

SENATE COMMITTEE ON
JUDICIARY

July 9, 1993 Hearing Room C
1:00 p.m. Tapes 214 and 215

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

STAFF PRESENT: Bill Taylor, Committee Counsel
 Kirk Bailey, Committee Assistant

ISSUES DISCUSSED: Possible Reconsideration & Work Session on HB 2543
 Work Session on HB 2382, HB 2383, HB 2288
 Public Hearing & Work Session on HB 2539, HB 2291,
 Public Hearing on HB 2381

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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 214, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:21 pm.

PUBLIC HEARING ON HB 2291:

WITNESSES:
JOHN ELLIS, DEPARTMENT OF JUSTICE
DAVID NEBEL, OREGON LEGAL SERVICES

004 JOHN ELLIS: Submits and reviews written testimony in support of the bill (EXHIBIT A).
 - Lists four aspects of the bill
 - Amendment included in testimony.

045 CHAIR SPRINGER: Will this apply to all existing degrees and if so should we state?

048 ELLIS: The bill should apply prospectively to orders entered or modified

after the effective date, and it will eventually affect all the child support orders to the extent they are brought in and modified.

050 CHAIR SPRINGER: Could this be an incentive to modify?

ELLIS: Yes, it could be but modification is so common that it will not likely affect the system. much.

ELLIS: Continues testimony.

087 CHAIR SPRINGER: What happens in line 11, page 1? Are there situations where beneficiary has difficulty being accepted in current plans, is that child excludable?

ELLIS: The next sentence clarifies the question by defining reasonable cost. This repeats the federal language verbatim. However, policies may not be reasonable just because we say so.

CHAIR SPRINGER: Defers to Sen. Shoemaker's guidance on the issue.

115 DAVID NEBEL: Testifies in support of the bill.

124 CHAIR SPRINGER: Notes corrections needed for counsel. Comments on conceptual changes needed.

- Holds bill for further review.

SEN. SHOEMAKER: Would it make sense to have an emergency clause?

ELLIS: I don't believe so.

144 SEN. SHOEMAKER: The bill would apply to child support and modification orders modified after the date of the act.

CHAIR SPRINGER: "Or modified after the effective date of the Act."

SEN. SHOEMAKER: Reviews amendment language again.

MOTION: SEN. SHOEMAKER: Moves to adopt amendment, page 2, line 11.

VOTE: The amendment were adopted without objection.

MOTION: SEN. SHOEMAKER: moves the bill to the floor with a Do Pass recommendation.

VOTE: In a roll call vote, all members present voted Aye.

175 WORK SESSION ON HB 2543:

BILL TAYLOR: reviews bill and recommends reconsideration.

185 MOTION: CHAIR SPRINGER Moves reconsideration of HB 2543 B-engrossed.

VOTE: No objection.

187 MOTION: CHAIR SPRINGER: Moves the correction be made and the bill
be sent to the floor as corrected.

VOTE: In a roll call vote, all members voted Aye.

204 WORK SESSION ON HB 2288:

WITNESSES:

DOUG MITCHELL, LANE COUNTY DISTRICT ATTORNEY

CARL STECKER, OREGON DISTRICT ATTORNEY'S ASSOCIATION

207 DOUG MITCHELL: Testifies in support of the bill, and explains
history of the issue. The bill provides that when someone who is required to
pay child support is on public assistance, a notice is generated to
both parties that unless a party objects, the Department of Human Resources
will stop billing child support. Either party has the opportunity to
request a public hearing. There is no opposition to the bill known.

CARL STECKER: Testifies in support of the bill.

305 SEN. SHOEMAKER: On lines 10 and 11 does the debt accrue from the
date it could have been paid?

STECKER: Believes that is the case. Underlying order remains
in effect.

CHAIR SPRINGER: Asks who belongs to the -A4 amendments?

322 MITCHELL: I do. Reviews reasons for the amendments. Don't believe
the state should be referring people to attorneys. Reviews amendments generally (EXHIBIT
B).

357 CHAIR SPRINGER: What prompted its initial passage in 1991?

MITCHELL: Oregon legal services brought the bill originally. Reviews
reasons. It was a public policy issue.

CHAIR SPRINGER: What if there is an obligor who comes into large
amount of funds?

MITCHELL: That is where presumption of inability to pay would be

rebutted and enabling an obligation to be imposed.

388 STECKER: That might not become an issue because if DHRdetermined
the person had that asset, he would no longer be eligible for public
assistance.

396 SEN. SHOEMAKER: But there would be not recover of past
obligations because of poverty.
STECKER: That is correct.

404 SEN. RASMUSSEN: But it doesn't strike me that in that scenario
nor would there be anything to prevent a custodial parent from pursuing
increased child support payments.

STECKER: None at all.

SEN. RASMUSSEN: Should we leave language requiring phone number?

433 SEN. HAMBY: Prefers to delete. Doesn't believe it is the state's
duty to remind people where low cost attorneys might be.

CHAIR SPRINGER: Depends on where we draw the line.

SEN. RASMUSSEN: This is an old argument. Does the District
Attorney represent the State in the same way a lawyer represents an
individual?

Committee discussion of possible amendment regarding inclusion of
phone number.

TAPE 215, SIDE A

061 MOTION: SEN. SHOEMAKER moves the -A4 amendments.

062 MOTION: SEN. RASMUSSEN moves that the Committee we delete lines 1 and
2 of the A4 amendments.

VOTE: In a roll call vote the motion fails with SENS. RASMUSSEN and
SPRINGER voting Aye, and SENS. SHOEMAKER, HAMBY and G. SMITH voting
No.
SEN WEBBER excused.

VOTE: Hearing no objection, the -A4 amendments are adopted.

MOTION: SEN. RASMUSSEN moves the bill to the floor as amended.

VOTE: In a roll call vote, all members vote aye, with SEN. WEBBER
excused.

086 BILL TAYLOR: Reviews bills for agenda.

CHAIR SPRINGER: Notes that HB 2386 will not be considered.

PUBLIC HEARING ON HB 2381:

CHAIR SPRINGER: considers remainder of agenda together.

112 LAUREL ANN CURTIS, CITIZEN: Submits and review written testimony
in

opposition to the bill (EXHIBIT C). Testifies with her mother, Holly
Kalowski. Testifies about the damage that civil forfeiture laws have
done to her family. Supports amendments to reform forfeiture statute.
CHAIR SPRINGER: Which agencies were involved in the activities
described?

CURTIS: Everybody, regional drug task force, Drug Enforcement Agency,
IRS, Clackamas County police.

CHAIR SPRINGER: Is your attorney present?

LAUREL: Notes attorney, who is not present. Continues testimony.

190 CHAIR SPRINGER: Invites further testimony.

193 KALOWSKI: Testifies in support of the bill. Doesn't believe the
state
should be able to take any of her possessions when she has not been
charged with any crime.

CHAIR SPRINGER: Has your granddaughter ever been prosecuted?

215 KALOWSKI: No, reviews situation further.

CHAIR SPRINGER: Was Oregon State Police involved?

CURTIS: Yes, Detective Leonard G. Olson.

CHAIR SPRINGER: When did this happen?

CURTIS: April 16, 1991. I thought my attorney was dragging his
heels.

CHAIR SPRINGER: What is the current status of the legal proceedings?

CURTIS: They are formulating another offer.

JENNY COOK, attorney: Reviews situation further.

SEN. RASMUSSEN: Clarifies the situation further.

268 COOK: Clarifies facts of the case.

CURTIS: reviews assets seized.

283 COOK: Assets were in excess of \$50,000.

SEN. RASMUSSEN: What was alleged connection between the properties forfeited and the individual sought?

288 COOK: That the alleged was putting assets in her family's name.

SEN. RASMUSSEN: What is the total between the three individuals?

COOK: \$200,000 or better.

SEN. RASMUSSEN: Was there any attempt to make a distinction between assets?

COOK: Clarifies what the status of the property now is.

SEN. RASMUSSEN: Was there evidence that these people had been involved?

COOK: No.

313 CHAIR: Requests further clarification from agents and agencies involved in the case.

COOK: Reviews those involved.

331 SEN. SHOEMAKER: Who would be the person to contact now?

COOK: Reviews attorneys for the state.

SEN. SHOEMAKER: Val Morley?

COOK: Correct.

354 ROSS SHEPARD, OCDLA: Testifies in support of the bill.

365 JENNY COOK: Reviews amendments submitted to the committee (EXHIBIT F through O). -A9 through -A20.

CHAIR SPRINGER: Who has made the claim that the I-5 stops are to look for other violations?

COOK: Oregon State Police Patrolman Hoffman from Roseburg.

CHAIR SPRINGER: Notes that is contrary to testimony received earlier this session.

SHEPARD: Notes this is relating to the -8 amendments.

COOK: Continues review of amendments, and discusses situation with searches on I-5. The A8 amendments give some substance to the statement

that people are free to leave during a search.

437 SEN. SHOEMAKER: Clarifies which amendments are under consideration.

COOK: It is now the -A15 amendments. Explains amendments in detail.

451 SEN. SHOEMAKER: If this is identical to SB 1046, then we don't need
to
review -A15.

465 COOK: Reviews -A10 (EXHIBIT G).

TAPE 214, SIDE B

020 COOK: Continues testimony on the -A10 amendment.

043 DAVID FIDANQUE, ACLU: submits hand written amendments to the
-A10.

Explains that the --A10 do not accomplish what was hoped.

CHAIR SPRINGER: Who lays claim to the -A8 amendments?

050 COOK: The amendments are not hers, but explains them to the
Committee.

068 CHAIR SPRINGER: What number of days?

COOK: 180 days is the same as to set aside a default in any ordinary
civil proceeding.

074 CHAIR SPRINGER: Asks clarification.

COOK: Court of Appeals has interpreted the statute very narrowly.

080 CHAIR SPRINGER: Notes committee has -a9 and -a10 with ACLU
amendment.

CHAIR SPRINGER: Moves on to next set of amendments.

085 FIDANQUE: Does committee have -A11 and -A12?

CHAIR SPRINGER: Yes.

FIDANQUE: Reviews -A11 and -A12. Reviews forfeiture statute, and
how
burden of proof is affected.

109 SEN. RASMUSSEN: Which language is intended to replace?

FIDANQUE: That entitled ACLU amendments, 7-9-93.

119 SEN. RASMUSSEN: Why don't you like -A11?

FIDANQUE: The -A11 may accomplish the same thing, but want it to be
crystal clear.

CHAIR SPRINGER: Proposes the Committee review remainder of amendments

and hear from additional amendments.

139 SEN. SHOEMAKER: requests clarifications of changes to -a11 and -A12.

FIDANQUE: Clarifies that under current law all the government needs to show is probable cause, the standard that is required for seizure of the property to begin with. This amendment would not change the amount of evidence needed in order to seize property initially, but would require at the time of trial that the government show by a preponderance that the property is subject to forfeiture.

157 SEN. SHOEMAKER: What do they need to show?

COOK: They need to show preponderance of evidence.

162 SEN. SHOEMAKER: Then burden of proof shifts to claimant?

FIDANQUE: Reviews current statute.

SEN. SHOEMAKER: Would it be better to state that the burden of proof that the property is subject to forfeiture shall rest on the plaintiff?

FIDANQUE: That would be acceptable.

179 SEN. RASMUSSEN: Refers to -A11 in its original form.

COOK: No problem clarifying where burden of proof lies.

SEN. SHOEMAKER: I don't know you need to go further with the burden of proof.

COOK: That is acceptable.

195 BILL TAYLOR: Reviews packet including copy of statute (EXHIBIT E).

CHAIR SPRINGER: There is a consensus on where the burden should lie.

220 COOK: Reviews -A14 and -A18 amendments (EXHIBITS K and M). Refers to Supreme Court case regarding forfeiture. -A18 relates to proceeds. In

-A19 whether the property is proceeds is just one of a number of factors for the court to consider. That is the difference between the two.

252 SEN. RASMUSSEN: The Attorney General's version on proportionality is -A18?.

COOK: The only modifier on that is if it is partly proceeds and partly property.

265 BILL TAYLOR: Reviews -A20 (EXHIBIT O). They are the issue regarding fishing boats.

SEN. SHOEMAKER: -A18 is OCDLA and -A19 is the AG's?

FIDANQUE: No, the other way around.

277 FIDANQUE: Notes ACLU's first choice is for the -A19. Prepared to live with -A18.

301 JEFF Ratliff, MULTNOMAH COUNTY DISTRICT ATTORNEY: Reviews case cited by Curtis. Provides further information.

CHAIR SPRINGER: Who is Multnomah County D.A. representing?

Ratliff: Morley works for Multnomah County.

356 SEN. RASSMUSSEN: Have criminal charges been brought?

Ratliff: Yes.

SEN. RASSMUSSEN: Please review for us your notes regarding manufacturing and growing.

Ratliff: There is evidence that Holly had assisted in purchasing a marijuana grow house.

RASSMUSSEN: Do you understand what you are saying?

CHAIR SPRINGER: Calls order, explains situation.

CURTIS: Expresses desire to comment.

CHAIR SPRINGER: Urges shift to amendments for the bills.

SEN. SHOEMAKER: Are charges contemplated?

Ratliff: No.

SEN. SHOEMAKER: How long have you known this info?

415 Ratliff: I don't know.

SEN. SHOEMAKER: Questions regarding the safe deposit box, reviews contents and what are the facts on the box?

Ratliff: I do not know.

420 SEN. SHOEMAKER: Is there a basis to keep that money?

Ratliff: I don't know but will review.

BILL TAYLOR: Questions on the dog "hit" on the money.

Ratliff: On the coins and currency.

BILL TAYLOR: Were contents in immediate proximity?

440 Ratliff: I don't know, but will find out.

CHAIR SPRINGER: Moves onto the amendments.

447 PETER SHEPHERD: Submits and reviews written testimony in support of
the
bill (EXHIBIT U). Reviews amendments generally. We are opposed to
-A9, because they say any judgement is voidable upon whatever a judge
decides is good cause.

TAPE 215, SIDE B

040 Continues testimony.

048 SEN. RASMUSSEN: Do you prefer the -A13 amendments because they pick
up
ORCP?

SHEPHERD: That's correct.

055 SHEPHERD: Reviews -A18 and -A19 amendments and supports -A18.
Also
notes that his
agency does not believe that a dog "hitting" on currency constitutes
probable cause. Also provides comment on earlier testimony by Ms.
Curtis.

085 CHAIR SPRINGER: Notes committee will probably have to return to
the
bill at a later time due to time constraints.

101 FRED AVERA, ODAA: Expresses concerns about the handwritten
replacement
for the -A10 amendments. Unsure of intent and language. Believes it
would be hard for interagency teams to work together under the
amendment.

Provides comments on burden of proof.

SEN. SHOEMAKER: Clarifies his earlier statement.

SEN. RASMUSSEN: Neither he nor Sen. Shoemaker were talking about
what
Fred is concerned about.

138 GEORGE STEVENSON, CITY OF SALEM: Submits and reviews written
testimony
in support of the bill (EXHIBIT V). Reviews amendments to the bill

is included in testimony. Testimony contains option A and option B, and most comfortable with option B. Describes Rep. Mannix's proposal.

194 SHAWN MCCRAY, ATTORNEY: Testifies in support of the bill. Supports
in particular the change in the burden of proof. Describes Lane County case.

232 SEN. SHOEMAKER: Have you moved for summary judgment?

233 MCCRAY: No, we stayed the forfeiture proceedings under threat
of criminal charges. The case is frozen.

SEN. RASMUSSEN: You don't want to force the District Attorney to place client in criminal action by following your best option.

250 MCCRAY: Essentially yes.

257 SEN. RASMUSSEN: It's nice to see a second member of my law school
class testify.

261 CHAIR SPRINGER: Calls former witnesses.

267 LAUREL ANN CURTIS: Rebuts Multnomah County District
Attorney's information. The D.A. has stated that Holly had nothing to do with case.

281 CHAIR SPRINGER: Has Holly been asked to provide financial records
to back up her claims?

283 CURTIS: Reviews her mother's work history and father's.

CHAIR SPRINGER: The Committe has run out of time.

Holds bill for further review.

SEN. RASMUSSEN: May want to address the bill later than Monday.

CHAIR SPRINGER: Proposes moving on to easy bills.

PUBLIC HEARING AND WORK SESSION ON HB 2539:

325 BILL TAYLOR: Reviews bill.

333 DAVID FIDANQUE, ACLU: Testifies in support of the bill.

MOTION: SEN. RASMUSSEN moves the bill to the floor with a Do Pass recommendation.

VOTE: In a roll call vote all members vote aye, with SENS. SHOEMAKER
and WEBBER excused.

WORK SESSION ON HB 2382:

BILL TAYLOR: Reviews bill.

MOTION: SEN. SPRINGER moves HB 2382 to the floor with a Do Pass recommendation.

VOTE: In a roll call vote, all members vote aye with SENS. SHOEMAKER and WEBBER excused.

WORK SESSION ON HB 2383:

BILL TAYLOR: Reviews bill and amendments (EXHIBITS W and X).

410 MOTION: SEN. SPRINGER moves HB 2383 to the floor with a Do Pass recommendation.

VOTE: In a roll call vote, all members vote aye with SENS. SHOEMAKER and WEBBER excused.

420 CHAIR SPRINGER: carries remainder of agenda over.

425 Adjourns at 3:10 pm.

Submitted by,

Reviewed by,

Peter Green

EXHIBIT LOG

A Testimony on HB 2291 - John Ellis
B Proposed amendment to HB 2288
C Testimony on HB 2381 - Curtis
D Article from The Oregonian
E Forfeiture statutes - staff
F Proposed amendment to HB 2381
G Proposed amendment to HB 2381
H Proposed amendment to HB 2381
I Proposed amendment to HB 2381
J Proposed amendment to HB 2381
K Proposed amendment to HB 2381
L Proposed amendment to HB 2381
M Proposed amendment to HB 2381
N Proposed amendment to HB 2381
O Proposed amendment to HB 2381
P Memo from Bill Taylor to Committee regarding HB 2381
Q Newsletter - Curtis
R Briefing paper on civil forfeiture - Curtis
S Proposed amendments to HB 2381 - Fidanque
T Proposed amendments to HB 2381 - Fidanque
U Testimony on HB 2381 - Shepherd

V Memorandum from George Stevenson - Shepherd
W Proposed amendment to HB 2383
X Testimony on HB 2383 - Kraft