

SENATE COMMITTEE ON
JUDICIARY

Hearing Room
Tapes - 75

MEMBERS PRESENT:

SEN. NEIL BRYANT, Chair
SEN. RANDY MILLER, Vice-Chair
SEN. KEN BAKER
SEN. JEANNETTE HAMBY
SEN. PETER SORENSON
SEN. DICK SPRINGER
SEN. SHIRLEY STULL

STAFF PRESENT:

BILL TAYLOR, Committee Counsel
DIANE DUSSLER, Committee Assistant

MEASURES HEARD:

SB 320 - PUBLIC HEARING
SB 630 - PUBLIC HEARING

SB 61 - WORK SESSION
SB 92 - WORK SESSION
SB 226 - WORK SESSION
SB 227 - WORK SESSION
SB 320 - WORK SESSION
SB 630 - 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 73, A

003 CHAIR BRYANT: Calls the meeting to order at 3:00 p.m.

Opens PUBLIC HEARING on SB 630

WITNESSES: Sen. Mae Yih, District 19
John Ellis, Department of Justice
Norman Rupp, Children First for Oregon
Betsy Bailey, Associated Oregon Industries

021 SEN. MAE YIH, District 19: Testifies and submits written testimony
with proposed amendments in support of SB 630 [EXHIBIT A].

074 JOHN ELLIS, Department of Justice: Testifies and submits written
testimony in favor of SB 630 [EXHIBIT B & C]. In line 22 of bill "federal"

employer ID number should be replaced with "state".

088 NORMAN RUPP, Children First for Oregon: Testifies in favor of SB 630
which will increase delinquent child support collections.

105 CHAIR BRYANT: Emergency Clause in Section 5, sunsets on June 30, 1995,
so we can make that date specific in an amendment.

113 BETSY BAILEY, Associated Oregon Industries: Testifies and submits
written testimony in favor of SB 630 and SB 630-1 [EXHIBIT I].

Closes PUBLIC HEARING on SB 630

Opens WORK SESSION ON SB 630

130 MOTION: CHAIR BRYANT: Moves to AMEND SB 630 by deleting word "federal"
on page 1, line 22, and inserting "state"; on page 2, Section 5, delete
lines 18 and 19 and insert "This Act takes effect July 1, 1995".

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

144 MOTION: CHAIR BRYANT: Moves to ADOPT SB 630-2 AMENDMENTS.

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

MOTION: SEN. BAKER: Moves SB 630 AS AMENDED to Ways and Means
with a DO PASS recommendation.

VOTE: Hearing no objections, the motion CARRIES.

Opens WORK SESSION on SB 61

WITNESSES: Rita Cobb, Pro-Tempore Judge Washington County, Head Washington
County Probate Department
Carol Kyle, Attorney, Circuit Court Judge, Multnomah County, Chief Probate
Judge
Ralph Wycoff, retired Probate Judge for Marion County

160 TAYLOR: Explains bill to committee.

185 RITA COBB, Pro-Tempore Judge Washington County, Head Washington County Probate Department: Testifies and submits proposed amendment to SB 61 [EXHIBIT E].

217 CHAIR BRYANT: Did you review Judge Johnson's technical corrections?

224 CAROL KYLE, Attorney, Pro Tempore Judge Washington County, Head Washington County Probate Department: We haven't. We do have his previous testimony.

275 CHAIR BRYANT: In Section 63 the finding was by clear and convincing evidence and why is it that rather than the preponderance of evidence?

283 COBB: It is clear and convincing evidence under current law limited to temporaries.

288 SEN. SORENSON: On page 9, line 28, does legislation change privileges of physician/patient, and lawyer/client?

300 KYLE: Language inserted in bill doesn't exist in current law. Deletion of that doesn't change the law.

348 SEN. SORENSON: Are we getting physician in trouble by asking them to disclose information to visitor?

358 KYLE: The judgment call is left to the doctor.

380 SEN. SORENSON: Do you have opinion on whether we should write role of physician into statute?

406 KYLE: I don't have an opinion on that coming from the committee's viewpoint.

444 COBB: I'm on board of estate planning section of Oregon State Bar and they support SB 61 and are in opposition to SB 92.

456 RALPH WYCOFF, retired lawyer, past Pro Tempore Probate Judge for Marion County: Testifies in favor of SB 61. We have 600-700 probate cases per year. Original statute was a series of patches and very difficulty to follow. We owe this bill to the public.

TAPE 74, A

044 CHAIR BRYANT: My idea is to move SB 61 today.

58 SEN. SORENSON: I think the judge's point of view would be helpful.

060 LEE JOHNSON, Circuit Court Judge, Multnomah County, Chief Probate Judge:

Proposed amendments are all right except for the one on top of page 2, that refers to page 4, and has language held over from old statute.

103 - no reason to disqualify someone because they are a health care professional

140 - should amend Section 39, parents should not take conservatorship fees

from child

153 - suggests language should be "established for court's satisfaction" as appointment of temporary guardianship hardly ever has clear and convincing evidence

180 CHAIR BRYANT: We will compare your amendments to SB 61-16.

215 CHAIR BRYANT: We will temporarily recess this work session.

Opens PUBLIC HEARING on 320

WITNESSES: Mike Dugan, District Attorney, Deschutes County
Susan Brewster, Assistant County Counsel, Deschutes County
Stephen Donnell
Jim Arneson, Oregon Criminal Defense Lawyer's Association

234 MIKE DUGAN, District Attorney, Deschutes County: Testifies and submits written testimony in favor of SB 320 which prohibits felons from having firearms [EXHIBIT F].

264 CHAIR BRYANT: Why did 1989 Legislature allow felons to petition and obtain weapons?

278 DUGAN: I think it was a last minute compromise.

273 SUSAN BREWSTER, Assistant County Counsel, Deschutes County: Testifies in favor of SB 320. Describes her experiences in going to court on this issue.

294 - most of the felons have multiple drug convictions

300 - if granted the petition the county must pay for the case filing fee

330 DUGAN: Describes case when judge let felon have possession of gun during hunting season.

355 BREWSTER: Explains current problems:

- can't get evidence needed within 15 days when must appear in court.

374 - can't cross examine witnesses

- no restrictions on what kind of firearms felons can have

379 DUGAN: Suggests amendments to bill: page 2, line 2 after "(c)" insert (A)
(B) (D) or (E).

424 SEN. BAKER: You mentioned 15 year rule on one felony, why is that?

430 DUGAN: That has historically been the statute.

465 SEN. SORENSON: Are you asking for a forever prohibition?

467 DUGAN: Under SB 320 it would be if they had more than one felony conviction.

475 SEN. SORENSON: Are you advocating for a permanent one time felon conviction?

482 DUGAN: No, 15 years is appropriate.

TAPE 73, B

049 STEPHEN DONNELL: Testifies for and against SB 320
058 - the 15 year rule arises out of federal statute
100 - if you commit federal felony, the state could lift bar for firearms on

federal offense
112 - certain felons are allowed to get their firearms back as previous
felonies are now permitted behaviors
137 - agrees there is a problem with procedure
189 - believes judge must make written decision that justifies removing bar
on firearms

221 JIM ARNESON, Oregon Criminal Defense Lawyer's Organization: Testifies
in opposition to SB 320. In general we oppose collateral consequences that

don't allow for individualized circumstances.

244 - individual must prove that they are not a danger
255 - don't oppose elimination of filing fees

Opens WORK SESSION on SB 320

295 CHAIR BRYANT: Process we have now doesn't adequately protect the
public. I prefer to pass the bill with amendments.

309 SEN. SORENSON: Anything on guns is controversial.

326 CHAIR BRYANT: Other than the opposition today I haven't heard any
opposition to it.

347 MOTION: CHAIR BRYANT: Moves to AMEND SB 320 on page 2, line 2, to
include after "(c)" insert (A) (B) (D) or (E).

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

MOTION: CHAIR BRYANT: Moves SB 320 AS AMENDED to the Floor with a DO
recommendation. SEN. BRYANT will carry the bill to the Floor. PASS

356 VOTE 6-1 MOTION PASSES
AYE: BAKER, HAMBY, SORENSON, SPRINGER, STULL, BRYANT
NAY: MILLER

Opens WORK SESSION on SB 61

373 CHAIR BRYANT: Technical amendments offered by Judge Johnson on page 2,
subparagraph 4 would change "court" to "conservator".

376 CAROL KYLE: We did discuss this section.

456 CHAIR BRYANT: Line 30, in Section 20 states health provider cannot be
appointed except for family members.

465 KYLE: This was a continuation of our current laws. A health care
provider, as provider of services to individual protected person, is
prohibited from being the guardian or conservator.

TAPE 74, B

050 CHAIR BRYANT: My understanding of page 2 is that "court" rather than
"conservator" would be the appropriate term.

052 MOTION: CHAIR BRYANT: Moves to ADOPT SB 61-16 AMENDMENTS.

055 SEN. BAKER: I'm uncomfortable with line 25 on page 2, deleting language
"subject to any law relating to confidentiality".

060 SEN. SORENSON: We could make declarative statement in bill since we
aren't changing any privilege.

073 CHAIR BRYANT: Withdraws motion and speaks to amendments.

077 MOTION: CHAIR BRYANT: Moves hand engrossed SB 61-16 AMENDMENTS as
amended at line 25, deleting in line 28 "subject to any law relating to
confidentiality".

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

102 MOTION: CHAIR BRYANT: Moves SB 6I as AMENDED to the Floor with a DO
PASS recommendation.

103 SEN. BAKER: Before we do that.

103 CHAIR BRYANT: Withdraws motion.

104 SEN. BAKER: Are we going to deal with probable cause on page 27?

112 TAYLOR: SB 92 amends Sections 61.

115 CHAIR BRYANT: On page 5, in SB 92 the temporary fiduciary may be appointed by court by preponderance.

127 SEN. SORENSON: Doesn't this make it easier for person to be taken into protective status, thus undermining the rights of the elderly person?

136 SEN. BAKER: That is the function of the court.

142 CHAIR BRYANT: The current standard is clear and convincing, is that correct?

146 TAYLOR: It has to be by clear and convincing evidence or it causes due process problems.

157 SEN. BAKER: I withdraw my objection.

159 MOTION: CHAIR BRYANT: Moves SB 6I AS AMENDED with a DO PASS recommendation.

VOTE: SEN. MILLER votes NO. All members are present.

Also submitted for the record testimony from Phyllis Rand [EXHIBIT D]

Opens WORK SESSION on SB 92

WITNESS: Lee Johnson, Circuit Court Judge, Multnomah County, Chief Probate Judge
Carol Kyle, Attorney, Circuit Court Judge Pro Tempore Multnomah County
Bob Jundeff, Attorney
Rita Cobb, Pro Tempore Judge Washington County, Head Washington County Probate Department

189 TAYLOR: Suggests you may wish to have Judge Johnson speak to SB 92 as many of these are policy issues.

219 LEE JOHNSON, Circuit Court Judge, Multnomah County, Chief Probate Judge:

Section 2, explains provision where court may waive notice requirement
254 - visitor's report should be admitted as evidence
294 - Section 4 isn't necessary
299 - opposes Section 5
312 - Section 6, a temporary guardian is a probable cause hearing
360 - Section 7, I'm not sure what it does

400 CHAIR BRYANT: Asks witnesses to speak to each section.

417 CAROL KYLE, Attorney, Circuit Court Judge Pro Tempore Multnomah County:

One of problems we have is the definition of "interested persons".

425 CHAIR BRYANT: There was a problem with breach of attorney privilege.

429 KYLE: We felt these were overly broad.

440 CHAIR BRYANT: Next is Section 2, relating to sub 6 and waiver of notice.

449 KYLE: Currently, we have ability to waive notice on petitions with allegation that protected person can't understand them.
- we were concerned about "harm"

470 - we didn't feel due process can have round corners

475 CHAIR BRYANT: Section 3.

478 BOB JUNDEFF, Attorney in Portland: Section 3, deals with admissibility into evidence of visitor's report in guardianship proceeding. It allows hearsay evidence to be admitted.

TAPE 75, A

050 CHAIR BRYANT: Isn't some hearsay evidence allowed?

057 JUNDEFF: As a practical matter I think the information is used in court.

062 CHAIR BRYANT: What happens to the protected person?

070 RITA COBB, Pro Tempore Judge Washington County, Head Washington County Probate Department: There is usually not a temporary guardianship. If they want to use hearsay evidence they have that person in court and can ask questions.

086 CHAIR BRYANT: Section 5
089 KYLE: The section that was removed out of SB 61 was the last sentence
in bold type.
We left burden with bar.

103 CHAIR BRYANT: Turning to clear and convincing evidence.

105 COBB: Preponderance of evidence, rather than clear and convincing
evidence, because this is ex parte and a temporary guardianship which has
serious consequences and requires a higher standard of proof.

122 CHAIR BRYANT: Section 7.

124 COBB: In subsection 5, the court hears objections to temporary
fiduciaries. We need a specific period of time to hear objections.

136 CHAIR BRYANT: To summarize the committee's preferences it is not to
adopt any portion but operate with amended SB 61, is that correct?

140 COBB: That is correct.

Submitted for the record testimony from Lee Hazelwood

Closes WORK SESSION on SB 92

Opens WORK SESSION on SB 226

166 BRADD SWANK, Legal Analyst, State Court Administrator's Office:
Testifies and submits written testimony with proposed amendments on SB 226
and SB 227 [EXHIBIT H]. These were introduced by Attorney General's Office
to simplify procedure before Court of Appeals. We have proposed amendments
as we believe language would adversely affect how Court of Appeals handles
motions.

187 MOTION: CHAIR BRYANT: Moves to ADOPT SB 226 AMENDMENTS.

VOTE: Hearing no objections, the amendments are ADOPTED. All members
presents vote AYE. SENS. BAKER, MILLER SPRINGER are EXCUSED.

190 MOTION: CHAIR BRYANT: Moves SB 226 AS AMENDED to the Floor with a DO
PASS recommendation.

VOTE: Hearing no objections, the motion CARRIES. All members present vote
AYE.
SENS. BAKER, MILLER, SPRINGER are EXCUSED.
SEN. STULL will carry the bill to the Floor.

Closes WORK SESSION on SB 226

Opens WORK SESSION on SB 227

191 MOTION: CHAIR BRYANT: Moves to ADOPT SB 227 AMENDMENTS.

VOTE: Hearing no objections, the amendments are ADOPTED. All members
present vote AYE. SENS. BAKER, MILLER, SPRINGER are EXCUSED.

194 MOTION: CHAIR BRYANT: Moves SB 227 AS AMENDED to the Floor with a
DO PASS recommendation:

VOTE: Hearing no objections, the motion CARRIES. All members present vote
AYE.
SENS. BAKER, MILLER, SPRINGER are EXCUSED.
SEN. STULL will carry the bill to the Floor.

Closes WORK SESSION on SB 227

204 CHAIR BRYANT: Adjourns meeting at 5:15 p.m.

Submitted by, Reviewed by,

DIANE DUSSLER BILL TAYLOR
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

A - Testimony with Proposed Amendments to SB 630 - Sen. May Yih - 5 pages
B - Testimony on SB 630 - John Ellis - 1 page
C - Testimony on SB 630 - John Ellis - 5 pages
D - Testimony on SB 61 - Phyllis Rand - 1 page
E - Proposed Amendments to SB 61 - 4 pages
F - Testimony on SB 320 - Michael Dugan - 2 pages
G - Testimony on SB 92 - Lee Hazelwood - 1 page
H - Testimony with Proposed Amendments to SB 226 & SB 227 - Bradd Swank - 3
pages
I - Testimony on SB 630 - Elizabeth Bailey - 1 page