

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON FAMILY LAW

January 22, 1997 Hearing Room 357

3:15 P.M. Tapes 1-2

MEMBERS PRESENT:

Rep. Ron Sunseri, Chair

Rep. George Eighmey, Vice Chair

Rep. Roger Beyer

Rep. Peter Courtney

Rep. Charles Starr

Rep. Judy Uherbelau

MEMBER EXCUSED:

STAFF PRESENT:

William E. Taylor, Counsel

Lauri A. Smith, Administrative Support

MEASURE/ISSUES HEARD:

HB 2058

HB 2172

HB 2261

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 1, A		
003	Chair Sunseri	Calls meeting to order at 3:20 P.M.
PUBLIC HEARING		

ON HB 2058		
006	Chair Sunseri	Opens Public Hearing on HB 2058
010	William E. Taylor, Committee Counsel	Presents a Preliminary Staff Measure Summary regarding HB 2058
014	Vice Chair Eighmey	<p>Testifies in support of HB 2058 and introduces Al Thompson of Standard Insurance Company.</p> <p>>The bill is to state that you cannot benefit from the death of a child for whom you had support of.</p> <p>Refer to <u>Section 2</u>. Line 6 of HB 2058 - "... is the beneficiary of a life insurance policy on the life of the child," Discussion.</p> <p>>Change to "is the beneficiary and owner of an insurance policy on the life of the child,"</p>
066	Vice Chair Eighmey	<p>Refer to <u>Section 2</u>. Line 9 of HB 2058 - "... the obligation to make support payments," Discussion.</p> <p>>Change to "the obligation to make support payments, provided that the assignment is permitted in the policy."</p>
079	Chair Sunseri	How often do you suspect that children have life insurance policies?
081	Vice Chair Eighmey	Responds that situations have occurred often enough.
090	Chair Sunseri	If the child supports is in arrears you will attach the policy by way of judgment?
092	Vice Chair Eighmey	Correct, it has to go through the court upon motion of the attorney general or district attorney. Only upon their motion not the individual obligee's motion.
101	Rep. Beyer	What happens now ... couldn't a judge do the exact same thing under current law? If an individual is in arrears for child support ... couldn't a judge garnish?
107	Vice Chair Eighmey	<p>Responds by stating that under current law the proceeds of a life insurance policy are payable to the beneficiary and are not attachable unless the court is aware of it. Generally the courts are not aware of a child's life insurance policy.</p> <p>>To give the District Attorney and Attorney General's offices support in collecting child support arrearage.</p>
123	Rep. Uherbelau	So the procedure that you are setting up is to do a debtor's exam and you learn that there is a life insurance policy and you immediately go in and attach to the policy even while the child is alive? The attachment is there

		should the event take place sometime in the future?
125	Vice Chair Eighmey	Correct.
128	Taylor	Provides an explanation of point within HB 2058: Wouldn't apply to private debtor's examination, only to the District Attorney or Attorney General support enforcement mechanisms.
135	Vice Chair Eighmey	Correct only to District or Attorney General and if only one month in arrears.
141	Al Thompson	Represents Standard Insurance Company and American Counsel of Life Insurance, a trade organization. >With the changes that Rep. Eighmey says he will make on this bill, we support this bill.
153	Chair Sunseri	Close Hearing on HB 2058
PUBLIC HEARING ON HB 2172		
156	Chair Sunseri	Opens Hearing on HB 2172
160	Taylor	Presents a Preliminary Staff Measure Summary regarding HB 2172 >Senior and Disabled Services Division ("SDSD") proposes an amendment to HB 2172 that will give authority directly to SDSD and out to any of their agents. Discussion.
183	Susan L. Dietsche	Assistant Administrator of SDSD Testifies in support of HB 2172 (EXHIBIT A)
232	Dietsche	Continues testimony.
263	Dietsche	Presents proposed amendments to HB 2172. (EXHIBIT B) Discussion regarding the proposed amendments to HB 2172. That will: >give the SDSD authority to subpoena/gather records and to delegate to their agents; and >clarifies that SDSD will serve notice to the person, legal guardian, or attorney for which they are requesting the records from; and
274	Rep. Uherbelau	Does the amended language provide that notice will be given?
287	Dietsche	Correct, Rep. Uherbelau. The proposed amendments to HB 2172 will, also, clarify that under certain circumstances SDSD can give the information to a person who is

		acting to protect the victim. This may be an attorney who is starting a guardianship proceeding and without the information gathered they cannot protect the victim.
302	Rep. Uherbelau	<p>You have alleviated in part ... one of my concerns about no notice.</p> <p>How about a situation where there is an individual who is not judged incompetent, has no guardian/conservator and who has refused to sign a consent for release. If they have not made a complaint, have they put their health status at issue. Have they waived that confidentiality?</p> <p>Could we go one step further, that there be time to object the consent to release as notice alone will not provide the time to refuse.</p>
306	Dietsche	<p>Responds to concerns.</p> <p>>If victim is capable and refuses to release information then SDSD does not pursue obtaining records.</p> <p>>If victim is hurt and is afraid to give a consent of release and SDSD feels that for purposes of protection SDSD needs to know the extent of the injury or battery is occurring ... giving notice is sufficient.</p> <p>>If victim is of a criminal act then SDSD refers them to law enforcement with a warrant to obtain information. However, SDSD would prefer to work with the victim to get the information.</p>
350	Rep. Uherbelau	I would prefer at least a short period of time in which to object to releasing medical information, your medical history encompasses your whole life and there may be areas you wish confidential, and if you had time to object you could even consider limiting access.
364	Vice Chair Eighmey	<p>Concerned about the period of time in which SDSD has the right for judicial intervention when at this stage you are only investigating. If in fact there is an immediate life threatening situation SDSD has the power to go to law enforcement agencies to have immediate intervention. In the situations described you are only at an investigating stage.</p> <p>If I were the guardian, I would prefer time to have judicial intervention and not allow immediate access authority to SDSD.</p>
406	Vice Chair Eighmey	Continues concerns regarding the amendment giving sole discretion to SDSD officials.
419	Dietsche	Responds to Vice Chair Eighmey by stating that SDSD wants the sole discretion at the division level not at the agencies.
453	Vice Chair Eighmey	The provision gives the agency sole discretion to disseminate this information and to provide whatever investigative data SDSD has garnered. Why does SDSD need sole discretion and then how are you going to set parameters? What guidelines are you going to set for dissemination of this information? Concerns, also, as stated by Rep. Uherbelau on the time element.

Tape 2, A		
037	Kelly Knivila	<p>Assistant Attorney General within the Department of Justice. General Counsel for SDSD.</p> <p>Responds to Vice Chair Eighmey concerns.</p> <p>>There are situations that before the division has sufficient evidence to forward to a law enforcement agency that would give them probable cause and where there is imminent danger, SDSD needs to have authority to obtain records. SDSD could set standards in their rules.</p> <p>>Whether it needs to be in sole discretion of SDSD. Keep that control with central office. Anything not expressly made confidential the division may have to give over as a public record. Addresses how SDSD will work with a third person (i.e. guardian) trying to obtain records. SDSD will have to agree that this release of information is in the interest of protecting the individual.</p>
081	Vice Chair Eighmey	<p>Currently under the protection statutes the court has authority to authorize you to disseminate information to the person who has applied for guardian status. You can do that now.</p> <p>Reiterates concerns with when an individual is incapacitated and unable to mentally know and your guardian refuses to release information, SDSD can still, if they believe, obtain the information. Also, before the guardian can have the time to object in court, SDSD can decide to disseminate the information. Wants an intervention of judicial protection.</p>
109	Rep. Uherbelau	<p>Asks for clarification between speakers testifying regarding HB 2172 amendment. Does the amendment require SDSD furnish notice always? Or to give notice only in certain situations?</p>
111	Dietsche	<p>Responds to Rep. Uherbelau by stating that there are two separate issues within the amendment.</p> <p>>First, when we need to furnish a subpoena to obtain information the amendment would require us to give notice.</p> <p>>Second, once we have confidential documents/reports, can we give them to a third party? The bill would say we could give the information to the third party for the protection of the individual without notice.</p>
127	Rep. Uherbelau	<p>Reiterates her concerns with the proposed amendments.</p> <p>Notice only does not give right to object. SDSD has means in immediate situations to obtain information, however, you are talking about non-emergency situations, so I can not see why there is objection to "giving a short period of time to object."</p>
		<p>SDSD Program Coordinator for Adult Protective Services.</p>

158	Aileen Kaye	<p>In response to Vice Chair Eighmey, SDSD has situations where individuals are alone and incapable of giving consent, we need to be able to respond to inquiries from interested persons, i.e. neighbors.</p> <p>Responding to community needs requesting information faster.</p> <p>Do not want to go to law enforcement until we have adequate information due to their workload.</p>
171	Bill Taylor	<p>Ms. Knivila, I refer to the proposed Amendment <u>Section 2(1)</u> and <u>Section 2(6)</u>. I take this to mean that if someone gave a written confession to a lawyer theoretically under this SDSD could subpoena.</p>
187	Knivila	<p>Responds to Taylor by stating that an attorney/client privileges would be grounds for refusal to comply with a subpoena and other privileges that are not specifically listed in these sections. The division doesn't envision that an attorney would generally hold records that SDSD needs. Usually it is information from hospitals and home health agencies that SDSD is looking to and that's why those particular privileges were selected out.</p> <p>The reference to "... otherwise made confidential under Oregon law." (refer to Section 2(6)) was intended to pick up things not in privilege statute but things that there other laws out there that talk about records being confidential. SDSD has had difficulty with hospitals and home health agencies in obtaining requested documents in this area of confidentiality. There are laws existing that place them in a bind between ones to keep medical records confidential and those which require them to be mandatory reporters.</p>
204	Taylor	<p>Are you talking about those statements made by the victim to a doctor, social worker, and to a nurse?</p>
207	Knivila	<p>The Department of Justice has seen these statements raised with the Oregon Board of Medical examiners as a defense.</p> <p>This is to clarify that the division can inquiry into these records that would normally be covered by the physician/patient privilege.</p>
225	Vice Chair Eighmey	<p>Isn't there a mandatory reporting for elder abuse? So they have to report this? The information gathered ... is it limited to records of the victim?</p>
233	Knivila	<p>Responds by stating it is limited in the first section to records that the division believes are relevant to the investigation.</p>
241	Vice Chair Eighmey	<p>Gives example and states concerns.</p>
264	Kaye	<p>Responds to Vice Chair Eighmey by stating that the mandatory reporting would be when the victim is 65 years or older and met the four definitions of elder abuse.</p> <p>Continues to testify regarding the intent of the 1981 drafters of the law.</p>
278	Rep. Uherbelau	<p>So if you think this was the intent in 1981, why were you not here before 1996 ...</p>

280	Kaye	Responds to Rep. Uherbelau
288	Knivila	Responds to Vice Chair Eighmey by stating that the example he gave is a clear reason why clarification is needed and further gives additional explanations.
303	Pete Shepherd	Attorney in Charge, Financial Fraud Section, Oregon Department of Justice. Assigned to the Attorney General's Task Force on Elder Abuse. Testifies in support of HB 2172 (EXHIBIT C) Two model areas to look to for reference: >Chapter 192 - Provisions over notice and providing opportunity to contest one's disclosure of their private financial records. >Chapter 180 - Provision over the Attorney General's Subpoena authority when restricting dissemination of information
343	Shepherd	Continues
369	Chair Sunseri	Closes Hearing on HB 2172
PUBLIC HEARING ON HB 2261		
371	Chair Sunseri	Opens Hearing on HB 2261
373	Bill Taylor	Presents a Preliminary Staff Measure Summary regarding HB 2261 Notes that it is similar to HB 2262 recently heard in the Civil Law Subcommittee.
408	Chair Sunseri	Sends HB 2261 back to Full Committee and states that James W. Nass will present his testimony at such time. Closes hearing on HB 2261
410	Chair Sunseri	Adjourns the hearing at 4:15 P.M.

Submitted By, Reviewed By,

Lauri A. Smith, William E. Taylor,

Administrative Support Counsel

EXHIBIT SUMMARY

A - Oregon Department of Human Resources -- Susan L. Dietsche -- 2 pages

B - Proposed Amendments to HB 2172 -- Kelly Knivila -- 3 pages

C - Testimony of Oregon Department of Justice -- Pete Shepherd -- 2 pages