

SENATE COMMITTEE ON
JUDICIARY

March 30, 1993 Hearing Room C
1:00 p.m. Tapes 75-76

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

MEMBERS EXCUSED: Sen.

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

ISSUES DISCUSSED: Public Hearing on SB 621 and SB 624
 Work Session on SB 200, SB 201, SB 199, SB 203, SB
204

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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 75, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:25 pm.

Public Hearing

SB 621: Modifies list describing order of priority for application
of
 assets of financial institution when financial institution
becomes
 insolvent or goes into liquidation.

WITNESSES:

FRANK BRAUNER, OREGON BANKERS ASSOCIATION

007 FRANK BRAUNER: Submits and reviews written testimony in support of
the
 bill (EXHIBIT A).

SB 624: Prohibits certain creditors from taking non-purchase
money
 security interest in certain household goods.

WITNESSES:

RICHARD SLOTTREE, OREGON STATE BAR

KEITH BURNS, OREGON FINANCIAL SERVICES ASSOCIATION

082 RICHARD SLOTTREE: Submits and reviews written testimony in support
of
the bill (EXHIBIT B).

123 SEN. SMITH: Abuse is in discrepancy between federal and state law?

SLOTTREE: Private attorney's have seen the problem in private
practices.

Also occurs with low income clients.

131 SEN. SMITH: Will this hurt low income individuals ability to
obtain
consumer goods?

SLOTTREE: Possible chilling effect. This type of legislation has this
effect generally.

>There is substantial consumer damage by allowing problem to continue.

148 KEITH BURNS: Testifies in opposition to the bill.

>Questions necessity for bill.

188 SEN. HAMBY: Not objecting to the bill and including the FTC
provisions?

BURNS: Correct.

Work Session

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

198 KAREN QUIGLEY, COMMITTEE COUNSEL: Reviews juvenile bills
before
committee. Reviews SB 200-1 amendments (EXHIBIT C).

213 TIM TRAVIS, JUVENILE RIGHTS PROJECT: Reviews SB 200-1 amendments.

234 SEN. SHOEMAKER: Amendment substitutes "clinic" for "other health
care
providers", was that intended?

TRAVIS: Did I leave out "mental health" in front of "clinic"?

240 SEN. SHOEMAKER: Reviews bill, left out all of line 13.

TRAVIS: Oversight. Bill in intended to include line 13.

246 SEN. SHOEMAKER: On line 15, amendment doesn't have "or
children
involved in the case".

TRAVIS: It should read exactly in the original bill.

254 SEN. SHOEMAKER: Why not just add last sentence?

258 MARK MCDONELL: Suggests further amendment. Add period after "ongoing investigation".

266 TRAVIS: No objection.

267 SEN. SHOEMAKER: ORS references in amendments don't appear in bill.

Reason for difference?

TRAVIS: Suggestion from Nancy Simons.

>ORS reference limits to juvenile court case rather than other possible cases.

280 SEN. SHOEMAKER: So changes should be included. Is Nancy Simons here?

Should we check with her?

290 CHAIR SPRINGER: Unsure if she can be contacted.

292 MOTION:: SEN. SHOEMAKER: moves to ADOPT SB 200-1 amendments, as

further amended after "appointment" in line 11 to read "under this section or ORS 419.523, 419.525 or 419.527" and after line 15, a new

sentence to read, "This paragraph does not apply to records of a police agency relating to an ongoing investigation."

313 VOTE: Hearing no objection, the amendments are ADOPTED.

315 MOTION: SEN. SHOEMAKER: moves SB 200, AS AMENDED, be sent to the floor

with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. SEN. RASMUSSEN is excused.

320 CHAIR SPRINGER: The motion CARRIES.

CHAIR SPRINGER will lead discussion on the floor.

SB 201: Provides that adoption laws do not prevent adoption agreements

allowing contact between birth family and adoptive family.

327 QUIGLEY: Reviews bill. Reviews concerns of Children's Services Division.

349 CHAIR SPRINGER: Amendments?

351 QUIGLEY: None presented to committee.

355 CHAIR SPRINGER: CSD concerned about attorney's fees in lines 13 and 14 of the bill.

358 BETTY UCHYTIL, CSD: Correct.
>Many adoptees are low income and fees are difficult for them to pay.

>Recommend fees parties pay their own fees, or some other method.
>CSD supports open adoptions generally.

389 SEN. SMITH: Does including attorneys fees discourage
adoption
proceedings reaching court?

404 TRAVIS: That is correct.
>Could deter people from court or deter from breaching agreement by
providing penalty for breaching agreement which is the intent.

429 SEN. SMITH: Comments on Travis' response.

442 SEN. SHOEMAKER: Proposed modification could bring parties to court
over
disagreement, is that the usual scenario?

TRAVIS: No. Cannot go to court unless agreement breached.
>There must be failure to comply with term of agreement to go to
court.

467 SEN. SHOEMAKER: Section language implies court can modify?

TRAVIS: Court can modify only upon a breach.

485 SEN. SHOEMAKER: Should we clarify attorney fee provision does not
apply
to modification?

TRAVIS: It would apply to modification if after breach it went to
court
and judged ruled modification was in order.
>Cannot go to court simply to modify.

497 SEN. SHOEMAKER: Is that appropriate? Should access to court
for
modification be permitted?

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034 TRAVIS: No. Access should not be allowed for simply modifying.

049 MOTION: SEN. HAMBY: moves SB 201 be sent to the floor with a DO
PASS
recommendation.

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

054 CHAIR SPRINGER: The motion CARRIES.

SEN. SMITH will lead discussion on the floor.

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

064 MARK MCDONNELL, MULTNOMAH DISTRICT ATTORNEY'S OFFICE:

Reviews

amendments from Tim Travis and the bill in general.

>Suggests further amendment on page 2, line 15, change "shall" to "may".

098 TIM TRAVIS, JUVENILE RIGHTS PROJECT: Submits and reviews written

amendments to the bill (EXHIBIT D).

>Someone in system must be made responsible for the child who needs services.

>Opposes transferring responsibility from judges to prosecutors.

148 MCDONNELL: Concerned that mandatory reduces fluidity and flexibility in

current system.

161 CHAIR SPRINGER: Amendments are presented in a letter from Travis.

Could carry bill over for LC form, or pass as is?

167 SEN. SHOEMAKER: Reviews February 15th letter from Betty Uchyttil

indicating that use of "shall" is too restrictive on court?

174 BETTY UCHYTIL: Concerned with permissive language in the bill.

>Predisposition for delinquency by Legislature is inappropriate.

187 SEN. SHOEMAKER: So you don't think bill is necessary?

UCHYTIL: Correct.

190 MCDONNELL: Reclarifies the problem.

>Bill is needed because some courts don't think they have authority.

Permissive language will make it clear they do.

211 TRAVIS: Responds to Uchyttil comments.

>Mclaren is not seeing these kids because cases are not pursued.

216 MCDONNELL: Concur.

221 SEN. WEBBER: Do you agree with Travis?

UCHYTIL: Cannot comment on children whose petitions have not been acted upon.

237 SEN. WEBBER: Confusion in the court justifies the bill?

MCDONNELL: Correct.

243 MOTION: CHAIR SPRINGER: moves to ADOPT amendments by Travis, dated

3/30/93, as further amended changing "shall" to "may" on line 15 of printed bill.

260 SEN. SHOEMAKER: Interested in hearing the arguments for or against the

bill? Still unclear.

264 CHAIR SPRINGER: Not ready to proceed?

266 SEN. SHOEMAKER: Don't understand the issue completely.

271 VOTE: Hearing no objection, the amendments are ADOPTED.

273 CHAIR SPRINGER: Bill does address a small void in juvenile system.

There is a need.

292 MOTION: CHAIR SPRINGER: moves SB 199, AS AMENDED, be sent to the floor

with a DO PASS recommendation.

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

CHAIR SPRINGER: The motion CARRIES.

CHAIR SPRINGER will lead discussion on the floor.

SB 203: Provides for jury trial, upon request of child, in juvenile

proceeding alleging delinquency as basis for jurisdiction.

311 TIM TRAVIS, JUVENILE RIGHTS PROJECT: Submits and reviews written

testimony in support of the bill (EXHIBIT E).

>No amendments to the bill.

324 CHAIR SPRINGER: Concern about fiscal impact?

332 BILL LINDEN, STATE COURT ADMINISTRATOR: Estimates biennial cost impact

of the bill.

>Jury cost: \$77,000 to \$260,000

>Indigent defense: \$8,600 to \$21,000.

>Reviews methodology. 7% of circuit court cases disposed by trial.

>Cost cannot be absorbed into the judicial budget.

376 CHAIR SPRINGER: Comment on numbers?

TRAVIS: Better comparison is to jury trials in other states.

>Linden's range is off, begins where it ends in other states.

394 CHAIR SPRINGER: Calls Dale Penn.

397 DALE PENN, ODAA: Other states are different.

>There are factors that could increase trial rate in Oregon. >Based on financial considerations no bill increasing indigent defense should be approved.

421 TRAVIS: Comments on Penn's points.

>Jury trial in Oregon's changing climate is essential.

442 CHAIR SPRINGER: Motion if made would send bill to Ways and Means?

449 SEN. SHOEMAKER: Agrees with Penn.

>No comment from ACLU indicates probably not a civil liberties issue.

458 SEN. RASMUSSEN: Concur.

459 SEN. WEBBER: Generally supports intent, but the timing is wrong.

466 MOTION: SEN. RASMUSSEN: moves to TABLE SB 203.

VOTE: In a roll call vote SEN. HAMBY, SEN. RASMUSSEN, SEN. SHOEMAKER
and SEN. WEBBER vote AYE. CHAIR SPRINGER votes NAY. SEN. SMITH is
excused.

TAPE 75, SIDE B

SB 204: Specifies contents of notice to parent or guardian after child
is
taken into temporary custody.

027 CHAIR SPRINGER: No amendments.

032 TRAVIS: Reviews bill.

038 SEN. RASMUSSEN: How does system work now?

040 TRAVIS: Reviews process.

051 BETTY UCHYTIL: Supports notice to parents for preliminary hearings
and
notification of rights.

>Concerned that it involves staff in process. CSD is refocusing its
role so as not to be law enforcement officials or officers of the
court.

>CSD advised that staff should not advise parents as to appointed
attorney eligibility.

071 SEN. HAMBY: Who should be responsible?

UCHYTIL: Concern is for parent who isn't present.

>Not appropriate for staff to locate parents.

086 SEN. HAMBY: Legislators want parents located. Need answer for
who
should be responsible?

090 SEN. SHOEMAKER: Revisits process.

100 UCHYTIL: Families do not bring counsel unless they have private
means
and have used in the past.

102 SEN. SHOEMAKER: Won't help much to provide information about counsel
in
notice. Parents are notified with adequate time to address counsel
issue.

107 SEN. HAMBY: Problem is with parents who don't know when the child

is

brought in.

115 General committee discussion on the issue.

121 TRAVIS: Current law states whoever takes child into custody must
inform
parent.

135 MARK MCDONNELL, ODAA: No position on the bill.
>Reviews current law which requires notification as soon as practical.
>Bill simply requires that notification state right to counsel.
>Suggests possible amendment placing period (.) after "right to have
counsel".

148 TRAVIS: Concurs.

152 SEN. WEBBER: Maybe we don't need statute. Perhaps CSD can print
up
notification forms?

157 MCDONNELL: Could be done by local offices and should be included
in
protocols.
>Statute would create obligation on police.

166 UCHYTIL: Agrees with response on local level.

171 MOTION: SEN. SHOEMAKER: moves to AMEND SB 204 with proposed
amendment
by McDonnell adding a period after "hearing" on line 10 and delete
rest
of sentence.

179 SEN. WEBBER: If notice is not given would that delay hearing?

TRAVIS: Not going to delay hearing on whether child should remain in
state custody because state can proceed without parent given probable
cause.
>Will require another hearing with parent present.

189 SEN. RASMUSSEN: Clarifies amendment. Understood that
suggested
amendment was for period after "counsel" not "hearing". Why the
change?

192 SEN. SHOEMAKER: Doesn't agree with suggestion. Supports CSD's
position
concerning legal advice.

200 VOTE: SEN. RASMUSSEN objects to amendment.

201 CHAIR SPRINGER: Calls for roll call vote.

203 VOTE: In a roll call vote SEN. HAMBY, SEN. SHOEMAKER, SEN. SMITH
and
CHAIR SPRINGER vote AYE. SEN. RASMUSSEN and SEN. WEBBER vote NAY.

CHAIR SPRINGER: The motion CARRIES.

207 MOTION: SEN. SHOEMAKER: moves SB 204, AS AMENDED, be sent to
the floor with a DO PASS recommendation.

VOTE: In a roll call vote SEN. HAMBY, SEN RASMUSSEN, SEN. SHOEMAKER,
SEN. SMITH and CHAIR SPRINGER vote AYE. SEN. WEBBER votes NAY.

212 CHAIR SPRINGER: The motion CARRIES.

SEN. SHOEMAKER will lead discussion on the floor.

218 CHAIR SPRINGER: Adjourns hearing at 3:00 pm.

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Karen Quigley
Administrator

EXHIBIT LOG:

- A - Testimony on SB 621, Frank Brawner, 5 pages
- B - Testimony on SB 624, Richard Slottee, 3 pages
- C - Amendments to SB 200, 1 page
- D - Testimony on SB 199, Tim Travis, 2 pages
- E - Testimony on SB 203, Tim Travis, 5 pages