

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON FAMILY LAW

January 28, 1997 Hearing Room 357

3:15 P.M. Tapes 3 - 4

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 2309 - Public Hearing

HB 2315 - Public Hearing

HB 2316 - Public Hearing

HB 2058 - 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 |
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| Tape 3, A | | |
| 004 | Chair Sunseri | Calls meeting to order at 3:16 P. M. |
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| <u>PUBLIC HEARING ON HB 2309</u> | | |
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| 007 | Chair Sunseri | Opens public hearing on HB 2309. |
| 009 | William E. Taylor | Reads Preliminary Staff Measure Summary on HB 2309 |
| 013 | Rep. Eighmey | What is defined in ORS 179.505(1)? |
| 018 | Taylor | Reads directly from ORS 179.505(1). |
| 044 | (1) Deborah Wilson (2) Paulette Furness | <p>(1) Department of Justice, Attorney-in-Charge, Family Law Section</p> <p>(2) General Counsel for the Family Law Section</p> <p>Witnesses in favor of HB 2309 (EXHIBIT A & B).</p> <ul style="list-style-type: none"> > Identifies scope of responsibility for the Family Law Section. > This HB 2309 will allow in the termination of parental rights cases the court to have access to Drug & Alcohol and Mental Health records of the parents without consent. If the court finds that good cause is shown. There is a balancing test and there are procedures set out which patterns federal law on child abuse and neglect cases. > It will enable the Attorney General's office to track our own termination cases under the computerized system that is set up in the State Court Administrator's office. |
| 085 | Wilson | <p>First, in a termination of parental rights trial, the court must determine if the parents conducts & conditions, meaning drug & alcohol abuse and their mental health condition, is severely detrimental to the child and if there will be a reintegration of the child back to the parents within the foreseeable future and is it in the best interest of the child to be freed from the parents.</p> <p>In the state of Oregon that means freed for adoption. Therefore, these records are very valuable to the courts in their determination of parental rights.</p> <p>Around the state there are a mirrored of things happening as some Oregon courts will readily apply the federal "good cause" balancing test standard and actually have the records come into the termination of parental rights case and other courts do not disclose this information, concluding that while there is federal law regarding child abuse cases there is no authority under Oregon law.</p> <p>The intention of Section 2(17)(b) in HB 2309 is to codify the "good</p> |

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| | | <p>cause" exception to confidentiality.</p> <p>>presents a definition of "good cause"</p> <p>The judge must determine whether the public interest and the need for disclosure outweighs the patient/provider privilege.</p> <p>>information disclosed must be material and relevant</p> <p>>the information disclosed will be protected from re-disclosure</p> |
| 117 | Wilson | <p>In summary, we want the courts to have clear right to access this information and that what they deem appropriate is the best possible decision be made for the child.</p> <p>Secondly, we refer to Section 4 (7)(a) of HB 2309 which addresses our concept to have access to computerized records of the State Court Administrator.</p> <p>> identifies the records Department of Justice has access to but they currently do not have access to juvenile cases</p> <p>>delinquency information and adoption proceedings available on the computerized records but safeguards will be put in place</p> |
| 130 | Wilson | <p>HB 2309 would provide "on-line" time of information, rather than awaiting information to be pulled and forwarded.</p> <p>> termination of parental rights has become a "growth industry"</p> |
| 170 | Chair Sunseri | <p>In <u>Section 2</u> (17) where it describes the records you want access to, in particular, "... other similar written accounts of the patients ..." can you give us a more specific definition of "other written accounts?"</p> |
| 175 | Wilson | <p>Responds by describing possible records wanted by the Department of Justice.</p> <p>The wording referenced is in existing statutory language.</p> |
| 185 | Chair Sunseri | <p>Who determines relativity?</p> |
| 188 | Wilson | <p>Responds by stating who determines relativity, factually and materially.</p> |
| 189 | Rep. Uherbelau | <p>First, in terms of parent's records, do you mean parent's or patient's records?</p> |
| 195 | Wilson | <p>Looking to the parent's records.</p> <p>The Department of Justice is the guardian of the child in a termination of parental rights case. We would request records of the parent who is a patient of a facility.</p> |

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| 218 | Rep. Uherbelau | Reads definition of provider under Chapter 179 of ORS. Are there other state agencies that keep records of health care services than the two listed here? |
| 223 | Wilson | Responds that we are looking for access to records of alcohol & drug and mental health facilities only on a termination of parental rights case. >Confidentiality issues being different between alcohol & drug/mental health workers than, for instance, doctor/patient. |
| 232 | Rep. Uherbelau | >Questions whether that due to the broad language, we might have access to other agencies, for instance, Oregon Health Sciences records. So I am looking for clarification. |
| 236 | Wilson | We will check with the person who represents Oregon Health Science University to see if this language will include their records. |
| 242 | Taylor | Who may seek these records? On page 4 of HB 2309 (Section 2. (17)(a)) "A juvenile court may authorize..." Could an attorney for the child seek them? |
| 246 | Wilson | Responds by stating that any party to the proceeding could seek them, but it would be whether or not the Judge would allow it. Petitions are now coming from children attempting to terminate parental rights. |
| 252 | Taylor | Refer to (Section 2. (17)(a)) "... may authorize and , if necessary, compel the disclosure of a written ..." Compel to whom? Would the records go first to the Courts? So the Courts could review them before released. |
| 256 | Wilson | Responds by stating that the records would go to the courts first to review and they would remove any irrelevant materials. |
| 258 | Taylor | Does the measure need to state that? Or is that assumed within the measure? |
| 262 | Wilson | We want the Judges to make the inspections. |
| 264 | Taylor | On the proposed amendment you note on page 4, line 43, after "jurisdictional proceeding" you wish to add "relating to an action to terminate parental rights". How does that differ from beyond an action to terminate parental rights? |
| 267 | Wilson | Responds by stating an example regarding the termination of the parental rights of Diane Downs. It was necessary to file for jurisdiction and to handle termination of parental rights both for her. |

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| 292 | Taylor | Would this proceeding s apply to a delinquency proceedings? So would Chapter 419C apply? |
| 297 | Wilson | No, nor is that the intent. It is intended on the most severe cases only. |
| 315 | Chair Sunseri | Closes public hearing on HB 2309. |
| <u>OPENS WORK SESSION ON HB 2058</u> | | |
| 320 | Chair Sunseri | Opens Work Session on HB 2058. |
| 323 | Taylor | Reads Preliminary Staff Measure Summary and notes proposed HB 2058-1 from Rep. Eighmey. |
| 335 | Rep. Eighmey | In regards to the HB 2058-1 proposed amendment (EXHIBIT I) on line 6 is to make the obligor and owner the beneficiary of a life insurance policy and on line 9 we are adding after "payments" insert ", if assignment is permitted in the policy". |
| 356 | Rep. Eighmey | MOTION: Moves to ADOPT HB 2058-1 amendments dated 01/27/97. |
| 358 | | VOTE: 6-0 |
| | Chair Sunseri | Hearing no objection, declares the motion CARRIED. |
| 370 | Rep. Eighmey | MOTION: Moves HB 2058356 to the full committee with a DO PASS AS AMENDED recommendation. |
| 385 | | VOTE: 6-0 |
| | Chair Sunseri | Hearing no objection, declares the motion CARRIED. REP. EIGHMEY will lead discussion on the floor. |
| 396 | Chair Sunseri | Closes Work Session on HB 2058 |
| <u>REOPENS PUBLIC HEARING ON HB 2309</u> | | |
| 398 | Chair Sunseri | Reopens public hearing on HB 2309. |
| 400 | Timothy Travis | Lawyer with Juvenile Rights Project, Inc. Testifies in support of Bill HB 2309 and provides written testimony (EXHIBIT C) |
| TAPE 4, A | | |

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| 030 | Travis | <p>In Multnomah County it is the District Attorney's Office and Juvenile Rights Project, Inc. who handles termination of parental rights cases.</p> <p>Shifting public policy emphasis away from privilege for patients and mental health clients and moving towards the best interest of the child.</p> <p>One policy exception in the State of Oregon is in child abuse reporting and this should fit within this already existing exception.</p> <p>Trying to get dependency cases moving and reduce foster care drifts.</p> <p>This measure is in line with a number of other measures later to be introduced in the session.</p> <p>In regards to inspection by a judge, I might disagree with Ms. Wilson, as this is done by my office. You might want to look to adding language to the measure which would not require the Judge to do this only for I see this as Lawyers' work.</p> |
| 050 | Travis | It is not uncommon to have jurisdiction and termination of parental rights cases being filed at the same time. |
| 061 | Nancy Miller | <p>State Court Administrators Office</p> <p>Concerns with Fiscal & Policy implications with courts.</p> <p>Asks for additional time to talk with the sponsors on this Measure and also have not discussed with their network of judges and trial court administrator's to get their feedback.</p> |
| 075 | Brad Swank | <p>State Court Administrators Office</p> <p>Can go through the technical difficulties now or await until we have talked with the sponsors.</p> |
| 080 | Rep. Courtney | Let's await until they have had time to talk with the measure's sponsors. |
| 084 | Chair Sunseri | <p>The Committee will hold the measure at this time.</p> <p>Closes public hearing on HB 2309.</p> |
| <u>OPENS PUBLIC HEARING ON HB 2315</u> | | |
| 088 | Chair Sunseri | Opens public hearing on HB 2315. |
| 090 | Taylor | Reads Preliminary Staff Measure Summary on HB 2315. |
| | | Department of Justice, Support Enforcement Division |

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| 108 | Bob David | <p>Testifies in support of HB 2315 and provides written testimony. (EXHIBIT D)</p> <p>Asking for this change due to the difficulty in administering cases under the current law as well as the growing complaints their receiving about the current law being unfair.</p> <p>>Current law provides for continued support until 21 years of age if attending school but doesn't address how disputes are settled.</p> <p>>Currently there are only 2 states like Oregon that continue support until 21 while the child is in school - Massachusetts & Hawaii.</p> <p>>Pennsylvania Supreme Court struck down the law as unconstitutional in 1995.</p> <p>>We propose to do what the majority of states are doing.</p> |
| 145 | David | <p>>lists examples of complaints where a child's support account might need to be adjusted and the resolution of these complaints is in court</p> <p>>of 100,000 cases that have this provision - 3600 of these cases have beneficiaries over 18.</p> <p>When disputes do arise, the Department does not have access to records due to confidentiality issues. So verification of attendance can not be done and must be relied upon from the parents.</p> <p>>proposes not to change existing orders</p> <p>Places the department in a difficult situation as in most instances it is from the custodial parent the information is coming from</p> <p>Passage would remedy the fairness issue and reduce the number of complaints received.</p> <p>Would increase efficiency in allowing the child support staff to collect the ongoing child support and to increase collections for families with minor child.</p> |
| 182 | Rep. Eighmey | <p>Regarding Section 13 (page 4 line 41 of HB 2315) which appears on the face the provision that you will continue to do this in those cases in which the orders written to include that provision under the criteria you listed.</p> |
| 188 | David | <p>We would continue to enforce the orders as they are written now and then after passage only those up till age 18.</p> |
| 194 | Rep. Eighmey | <p>Regarding future child support provisions in decrees that are entered into you will enforce those as well.</p> |
| 196 | David | <p>If this measure passes that provision wouldn't be in future decrees.</p> |
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| 200 | Rep. Eighmey | What if a decree were modified which was entered into prior to 1997 that was unrelated to child support maybe only to child visitation. Is that sufficient to eliminate your obligation under pre-1997? |
| 211 | David | Modification in itself would not change the existing provision in an order if it continued until age 21 years while the child was attending school. But could become a petition before the court to modify down to age 18. |
| 219 | Rep. Eighmey | You had numerous complaints - have you categorized these complaints? |
| 223 | David | In the administrative office, we have 31 individual complaints regarding this issue. This number does not include the local level which generally receives the complaints. They are not coming from one particular source. |
| 245 | Rep. Uherbelau | I have received many calls and have either contacted the local or state agencies. I think 31 would be a very small number of the total complaints. |
| 250 | David | Clarifies how the 31 was collected. |
| 259 | Rep. Uherbelau | How much of a burden.? Can you track complaints in such a way that would actually tell us what percent of phone calls that deal with this particular issue? |
| 267 | David | No specific numbers available on a state wide basis. |
| 272 | Rep. Uherbelau | The wording of this statute would actually allow someone to have an existing judgment that provides for payment till 21 while attending school to go back in and modify or change this? |
| 280 | David | We believe that modification could be done. |
| 283 | Rep. Uherbelau | If we pass this legislation that this would be a change of circumstances? |
| 285 | David | We do not believe that in itself would be a change in circumstances. We are saying that in a normal course of modification, we believe this is one of the issues that could be addressed. |
| 291 | Rep. Uherbelau | Have you discussed this with the Department of Human Services and the Family Law Task Force? |
| 296 | David | Drafts have been provided in early November of last year and there has been recent conversations. |
| 305 | Art Kaptyn | Department of Human Resources Child Support Program. Has been a full participant in drafting this measure. In tracking the number of complaint cases, the information lies in two state agencies and in 31 of 36 District Attorney offices. |
| | | Legislative Director for the Oregon Student Association Testifies in opposition of HB 2315 and provides written testimony. (EXHIBIT E) |

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| 350 | Tamara Dykeman | <p>For children of divorced or unmarried parents, child support replaces the aid that they would normally receive if they had intact families. If support is withdrawn, the burden of college expenses would fall solely to the custodial parent and/or child.</p> <p>A counter argument could be made that intact families are under no legal obligation to support their college-aged children, and thus children from broken families would have an unfair advantage.</p> <p>>children suffer financially after divorce</p> <p>>when did your (the parents) responsibility end</p> |
| 410 | Dykeman | <p>The federal government and Oregon financial aid eligibility rules factors in your parents' income to determine your financial need.</p> <p>In addition, the Governor has proposed returning Pell grant recipients to the Oregon Health Plan. Thereby, asking the parents to be responsible for the child's health insurance needs while they attend college.</p> <p>Thus there lies the inconsistency when on one hand the parent is responsible for the financial aid & health insurance needs of the child while attending school, but if you are a divorced parent you have no responsibility to the child over the age of 18.</p> |
| 449 | Rep. Beyer | <p>Currently, the payment goes to the Parent who has custody and not to the Child and there is no requirement that the money be used for the child's education.</p> |
| Tape 3, B | | |
| 035 | Dykeman | <p>I believe that is true.</p> <p>Also, there is a measure on the Senate side that would allow the payment to go directly to the child.</p> |
| 038 | Rep. Beyer | <p>Would the student association have concern with the payments going to the other parent to tie in payments directly to a school?</p> |
| 040 | Dykeman | <p>I would need to check with my board but initially I would not see a problem with that.</p> |
| 045 | Russell Lipetzky | <p>Chair of the Family & Juvenile Law Section, Oregon State Bar</p> <p>Testifies in neutrality of the substantive issues of the measure and provides written testimony. (EXHIBIT F)</p> <p>Should be based on a policy decision rather than an administrative one.</p> <p>In Oregon when the child support guidelines were promulgated they were not intended and none of the economic underpinning of those guidelines were intended to address college age kids. Nevertheless, there is a requirement that all child support be administered by the agency and that</p> |

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| | | <p>it be set under the guidelines. So the inconsistency comes from where the child support has to be set under the guidelines but those guidelines were never intended for these kids.</p> <p>This is a significant substantive change.</p> <p>No consensus as a whole in the Oregon State Bar group on this measure.</p> |
| 080 | Lipetzky | <p>Regarding the technical concerns in HB 2315:</p> <ul style="list-style-type: none"> >Line 6 through 21 of the printed Bill - do not delete >Page 4 of printed Bill Line 19 - delete "over" >Page 1 of printed Bill Line 7 making reference to "a" parent - could then be construed to mean only one parent could be ordered to pay support - do not amend <p>Regarding the effective date of law and how it effects modifications. It generally a decree can only be modified if a change in circumstances.</p> |
| 130 | Lipetzky | <p>If the law changes the circumstances to let everyone come in and change their child support orders? Be very clear in HB 2315 whether or not to allow current orders to be modified.</p> <p>Last session SB 75 was drafted to tighten up a "child attending school" language and we did not purport to eliminate support while attending school. However, SB 75 did not pass.</p> <p>Refers to his written testimony (EXHIBIT F) in which are excerpts to aide in the tightening of the definition on a "child attending school."</p> |
| 159 | Victor Smith | <p>President of DADS (Dads Against Discrimination)</p> <p>Testifies in support of HB 2315.</p> <ul style="list-style-type: none"> >not proposed by DADS >no knowledge of bill until a week ago in a Senate Session >when discriminates between divorce/separation vs. intact families |
| 200 | Smith | <p>Explains that the language of the present law (ORS 107.108) is difficult and notes to all of the problems caused.</p> <p>How about the modification/ramifications of orders out there which had been using age 18 that were modified upward to 21 years.</p> <p>We should being using the same rules now to modifying existing orders.</p> <p>The language under ORS 107.108 has not always been there. When it did</p> |

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| | | appear it provided courts and obligees with decrees with wording till 18 to modify to the new language till 18 or 21 while attending school. |
| 238 | Rep. Uherbelau | If in deed when the change in law allowed for the addition of "until 21 while attending school", and they were able to go back and modify the wording of the decree, where did you get your information? |
| 248 | Smith | My personal experience. Wouldn't an attorney who had a court order stating "until 18 only" take the order into court and modify to "till 21 years of age while attending school?" Challenges that local district attorney have on this point strongly encourage obligors to change language and gives examples. |
| 298 | Rep. Uherbelau | Have you read copy of a paper from Mr. Lipetzky about some suggestions? Considering there is a bill in the Senate proposing to pay support directly to the child or to the school, along with these suggestions, the non-custodial parent paying the support may have access to the schools records and so with those kinds of safeguards, would you feel any differently? |
| 312 | Smith | No. Our legislature following the federal laws under US Code 20 Section 12 (32)(g) wrote this language about school records, however, in practice it is not working well. Due to privacy issues, it is very difficult to get records just because it's the law. |
| 335 | Rep. Beyer | What year did they change that law? |
| 337 | Smith | I don't know. |
| 341 | Rep. Uherbelau | Before 1981. |
| 342 | Smith | I am aware that when the older decrees are found with "till age 18" they are getting modified upward. |
| 350 | Taylor | The original statute was enacted in 1973 and amended in 1981. |
| 353 | Chair Sunseri | Closes Public Hearing on HB 2315. |
| <u>OPENS PUBLIC HEARING ON HB 2316</u> | | |
| 358 | Chair Sunseri | Opens Public Hearing on HB 2316. |

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| 360 | Taylor | Reads Preliminary Staff Measure Summary on HB 2316 |
| 365 | Ronelle Shankle | <p>Department of Justice, Support Enforcement Division.</p> <p>Testifies in support of HB 2316 and presents written testimony and a proposed amendment dated January 28, 1997.</p> <p>(EXHIBIT G & H).</p> |
| 420 | Shankle | <p>Current law is limited to filing partial satisfactions for only the portion of child support that was assigned and paid to the state. It is the obligee who files for satisfaction for the private moneys even when the state is the record keeper.</p> <p>It is proposed do to numerous complaints that the department should be cleaning up "all" the child support records.</p> <p>There are times when the obligee can not be found to obtain a satisfaction or inclined to do so.</p> <p>Believe it will provide better public service and expedite those cases where we are the record keeper and have the paperwork to file for satisfaction.</p> |
| Tape 4, B | | |
| 049 | Russell Lipetzky | <p>Appears as private practitioner in domestic relations.</p> <p>My concern with HB 2316 is that this is a major policy change.</p> <p>Currently the state agencies can assign a satisfaction of judgment to the extent money is owed to the state. Under this bill the agency would be able to assign a satisfaction of judgment that would satisfy an obligation owed not to the agency but to third party, namely the support obligee.</p> <p>Explains difficulty of support obligors to prove you are current with your support payments and the person receiving the support might not be willing to sign a satisfaction of judgment report.</p> <p>Asks for caution if going to put a state agency in authority of assigning a satisfaction of judgment that effects money owed to a third party. This measure will allow notice and an opportunity to object to the obligee and that it has to be based on written request by the obligor.</p> <p>I would take a step further, and ask the obligor to make a prima face showing that support is current by, for instance, sworn affidavit, Human Resources printout, or by producing canceled checks.</p> <p>Appropriate to put some burden on obligor before putting back on the obligee. This is not an unreasonable burden to put on the obligor.</p> |
| | Chair | Do you think the agency is going to issue a satisfaction of judgment, if |

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| 087 | Sunseri | they haven't gotten the money? |
| | | The agency will rely on their records to reflect current payments. |
| 089 | Lipetzky | Nothing in this measure or in administrative rules requires them to do that. I'm sure in good faith they will purport or intend to do that, but it should be a requirement that their records show current payments. |
| 100 | Chair Sunseri | Producing checks to establish their current satisfaction is a major problem especially if someone is not willing to cooperate. I heard you to say that steps are being taken to correct this? |
| | | The measure seeks to correct this. |
| 110 | Lipetzky | Canceled checks are burdensome but as an alternative I have suggested prima face of Human Resources records. Nor is unreasonable to ask for a sworn affidavit stating that the obligor is current, this is not a burden. |
| 125 | Chair Sunseri | Lenders do not generally accept that. Closes public hearing on HB 2316. |
| 133 | Chair Sunseri | Adjourns meeting at 4:45 P.M. |

Submitted by, Reviewed by,

Lauri A. Smith, William E. Taylor,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2309, written testimony, Deborah Wilson, 5 pages

B - HB 2309, proposed amendments, Deborah Wilson, 1 page

C - HB 2309, written testimony, Timothy M. Travis, 2 pages

D - HB 2315, written testimony, Bob David, 4 pages

E - HB 2315, written testimony, Tamara Dykeman, 2 pages

F - HB 2315, written testimony/suggestions, Russell Lipetzky, 1 page

G - HB 2316, written testimony, Ronelle Shankle, 2 pages

H - HB 2316, proposed amendments, Ronelle Shankle, 2 pages