

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL
ADMINISTRATION

June 3, 1993 Hearing Room 357 1:12 p.m. Tapes 129 - 131

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

STAFF PRESENT: Holly Robinson, Committee Counsel Carole
Souvenir, Committee Counsel Sarah May, Committee Clerk Joseph M.
Menashe, Page

MEASURES CONSIDERED: HB 2994 Remand of Juvenile Offenders SB
286 Oregon Health Care Decisions Act HB 3134 Expansion of Nuisance Laws
SB 240 Statute of Limitations and Ultimate Repose

WITNESSES: Mark McDonald, Oregon District Attorney's
Association Senator Bob Shoemaker, District 3 Representative Cedric
Hayden, District 28 Ted Falk Dr. Tina Kitchin Dr. Miles Edwards Diana
Godwin, Williams & Troutwine Mike Williams, Williams & Troutwine Norma
Gant Gretchen Morris Brian Dougherty, General Electric Laurie Wimmer,
Oregon Women's Commission

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

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 129, SIDE A

008 CHAIR BRIAN: Calls meeting to order at 1:12 p.m.

HB 2994 - WORK SESSION

010 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses bill and the HB
299 4-4 amendments (EXHIBIT A). MOTION: REP. BAKER: Moves to ADOPT the
HB 2994-4 amendments dated

6/3/93 to HB 2994.

VOTE: CHAIR BRIAN: Hearing no objection the amendments are ADOPTED.

All members are present.

067 REP. JIM EDMUNSON: How will this bill deal with the
detention of juveniles who are remanded on adult matters.

070 ROBINSON: Refers to line 21, page one of the HB 2994-4
amendments.

082 REP. EDMUNSON: The same standard will apply whether a

juvenile is remanded under the discretion of the court or whether it is a statutory remand for one of the enumerated allegations?

084 ROBINSON: Yes.

095 REP. KEN BAKER: Refers to line 24, page one. Are we excluding the possibility that the court could remand a juvenile but place the child

in another facility? Is this limiting the court to only these options or is there the ability to be flexible?

105 ROBINSON: Under current law, does not believe that discretion exists.

126 MARK MCDONALD, OREGON DISTRICT ATTORNEY'S ASSOCIATION: Under current law, when individuals are remanded, they are under the same statutory

scheme as any adult in the system and are not entitled to bail but can be released if the court considers that to be appropriate.

136 ROBINSON: Refers to line 24, page one. Suggests that the phrase, "if at all", inserted after the word "detained", be restored which would

allow for juveniles to be placed in other facilities besides a juvenile facility or jail.

MOTION: REP. BAKER: Moves to AMEND the HB 2994-4 amendments dated

6/3/93 by adding the phrase "if at all", after the word "detained" to line 24, page one.

VOTE: CHAIR BRIAN: Hearing no objection the motion CARRIES. All members are present.

153 ROBINSON: Refers to line 19, page one. Suggests that the committee insert, "subsection one, subsection a" after O.R.S. 163.115 so that this bill applies to intentional murder cases only.

MOTION: REP. BAKER: Moves to AMEND the HB 2994-4 amendments dated

6/3/93 by inserting, "subsection one, subsection a", to line 19, page one.

VOTE: CHAIR BRIAN: Hearing no objection the motion CARRIES. All members are present.

MOTION: REP. BAKER: Moves HB 2994, AS AMENDED, to the full

committee with a DO PASS recommendation. VOTE: In a roll call vote, REPS. BAKER, EDMUNSON and CHAIR BRIAN

vote AYE. REP. MASON votes NO.

CHAIR BRIAN: The motion CARRIES.

SB 286 - WORK SESSION

202 CAROLE SOUVENIR, COMMITTEE COUNSELOR: Discusses bill and the SB 286 amendments dated 6/3/93. (EXHIBIT B). Note: The amendments being used

are the A-11 version dated 6/8/93 with all the changes discussed from the 6/3/93 meeting. >Refers to Page four, line nine of SB 286A. Should there be a seven

year default if the person does not identify on the advanced directive how long it will remain in effect and should the advance directive be subject to suspension?

234 REP. EDMUNSON: Tends to believe that a will remains in effect potentially for years unless there is a limit in the document. Should

not allow for suspension and reinstatement because the bill allows the principal to refuse care or refuse withdrawal.

263 CHAIR BRIAN: Throughout the document, wherever appropriate, the duration of the advance directive is for the life of the principal

unless otherwise specified in the directive or revoked by the principal.

269 REP. TOM MASON: These are not wills and is uncomfortable with these directives staying active for years.

290 REP. EDMUNSON: The consequence of this laying around for 30 years is different than the consequence of a will laying around for 30 years.

297 SENATOR BOB SHOEMAKER, DISTRICT 3: To have the directive terminated in seven years will be a greater risk than having a directive reoccurring

30 years after execution.

312 REPRESENTATIVE CEDRIC HAYDEN, DISTRICT 28: Would it not make more sense to have a default after seven years, if you executed this document at

the age of 25, knowing that your needs may change at the age of 60?

324 SEN. SHOEMAKER: Refers to section 21. It does not cover one of the important elections made in the form and that is the progressive

illness. That one, which may be the most sensitive of all, is not covered under section 21.

330 REP. HAYDEN: Would suggest that you do a default, at seven years, into this list of people who can speak for you. And then you have the option of renewing it every seven years to update your desires.

355 REP. EDMUNSON: Suggests that the duration not be limited to seven years, unless otherwise specified by advance directive by the principal.

401 SOUVENIR: Refers to page 14, line 42. Hand-engrossed a subsection to read, "any reinstatement and advance directive shall be in writing".

Understands that the committee wants to take out all references to "suspension" but leave in the "revocation" references.

410 CHAIR BRIAN: Yes.

413 REP. EDMUNSON: Does your hand-engrossed subsection c allow the reinstatement of a revoked directive? Does that envision all the steps

required to execute the original advance directive?

435 SOUVENIR: That is not addressed in the bill but knows that the committee discussed this in one of its work sessions that reinstatement could work like a codicil to a will.

438 REP. EDMUNSON: Does not want to make it so difficult that a person could not reexecute. On the other hand, does not want a verbal

revolving door. If that was the intent in drafting this, is comfortable with that.

TAPE 130, SIDE A

006 SHOEMAKER: Thinks that is fine.

020 REP. HAYDEN: When you have a person that is legally incompetent and has a directive who they resist the procedure that this would impose, we

stop the action at that time but the action is not revoked?

032 REP. EDMUNSON; Yes.

049 REP. BAKER: Would like an explanation on page 14 of the hand-engrossed bill regarding the issue of interpreters and the decision to print this in other languages.

054 SOUVENIR: The translation part of the form is on page 6, line 16 of the A engrossed version. The concern is whether or not this form should be

translated by an interpreter and if that would affect the validity of the form.

071 CHAIR BRIAN: Does not have a problem if the form is verbally translated to someone. Thought that the form could be translated and printed into

foreign languages but thinks that will create an incredible amount of problems if the form were to be presented to a physician in the hospital.

084 TED FALK: Has seen the form translated in Spanish and the other side was in English. This would be something to consider.

093 CHAIR BRIAN: Who would print this form and how would the physician know what was on the form?

103 REP. BAKER: Would it not make more sense for the attorney or whom ever fills out the form to do the translation, at that point, by filling the form out in English? The responsibility should be on the person filling out the form, not on the interpreter or someone trying to interpret the form.

110 FALK: Does not know if the attorney-in-fact would necessarily have that linguistic capability.

141 REP. BAKER: Are we going to provide interpreters for all individuals which means that we would have to provide hospital staff that could

communicate with these individuals?

146 REP. HAYDEN: In my experience, people are usually accompanied to a medical facility by a family member who can speak English. May want to

include having a family member designated as an interpreter.

155 SOUVENIR: Refers to page seven, line 37. On line 37, the words, "or that person was appointed prior to your admission into the health care

facility", deals with the issue of employees of facilities who are also health care representatives that are appointed. Refers to page 13, line five. Points out new language that is consistent with section 21.

207 CHAIR BRIAN: Refers to page 23, line 43. We will add language which refers to the furnishing of the form, why are we limiting that to 12

months?

217 REP. HAYDEN: It would be senseless to offer a person the form every time they were admitted to the hospital if they are admitted more than

once a year. It is time consuming and expensive.

222 CHAIR BRIAN: Why do we say just 12 months if an organization knows that one has been provided or knows that one has been executed?

226 SEN. SHIPRACK: Thinks that a 12 month gap is appropriate.

237 CHAIR BRIAN: By federal law, are individuals not already advised?

238 SEN. SHIPRACK: The federal law requires you to advise, the state law requires you to provide a copy of the form.

264 SOUVENIR: Discusses changes on pages 19, 20, 21, 22 and 23 from (EXHIBIT C).

364 SEN. SHIPRACK: What does O.R.S. 540 deal with?

365 SOUVENIR: Refers to page 13, lines eight and nine. Discusses amendments proposed by REP. MASON (EXHIBIT D).

404 REP. BAKER: If a physician notifies the health division, is that the same as putting the information on the death certificate or is that a

different agency and a different function?

414 SOUVENIR: Contacted the Bureau of Vital Statistics and the cause of death would not be public.

425 REP. BAKER: Are you saying that death certificates are not public documents, open to public inspection?

428 SOUVENIR: You can find out the cause of death, according to the Department, but you can not get the actual death certificate which shows the cause of death. TAPE 129, SIDE B

020 SEN. SHOEMAKER: Seems that a lot is being made over an ordinary death eventually you take away life support, even today, without all of these documents and without this law. Thinks to require that the health

division and the District Attorney be notified every time someone dies because you take away a life support system is not necessary.

031 REP. MASON: This is not life support, this is about food and hydration.

057 REP. BAKER: Refers to (EXHIBIT D). When you say that the withdrawal information is under O.R.S. 127.505 and O.R.S 127.640, are you referring to situations where there are no directives?

061 REP. MASON: The amendment refers to any time that food and hydration or nutrition and hydration is withdrawn.

074 REP. BAKER: Would support the SB 286-A10 amendments if it was specifically directed to those situations where there is no directive.

Then we are monitoring to see how the process is or is not working.

079 DR. TINA KITCHIN: Thinks if you add additional reporting requirements to this bill, it will make it more burdensome to remove them and

decisions will be made not to put them in.

092 REP. BAKER: If we do not do some sort of record keeping amendment, how do we come back in two years or five years and get a sense of where we

are going with this decision? Do we, from the medical community standpoint, have that information available to us from a historical, factual or storytelling basis?

100 KITCHIN: Does not know if that data is available for anyone.

101 REP. BAKER: Do you not think that this type of data should be kept?

102 KITCHIN: Thinks that until people get used to these procedures, keeping the data will push people the other way. That is to push people to

continue with what they are doing without a great deal of scrutiny and input. These decisions are personal and difficult.

118 REP. MASON: That is my point. You are going to be withdrawing nutrition and hydration.

120 KITCHIN: Is concerned that people will not put the tubes into withdraw individuals because of fear of withdrawal already. If you make that

fear too large, or that becomes the perception, you will have decisions that are made quickly, without a great deal of input and not necessarily in the best interest of the person.

126 REP. MASON: Are these people making the decisions in the best interest of the person?

128 DR. KITCHIN: Believes that the decision is being made in the best interest of the person but without the time and the scrutiny to allow

emotions to be separated from the facts. Sometimes these decisions do not end up being in the best interest of the person. 136 REP.

EDMUNSON: Has to fall on the side of privacy. The notice of information should not be a public record however, it should be made available for inspection by members of the principal's family.

184 DR. MILES EDWARDS: Physicians are concerned about getting into trouble over things that they do and if they are fearful of not providing

nutrition and hydration, they are going to be pressed toward a place where they are going against their good conscious in a given case. Is

really concerned about the public's ultimate interest in euthanasia because of this sort of action.

209 CHAIR BRIAN: Are you saying that doctors, given the legal authority to do so, would not withhold or withdraw because after the person dies they would have to give notice to the health division?

213 DR. EDWARDS: When in good conscious and without a written advance directive, physician's would be pressing people who are in a very

deteriorated state. The family is convinced that they would not want this. We run into this frequently when there is no advance directive and have heard families say that maybe we should have legalized euthanasia because doctors are not letting people die when it is their time.

MOTION: CHAIR BRIAN: Moves to ADOPT the SB 286A-10 amendments dated 5/18/93 with a conceptual amendment stating that "the notice and information provided by the attending physician would be made private with members of family being the exception in cases where a directive does not exist" to SB 266A.

VOTE: CHAIR BRIAN: Hearing no objection the amendments are ADOPTED. All members are present.

MOTION: REP. EDMUNSON: Moves to ADOPT the hand-engrossed amendments dated 6/3/93 to SB 286A.

VOTE: CHAIR BRIAN: Hearing no objection the amendments are ADOPTED. All members are present.

MOTION: REP EDMUNSON: Moves that SB 286A, AS AMENDED, to the full committee with a DO PASS recommendation.

DISCUSSION TO THE MOTION

322 REP. MASON: Will vote in opposition to the bill.

VOTE: In a roll call vote, REPS. BAKER, EDMUNSON and CHAIR BRIAN vote AYE. REP. MASON votes NO.

HB 3134 - WORK SESSION

433 REP. EDMUNSON: Has a problem with the 400 feet provision.

TAPE 130, SIDE B 008 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses bill.

066 CHAIR BRIAN: When you refer to three or more offenses, is that referring to arrests which took place simultaneously in the same event?

070 ROBINSON: Believes that would occur.

075 CHAIR BRIAN: What is considered serious, persistent and a problem?

081 ROBINSON: Refers to Portland City Ordinance.

117 EDMUNSON: Is concerned about where the activity occurs.

126 ROBINSON: The City of Portland's list of offenses is narrower and does not include criminal trespass or criminal mischief.

137 CHAIR BRIAN: Should we remove criminal trespass and criminal mischief from the list?

140 REP. BAKER: Yes.

MOTION: CHAIR BRIAN: Moves to ADOPT a conceptual amendment by deleting "criminal trespass" and "criminal mischief" from lines 21 and 22, page one of HB 3134.

VOTE: CHAIR BRIAN: Hearing no objection the amendment is adopted.

All members are present.

143 CHAIR BRIAN: Do we want to use the word "place" or "business"?

157 ROBINSON: The word "place" is already a part of Oregon law. Would only have to add the word "business".

201 CHAIR BRIAN: Wants to define "nuisance" with the issues of frequency and distance.

205 REP. EDMUNSON: Refers to page two, line five. Would like to reword the phrase to read "a pattern of disruptive activity".

211 CHAIR BRIAN: Would like to know what is considered a pattern?

215 ROBINSON: That usually means two or more incidents within a time frame.

222 REP. EDMUNSON: Would like to use the same language and have it be within a year.

228 REP. BAKER: The volume of people who go through a business door will determine the number of incidents. Gives an example.

239 REP. MASON: Not comfortable with this bill. Does not feel there is sufficient support to move this out.

258 REP. EDMUNSON: Do we need a state law when cities and counties are passing these type of ordinances?

270 ROBINSON: When cities and counties enact ordinances, at some point, due to the disparity, it becomes an issue of statewide concern and they look to the State to set the standard.

286 CHAIR BRIAN: Should we have a uniform nuisance statute or allow cities and counties create their own?

294 REP. BAKER: Is not comfortable with nuisance statutes because they are so broad that they have to be very narrowly drawn to be valid.

308 CHAIR BRIAN: Since a statewide measure will not be going into effect, would like to have a model ordinance drafted for cities and counties to refer to for local adoption.

SB 240 - PUBLIC HEARING

338 DIANA GODWIN, WILLIAMS & TROUTWINE: Discusses SB 240 and submits written testimony (EXHIBIT E).

352 MIKE WILLIAMS, WILLIAMS & TROUTWINE: Testifies in support of SB 240.

409 REP. BAKER: You mentioned that there was relief available in other states and would like an idea what their limitations are?

413 WILLIAMS: In the state of Washington, there is a 12 year limitation on product liability claims, with the exception which implies to any

product that was intended or represented to be useful longer than 12 years. Idaho has a similar exception written into their law. California has no limitation. North Carolina is the only state in the country that has a stricter rule than Oregon.

TAPE 131, SIDE A

022 NORMA GANT, CITIZEN: Testifies in support of SB 240.

106 REP. BAKER: Do we use silicone for any other reconstructive surgery?

108 WILLIAMS: Unfortunately, it is used for all kinds of implants.

114 REP. BAKER: Why are limiting this to breast implants?

117 WILLIAMS: The bill was originally drafted to include other types of implants however, the Senate Judiciary Committee narrowed it to breast

implants.

119 REP. BAKER: Have you talked to the Senate, at this point, about including chins?

120 WILLIAMS: No.

139 GODWIN: The Pharmaceutical Manufacturers Association, along with the medical profession and hospitals, have some concerns about the number of different devices that use silicone as a component.

164 WILLIAMS: Has about 25 clients, like Mrs. Gant, who has a real need.

177 GRETCHEN MORRIS, CITIZEN: Testifies in support of SB 240.

283 BRIAN DOUGHERTY, GENERAL ELECTRIC: Discusses proposed amendments: >Page two, line 39, add section six. >Page two, line 40, section six should be changed to section seven. >Page two, line 44, add section six. At the end of line 44, change

section six to section seven. 329 LAURIE WIMMER, OREGON WOMEN'S COMMISSION: Testifies in support of SB 240 and submits written testimony (EXHIBIT F).

Amendments to SB 240 dated 6/3/93 submitted (EXHIBIT G).

SB 240 - WORK SESSION

MOTION: REP. EDMUNSON: Moves to ADOPT the Miller Nash amendments dated 6/2/93 and that SB 240 be further amended on page two, line 39 by adding section six; line 40, by changing section six to read section seven; and line 44, by adding section six and changing section six to section seven at the end of the line.

VOTE: CHAIR BRIAN: Hearing no objection the amendments are ADOPTED.

MOTION: REP. MASON: Moves that SB 240, AS AMENDED, be sent to the full committee with a DO PASS recommendation.

VOTE: In a roll call vote, all members present vote AYE.

CHAIR BRIAN: The motion CARRIES.

382 CHAIR BRIAN: Adjourns at 3:36 p.m

Submitted by:

Reviewed by:

Karen Edwards Anne May Clerk

Coordinator

EXHIBIT LOG:

A - Amendments to HB 2994 - Staff - 5 pages B - Amendments to SB 286A

- Staff - 8 pages C - Amendments to SB 286A - Staff - 3 pages D -
Amendments to SB 286A - Staff - 2 pages E - Testimony on SB 240 - Diana
Godwin - 7 pages F - Testimony on SB 240 - Laurie Wimmer - 1 page G -
Amendments to SB 240 - Counsel - 1 page