

SENATE COMMITTEE ON
JUDICIARY

February 15, 1993 Hearing Room C
1:00 p.m. Tapes 26-27

MEMBERS PRESENT: Sen. Dick Springer, Chair
Sen. Neil Bryant
Sen. Jeannette Hamby
Sen. Bob Shoemaker
Sen. Catherine Webber

MEMBERS EXCUSED: Sen. Grattan Kerans

STAFF PRESENT: Karen Quigley, Committee Counsel
Kirk Bailey, Committee Clerk

ISSUES DISCUSSED: Executive Appointment
Public Hearing

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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.

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TAPE 26, SIDE A

003 SEN. SHOEMAKER opens the hearing at 1:04pm in the absence of
CHAIR
SPRINGER.

Executive Appointment

007 SEN. SHOEMAKER: Proceeds with confirmation review for the Board
on
Public Safety Standards and Training.

009 FRANK HALL, DEPARTMENT OF CORRECTIONS: Offers introductory
comments.

029 MOTION: SEN. SHOEMAKER: moves to CONFIRM Frank Hall to the Board
on
Public Safety Standards and Training.
VOTE: In a roll call vote all members present vote AYE. SEN. KERANS
and
SEN. HAMBY are excused.

034 SEN. SHOEMAKER: The motion CARRIES.

SEN. WEBBER will carry the nomination on the floor.

LC 1195 (EXHIBIT O)

KAREN QUIGLEY, COMMITTEE COUNSEL: Reviews LC 1195, Relating to hospitals, at request of Oregon Trial Lawyers Association and Oregon Primary Care Association.

049 MOTION: SEN. SHOEMAKER: Moves LC 1195 be introduced.
VOTE: Hearing no objection, so ordered.

SB 257: Reorganizes juvenile code.

WITNESSES:

JUDGE STEPHEN HERRELL, CIRCUIT COURT, MULTNOMAH COUNTY
TOM JOHNSON, OREGON JUVENILE DEPARTMENT DIRECTORS ASSOCIATION
GINA WOOD, OREGON COMMUNITY CHILDREN & YOUTH SERVICES COMMISSION
TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT
LEN MUNKS, CHILDRENS SERVICES DIVISION
MARY BOTKIN, AFSCME

SEN. COHEN submits only written testimony in support of the bill (EXHIBIT A).

061 JUDGE HERRELL: Submits and reviews written testimony (EXHIBIT B).
>Not aware of any opposition.
>Section 105, sub 2 repeats language, recommends removal.

314 TOM JOHNSON: Submits and reviews written testimony in support of the bill (EXHIBIT C).

340 GINA WOOD: Submits and reviews written testimony in support of the bill (EXHIBIT D).

394 TIMOTHY TRAVIS: Submits and reviews written testimony in support of the bill (EXHIBIT F).

429 LEN MUNKS: Submits and reviews written testimony in support of the bill (EXHIBIT E).

TAPE 27, SIDE A

008 MARY BOTKIN: Identifies concerns with the bill. Urges committee to delay bill for further review.

048 SEN. SHOEMAKER: How much time do you need to review?

BOTKIN: Week to 10 days.

056 CHAIR SPRINGER: Who is reviewing? Do they have the contacts they need if there are questions?

BOTKIN: In contact with Gina Wood. Disappointed at not being included

in the process.

068 CHAIR SPRINGER: Calls on Judge Harrell. Would 7-10 days fit timetable?

HERRELL: Up to the committee.

>Concerned that bill be on the Governor's desk asap.

088 CHAIR SPRINGER: Who should we contact?

HERRELL: Will maintain contact with counsel.

090 CHAIR SPRINGER: Is bill fast-tracked on House side also?

HERRELL: Holly Robinson, House Judiciary staff, has been involved.

They know it is coming.

SB 198: Allows juvenile court to enter restraining order under specified circumstances.

WITNESSES:

TIMOTHY TRAVIS, JUVENILE JUSTICE PROJECT.

MARK MCDONNELL, OREGON DISTRICT ATTORNEY'S ASSOCIATION

DAVID NEBEL, OREGON LEGAL SERVICES

JUDGE STEPHEN HERRELL, CIRCUIT COURT JUDGE, MULTNOMAH COUNTY

BETTY UCHYTIL, CHILDRENS SERVICES DIVISION

BILL LINDEN, STATE COURT ADMINISTRATOR

118 TIMOTHY TRAVIS: Submits and reviews written testimony in support of bill (EXHIBIT G).

191 SEN. BRYANT: Who pays for perpetrator's attorney?

TRAVIS: Already allowed appointed attorney out of indigent defense budget.

198 SEN. BRYANT: Is that because they may incriminate themselves?

TRAVIS: Mostly due to constitutionally mandated rights when dealing with parents' liberty interest in their children.

205 SEN. BRYANT: Determination of attorney's fee same method as criminal procedure?

TRAVIS: Yes. Refers to ORS 135.050.

210 SEN. BRYANT: Safeguards contained in juvenile code?

TRAVIS: Yes, that is correct.

219 QUIGLEY: Does finding include future or continued danger, or only what has already occurred?

TRAVIS: On finding of probable cause that abuse has occurred and order

is in best interest of the child.

>"Best interest" language could cover future possibilities.

240 QUIGLEY: Is there a method to inform law enforcement about order?

TRAVIS: Same mechanism as Family Abuse Prevention Act.

253 QUIGLEY: Does this change or expand jurisdiction of juvenile courts?

TRAVIS: No, expands power of the court, but not grounds of jurisdiction.

261 SEN. SHOEMAKER: Does "county sheriff" language include deputies?

TRAVIS: Yes. Provided for in law.

274 JUDGE HERRELL: Testifies in support of the bill.

286 MARK MCDONNELL: Testifies in support of the bill.

>This codifies existing practice.

>Also covers abuse by siblings.

>Suggests expanding to include when criminal complaint has been filed for abuse.

318 DAVID NEBEL: Submits and reviews written testimony in support of the bill (EXHIBIT H).

>Recommends bill state explicitly orders cannot be issued ex parte.

344 SEN. BRYANT: If that were the case, would there be exception for defendant avoiding service?

NEBEL: If defendant is given notice and doesn't appear then there is no problem issuing the order. Notice and the opportunity for hearing is the issue.

356 SEN. BRYANT: How much notice should there be?

NEBEL: Hearings are scheduled quick. Notice within 24 hours would be sufficient.

365 HERRELL: Doesn't see how this can work other than through issuance of ex parte order and then notice and opportunity for hearing.

403 BETTY UCHYTIL: Submits and reviews written testimony in support of the bill (EXHIBIT I).

426 BILL LINDEN: Comments on financial impact, not substance of bill.

>Fiscal impact to indigent defense, \$1,500 to \$14,000.

>Additional workload - \$1,000 to \$45,000.

>Requests bill be sent to Ways and Means.

SB 199: Allows juvenile court to amend petition based on delinquency to one based on dependency.

WITNESSES:

JULIE MCFARLANE, JUVENILE RIGHTS PROJECT
MARK MCDONNELL, OREGON DISTRICT ATTORNEYS ASSOCIATION
BETTY UCHYTIL, CHILDRENS SERVICES DIVISION
JUDGE STEPHEN HERRELL, CIRCUIT COURT, MULTNOMAH COUNTY

TAPE 26, SIDE B

033 JULIE MCFARLANE: Submits and reviews written testimony in support of the bill (EXHIBIT J).

086 MARK MCDONNELL: Testifies in opposition to the bill.

125 BETTY UCHYTIL: Submits and reviews written testimony in opposition to the bill (EXHIBIT K).

140 JUDGE HERRELL: Testifies in opposition to the bill.
>Concerned about changing delinquency case to dependency case.

161 SEN. SHOEMAKER: Your difficulty is with discretionary clause rather than second clause?
>First clause would permit petition to be converted from delinquency to dependency depending on the case?

HERRELL: Yes.
>Doesn't think that is a role for the court. Court should do it on their own motion. Not comfortable with that power.

177 SEN. SHOEMAKER: You don't agree with CSD who feels second sentence is inappropriate?

HERRELL: Don't agree at all. State of mental health system in Oregon is terrible.

208 SEN. SHOEMAKER: Under present circumstances are delinquency proceedings going forward even if child is unable to aid and assist?

HERRELL: Not sure.

213 SEN. SHOEMAKER: Do we need this law?

HERRELL: We have kids who are mentally incompetent.
>Aid and assist issue has not been raised in court. Kids often need help they are not likely to get.

233 MCFARLANE: With McDonnell. McDonnell and Harrell have the same

objection to the bill.

>They have no problem with the specific intent of the bill relating to the aid and assist program, and have amendments that will address concerns.

253 MCDONNELL: No objection to bill if delete line 14 to period after c
on
line 15.

277 MCFARLANE: Not the intent of proponents to address expungement.

284 CHAIR SPRINGER: House bill? Also need to review CSD issues.

MCDONNELL: HB 3033.

294 CHAIR SPRINGER: Does it deal with issues in this bill or Bishop
case?

MCDONNELL: Deals with Bishop case.

312 CHAIR SPRINGER: Was case ever appealed?

MCDONNELL: Court of Appeals stated Circuit Court did have authority to do informal disposition.

SB 202: Provides that procedures for jurisdictional hearings also apply to hearings concerning termination of parental rights.

WITNESSES:

MARK MCDONNELL, OREGON DISTRICT ATTORNEYS ASSOCIATION
JUDGE STEPHEN HERRELL, CIRCUIT COURT, MULTNOMAH COUNTY
JULIE MCFARLANE, JUVENILE RIGHTS PROJECT
BILL LINDEN, STATE COURT ADMINISTRATOR

347 MARK MCDONNELL: Testifies in support of changes in Subsection 1 to
line
31, p.1.
>Concerned about increasing cases where parents entitled to court
appointed counsel.

362 JULIE MCFARLANE: Submits and reviews written testimony in support
of
the bill (EXHIBIT L).

477 JUDGE HERRELL: Testifies in support of the bill and testimony
by
McFarlane.

490 SEN. SHOEMAKER: Testimony did not relate to portion of bill that
calls
for court to appoint counsel to represent parents?

TAPE 27, SIDE B

036 MCFARLANE: Correct.

>Section puts in references to ORS 419.523 and .525.

041 SEN. SHOEMAKER: Not intending to change ORS 419.525?

MCFARLANE: Correct. Provides that appointment of counsel is still governed by termination statute.

047 SEN. SHOEMAKER: Recommends reviewing language.

MCFARLANE: Relates to amendment in new paragraph 3, section a. On line 17 added 419.523 and .525.
>Clarifies that parents appointment of counsel governed by original statute.

067 BILL LINDEN: Testifies on fiscal impact only.

>\$48,000 impact to indigent defense fund.

>These are expensive cases. \$500 per case, 84 counsel appointments.

>Recommends sending bill to Ways and Means.

SB 203: Provides for jury trial, upon request of child, in juvenile proceeding alleging delinquency as a basis for jurisdiction.

WITNESSES:

TOM JOHNSON, OREGON JUVENILE DEPARTMENT DIRECTORS

JUDGE STEPHEN HERRELL, CIRCUIT COURT, MULTNOMAH COUNTY

JULIE MCFARLANE, JUVENILE RIGHTS PROJECT

BILL LINDEN, STATE COURT ADMINISTRATOR

095 JULIE MCFARLANE: Submits and reviews written testimony on behalf of Angela Sherbo in support of the bill (EXHIBIT M).

145 JUDGE HERRELL: Testifies in opposition to bill.

>Juvenile courts do not have physical space for jury trial.

>Jury trials would not result in better quality of justice.

>Implementation in rural counties would be difficult.

>Texas has right to trial which is seldom exercised but very difficult when it is.

173 TOM JOHNSON: Testifies in opposition.

>Expensive and unnecessary provision.

>Jury trial not needed, judges adequate to task.

197 SEN. SHOEMAKER: Considering severity of sentences, shouldn't children

have same protection as adults? Is it possible to permit juvenile to call for jury trial after proceeding if unsatisfied with result?

HERRELL: Wouldn't favor that approach.

>There are not that many cases or requests.

>Concerned that possibility of additional trial could be used as bargaining tool.

231 MCFARLANE: Not a suggestion they had considered.
>Cites experience of other states with these cases where numbers are
very low.
>Jurisdictions similar to Multnomah only experienced about 10 per
year.

246 BILL LINDEN: Testifies on fiscal impact.
>Estimate significant impact: \$77,000 - \$260,000.
>Would have to summon over 10,000 additional jurors.
>Indigent defense impact of \$8,500 to \$21,000.
>Recommend refer to Ways and Means.

272 CHAIR SPRINGER: Clarify need for jurors? Would you really need
to
bring in additional jurors?

LINDEN: Numbers based on state wide needs.
>In Multnomah, often err on the side of too few jurors.

SB 200: Allows attorney appointed to represent child in juvenile court
to
have same access to records concerning child as court appointed
special advocate.

WITNESSES:

MARK MCDONNELL, OREGON DISTRICT ATTORNEYS ASSOCIATION
TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT

304 TIM TRAVIS: Submits and reviews written testimony in support of
the
bill (EXHIBIT N).

346 MARK MCDONNELL: Concerned with bill in subsection f, page 2.
>Measure is overbroad.
>Concerned that documentation is not sufficient.
>Scope of information should be narrowed. Release should be upon order
of the court.

366 SEN. SHOEMAKER: Not questioning that order of appointment would be
a
valid order? Why should you need more than that?

MCDONNELL: No. Because no need for information would have to be
established.
>Confidentiality requirements concerning other individuals would be
overcome by the bill.

388 SEN. SHOEMAKER: Same concerns concerning court appointed
special
advocate?

MCDONNELL: Yes.

391 SEN. SHOEMAKER: Would holders of records seek protective order if
they

saw a problem?

>Would that be appropriate protection?

>Going into court wouldn't solve the problem addressed by the bill.

413 MCDONNELL: That method would be preferable to blanket authorization.

418 TRAVIS: Haven't encountered this problem before.

SEN. SHOEMAKER: If agency sees a problem, they could seek protective order.

427 TRAVIS: Currently can obtain information, this bill only substitutes

appointment order for CSD or court approval.

>Never refused information.

441 MCDONNELL: Concerned about release of additional information relating

to individuals and investigations other than child.

463 TRAVIS: If police aren't ready to complete investigation or issue

charges, then I'm not appointed the attorney yet.

CHAIR SPRINGER: Urges parties to review matter and propose compromise.

Adjourns hearing at 2:55pm.

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Karen Quigley
Administrator

EXHIBIT LOG:

A - Testimony on SB 257 - Joyce Cohen - 1 page
B - Testimony on SB 257 - Judge Stephen Harrell - 20 page
C - Testimony on SB 257 - Tom Johnson - 1 page
D - Testimony on SB 257 - Gina Wood - 19 pages
E - Testimony on SB 257 - Len Munks - 1 page
F - Testimony on SB 257 - Tim Travis - 2 pages
G - Testimony on SB 198 - Tim Travis - 3 pages
H - Testimony on SB 198 - David Nebel - 1 page
I - Testimony on SB 198 - Betty Uchytil - 2 pages
J - Testimony on SB 199 - Julie McFarlane - 1 page
K - Testimony on SB 199 - Betty Uchytil - 2 pages
L - Testimony on SB 202 - Julie McFarlane - 8 pages
M - Testimony on SB 203 - Angela Sherbo - 17 pages
N - Testimony on SB 200 - Tim Travis - 2 pages
O - LC 1195 - Staff - 1 page