

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL
ADMINISTRATION

May 13, 1993 Hearing Room 357 1:00 p.m. Tapes 110 - 111

MEMBERS PRESENT: Rep. Tom Brian, Chair Rep. Ken Baker Rep. Jim Edmunson
Rep. Tom Mason

STAFF PRESENT: Holly Robinson, Committee Counsel Sarah May,
Committee Clerk

MEASURES CONSIDERED: HB 3329 - Relating to support orders;
declaring an emergency HB 2288 - Relating to suspension
of child support obligations HB 2292 - Relating to children HB 2517 -
Relating to domestic relations HB 2977 - Relating to child support

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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. [--- Unable To Translate
Graphic ---]

TAPE 110, SIDE A

005 REP. BAKER: Calls the meeting to order at 1:17 p.m.

WORK SESSION ON HB 2288

Witnesses: Doug Mitchell, Assistant District Attorney in Lane
Maureen McKnight, Oregon Legal Services John Ellis, Department of
Justice

007 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2288 provides for
suspension, rather than modification, of duty to pay child support
based upon

receipt by obligor of certain cash benefits. 042 DOUG MITCHELL,
ASSISTANT DISTRICT ATTORNEY IN LANE COUNTY: Testifies and submits
written testimony in support of HB 2288. (EXHIBIT A)

066 REP. BAKER: The obligee has notice and has twenty days to
respond?

067 MITCHELL: Yes. Continues with testimony.

107 REP. EDMUNSON: Does this change the substantive
obligation or entitlement that exists now, other than procedural
changes? Will anyone pay or receive more or less?

112 MITCHELL: Someone might pay more or less, but this bill will

correct a problem. Now when an obligor begins receiving public assistance, there

is a delay between the month they begin receiving public assistance, and the month that we modify the support order.

122 REP. EDMUNSON: If they were on public assistance to maintain living expenses, do they pay child support out of available funds, or do they

not pay?

127 MITCHELL: The latter is more likely, and an arrearage occurs, collected later.

134 REP. EDMUNSON: What happens when a person goes off assistance under the present system? 138 MITCHELL: When there is a case with a zero support order and person can't pay, there's nothing we can do. We have to review a case every 90 days. If we aren't aware of a person going off public assistance, there is potential of missing monthly payments. The way that both parties

benefit is that each month the obligor is on public assistance, they get the credit.

160 REP. BAKER: If obligee receives notice and challenges the change, what legal counsel represents the obligee?

163 MITCHELL: The state's interest is that the rule isn't abused. The state has better access since we are either the Support Enforcement

Division (SED) or the district attorney office, have burden to give court enough information to make the decision.

170 REP. BAKER: At that point you're representing the obligor?

171 MITCHELL: We are representing the state.

173 REP. BAKER: Who is your client?

174 MITCHELL: Always the state.

175 REP. BAKER: So you initiate on behalf of obligor, but when the obligee comes forward you represent them?

176 MITCHELL: We don't represent the obligor. The obligor and the state's interest are aligned, at the beginning. But the state's interest is

also in not having a remedy be abused, but to determine what is actual going on.

182 REP. BAKER: Is there any effort made to notify the obligor that you represent the state's interest? What information do both parties have

regarding their support? How do we assure them that they will have

their day in court?

197 MITCHELL: This puts burden on obligee to provide information initially when requested.

199 REP. BAKER: Is it in the proposed amendments that the obligee is notified that if they want to challenge this that the district attorney will represent them in the challenge?

202 MITCHELL: No that's not represented. We couldn't do that.

203 REP. BAKER: Why couldn't you do it?

204 MITCHELL: Because as attorneys, our client is the state.

206 REP. BAKER: Now you have obligee with you, and you are representing the state. I think you have a dual representation.

212 MITCHELL: In most instances we do, but we are required to initiate modifications on behalf of obligor's. The state interest is that child

support be consistent with state guidelines. We are always representing the interest of the state, and not of either parties.

226 REP. BAKER: What kind of notice would you provide the obligee to say that if they challenge this action there will be a hearing, and that

your office will be there representing the states interests, but that

you are available for conducting the hearing? From the consumer

standpoint, generally a young parent, how do they know that they are not facing system alone?

234 MITCHELL: They don't.

235 REP. BAKER: What can you do about it so that they feel more comfortable and that they know that at least someone is there to give them

information?

238 MITCHELL: Nothing in this bill would allow us to do that. They are entitled to be represented by an attorney, but the poorer parents aren't going to be able to do that anyway.

243 REP. BAKER: Maybe 1 out of 100?

244 MITCHELL: Not that good. Legal aid may be available but it doesn't provide the kind of protection that you were inquiring about. Continues with testimony.

272 MAUREEN MCKNIGHT, OREGON LEGAL SERVICES: Testifies and submits written testimony in support of HB 3329. (EXHIBIT B)

288 REP. EDMUNSON: Is there anything wrong with leaving the present system as an alternative?

290 MCKNIGHT: This bill does that, and I support that. Continues with testimony. Nothing in this bill prescribes the type of notice that you

are talking about.

313 REP. EDMUNSON: Cites Mitchell's testimony, Pg.2. Does that first notice that you suggest include the statement of rights, or should both notices include it?

326 MCKNIGHT: Both notices.

331 REP. EDMUNSON: Do you have any problem with adding a notice of rights disclaimer as to how you get a lawyer in Oregon?

334 MITCHELL: No.

340 JOHN ELLIS, DEPARTMENT OF JUSTICE: Testifies in support of amendments.

345 REP. EDMUNSON: The existing procedure of modification would remain available if Mitchell's amendments are adopted and enacted?

352 HOLLY ROBINSON, COMMITTEE COUNSEL: Yes.

354 MOTION: REP. EDMUNSON: Moves to AMEND HB 2288 by adding the four page fax, EXHIBIT A, presented by the Lane County District

Attorney, including conceptual amendment standard notice

language.

369 HOLLY ROBINSON, COMMITTEE COUNSEL: Is this to go into a specific section or to be throughout?

371 REP. EDMUNSON: Subsection 2, pg. 2, reference to notice, shall specify the representative capacity.

384 MCKNIGHT: With the nature of representation of state and availability of low cost legal services, the notice can get the addresses and

numbers.

395 REP. EDMUNSON: There also is a notice on pg. 4, Section 5.

401 CHAIR BRIAN: Counsel is asked to insert that wherever appropriate.

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

414 MOTION: REP. EDMUNSON: Moves to AMEND HB 2288 by adding language of January 1, 1994.

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

419 MITCHELL: Subsection 6, after "months", language should be included, so courts won't be given credit for public assistance before the effective date.

431 REP. EDMUNSON: Language such as, "For months subsequent to the effective date of this act", on pg. 3 of memo, pg. 4 of fax. EXHIBIT A

438 MOTION: REP. EDMUNSON: Moves to AMEND HB 2288 by adding the above stated language.

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

440 REP. EDMUNSON: Do we have to do anything with the existing bill HB 228 8 as far as deletions?

TAPE 111, SIDE A

002 HOLLY ROBINSON, COMMITTEE COUNSEL: These amendments will require a substitution of the original bill.

004 MOTION: REP. EDMUNSON: Moves to CONCEPTUALLY AMEND HB 2288 by deleting appropriate portions of HB 2288 to be consistent with Mitchell's amendments.

006 CHAIR BRIAN: Was that a committee or an agency bill?

007 HOLLY ROBINSON, COMMITTEE COUNSEL: That was an agency bill.

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

011 MOTION: REP. EDMUNSON: Moves HB 2288 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

VOTE: 4-0 MOTION PASSES AYE: Baker, Edmunson, Mason, Brian NO: None

WORK SESSION ON HB 2517

(HB 2517 Allows court to deny paternity action initiated by putative father when court determines that putative father's sexual conduct that resulted in pregnancy would constitute crime of rape or incest, unless putative father can establish that determination of)

Witness: Rep. Kevin Mannix, District 32

019 REP. KEVIN MANNIX, DISTRICT 32: Testifies in support of HB 2517.

WORK SESSION ON HB 2977

Witnesses: John Ellis, Department of Justice Maureen McKnight, Oregon Legal Services Carl Stecker, Marion County District Attorney

082 HOLLY ROBINSON, COMMITTEE COUNSEL: Provides that social security payments for benefit of child stemming from eligibility of

support

obligor are credited against support obligation even if paid directly to obligee. If committee adopts amendments, if there is more than one child that support is being determined, the income that is receiving support will only be applied to that child and not be used to subsidized the income of support of other child. (EXHIBIT C)

131 REP. BAKER: Cites pg. 2, line 5 about cost of supporting a child. How are you doing that in practical way? Are you increasing cost?

141 HOLLY ROBINSON, COMMITTEE COUNSEL: Intent was to factor it in.

143 REP. BAKER: We do that now.

146 REP. EDMUNSON: What about older children who have summer jobs? Is this saying that the amount of child support that they receive should be

decreased?

150 HOLLY ROBINSON, COMMITTEE COUNSEL: The intent was only to build it in so that it could be considered.

158 CHAIR BRIAN: The intent was unearned income.

160 REP. EDMUNSON: But this says any income of child should apply.

164 JOHN ELLIS, DEPARTMENT OF JUSTICE: Two ways to handle: 1) make it a criteria 2) or could go to next section of code ORS 25.280, which is

rebuttable factors, and make income of child a factor to be considered. Both unearned and earned income of the child.

176 CHAIR BRIAN: Cites example of disabled father, where child received social security, but he didn't get credit for it.

183 ELLIS: That's true, payments that don't go directly through the Department of Human Resources (DHR) computer are not counted as child

support. 1) Do you get credit for social security benefits that don't go through DHR- No. 2) How do you calculate the obligation of a parent who receives social security and whose child receives a benefit? The proposed amendments will work, but this requires that we consider and always give credit for benefit that the child receives.

204 REP. BAKER: As opposed to putting it into the rebuttable presumption section?

205 ELLIS: Yes. In the second example the receipt of social security by a child may or may not excuse a parents obligation.

210 REP. BAKER: Gives example of a father who is disabled and the child is disabled also.

221 MAUREEN MCKNIGHT, OREGON LEGAL SERVICES: We are concerned about approach that would put the earnings and benefits of a child into the

rebuttal factors because will persist in what is now a lack of uniformity on how to treat this issue. We oppose the rebuttal approach.
234 ELLIS: We don't have a position against this approach.

243 CARL STECKER, MARION COUNTY DISTRICT ATTORNEY: Our concern is about the income that child earns a might be dedicated toward a college fund, will now be used to dilute the child support obligation.

248 CHAIR BRIAN: It was in unanimous agreement that we would only make this unearned income.

251 STECKER: We have no objection to that.

257 REP. BAKER: Does anyone want to address the educational loans, grants, and scholarships awarded to the child?

259 ELLIS: We have no thoughts about that.

261 REP. BAKER: This concerns older children.

265 ELLIS: There was consideration to remove the older children from the child support guidelines, would then use the Smith formula to figure out what child support for this child was.

271 REP. BAKER: It is up to the discretion of the court.

274 MCKNIGHT: We would remain supportive of an amendment that would take post secondary school support issues out of the current guidelines.

278 REP. BAKER: Is that in testimony of this bill?

279 MCKNIGHT: This bill does not do it explicitly, it would attempt to address it, but not take it out of the current guidelines.

292 MOTION: CHAIR BRIAN: Moves to AMEND HB 2977-1 by inserting on pg.2, line 5, "unearned" between "any" and "income".

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

300 MOTION: REP. BAKER: Moves to AMEND HB 2977 by deleting on pg. 2, lines 9-10, "earnings from employment".

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

308 REP. BAKER: Lines 11,12, those decisions vary with each situation. Is the issue of educational loans and grants, still in presumption?

319 MCKNIGHT: No, only if it's covered within the needs of the

child.

323 REP. BAKER: I would want to delete lines 11-12 and leave it in the presumption area.

326 ELLIS: There is nothing which specifically talks about the income of the child. It does talk about the needs of the child, and one infers

the child's need in light of child's income.

333 CHAIR BRIAN: Generally a child who receives loans and grants, their income has been considered in the award of that.

341 MOTION: REP. BAKER: Moves to AMEND HB 2977 by deleting lines 10 starting with "and", through line 12. And in line 10, change "and" to "or".

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

357 MOTION: REP. BAKER: Moves to ADOPT HB 2977-1 AMENDMENTS

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

363 MOTION: REP. BAKER: Moves HB 2977 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

VOTE: 3-0 MOTION PASSES AYE: Baker, Brian, Chair Parks NO: None EXCUSED: Edmunson, Mason

WORK SESSION ON HB 2292

Witnesses: John Ellis, Department of Justice

377 HOLLY ROBINSON, COMMITTEE COUNSEL: Reduces penalty for certain disclosures of confidential information. Cites new -3 amendments.

(EXHIBIT D)

409 JOHN ELLIS, DEPARTMENT OF JUSTICE (DOJ): Agrees with counsel. We have agreement on penalties for releasing confidential information. Those

penalties would be: for the violation, a suspension without pay for a maximum of 90 days; for a second violation- automatic termination and ineligibility for employment with the DOJ for five years.

TAPE 110, SIDE B

007 REP. PARKS: In present law if someone divulges confidential information, that is grounds for termination?

008 CHAIR BRIAN: Yes, they are immediately dismissed and are disqualified for holding any position with the DOJ for five years.

01 REP. PARKS: Does that include lawyers?

012 ELLIS: It would be anyone who released confidential information. Attorneys that give us their services are not within the SED. Could fix that by deleting references to the SED and making a general statement

about DOJ employees, if it is your intent to include everyone.

022 REP. PARKS: How long has this been the law that it is a termination?

024 ELLIS: Many years.

025 REP. PARKS: How many people have been terminated because of violations?

026 ELLIS: None.

027 REP. PARKS: Why are we changing the law?

028 ELLIS: Because of a circumstance that happened, we thought we would have to apply this law. We decided that a very harmless technical

breach of confidentiality would require very serious penalty.

040 REP. PARKS: Harmless as opposed to harmful breach of confidentiality? Or intentional as opposed to unintentional?

043 ELLIS: Both.

050 CHAIR BRIAN: The most recent approach would retain the strict standard, and would add a first offense lenience. Because of the severity on the

sanction, might it have a chilling effect on pursuing allegations?

064 ELLIS: No, this sanction is much less serious than in current law.

066 CHAIR BRIAN: Do you think the current law has had chilling effect on pursuing it?

069 ELLIS: No, our people are aware of penalties for releasing confidentiality. Our people are so "paranoid" about this, that they are extremely conscious about giving out information.

083 REP. BAKER: In -3 amendment on line 3, suspension without pay up to 90 days, is that mirrored somewhere else in the statute? Why 90 versus 30

days?

087 ELLIS: It is a choice for the committee.

094 CHAIR BRIAN: There may be cases from the administrative

standpoint where they don't want to give a five year reprimand, but more than 30

days.

099 REP. PARKS: There should be a distinction when there is an intentional breach and there should be a provision that the attorney general's

office should report the incident to the Supreme court. 114 CHAIR BRIAN: Pg. 1, line 18, would your motion be deleted and the Department of Justice being substituted? If employee is member of the Bar, then termination or disciplinary action be reported to the Bar?

124 REP. PARKS: Agree that if it is inadvertent that a lesser penalty would be appropriate.

132 CHAIR BRIAN: The -3 amendments would work except if the disclosure was intentional, then the first offense provision would not apply.

136 HOLLY ROBINSON, COMMITTEE COUNSEL: The issue about broadening Subsection 2 to any employee of the DOJ, might conflict, and would only apply to DOJ employees that deal with records that only apply to

children.

154 REP. PARKS: Relating to children, and creating new provisions, is everything after that the relating clause?

159 HOLLY ROBINSON, COMMITTEE COUNSEL: Relating to clause ends after first ";".

166 CHAIR BRIAN: The first intent would be on line 18, the DOJ, or if narrower the DOJ employees working with the Support Enforcement

Division. 2) the first violation provision up to 90 days would apply, if the disclosure was not intentional, if it was intentional it would be the current provision. If the employee that made the violation was a member of the Bar, it would be reported to bar.

PUBLIC HEARING ON HB 3329

(HB 3329 Requires court to send copy of support order to Support Enforcement Division if order provides for payment to obligee by direct deposit.)

Witnesses: Brian Petrequin, Intern for Rep. Dell John Ellis, Department of Justice Phil Yarnell, Department of Human Resources Maureen McKnight, Oregon Legal Services

197 BRIAN PETREQUIN, INTERN FOR REP. MARILYN DELL: Testifies and submits written testimony in support of HB 3329. (EXHIBIT E)

240 REP. PARKS: What are the three most important points?

248 PETREQUIN: 1) People aren't reporting cases, 2) they don't report for various reasons, and 3) the state needs to be more aggressive in what

they are doing.

252 REP. PARKS: How would your legislation make the state more aggressive?

253 PETREQUIN: That the Adult and Family Services (AFS) will solicit and ask people if they are getting their payments made.

259 REP. EDMUNSON: Sending a form? Do you think that would have been returned?

260 PETREQUIN: Yes, after a number of years people don't know where to go for help.

265 REP. PARKS: Do you have a fiscal impact statement?

266 PETREQUIN: According to the DOJ's changes it will be costless.

273 REP. BAKER: If sending copies to the SED, if they don't have an existing file they will have to create a file, who will do that?

277 PETREQUIN: It would go to the AFS.

281 REP. BAKER: Are you requiring that the SED maintain some record consistently, so that there is some accounting function?

286 JOHN ELLIS, DEPARTMENT OF JUSTICE: Testifies and submits written testimony in support of HB 3329. (EXHIBIT F) Current law requires a

county clerk to send child support orders to DHR, which is the keeper of child support records. Even if DHR is not providing child support services, the law has always contemplated that DHR have a copy of the child support order.

311 REP. EDMUNSON: The department already has a file?

313 ELLIS: DHR is supposed to receive a support order for every case in the state. That requirement is often not followed. We are trying to make

it happen by amending this bill.

327 REP. BAKER: Whose responsibility is it to keep the records: the obligor's, obligee's, or the state?

339 ELLIS: The record is kept by DHR, for those cases which they have required to keep the record for. For other cases records are kept by

the parties. The law in Oregon is if your payments don't go through DHR they are supposed to go into bank account. By amending the bill, it

would restore the formality, and require DHR to receive a payment record for cases that DHR does not keep a payment record on.

365 REP. BAKER: Why send the department this information if you're not going to keep a record on them?

368 PHIL YARNELL, DEPARTMENT OF HUMAN RESOURCES: We have a central registry. All orders come in and are put in the computer, some are not

activated as full enforcement.

387 REP. EDMUNSON: Is the Department not keeping every record sent to them?

391 YARNELL: No. The court does not send us a copy of every order they should. 394 REP. EDMUNSON: But you keep track of the one's you do?

395 YARNELL: Yes, we log it in the computer, but if is not a case that has requested enforcement services, we do not process the payments.

402 REP. EDMUNSON: Is it possible to have mailing addresses for purpose of contacting people and how many current addresses do you have?

414 YARNELL: The law requires that both parties give us their change of address within 10 days. 420 REP. EDMUNSON: When did that law go into effect?

421 YARNELL: 1975. This will be the first time we will try to do mailings to nonactive cases.

433 REP. BAKER: Has DHR ever audited the county's records to see how well they match up?

438 YARNELL: Not an audit, because we have a state system.

443 REP. BAKER: How do you know that your records are accurate?

TAPE 111, SIDE B

002 YARNELL: I'm talking about the 4D portion. The District Attorney has to have our computer in order to work the case.

004 REP. BAKER: But every case in the state is supposed to be in your computer?

005 YARNELL: It is, if we are talking about those that receive our services.

006 REP. BAKER: Mr. Ellis said that every support case that comes through is supposed to be in your computer.

007 YARNELL: True.

008 REP. BAKER: Is it there?

008 YARNELL: Because we have not received all of the orders we should from the courts.

009 REP. BAKER: How do you know how accurate you are?

010 YARNELL: We don't. The purpose of the system is for enforcement cases only. The additional orders have been a side benefit that allow us to

take quick action if they become a 4D case. If they don't require support enforcement services, our system wasn't intended to serve them.

016 REP. PARKS: The court has to send you a copy of the decree?

018 YARNELL: Correct. 019 REP. PARKS: Why is that necessary when all circuit courts in Oregon have a computerized system for maintaining details on all circuit court cases?

027 ELLIS: You are referring to Oregon Judicial Information Network (OJIN), which does have records of all court orders. The problem would be the

courts computer hooked up to the DHR's computer.

033 REP. PARKS: Why wouldn't that be simpler way to handle this?

035 YARNELL: Our system requires a lot of data in order to do enforcement, and I'm not sure OJIN carries that information.

039 REP. PARKS: With decrees now, there is a lot of information that we required to be supplied, and I don't know why whatever you need couldn't be part of the decree?

044 REP. BAKER: Why do we go through the manual labor, instead of exchanging information?

050 YARNELL: No objection to that. I have been unaware that information that was needed is there. We do have to keep an copy of the decree in

it's entire text on file.

058 REP. PARKS: The burden of proof is on the person who is coming in, and it would be simple if they had to bring the decree in. Why couldn't we

use the state court computer system?

069 BILL LINDEN, STATE COURT ADMINISTRATOR: Would be a good idea if there is access to it, it contains all of the information that the paper does.

081 MAUREEN MCKNIGHT, OREGON LEGAL SERVICES: Testifies and submits written testimony in support of HB 3329. (EXHIBIT G)

115 CHAIR BRIAN: Adjourns the meeting at 2:50 p.m.

Submitted by:

Reviewed by:

Sarah May
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Testimony on HB 2288 - Lane County - 4 pages B - Testimony on HB
2288 - Lane County - 3 pages C - Proposed Amendments to HB 2977 -
Committee Counsel - 2 pages D - Proposed Amendments to HB 2292 -
Committee Counsel - 4 pages E - Testimony on HB 3329 - Brian Petrequin
- 6 pages F - Proposed Amendments to HB 3329 - Department of Justice -
1 pg. G - Testimony on HB 3329 - Oregon Legal Services - 2 pages