

**HOUSE JUDICIARY COMMITTEE ON CIVIL LAW**

January 20, 1999 Hearing Room 357

1:00 p.m. Tapes 5 & 6

**MEMBERS PRESENT:** Rep. Shetterly, Chair

Rep. Max Williams, V. Chair

Rep. Vic Backlund

Rep. Randall Edwards

Rep. Kathy Lowe

Rep. Vicki Walker

Rep. Larry Wells

Rep. Bill Witt

**MEMBER EXCUSED:** Rep. Judy Uherbelau, V. Chair

**STAFF PRESENT:** Aaron Felton, Counsel

Nancy Richards, Administrative Support

**MEASURE/ISSUES HEARD:** HB 2298

**HB 2296**

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
<b>TAPE 3, A</b>		
<b><u>HB 2298 Public Hearing</u></b>		
004	Chair Shetterly	Calls the meeting to order at 1:05 p.m.
009	Counsel Felton	HB 2298 allows court, for good cause, to waive requirement that parents of child to be adopted be advised of voluntary adoption

		registry.
023	<b>Robin Pope</b>	<p><b>Chairperson, Adoption Standing Committee of the Oregon State Bar.</b></p> <p>Testifies in support of HB 2296 <b>(EXHIBIT A)</b>. This bill was introduced last session in the Senate. The bill defines "birth parent" which makes the statutes more consistent. The court may waive this requirement upon showing of good cause. This bill mostly affects foreign adoptions.</p>
073	Chair Shetterly	Under current law the court is required just to advise of this adoption registry, is this correct?
077	Pope	It is not actually the court that advises everyone, it is usually the attorney, or the is an adoption agency, the agency advises.
082	Chair Shetterly	Do you have to certify to the court that they have received notice or information about the opportunity to avail them of this adoption registry?
084	Pope	Typically, what we do is sign an affidavit or verification that you have provided the information needed for the registry or you state in the affidavit why you can't provide that information.
090	Chair Shetterly	Would this be a waiver of the notice requirement not a waiver of any existing requirement that they register?
090	Pope	Correct. It is simply saying that if Attorney Pope or Hult Adoption Agency for good cause cannot get information to that person the court will then waive that requirement. Dismisses what the waiver exception is intended to do.
097	Rep. Walker	I have concern about showing good cause; I think it needs to be more specific. It needs to have an explanation why representatives of the child cannot provide the information regarding the adopted child's birth parents.
110	Pope	The courts in Oregon have made it very clear that they will require a strong affidavit.

118	Rep. Walker	The courts could do many different things, so a statute needs to be very specific to act as a safeguard.
122	Rep. Witt	What is involved in a voluntary registry ?
121	Pope	Explains how the registry works and its requirements. When an adopted child is 18 years old, he or she would be eligible to register in the registry if they do not know their birth parents.
147	Rep. Lowe	I am hoping there would be safeguards articulated in this bill that would prevent somebody from just saying they don't know who the father is because that is easiest.
165	Pope	That could happen at the moment a birth mother is consenting to an adoption. The only way she can get around providing notice to the birth father would be if she signs an affidavit stating that he hasn't done certain things which would include providing support for the child.
180	Rep. Lowe	Would this particular procedure that you are advocating streamline the process?
187	Pope	Yes. In foreign countries, it is easier to just put "father unknown". The father needs not to have notice
193	Chair Shetterly	How does this relate to Measure 58?
194	Pope	This bill has no relation to Measure 58. Measure 58 opens up an original sealed birth certificate because of an adoption. The registry is a voluntary matter and gives other information, which may not include the entities of the birth parents or even of the adopted child.
211	Chair Shetterly	Measure 58 didn't amend this statute?
213	Pope	Not to my knowledge.
217	Chair Shetterly	How will Measure 58 affect the registry?
221	Pope	It may make the registry less of an issue for people. Measure 58 would

		not impact those children born outside of Oregon.
228	Chair Shetterly	Is "good cause" too broad?
230	Pope	The judges in Oregon is very observant and watches over our organization. When the notice requirement was put into this statute it wasn't realized that we would have all of these foreign adoptions, so there wasn't any waiver language put in.
234	Lowe	Do you think an affidavit is sufficient to show good cause or do you think it might be a better to have testimony taken before a court so they can decide the credibility of the adopting parents?
258	Pope	If someone is going to lie about information, they could do it on the witness stand just as easily as on an affidavit.
262	Lowe	Yes, but then the court could then question the credibility of the witness.
264	Pope	The court could require that.
271	Chair Shetterly	I would agree that a hearing in every case, to provide credibility, would be a waste of time.
277	Pope	Comments on Section 2, HB 2298, concerning the legal birth parent.
302	Rep. Wells	Why wasn't this bill passed last session?
305	Pope	The bill went before the Senate and passed, but it didn't get back on the hearing schedule in the House and it died.
<b><u>HB 2298 WORK SESSION</u></b>		
332	Rep. Lowe	<b>MOTION: Moves SB 2298 to the floor with a DO PASS recommendation.</b>
334	Rep. Walker	I am concerned about the clause regarding a biological parent

		refusing to participate in the adoption plan.
343	Pope	Biological parents don't participate even if they have notice of the registry and some just disappear. The court is going to have to look at an affidavit and ask for a hearing to find out the accuracy of the disappearance.
361	Rep. Williams	If a person is unwilling to participate in this process, are we essentially depriving the child of an opportunity to later learn who their parent is by failing to give the parent notice? Would it be reasonable to limit the bill only to those situations where the parent is simply unknown?
379	Pope	Gives example of a situation where the parent mailed the notice back.
370	Rep. Williams	What about the situation where you have an uncooperative father who doesn't want to participate in the adoption process?
399	Pope	Even when you know who the parent is, you may not know where they are. You can give the information, but it is a voluntary procedure.
405	Rep. Williams	When we know who the birth parent is, could we have other methods of meeting your statutory requirement to provide notice?
417	Chair Shetterly	If he won't accept the letter, the court would find this good cause for not giving the notice.
422	Pope	If we know who the father is, the judge would not say it was okay not to mail the notice to him.
429	Rep. Williams	What is the duty of the lawyer or the adoptive agency to make the effort to determine where this father is? Would these people have to make every effort to locate these fathers before going to the court?
441	Pope	It has long been the trend that these men have rights to notice and information of the registry. Putative father, have limited rights here in Oregon.

470	Rep. Williams	The right that I am concerned about is the right of the child. Where no effort is made to find the father because it was easier to not look for him, and without any requirement, the father should have some duty to make an effort to give notice.
490	Pope	The duty is on the putative father. The child should have certain rights and that was why Measure 58 came about.
<b>Tape 6, Side A</b>		
039	Rep. Williams	If the father wasn't known, could we connect notice of the registry to the initial part of the adoption and still be qualified in the notification requirement?
047	Pope	The connection is different. The connection actually ties in with the involvement of the birth father stepping forward and is willing to accept certain rights and responsibilities.
051	Rep. Williams	How is that going to play out?
057	Pope	Good cause is more than simply, not knowing where the birth father is. We don't publish in search for information about the birth father.
068	Rep. Wells	A requirement to look in a phone book doesn't seem to be an outlandish requirement to place on a practitioner or an adoption agency.
070	Chair Shetterly	There has to be a good demonstration of good cause. My concern is to try and draft a bill that will not create more problems than we are trying to solve.
080	<b>Timothy Travis</b>	<b>Juvenile Court Improvement Project Manager</b>  Testifies in opposition of HB 2298, but clarified that as an advocate of the child, this bill makes the decision for the child in the future. Discusses when it is best for the child to know who the father is.
111	Pope	In the clause, "The court may waive this requirement upon a showing of good cause", we should change the word, showing, to finding. Reasons

		for this change involves foreign agency adoptions.
120	Russ Lipetzky	What would change of , finding to showing mean?
124	Pope	Discusses the difference between showing and finding.
134	<b>Russ Lipetzky</b>	<b>Family Law Practitioner</b> Explains that judges may not look at this notice requirement as closely as they should and this will not be taken as seriously as it should. A finding means that a judge has to look at something in one way or another.
150	Rep. Lowe	Adds to Mr. Lipetzky's comments, that the party responsible for the presentation of testimony evidence has met their burden of proof, which is more important.
154	Rep. Walker	Speaks in favor of changing the word, showing, to finding, as it seems to protect the child's rights as well.
163	Pope	As the chairperson of this committee, I would find this change acceptable.
166	Rep. Witt	I don't know if changing the word, showing, to finding provides greater protection to the child. The court, by not requiring the notice to the birth parents, may be protecting the child because it is in the child's best interest not to know.
175	Pope	The growing trend in Oregon is open adoptions. This is becoming less of an issue except for foreign adoptions and where a birth parent is unknown or cannot be found.
179	<b>Rep. Lowe</b>	<b>MOTION:</b> <b>Moves to AMEND HB 2298 on page 1, in line 9, after "a," delete "showing," and on page 1, in line 9, after "a," insert "finding".</b>  <b>VOTE: 7-1-1, Rep. Witt</b>

		<b>EXCUSED: 1 ñ Rep. Uherbelau</b>
084	Chair Shetterly	Closes work session.
<b><u>HB 2296 Public Hearing</u></b>		
222	Counsel Felton	HB 2296 establishes that the amount of child support is automatically reduced when child support order is for more than one child and one of children for whom support was ordered becomes ineligible for support.
241	<b>Russ Lipetzky</b>	Testifies and submits written testimony in support of HB 2296 <b>(EXHIBIT B)</b> . A class order is when child support is given in a lump sum. When a child reaches 18 years old, or if one child becomes ineligible, the lump sum stays the same.
324	Chair Shetterly	Would it be acceptable to automatically reduce the lump sum to the guideline amount for a lower number of children.
327	Lipetzky	That would be ideal if it could be done, but no one has been able to come up with that. One of the problems with this is that we have an ever-increasing number of people that are representing themselves in family law matters.
344	Chair Shetterly	Could anyone go into the courthouse and just ask to see the matrix and insert that amount of changed support?
350	Lipetzky	Parents do not always know when a child becomes ineligible for child support because the support order is not automatically reduce. There is a provision in the bill that states that if a support is reduced pro-rata, either party can come back and seek a modification to make it consistent with the guidelines. There are also notice requirements.
384	Chair Shetterly	This bill essentially puts the burden on the receiving spouse to be aware of the guidelines. You could put that obligation on the father to find out what that guideline level is before the reduction kicks in. It works either way doesn't it?

403	Lipetzky	That is correct. Under this bill, you run the risk that the support payment is lower than the guidelines. The deviation from the guideline amount is greater under the current law than it would be if you reduce it pro-rata and then if someone wants to reduce the support payment, they could.
420	Rep. Witt	Why can't you require the reduction to come to the guideline and not on a pro-rata basis?
423	Lipetzky	The intent of the bill would be to have it operate automatically.
425	Chair Shetterly	But, can it operate automatically anyway?
429	Lipetzky	I don't think the agency's computers are set up to do that.
450	Rep. Witt	Aren't the guidelines published? Can't you go to the guideline and determine what the appropriate payment is and start making that payment?
<b>Tape 5, Side B</b>		
016	Lipetzky	Yes, but because of the current statutes, when a child drops off the support rolls, the full amount continues, and you can't do anything about it unless you go to court. It would be contrary to policy and an unreasonable burden to allow a parent to modify the support, which is another way to deal with the problem.
025	Rep. Witt	As it relates to the guidelines, is it assumed that the father has an excuse to be ignorant of the law?
028	Lipetzky	Discusses that there might be some conflict of the law because of old case guidelines.
039	Rep. Witt	My concern is that instead of going to the guideline, we should go to this pro-rated reduction.
044	Lipetzky	Yes, and as a practical matter that is what happens and that is why the problems arise.
045	Rep. Witt	It wouldn't hurt to put the reduction

		to the guideline as opposed to this pro-rated reduction if the support parents were not ignorant of the law.
047	Lipetzky	It would be preferable. Unless a parent comes into court to seek modification of the support, it would not automatically happen.
054	Chair Shetterly	If the receiving spouse is ignorant of the law, then they are the one who bears the burden of receiving this lesser amount of support. This is putting the entire burden on the receiving spouse.
060	Rep. Lowe	Class orders were a particularly sticky problem for old support orders that hadn't been modified before 1985.
080	Lipetzky	I don't think under this bill, or under current law, it makes any difference if an order was before 1985.
087	Rep. Lowe	The practitioners are modifying the amount once the children become of age anyway.
092	Lipetzky	The bill is simply a reminder to do something different if a child becomes ineligible for support.
106	Rep. Lowe	Isn't it true that the calculations of the guidelines require knowing more about the situations of the child?
120	Lipetzky	Yes.
123	Rep. Wells	Discusses concerns he has with the automatic reduction of child support.
137	Lipetzky	The alternative bill would address the problem another way. A child drops off without any knowledge that the support continues in the full amount and you can't do anything about it until you go to court. It would not be contrary to policy to allow a parent to modify the support.
154	Rep. Edwards	Pro-rata seems too simple. The burden seems to be placed on the child and should be placed on the person paying the support.
177	Lipetzky	It is a policy issue and is not without merit.

180	Rep. Witt	I have a hard time putting the burden on the custodial parent and I think this legislation does that. Support money should be taken care of in a reasonable time frame.
197	Lipetzky	There should be a time frame involved concerning the alternative bill.
215	<b>Ronelle Shankle</b>	<b>Department of Justice, Supportive Enforcement Division</b>  Testifies in opposition to HB 2296. Providing testimony on behalf of the Department of Human Resources, Adult and Family Services Section, and the Department of Justice (Support and Enforcement Division). Our primary concern is the fact that a pro-rata would not be in compliance with the guideline model.
265	<b>Carl Stecker</b>	<b>Marion County, Deputy District Attorney</b>  Testifies in opposition to HB 2296. The way the bill is written, there is no mechanism built in for a party who contests the guidelines except to go to court.
314	Rep. Wells	Under the current law, what is the procedure for the modification of child support?
325	Stecker	Discusses what happens and the process for filing support a motion for modification to a child support order.
370	Shankle	Discusses the child support program and how to get modification by applying for services. They do not need to already be in our system.
388	Rep. Lowe	Can a private attorney representing a private client do an automatic review of the child support amounts?
405	Shankle	A private sector attorney can do modification actions, but they do not handle the automatic review and adjustments.
407	Rep. Lowe	The problem of citizens of Oregon who have child support order is that they don't have the remedy of periodic review?

417	Shankle	That is correct. This bill attempts to address a child who is not eligible for support and when there is a child that is no longer eligible for support. A private practitioner could initiate a modification in the event a child becomes eligible.
424	Rep. Lowe	If a private attorney could get into the system every two years, the same as your service could, the support orders would be more up-to-date.
432	Lipetzky	Can Mr. Stecker give us a realistic idea about the time frame from the first telephone call to his office to when the agency files a motion?
443	Stecker	There is a considerable backlog in our service level. Generally, we are looking at the date from when the person first calls or formally applies; it grows to be four months.
464	Shankle	In support of the Enforcement Division, we have a standing procedure that we have the motion issued and signed so that it can be the date it will be effective. When we receive a request the staff needs to have that motion signed that same month.
490	Chair Shetterly	Closes the meeting at 2:30 p.m.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,  
Administrative Support Counsel

**EXHIBIT SUMMARY**

**A - HB2298, Written testimony, Robin Pope, p. 2**

**B ñ HB2296, Written testimony, Russell Lipetzky, p. 2**

**C - HB2296, Written testimony, Carl Stecker, p. 7**

**D ñ HB2296, Written testimony, Ronelle Shankle, p. 5**