

SENATE COMMITTEE ON
JUDICIARY

May 25, 1993 Hearing Room C
1:00 p.m. Tapes 171-172

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

MEMBERS EXCUSED: Sen. Rasmussen
 Sen. Smith

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

ISSUES DISCUSSED: Public Hearing & Possible Work Session on SB 988, HB
202 1,
 HB 2022, HB 2281, HB 2143, HB 2144, HB 2385, HB 3577
 Public Hearing & Work Session on SB 266.

[--- Unable To Translate Graphic ---]

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 171, SIDE A

003 SEN. SHOEMAKER: Opens the hearing at 1:00 pm in the absence of
the
Chair.
>Opens joint consideration of HB 2143 & HB 2144.

HB 2143: Deletes requirement that court grant guardianship to
Children's
Services Division when court places child in legal custody of

division.

WITNESSES:
BETTY UCHYTIL, CHILDREN'S SERVICES DIVISION
BILL CAREY, CHILDREN'S SERVICES DIVISION

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

051 SEN. WEBBER: Refers to language in the bill, would foster parents

have

to go to welfare and apply to receive child welfare payment? What does the provision mean?

UCHYTIL: CSD as legal custodian would be the applicant for any benefits.

064 SEN. HAMBY: Explain where and what the role of the grandparents would be prior to removing the child from an abusive situation? On HB 2144.

070 CHAIR SPRINGER: Notes committee is considering HB 2143.

073 SEN. HAMBY: Bill makes CSD or appropriate individual the guardian of the child... could appropriate individual be the grandparents?

UCHYTIL: Yes. Juvenile court could make grandparents guardian.

HB 2144: Allows juvenile court to enter restraining order against alleged child abuser under certain circumstances.

WITNESSES:

BETTY UCHYTIL, CHILDREN'S SERVICES DIVISION

BILL CASEY, CHILDREN'S SERVICES DIVISION

TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT

DAVID NEBEL, OREGON LEGAL SERVICES

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

097 SEN. HAMBY: What about when the safety of the child might be in question?

UCHYTIL: This language was amended in the House to limit only to those issues where the child had been victim of abuse.

103 SEN. HAMBY: Are there other statutes that speak to the safety issue?

UCHYTIL: Yes. But we would not be able to gain restraining order the perpetrator unless the child had been abused.

111 SEN. SHOEMAKER: In line 7-8, order may restrain perpetrator from contact with child and any other in the household, and concerning the other child it doesn't rely on any finding of probable cause; could you explain?

UCHYTIL: Can't explain. Would agree with the provision if one child

has been abused in a home it seems appropriate that other children in the household would need to be protected.

126 CHAIR SPRINGER: Calls other witnesses who may be able to answer.

131 TIM TRAVIS: In response to SEN. SHOEMAKER: question, the operative language is "may enter an order". It is left to the discretion of the court.

142 SEN. SHOEMAKER: If the victim is in temporary custody...

TRAVIS: The point of the bill is to get the victim out of foster care and back home.

147 SEN. SHOEMAKER: Bill doesn't require the court to make a finding of probable cause the abuse is occurring with the other child. It assumes abuse is possible with the other child?

TRAVIS: It is permissive language for the court.

158 SEN. SHOEMAKER: Understand but that is not satisfactory.

160 DAVID NEBEL: Submits and reviews written testimony with amendment in support of the bill (EXHIBIT C & D).

198 TRAVIS: Refers to SB 198 which was withdrawn in favor of HB
214 4.
Concurs with Nebel's language. Supports the amendment.

207 UCHYTIL: Concurs with Nebel's amendments.

214 CHAIR SPRINGER: Was this issue discussed on the House side?

UCHYTIL: Yes.

CHAIR SPRINGER: They were not convinced?

UCHYTIL: Correct.

218 CHAIR SPRINGER: Trying to clarify if the committee can expect to go to conference?

TRAVIS: Unclear on why the House was not convinced.

UCHYTIL: There was discussion about individuals not being kept from their homes unless there were very serious circumstances evidenced by the removal of the child.

228 SEN. HAMBY: Believes the issue needs to be readdressed in conference.

CHAIR SPRINGER: If that is the will of the committee.
>Inquires of Sen. Shoemaker if he needs further clarification of his concerns.

235 SEN. SHOEMAKER: What would be the reaction to a required finding by the judge of probable cause to believe that the other child was also at risk of abuse? Explains question.

257 CHAIR SPRINGER: Requests witnesses reflect on distinction between biological child and stepchild.

TRAVIS: Father is represented by counsel at hearing and is not solely responsible for defense.

270 SEN. SHOEMAKER: Is there a problem with requiring the court to make a finding of probable cause?

TRAVIS: Yes. Parallels in juvenile law already. Court has discretion to grant jurisdiction over both children based on what has happened to one.

283 SEN. SHOEMAKER: Arguing for finding before imposing penalty on parent.

TRAVIS: More comfortable with the court protecting the second child.

292 UCHYTIL: Concerned about situation where there is criminal and juvenile court cases and second child could be used to convince abused child that perpetrator should be allowed to come home.
>Court needs maximum flexibility to protect children without probable cause.

309 SEN. SHOEMAKER: Not going as far as requiring probable cause that the sibling has been abused; only reason to believe there is a risk of abuse.

TRAVIS: So, on line 8, inserting "or any other child in the household, insofar as there may be danger to that other child,"?

320 SEN. SHOEMAKER: Yes.

322 TRAVIS: That would be acceptable. Prefers as is, but that wouldn't change very much.

NEBEL: That is acceptable.

329 CHAIR SPRINGER: Proposes committee consider the amendment further
and
reschedule the bill for a later hearing.
>Asks Sen. Shoemaker to review language.

338 SEN. SHOEMAKER: On line 8, after "household", insert "upon a
finding
that any other child or children may be in danger of abuse".

354 CHAIR SPRINGER: Committee will review language further and return
to
bill at a later hearing.

359 SEN. WEBBER: Clarifies additional provisions of the bill.

SEN. SHOEMAKER: Aware of the line, believes it applies to the child
taken into custody. Perhaps it is each child. That would be an
improvement.

375 CHAIR SPRINGER: Carries bill over for further review.
>Carries HB 2143 over for later in hearing.
>Notes HB 2385 is carried over to 6/1 and HB 3577 is carried over to
6/2.

Public Hearing and Possible Work Session

SB 988: Authorizes physician to issue Emergency Medical Services Do
Not
Resuscitate Order to patient.

WITNESSES:

LARRY BLUMENSTEIN, OREGON EMS PRESIDENTS
HOWARD KIRKWOOD, OREGON HEALTH DIVISION
HEIDE ANDERSON, BUCK MEDICAL SERVICES
BOB COSTAGNA, OREGON CATHOLIC CONFERENCE

ANN JACKSON, OREGON HOSPICE ASSOCIATION: Submits written testimony only
in
support of the bill (EXHIBIT E).

412 LARRY BLUMENSTEIN: Submits and reviews written testimony in support
of
the bill (EXHIBIT G).
>Proposes amendment to section 1, at beginning add, "Pursuant to and
consistent with ORS 127"; at end of line change "an adult patient" to
"a
terminally ill patient".

473 SEN. SHOEMAKER: Where does that go?

BLUMENSTEIN: Line 4, section 1, at the end.

TAPE 172, SIDE A

029 SEN. HAMBY: Do EMS's typically ever service facilities which might include terminally ill children?

BLUMENSTEIN: Possible but rare. Traditionally, someone is dying from an in stage disease in the home or a hospice.
>Most often we are called to ensure the individual has died.

050 CHAIR SPRINGER: Would a person with Alzheimers Disease be considered terminally ill?

SEN. SHOEMAKER: No.

053 CHAIR SPRINGER: What about someone in that situation who has a seizure or stroke? Are we opening it up if we change from "adult" to "terminally ill"?

SEN. SHOEMAKER: Terminal illness is defined in ORS 127, as suffering from a disease which will take your life and that death is imminent.
>Do not resuscitate order is different situation from allowing person to die under power of attorney for health care or directive. Not sure that chapter 127 addresses do not resuscitate orders and is uncomfortable linking with chapter 127 for that reason.

074 HOWARD KIRKWOOD: Submits and reviews written testimony in support of the bill (EXHIBIT F).
>Our understanding with Mr. Costagna and Sen. Shoemaker was that this would enable process but not create any substantive law. Enable identification of patients for whom orders already existed, consistent with current law.
>Willing to work with committee and others to ensure that health division is not creating substantive law in its rule-making.

091 SEN. SHOEMAKER: Intent is to identify patient with a bracelet who already has DNR order entered by physician according to current rules. Those rules are already established.

103 BLUMENSTEIN: One other reference making section 1, section 1 (A) and adding a section 1 (B) to deal with patients who attempt suicide or may be pregnant.

115 SEN. HAMBY: Trying to imagine situation where pregnant woman would be

wearing this type of bracelet?

KIRKWOOD: Those additions were an attempt to accomodate Mr. Costagna.

121 SEN. HAMBY: Juveniles are sometimes found in hospice situation,
suppose
that juvenile were granted DNR order and EMS offended that
committment...

133 BLUMENSTEIN: We are trying to establish a rule that addresses
the
problem in the field.
>Nothing prohibits having a DNR order on a child and not calling
emergency medical services. EMS is only involved when called.

149 SEN. HAMBY: Notes that Multiple Sclerosis is not a late stage
terminal
illness as the language indicates.

KIRKWOOD: Hoping to address the situation with this legislation.

155 SEN. HAMBY: Notes support for the bill, but skeptical about
the
amendments.

SEN. SHOEMAKER: Notes lines 4-6 need to be clarified to ensure DNR
order is entered within the hospital or subject to rules of the
hospital
involved.

169 KAREN QUIGLEY, COMMITTEE COUNSEL: In subsection 4, section 1, the
bill
states the physician must follow decisions and protocols adopted by
the
Health division, does that address the concern?

SEN. SHOEMAKER: Not completely. Section 1 seems to authorize
independent DNR order. This needs to be an identification component to
the DNR entered in the patients medical file.

182 BLUMENSTEIN: Willing to submit to the committee on anything
that
further clarifies the bill.

191 SEN. SHOEMAKER: Protocols already exist in the hospitals and this
could
possibly allow doctor to avoid those regulations.
>Suggests further review.

206 BOB COSTAGNA: Testifies with the concerns about the bill.
>Bill provides no guidelines for Health Division rule-making.

254 CHAIR SPRINGER: Clarifies that the bill is in committee to review
the
penalty provision. Did you address this issue in Health care

committee?

COSTAGNA: Didn't testify before that committee.

259 CHAIR SPRINGER: Notes that the scope of review is limited in
Judiciary
committee.

271 SEN. SHOEMAKER: You feel if EMS DNR order is tied into DNR
order
entered pursuant to hospital rules in the patients medical file, that
would be sufficient?

COSTAGNA: That is a small connection to existing medical standards.

279 SEN. SHOEMAKER: Uncomfortable for allowing this bill to address
the
entire DNR issue.

COSTAGNA: Legislature needs to give some guidance to agencies.

296 HEIDE ANDERSON: Testifies in support of the bill.

307 CHAIR SPRINGER: Inquires about Sen. Shoemake's preference on the
bill?

SEN. SHOEMAKER: Would prefer to carry over for further review. Thanks
Costagna for raising the issue.

318 CHAIR SPRINGER: Holds bill for further review.
>Notes committee schedule for the remainder of hearing.

Public Hearing and Possible Work Session

HB 2021: Specifies Secretary of State filing and indexing duties for
certain
federal liens.

WITNESSES:

TOM WROSCHE, SECRETARY OF STATE CORPORATIONS DIVISION
GARY JOHNSON, SECRETARY OF STATE CORPORATIONS DIVISION

355 GARY JOHNSON: Submits and reviews written testimony in support of
the
bill (EXHIBIT H).

400 CHAIR SPRINGER: What was the vote on the House side?

QUIGLEY: 46-0, in favor.

403 CHAIR SPRINGER: Any opposition, in committee, in testimony?

QUIGLEY: None we are aware of.

406 MOTION: CHAIR SPRINGER: moves HB 2021 be sent to the floor with a
DO
PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. SEN. RASMUSSEN
and SEN. SMITH are excused.

415 CHAIR SPRINGER: The motion CARRIES.

SEN. SMITH will lead discussion on the floor.

TAPE 171, SIDE B

HB 2022: Increases certain fees relating to secured transaction filings.

WITNESSES:

JANE SULLIVAN, SECRETARY OF STATE CORPORATIONS DIVISION

GARY JOHNSON, SECRETARY OF STATE CORPORATIONS DIVISION

TOM WROSCH, SECRETARY OF STATE CORPORATIONS DIVISION

005 JAN SULLIVAN: Submits and reviews written testimony in support of
the
bill (EXHIBIT I).

061 SEN. SHOEMAKER: Speak to lines 26-27, page 2, which states fee
may
exceed \$10 if it relates to fees for furnishing summaries,
compilations
and computer remote access? That fee is now \$5?

067 GARY JOHNSON: That was initially an oversight. That refers to
magnetic
tape program and remote access program.
>Would like to have those programs excluded from \$10 cap.

071 SEN. SHOEMAKER: Always intended they would be but the language
was
confused?

JOHNSON: Correct.

074 CHAIR SPRINGER: Which House committee did this come from?

QUIGLEY: Commerce.

076 CHAIR SPRINGER: What was the vote?

QUIGLEY: 51-8, in favor.

078 CHAIR SPRINGER: Assume this is in the Division's budget?

SULLIVAN: Yes.

082 MOTION: CHAIR SPRINGER: moves HB 2022, A-Engrossed, be sent to
the
floor with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. SEN. RASMUSSEN
and SEN. SMITH are excused.

085 CHAIR SPRINGER: The motion CARRIES.

SEN. SMITH will lead discussion on the floor.

Public Hearing and Work Session

SB 266: Requires transferor of interest in motor vehicle to notify
Motor
Vehicles Division of transfer.

WITNESSES:

JOANNE PETERSON, DEPARTMENT OF TRANSPORTATION
SENATOR JOAN DUKES
JOAN PLANK, MOTOR VEHICLES DIVISION

JOANNE PETERSON: Submits written testimony only in support of the
bill
(EXHIBIT J).

092 SEN. DUKES: Testifies in support of the bill.

142 SEN. WEBBER: Comments on the issue generally.

151 SEN. SHOEMAKER: Why a class A misdemeanor? Seems a little stiff.

SEN. DUKES: That was the way it was drafted.

159 SEN. SHOEMAKER: Wouldn't it be more appropriate as an infraction
and
make the penalty a fine.

SEN. DUKES: No preference on that issue, as long as it is effective.

168 CHAIR SPRINGER: Is anyone from Department of Transportation
(ODOT)
here?

SEN. DUKES: Yes, and they submitted testimony.

170 CHAIR SPRINGER: Calls ODOT representative. Please address crime
versus
violation issue.
>Where would this offense be deemed to have occurred?

180 JOAN PLANK, MOTOR VEHICLES DIVISION: Testifies in support of the
bill.

>Don't know where the offense would be deemed to have occurred.

>Don't feel strongly about class A misdemeanor.

190 CHAIR SPRINGER: Reviews normal criminal procedure. Who is going
to
deal with the UTC?

199 PLANK: As with many offenses, it is turned over to the
district
attorney and they can address or not.

211 SEN. DUKES: Would be surprized if the section was used because there
is
no penalty for not filling out the form.

224 CHAIR SPRINGER: What is the committee's feeling about making this
a

violation?

SEN. SHOEMAKER: With \$500 fine?

227 CHAIR SPRINGER: Class A violation is \$250 or \$500?

228 SEN. HAMBY: \$250 for not filling it out, \$500 for filling out
erroneously.

SEN. DUKES: Concerned about informing people they must complete the forms. Notice isn't supplied by the state in this case as it is for other motor vehicle requirements.

239 CHAIR SPRINGER: Suggests carrying over for further review unless
members are ready to move on the bill.

SEN. SHOEMAKER: Ready to move, with just Class A violation.

247 MOTION: SEN. SHOEMAKER: moves to ADOPT amendments changing in
section

4 & 5, Class A misdemeanor to Class A violation.

VOTE: Hearing no objection, the amendments are ADOPTED.

252 MOTION: CHAIR SPRINGER: moves SB 266, 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
and SEN. SMITH are excused.

256 CHAIR SPRINGER: The motion CARRIES.

SEN. DUKES will lead discussion on the floor.

259 CHAIR SPRINGER: Reopens hearing and work session on HB 2143.

HB 2143: Deletes requirement that court grant guardianship to
Children's

Services Division when court places child in legal custody of
division.

262 MOTION: CHAIR SPRINGER: moves HB 2143 be sent to the floor with a
DO

PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. SEN. RASMUSSEN
and SEN. SMITH are excused.

266 CHAIR SPRINGER: The motion CARRIES.

SEN. RASMUSSEN will lead discussion on the floor.

269 CHAIR SPRINGER: Carries over remaining bills on the agenda for
future
hearing.

>Adjourns the hearing at 3:00 pm.

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Karen Quigley
Administrator

EXHIBIT LOG:

- A - Testimony on HB 2144, Bill Carey, 2 pages
- B - Testimony on HB 2143, Bill Carey, 2 pages
- C - Amendments to HB 2144, David Nebel, 1 page
- D - Testimony on HB 2144, David Nebel, 2 pages
- E - Testimony on SB 988, Ann Jackson, 2 pages
- F - Testimony on SB 988, Howard Kirkwood, 3 pages
- G - Testimony on SB 988, Larry Blumenstein, 3 pages
- H - Testimony on HB 2021, Gary Johnson, 6 pages
- I - Testimony on HB 2022, Jan Sullivan, 5 pages
- J - Testimony on SB 266, Joanne Peterson, 2 pages