

## SENATE COMMITTEE ON JUDICIARY

February 26, 2001 Hearing Room 343  
1:00 p.m. Tapes 44-45

**MEMBERS PRESENT:**        **Sen. Minnis, Chair**  
                                  **Sen. Courtney, Vice-Chair**  
                                  **Sen. R. Beyer**  
                                  **Sen. Burdick**  
                                  **Sen. Harper**  
                                  **Sen. Metsger**

**MEMBER EXCUSED:**        **Sen. Duncan**

**STAFF PRESENT:**         **Marilyn Odell, Counsel**  
                                  **Jane Bodenweiser, Committee Assistant**

**MEASURE/ISSUES HEARD:**        **SB 167 Public Hearing**  
  **SB 124 Public Hearing and Work Session**  
  **SB 152 Public Hearing**  
  **SB 154 Public Hearing**

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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.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 44, A</b> 003	Chair Minnis	Calls the meeting to order at 1:08 p.m. and opens a public hearing on SB 167.
<b><u>SB 167 PUBLIC HEARING</u></b> 006	<b>Sen. Bev Clarno</b>	<b>State Senator, District 27</b> Introduces SB 167 relating to child custody. Says that it grew out of the recognition that the current system is too adversarial.
023	<b>Hugh McIsaac</b>	<b>Oregon Family Institute, Tillamook</b> Testifies in support of SB 167, and states that it does not cost the state any money. Indicates that qualified evaluators are leaving the field because of the overly adversarial nature of the current process, and says that a wide range of interventions is needed for these high-risk families that put children at risk. Asserts that this statute will encourage the development of these interventions.

042	<b>Bill Howe</b>	<b>Law Partner, Gevurtz, Menashe, Larson &amp; Howe, Portland</b> Testifies in support of SB 167. States that he chaired the Oregon Task Force on Family Law for 4 years, where it was their goal to make the family law system less adversarial, stressing the need for parenting plans, changing the language of visitation to parenting time, adding mediation in custody matters, etc. States that this bill supports these goals.
084	<b>Andrea Anderly</b>	<b>Board Member, Oregon Family Institute</b> Testifies in support of SB 167 and discusses her experience with a case involving a young child. Stresses the importance of having a panel of custody evaluators available so that the court can determine what is in the best interest of the children.
105	Chair Minnis	Refers to line 9, page 1 of the bill and asks if a Masters in divinity and theology specifically were omitted.
109	McIsaac	Replies that the language used was from the existing statute, and that it refers to training in the behavioral sciences.
115	Chair Minnis	Asks about the source of the amendments (Exhibit A).
118	McIsaac	Replies that they were created by the Oregon Judicial Department and would add some additional items to the bill.
126	<b>Alice Phalan</b>	<b>Oregon Judicial Department</b> Submits testimony and testifies in support of SB 167 ( <b>EXHIBIT A</b> ). Suggests that the -1 amendments would clean up the current statutes.
144	Counsel Odell	States that it is her understanding that these amendments are to make the options more flexible for the court in terms of the type of panel or individual appointed.
153	McIsaac	Says that is correct.
156	Phalan	Continues to explain what the amendments will add to the bill.
230	Sen. Burdick	Asks if a fiscal impact has been done for the local courts.
235	McIsaac	Replies there is no fiscal impact, and that the participants would pay the costs.
240	Howe	Suggests that this bill would cut down on court appearances, thus court costs.
277	Sen. Harper	Asks if there is something that prohibits the court from ordering an evaluation on their own under current statute.
279	Howe	Replies that there is conflict among the judges, and the bill would provide clear statutory authority.
293	Chair Minnis	Asks about families that can't afford to pay.
295	Howe	Replies that different counties have different ways of handling it. States that usually the panels are court appointed, and panel members are required to perform some pro bono work.
313	McIsaac	States that the fees are very moderate.
326	Phalan	Says that in some states the parent coordinator may be someone in the community, such as a pastor, who would do this as part of their other community work.
349	Sen. Metsger	Asks how much of this unresolved dispute is the responsibility of the courts. States a situation he was involved in where the courts did not take enforcement action.
363	Howe	Responds that he is puzzled and asks to know more about that particular case.
405	Chair Minnis	Asks that the -1 amendments be drafted by Legal Counsel before

further action be taken on this bill. Closes the public hearing on SB 167 and opens a public hearing on SB 124.

**TAPE 45, A**

**SB 124 PUBLIC HEARING**

006 Tammy Dentinger

**Family Law Section, Oregon State Bar**

Testifies in support of SB 124, which allows parties to annulment or dissolution of marriage or separation to stipulate to entry of decree. States that it fixes a current statute.

020 Chair Minnis

Closes the public hearing on SB 124 and opens a work session.

**SB 124 WORK SESSION**

022 Vice Chair  
Courtney

**MOTION: Moves SB 124 to the floor with a DO PASS recommendation.**

**VOTE: 5-0-2**

**EXCUSED: 2 - R. Beyer, Duncan**

**Hearing no objection, declares the motion CARRIED.**

**SEN. BURDICK will lead discussion on the floor.**

024 Chair Minnis

Closes the work session on SB 124, and opens a public hearing on SB 152.

028 Chair Minnis

**SB 152 PUBLIC HEARING**

032 Shawn Cleave

**Testifying on behalf of Sen. Fisher**

Submits testimony and testifies in support of SB 152 relating to rights of parent to child conceived by rape of other parent (**EXHIBIT B**). Describes the case of the Magallanes family whose daughter became pregnant as the result of a rape, and is now concerned that without this bill the father could sue for custody of the child to avoid child support payments. Suggests that there may need to be a definition for rape and statutory rape included in this bill.

081 Chair Minnis

Asks if the bill does not require a conviction for rape.

082 Cleave

Replies, no.

091 Tammy Dentinger

**Family Law Section, Oregon State Bar**

Testifies in opposition to SB 152. States that there are concerns about the bill, and that the family lawyers don't think it is necessary. Says that there are other ways already codified in which the same goal is accomplished. Notes that the bill does not require a conviction, which would open the door to numerous litigated issues.

128 Sen. Burdick

Says she is troubled by the lack of a conviction in this bill, and asks if it would be helpful to have some charge in connection with the conception of a child.

136 Dentinger

Replies that it would help, but it would not be enough.

148 Sen. Harper

Asks for an example of when it would be in the child's best interest to see the father in a rape situation.

153 Dentinger

Responds with an example of a 15 year-old mother and a 19 year-old father, which would technically be a "rape 3" situation.

165 Bill Howe

**Law Partner, Gevurtz, Menashe, Larson & Howe**

Testifies in opposition to SB 152. Describes situations where it would be in the best interest of a child to see the father. States that this bill is inflexible with regard to the wrongdoer.

224 Chair Minnis

Asks how you get past the issue that rape is an act of violence.

229 Howe

Replies that there are other crimes that could be considered acts of violence that would not constitute terminating parental rights.

250	Chair Minnis	States that he would like to hear from some women who have experienced this kind of crime.
270	Sen. Harper	Asks what would happen if, after a number of years, a judge decides that a father should be able to see his child over the objection of the mother.
280	Howe	Replies that that could happen because the job of the judge is to look at it not as a reward to the mom or dad, but in terms of what is in the best interest of the child. Explains that he believes this bill would be too restrictive.
315	Sen. Metsger	Asks if under the law, two young people could have consented sex that would ultimately be considered rape.
321	Howe	Replies, yes, if one of the partners is under 16.
351	Chair Minnis	Asks about identification concerns with regard to terminating parental rights.
356	Howe	Replies that he knows the courts have the authority to require DNA testing, and assumes that unless the court is petitioned to do so, testing will not occur.
381	Vice Chair Courtney	Asks about the language of child support in the bill.
399	Howe	Says that he does not believe support can be enforced if all other parenting rights have been removed.
425	Vice Chair Courtney	Asks if there are situations where a father does not have custody or visitation rights, but has been ordered to make some kind of payment.
431	Howe	Replies, yes, when a dad has proved to have the potential for parenting.
450	Sen. Burdick	Asks if he is aware of any rapists who are required to pay child support.
456	Howe	Responds that he does not know, but is certain there are such cases.

**TAPE 44, B**

025	<b>Kathie Osborne</b>	<b>Senior Attorney, Juvenile Rights Project</b> Explains her concern with regard to the termination of the parental rights issue.
042	Chair Minnis	Asks about rapists being required to pay child support.
047	Ronelle Shankle	Replies they do not have statistics, but explains the rules and policies process.
062	Sen. Burdick	Asks if a rapist has ever come forward and tried to establish paternity.
064	Shankle	Replies that she knows of at least two instances.
071	Chair Minnis	Closes the public hearing on SB 152 and opens a public hearing on SB 154.

**SB 154 PUBLIC HEARING**

077	<b>Shawn Cleave</b>	<b>Staff Assistant to Senator Fisher</b> Introduces Robert Sherman who submits his testimony.
081	<b>Robert Sherman</b>	<b>Winston, Oregon</b> Submits testimony and testifies in support of SB 154 relating to parenting time awarded in domestic relations suit ( <b>EXHIBIT C</b> ). Explains that he was wrongfully accused of sexually abusing his daughters, that it has been 4 years since he has seen them, and that he cannot get help with righting this problem.
116	Chair Minnis	Referring to line 21-23 on page 1 of the bill asks about the deleted language.
132	Counsel Odell	Explains that the reason for the deletion is to require the court to

		conduct the same analysis that they must do in cases of abuse under ORS 107.7184.
139	Vice Chair Courtney	Asks if Mr. Sherman's court order was entered 3 years ago regarding the custody and visitation of his children.
141	Sherman	Replies, yes.
144	Vice Chair Courtney	Asks if he has been back to court since this issue.
151	Sherman	Replies, no, because of the costs involved.
168	Chair Minnis	Closes the public hearing on SB 154, and adjourns the meeting at 2:15 p.m.

Submitted By,

Reviewed By,

Jane Bodenweiser,  
Committee Assistant

Marilyn Odell,  
Counsel

**EXHIBIT SUMMARY**

- A 1– SB 167, written testimony, submitted by Alice Phalan, dated 2/26/01, 3 pp**
- A 2 – SB 167 briefing paper submitted by Alice Phalan, dated 12/20/99, 34 pp**
- B – SB 152, written testimony, submitted by Shawn Cleave for the Magallanes Family, 1 p**
- C – SB 154, written testimony submitted by Robert Sherman, dated 2/26/01, 1 p**
- D – SB 154, written testimony, submitted by Bradley Bowker, dated 2/26/01, 2 pp**
- E – SB 124, written testimony, submitted by Layne Barlow, dated 2/16/01, 1 p**
- F – SB 152, written testimony, submitted by Layne Barlow, dated 2/26/01, 2 pp**