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SENATE COMMITTEE ON BUSINESS, LAW, AND GOVERNMENT

April 4, 1997 Hearing Room A

1:00 p.m. Tape 137 - 139

MEMBERS PRESENT:

Sen. Neil Bryant, Chair

Sen. Randy Miller, Vice-Chair

Sen. Kate Brown

Sen. Gene Derfler

Sen. Randy Leonard

Sen. David Nelson

MEMBER EXCUSED:

STAFF PRESENT:

Bill Taylor, Counsel

Lisa Fritz, Administrative Support

MEASURE/ISSUES HEARD:

SB 243 - Public Hearing and Possible Work Session

SB 244 - Public Hearing and Possible Work Session

SB 245 - Work Session

SB 512 - 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 139, A		
006	Chair Bryant	Calls the meeting to order at 1:15 p.m.
<u>OPENS PUBLIC HEARINGS ON SB 243 and SB 244</u>		
037	Chair Bryant	Recesses at 1:18 p.m. (due to technical problems).
038	Chair Bryant	Reconvenes at 1:23 p.m.
040	Bill Taylor	Committee Counsel Discusses SB 243. The -3 amendments (EXHIBIT A) supersede the bill and the -1 amendments (EXHIBIT B). Discusses the -2 amendments (EXHIBIT C). Discusses SB 244. The -3 amendments (EXHIBIT D) supersede the bill and the -1 amendments (EXHIBIT E). Discusses -2 amendments (EXHIBIT F).
070	Bill Howe	Chair of the Oregon Task Force on Family Law Introduces Hugh McIsaac. Discusses goals of the Task Force. There is a great amount of tension between the "dads' rights" folks and the those centered around domestic violence issues. We have come up with a compromise that we hope will be acceptable, but we are open to suggestions. Walks the committee through the -3 amendments to SB 243 (see EXHIBIT A). Discusses -2 amendments to SB 243 (see EXHIBIT C). Discusses -3 amendments to SB 244 (see EXHIBIT D).
120	Howe	Continues testimony.
166	Sen. Derfler	I feel very good about all the work you have done. Thank you for all your time and effort.

170	Hugh McIsaac	Oregon Task Force on Family Law We've have done a lot of studying and research on this. I think it's a great effort, and I hope we can move forward.
188	Howe	Discusses -2 amendments to SB 244 (see EXHIBIT F).
225	Lynn Jarvis	Oregon State Bar (OSB) Family and Juvenile Law Section I don't think anyone would say that the family plan is a bad one, but the expedited force causes problems for some of us. Section three, 1a, of SB 243, as it is couched, requires a motion alleging a denial of parenting time. We would suggest, in order to make it more even-handed, to say "a motion filed by either party alleging a violation of the parenting plan." This way, if the parenting plan is violated by either parent, both parties would have an opportunity to come into court, other than when there has been alleged denial by the non-residential parent. Also, the lack of standard for the court to use, in applying this statute, is bothersome. Gives example and further suggestions.
275	Jarvis	Continues testimony.
305	Chip Gazzola	OSB Family and Juvenile Law Section Discusses addressing the financial sanctions of the bill and offers suggestions. Also, the provision, that requires response within 30 days of filing a modification, does not sound unreasonable, but it is contrary to many local rules currently provide. That will cause some counties to have to modify their rules.
367	Chair Bryant	Would page four, line six of the -3 amendments, alleviate your fear of using the expedited proceeding for modification?
375	Gazzola	That would address it, if someone was seeking a fast-track of a custody modification, but it wouldn't necessarily remedy the situation, if someone was seeking a fast-track to modify child or spousal support.
TAPE 138, A		
020	Linda Scher	Chair of the Oregon Mediation Association (OMA) Submits written testimony in favor of SB 244 and SB 245 (EXHIBIT G).
070	Layne Barlow	Oregon Men's' Association Submits written testimony on SB 243 and SB 244 (EXHIBITS H and I) and proposed amendments to SB 243 (EXHIBIT J).
100	Chair Bryant	Wouldn't you agree that SB 244 is better system than what we have right now?
101	Barlow	As long as you take out section 1(1)e, we will endorse the bill.
107	Sen. Brown	I'm sorry. I'm not seeing section 1(1)e.
108	Taylor	I think on the -3 amendments, it is now 1d. In the original bill, it was 1(1)e. Discusses what the section deals with. Is that the section you have concerns with, Mr. Barlow?
111	Barlow	I have concerns with lines 26-28 of SB 244. Continues testimony,

		discussing issues presented in his written testimony.
175	Barlow	Continues testimony.
225	Barlow	Continues testimony.
273	Chair Bryant	We'll take a look at your amendments, but for the moment, just taking a look at SB 243, would you say that is an improvement over our existing law?
278	Barlow	Absolutely.
280	Sen. Brown	As I look at the -3 amendments, section three, in terms of visitation time and your section three, things are not jumping out, except I don't see you using spousal support. You don't think spousal support is an appropriate method of punishment.
286	Barlow	No. Spousal support is a property distribution issue. We already have ORS 107.431 to work with, which can modify or suspend child support, if a visitation has been messed with. That's been a law for 10 years.
291	Sen. Brown	It's my understanding that, under current law, courts are not allowed to withhold child support for failure to deny visitation.
296	Barlow	That conflicts with ORS 107.431. Look it up.
299	Sen. Brown	Do you think withholding child support is an appropriate method of punishment for failure to provide visitation?
304	Barlow	The judge should have that discretion. It's been there for 10 years as an available option. Of course, it's not used often, but we should let the judge decide in a fair and impartial hearing.
322	David Nebel	Oregon Coalition Against Domestic and Sexual Violence, Concerned Citizens for the Health and Safety of Women Submits written testimony on SB 243 and SB 244 (EXHIBITS K and L).
372	Nebel	Continues testimony.
TAPE 136, B		
027	Sen. Leonard	What do you think, in the -2 amendments to SB 244, on line two, are the imbalance issues?
034	Nebel	I would suggest that it, perhaps, has to deal with sexual assault issues, related to domestic violence. I suppose it might have to do with neglect, where one party has neglected another, or where the two parties are in an economic imbalance. Gives example.
043	Sen. Leonard	I guess it depends on your perspective. I assumed that meant that whoever had primary custody of the children would have a more powerful position than the non-custodial parent.
047	Nebel	I would not interpret it to mean that. I think that the relationship between the two parents and how much of the parenting has been done by one parent, as opposed to the other, is a legitimate issue for the court to consider.

051	Sen. Leonard	That's not what I mean. The primary custody is with one parent, and that puts that parent in a powerful position, regarding whether the non-custodial parent sees the child. I think that's one of the main issues we're dealing with here.
055	Nebel	That may be. I think what these amendments are addressing, however, is power imbalance, in the context of mediation. In that context, I'm not sure the kind of balance, you are bringing up, really enters into it. I think that what we're dealing with is the ability of one parent to control the other by economic, physical, etc. means.
068	Sen. Leonard	You're not familiar with one parent controlling the other by threats of non-visitation?
070	Nebel	That may be something that happens, but I think SB 243 is the vehicle to address that.
077	Larry Redler	Resident of Medford, Oregon People that are affected by this need to participate in coming up with a way to make this problem better. I am opposed to the word "visitation" because it makes parenting sound like a privilege; parenting is a right. Seeing a child two times a month is only enough time to get acquainted again. You can't discipline them or be a role model. I think taking support away for not visiting is the wrong way to go, because the only person hurt by that is the child. Discusses his own divorce and experiences, as they relate to SB 243.
123	Redler	Continues testimony.
144	Chair Bryant	I feel that the concerns you have are being addressed by these bills, in some way, and no one will be entirely happy with the outcome, but I hope that we all agree that this could result in a better system than we have now.
157	Redler	Where you have visitation and restraining orders, you have entrapment. Discusses restraining orders and gives examples to support his position.
180	Chair Bryant	Interrupts Public Hearings, temporarily, to open Work Session on SB 512.
OPENS WORK SESSION ON SB 512		
185	Kevin Mannix	Discusses background, intent, and purposes of SB 512, as well as the -2 amendments to the bill (EXHIBIT M).
230	Chair Bryant	Do you want an emergency clause?
231	Mannix	Yes.
241	Bob Joondeph	Requester of the SB 512. Testifies in favor of SB 512 and the -2 amendments.

243	Sen. Derfler	MOTION: Moves to ADOPT SB 512-2 amendments dated 3/13/97 and that the measure be FURTHER AMENDED by inserting an emergency clause and making further changes as suggested by Kevin Mannix.
		VOTE: 6-0
244	Chair Bryant	Hearing no objection, declares the motion CARRIED.
<u>REOPENS PUBLIC HEARINGS ON SB 243 and SB 244</u>		
266	Sen. Brown	I think my understanding, in terms of child support and visitation, comes from ORS 107.106. I haven't heard of a judge withholding child support, regarding visitation.
290	Alice Phalan	Oregon Dispute Resolution Commission Testifies in favor of the -3 amendments to SB 244. Submits written testimony, regarding SB 244 (EXHIBIT N).
302	Sen. Leonard	The same provision is in the -3 amendments as in the -2 amendments.
303	Phalan	Yes.
305	Sen. Leonard	Going back to the power imbalance, what do "other power imbalance issues" include, for you?
311	Phalan	Certainly, as you have said, a parent may feel less power because they have little or no quality time with his/her child. In a mediation session, those would be one of the power imbalance issues that come to the table. I think it's important to note that, when talking about mediation, there is a wide range of power imbalance issues.
330	Cindy Flintjor	Waverly Children's Home Submits written testimony, concerning the Waverly Children's Home and the facilitation of better relationships for the sake of children (EXHIBIT O). Testifies in support of SB 243. Discusses how the Home deals with adversarial issues and getting parents to work together for children.
353	Sen. Brown	Alice, it is my understanding, despite Mr. Barlow's testimony, that all mediators do not have domestic violence training.
355	Phalan	Currently, all mediators, providing mediation, under the chapter 107 programs, have to have had at least a domestic violence course. We have recognized that there is not enough training. As we look at revising the rules, we will be specifying, clarifying, and most likely, elevating that standard. We are also looking at setting up a domestic violence training program that would run for, at least, two days.

375	Tony Ivanov	Resident of Portland, Oregon Discusses the adversarial issues of divorce and the divorce he is currently going through, as it relates to SB 243. I think we need to remove the ties between family civil law and domestic violence and abuse. Testifies in favor of Layne Barlow's amendments.
TAPE 138, B		
030	Ivanov	Continues testimony.
053	Chair Bryant	Tony, wouldn't you agree that SB 243 provides better law than we have right now?
055	Ivanov	Yes, because it provides avenues that were not previously available. However, though we are moving in the right direction, I feel Mr. Barlow's amendments would move us even further ahead.
058	Sen. Brown	I understand that you want to make the process less adversarial. How do we separate domestic violence out, in those families in which it occurs, from the dissolution and custody process, when there are impacts on the children in that home from domestic violence?
066	Ivanov	I agree that those issues need to be addressed. However, the way you separate it out is by making the person, who accuses, have grounds for his/her accusations.
070	Sen. Brown	Would you agree with me that bruises and black eyes are sufficient?
072	Ivanov	Not in every case. For instance, I don't believe that it would be beyond my wife to cause damage to herself, if she wanted to use this law against me. I think it's important that things, like this, move into criminal proceedings, for someone who makes such horrible accusations to keep a father or a mother from their children.
076	Sen. Brown	But, you do agree that there are impacts on the family.
082	Ivanov	Absolutely. Discusses intake sheets used in divorce.
110	Fred Wilkins	Submits written testimony, regarding the reforming of family law (EXHIBIT P) . Discusses personal experiences, involving him and his wife, as they relate to SB 243 and SB 244.
140	Sen. Brown	Is your wife's case in Multnomah County?
142	F. Wilkins	Yes it is.
143	Sen. Brown	Do you know the name of the judge?
145	F. Wilkins	Yes. It's Paula Krushner.
157	Richard	Oregon Families and non-adversarial divorce process advocate Submits written testimony on and proposed amendments to SB 243 and SB 244

	Koenig	(EXHIBIT Q).
217	Koenig	Continues testimony.
278	Michael Fogle	National Clearing House for Divorce Equity Without any "teeth" to support these bills, such as sanctions, the custodial parent has power over the non-custodial parent. Submits testimony, for the record, from Kevin C. Schaumleffle of Oregonians for Custodial Equality (EXHIBIT R) .
307	Sen. Brown	As I read the bills and the amendments, it is proposed that child support be withdrawn as punishment. What else would you ask the court to do as punishment for failure to allow visitation?
309	Fogle	I don't think withholding of money is right.
317	Sen. Brown	What punishment would the court use?
321	Fogle	I would say the same that is used if I don't pay child support: contempt of court. I would be sentenced to jail. That's why I don't support these bills. The punishment is not the same for the custodial parent. I support the joint custody bills that are now in the legislature.
330	Sen. Brown	You think joint custody will resolve all of the adversarial problems that we have.
332	Fogle	No, but it's a start. People will come in with the attitude that they are equal. Neither parent has power over the other. The non-custodial parent doesn't have the power to "leave" the children, and the custodial parent doesn't have the power to "take" the children. My wife was allowed to take my children, and she left the state. I haven't seen them in years. Joint custody would prevent that from happening. This body is here to protect the people with the least amount of power. Non-custodial parents have the least amount of power in this state. All we ask is that we have the right to be with our children.
347	Chair Bryant	What if the court said that until you have visitation, you don't have to pay child or spousal support?
350	Fogle	I don't think that's right, because that is hurting the children. I am for the children. I am not for my rights.
353	Chair Bryant	I'm just saying that that might cause you to get your visitation rights.
355	Fogle	It might, but then again, it might not. It might cause somebody to leave the state. The only way to get rid of the adversarial situation is to take the power out of the words of the law.
358	Chair Bryant	Don't you think the parenting plan will be of some assistance in that?
360	Fogle	Again, with a parenting plan, you will still have people arguing.
364	Sen. Brown	One of the problems I have with the joint custody piece is: What happens when two people can't make a decision in a joint custody arrangement? Who decides? Do we go to mediation? Do we have a judge involved? I don't think that joint custody will resolve the problem that two parents can't agree on what is right for the child, no matter what the decision

		involves.
378	Fogle	I could agree or disagree with that. However, if you assume that you are coming in equal and it's in the best interest of the child, then, at least, no one has more power. The word "custody" is almost like property. The custodial parent views it as property; it's theirs.
TAPE 139, A		
016	Catherine Wilkins	Citizens and Parents of Oregon I am both a custodial and non-custodial parent, so I sympathize with both sides. I believe that when a non-custodial parent has a child, they should be treated as a custodial parent, and they should get the same benefits the law allows custodial parents, when the child is with them. When a parent is found to be abusive, I believe that a temporary change in custody should be in order. Non-custodial parents should also be able to obtain records of their child. There are no "teeth" in the law the way it is now.
045	Chair Bryant	Do you understand that SB 243 will add some additional "teeth?"
047	C. Wilkins	That would be really nice. Discusses her own personal experiences, as they relate to the bills.
053	Sen. Brown	Would you tell us what the Judge Krushner did, in terms of visitation, in your case?
056	C. Wilkins	Discusses her experiences in court and with custody battles.
062	Sen. Brown	Did the judge know how much you spent in attorney fees?
064	C. Wilkins	She doesn't know yet, but they will be shared court costs. We are going to ask for attorney fees as well, but the whole thing should have never went to court.
070	Chair Bryant	The bills will also strengthen your right to collect attorney fees.
080	Bill Howe	Oregon Task Force on Family Law We have tried to look at these issues through the children, rather than through the experiences of the parents. I believe that when presented with the question, "Would you accept these bills as a package, yes or no?" 100 percent would say, "yes." Many want to fine tune, but we can't please everyone completely. Parenting plans are in existence in seven states, and they have been very successful, concerning the children. Discusses concerns and questions, previously brought up in testimony, and how the Task Force came to the decisions they did, regarding the bills.
130	Howe	Continues testimony.
160	Sen.	I'm just curious about ORS 107.431 and ORS 107.106 and what the court

	Brown	already has the authority to do, with regard to child support.
164	Howe	I have never once heard a case where the court has used the authority to deny child support because of visitation denial.
173	Chair Bryant	What do you think of going to violation rather than a denial of a parenting plan?
179	Howe	The amendment that would meet that, which we would feel more comfortable with, would be on page two of the -3 amendments to SB 243, line 28, mentioned by Linda Scher. We agree that the street needs to run both ways.
190	Chair Bryant	Then, on page four, even though it adds "modify," "suspend" should be added to (c) and (f). Many were also concerned that this would become an expedited process.
229	Howe	We assume that the court can police that. Gives an example. Continues discussing amendments to the bills.
278	Chair Bryant	Are the -2 amendments to SB 244 your amendments?
279	Howe	Yes.
281	Sen. Leonard	I assume that, from your testimony, you agree with the OMA.
284	Howe	Too many people tend to see power imbalances too simply. However, power imbalance is usually very sophisticated. Often, one party has greater economic power, but the other party may have more power because they have custody of the children. Our view is to give the court maximum flexibility to make sure nobody is taken advantage of.
293	Sen. Leonard	I was concerned that this is leaning more toward domestic violence.
297	Howe	That is absolutely not the case.
315	Chair Bryant	Mr. Barlow suggested to add a new subsection (e) in ORS 109.137. Do you see any problems with adding that new subparagraph?
323	Howe	I haven't seen his testimony, but my inclination is to insist on our amendment. We took a look at every "friendly parent" statute in the country and tried to come out with a reasonable compromise. However, I will review his amendments and get back to you in writing.
344	Chair Bryant	Adjourns at 3:33 p.m.

Submitted By, Reviewed By,

Lisa Fritz, Bill Taylor,

Administrative Support Counsel

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EXHIBIT SUMMARY

A - SB 243, proposed amendments (-3), Legislative Counsel, 68 pages.

B - SB 243, proposed amendments (-1), Legislative Counsel, 68 pages.

C - SB 243, proposed amendments (-2), Legislative Counsel, 2 pages.

D - SB 244, proposed amendments (-3), Legislative Counsel, 10 pages.

E - SB 244, proposed amendments (-1), Legislative Counsel, 9 pages.

F - SB 244, proposed amendments (-2), Legislative Counsel, 2 pages.

G - SB 244 and SB 245, written testimony, Linda Scher of the Oregon Mediation Association, 3 pages.

H - SB 243, written testimony, Layne Barlow of the Oregon Men's Association, 5 pages.

I - SB 244, written testimony, Layne Barlow of the Oregon Men's Association, 3 pages.

J - SB 243, proposed amendments, Layne Barlow of the Oregon Men's Association, 9 pages.

K - SB 243, written testimony, David Nebel of the Oregon Coalition against Domestic and Sexual Violence and the Concerned Citizens for the Health and Safety of Women, 2 pages.

L - SB 244, written testimony, David Nebel of the Oregon Coalition against Domestic and Sexual Violence and the Concerned Citizens for the Health and Safety of Women, 6 pages.

M - SB 512, proposed amendments (-2), Legislative Counsel, 2 pages.

N - SB 244, written testimony, Alice Phalan of the Oregon Dispute Resolution Commission, 1 page.

O - SB 243 and SB 244, written testimony, Cindy Flintjor of the Waverly Children's Home, 2 pages.

P - SB 243, written testimony, Fred Wilkins, Resident of Portland, Oregon, 2 pages.

Q - SB 243 and SB 244, written testimony and proposed amendments, Richard Koenig of Oregon Families, 2 pages.

R - SB 243, written testimony, submitted by Tony Ivanov, Resident of Portland, Oregon, for Kevin C. Shaumleffle of Oregonians for Custodial Equality, 4 pages.
