

SENATE JUDICIARY
COMMITTEE

March 29, 1993 Hearing Room C
1:00 p.m. Tapes 73-74

MEMBERS PRESENT: Sen. Dick Springer, Chair
 Sen. Jeannette Hamby
 Sen. Karsten Rasmussen
 Sen. Gordon Smith
 Sen. Bob Shoemaker, Vice Chair
 Sen. Catherine Webber

STAFF PRESENT: Bill Taylor, Committee Counsel
 Kate Wrightson, Committee Coordinator
 Ellen L. Senecal, Committee Assistant

ISSUES DISCUSSED: Public Hearing on SB 501, SB 287 and SB 660.
 Work Session on SB 256 and SB 220.

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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 73, SIDE A

PUBLIC HEARING

SB 287: Revises laws relating to guardianships and conservatorships.

CHAIR SPRINGER: Opens hearing at 1:10 p.m.

WITNESSES:

SCOTT MCGRAW, OREGON STATE BAR
MEG NITINGALE, OREGON ADVOCACY CENTER
BILL LINDEN, JUDICIAL DEPARTMENT
MAXINE BUSH, AARP
GARY BEAGLE, GUARDIAN/CONSERVATOR ASSOCIATION
JANNA STARR, ARC OF OREGON
ALICE PICKARD, AARP

016 SCOTT MCGRAW, OREGON STATE BAR: Testifies support of SB 287.
 - The existing Bill is difficult to follow.
 - The draft has distinct procedures to follow. i.e. guardianships,

 general conservatorships.
 - Any practitioner can read the statutes and know what's going on.
 - Authority of the court will be expanded.
 - In closing, asks that an Interim Committee be appointed to
continue
 to review the bill.

131 SEN. SHOEMAKER: I don't see any reason why we should extend the hearing on this bill.

140 SEN. WEBBER: Supports the Interim Session committee.

147 SEN. G. SMITH: Some people have come a long way and I'd be happy to hear a brief testimony.

166 ALICE PICKARD, AARP and CAPITOL CITY TASK FORCE: Testifies in support of SB 287.

171 MAXINE BUSH, AARP and OREGON STATE LEGISLATIVE COMMITTEE TASK FORCE:

Submits and reviews written testimony in support of SB 287. (EXHIBIT C)

- To prevent intrusion into private lives and insure due process protection of civil rights of incapacitated persons.

212 BILL LINDEN, JUDICIAL DEPARTMENT: Submits and reviews written testimony

in support of SB 287. (EXHIBIT D)

- Agrees that an interim committee would be good.

219 MEG NITINGALE, OREGON ADVOCACY CENTER: Submits and reviews written

testimony in support of SB 287. (EXHIBIT B)

- Does not think that interim study is appropriate.

256 SEN. SHOEMAKER: Does the Bar provide a manual for lawyers to use in the guardianship area?

STARR: I'm not aware of a comprehensive one.

267 GARY BEAGLE, GUARDIAN/CONSERVATORSHIP ASSOCIATION: Submits and reviews

written testimony in support of SB 287. (EXHIBIT E)

- Key areas:

@ The need for training for guardians and conservators in the statewide system.

@ We feel the need for some kind of voluntary conservatorship within the statute so that "power of attorney" won't be abused.

316 CHAIR SPRINGER: Do you have a ballpark figure in terms of how many people's interests may be subject to stewardship?

BEAGLE: All thirty-nine.

329 JANNA STARR, ARC OF OREGON: Testifies in support of SB 287.

347 CHAIR SPRINGER: Refers to Lee Johnson's letter.

SB 501: Establishes procedures for superintendent of state mental hospital to follow when court has ordered defendant committed to superintendent's custody because court has reason to doubt defendant's capacity to stand trial.

WITNESSES:

BOB JOONDEPH, OREGON ADVOCACY CENTER
EVA KUTAS, MHDDSD
SANDRA MILLIUS, MENTAL HEALTH ASSOCIATION FOR OREGON
JANNA STARR, ARC OF OREGON
RICHARD HULTENG, PHD, MENTAL HEALTH ASSOCIATION

388 BOB JOONDEPH, OAC: Submits written testimony in support of SB
501 .
(EXHIBIT F)
- Wants to conform state law to Federal Supreme Court law in terms
of
the consent decree.

TAPE 74, SIDE A

003 JOONDEPH: Continues testimony.
- The law would differ in that there would be time frames on the
evaluation process. Evaluation within 90 days after being sent to
hospital.
- The Bill modernizes some of the language allowing psychologists
and
doctors to do evaluations.

091 SEN. SHOEMAKER: Can you explain to me how civil commitment works.

JOONDEPH: First of all, incapacity, in terms of being able to go to
court, is not a problem in the civil commitment area. Secondly, the
evidence standard is different, which is proof that persons with a
mental disorder, as a result, are dangerous to others and themselves.

130 SEN. SHOEMAKER: How about a capital crime?

JOONDEPH: One would get five years and then be moved into civil
commitment. It is possible that one could be held indefinitely.

150 SEN. SHOEMAKER: I guess one has to balance confinement without
proof
beyond a reasonable doubt against the danger to the public if you
don't
do this.

JOONDEPH: That's correct.

155 SEN. SHOEMAKER: What about the staleness of evidence?

JOONDEPH: That's a decision for the District Attorney. It is a problem that continues to exist.

205 JANNA STARR, ARC: Submits and reviews testimony in support of SB
501 .
(EXHIBIT H)

230 SANDRA MILLIUS, MENTAL HEALTH ASSOCIATION: Submits and reviews
written
testimony in support of SB 501. (EXHIBIT I)

251 EVA KUTAS, MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
DIVISION: Submits and reviews written testimony in support of SB 501.

(EXHIBIT J)

277 CHAIR SPRINGER: How many of these people will you have in your
facility
at a given time?

288 RICHARD HULTENG, PHD: We evaluate about 60 patients a year on
an
out-patient basis and admit about 90 a year. Fifteen to twenty-five
patients are in the hospital at any given time.

298 CHAIR SPRINGER: Are there many people you are holding for years?

HULTENG: The restoration of competency commitment is bi-modal. Most
are
restored to competency within first six months.

SB 660: Modifies filing time for Abuse Prevention Act restraining order.

WITNESSES:

JANET ARENZ, ACLU
LAUREN MOUGHON, WOMEN'S RIGHTS COALITION
CYNTHIA HELMKE, OREGON COALITION AGAINST DOMESTIC AND SEXUAL
VIOLENCE
DAVID NEBEL, OREGON LEGAL SERVICES

338 DAVID NEBEL, OREGON LEGAL SERVICES: Submits and reviews
written
testimony in support of SB 660. (EXHIBIT K)

400 SEN. G. SMITH: If this bill becomes law are there any potential
abuses
that could result to the abusers? Could this bill be abused?

TAPE 73, SIDE B

003 NEBEL: There is always the danger of abuse. There is a provision
in
that someone who thinks the statute is being misused can ask for a
hearing.

010 SEN. G. SMITH: I agree with you.

019 CYNTHIA and VIETTA HELMKE, OCADSV: Submits and reviews
written
testimony in support of SB 660. (EXHIBIT L)

039 LAUREN MOUGHON, WOMEN'S RIGHTS COALITION: Submits and reviews
written
testimony in support of SB 660. (EXHIBIT M)

058 JANET ARENZ, ACLU: Testifies in support of SB 660.

WORK SESSION

SB 256: Creates house of delegates of Oregon State Bar.

WITNESSES:

BOB BLAVIN, OREGON STATE BAR
OLSON, OREGON STATE BAR
JULIE FRANCE, PRESIDENT, OREGON STATE BAR

095 CHAIR SPRINGER: A measure of referendum may be submitted to the Bar
for
a vote, but the SB 256-4 amendments I have proposed restrict this and
provide that this should be done only in a limited situation. Correct,
Mr. Taylor? (EXHIBIT O)

108 TAYLOR: That's correct.

114 CHAIR SPRINGER: The SB 256-5 amendments are a suggestion to enlarge
the
number of delegates that would be selected by adding an additional
category to represent each Bar association. Refer to sec. 2, sub. 4.
(EXHIBIT P)

Note: EXHIBIT N relates to the hand-engrossed SB 256-4 and SB 256-5
amendments together submitted by staff.

127 OLSON, OREGON STATE BAR: I'm okay with the -5 amendments.

129 BOB BLAVIN, OREGON STATE BAR: Comments on -4 amendments.

142 MOTION: CHAIR SPRINGER: Moves to ADOPT the SB 256-5 amendments.

VOTE: Hearing no objection the amendments are ADOPTED.

184 SEN. HAMBY: The original language would have allowed both? Was
there
discussion as to why we shouldn't give that option to both?

187 CHAIR SPRINGER: The chair is in the opinion that the organization
ought

to have the exclusive responsibility as the elected body in lieu of the full membership to decide whether matters ought to be referred to the membership.

203 JULIE FRANCE, PRESIDENT, OREGON STATE BAR: There is always some difficulty in calling together the House of Delegates to look at any particular issue. Would like to retain some balance of power and -4 would remove that power from the Board.

212 SEN. SHOEMAKER: Who was advocating for the -4 amendments?

214 CHAIR SPRINGER: Yours truly.

216 SEN. RASMUSSEN: I'm advocating for the -4 amendments, also.

219 SEN. HAMBY: I look to my colleagues for council.

226 SEN. SHOEMAKER: I do not favor the -4 amendments. I agree with the bar. It's smoother not having to go through the House of Delegates process.

233 SEN. WEBBER: I agree with the Chair.

238 MOTION: CHAIR SPRINGER: Moves that the SB 256-4 amendments be ADOPTED.

VOTE: In a roll call vote Senator Hamby, Senator Webber, Senator Smith, Senator Rasmussen and Chair Springer vote AYE. Senator Shoemaker votes NAY. The amendments are ADOPTED.

243 MOTION: CHAIR SPRINGER: Moves that SB 256, AS AMENDED, be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote, all members vote AYE. The motion CARRIES.

SB 220: Authorizes Supreme Court to adopt trust account overdraft notification program for attorneys.

WITNESSES:

FRANK BRAUNER, OREGON BANKERS
GEORGE RIEMER, OREGON STATE BAR

281 TAYLOR: Explains SB 220-3 amendments.

307 FRANK BRAUNER, OREGON BANKERS: In support of -3 amendments.

312 SEN. RASMUSSEN: Someone please tell me what we are trying to get out here. I wasn't here for this discussion.

320 GEORGE RIEMER, OREGON STATE BAR: Gives background information on
the language in Sub. 4 Sec. 4.

335 SEN. HAMBY: There was no need to identify an operative date?

BRAWNER: I'm sure the Supreme Court will identify the operative date.

342 SEN. RASMUSSEN: Does this language, as amended, say that the
Financial Institution isn't liable if false notification is given to the Supreme
Court about a client's trust account?

349 BRAWNER: That's correct.

352 GEORGE RIEMER: This is identical to existing law.

352 BRAWNER: We must now send an additional notice to a third party.
- It voids normal banking relationship we have with customers.
- This is a major concern with financial institutions.

378 RIEMER: The membership of the state bar has seen this and approved
it.

380 SEN. RASMUSSEN: May I ask when we approved it?

RIEMER: Twice. Once in 1990 and once in 1992.

390 SEN. SHOEMAKER: A lawyer or an attorney on the account could correct
the mistake and advise the beneficiary. So it seems unlikely that there
would be any damage.

404 BRAWNER: The lawyer will automatically get notice if overdrawn.

424 RIEMER: This will be treated like any other matter that comes to
the attention of the Disciplinary Council. Therefore, the risk of damage
is minimized.

432 SEN. G. SMITH: What would be the process against an attorney if
you received one of these notices?

RIEMER: The council would inquire of the attorney.

443 SEN. G. SMITH: Frank, unless this exculpatory language is there for
you, you want this to die.

BRAWNER: We've worked a long time on this and without the language
there are institutions who won't proceed.

458 MOTION: CHAIR SPRINGER: Moves to ADOPT the SB 220-3 amendments.

VOTE: Hearing no objection the amendments are ADOPTED.

463 MOTION: CHAIR SPRINGER: Moves that SB 220, AS AMENDED, be sent to
the Floor with a DO PASS recommendation.

VOTE: In a roll call vote Senator Smith, Senator Hamby, Senator
Shoemaker, Senator Webber, Chair Springer vote AYE. Senator Rasmussen
votes NAY. The motion CARRIES.

SEN. SHOEMAKER: Will lead floor discussion.

484 CHAIR SPRINGER: Adjourns meeting at 2:37 p.m.

Submitted by:

Reviewed by:

Ellen L. Senecal
Assistant

Bill Taylor
Administrator

EXHIBIT LOG

A - Testimony on SB 287-Lee Johnson-1 page *
B - Testimony on SB 287-Meg Nitingale-4 pages
C - Testimony on SB 287-Maxine Bush-3 pages
D - Testimony on SB 287-Bill Linden-3 pages
E - Testimony on SB 287-Gary Beagel-35 pages
F - Testimony on SB 501-Bob Joondeph-2 pages
G - Testimony on SB 501-Elliot Weiner-1 page *
H - Testimony on SB 501-Janna Starr-1 page
I - Testimony on SB 501-Sandra Millius-1 page
J - Testimony on SB 501-Eva Kutas-3 pages
K - Testimony on SB 660-David Nebel- 2 pages
L - Testimony on SB 660-Vietta Helmke-1 page
M - Testimony on SB 660-Lauren Moughon-1 page
N - Hand-engrossed Amendments-SB 256-Staff-7 pages
O - Proposed Amendments to SB 256-Chair-1 page
P - Proposed Amendments to SB 256-Bob Blavin-1 page
Q - Proposed Amendments to SB 220-Frank Brawner-1 page
R - Hand-engrossed Amendments to SB 220-Staff-1 page

* Submitted written testimony only.