

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL
ADMINISTRATION

June 8, 1993 Hearing Room 357 1:00 p.m. Tapes 132 - 133

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

STAFF PRESENT: Carole Souvenir, Committee Counsel Bryan
Boehringer, Committee Clerk

MEASURES CONSIDERED: SB 201 - Relating to adoption SB 211 -
Relating to trusts SB 214 - Relating to claims in probate SB 234 -
Relating to statute of limitation for certain actions arising out of
child abuse; declaring an emergency SB 586 - Relating to child-parent
relationship

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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 132, SIDE A

007 CHAIR BRIAN: Calls the meeting to order at 1:15 p.m.

PUBLIC HEARING ON SB 201

Witnesses: Timothy Travis, Oregon Juvenile Rights Project Diana
Roberts, Children's Services Division Geri Auerbach, Oregon Adoptive
Rights Association Susan Stoltenberg, Open Adoption and Family

013 CAROLE SOUVENIR, COMMITTEE COUNSEL: SB 201 provides that adoption
laws do not prevent adoption agreements allowing contact between birth
family and adoptive family. (EXHIBIT A)

026 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT: Submits and reviews
written testimony in support of SB 201. (EXHIBIT B)

064 CAROLE SOUVENIR, COMMITTEE COUNSEL: Asks about a termination
hearing, and the assignment of an adoptive family.

067 TRAVIS: Explains that there is another family selected, the
scope of the bill, and the instances where the case would go to court.
Continues with testimony.

100 REP. BAKER: Describes an example of dysfunctional parents who
might abuse the open adoption. How do we protect the child?

108 TRAVIS: Explains that not every case will be appropriate for an open adoption.

110 REP. BAKER: Likes blind adoptions without past history following the child. Asks about allowances to protect the child.

119 TRAVIS: Explains that open adoptions are very successful in Oregon. Can't assure that there won't be a problem, but discusses the validity

of the statistics.

134 REP. BAKER: Asks about narrowing the bill to allow for open adoptions, but not cause problems for the children.

150 TRAVIS: It can't be that narrow. The success comes from selecting people, and counseling them. Emphasizes that the legislation will not

reach all adoptions. Discusses the attorney fee provision. Explains broken agreement provision and the courts decision to decide that.

189 REP. BAKER: We don't allow attorney fees as an enforcement tool to visitation rights. Asks about the rewarding of attorney's fees in

visitation cases.

199 TRAVIS: Explains the rationale behind the attorney fee provision.

243 DIANA ROBERTS, CHILDREN'S SERVICES DIVISION: Submits and reviews written testimony in support of SB 201. (EXHIBIT C) Suggests possible

amendments.

308 REP. BAKER: Asks about the compliance in relation of the attorney fees.

311 ROBERTS: Explains the compliance numbers.

318 REP. BAKER: Asks about the numbers of agency vs. private adoptions.

331 ROBERTS: Yes, about half to two-thirds are agency adoptions.

334 CAROLE SOUVENIR, COMMITTEE COUNSEL: Discusses the amendments concerning the written agreement.

343 ROBERTS: In the agreement they will discuss the changes so that there it will be cited that the agreement will change as the child grows up.

350 CHAIR BRIAN: Does Subsection 2 say that the agreement should require provisions for an amendment? 353 ROBERTS: Yes.

354 REP. BAKER: Asks about Subsection 4 concerning mediation and modification of the agreement.

371 GERI AUERBACH, OREGON ADOPTIVE RIGHTS ASSOCIATION: Submits and reviews written testimony in support of SB 201. (EXHIBIT D)

401 SUSAN STOLTENBERG, OPEN ADOPTION AND FAMILY: Testifies in support of SB 201.

TAPE 133, SIDE A

047 REP. BAKER: Asks about mandating counseling requirement in adoptions.

056 AUERBACH: Supports that.

WORK SESSION ON SB 201

065 REP. MASON: Discusses the amendments and asks about opposition.

068 TRAVIS: Supports all of the amendments, but is concerned with the mediation section.

091 REP. BAKER: Asks about enforcement of the legislation.

095 TRAVIS: Yes.

096 REP. BROWN: Asks about the Senate's possible reaction to CSD's amendments.

098 TRAVIS: Explains that the amendments will probably not be a problem with the Senate.

102 CHAIR BRIAN: Discusses the definition of mediation.

114 TRAVIS: If "mediation" is left in, anyone that both parties agree to could do it.

121 MOTION: REP. MASON: Moves to AMEND SB 201 by adding conceptual amendments as stated.

VOTE: Hearing no objections the amendments are ADOPTED.
Rep. Edmunson is

excused.

122 MOTION: REP. BAKER: Moves to AMEND SB 201 by deleting cited wording on lines 13-14.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Edmunson is excused.

138 CAROLE SOUVENIR, COMMITTEE COUNSEL: Discusses Section 4A about mediation and modification of mediation relating to civil action.

145 TRAVIS: Explains that the mediation would be before the legal action.

154 CAROLE SOUVENIR, COMMITTEE COUNSEL: Discusses the amended

Subsection 4 and explains the clarification. Suggests an amendment to line 13 for

the purposes of clarification.

163 TRAVIS: Discusses language changes.

195 MOTION: CAROLE SOUVENIR, COMMITTEE COUNSEL: Proposes a conceptual amendment to AMEND SB 201.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Edmunson is excused.

204 MOTION: REP. BAKER: Moves SB 201 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

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

PUBLIC HEARING ON SB 234

(SB 234 repeals limitation on bringing action based on conduct constituting child abuse that requires that action be brought before plaintiff attains 40 years of age. EXHIBIT E)

Witnesses: Mickey Morey, Sex Abuse Victims Jill Otey, Survivors of Sex Abuse Rep. Kate Brown, District 13 Mickey Hartshorn, Victim Paula Hole, Victim Linda Uhlir, Victim Gay Angelos, Victim Nancy Williams, Victim

223 MICKEY MOREY, SEX ABUSE VICTIMS: Submits and reviews written testimony in support of SB 234. (EXHIBIT F)

297 JILL OTEY, SURVIVORS OF SEX ABUSE: Testifies in support of SB 234. 340 REP. BAKER: On pg. 2 of Section 2, lines 8-9 cites wording. Attempting to try and get a second chance?

354 OTEY: It would exclude that possibility.

356 REP. BAKER: What does "adjudicated" mean?

357 OTEY: Describes a situation of a case being adjudicated.

365 REP. BAKER: We always have to have a statute of limitations.

372 REP. MASON: Can you lose on a statute issue when it is a question of fact?

378 OTEY: No, it can go to the jury on statute of limitations.

379 REP. MASON: Is there any way to affect those cases lost on a question of fact whether or not the statute run.

384 OTEY: Given Oregon's inability to question jurors, I can't answer that.

389 REP. BAKER: A jury can merge two issues together if there isn't a request for a specific findings of facts.

391 REP. MASON: The statute is retroactive and should be dismissed.

397 OTEY: Specific questions always need to be asked to a jury in these situations.

402 MOREY: This isn't a statute of limitations in a delayed discovery situation.

408 REP. MASON: Has it ever been an issue that someone was 40 years old?

410 OTEY: Yes.

418 REP. BRIAN: What kinds of recourse are involved when suits are brought? What kind of recovery or damages are typical in these cases?

432 MOREY: It is dependent on if the case can be pursued from a financial standpoint.

451 REP. BAKER: Bringing a case against the perpetrator is sometimes the most therapeutic.

454 OTEY: Explains that these child abuse crimes are not excluded to only one class of people. Mental health benefits are hard to find, and also

have limited resources.

TAPE 132, SIDE B

056 REP. KATE BROWN, DISTRICT 13: Testifies in support of SB 234.

061 MICKEY HARTSHORN, VICTIM: Testifies in support of SB 234. 082 PAULA HOLE, VICTIM: Testifies in support of SB 234.

101 LINDA UHLIR, VICTIM: Testifies in support of SB 234.

130 GAY ANGELOS, VICTIM: Testifies in support of SB 234.

143 NANCY WILLIAMS, VICTIM: Testifies in support of SB 234.

184 MOREY: Discusses Nancy William's case.

198 REP. BAKER: Asks about an attorney trying to go after assets of perpetrator and if the action dies with the death of the perpetrator.

204 MOREY: Once the perpetrator is dead and the estate has been closed, you are barred like anyone else.

WORK SESSION ON SB 234

212 MOTION: REP. MASON: Moves SB 234 TO FULL COMMITTEE with a DO PASS recommendation.

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

PUBLIC HEARING ON SB 211

(SB 211 allows persons who are interested in trust to modify terms of trust or clarify interpretation of trust by written agreements filed in circuit court. EXHIBITS G, H)

Witnesses: Frank Brawner, Oregon Bankers Association D. Charles Mauritz, Oregon State Bar

234 FRANK BRAUNER, OREGON BANKERS ASSOCIATION: Testifies in favor of SB 211.

256 D. CHARLES MAURITZ, OREGON STATE BAR: Submits and reviews written testimony in support of SB 211. (EXHIBIT I)

286 REP. MASON: Asks about the memo from Judge Johnson, EXHIBIT H.

300 CHAIR BRIAN: Discusses the transferring of assets mentioned in the Johnson memo.

305 MAURITZ: Explains the differences in the trust agreement. 326 REP. BAKER: Asks about the court procedure in the special need trusts.

328 MAURITZ: Discusses Judge Johnson's opinion in memo and special needs trusts.

343 CHAIR BRIAN: Asks about the transferring of assets away from the person covered in the trust.

352 MAURITZ: Discusses what has to happen for a trust to be a specialized trust, and how people qualify.

383 REP. BAKER: Asks about the court proceedings to get a trust.

388 MAURITZ: Explains the proceedings with consensus.

394 REP. BAKER: Asks how it impacts other time frames.

399 MAURITZ: Discusses the modification of the bill, and the process that it has to go through.

WORK SESSION ON SB 211

425 MOTION: REP. MASON: Moves SB 211 TO FULL COMMITTEE with a DO PASS recommendation.

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

PUBLIC HEARING ON SB 214

Witnesses: Bob Saalfeld, Estate Planning Section of the State Bar

455 CAROLE SOUVENIR, COMMITTEE COUNSEL: SB 214 Specifies that claims against estate of decedent that are insured need not be presented to

personal representative in same manner as other claims.

464 BOB SAALFELD, ESTATE PLANNING SECTION OF THE STATE BAR: Submits and reviews written testimony in support of SB 214. (EXHIBIT J)

TAPE 133, SIDE B

043 REP. BAKER: Asks about the closure of estates. Discusses the claims of injured parties, against the assets of the insurance company.

048 SAALFELD: Explains probate assets claims.

055 REP. BAKER: Asks about the distribution of the assets.

WORK SESSION ON SB 214

062 MOTION: REP. BAKER: Moves SB 214 TO FULL COMMITTEE with a DO PASS recommendation.

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

PUBLIC HEARING ON SB 586

Witnesses: Timothy Travis, Oregon Juvenile Rights Project Diana Roberts, Children's Services Division

071 CAROLE SOUVENIR, COMMITTEE COUNSEL: SB 586 specifies related or nonrelated foster parent who has established emotional ties with child

may file motion to intervene and petition court for custody, guardianship, visitation or other generally recognized right of parent or person in loco parentis.

079 REP. MASON: Asks about the "foster parent" language.

083 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT: Discusses language. Submits and reviews written testimony in support of SB 586. (EXHIBIT K)

093 REP. BAKER: Asks about the statute relating to emotional parent-child relationships. Asks about the placing of a child in a foster home on a

related basis.

096 TRAVIS: Yes, there is a policy priority. Continues with testimony.

175 CHAIR BRIAN: Asks about the time relating to federal law for the planned review.

177 TRAVIS: Explains the proposal of time.

184 DIANA ROBERTS, CHILDREN'S SERVICES DIVISION: Submits and reviews written testimony in opposition of SB 586. (EXHIBIT L)

271 CHAIR BRIAN: Discusses interim activity and commitments to children. Asks about the statistics.

293 TRAVIS: Discusses the statistics of public policy.

WORK SESSION ON SB 586

307 MOTION: REP. BAKER: Moves SB 586 TO FULL COMMITTEE with a DO PASS recommendation.

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

334 CHAIR BRIAN: Adjourns the meeting at 3:04 p.m.

Submitted by:

Reviewed by:

Sarah May
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Testimony on SB 201 - Committee Counsel - 1 page B - Testimony on SB 201 - Juvenile Rights Program - 3 pages C - Testimony on SB 201 - Department of Human Resources - 2 pages D - Testimony on SB 201 - Oregon Adoptive Rights Association - 1 page E - Testimony on SB 234 - Committee Counsel - 1 page F - Testimony on SB 234 - Michael Morey - 13 pages G - Testimony on SB 211 - Committee Counsel - 4 pages H - Testimony on SB 211 - Judge Lee Johnson - 2 pages I - Testimony on SB 211 - Charles Mauritz - 6 pages J - Testimony on SB 214 - Robert Saalfeld - 3 pages K - Testimony on SB 586 - Timothy Travis - 4 pages L - Testimony on SB 586 - Department of Human Resources - 3 pages