

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON FAMILY LAW**

**April 1, 1997 Hearing Room 357**

**3:15 P.M. Tapes 58 - 59**

**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 3099 - Public Hearing**

**HB 2693 - Public Hearing**

**HB 2324 - 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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 58, A</b>		
002	Chair Sunseri	Calls meeting to order at 3:26 p.m.
<b><u>HB 3099 - PUBLIC</u></b>		

<b><u>HEARING</u></b>		
003	Chair Sunseri	Opens a public hearing on HB 3099.
007	Chair Sunseri	Recesses HB 3099.
<b><u>HB 2693 - PUBLIC HEARING</u></b>		
009	Chair Sunseri	Opens a work session on HB 2693.
014	Jon P. Terry	<p>Attorney at Law with Law Office of Terry &amp; Wren, Portland, Oregon</p> <p>Testifies in support of HB 2693.</p> <p>&gt;new language would allow parents who already have biological or adoptive ties to the child, that one of the Services to Children &amp; Families ("SCF") home studies (pre-placement or post-placement reports) could be waived</p> <p>&gt;currently, two are required by law costing about \$1100</p> <p>&gt;pre-placement reports presupposes a child is not living in the home already</p> <p>&gt;post-placement report asks SCF to review the home after placement</p> <p>&gt;provides a case history</p>
051	Rep. Eighmey	<p>Shares comments received from SCF.</p> <p>&gt;no objections from SCF</p>
063	Rep. Beyer	Refers to page 2, lines 6 and 8 of the printed measure. I question why the need for "or" between "biological or adoptive parents." Are we taking this a step too far?
072	Rep. Eighmey	This involves a biological parent who has a biological child and who may also have an adopted a child. Now, the person wishes to adopt another child as well. It is not the adopting parent. It is the parent who is the adoptive parent already.
078	Terry	In Oregon, whether it is through the intestacy laws or any other way, we treat children that have been adopted by the parent as the biological child. This language was included to stay consistent with Oregon law.
084	Rep. Uherbelau	How does this cost the department money when SCF receives a fee when a home study is done?
088	Rep. Eighmey	SCF doesn't receive the fee. SCF hires out to do the home study.

089	Rep. Uherbelau	So, where does SCF's costs come in?
090	Rep. Eighmey	SCF's costs arise from reviewing one or two of these studies.
093	Rep. Uherbelau	Shares concerns regarding waiving a home study where a stranger (a third party) is involved. I feel that there needs to be at least one home study. Asks for comments on this view.
102	Terry	Often times I agree with you. It is very appropriate, in certain instances, that there be one home study. There may be a set of circumstances where SCF may waive both home studies. Most of the time, only one is waived, as there is no need for both. That goes to the intent of this measure. The measure seeks to have SCF develop a criteria for which one home study could be waived. Provides an example.
112	Rep. Uherbelau	Shares concerns that SCF, due to a shortage of caseworkers, may routinely waive home studies if this new language is adopted.  Would you feel it adequate, if we waive the post-placement only?
124	Terry	That would certainly get to the intent of the measure. My one concern is that there are situations where both home studies could be waived, thus saving additional money and time.
129	Rep. Courtney	Why was this public policy created?
131	Terry	I do not know the public policy behind it. Provides a history of the policy.
136	Rep. Courtney	Refers to Line 7 & 8 of printed measure. What's wrong with making that discretionary?
142	Terry	The concern is that there is no need for both reports. It seems that the post-placement report is often times perfunctory. Of the two home studies, it is the least inclusive in terms of the amount of work required.
149	Rep. Courtney	You are still leaving the option to make a report by using the language "may." It is then not requiring SCF to perform the post-placement report. It is conceivable that you would have a case where a post-placement report would be positive, is that not correct? I am not certain what is meant by "adoptive parents." Don't you want to at least allow for the cases where there is still the need for a post-placement home study?
161	Rep. Eighmey	The policy has always been to require two home studies.  Explains the intent of the measure.  >pre-placement report is actually a post-placement report as well because the child is already in the home  >the "may" clause with regards to the pre-placement report may be of some concern only because in the present circumstances SCF may waive the pre-placement report now

		"We could change the language to "must make it and may waive it under certain circumstances which the department determines ... something some condition on it"
186	Rep. Courtney	Did you testify today that the law currently states that you "may waive the post-placement report?"
188	Rep. Eighmey	No.
190	Rep. Courtney	No, it is not. There isn't a discretion now that SCF may waive a post-placement report. The post-placement report must be done now.
195	Terry	Currently, both reports must be done.
196	Rep. Courtney	That's in the law now, that both are required. Your intent is to make one discretionary and remove the other report, correct?
199	Terry	Yes.
200	Rep. Starr	Seeks clarification through an example.
206	Terry	That is correct.
208	Rep. Starr	I then support this measure.
212	Rep. Uherbelau	Refers to page 2, line 1 and 2 of the printed measure: Seeks clarification because you can file a request for a waiver of a home study now.
217	Rep. Eighmey	Correct, however, the rules have been interpreted that both home studies are required under the circumstances addressed in our measure.
226	Rep. Beyer	Need to reflect "Children Services Division" as "Services to Children and Families" now .
232	Chair Sunseri	Closes the public hearing on HB 2693.
<b><u>HB 3099 - WORK SESSION</u></b>		
236	Chair Sunseri	Reopens the public hearing on HB 3099.
238	Rep. Mike Lehman	District #47  Testifies in support, if amendments are adopted and presents memorandum outlining research found. <b>(EXHIBIT A)</b>  >last session enacted this offense - a failure to supervise a child  >need look to changing the age limit to a higher age per law enforcement  >last time 15, 16, and 17 year olds were specifically excluded on theory they're able to be more responsible

		<p>&gt;the first offense now is a warning, a waste of time</p> <p>&gt;consider removing "warning" and inserting "a fine to exceed \$100 for the first offense or some other option considered"</p> <p>&gt;add a provision for a parent peer court - done currently in juvenile courts</p>
282	Chair Sunseri	Closes the public hearing on HB 3099.
<b><u>HB 2324 - WORK SESSION</u></b>		
307	Chair Sunseri	Opens the work session on HB 2324.
320	Rep. Eighmey	Shares comments on HB 2324 amendments, drafting, and identifies all parties involved.
353	Chair Sunseri	Is the Committee to understand that the work group totally agrees on the proposed amendments you are going to present here today?
357	Rep. Eighmey	I confirm that each piece was individually agreed to substantively. There is only one amendment that I am proposing that could not be agreed to by the work group. I do not believe there is a place where a consensus was not reached.
376	Bob David	<p>Department of Justice Support Enforcement Division ("SED")</p> <p>Testifies in support and presents augmented -2 amendments [LC #1632, dated 3/27/97] <b>(EXHIBIT B)</b> and attached support documents: cross reference to Personal Responsibility Work Opportunity Reconciliation Act ("PRWORA") <b>(EXHIBIT C)</b> and federal reference material on HB 2324 <b>(EXHIBIT D)</b>.</p> <p>&gt;penalties that could be imposed on the state for failing to enact the federal mandates</p> <p>&gt;potential risk to Title IVE funding</p> <p>&gt;states have contacted the federal government asking what will happen if the state does not adopt all of the federal provisions</p> <p>&gt;message from the federal government is you subject yourselves to the penalties earlier stated</p>
416	Chair Sunseri	Who did you ask about what the penalties would be?
		We inquired of the regional office in Seattle, Washington, and they, in turn, inquired of the national office in Washington, DC. In addition, we received copies of a letter directed, to the Title IVE director, and a copy of a letter, from the State of Oklahoma, who are not going to enact the changes to the Federal Welfare Act with a response from the federal government. Copies

417	David	<p>of these letters can be presented to the committee, if requested.</p> <p>Continues testimony.</p> <p>&gt;Refers to HB 2324 Cross Reference to PRWORA (<b>EXHIBIT C</b>)</p> <p>&gt;Refers to additional support documents: PRWORA, ERISA, 42 USC Medical OBRA, and Uniform Interstate Family Support Act (1996) (<b>EXHIBIT D</b>)</p>
456	Rep. Beyer	"On that extension what you are saying that it is your interpretation that if we were to eliminate something in that area or change something in that area that would not put us in violation?"
462	David	<p>Clarifies what is meant by "extension."</p> <p>When we enact a federal mandate in one area of the measure, there may be other pieces effected by the change in process.</p>
<b>Tape 59, A</b>		
033	David	<p>Continues testimony.</p> <p>Extension is more of a process than a principle.</p>
035	Rep. Eighmey	Responds by providing an example regarding extensions.
062	David	<p>Continues testimony and refers to (EXHIBIT B, C, D):</p> <p>&gt;Article I. Enforcement, A. Income Withholding</p>
094	Chair Sunseri	Where in the measure is the limit on the federal minimum wage that must be left to an obligor, when all that is being collected on is a judgment?
095	David	Refers to page 8, lines 12 -29 of the -2 amendments: This was added by the work group no PRWORA reference.
099	Maureen McKnight	<p>Oregon Legal Services</p> <p>&gt;leave the obligor with at least a minimum wage that had been inserted at the request of Oregon Legal Services</p> <p>&gt;a retention of current law that had originally been proposed to be deleted</p> <p>&gt;intended to protect individuals such as social security recipients who are on a fixed income</p> <p>&gt;this is not a change from current state law</p>
110	David	<p>Continues testimony and refers to (EXHIBIT B, C, D):</p> <p>&gt;Article I. Enforcement, A. Income Withholding</p>
		Continues testimony and refers to (EXHIBIT B, C, D):

150	David	>Article I. Enforcement, B. Health Insurance >Article I. Enforcement, C. Passports/Federal Tax Offset
170	Chair Sunseri	What if they need their passport to go to work?
172	McKnight	Federal statutes does not require at all times a revocation or a denial. However, it does allow for limitations. The federal statute directs the US Secretary of State to set up rules for implementation of this provision. Any accommodations would need to come from the federal government.
179	David	Continues testimony and refers to (EXHIBIT B, C, D): >Article I. Enforcement, D. License Suspension
188	Chair Sunseri	Please explain what is meant by "recreational licenses."
189	David	I do not have the definition of "recreational licenses". We have used the language required by the federal government. Mainly, the federal government's intent was toward hunting and fishing licenses.
199	Chair Sunseri	Seeks clarification through an example.
201	David	I'm not certain how it will work. It is anticipated to work like a license suspension now. If we had an individual in arrearage, we would check for a hunting and fishing license and notify the agency to suspend and not to renew the license until the obligor has met their child support obligation.
210	Chair Sunseri	So, SED will be sending notifications to the licensing agencies? The licensing agency will then verify against a list to whom is eligible for a hunting and fishing license?
215	David	Refers to Article I. Enforcement, D. License Suspension: This section ties into other sections. For instance, licensing agencies are being required to obtain social security numbers on their applications.
221	William E. Taylor	Counsel By licensing agencies, you mean those agencies that issue hunting and fishing licenses?
224	David	Everyone who issues a license in the State.
231	Russell Lipetzky	Chair, Family and Juvenile Law Section of the Oregon State Bar Refers to page 72 of the federal mandate: The work group tried to tailor Article I. Section D to the federal mandate.
241	David	SED would require those licensing agencies to gather social security numbers, and we will match data bases.
249	Taylor	Would that also extend to that agency in Oregon which issues permits for people to go camping, or are you considering them a licensing agency?
255	David	SED did not anticipate an agency who issues camping permits.

258	Taylor	Did not intend the agency who issues camping permits to be included?
259	David	I don't know the answer.
260	Rep. Beyer	Shares concerns on gathering social security numbers. Social security numbers are not mandated to be provided for identification.
268	David	For the purpose of child support, social security numbers are required.
273	Rep. Uherbelau	In regards to camping fees, couldn't we be getting carried away in trying to cover everything? Isn't a camping permit more like an entrance fee rather than a license? We need to be careful not to be all inclusive.
288	David	Correct.  We don't have the ability to find out if a person is going to ask for a camping permit. The intent behind this section is for occupational, drivers, hunting, and fishing licenses, not permits.
302	Chair Sunseri	Seeks clarification through an example.
308	McKnight	Your example would be covered by current statutes.  The -2 amendments are to expand the category to include recreational licenses. There are two conditions that are to be met prior to suspending a license. They are: 1) arrearage of child support of at least \$2500 or three-months increments, and 2) the obligor hasn't entered into a payment contract with the District Attorney's office or SED.
324	David	SED's role is not to suspend licenses but to obtain child support. SED would hope the obligor would enter into an agreement, so that their license need not be suspended.
329	Taylor	The issue of boating licenses and camping permits was raised in the work group discussions. Camping permits, in the legal sense, are licenses.  I think it is up to the Legislature or SED to define what is a recreational licenses. I don't think we can leave it up to the federal government to make the determination, as we may have an improper delegation issue.
345	David	The tack that SED has taken is that SED is not here to set public policy. SED has brought forward the requirements, from the federal government that the legislature suspend recreational licenses, absent their definition of recreation licenses. The federal government may eventually define and the state will have to change our definition. SED can define it in our rule making. Again, it is not SED's position to define, as we do not have a definition for recreational licenses.
367	Taylor	If we leave the term "recreational licenses" within the measure, we are, through statute, giving SED the authority to define.
373	Chair Sunseri	If "recreational license" is going to be defined, then we need to do it here in the committee.
377	Lipetzky	Neither the federal statute nor the federal mandate defines "recreational licenses." It leaves the liberty to the legislature to define or delegate by rule



		making to the agency.
383	McKnight	The indication from the federal government is "hunting and fishing".
385	David	Continues testimony and refers to (EXHIBIT B, C, D): >Article I. Enforcement, E. New Hire Reporting >Refers to page 26A of the -2 amendments.
419	Rep. Beyer	Are you saying all employers will be required to report all employees?
422	David	Yes, an employer would be required to report all newly hired or rehired employees. However, there are no provisions that the employer report all existing employees.  When the employer reports this information, the federal government has made it easy to report. The employer need only furnish a copy of the W4 form to SED.  Explains procedure on how this information will be handled through the system.  >other states will have access to this information  >this information could be used for unemployment or welfare fraud
451	Rep. Beyer	Shares concerns by example of an agricultural employer.
456	David	There are time periods to report, but the employer does not have to wait. There is no requirement for approval prior to the employee working.
465	McKnight	Where employers have employees in more than one state, they can report magnetically by tape. Therefore, not every situation requires a W4 form. It is simply a compliance requirement not a condition for hiring.
471	Chair Sunseri	What is the penalty to the employer?
<b>Tape 58, B</b>		
035	David	I believe its \$25 per each failure to report.
038	Lipetzky	The penalties are addressed on page 19 of Title 42 -- The Public Health and Welfare.
040	McKnight	The penalties are also addressed on page 26, lines 27 - 30 of the -2 amendments.
048	David	If there is a conspiracy between the employer and the employee, the administrator may impose a civil penalty up to \$500. [page 26, line 31 and page 26A, lines 1-3 of the -2 amendments].
050	Lipetzky	This tracks the same language as the federal mandate does on page 19 of Title 42 -- The Public Health and Welfare.
		I interpret page 19 of the federal mandate as meaning the state shall have

052	Rep. Beyer	the option to set civil penalties?
055	McKnight	I believe that is correct. Oregon has elected the option to statutorily allow the administrator to impose a civil penalty. Again, it is a discretionary imposition.
064	Rep. Beyer	This seems to be more than just a concept. >Refers to page 19 of the federal mandate. I don't see where the state has to include civil penalties.
067	Chair Sunseri	Is that an existing Oregon statute?
068	David	No, it is not.
070	Taylor	>Refers to page 26 of the -2 amendments: There is a list of who has to report now. It is correct that including civil penalties is an option. I guess you can say that this whole measure is an option. We are not mandated to adopt the measure. However, there are certain strings applied and penalties incurred, if not enacted.
079	Rep. Uherbelau	Shares the purposes of HB 2324 and the Federal Welfare Act.
091	David	Continues testimony and refers to (EXHIBIT B, C, D): >Article II: Paternity, A. Voluntary Acknowledgment and B. Trials/Parentage Tests/Evidence
129	Taylor	Constitutional rights of jury trial in a paternity trial is explained.  There is probably no right to a jury trial, in a paternity matter, because it is, a statutorily, a greater right, not a constitutionally mandated right.
130	Chair Sunseri	"We have had the right to a jury trial?"
131	Taylor	We do have the right to a jury trial.
132	Chair Sunseri	"To this date, people have had the right to a jury trial."
136	McKnight	That is true. In the last calendar year, there has been about twenty jury trials in Oregon.
138	Chair Sunseri	"Are the Feds saying we have to do this?"
140	David	Yes, the paternity trials must be eliminated. Research was done to determine how many enforcing agencies did jury trials last year. Our research only found 2 such trials. The issue, however, is that there may be more, but they are settled prior to the trial date.  Under this measure the person would still be allowed a paternity trial but before the judge only not before a jury.
150	McKnight	There is a dramatic decrease in jury trials due to genetic testing.

157	David	Continues testimony and refers to (EXHIBIT B, C, D):  >Section III. Expedited Process, B. Liens/Writs of Execution  >Section III. Expedited Process, A. Administrative Subpoenas
165	Chair Sunseri	"Who does it allow?"
167	David	It allows the enforcing agency, SED, or District Attorney to issue an administrative subpoena.
171	Chair Sunseri	"No one else?"
172	David	The section does allow for SED, District Attorneys, and other states' enforcing agencies to issue a subpoena to someone in the state of Oregon.  Continues testimony and refers to (EXHIBIT B, C, D):  >Article III. Expedited Process, A. Administrative Subpoenas continued.  >Article III. Expedited Process, B. Liens/Writs of Execution continued.
190	Chair Sunseri	"Personal property liens, real property liens which?"
191	David	Both.
192	Chair Sunseri	Seeks clarification through an example.
199	David	That's correct. This issue was addressed in the work group, and the process has been specified in the -2 amendments.
201	Chair Sunseri	Is the lien going to be second to the bank's lien?
203	David	Yes.
207	Taylor	"I believe the lien will be filed in the same place as any other lien will be filed, as it relates to motor vehicles and that's per the Department of Motor Vehicles. Is that not correct on title?"
208	David	That is correct on the title. The distinction here is that the lien would arise by operation of law when there is a judgment. In Oregon, for instance, it would arise by operation of law, but it could only be enforceable by effecting that lien. The same procedures would apply for other states.  If it were a lien on an automobile or a boat, the title would be branded as is done now. There is no change from existing procedures.
220	Chair Sunseri	Seeks clarification by an example of a vehicle trade-in.
222	David	Are we talking about where the dealer has presented a title that reflects a lien upon it, or where they are presented a title that they are unaware of a lien?

226	Chair Sunseri	One where they are not aware.
228	David	I do not have an answer.
240	Chair Sunseri	Seeks clarification of lien issues.
245	Frank Brawner	Oregon Bankers Association The lien would be second to a bank's lien.
248	Chair Sunseri	Shares concern by example.
251	Brawner	Yes, it would affect the banks if the lien was unknown. Those liens do happen now in other forms, for instance, mechanic's liens. We would hope the process will notify us, but the Bank would have the title. Discovery of the lien will happen when the vehicle is put up for sale.. The banks are concerned, but they do not know of any way to change this.  Probably the support enforcement department won't go through the process of placing a lien on an automobile that has no equity.
265	Chair Sunseri	"How will they know?"
266	Brawner	Responds that the enforcing department will determine the value of the vehicle.
270	David	SED doesn't intend to place a lien on every automobile. Per the DMV, we can't actually place a lien until SED has the title.
275	Chair Sunseri	This explains the bank's position.
276	David	In a situation where we have the title, we will "brand" the title. If the title is not "branded," it is not anticipated that we will hold the dealer responsible for not honoring the lien.
284	Chair Sunseri	Expresses concern that this needs to be yet addressed.
286	David	Continues testimony and refers to (EXHIBIT B, C, D):  >Article III. Expedited Process, C. Garnishment  >Article III. Expedited Process, D. Statewide Jurisdiction/Subsequent Service
320	Chair Sunseri	What is the additional information that may be required?
321	David	Responds by an example.
328	Rep. Beyer	Refers to page 23 ( <b>EXHIBIT C</b> ), the work group mandate.
		The original measure allowed for notice by mail on all support

335	Lipetzky	enforcement proceedings. A contempt proceeding is a quasi criminal proceeding which, I believe, is a constitutional matter that requires personal service of notice. I believe this is a due process requirement.
350	McKnight	It is consistent with our rules of procedures for contempt proceedings outside of child support enforcement.
354	Chair Sunseri	Refers to page 23 of <b>(EXHIBIT C)</b> asking what is the personal information for good cause that is being prohibited here?
360	McKnight	This language was added at my request. The earlier version of this measure had not addressed this area with the specificity that the federal statute required. Continues by example. This is an attempt to codify privacy safeguards.
387	David	Continues testimony and refers to (EXHIBIT B, C, D): >Article IV. Interstate, A. UIFSA (Uniform Interstate Family Support Act)
434	Chair Sunseri	Asks question, regarding page 24 <b>(EXHIBIT C)</b> . Where is the federal requirement that would allow any party seeking subsequent action to transfer the file from one county to another?
453	David	It is outlined on page 80 of <b>(EXHIBIT D)</b> section 666 (c)(2)(B).
470	Chair Sunseri	So you construe that to mean county to county.
471	David	That is correct.
<b>Tape 59, B</b>		
033	David	Continues testimony and refers to (EXHIBIT B, C, D): >Section IV. Interstate, B. Conforming Amendments
040	Chair Sunseri	Closes the work session on HB 2324. Adjourns meeting at 4:53 P.M.

Submitted by, Reviewed by,

Lauri A. Smith, Sarah Watson,

Administrative Support Office Manager

### **EXHIBIT SUMMARY**

**A - HB 3099, memorandum, Rep. Mike Lehman, 2 pages.**

**B - HB 2324, augmented proposed -2 Amendments [LC #1632, dated 3/27/97], Bob David, 152 pages.**

**C - HB 2324, cross reference to PRWORA, Bob David, 36 pages.**

**D - HB 2324, federal reference materials, Bob David, 151 pages.**