

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON FAMILY LAW

April 8, 1997 Hearing Room 357

3:15 P.M. Tapes 64 - 65

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 2744 - Public Hearing

HB 2716 - Public Hearing

HB 2265 - Public Hearing

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 64, A		
003	Chair Sunseri	Calls meeting to order at 3:20 p.m.
<u>HB 2716 - PUBLIC HEARING</u>		

004	Chair Sunseri	Opens a public hearing on HB 2716.
020	Timothy M. Travis	Juvenile Rights Project, Inc. Testifies in support and presents written testimony on HB 2716 (EXHIBIT A).
048	Rep. Uherbelau	You have covered only dependency hearings. However, the way the measure is written it is much broader and would also include custody in a dissolution. Do you have any views in that area?
052	Travis	I am no longer in that area of practice. If the measure was to be amended by proponents in the area of dissolution, I would be alright with changes. However, I would not want the entire measure lost in ORS 107. In ORS 419B area, I believe this is imperative. I have circulated among all members a sheet listing measures that should be enacted by this legislature, and HB 2716 is one of them.
064	Rep. Uherbelau	Shares concerns over intent of measure.
074	Rep. Liz VanLeeuwen	District #37. Testifies in support of HB 2716. >will end confusion which should save time in the long run >people are so stressed when testifying >we need to provide the public, in writing, their rights
094	Travis	Provides an example to identify that HB 2716 should not be a burden on the courts.
105	Rep. Uherbelau	Again, are you referring to dependency hearings?
107	Travis	Yes, my own personal take on this would be, if it were limited to ORS 419B, that would take care of my particular concern.
109	VanLeeuwen	Refers to -1 amendments [LC #3191 dated 3/13/97] (EXHIBIT B).
119	Chair Sunseri	The -1 amendments simply restrict it to judicial proceedings or the court.
		Chair of the Family & Juvenile Law Section of the Oregon State Bar Questions regarding intent of HB 2716: 1) What are the consequences of a lack of notice? 2) Who gets sued for giving out bad information? 3) Does this require the unauthorized practice of law when you are requiring courts to be providing people with notices about their rights in a proceeding?

122	Russell Lipetzky	<p>4) What is meant by every stage of the proceeding? It is not defined.</p> <p>5) Nor is it defined what is meant when custody of a child is at issue. Does that mean in cases where children are involved or only when custody is being disputed in some way? That's not clear.</p> <p>6) The court is to provide the parents with notice. What does that mean? Should the notice go by mail or by telephone or must it be served? That is not clear.</p> <p>7) There is language that calls for a clearly written notification. Clear to who, written how, and notification of what exactly? That is not clear.</p> <p>8) The language about requiring the parents to be informed of their rights in a proceeding. What does that mean: a right to appear, a right to be informed of a hearing, or a right to be informed of their substantive rights they can assert in a proceeding? None of this is clear.</p> <p>If HB 2716 was limited only to ORS 419B dependency cases, I would have a lot less concern, but as it is written now, I see it very problematic just because of lack of clarity.</p>
156	Chair Sunseri	Recesses the public hearing on HB 2716.
<p><u>HB 2744 - PUBLIC HEARING</u></p>		
157	Chair Sunseri	Opens the public hearing on HB 2744.
159	Rep. Strobeck	<p>District #6. Testifies in support of HB 2744.</p> <p>>presents example to explain intent behind the measure</p> <p>>presents and explains intent behind the -1 amendments [LC 3076 dated 3/26/97], created in conjunction with Art Kapteyn of Department of Human Resources (DHR), Child Support Enforcement Division (EXHIBIT C)</p> <p>>coupons forwarded to obligor, even if not in arrearage, that states on the face "That you are behind." However, per DHR, this is merely a statement of your account not a billing.</p> <p>>request made of DHR to change this language, so as not to appear as a bill when the obligor is current</p>
221	Rep. Uherbelau	Refers to the -1 amendments: We're asking the court to send copies of every support order. A lot of support orders are not dealt with through DHR. The preceding language only asked the court to forward those orders where DHR was involved. Did you intend the court to send every support order to the DHR?

235	Rep. Strobeck	It was my understanding that virtually all of the support orders go through DHR.
240	Art Kapteyn	Department of Human Resources, Child Support Enforcement Division Testifies neutrally and presents written testimony on HB 2744 (EXHIBIT D).
261	Rep. Uherbelau	But not all support payments go through DHR. A large percentage of the support is paid directly from the obligor to the obligee and they don't go through the clerk of the court or DHR. I interpret this measure as asking the courts to even send copies of these support orders, also. I do not understand. Why that would be necessary?
267	Kapteyn	The reasoning is even though we are not maintaining the case records, DHR maintains a legal history on that case. We are the central registry of child support orders in the state. The federal government mandates that we have a central registry for support orders in the state. In the past, we have maintained the legal history, but not the accounting history.
282	Rep. Eighmey	It appears that this measure applies to everybody but the direct payee to the obligee. Refers to line 7 and 8 of the original measure.
287	Rep. Uherbelau	That language is being deleted by the -1 amendments.
290	Rep. Eighmey	So, the court orders support payments, and you're suspending payment until you catch up with your paperwork.
295	Kapteyn	What generally happens is that there is a 3 to 4 month lag time between the time the court order directs the payment and the time we receive the paperwork to begin the process. Current practice is to commence our accrual from the effective date of the order. This creates an instant arrearage on child support cases, that may not be accurate, when an attorney directs payments to the obligee. Then DHR produces an income withholding order at the time the case is received. Oregon law requires immediate wage withholding on all support orders. DHR proposes to begin accrual on record with the first due date after notification is made to the obligor to begin payment to DHR. DHR will notify the parties, and the obligee may request arrearage establishment by procedures existing in law now.
330	Rep. Strobeck	This language can be found in <u>Section 3</u> of the -1 amendments. >deletes the automatic presumption of arrearage as soon as the paperwork is set up by DHR
		Shares concerns: >DHR placing responsibility on the obligee to activate the request

343	Rep. Eighmey	Why don't we have a system, where DHR doesn't automatically put in the arrearage and instead requires of the obligor to prove that there is no arrearage? Instead of making that the responsibility of the obligee.
376	Kapteyn	Responds by stating, that what Rep. Eighmey has described, is current practice. DHR is looking for direction from the legislature on how to proceed.
402	Rep. Eighmey	Why are you saying it has to be a notice of delinquency?
423	Kapteyn	DHR is sending out a bill. DHR is not calling it a "notice of delinquency," but it is what it is. It identifies an arrearage that may or may not be accurate.
430	Rep. Eighmey	Continues to share concerns.
432	Rep. Uherbelau	Restates her concern regarding the court sending copies of support orders to DHR. Shares examples from other counties where direct payee support orders are not forwarded to DHR. There are ways to opt out of the Central Registry. Is there not another way to do this and still remain in compliance with the welfare reform act?
Tape 65, A		
035	Rep. Strobeck	I would be willing to work with DHR to restore <u>Section 2</u> into the original measure. Restates intent of the measure.
045	Russell Lipetzky	Chair of Family and Juvenile Law Section of the Oregon State Bar Explains current law and accounting process in regards to support payments. Offers suggestions to reach a middle ground between both sides: >remove immediate withholding order and collection of arrearage on paper >have DHR wait two to three months, after entered on their system, prior to mailing arrearage notices >have DHR provide notice to both parties and await feedback >then focus on collecting arrearages >during first three months focus on collecting support There is certainly a policy shift by changing the burden from the obligor to the obligee.

		For the record: We are not addressing support obligations, only the accounting function. We are not suspending the support obligation as the obligation exists once ordered by the court.
079	Chair Sunseri	That is my understanding.
080	Rep. Strobeck	Restates his intent of the measure using an example.
085	Chair Sunseri	Rep. Strobeck, is the proposal by Russell Lipetzky workable for you?
086	Rep. Strobeck	<p>If DHR can prepare a report that acknowledges receipt of canceled checks and remove the arrearage notice, because my constituent did send copies of the canceled checks, and nothing happened to amend the arrearage notification.</p> <p>So, if it takes three months to set it up, DHR should at least give three months to make sure they have time to confirm that the payments have been made in a timely fashion, before the withholding order is entered on the system.</p>
094	Kapteyn	DHR's concern is that there are literally hundreds of support orders in any given month. DHR needs the most efficient process in order not to have a fiscal impact on this measure.
098	Rep. Eighmey	Why can't this be done administratively? Shares experiences. The statute does not require DHR to send this notice of arrearage.
120	Kapteyn	<p>Responds by sharing actions taken by DHR in last session.</p> <p>Currently, we have an administrative process, improving from only having a judicial process, but it is still a cumbersome process. I agree to rework this measure to come up with a simpler method.</p>
131	Rep. Strobeck	Shares concerns of his constituent.
137	Kapteyn	DHR and the judicial department have met. The judicial department has agreed to extend 66% federal matching funds for the purpose of producing those orders in the most timely manner possible. The judicial department is in the process of surveying the court clerks.
146	Chair Sunseri	Shares concerns, if this measure is not implemented.
155	Carl Stecker	<p>Deputy District Attorney in Marion County.</p> <p>Testifies neutrally on HB 2744.</p> <p>Shares experience of what was seen on a trip to Olympia, Washington, when reviewing their procedures on support order enforcement.</p> <p>>shares process used in Marion County</p> <p>>proposes a solution that would enter a DHR account number in the pleading stage of the divorce proceeding</p>

197	Chair Sunseri	Closes the hearing on HB 2744.
HB 2716 - PUBLIC HEARING		
204	Chair Sunseri	Reopens hearing on HB 2716.
210	Dianne Lancaster	Assistant Administrator Program Operations with Services to Children and Families (SCF) Refers to -1 amendments (EXHIBIT B) and if these amendments are adopted by the Committee, SCF will support the measure.
223	Nancy Miller	Administrator for the Citizen Review Board (CRB)and represents the State Court Administrator's Office (SCA) >refers to conversation with Rep. VanLeeuwen, and she is amenable to changing the measure to apply only ORS 419B >supported by CRB and SCA, if above change is adopted >delete in lines 4 and 5 of the original measure "in which the custody of the child is an issue," and then on line 4, after "proceeding", insert "under ORS 419B" >suggests in line 6 of the original measure to add before the period "if the parents are present at the hearing" >concerned about mailing information, as most addresses received inadequate >concerned there is no effective date listed in the original measure, recommends effective date of January 1, 1998 >refers to booklet produced by SCF (EXHIBIT E); CRB and SCA would be looking at creating something similar which would speak to all stages of the proceeding >did not prepare a fiscal impact statement for the hearing today in order to await the breath of the measure enacted before requesting >there will be a fiscal impact to this measure
272	Rep. Eighmey	>refers to line 5 of the original measure - concern with "clearly" I would recommend deleting the word "clearly", as it serves no purpose. It doesn't explain anything.
280	Chair Sunseri	Have these concerns been addressed with Rep. VanLeeuwen?
282	Miller	Not all of my concerns have been passed by Rep. VanLeeuwen, due to time constraints. I will be glad to further meet with her.

285	Rep. Uherbelau	When you have a dependency hearing or a hearing under ORS 419B, is there no court appointed attorney, if one cannot be afforded?
290	Miller	Parents are entitled to a court-appointed attorney, when one cannot afford one. Children are entitled to a court-appointed counsel, if requested on their behalf. All parents do not get court appointed attorneys, nor do all children.
296	Rep. Uherbelau	If they are entitled to a court appointed attorney, why aren't they getting one?
302	Timothy Travis	Juvenile Rights Project, Inc. Shares examples of what is seen in the courts, regarding hiring of counsel.
320	Rep. Uherbelau	Would it be possible to amend the original measure to limit it only to dependency hearings?
332	Travis	I anticipate Rep. VanLeeuwen and I would have a concern with that. Shares reason using an example.
352	Douglas M. Bray	Deputy State Court Administrator Shares concern when custody is an issue. Generally, there will be counsel appointed, but that is not always clear at the outset. Shares comments on the drafting of the measure. I do recognize there will still be some fiscal impact.
371	Rep. Uherbelau	Would it be too cumbersome to do a fiscal impact considering that we give the information to everybody even those in termination cases versus just providing the information at dependency cases where termination is not at issue or where we're not sure it is an issue?
380	Miller	Our juvenile information system (The Oregon Judicial Information Network) is not yet on-line all over the state. Currently, the counties report, quarterly, the number of petitions filed. However, they do not report the information equally. I would need to research further to see if the numbers are available statewide.
394	Chair Sunseri	Counsel, could you give a brief summary of ORS 419B?
396	William E. Taylor	Counsel Summarizes ORS 419B.
401	Travis	It is a constitutional right for the parent to have counsel. The ORS 419B reference is only to a juvenile guardian, in the juvenile courts, not probate guardians.
412	Chair Sunseri	I will bring back this measure before the subcommittee, after all parties have discussed, with Rep. VanLeeuwen, their concerns. Closes the public hearing on HB 2744.

<u>HB 2265 - PUBLIC HEARING</u>		
425	Chair Sunseri	Opens a public hearing on HB 2265.
443	Douglas M. Bray	Deputy State Court Administrator Testifies in support, if changes are made to the original measure, and presents written testimony on HB 2265 (EXHIBIT F).
Tape 64, B		
038	Bray	Continues testimony.
042	Tom Hart	Oregon District Attorneys Association. Testifies in support, if changes are made to HB 2265. >SB 753 is put forward by Sen. Stull, deals with a similar issues >either through SB 753 or by the proposed amendments to HB 2265, we would support to obtain the municipal court's consent prior to the juvenile court waiving offenses into municipal court's jurisdiction >shares examples in the Keizer & Silverton municipal courts
067	Bray	Adds comments, regarding SB 763 in comparison to HB 2265: >HB 2265 will provide the juvenile courts a right to waive into adult court (district/circuit) infractions and violations, not to limit only to municipal courts >SB 763 addresses only with municipalities >the measures could be combined >juvenile courts would like to transfer out minor infractions and violation offenses to adult court in order to focus on more delinquency cases
092	Frank Gruber	Municipal Judge from the City of Salem, Oregon >not speaking on behalf of the Municipal Judges Association nor on behalf of the City of Salem, as to the policy issues addressed by HB 2265 >refers to ORS 419C.370 and provides history of section >municipal courts have concurrent jurisdiction over traffic offenses and refers to Oregon's Motor Vehicle code >no jurisdiction over juveniles because state law sends all juvenile

		<p>offenses unless otherwise directed to juvenile court</p> <p>>continues to refer to ORS 419C.370, which allows for the juvenile court to transfer to municipal courts or adult court with jurisdiction</p> <p>>the language inserted two years ago, regarding property offenses, allowed to be sent from the juvenile court to the municipal court</p>
142	Gruber	<p>Continues testimony.</p> <p>>the language of two years ago purports to send misdemeanor property offenses to municipal court, if the municipal court agrees</p> <p>>not in practice in Eugene where it was requested last session</p> <p>>questions the intent of the that language added for Eugene</p> <p>>presents an example and perhaps intended use of this language</p> <p>>that language greatly broadened the original intent</p> <p>>refers to Mr. Bray's testimony (EXHIBIT F), and provides his interpretation as to the intention of the -1 amendments</p> <p>My concerns are: 1) current case load in the municipal courts, 2) there is not as many resources available as at the state level, and 3) regarding types of cases received. Shares an example.</p>
213	Rep. Uherbelau	The -1 amendments on line 13 address only where property offenses can be waived. If this requirement was broadened to include "other than property offenses", would that make you more comfortable?"
221	Gruber	Are we broadening to include "other than property offenses"?
223	Rep. Uherbelau	Right now, the measure states only property offenses can be waived to the municipal courts, if the municipal court has agrees. What if we added "all offenses" not just "property offenses"?
228	Gruber	Refers to lines 7 - 12 of the -1 amendments: It purports to do just that.
231	Rep. Uherbelau	<p>Refers to lines 13 and 14 of the -1 amendments: However, a property offense can be waived by the municipal court, if agreed to by the court.</p> <p>If, we add under <u>Section 1</u> (a), "be waived if you agree", would this be amenable?</p>
234	Gruber	<p>As a matter of state policy, this section of the law is being bent to do a jurisdictional thing that here, before, had been done separate by statutory authority in the Motor Vehicle Code. It bends the statute in a way not done before, as far as granting jurisdiction.</p> <p>Beyond that, I have concerns whether the municipalities, if they agree, will have enough resources to deal with the case, and whether it is</p>

		appropriate for the municipal judge to deal with those cases, where the person is a juvenile and where the court would not have jurisdiction if the person was an adult.
260	Rep. Eighmey	You do not want to be placed in a position to have to waive, deny, or refuse a case because of the pressures, dilemmas, and differentiation between adult and juvenile courts.
270	Gruber	<p>No. I think, if it is passed with the provision that the court can opt out and not have to agree to accept jurisdiction, then I don't find it a dilemma. As I stated earlier, I would probably say "no" because of the caseload and the resource problems.</p> <p>This approach seems to be an aberration that a court would have subject matter authority over certain kinds of cases, when they are committed by a juvenile, but not when committed by an adult. That is why the juvenile court system was established.</p>
295	Rep. Eighmey	Shares concern that this is merely shifting responsibility down the line.
315	Gruber	<p>>shares comments on the state courts' position</p> <p>>maybe there are municipalities that have requested this position</p> <p>>relates what happened in Eugene, where a district attorney was not prosecuting property offenses against juveniles because they simply didn't have the resources to handle and the municipal court could</p>
336	William E. Taylor	<p>Counsel</p> <p>Would the cases that are to be considered by the municipal courts, those that bring in more money to the system than expenses incurred? The cases being considered do not require appointment of counsel and there is no incarceration as they impose only a fine as sentence. I know this to be true of traffic offenses. Would this be true here, Mr. Bray? Would they bring in more money, to whatever court were to decide the case, than the expenses incurred in administrating the additional workload?</p>
		<p>>offenses that are being added here is where the sanction would only be for a fine or some community service in lieu of a fine</p> <p>>judges frequently assign youthful offenders to community service</p> <p>>some revenue aspect to these cases coming into the court</p> <p>>majority of these cases coming into the adult courts for sometime</p> <p>>a lot of juvenile courts have enacted blanket waivers under ORS 419C.370, and this would allow them to deal with minor infractions as well</p>

345	Bray	<p>>the way the statute is worded limits it to those cases involving the use of a motor vehicle, not simply any offense under the motor vehicle code, and those offenses can't be waived</p> <p>>the minor in possession of alcohol and less than ounce of marijuana cases are specifically exempt from the -1 amendments at request of the juvenile directors</p> <p>>refers to -1 amendments, line 12, it would be okay to delete "or municipal court" and provides reasoning</p> <p>>some municipal courts have more of an interest in juvenile proceedings and some communities would like to see these cases handled locally</p> <p>>refers to -1 amendments, line 12, it would be okay, instead, to add after "municipal court" insert "if municipal courts have agreed to accept jurisdiction"</p>
407	Rep. Courtney	Could the message, you are sending to the young person, be better made in your court than in a juvenile court?
418	Gruber	To impose a requirement on anyone, juvenile or not, sends a message or makes an impact, if you have some kind of authority behind it to enforce it. There are limited sanctions for enforcing the payment of fines. Provides an example.
468	Gruber	Continues testimony. Responds by stating the intent of the statute versus how the courts may use the proposed measure.
Tape 65, B		
033	Gruber	Continues testimony. Possibly jurisdictional language may need to be added, giving the municipal courts some of the state courts' jurisdiction, aside from just the aspect of being a juvenile.
038	Rep. Uherbelau	Mr. Bray, did you say possession was exempted out?
039	Bray	Possession of less than an ounce, yes.
040	Rep. Uherbelau	Is that ORS 471?
041	Bray	Refers to ORS 471.430 and ORS 475.992 (2)(b) and (4)(f) because the juvenile directors wanted to keep these offenses. Alcohol and the less than an ounce of drugs, which are violations currently staying with the juvenile directors and not be subject to a blanket waiver.
045	Gruber	That was not in the original measure, and I had not noticed that in the

		amendments. My apologies.
048	Rep. Uherbelau	I have no idea what offenses are violations, juvenile, or otherwise, but does the fact that being in the possession of alcohol or under an ounce of marijuana is exempted out, does that in anyway make you more comfortable?"
054	Gruber	I am more comfortable that there is recognition, with the -1 amendments, that substance abuse cases would not be as well served being forwarded to a court that does not have the resources to address these abuses. The City of Salem has a minor in possession ordinance. If the legislature wants to allow the juvenile courts to give up its jurisdiction over a municipal ordinance violation and then sends to offender to the municipal courts, there would be some consistency. I would deal with both the adults and the children thus charged.
075	Chair Sunseri	Do juvenile judges just not want to hear these cases?
077	Bray	I not sure that is the case. There are workload concerns. Some courts do not pass off many of these cases to adult courts. Discusses case load handling.
100	Chair Sunseri	Shares concerns over the shifting of cases. What are we actually accomplishing here?
104	Bray	Responds by stating an example.
120	Rep. Eighmey	The Silverton ordinance, which is now incorporated into state law, provides less notice to the parents. If the parent is going to be held responsible for acts of the juvenile, and the case is forwarded to the municipal court in circumstances, where there is no petition or notices sent out, then the parent, I think, is going to be subject, quicker, to the Silverton-type ordinance responsibilities.
130	Bray	I don't understand the workings of the Silverton-type ordinance with regards to the parental responsibilities.
134	Rep. Uherbelau	Shares concerns over the juvenile court violations being ignored, and states that the state courts' process when handling cases is not as cumbersome. It seems to be down to a science. Continues to share concerns whether the Silverton ordinance is really involved.
150	Rep. Eighmey	My point in mentioning the Silverton ordinance is that a case, subject to the Silverton ordinance, gets into the system, and the parents are subjected to a shorter response time.
160	Gruber	One way to ease the efficiency of process, in the juvenile courts, could be to adopt legislation that would change the charging instrument for infractions or non-criminal violations that would allow expedited infraction citations.
175	Bray	That was the subject of the original measure. However, the Juvenile Directors had a lot of concern in that area.

179	Taylor	Mr. Bray, would you have any objections to making this discretionary? If, for example, we inserted after "offense" in line 13 "or any offense classified as an infraction or violation under the laws of this state or any political subdivision of this state, except any offense under ORS 471.430 or 475.992 (2)(b) or (4)(f) that is classified as a violation, may be".
187	Bray	Our whole intent was to allow the juvenile court to keep these things in the circuit and district courts. If, we move the bold language in lines 8 through 13 of the -1 amendments down, the juvenile court would lose that discretion. I would rather, on line 12 of the -1 amendments, take "municipal court" out of the statute. If it is a concern with the municipal courts, we would be perfectly happy to have ORS 419C.370 (1)(a) simply refer to adult court processing, then allow the municipal courts to do whatever they wished in ORS 419C.370 (1)(b). This would allow the municipal court to expand or contract as they wished and would allow the circuit court judges, who sit both in juvenile and in circuit court, to work out handling the cases within their own jurisdiction. Moving the bold language in lines 8 through 13 of the -1 amendments would really defeat the whole purpose of the circuit court judges being interested in this bill.
202	Taylor	So, you would have no problem sending it to the municipal court, if they agree to accept?
204	Bray	Correct.
205	Chair Sunseri	Closes the public hearing on HB 2265. Adjourns the meeting at 4:58 p.m.

Submitted by, Reviewed by,

Lauri A. Smith, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2716, written testimony, Timothy M. Travis, 2 pages.

B - HB 2716, -1 amendments [LC #3191 dated 3/13/97], Staff, 1 page.

C - HB 2744, -1 amendments [LC #3076 dated 3/26/97], Staff, 1 page.

D - HB 2744, written testimony, Art Kapteyn, 2 pages.

E - HB 2716, brochure, Nancy Miller, 2 pages.

F - HB 2265, written testimony, Douglas M. Bray, 4 pages.