

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL
ADMINISTRATION

June 10, 1993 Hearing Room 357 1:00 p.m. Tapes 136 - 137

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

VISITING MEMBERS: Rep. George Eighmy Rep. Kate Brown

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

MEASURES CONSIDERED: SB 251 - Relating to domestic relations SB
966 - Relating to delegation of certain powers
regarding minor children SB 1051 - Relating to juveniles

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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 136, SIDE A

004 CHAIR BRIAN: Calls the meeting to order at 1:13 p.m.

PUBLIC HEARING ON SB 966

(SB 966 allows member of organized militia or reserves who is called to
and enters active military service of United States to delegate powers
as parent or guardian of minor child to another person for up to term
of active duty plus 30 days.)

Witnesses: Mike Jacobson, Staff for Sen. Stan Bunn Mike Caldwell,
Oregon National Guard

011 MIKE JACOBSON, STAFF FOR SEN. STAN BUNN: Testifies in support
of SB 966.

019 MIKE CALDWELL, OREGON NATIONAL GUARD: Testifies in support of SB
966 .

044 REP. BAKER: Was there any analysis done by the Oregon State Bar?

045 CALDWELL: Doesn't know.

047 REP. BAKER: Family law should be in the best interest of the
child. This provision is overriding that.

048 CALDWELL: Cites lines 17-19, relating to the child's best

interest.

055 REP. BAKER: So the court has the final say?

056 CALDWELL: Yes.

WORK SESSION ON SB 966

059 MOTION: REP. BAKER: Moves SB 966 TO FULL COMMITTEE with a DO PASS recommendation.

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

PUBLIC HEARING ON SB 251

Witnesses: Michael Wells, Oregon State Bar Susan Garren, Grandparent Support Group

066 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 251 allows court to award same temporary relief pending appeal of certain domestic relations suits as

court can award prior to issuing decree. (EXHIBITS A-D)

082 MICHAEL WELLS, OREGON STATE BAR: Testifies and submits written testimony in support of SB 251. (EXHIBIT E)

170 REP. BAKER: Asks about the recommendations by John Ellis.

174 WELLS: Explains the Ellis proposal that deals with child support announcements. Explains the creation of HB 2976.

186 REP. BAKER: Asks about the language proposed in HB 2976 by Ellis. Asks about the judgement length, and the composition of the working group

that created the amendments.

194 WELLS: Explains Ellis's position working with the Department of Justice.

205 HOLLY ROBINSON, COMMITTEE COUNSEL: Cites and explains proposed amendments.

213 SUSAN GARREN, GRANDPARENT SUPPORT GROUP: Testifies and submits written testimony in support of SB 251 and SB 1051. (EXHIBIT F)

237 HOLLY ROBINSON, COMMITTEE COUNSEL: Gives example of natural vs. psychological parent. Explains the court of appeals process and the

language in the proposed amendments.

294 REP. BAKER: Asks about the court granting temporary custody of a child.

297 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses example of when

the temporary custody family wants full custody, keeping the child's best

interest in hand.

313 REP. EDMUNSON: Asks about the minimum duration of the intervening duration.

319 HOLLY ROBINSON, COMMITTEE COUNSEL: Explains the five section of the intervener statute and their time statutes.

329 REP. EDMUNSON: This proposal would be a minimum of six months?

336 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT: Explains that the relationship of someone being granted custody of a child must have existed within the six months, prior to the filing of the petition. Compares SB 251 to SB

1051 and what would be better for the child.

357 CHAIR BRIAN: Which bill do you like better?

359 TRAVIS: Likes SB 251-3 amendments, explains.

371 CHAIR BRIAN: Discusses what the goal is for the best interest of the child.

375 REP. EDMUNSON: Discusses the present law, and what it would be with the proposed amendments.

405 REP. BAKER: Discusses cases and that there is a major policy change.

412 REP. EDMUNSON: Explains that it is critical that the presumption favors the natural parents.

427 REP. BAKER: This raises stakes of intervention, explains.

TAPE 137, SIDE A

PUBLIC HEARING ON SB 1051

Witnesses: Nancy Simmons, Juvenile and Family Justice Project Judge Stephen Herrell, Multnomah County Katherine English, Juvenile Court Referee Timothy Travis, Juvenile Rights Project 017 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 1051 revises juvenile code and is the companion bill to SB 251.

031 NANCY SIMMONS, JUVENILE AND FAMILY JUSTICE PROJECT: Testifies and submits written testimony in support of SB 1051. (EXHIBIT I)

056 JUDGE STEPHEN HERRELL, MULTNOMAH COUNTY: Testifies and submits written testimony in support of SB 1051. (EXHIBIT J) Discusses proposed

amendments.

162 KATHERINE ENGLISH, JUVENILE COURT REFEREE: Testifies in support

of SB 1051. 185 REP. BAKER: Asks about who can file a petition.

186 ENGLISH: Anyone can file a petition, but not a termination petition.

187 REP. BAKER: Someone can't file except under the state?

188 ENGLISH: Anyone can file a petition to ask to investigate the circumstances of a child's home life.

190 REP. BAKER: Discusses a case, where someone did this.

193 HERRELL: The law is ambiguous right now about who can decide these cases, that is why we need this amendment.

199 REP. BAKER: Asks about the rationale for the child filing a petition.

201 ENGLISH: Would like children to be able to file these petitions.

214 REP. BAKER: Who has the responsibility for prosecuting the case?

216 ENGLISH: The child's attorney who is joined by the district attorney and CSD.

218 REP. BAKER: Who pays for the child's attorney?

219 ENGLISH: The tax payers.

221 REP. BAKER: Discusses what would happen if Section 56 were to remain.

225 ENGLISH: Explains the effects of the amendment.

233 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT: Explains how much they are paid for representing a child.

243 CHAIR BRIAN: Asks what would happen if other language was added to the amendment.

249 HERRELL: That wouldn't work because a termination proceeding is an all or nothing. Explains what the state must prove for the parents to be

declared unfit.

264 CHAIR BRIAN: Asks about the concern for an intervener.

271 HERRELL: Discusses the problems of state action.

292 ENGLISH: Discusses termination of parental rights, and what happens in the court system. Explains why favors SB 251.

322 REP. BAKER: Concerned about the wide range of cases.

345 ENGLISH: Cites a case relating to the termination of a parents rights.

362 REP. BAKER: Asks about amending the statute and if that would solve the problem of contested adoption.

373 ENGLISH: Discusses courtesy terminations getting children homes faster.

380 REP. BAKER: We are privatizing the termination industry.

382 TRAVIS: Discusses permanent planning and what CSD does.

408 REP. BAKER: This bill has no initiating criteria of when this can happen.

409 TRAVIS: Explains the process of getting a parent for an act, that would allow a termination.

428 REP. MASON: Discusses problems with the exemptions to the case.

TAPE 136, SIDE B

016 TRAVIS: Explains that they do not want to change the criteria to bring determination.

022 HERRELL: Explains the changes he would like to make.

030 REP. BROWN: Discusses the attorney for the child, recognizing the child's best interest vs. the psychological parent who may have their

own interests involved.

039 TRAVIS: Discusses the rights that should be extended to the children.

063 CHAIR BRIAN: Asks about the work done by the state in the proceedings for child's rights.

076 TRAVIS: Explains the legal requirement stated by the law, that a child has someone to represent them in court.

089 ENGLISH: Explains why there is such a need for extending rights to the children.

107 REP. MASON: If you allow children to bring actions, you don't know what the ramifications are going to be.

142 ENGLISH: We are not changing the fundamentals. This bill is expanding the way children can operate in court.

171 TRAVIS: We are not changing anything, we are clearing up a misconception that the members of the bench have that it is not right.

191 REP. BAKER: Goes through a section-by-section analysis of SB 1051, and asks questions.

213 ENGLISH: "Adoptive" or "biological" does not cover all of the father type figures. We tried to define the "legal" father.

225 HERRELL: It is a matter of law, the a man is the father.

229 ENGLISH: The definition of "father" comes from codifying the case law. This bill does not give a man any more rights he doesn't already have

under the state law.

235 REP. MASON: Asks about the question of whether a man is the "father".

239 ENGLISH: Certain presumptions under the law are rebuttable.

254 REP. BAKER: This is for notification purposes?

256 ENGLISH: Yes.

259 REP. BAKER: Continues with section by section analysis of bill. Why are you not allowing the Court Appointed Special Advocate (CASA) to also get that information?

283 SIMMONS: CASA's are those acting under the judge's direction.

285 REP. BAKER: But you are excluding the CASA.

287 SIMMONS: No, cites language. They are already covered in the definition.

297 REP. BAKER: We need to add "CASA", cites placement in the bill. Continues with analysis. Asks about the standard for care and education for a child.

321 HERRELL: Discusses "support" and what it means.

329 REP. BAKER: "Care" is a broad term.

330 ENGLISH: We wanted something to be broad but not too broad.

334 REP. BROWN: "Care" seems to be redundant in that line.

338 ENGLISH: The other words are alternative language. 344
HERRELL: Discusses distinctions.

354 REP. BAKER: Continues with analysis.

369 HERRELL: Explains the child abuse reporting law.

372 SIMMONS: Correct, the language for child abuse reporting was moved into this word for word. 381 REP. BAKER: Continues with analysis of bill.

391 HOLLY ROBINSON, COMMITTEE COUNSEL: We are getting a bill that has been requested by CSD and the federal government dealing with abuse reporting and spiritual treatment.

398 REP. BAKER: Concerned about the exception for treating by spiritual means. Continues with analysis of bill.

426 ENGLISH: The committee just transferred the child abuse reporting act into the juvenile code.

432 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses two options

that the committee has concerning the above stated words.

440 ENGLISH: We didn't plan on changing the child abuse reporting act.

446 REP. BAKER: Continues with analysis. Why is there a distinction in the language?

TAPE 137, SIDE B

011 SIMMONS: The language was broadened in the child abuse reporting law to include non-mandatory reporters. It was also changed to remove

distinctions between the court and CSD in handling records.

015 REP. BAKER: Asks about the validity of the distinction.

019 HERRELL: Likes the distinction and wouldn't want to take it out.

022 SIMMONS: The distinction isn't present law, it was broadened.

024 REP. BAKER: Continues with analysis. Why is there a requirement of a court approval for a physical examination?

033 SIMMONS: This is current law, and is important because it requires the person who picks the child up, to get a court order.

038 REP. BAKER: How practical is it to get permission from the court for an exam?

040 ENGLISH: Has never seen a request filed, but has ordered one.

042 REP. BAKER: Can someone get a request filed at any time of the day? 043 ENGLISH: CSD has to wait and get a temporary custody order the next day.

045 REP. BAKER: What about a rape victim?

049 HERRELL: That doesn't happen. Doesn't want to get into certain issues because this is a clean-up bill.

056 ENGLISH: We didn't revise the child abuse reporting act when we added it into the juvenile code.

063 HERRELL: The changes made were technical.

064 SIMMONS: The biggest change was to include voluntary reporters.

066 CHAIR BRIAN: Asks about the physical evidence that might be there, but will disappear if a physical examination isn't done.

072 ENGLISH: Judges are available 24 hours a day, for those cases.

084 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses what the interim study did.

088 REP. BAKER: Continues with analysis. Asks about photographs used as a record, and if they are destroyed?

094 SIMMONS: CSD records are destroyed on a schedule.

096 REP. BAKER: Why are the photographs and fingerprints kept separately?

097 SIMMONS: They can't be disclosed.

098 REP. BAKER: Continues with analysis. Asks about a central registry.

100 HERRELL: Yes.

102 REP. BAKER: Continues with analysis. Asks about either spouse being a witness against the other and if that is existing law.

105 SIMMONS: Yes.

108 REP. BAKER: Continues with analysis. Asks about the new person who can petition the court for rights of limited participation, if that person

is defined and if it is existing law.

112 ENGLISH: It is new. Explains why they added the language of who should be able to petition. 117 HERRELL: Gives the example of foster parents and explains.

130 HOLLY ROBINSON, COMMITTEE COUNSEL: Is HB 2144 out of the Senate?

132 TRAVIS: HB 2144 has been passed.

134 REP. BAKER: Continues with analysis. Asks if the mandatory consolidation statute is current, and what the policy is.

139 ENGLISH: Explains the policy on the statute.

145 REP. BAKER: You are forcing consolidation.

147 ENGLISH: Yes, if there is a pending domestic relations suit in which custody of the child is disputed.

150 HERRELL: Discusses what can happen under this kind of provision.

159 REP. BAKER: Continues with analysis. Asks about the court's authority in ordering the perpetrator to move from the house where the child

resides.

174 ENGLISH: Gives examples of cases and what could happen in the family relations.

176 REP. BAKER: But this would force them to move from their own house.

177 HERRELL: Explains the due process that is required.

184 REP. BAKER: You have the right to remove the child from the problem, but you don't have the right to force someone who is on their own

property to do something so that the child will be protected.

191 TRAVIS: Explains that this language has to be in the summons, and asks why it was removed. It is less damaging to the child to stay in the

home, and remove the perpetrator.

207 REP. BAKER: Asks about the current time length standard.

211 ENGLISH: Six months is the current standard.

214 REP. BAKER: Asks if you can force testimony by telephone.

220 HERRELL: Explains that this is deposition testimony only.

RE-OPENS WORK SESSION ON SB 251

251 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses the conflict between SB 251 and HB 2976 which has already been passed.

320 MOTION: REP. BAKER: Moves to AMEND SB 251 by deleting Sections 1,4, and 6, and inserting HB 2976.

REP. MASON: Objects.

VOTE: The amendments are ADOPTED. All members are present.

325 MOTION: CHAIR BRIAN: Moves to ADOPT SB 251-3 AMENDMENTS.

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

334 MOTION: REP. BAKER: Moves SB 251 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

VOTE: 3-0 MOTION PASSES AYE: Baker, Edmunson, Brian NO: Mason

342 CHAIR BRIAN: Adjourns the meeting at 3:00 p.m.

Submitted by:

Reviewed by:

Sarah May
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Proposed Amendments to SB 251 - Committee Counsel - 3 pages B -
Testimony on SB 251 - Committee Counsel - 2 pages C - Testimony on SB
251 - Committee Counsel - 1 page D - Testimony on SB 251 - Committee
Counsel - 16 pages E - Testimony on SB 251 - Michael Wells - 2 pages F
- Testimony on SB 251 - Susan Garren - 1 page G - Proposed Amendments
to SB 1051 - Committee Counsel - 1 page H - Testimony on SB 1051 -
Multnomah Judicial Administration - 1 page I - Testimony on SB 1051 -
Nancy Simmons - 2 pages J - Testimony on SB 1051 - Judge Stephen
Herrell - 7 pages