a parent becomes delinquent in support payments, that person currently is brought back into court on order to show cause why he shouldn't be held in contempt, he is given an additional ninety days to make payment, he is recalled back into court, etc. Eventually the parent is returned to a paying status, but the children have been without support for up to six months to a year.

In reply to Ms. Ham it was noted that the responsible parent always has the option to return to court to have the payment amount reduced based on a loss of or decrease in wages and thus

a change in the ability to pay. Additionally, it was pointed out that employers already make wage assignments for union dues, monthly bill payments, savings, etc. and that a child support payment would simply be an additional type of assignment. It was also noted that wage assignments for child support benefit the child-parent relationship, since the parent does not feel guilt about being behind in his payments and thus does not fail to visit the child, etc.

Mr. Sader said he felt it was necessary to either pass only one of the two bills and kill the other, or pass a compromise of the two bills. He then reviewed both bills. SB 252 deals with both the URESA situation and the domestic, purely internal (within the state) situation. AB 246 deals only with the internal situation. Hence SB 252 is more inclusive.

AB 246 would require that once an application for assistance is given to the court, ten days notice must be given to the responsible parent; if this parent does not come in, then the wages can be assigned. This bill does not specify, however, that a court order must be issued in order to assign the wages; this should be spelled out. This is also necessary in order to comply with the Garnishment and Exemption statutes which note that a larger percentage of the individual's wages can only be assigned if this is based upon a court order.

AB 246 does not mention attorney's fees in the section dealing with court costs and filing fees. It was agreed the responsible parent should have to pay all the costs--including that of either private or public funded attorneys--not just the costs currently cited in the bill.

Mr. Sader then explained to the Committee that there are two different kinds of enforcement involved here. URESA allows the use of District Attorneys. However the most common situation involves the use of private attorneys, and as this is fairly expensive most individuals wait until there is a large sum outstanding, and indication that there is reasonable hope of collecting the money, before bringing action against the responsible parent. Mr. Sader said that if attorneys' fees were also covered in the bill, then the individual would be more likely to go after the delinquent parent.

Mr. Furlong explained that the District Attorney is required to enforce both AFDC and non-AFDC cases and would handle non-support actions which are not connected in any way with the Welfare Division. This is unfair to the taxpayer, however. There is current legislation being proposed which would allow the District Attorney to bill the responsible parent for costs accrued in relation to the following actions: URESA, paternity, support obligation, and enforcement of support obligation. These would involve both public assistance and non-public assistance cases.

Regarding the notice provision in section 1, subsection 3 of AB 246, it was noted that the court is neither staffed nor funded for this type of procedure, and that since it is an adversary proceeding, it should be the applicant who carries out this act.

Mr. Sader further noted that while the bill states the notice will be sent to the last known address of the responsible parent, often the moving party knows where to locate this individual, and it is not necessarily at the last known address. Mr. Sader felt stronger notice provisions should be included. Mr. Furlong said the District Attorneys had suggested language providing notice pursuant to the Nevada Rules of Civil Procedure would strengthen this.

Additionally, Mr. Furlong said the District Attorneys had suggested the assignment become effective upon service upon the employer rather than 1 week following service so that there can be no time for diverting monies, etc.

Chairman Stewart suggested to the Committee that, since the Senate Bill has already passed the Senate, it might be advisable to study this bill more closely and add to it those provisions deemed important and contained in AB 246. He said it might even be necessary to change SB 252 into an Assembly Bill and pass it back to the Senate after making the required changes.

It was finally agreed the best procedure might be to amend AB 246, make it a blank bill and put into it the SB 252 provisions.

Mr. Furlong stated he would be more than happy to work closely with the members of a Subcommittee in coming up with a compromise bill. He stressed that SB 252 contains the most critical portions in that it requires that wage assignments be issued after sixty days delinquency. He felt this is the most important issue in terms of the children of the state.

Next Mr. Furlong noted that there are some other provisions of SB 252 which amend NRS 130 and do not relate to wage assignments; he explained the need for these changes as follows:

Section 1: Establishes that the Division can go after both ongoing and arrearages at the same time. This is of particular importance in public assistance cases since often the Division is collecting for ongoing support of the child, but because the responsible parent has the ability to pay beyond that, if there is an unreimbursed assistance money owed to the state which the Division has paid out, they can also start collecting on that. The statute does not currently state that the Division can work both, even though they have been doing this. They would therefore like this point clarified.

Ms. Foley asked Mr. Furlong who would be responsible for "selling" this wage assignment program to the employers and the public. He replied his office as well as the District Attorneys would be the prime movers in this. He explained this would undoubtedly take the form of a meeting which would present the goals, potential impact on the community, and the potential impact on the employers and request their cooperation in retaining those employees.

Mr. Malone asked what would happen if a responsible parent were temporarily unemployed, as recently happened with the MGM fire situation. Mr. Furlong explained that this individual can immediately contact the court and request the support obligation either be reduced or completely done away with until he regains employment. Since this involves a court order, action must come from the court, but it is possible to change the obligation based on an inability to pay. It was further explained that while it is recommended the individual have counsel during this process, the person can also wait until the sixty day period has elapsed and the 10 day notice has been received, at which point the individual can explain the situation. The possibility of a Legal Aid Society helping the individual was also raised. Mr. Furlong said it is his office's policy to advise absent parents to notify the court as soon as they become unemployed, as this prevents arrearages from building up.

Mr. Beyer noted that AB 246 requires the assignment become binding one week after service upon the employer and he wondered how soon after service the check had to be made out and paid. Mr. Furlong explained that the procedure should coincide with the employer's normal payment schedule, and this only means that those resources available at the time the assignment becomes effective are legally tied up and must be paid to the court.

There followed a discussion concerning whether or not the District Attorney should be required to enforce all support cases, during which it was noted that the proposed legislation mentioned earlier which would empower the District Attorney to handle URESA, paternity, support obligation and enforcement of support obligation cases had been deleted from SB 252 by the Senate Judiciary Committee. (See page 5 of these minutes.) It was noted that this section should be included in order to be in compliance with the Federal Office of Child Support Enforcement regulations. It was not clear why the Senate removed this provision; according to the Senate minutes of that meeting, the Senate felt the District Attorney was already overworked and did not need this additional burden.

Mr. Sader explained the situation further: Under the URESA act, if the couple involved are from out of state or are living in different counties, then the District Attorney has jurisdiction to enforce. If the parents are in the same county the District Attorney does not have jurisdiction unless he can show two things: 1) financial hardship on the part of the applicant spouse and 2) six months non-support. The original Senate Bill

excluded those limitations on intra-county litigations. He added it was his opinion this provision should be reinserted; the Committee appeared to agree with him on this point.

Mr. Furlong returned to his explanation of those changes in SB 252 which do not relate to wage assignments:

Section 2: Specifically requests the Legislature to provide authorization to the District Courts to appoint masters for non-support cases. This is presently done under Rule 53.

Section 3: This is an attempt to clarify that not only must the District Attorney prosecute cases diligently, he must also do so within a reasonable time. There is no specific time limit cited because of the number and types of demands on this office. Of eight District Attorneys who voiced an opinion on this change, only one objected to the term "reasonable time".

Section 4: Provides for a relaxed rules of evidence. This is to accommodate attorneys who are faced with having to represent a client who isn't available to testify in court in their own behalf. Often in URESA cases one of the parties is not there because they are from out of state. He added that this change was requested by all the District Attorneys who responded to the Division's questionnaire. In particular this allows for the affidavit of the custodial parent to be admissable.

Section 5: Deletion of the last sentence in subsection 1 of this provision is necessary because that sentence in effect negates all that preceeds it. Thus, an order from this state cannot nullify an order of some other state. Mr. Stewart noted this was an important point, since under a URESA action a parent may receive an order of support which is less than the original order and may assume this is all he is liable for. Mr. Furlong said he has noted that most Nevada courts make it a practice to advise the defendant that while the URESA order may be less than what was ordered in the divorce decree, the individual would have to go to the court of original jurisdiction to change that support obligation.

Section 6: This is requesting specific legislative language that totally separates visitation from support. Mr. Stewart noted this might be an area for another bill. He stated that often a person who is denied visitation rights retaliates by withholding support; and while there are easy and simple proceedings for

reestablishing the ability to collect support, the procedures for reestablishing visitation and custody are not so simple. Mr. Furlong felt the Uniform Child Custody Act is a big step towards solving this problem. He added that the trend in support enforcement in all the states has been to separate the issues.

In reply to Mr. Price's observation that the families involved with the Welfare Division are stressed too heavily, while the 99% of those families not on welfare are somewhat ignored, Mrs. Hurst explained that the Welfare Division is concerned with both ADC as well as non-ADC cases. The Child Support Enforcement Program of the Welfare Division in fact collects more support for non-ADC families than it does for ADC families. The Welfare Division is especially concerned that it not get involved in visitation arguments when dealing with these support cases.

Mr. Furlong went on to point out that the Welfare Division pays 75% of the District Attorneys' expenditures, plus 15% of all of their incentives in AFDC collections. Thus, while the Welfare Division is required to respond to all non-AFDC cases, often the District Attorneys disagree as to whether or not they should handle the legal affairs for the Welfare Division when it reaches that stage. This is the reason for the attempt to amend the law. Mr. Furlong added that if individuals cannot get aid through the District Attorneys, then they go to the Welfare Division, which has to enunciate the individuals' hardship more clearly and then provide it back to the District Attorneys who will generally go on to handle the case.

It was explained to Mr. Sader that, regarding the provision for a master, Clark County already has one. Additionally, there is no constitutional problem foreseen in having a master.

Regarding that section referring to relaxed rules of evidence, while there would not be a requirement for strict rules of evidence, there would still be those rules prescribed in the Nevada Revised Statutes for such hearings, and it is primarily to get around the problem of hearsay in relation to plaintiffs not being able to be present in the court to testify. Mr. Sader saw a problem here in that this abrogates the massive body of evidentiary rules which are not statutory. Mr. Furlong reiterated that this was at the direct request of the prosecutors who feel that the rights of the individual would still be protected under those rules which have been established under NRS.

Chairman Stewart then appointed a subcommittee to study both AB 246 and SB 252: Mr. Sader, Chairman; Mr. Malone and Ms. Ham.

AB 266: Broadens provisions for modification of periodic payments of alimony.

Mr. Stewart explained the genesis of this bill: Currently if the alimony decree is not merged with the divorce decree, then it is considered a separate agreement from the divorce decree and can never be changed. If the alimony decree is merged with the divorce decree, then the alimony decree can be changed by a court order. This bill would allow the court to modify the alimony agreement based on changed circumstances. This could be advantageous should an individual be unable to pay due to a loss of employment, or some other reason. It could be a liability in those instances where an individual claims more money simply because the other individual is earning more, or because the first individual has squandered their portion.

Mrs. Cafferata noted that currently an individual has a choice as to whether or not to merge the alimony decree with the divorce decree, thus this bill is not really necessary.

Mr. Sader added that it is up to the client to decide whether or not to merge these, and that in most cases they are merged (which allows future change) because child support is often involved. He added that today alimony is considered to be a temporary award in most cases until the dependent spouse is in a position to earn their own money, thus the bill does appear to be unnecessary.

Chairman Stewart requested that action on this bill be postponed in order to research further into the reason behind its proposal.

AB 240: Provides for use of foreign standard of "felony" in defining certain offenses for purposes of registration of convicted felons.

Mr. Price noted that he had been appointed to a subcommittee on this bill, and that a possible solution to some of the problems encountered in this bill might be contained in AB 361/60 which was indefinitely postponed during the last session, apparently due to a lack of time. The proposed solution involves amending NRS 207.090 rather than NRS 207.080 regarding how a person is listed when registering, adding the following new language: "the kind, character and nature of each crime for which he has been convicted, including the classification of the crime as a misdemeanor, gross misdemeanor, felony or other class of crime under the law of the state in which he was convicted." Thus, when a report is filled out it will have a space for noting the classification of the crime in the state where convicted. Additionally, the bill requires the sheriff or agency, in any disclosure of information contained in such a report or statement, make reference only to the classification of the crime in the state where it was committed. He added that other laws are involved in this situation, and that they too would have to be amended in the same way.

The Committee seemed to feel this was a much better approach to the problem, and Mr. Stewart suggested the subcommittee consider this solution.

AB 297: Simplifies provision for verification of complaint for divorce.

Mr. Frank Daykin of the Legislative Counsel Bureau testified on the need for this bill. He noted that while it has been assumed that verified complaints are the same as complaints under oath, one District Judge has ruled that they are not the same. Thus the need for this bill.

Mr. Sader felt the difference involved the question of whether or not a person could be prosecuted for perjury in both instances. By using the term "under oath", the state made it perfectly clear the statement was being made under penalty of perjury.

Ms. Ham asked what the penalties are for falsely verifying a complaint. Mr. Daykin explained that in the formal verified complaint used in this state, the phrase "under penalty of perjury" is not used, however it is acknowledged before a notary public and it says that these are true to the best of his knowledge except as to matters stated upon information and belief in which case he believes them to be true. Then it is sworn to before and subscribed to in the presence of the notary. Therefore, because of the language "sworn to" which is part of a judicial proceeding or other matter where an oath or affirmation is required, it is sufficient to invoke the penalty of perjury. Mr. Daykin went on to say the term "under oath" was enacted earlier than the verified complaint statute, and simply was not changed. Thus, the individual can be prosecuted for perjury if he makes a false statement in a verified complaint.

It was noted that by changing to the term "verified complaint" at this time, you are not eliminating nor reducing the penalty provided by law for falsehood. This bill is simply an attempt to solve a problem which concerns divorce attorneys: because this statute is worded slightly differently from most other statutes, it requires a complaint under oath, and one judge has required that this minute difference be addressed. So basically AB 297 is simply an attempt to eliminate unnecessary language which is causing a problem because it does not conform to the majority of the statutes.

Mrs. Cafferata moved DO PASS AB 297, seconded by Ms. Foley and passed unanimously with Mr. Thompson absent at the time of the vote.

Mr. Chaney then distributed copies of a letter concerning legislation to be considered on 24 March 1981 by the Committee. The letter was from James B. Kelly, President of the Nevada Judges Association, and suggested certain changes.

As there was no further business, Chairman Stewart adjourned the Committee at 10:40 a.m.

Respectfully submitted,

Pamela B. Sleeper

Pamela B. Sleeper
Assembly Attache

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: Monday, 23 March 1981

SUBJECT: AB 297: Simplifies provision for verification of complaint for divorce.

MOTION:

DO PASS XX AMEND ___ INDEFINITELY POSTPONE ___
RECONSIDER ___

MOVED BY: MRS. CAFFERATA SECONDED BY: MS. FOLEY

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Thompson	ABSENT		___	___	___	___
Foley	X	___	___	___	___	___
Beyer	X	___	___	___	___	___
Price	X	___	___	___	___	___
Sader	X	___	___	___	___	___
Stewart	X	___	___	___	___	___
Chaney	X	___	___	___	___	___
Malone	X	___	___	___	___	___
Cafferata	X	___	___	___	___	___
Ham	X	___	___	___	___	___
Banner	X	___	___	___	___	___
TALLY:	10	0	___	___	___	___

ORIGINAL MOTION: Passed XX Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

ATTACHED TO MINUTES OF Assembly Judiciary Committee
Monday, 23 March 1981

EXHIBIT A

SB 252	AB 246	
No such provision.	SECTION 1:	
	Subsection 1:	Provides for a contingent assignment to be issued at the time of any Nevada divorce order.
Same, except we do not spell out who may apply.	Subsection 2:	Provides for an application by the custodial parent to the court for an assignment whenever an absent parent becomes an equivalent of two months delinquent in any 12 month period.
Procedure already established by Courts.	Subsection 3.	Provides for the notification of the responsible absent parent, and time frames to accomplish such notification.
As directed by Court.		Provides 10 days for the responsible absent parent to request a hearing.
As adjudicated by Court.		Provides that burden of proof of payment is on responsible absent parent.
As directed by Court.		Provides for establishment of effective date of assignment.
Effective upon service.	Subsection 4:	Provides that an assignment is binding upon a current employer one week after service upon such employer.
Allows $3.		Allows a $1 service fee for employer.
No fine in our proposal.		Provides penalty against employer who fails to honor assignment. A $200 fine and payment of assigned amount are the penalties imposed.
Same.		An employer cannot discipline an employee because of an assignment.
Same.		Compliance with an assignment by an employer discharges the employer's liability.
No such provision.	Subsection 5.	Allows for assessment of filing fees and court costs.

SB 252	AB 246
	SECTION 2:
No such provision.	Subsection 1: Provides amendments to Chapter 31 for a contingent assignment to be processed to the appropriate parent or government agency.
- -	Subsection 2: No changes.

BILL FURLONG
Chief
Support Enforcement

State Welfare Division, 251 Jeannell Drive, Capitol Complex
Carson City, Nevada 89710, Telephone (702) 885-4744