

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

May 31, 2005 Hearing Room 357

8:30 A.M. Tapes 91 - 92

MEMBERS PRESENT: Rep. Bob Ackerman, Chair

Rep. Linda Flores

Rep. Bill Garrard

MEMBER EXCUSED: Rep. Kelley Wirth

GUEST MEMBERS: Rep. Greg Macpherson

STAFF PRESENT: Joe O'Leary, Counsel

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

SB 106A – Public Hearing and Work Session

SB 115 – Public Hearing and Work Session

SB 181A – Public Hearing and Work Session

SB 230A – Public Hearing and Work Session

SB 231A – Public Hearing and Work Session

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 91, A		
003	Chair Ackerman	Calls the meeting to order at 8:45 a.m. and opens a public hearing on SB 106A.
<u>SB 106A – PUBLIC HEARING</u>		
009	Joe O’Leary	Counsel. Identifies SB 106A as the elder abuse bill. Describes the -5 amendments (EXHIBIT A) which deal with long-term care facilities being provided notice of sex offenders who reside in them and permits them to refuse admission or to transfer or discharge a resident who has been adjudicated as a sex offender. Explains the -3 amendments (EXHIBIT B) which apply to the type of relief that can be provided pursuant to the restraining order to prevent abuse of an elderly or disabled person.
031	BeaLisa Sydlik	Oregon Judicial Department. Testifies and submits written testimony by Circuit Court Judge Claudia Burton on SB 106A (EXHIBIT C). Refers to copies of relevant statutes ORS 125.025, 125.085, 125.225 and 125.600 (EXHIBIT D) that describe the authorities of the court in protective proceedings.
075	Sydlik	Continues that if a person has legitimate concerns about the conduct of a conservator or guardian, there are sufficient authorities for a judge to act. Indicates that Judge Burton points out some of the problems if a restraining order was permitted against a guardian or conservator, including different judges looking at different issues. Concludes that the court already has full authority to address the concerns.
102	Chair Ackerman	Refers to discussions about existing authority and expresses appreciation for the information.
106	Rep. Garrard	Asks what the -5 amendments do.
108	Sydlik	States that the -5 amendments are not the court amendments.
113	O’Leary	Responds that the-5 amendments require state agencies to notify long-term care facilities of sex offenders seeking admission and give the facility the authority to refuse admission or discharge of a resident.

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| 122 | Rep. Garrard | Inquires if the amendments deal with the objection that was raised. |
| 124 | Chair Ackerman | Answers no. |
| 133 | Chair Ackerman | Closes the public hearing on SB 106A and opens a public hearing on SB 115. |

SB 115 – PUBLIC HEARING

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| 137 | Joe O’Leary | Counsel. Explains SB 115 which repeals a 1987 statute that requires the Department of Corrections (DOC) to provide ongoing medical care to individuals who, as inmates, participated in radiation experiments from 1958 until the early 1970s. Describes a class action lawsuit by surviving inmates against the state and the settlement terms. |
| 164 | Stan Czerniak | DOC. Testifies and submits written testimony by Max Williams, Director, in support of SB 115 (EXHIBIT E). Provides information on the experiments performed on patients on a volunteer basis. |
| 197 | Rep. Macpherson | Inquires about the number of surviving inmates. |
| 207 | O’Leary | Replies that 67 made up the class and not all former inmates were, at the time, still in the custody of DOC. |
| 224 | Rep. Macpherson | Seeks clarification of the numbers. |
| 230 | O’Leary | Answers that there were 67 surviving former inmates in the class, and two of these remain in DOC custody. |
| 234 | Czerniak | Responds that is correct. |
| 244 | Chair Ackerman | Closes the public hearing and opens a work session on SB 115. |

SB 115 – WORK SESSION

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| 247 | Rep. Garrard | MOTION: Moves SB 115 to the full committee with a DO PASS recommendation. |
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VOTE: 3-0-1

AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 - Wirth

255 Chair Ackerman **The motion CARRIES.**
REP. GARRARD will lead discussion in the full committee.

256 Chair Ackerman Closes the work session on SB 115 and opens a work session on SB 106A.

SB 106A – WORK SESSION

265 Chair Ackerman Summarizes the testimony from public hearing. Asks members if any additional clarification is needed.

274 Rep. Macpherson Adds that the testimony addressed concerns raised at the previous hearing.

286 Rep. Garrard Refers to Mr. Copp’s testimony that the current system may not be working. Questions if the existing protections are adequate.

297 Chair Ackerman Responds that his experience has been the courts have tremendous supervision over the files.

318 Rep. Flores **MOTION: Moves to ADOPT SB 106A-3 amendments dated 5/13/05.**

VOTE: 3-0-1

EXCUSED: 1 - Wirth

326 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**

328 Rep. Flores **MOTION: Moves to ADOPT SB 106A-5 amendments dated 5/24/05.**

VOTE: 3-0-1

EXCUSED: 1 - Wirth

- 331 Chair Ackerman Hearing no objection, declares the motion CARRIED.
- 333 Rep. Flores **MOTION: Moves SB 106A to the full committee with a DO PASS AS AMENDED recommendation.**
- VOTE: 3-0-1**
- AYE: In a roll call vote, all members present vote Aye.**
- EXCUSED: 1 - Wirth**
- 344 Chair Ackerman **The motion CARRIES.**
- REP. FLORES will lead discussion in the full committee.**
- 346 Chair Ackerman Closes the work session on SB 106A and opens a public hearing on SB 181A.

SB 181A – PUBLIC HEARING

- 348 Joe O’Leary Counsel. Describes current statute that permits the court to waive or defer the filing fees for an inmate who seeks to bring a lawsuit against a public body, but the decision on the waiver may be based only on the inmate’s ability to pay. Explains SB 181A adds another factor and permits the court to review the inmate’s pleadings at the time of filing and determine whether or not the pleadings fail to state a claim. Continues that if the court determines the pleadings fail to state a claim, the court could decline to waive the fees.
- 312 Craig Prins Criminal Justice Commission. Testifies in support of SB 181A. Explains that SB 181A attempts to streamline the system by allowing a judge’s review of inmate claims to determine the merits of the case.

TAPE 92, A

- 017 Chair Ackerman Asks if these are mostly 1983 claims being filed.
- 019 Prins Answers that is his understanding.
- 020 Chair Ackerman Believes the federal court system has the same problem.

021	Prins	Replies that is correct.
022	Chair Ackerman	Inquires if the federal system goes further. Thinks the court enters an order to inform the plaintiff what needs to be done to make the complaint complete in a specific time frame.
025	Prins	Believes that is correct.
030	Chair Ackerman	Asks if the matter was considered to enter an order informing the plaintiff what to do, and if not done, the case would be dismissed.
032	Prins	Answers they did not have that discussion.
040	Rep. Macpherson	Inquires if inmates ever pay the filing fee themselves or if the cases just don't go forward if the fee isn't waived.
042	Prins	Indicates it is possible that an inmate would have a trust account from which the fees could be paid. Continues that a Department of Corrections employee certifies whether or not funds available.
051	Chair Ackerman	Inquires what happens to the case if the waiver of fee is denied and the court makes a decision on the sufficiency of the claim.
055	Prins	Responds it serves as a limited judgment and believes it is appealable.
063	Rep. Flores	Refers to Section 6 of SB 181A. Comments that they are not barred from bringing a claim so there must be consideration of some assets to allow filing.
079	Paul Snider	Association of Oregon Counties. Testifies in support of SB 181A.
088	Chair Ackerman	Closes the public hearing and opens a work session on SB 181A.

SB 181A – WORK SESSION

089 Rep. Garrard MOTION: Moves SB 181A to the full committee with a DO PASS recommendation.

VOTE: 3-0-1

AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 - Wirth

- 094 Chair Ackerman The motion **CARRIES**.
REP. GARRARD will lead discussion in the full committee.
- 095 Chair Ackerman Closes the work session on SB 181A and opens a public hearing on SB 230A.

SB 230A – PUBLIC HEARING

- 098 Joe O’Leary Counsel. Explains SB 230A sets up the process for appointing a guardian ad-litem to represent a parent in a juvenile dependency proceeding or termination of parental rights proceeding. Advises that the -4 amendments (**EXHIBIT F**) revise the original language concerning the process for appointment, the standard by which the court determines whether or not to appoint.
- 126 Rep. Garrard Asks for the definition of “guardian ad-litem.”
- 129 O’Leary Responds, for purposes of the case or the litigation. Continues that the guardian ad-litem is the person who stands in the place of the litigant and makes the decisions.
- 141 Wendy Johnson Deputy Director, Oregon Law Commission. Testifies and submits written testimony in support of SB 230A (**EXHIBIT G**). Explains there is not currently a provision in statute that lays out the process for appointing a guardian ad-litem in a juvenile case. Describes a situation where a guardian ad-litem may be necessary for a parent who doesn’t have the capacity to represent themselves adequately.
- 155 Johnson Cites the 2003 Court of Appeals opinion on *State ex rel Juvenile Department v. Cooper*. States that it is important to balance the parent’s rights.
- 174 Michael Livingston Assistant Attorney General, Department of Justice. Testifies and submits written testimony in support of SB 230A (**EXHIBIT H**). Expands on the case cited by Ms. Johnson. Advises SB 230A clarifies the powers and authorities of a guardian ad-litem.

203	Livingston	Refers to the -4 amendments which outline the processes by which a guardian is appointed. Explains the two methods a guardian can be appointed. States that the -4 amendments were drafted based primarily on Sen. Roger Beyer's concerns about the rules of evidence.
237	Livingston	Continues the amendments deal with the reliability of the evidence. Provides an example. Advises the standard for reliability of evidence comes from the Administrative Procedures Act.
261	Livingston	States that the decision to appoint a guardian must be based on evidence presented at hearing. Describes the term "impairment" which was added to the previous term "disability."
294	Livingston	Concludes that further review of the motion practice revealed that clarification of the proceedings was necessary.
314	Rep. Macpherson	Asks if the guardian ad-litem and court-appointed counsel are two different people.
324	Johnson	Answers yes.
329	Rep. Macpherson	Inquires what type of individual serves as a guardian ad-litem as opposed to indigent counsel for the parent.
333	Johnson	Reads from Section 3 of SB 230A which defines the type of person who can be appointed.
348	Rep. Macpherson	Asks if the appointed counsel would ever also be the guardian ad-litem.
362	Johnson	Answers they can never represent both. Refers to Oregon State Bar opinions that an attorney cannot ask for a guardian ad-litem to be appointed.
374	Rep. Macpherson	Seeks clarification on who makes the decision a guardian ad-litem is needed.
385	Johnson	Responds that SB 230A states the parent, opposing counsel, or the court.

- 393 Rep. Macpherson Seems to be multiple service providers.
- 400 O'Leary Interjects that court-appointed counsel would likely be reticent to ask the court to have a hearing on whether or not the parent is competent to make decisions in the termination proceeding. Believes it is more likely another party to the proceeding or the judge would make that request.

TAPE 91, B

- 005 Rep. Macpherson Asks if a court-appointed counsel withdraws from a case, if an attorney would be appointed as guardian ad-litem.
- 010 O'Leary Answers, no as they are not one and the same because the court-appointed counsel must continue to advocate on behalf of the client.
- 023 Timothy Travis Oregon Judicial Department. Explains ethical spheres of control of a legal case. Continues that a mental health professional or a lawyer trained in mental health issues is the natural person to substitute for the disabled person.
- 045 Rep. Macpherson Understands how the initial court-appointed indigent counsel who is representing the parent would be disqualified as a guardian ad-litem. States that once a guardian ad-litem is appointed, that individual is making the decisions for the parent. Comments that if that is an attorney, one person could do the job. Cites an example where there would be two individuals being paid by the state. Continues that in termination of parental rights, there could also be court-appointed-counsel for children. Asks if we are being as efficient as possible to get the right level of expertise.
- 069 Travis Responds that in the law efficiency is not always the highest value. Comments that there are not many attorneys who are cross-trained in mental health issues and in termination of parental rights law. Continues that the juvenile code is very complicated and a specialized area of law.
- 090 Livingston Clarifies that guardianship proceedings apply at any stage of the case, not just termination. Refers to Section 3 of SB 230A which lists the decisions the guardian ad-litem must make. Provides an example. States that an attorney provides legal advice and options, but the guardian ad-litem must make the decision.

- 130 Rep. Macpherson Asks if an indigent counsel is appointed for the parent and a guardian ad-litem is appointed, if there is still that original counsel representing the parent.
- 139 Travis Answers no. Explains that the guardian ad-litem appointed would be represented by the attorney who was representing the parent.
- 142 Rep. Macpherson Confirms that there aren't two court appointed attorneys.
- 145 Chair Ackerman Raises a potential conflict of interest in Section 5 of SB 230A.
- 151 Rep. Flores Inquires if most cases of termination of parental rights proceedings have court appointed counsel.
- 158 Travis Replies overwhelmingly.
- 161 Chair Ackerman Asks if a court-appointed special advocate (CASA) is considered a guardian ad-litem or if they perform another role.
- 164 Travis Responds that CASAs were specifically excluded from being guardians ad-litem for the parent because their role is to investigate and advocate for the best interest of the child.
- 170 Chair Ackerman Closes the public hearing and opens a work session on SB 230A.

SB 230A – WORK SESSION

- 172 Chair Ackerman **MOTION: Moves to ADOPT SB 230A-4 amendments dated 4/18/05.**

VOTE: 3-0-1

EXCUSED: 1 - Wirth

- 174 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**

- 175 Chair Ackerman **MOTION: Moves SB 230A to the full committee with a DO PASS AS AMENDED recommendation.**

VOTE: 3-0-1

AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 - Wirth

182 Chair Ackerman The motion CARRIES.

REP. ACKERMAN will lead discussion in the full committee.

183 Chair Ackerman Closes the work session on SB 230A and opens a public hearing on SB 231A.

SB 231A – PUBLIC HEARING

- 188 Joe O’Leary Counsel. Explains that SB 231A clarifies who has access to the information in “social” files and that maintenance of those records must be by the Circuit Court Clerk; and clarifies that transcripts of juvenile delinquency cases are subject to the same disclosure restrictions as the social file. **Note:** The -2 amendments (**EXHIBIT I**) were distributed prior to the meeting.
- 202 Wendy Johnson Deputy Director, Oregon Law Commission. Testifies and submits written testimony in support of SB 231A (**EXHIBIT J**). Advises that there are not clear statutes on what the court is required to maintain and what is, in fact, the juvenile record. Indicates the amendments respond to issues raised by the Oregon Judicial Department.
- 224 Michael Livingston Assistant Attorney General, Department of Justice (DOJ). Testifies and submits written testimony in support of SB 231A (**EXHIBIT K**). Refers to ORS 419A.255 which governs the confidentiality of juvenile court records maintained in either the legal file or the social file. Comments this statute has been in place since 1959 when the juvenile code was enacted. Cites the problems in statute being corrected by SB 231A.
- 270 Livingston Discusses reports that are submitted but not made a part of the record. Advises that some counties preserve these reports and others shred them, so if there is an appeal, the location of the report is unknown.
- 303 Livingston Continues that the -2 amendments give direction to counties on what is confidential.

- 338 Chair Ackerman Indicates that a vehicle of judicial notice is used to incorporate into the juvenile court records, documents that would not otherwise be there. Asks for an explanation on how that works.
- 345 Livingston Responds that a judicial notice is authorized by the Oregon Evidence Code and allows the court to put a body of information into the record without actually having the document.
- 369 Chair Ackerman Closes the public hearing and opens a work session on SB 231A.

SB 231A – WORK SESSION

- 373 Rep. Garrard **MOTION: Moves to ADOPT SB 231A-2 amendments dated 5/12/05.**

VOTE: 3-0-1

EXCUSED: 1 - Wirth

- 378 Chair Ackerman **Hearing no objection, declares the motion CARRIED.**

- 380 Rep. Garrard **MOTION: Moves SB 231A to the full committee with a DO PASS AS AMENDED recommendation.**

VOTE: 3-0-1

AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 - Wirth

- 392 Chair Ackerman **The motion CARRIES.**
REP. GARRARD will lead discussion in the full committee.

- 397 Chair Ackerman Closes the work session on SB 231A and adjourns the meeting at 10:05 a.m.

EXHIBIT SUMMARY

- A. **SB 106, -A5 amendments, staff, 7 pp**
- B. **SB 106, -A3 amendments, staff, 2 pp**
- C. **SB 106, written testimony by Claudia Burton, BeaLisa Sydlik, 2 pp**
- D. **SB 106, statutes, BeaLisa Sydlik, 8 pp**
- E. **SB 115, written testimony by Max Williams, Stan Czerniak, 2 pp**
- F. **SB 230, -A4 amendments, staff, 3 pp**
- G. **SB 230, written testimony, Wendy Johnson, 6 pp**
- H. **SB 230, written testimony, Michael Livingston, 5 pp**
- I. **SB 231, -A2 amendments, staff, 1 p**
- J. **SB 231, written testimony, Wendy Johnson, 5 pp**
- K. **SB 231, written testimony, Michael Livingston, 8 pp**