

HOUSE JUDICIARY
SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL ADMINISTRATION

Hearing Room 357
10:00 am Tapes - 44

MEMBERS PRESENT:

Rep. Del Parks, Chair
Rep. Bryan Johnston, Vice-Chair
Rep. Kate Brown
Rep. Chuck Carpenter
Rep. Lisa Naito
Rep. Eileen Qutub
Rep. Bob Tiernan

STAFF PRESENT:

Milt Jones, Committee Counsel
Sarah May, Committee Assistant

MEASURES HEARD:

HB 2784 - Public Hearing and Work Session
HB 2910 - Public Hearing
HB 2942 - Public Hearing and Work Session
HB 3104 - Public Hearing and Work Session

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , SIDE A

005 CHAIR PARKS: Calls the meeting to order at 8:42 am

PUBLIC HEARING ON HB 2910

008 MILT JONES, COMMITTEE COUNSEL: HB 2910 prohibits pre-decree and post-decree ex parte custody and visitation order.

Witnesses: David Nebel, Oregon Legal Services
Ellen Mendoza, Oregon Legal Services
Karen Hightower, State Court Administrators Office

016 DAVID NEBEL, OREGON LEGAL SERVICES : Testifies and submits written testimony in support of HB 2910. Introduces Ellen Mendoza. (EXHIBIT A)

[REP. BROWN: Hands out testimony from Kingsley Click. (EXHIBIT B)]

020 ELLEN MENDOZA, OREGON LEGAL SERVICE: Testifies and submits written testimony and proposed amendments in support of HB 2910. (EXHIBITS C, D)

091 REP. NAITO: Why not just change the "shall" to "may"? Can't we leave it up to the judge?

095 MENDOZA: This gives discretion to the judge instead of using mandatory language. Continues testimony and discussion of amendments.

117 REP. BROWN: Could you explain what the UCCJA is?

121 CHAIR PARKS: Is there any statutory requirement as opposed to a local rule on this subject?

123 MENDOZA: The only statutory requirement under the pre-decree situation is the general language in ORS 107, explains. Explains and discusses the Uniform Trial Custody Jurisdiction Act. This law is to make sure there are

no other cases pending out side of the state concerning the child.

146 REP. BROWN: The reason why this bill is so important is that when a judge awards custody, the primary parent usually gets award of the children. Explains what happens when parties divorce and children are involved. That is why I feel this piece is so critical.

161 MENDOZA: Discusses conversation with Karen Hightower from the State Court Administrators office. Thirty days is a long time for a child to wait, I agree with Ms. Hightower in that we would like the process to stay at 14 days if possible.

172 CHAIR PARKS: Does everyone understand in a practical way what we are talking about? Cites example of custody case and asks if that is main problem we are trying to get at?

184 NEBEL: Yes.

185 MENDOZA: Cites page 2 of testimony and gives examples that often come up. There are a lot of situations where it is a power play with whoever has the kids.

200 CHAIR PARKS: That is because there is a reluctance of courts to change the status quo for small kids.

209 KAREN HIGHTOWER, STATE COURT ADMINISTRATORS OFFICE: Testifies and submits written testimony and proposed amendments in support of HB 2910. (EXHIBIT E)

252 REP. NAITO: The Lane county rules specify the types of needs for immediate protection. The statute doesn't list what those "immediate dangers" might be. Do you think that should be included in the statute for clarification?

262 HIGHTOWER: Additional factors should be added?

265 REP. NAITO: Discusses Lane county rules and what they specify. In Lane county, none of those specifications were taken.

272 HIGHTOWER: We received the comment from some judges that there were not enough specific factors in this bill. They would suggest adding those other factors.

279 CHAIR PARKS: I'm not supportive of giving the courts 30 days to do this is very important process.

286 REP. BROWN: My concern in Multnomah county would be that the rules would be different in close geographical areas. Not only is that confusing for attorneys but it is confusing for the people.

297 HIGHTOWER: The judicial department has not taken a position on whether it is better to have state wide uniformity or local flexibility.

303 CHAIR PARKS: Rep. Brown will get together with you.

PUBLIC HEARING ON HB 3104

333 MILT JONES, COMMITTEE COUNSEL: HB 3104 allows parent to file petition to appoint person to act as standby caretaker for children to parent.

Witnesses: Margo Denison, Self
Rep. George Eighmy, District 14

345 MARGO DENISON, SELF: Testifies and submits written testimony in support of HB 3104. (EXHIBIT F)

TAPE 44, SIDE A

012 REP. GEORGE EIGHMY, DISTRICT 14: Testifies and submits written testimony in support of HB 3104. (EXHIBIT G)

028 REP. JOHNSTON: Does it cost anything to file this?

030 REP. EIGHMY: These are filing costs that are normal in a guardianship filing anyway. If a person files for a guardianship right now in Multnomah county, the fee is \$45.50.

034 REP. JOHNSTON: It doesn't strike me that this will be a contested case hearing or that it will become one.

037 REP. EIGHMY: The only contested situation would be if a distant relative would come forward, discusses safeguards to prevent that from happening. I am in no way trying to sever the relationship to one of the parents.

046 REP. JOHNSTON: Unless it became a contested case, there should be no filing fee.

052 REP. EIGHMY: This process can be done by mail, but it does have the safeguard in it that the person filing will be filing with the court and will know that there are sanctions imposed if anything were to go wrong. To make it an administrative procedure could be questionable.

061 MILT JONES, COMMITTEE COUNSEL: Can you draw a quick distinction between the "temporary guardian" and the "caretaker" in this bill?

064 REP. EIGHMY: Explains role of caretaker in section 4 of bill.

086 DENISON: Cites language in section 4 of the bill concerning the definition and role of "caretaker" vs. "guardian".

091 REP. EIGHMY: What is the distinction between the standby caretaker and the guardian? Why did we create these two separate entities?

094 DENISON: I don't know.

095 MILT JONES, COMMITTEE COUNSEL: They both appear to become effective upon the debilitation of the party.

097 REP. EIGHMY: I noticed that, we might need to clean that up.

103 REP. QUTUB: If this can be done by mail, I would want the other parent, if we are discussing the situation of a debilitated parent, to have the right to participate. Cites language in the bill. Asks if the parents rights are terminated in a divorce case.

115 REP. EIGHMY: No. Explains a divorce case custody situation. This bill in no way severs the parental rights.

120 REP. QUTUB: What kinds of things separate parental rights?

122 REP. BROWN: Explains termination of parental right.

131 REP. CARPENTER: How does this differ under the current rules and why is this needed?

136 REP. EIGHMY: Presently guardianships are created by a judicial action, explains situation. During life, guardianships are created for the incapability of handling affairs and at that point the guardian would step in. This allows for a guardian on a temporary basis. Discusses the 60 days safety net in the bill.

168 REP. QUTUB: Asks if under section 5, letter C, a parent would have to object and not sign a letter of consent? That means they have to take a proactive negative stand, rather than giving a positive consent? If this process was done by mail and no one objected to it, it could be done clandestinely. This may not happen very often, but it could.

186 REP. EIGHMY: A consent not to object is a consent. It has to be a signed document, explains. If that document is not attached, it is the equivalent to giving or not giving consent. By doing nothing, the other parent has in effect vetoed the standby care taker.

205 REP. QUTUB: Where is that in the bill?

212 REP. EIGHMY: Section 5c. Explains and cites language.

217 REP. QUTUB: What objections?

220 REP. EIGHMY: It doesn't matter whether someone signs objections or not, it is still a signed document. If you want different terminology, we can change it.

226 CHAIR PARKS: You wouldn't object if we amended section 5c to provide the court finds that the other parent has consented in one manner or another in writing?

230 REP. EIGHMY: No, I would not object.

231 REP. BROWN: That is the problem. The petition requires that there is a waiver of objections, but there is nothing to tell the judge to have that available before they sign the order. I think Rep. Parks suggestion would clear up that concern.

240 REP. EIGHMY: Cites Section 5d language.

WORK SESSION ON HB 3104

254 MOTION: REP. BROWN: Moves to AMEND SECTION 5, SUB 6A TO REQUIRE THE COURT TO ENTER A DECREE ONLY AFTER SECTION 2, SUB C HAS BEEN VERIFIED.

270 REP. BROWN: If it is not attached to the petition there is nothing to prevent the judge from entering a decree.

273 CHAIR PARKS: There needs to be incorporated into the petition either a written consent or a written statement signed by the other parent that they waive all objections. Explains amendment.

292 VOTE: Hearing no objections the amendment is ADOPTED.

293 MOTION: REP. JOHNSTON: Moves HB 3104 AS AMENDED TO THE FULL COMMITTEE with a DO PASS recommendation.

VOTE: 7-0 MOTION PASSES
AYE: Brown, Carpenter, Johnston, Naito, Qutub, Tiernan, Parks
NO: None

WORK SESSION ON HB 2784

307 MILT JONES, COMMITTEE COUNSEL: HB 2784 vests exclusive authority to regulate sale, acquisition, transfer, ownership, possession, transportation and use of firearms in Legislative Assembly. Explains differences between the -7 & -8 amendments. (EXHIBITS H, I, J, K)

333 REP. TIERNAN: Cites language in section 6. Is that language meant to include the gun shows?

347 CHAIR PARKS: That is true. There is an issue as to what a "second hand store" is. Cites EXHIBIT H.

353 REP. TIERNAN: Gives example of a resale gun and problems which needs to be addressed.

362 CHAIR PARKS: Has everyone had an opportunity to consider the amendments including EXHIBIT H?

368 MOTION: REP. TIERNAN: Moves to ADOPT HB 2784 -8 AMENDMENTS.

VOTE: Hearing no objections the amendments are ADOPTED. All members are present.

385 MOTION: REP. TIERNAN: Moves to ADOPT THE "SECOND HAND STORE" LANGUAGE AS STATED IN EXHIBIT H.

DEFINING

VOTE: Hearing no objections the amendments are ADOPTED. All members are present.

390 MOTION: REP. TIERNAN: Moves HB 2784 AS AMENDED TO THE FULL with a DO PASS recommendation.

COMMITTEE

401 REP. NAITO: What are some of the types of organizations that will now be prohibited? Will carrying loaded weapons in a car be allowed in the city of Portland?

409 CHAIR PARKS: The purpose of the bill is to allow the state to make those rules.

414 REP. TIERNAN: I believe the rule is that a person can not carry a loaded firearm in the car.

419 REP. NAITO: The statutes regulate concealed weapons and possession in public places, but I can not find any regulation of a person carrying a loaded gun openly. There is a city ordinance, but I don't find a state regulated ordinance, is that allowed?

436 MILT JONES, COMMITTEE COUNSEL: The carrying of a weapon, loaded or unloaded, is permitted in Oregon.

TAPE 43, SIDE B

007 CHAIR PARKS: This bill does not say that the carrying of a loaded weapon cannot be prevented. It says that this is an issue of the rights of people and should be the same in every locality. The state should regulate this issue as a state wide issue, explains.

018 REP. NAITO: I don't believe that all areas have subject to a state wide concern. We have real needs in Portland because there is so much violence and death caused by guns. It is different in metropolitan areas than in rural areas.

025 REP. TIERNAN: There are unique problems when there are different laws all over the state, gives example. There is problems with having different laws concerning different kinds of guns, loaded or unloaded, when traveling around the state. We need to have one rule so that people can carry their weapon with the insurance that they won't violate different jurisdiction laws.

040 VOTE: 6-1 MOTION PASSES
AYE: Brown, Carpenter, Johnston, Qutub, Tiernan, Parks

NO: Naito

PUBLIC HEARING ON HB 2942

048 MILT JONES, COMMITTEE COUNSEL: HB 2942 expands authority of court to restrain person who abuses family or household member.

Witnesses: Rep. Kate Brown, District 13
Rep. Chuck Carpenter, District 7

060 REP. KATE BROWN, DISTRICT 13: Testifies in support of HB 2942.

075 REP. CHUCK CARPENTER, DISTRICT 7: Testifies in support of HB 2942.

091 REP. NAITO: The order must be fairly specific with respect to the area surrounding it. Should it specify a number of feet around a home or should it be by the block?

097 REP. BROWN: A specific number of feet would be appropriate, but in some neighborhoods a block is used. Gives example of a situation where this would apply.

107 REP. TIERNAN: How does this bill differ from the stalking legislation?

109 REP. BROWN: This amends the Family Abuse Prevention Act. The stalking legislation is a different statutory authority.

111 REP. TIERNAN: It seems there are some similarities between the bills.

112 REP. BROWN: Yes they are. The stalking legislation that was passed last session was based on the Family Abuse Prevention Act, and that is what this bill would amend.

115 REP. TIERNAN: Does this do something that the stalking legislation doesn't do?

116 REP. BROWN: Yes. This allows a judge to kick an abusive party out of the home and restrain that party from their residence. The stalking order is geared toward a different problem.

122 REP. QUTUB: You would have to prove something else by the stalking legislation?

124 REP. BROWN: Correct. Explains how the Family Abuse Prevention Act relates to the stalking order and how it would apply under other circumstances.

132 REP. QUTUB: This only includes places if they are specified under the order?

138 REP. BROWN: That is correct. The Family Abuse Prevention Order is designed to prevent the respondent from coming near a particular place that the parties have had trouble with, gives example. It doesn't prevent the respondent from going outside of their home or business. The stalking statute does not require that the parties be in a sexually intimate relationship, but the Family Abuse Prevention Act require that there be a relationship within six months before the filing of the order.

162 LAURIE WIMMER, COMMISSION FOR WOMEN: Testifies and submits written testimony in support of HB 2942. (EXHIBIT L)

209 TEVINA BENEDICT, WOMEN'S RIGHTS COALITION: Testifies and submits written testimony in support of HB 2942. (EXHIBIT M)

259 MOTION: REP. BROWN: Moves HB 2942 TO THE FULL COMMITTEE with a DO recommendation.

PASS

VOTE: 7-0 MOTION PASSES
AYE: Brown, Carpenter, Johnston, Naito, Qutub, Tiernan, Parks
NO: None

278 CHAIR PARKS: Adjourns the hearing at 10:05 am.

Submitted by, Reviewed by,

Sarah May Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

- A. Testimony on HB 2910 - David Nebel - 2 pages
- B. Testimony on HB 2910 - Kingsley Click - 7 pages

C. Testimony on HB 2910 - Ellen Mendoza - 5 pages
D. Proposed Amendments to HB 2910 - Ellen Mendoza - 1 page
E. Testimony on HB 2910 - Karen Hightower - 4 pages
F. Testimony on HB 3104 - Margo Denison - 3 pages
G. Testimony on HB 3104 - Rep. George Eighmy - 1 page
H. Proposed Amendments to HB 2784 - Staff - 2 pages
I. Proposed Amendments to HB 2784 - Staff - 2 pages
J. Proposed Amendments to HB 2784 - Ron Harder - 1 page
K. Proposed Amendments to HB 2784 - John Nichols - 1 page
L. Testimony on HB 2942 - Laurie Wimmer - 1 page
M. Testimony on HB 2942 - Tevina Benedict - 1 page
N. Testimony on HB 2942 - Vietta Helmle - 24 pages