

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON FAMILY LAW

April 3, 1997 Hearing Room 357

3:15 P.M. Tapes 62 - 63

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 3207 - Public Hearing and Work Session

HB 3172 - Public Hearing and Work Session

HB 2981 - Work Session

HB 2982 - Work Session

HB 2993 - Work Session

HB 2693 - 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

Tape 62, A		
003	Chair Sunseri	Calls meeting to order at 3:20 p.m.
<u>HB 2993 - WORK SESSION</u>		
004	Chair Sunseri	Opens a work session on HB 2993.
005	Rep. Floyd Prozanski	District #40 and testifies in support of HB 2993 >requested by Lane County Domestic Violence Council >only provides for a copy of the petition and order to be made for the sheriff's office for service >petitioner requesting a second copy to be made in order to give notification i.e. to schools advising that an order is before the courts Refers to Emily Heilbrun's written testimony [(EXHIBIT B) heard on 03/26/97 to the House Judiciary Subcommittee on Family Law]
027	Rep. Courtney	MOTION: Moves HB 2993 to the full committee with a DO PASS recommendation.
032		VOTE: 6-0-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Sunseri	The motion CARRIES. REP. PROZANSKI will lead discussion on the floor.
037	Chair Sunseri	Closes the work session on HB 2993.
<u>HB 2693 - WORK SESSION</u>		
054	Chair Sunseri	Opens a work session on HB 2693.
056	William E. Taylor	Counsel Reads a Preliminary Staff Measure Summary on HB 2693.
060	Rep. Eighmey	Shares concerns that issues are 50% resolved. One individual has agreed, and the other has reservations.
065	Rep. Beyer	I believe amendments were being drafted on this measure.
067	Rep.	The reference to Children Services Division will be uniformly changed automatically prior to codifying to Services to Children and Families.

	Eighmey	Regarding the concern on the "may" or "shall" language, a compromise has been reached. The measure will retain the language of "may."
080	Rep. Rep. Eighmey	MOTION: Moves HB 2693 to the full committee with a DO PASS recommendation.
082		VOTE: 5-1-0 AYE: 5 - Rep. Beyer, Rep. Courtney, Rep. Starr, Rep. Eighmey, Chair Sunseri NAY: 1 - Rep. Uherbelau
	Chair Sunseri	The motion Carries. REP. EIGHMEY will lead discussion on the floor.
086	Chair Sunseri	Closes the work session on HB 2693.
<u>HB 2981 - WORK SESSION</u>		
089	Chair Sunseri	Opens the work session on HB 2981.
090	Rep. Floyd Prozanski	District #40 Testifies in support of HB 2981.
100	William E. Taylor	Counsel Note: -1 amendments [LC # 3370 dated 3/31/97] (EXHIBIT A)
112	Rep. Beyer	MOTION: Moves to ADOPT HB 2981-1 amendments dated 03/31/97.
114		VOTE: 6-0-0
	Chair Sunseri	Hearing no objection, declares the motion CARRIED.
116	Rep. Beyer	MOTION: Moves HB 2982 to the full committee with a DO PASS AS AMENDED recommendation.
118		VOTE: 6-0-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Sunseri	The motion CARRIES. REP. BEYER will lead discussion on the floor.
122	Chair Sunseri	Closes the work session on HB 2981.
<u>HB 2982 -</u>		

<u>WORK SESSION</u>		
128	Chair Sunseri	Opens a work session on HB 2982.
129	Rep. Floyd Prozanski	District #40 Testifies in support of HB 2982.
139	William E. Taylor	Counsel Note: -1 amendments [LC #3361 dated 3/31/97] (EXHIBIT B)
143	Rep. Beyer	Can a clergy person perform marriages anywhere in the state? They are not limited by jurisdiction?
145	Chair Sunseri	The clergy is not limited to jurisdiction.
146	Rep. Beyer	MOTION: Moves to ADOPT HB 2982-1 amendments dated 03/31/97.
147		VOTE: 6-0-0
	Chair Sunseri	Hearing no objection, declares the motion CARRIED.
149	Rep. Beyer	MOTION: Moves HB 2982 to the full committee with a DO PASS AS AMENDED recommendation.
153		VOTE: 6-0-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Sunseri	The motion CARRIES. REP. BEYER will lead discussion on the floor.
159	Chair Sunseri	Closes the work session on HB 2982.
<u>HB 3172 - PUBLIC HEARING</u>		
160	Chair Sunseri	Opens a public hearing on HB 3172.
163	Rep. Mike Fahey	District #17 Testifies in support of HB 3172. Shares concerns and intentions of HB 3172 through examples.
197	Rep. Beyer	Are you aware there is a similar measure in the Senate?
199	Rep. Fahey	No.

203	Arlyn Stepper	Private citizen and testifies in support of HB 3172. Presents written testimony (EXHIBIT C).
253	Stepper	Continues testimony.
258	Rep. Uherbelau	In reference to comments you made, regarding Utah, Washington, and Texas, I do not believe these states recognize presumptive joint legal and physical custody. Is there some reading where you've interpreted this, or has someone else interpreted this for you?
273	Diana McCoy	American Federation of State County Municipal Employees ("AFSCME") A search of state statutes showed 16 states where presumptive joint legal and physical custody was found. I would be willing to provide copies of the full statutes, should the committee request.
278	Rep. Uherbelau	I would appreciate that because this language alone does not raise presumptive joint custody.
280	McCoy	I will make it available for the committee.
282	William E. Taylor	Counsel Provides background information and notice of additional measures in the Senate.
297	Rep. Fahey	Do those measures address joint custody or just the parenting counseling classes?
300	Taylor	Their primarily concern is to develop a parenting plan which would clarify visitation. One outcome of a divorce is that one party may start unofficially denying visitation. This measure would impose penalties. The amendments would provide that one of the considerations the court takes into account when determining custody would be on how willing the person would be to facilitating visitations. I do not believe the Senate Measures directly deal with joint custody.
313	Chair Sunseri	Rep. Fahey, I would recommend the committee review the Senate measures with HB 3172. If they do not cover your concerns, the subcommittee will bring back HB 3172 for a work session.
318	Taylor	Mr. Stepper, I have a question on the language on page 1, line 10 of the printed measure. What is your intent here? Are you asking in all cases that it would be joint custody? What do you mean "where practical?"
327	Stepper	Shares his intention of this language on line 10, page 1 of the original Measure.
339	Taylor	So, if one parent was totally hostile to joint custody, would the court still be required to name joint custody?

343	Rep. Fahey	"Hostile to what? To having joint custody?"
346	Taylor	Do you intend to take the discretion away from the judge so that he would have to order joint custody, except in those cases of abuse?
348	Rep. Fahey	Shares concerns by example.
364	Chair Sunseri	The language is a bit nebulous here. The language in the measure simply says the court is required to recognize the value of two parents but to encourage, where practical, that there is joint custody. If you want to take this out of the hands of the judge, I believe the language needs to be changed.
372	Rep. Fahey	Responds by what he's seen in the courts. Perhaps a review of the Senate measures would be in order. I don't want to tie the hands of the judge, as he should have a say in determining custody. Unless he has hard facts to the contrary, then there needs to be joint custody awarded.
388	Rep. Uherbelau	Mentions a study done in California and suggests using that information when looking at HB 3172.
399	Chair Sunseri	Calls recess at 3:48 p.m.
401	Chair Sunseri	Reconvenes the meeting at 4:02 p.m.
<u>HB 3207 - PUBLIC HEARING</u>		
403	Chair Sunseri	Opens the public hearing on HB 3207.
404	Rep. George Eighmey	District #14 Testifies in support and provides written testimony on HB 3207. (EXHIBIT D)
454	Rep. Eighmey	Continues testimony.
470	Chair Sunseri	Asks a question to clarify his concern. "What would happen in the unfortunate situation where the personal representative were challenged by a parent, for instance, and there is a conflict over as to what will happen with the remains? Will this scenario end up in the courts to resolve?"
Tape 63, A		
030	Rep. Eighmey	Continues testimony. Your situation is a worse case scenario of what is happening now. This even happens, regarding to property distribution. Any dispute over distribution creates delay.

		Restates the intent of HB 3207.
046	Chair Sunseri	Then is there no way to avoid such a scenario.
048	Rep. Starr	Shares concerns by example.
050	Rep. Eighmey	"Only if it is legal."
052	Rep. Uherbelau	Refers to lines 16 and 17, page 1 of the original measure: You only have one spouse. I wonder why Legislative Counsel didn't use the language they have in lines 13 through 16? Some of these classes only have one person, for instance, a conservator or spouse. I think using the word "majority" could be confusing. Provides an example.
068	Rep. Eighmey	Your concerns were asked of Legislative Counsel, and their response was that "majority" is interpreted when there is only one, as it is then a majority of one. If there are two people in dispute, then I have inserted that the eldest decides.
077	Rep. Uherbelau	"But, out of the seven categories, there is only really three, where there can be a majority, and the rest of them are just one, if we are talking about the present guardian, the spouse, the personal representative. People can name and change, you know."
081	Rep. Eighmey	There could be cc-guardians.
082	Rep. Uherbelau	Refers to page 2, lines 3 - 7: The decedent is not named in subsection 2 of the original measure. We do allow the decedent to delegate. I want to make certain we are not interpreting this section to allow delegation, by the decedent, and then take it away. We may want to look at rewording this section. Perhaps leave out in line 6, page 2 "under subsection (2)."
101	Rep. Eighmey	It should probably say "authority" not "priority." "The delegated stands in the place of the decedent."
104	Rep. Uherbelau	"Or the person delegating them."
106	Rep. Starr	If the person has the standing to make the decision to delegate, they would have the same priority.
110	Rep. Eighmey	Your are right it is the same priority. Maybe I should just state "priority and authority." Addresses the -2 Amendments which come from the Oregon Funeral Directors Association (EXHIBIT E).
125	William E. Taylor	Counsel The -2 amendments also clarifies some language on page 1, lines 6 and 7 of the original Measure.

127	Chair Sunseri	Calls a recess at 4:15 p.m.
130	Chair Sunseri	Reconvenes hearing at 4:42 p.m.
<u>HB 3172 - PUBLIC HEARING</u>		
131	Chair Sunseri	Reopens the public hearing on HB 3172.
132	Jeff Fossum	<p>Private Citizen, Multnomah County</p> <p>Works for National Center for Men Oregon Chapter, but not representing them today.</p> <p>Testifies in support of HB 3172.</p> <ul style="list-style-type: none"> >believes there are 4 Measures dealing with joint custody >this measure is the simplest to move us toward providing the best environment for our children >in the past we have worked by the tendered years doctrine in divorce situations where the best place is with their mother >currently operating by home base theory - child is best place where they always have one primary residence >net result still where 90% of the time the mother is awarded custody
182	Fossum	<p>Continues testimony.</p> <ul style="list-style-type: none"> >presumption is now that the father must prove mother unfit >present system is detrimental to the children of Oregon >this is why the Governor's task force was formed <p>Shares example to show his concerns for children in divorce actions.</p>
232	Fossum	<p>Continues testimony.</p> <ul style="list-style-type: none"> >wants a joint custody measure out of this session >refers to other measures as having different intents >refers to SCF's statistics where mother's abuse 2 to 1 over fathers >most causes of abuse is single parenthood

		>census bureau study determined that 1) when visitation is denied or problems occur you only have a 40% compliance in payment of child support from the non-custodial parent and 2) where joint custody awarded there is a 80 - 90% compliance in child support payments
282	Fossum	<p>Continues testimony.</p> <p>>joint custody will then lower the cost to the states in collections</p> <p>>Detroit jails statistics show that 80% of members in gangs are coming from single parent households</p> <p>>fathers play a vital role in the development of children which isn't being provided by the mothers</p> <p>>our children of Oregon need the full range of information from both parents</p> <p>>do not want this measure tabled</p> <p>>states letters available which reflect 50% say the way to go is with joint custody</p>
332	Fossum	<p>Continues testimony.</p> <p>>need presumption of joint custody to remove the battle over custody</p> <p>>look beyond just California on joint custody as the problems that arose there were more from who were implementing the law</p>
342	Rep. Mike Fahey	<p>District #17. Continues testimony on HB 3172.</p> <p>>refers to line 10, page 1 regarding "may" vs. "shall" and then directs Committee to SB 243, Section 7 on page 6, line 28 - 30 is the same verbiage. On SB 243 they changed the "may" to "shall."</p>
357	William E. Taylor	<p>Counsel</p> <p>Spoke with Diana McCoy of AFSCME, and she advises her organization did not make the change in SB 243, relating to Section 3 ORS 107.169.</p>
363	Chair Sunseri	Could you advise where SB 243 is in the legislative process?
364	Taylor	Yes. It is up for a hearing tomorrow. I am the staff person for all three measures tomorrow.
370	Rep. Fahey	I merely wanted to make note that the verbiage is the same in both measures.
372	Chair Sunseri	Closes the public hearing on HB 3172.
HB 3207 -		

WORK SESSION		
376	Chair Sunseri	Opens the work session on HB 3207.
382	Rep. Eighmey	State Mortuary & Cemetery Board and Oregon Funeral Directors Association are both in support of HB 3207. In addition to the proposed -2 amendments, I have looked at Rep. Uherbelau's concern on page 2, line 6 of the original Measure. I would like to insert "or authority" after "priority."
418	Chair Sunseri	I would be willing to send this measure to the Full Committee with that conceptual change.
420	Rep. Starr	I would rather use "and" rather than "or" on page 2, line 6 of the original measure, as both apply.
424	Rep. Eighmey	I would agree to that change. Let's change the language on page 2, line 6 after the word "priority" insert "and authority." State Mortuary & Cemetery Board and the Oregon Funeral Directors Association have asked to delete any reference to "funeral and burial arrangements" which would, in any way, cause control over services, whether religious or nonsectarian. I agree to do this for them.
438	Rep. Eighmey	MOTION: Moves to ADOPT HB 3207-2 amendments dated 03/28/97.
439		VOTE: 6-0-0
	Chair Sunseri	Hearing no objection, declares the motion CARRIED.
440	Rep. Eighmey	MOTION: Moves to AMEND HB 3207 on page 2, in line 6, after "priority," insert "and authority".
442		VOTE: 6-0-0
	Chair Sunseri	Hearing no objection, declares the motion CARRIED.
446	Rep. Eighmey	MOTION: Moves HB 3207 to the full with a DO PASS AS AMENDED recommendation.
472	Rep. Beyer	I will vote in favor today, but reserve the right to change my vote in the Full Committee.
Tape 62, B		
034		VOTE: 5-0-1 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Rep. Courtney

	Chair Sunseri	The motion CARRIES. REP. EIGHMEY will lead discussion on the floor.
038	Chair Sunseri	Closes the work session on HB 3207. Meeting adjourns at 5:03 p.m.

Submitted by, Reviewed by,

Lauri A. Smith, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2981, -1 amendments [LC #3370 dated 3/31/97], Staff, 1 page.

B - HB 2982, -1 amendments [LC #3361 dated 3/31/97], Staff, 1 page.

C - HB 3172, written testimony, Arlyn Stepper, 2 pages.

D - HB 3207, written testimony, Rep. George Eighmey, 1 page.

E - HB 3207, -2 amendments [LC #3232 dated 3/28/97], Rep. George Eighmey, 1 page.