

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON FAMILY LAW

April 16, 1997 Hearing Room 357

3:15 P.M. Tape 70

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:

Bill Taylor, Counsel

Lisa Fritz, Administrative Support

MEASURE/ISSUES HEARD:

HB 2744 - Work Session

HB 3645 - Public Hearing and Possible 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 70, A		
006	Chair Sunseri	Calls the meeting to order at 3:19 p.m.

<u>OPENS WORK SESSION ON HB 2744</u>		
012	Bill Taylor	Committee Counsel Discusses 2744 and -3 amendments to the bill (EXHIBIT A) .
033	Rep. Beyer	MOTION: Moves to ADOPT HB 2744-3 amendments dated 4/11/97.
		VOTE: 6-0
035	Chair Sunseri	Hearing no objection, declares the motion CARRIED.
037	Rep. Beyer	MOTION: Moves HB 2744 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0
040	Chair Sunseri	Hearing no objection, declares the motion CARRIED. REP. STROBECK will lead discussion on the floor.
045	Chair Sunseri	Closes Work Session on HB 2744.
<u>OPENS PUBLIC HEARING ON HB 3645</u>		
050	Randy Chastain	Requester of HB 3645 Discusses HB 3645 and reasons for requesting the bill. I feel this bill is necessary to equalize the rights of custodial and noncustodial parents.
067	Rep. Uherbelau	Did you talk to any sheriff's department before you talked to Rep. Oakley to sponsor this bill?
070	Chastain	No, I did not.
075	Rep. Uherbelau	I understand Mr. Chastain's concerns, but I have a greater concern. I'd like to hear from a representative of the sheriff's office because we are already overwhelming our sheriff, and I don't know that this is something they would

		have the staff to do.
080	Chair Sunseri	I also share that concern, and I am also concerned about the part in section two, which deals with the district attorneys, as they are already overloaded. I'm not saying this is unimportant; I am saying that we may need to find another way to accomplish this. Has this arisen out of a personal situation that you feel needs to be corrected, or have you observed this in others?
086	Chastain	Actually, I am on both sides of the fence. I am a single custodial parent, and I am also a noncustodial parent. I have access to and a good relationship with all my children, so this is not personal. I have seen these types of things happen with a lot of people I know. I think people would be more willing to pay child support, if they have access to their children.
104	Taylor	Discusses the Task Force on Family Law's Senate bills, as they relate to HB 3645. The bills would do the same things, without involving law enforcement.
121	Chastain	It is my understanding that if the noncustodial parent extends their visitation rights, they are subject to a writ of assistance from the sheriff's department and criminal charges. I believe that noncustodial parents should also have that right, if they are denied access to their children. The custodial parent is in contempt of court, and it's my understanding that contempt is a criminal charge. Isn't it the responsibility of law enforcement to enforce those laws?
128	Rep. Eighmey	Failure to pay money is easily documented, but the failure to provide visitation rights is, at times, subjective. I believe we should try to separate the care of a child from visitation as much as possible. It is the parent's responsibility to care for their child, whether or not they are able to see them. Sometimes, the animosity between the parents is so great that being five minutes late is considered a denial of visitation. I agree that visitation laws need to be enforced, but going to the sheriff to support this may not be the best way to do so. The cost will be astronomical.
168	Rep. Uherbelau	In too many cases, because of the parents' relationship, the child becomes a tool. This kind of bill just perpetuates that. What are we telling these children, when we take a sheriff with us to force a visit? We are just adding to an already negative situation. Visitation should be enforced, but maybe we should find some other way.
190	Fred Avera	Polk County District Attorney, Oregon District Attorneys Association (ODAA) We are neutral on this bill. I do recognize that this problem needs to be addressed, but I'm not sure the district attorneys should have a role in this. If we are to have a role in this, the bill, as drafted, mandates that we provide enforcement services. I guess what we would need to know is what that is going to be, so we know what to charge for it. It doesn't appear that there is really anything for us to do. If I may be permitted to suggest, it does seem that SB 243 provides a good solution to this problem, and you may want to consider that, when the bill comes over (to the House side).
		Marion County Deputy District Attorney This is somewhat analogous to the support enforcement, but with a vast difference: the availability of funding. The proponent of the bill did mention that he is interested in locate resources, essentially. I'm not certain that we can use the child support program to

208	Carl Stecker	provide that kind of information because that information comes to us in a limited capacity and scope of use. There is a statute in 180, I believe, that deals with use of Department of Justice locate resources to locate parents, where there has been a parental kidnapping or custodial interference, etc. That's an existing law. However, I'm not sure that the department's rules would be expansive enough to allow for private individuals. Contempt is a very coercive remedy, and I think this is the kind of issue where you really want to look at mediation or other positive resources to resolve a dispute. Typically, district attorneys deal with contempt; we are not mediators. This is not an objective situation like child support: Did you pay it, or didn't you? In visitation, there are lots of issue of fact, and I think there would be some very burdensome hearings.
239	Russell Lipetzky	Chair of the Family and Juvenile Law Section of the Oregon State Bar I would like to raise some technical concerns. It doesn't require the registration of the order that's at issue. There's nothing in the bill that requires service or notice to the custodial parent, and we would think, at a minimum, notice should be given to the custodial parent, if one of these applications is to be made. I'm surprised that the law enforcement agencies aren't here opposing this bill because historically, when the Family Law Section has looked at this type of legislation, they've had a lot of concerns about some of the issues I see in this bill, regarding the discretion it requires law enforcement to undertake. It would require the sheriff to determine whether or not an order is of sufficient detail. It would require the sheriff to determine whether or not visitation is being denied. What does that mean? Does it mean a substantial denial; does it mean a minor denial; being five minutes late, or an outright denial? The bill does not address that. The bill also requires a law enforcement officer to determine whether or not exercising the visitation, and that being enforced, would endanger the health of the child. I think that's a subjective determination that, in my experience, law enforcement is not eager to undertake, when they are looking at enforcing a court order. We believe that SB 243 addresses these problems.
286	Taylor	Reads aloud line 19. I take it they could not make an arrest of the custodial parent because it's not a felony or a misdemeanor committed in their presence. Would that be correct?
292	Avera	The sheriff would, if necessary, remove the child from the custodial parent and place him/her in the custody of the visiting parent, unless the sheriff made the judgment that that would endanger the health of the child. I don't know that's a good idea, but that's how I interpret it.
302	Chair Sunseri	Closes Public Hearing on HB 3645.
319	Chair Sunseri	Adjourns at 3:42 p.m.
		*Written testimony submitted, regarding HB 3645, for the record, by Layne Barlow of the Oregon Men's Association (EXHIBIT B).

Submitted by, Reviewed by,

Lisa Fritz, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2744, proposed amendments (-3), Legislative Counsel, 2 pages.

B - HB 3645, written testimony, Layne Barlow of the Oregon Men's Association, 1 page.