

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.

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE

February 15, 1991Hearing Room 357 2:00 p.m.Tapes 32 - 34

MEMBERS PRESENT:Rep. Kelly Clark, Chair Rep. Judy Bauman Rep. Marie Bell Rep. Jim Edmunson Rep. Kevin Mannix Rep. Tom Mason Rep. Del Parks Rep. Ron Sunseri

STAFF PRESENT: Holly Robinson, Committee Counsel Kathy Neely, Committee Assistant MEASURES CONSIDERED: HB 2447 - Change in Child Custody, PH HB 2519 - Modifying Visitation Rights, PH SB 387 - Entry of decree by default, PH SB 388 - Child Support Judgments, PH HB 2593 - Recovery by Personal Representative, PH HB 2596 - Juvenile Court, PH

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TAPE 32, SIDE A

003 REPRESENTATIVE MASON: Calls the meeting to order at 2:30 p.m.

PUBLIC HEARING ON HB 2519 Witnesses: Kevin C. Gage, Rep. Derfler, Victor Smith

020 REP. DERFLER, DISTRICT 31: Introduces self and constituent here to testify on the bill.

025 KEVIN C. GAGE, FAMILY LAW LEGISLATION COMMITTEE: (EXHIBIT A) Offers testimony in favor of HB 2519. The issue is when legislature granted nonparents and grandparents the right to gain custody and visitation rights they did not put in a specific provision which allows the courts to amend the original order entered. There are situations where a step parent or grandparent, independent of a dissolution proceeding as for visitation and custody rights, be granted and clearly be outside the ability to have a modification entered through a dissolution proceeding.

This is a house keeping bill to make clear the court's authority to modify a judgment entered. Discusses modifying an order. Must have different circumstances in order to modify. This bill does not say that a change is circumstances is required. It is implicit in law, res judicata, can't get relitigation on the same facts.

030 REP. PARKS: Points out to committee this is the third bill in 3 days talking about not having change of circumstance.

031 KEVIN GAGE: The distinction made is that ORS 107.135 is the basis for the language. Pulled out of divorce modification. There are number

of cases dealing with change in circumstances needed before the judgment can be modified. Believes they would apply to this bill. The bill gives the court authority to grant attorneys fees to any party in the initial proceeding and other.

059 REP. MASON: It is really in the best interest of the attorney.

063 KEVIN GAGE: Recommends a change to the last words of second paragraph, page 2, line 16 which refers to reasonable attorneys fees and costs being assessed against any party for the benefit of the other party. Recommends changing to "another party" rather than "other party". There are typically more than two parties.

100 REP. MASON: Conception is the grandparent would ask for modification and the court would award attorneys fees, against whom?

KEVIN GAGE: Anyone that might take an unreasonable position. This would be in keeping with other in domestic relations cases.

122 REP. MASON: Comments on example given.

KEVIN GAGE: A judge should have discretion to make an award when appropriate. Discusses experience with domestic relation modification case. The court usually does not award attorneys fees.

131 REP. PARKS: Grandparents having a valuable contributions to make to a child's life is a valid concept and needs to be looked at. Very few cases are paid on a recovery aspect but the client is required to pay unless the court awards attorneys fee.

168 KEVIN GAGE: Personally ask for a retainer at beginning of case. Many attorneys take them on a pro bono basis.

178 REP. PARKS: The problem in this situation is grandparents are not parties to the proceeding at the outset. Is there a specific statute that authorizes the grandparents to, at a later time, intervene?

200 KEVIN GAGE: Yes, found in ORS 109.121, the second of the two amended statutes.

REP. PARKS: Why is this needed?

KEVIN GAGE: Because a grandmother had an order and problems arisen regarding visitation. Wanted to modify the visitation. There is no statutory authority granted to the court to amend an order entered under the two statutes.

250 REP. PARKS: Why do you have to use that order to show cause?

KEVIN GAGE: Because the judge asks for grant of authority to grant this order.

REP. PARKS: Said having trouble getting visitation.

280 KEVIN GAGE: Concern is not with enforcement of orders but to modify it. Contempt is a remedy for enforcement of an existing order.

REP. PARKS: What about the stability of the child?

300 KEVIN GAGE: Stability is an important factor the judge looks at.

There needs to be a right to change the order.

330 REP. MANNIX: Under current law, any party can petition the court for an order providing for custody or placement of a child. Has any judge said someone cannot come into court under current law and have a new order?

350 KEVIN GAGE: No. When this problem arose, studied the dissolution statutes. Required to state authority to modify the order and did not see any authority in the current statutes.

REP. MANNIX: The real new policy issue in the bill is the assessment of the attorney fees and costs for the benefits of another party. It is discretionary. Need to have a social policy reason to go beyond tradition of parties paying for own attorney to say that someone else maybe required to pay. Are there other domestic relation cases where a court is authorized to assess attorney fees and costs?

KEVIN GAGE: Unaware of any other area of family law area that does not authorize attorneys fees.

REP. MANNIX: Not making new social policy here, just filling in a gap.

400 HOLLY ROBINSON: Legislative history: the grand parent and psychological parent statute are relatively new in Oregon law.

410 REP. MANNIX: Is there anyone signed up against this bill?

CHAIR CLARK: No. All this does is allow courts to modify what the legislature gave them the authority to do several years ago?

KEVIN GAGE: Yes. It allows them to modify what already exists.

450 CHAIR CLARK: There is also a provision about attorneys fees.

KEVIN GAGE: Yes.

CHAIR CLARK: Comments on Rep. Mason's comments on society.

REP. MASON: Grandparents having to go to court to see grandkids is a terrible commentary on the state of family in America. In the long run the courts are not going to save families.

460 CHAIR CLARK: The intent is to say you can get modification if there has been a change of circumstances in the meaning of Chapter 107 such as normal visitation between parent child.

KEVIN GAGE: That is correct. Comments on Ortiz v. Ortiz.

CHAIR CLARK: Would you object to having a reference to the change in circumstance statute in this bill to make it clear.

KEVIN GAGE: Encourage tying it to 107.135.

480 REP. SUNSERI: The change suggested for page 2, line 16 is to be the same on page 3, line 36?

KEVIN GAGE: Yes.

CHAIR CLARK: Moves out of public hearing into work session.

WORK SESSION

MOTION:REP. MANNIX: Moves to amend the bill on page 2, line 16 and page 3, line 36 to take out "the other" and insert "another".

CHAIR CLARK: Rep. Mannix has made motions for pages 2 and 3. Is there further discussion, is there opposition?

REP. MASON: Yes.

CHAIR CLARK: Asks for roll call vote:

VOTE: COMMITTEE ASSISTANT: Roll call vote.

Rep. Bauman: Excused Rep. Bell: Aye Rep. Edmunson: Aye Rep. Mannix: Aye  
Rep. Mason: Nay Rep. Parks: Excused Rep. Sunseri: Aye Chair Clark: Aye

CHAIR CLARK: The motion passes. The bill is to be amended.

MOTION:REP. MANNIX: Moves to amend the bill on page 2, line 14 and page 3, line 34 to add the following clause at the end where it says "visitation of the minor children" to insert: "based on a change of circumstances as defined in ORS 107.137."

CHAIR CLARK: Rep. Mannix has moved to amend the bill. Will that language do it?

HOLLY ROBINSON: Believes so. ORS 107.135?

REP. MANNIX: Should it be 135?

KEVIN GAGE: It is 107.135.

REP. MANNIX: Excuse me, 135.

CHAIR CLARK: Mr. Gage do you concur the language will do what the committee is trying to do?

KEVIN GAGE: That statute itself does not define change in circumstances but case law and interpretation of that does.

CHAIR CLARK: Consider a friendly amendment to say "within the meaning of".

REP. MANNIX: Yes.

CHAIR CLARK: Further discussion on amendment?

KEVIN GAGE: This issue cannot be divorced by the issue that will be brought up by Mr. Richkind about the change of circumstances rule. There is a question about the Supreme Court saying no change in circumstances is required in visitation cases. Want to bring it to committee's attention. It might not resolve the issue.

TAPE 33, SIDE A

013 CHAIR CLARK: That means under the Ortiz case.

KEVIN GAGE: Correct.

CHAIR CLARK: Reason wanted to hear this first.

014 REP. MANNIX: There is another provision, 107.137. 107.135 is the one discussing change of circumstances. The point of amendment, present it as a conceptual amendment, don't want change of circumstances for other visitation and support proceedings to be a different concept than here.

020 HOLLY ROBINSON: If Legislative Counsel says it need to be done differently, Counsel has the ability to go along.

CHAIR CLARK: Will take it as a conceptual amendment and asks Counsel to make it work.

025 REP. PARKS: Comments on the other bill to follow.

CHAIR CLARK: Asks counsel.

REP. PARKS: Mr. Richkind had the case that involved the court decision on a threshold. Is that what Rep. Mannix's amendment is about?

034 REP. MANNIX: No. Should have a separate policy discussion on what to do on change of circumstances. Whatever is done or not done should be consistent.

CHAIR CLARK: Trying to track HB 2519 with existing law. Further discussion on proposed amendment. Is there opposition? Hearing none, it is so ordered.

044 MOTION:REP. MASON: Moves the deletion of attorneys fee provision on page 2 lines 15 and 16 and on page 3, lines 35 and 36.

CHAIR CLARK: Rep. Mason has moved the deletion of the entire attorneys fees provision subsection 7 on page 2 and subsection 10 on page 3. Asks to speak to motion.

REP. MASON: To the motion: Can see logic of bill. It is not good social policy to say they are special third parties and can get attorneys fees paid for. It will make it that much easier.

074 CHAIR CLARK: Hopes the committee will make a collected determination that regardless of the outcome on this motion, the bill and concept are still worth fighting for.

077 REP. MANNIX: Important to look at language here. If this said prevailing party, would not support but it says court may assess against any party, fee and costs for benefit of another party. Discusses poor grandparents. This just authorizes the court to look at circumstances and weigh the equities. Will oppose this amendment.

098 REP. PARKS: Not allowing attorneys fees better balances the issue. Calls for the question.

116 CHAIR CLARK: There is opposition, clerk will call the roll.

VOTE:COMMITTEE ASSISTANT: Roll call vote.

Rep. Bauman: excused Rep. Bell: aye Rep. Edmunson: aye Rep. Mannix: nay  
Rep. Mason: aye Rep. Parks: aye Rep. Sunseri: aye Chair Clark: aye.

CHAIR CLARK: The motion passes.

136 MOTION:REP. MANNIX: Moves the bill as amended to the full committee with a do pass recommendation.

CHAIR CLARK: Rep. Mannix moves the bill to full committee with a do pass recommendation.

VOTE:COMMITTEE ASSISTANT: Roll call vote.

Rep. Bauman: excused Rep. Bell: aye Rep. Edmunson: aye Rep. Mannix: aye Rep. Mason: aye Rep. Parks: aye Rep. Sunseri: aye Chair Clark: aye

CHAIR CLARK: HB 2519 as amended is passed to full committee with do pass recommendation. Rep. Parks to carry. Discusses intent of the Chair.

(Tape 33, Side A) PUBLIC HEARING ON HB 2447 Witnesses: Steve Richkind, Karen Berkowitz, Judy Snyder, Mike Wells, Victor Smith

153 HOLLY ROBINSON: Gives overview of bill. It would require the court to determine in every case whether change of circumstances would be in the best interest of the child.

173 STEVE RICHKIND, ATTORNEY: (EXHIBIT B) Offers testimony in favor of the bill. Change of circumstance rule is not in the statutes, it evolved from common law. The purpose of this bill is to allow judges to see evidence that affects children. The problem comes when parties stipulate and no judge has ruled on the evidence. Discusses Ortiz v. Ortiz and Welby v. Welby. Suggests an amendment to the bill on page 2 to read "when the last custody determination was made by stipulation of the parties and the court did not make an in court adjudication on the merits". This addresses the problem of stipulation and balances the interest.

268 CHAIR CLARK: The bill codifies case law prior to Ortiz by specifying .....

STEVE RICHKIND: As written, the bill will abolish the change in circumstance rule.

279 CHAIR CLARK: How can you get around the problem of asking a court to make an inquiry into every case? The law presumes if stipulated, the parents know best.

STEVE RICHKIND: It shouldn't be binding on the judge.

289 CHAIR CLARK: Change in circumstance is not needed to get into court on a custody or modification.

STEVE RICHKIND: Without the amendments, would basically allow anybody to go to court and judge will make determination on what is in child's best interest. Problem is people who will litigate over and over.

CHAIR CLARK: This is an invitation to litigation.

306 REP. MANNIX: Shooting at the wrong target. Comments on the real change of circumstances in the Ortiz case.

336 STEVE RICHKIND: There is no statute, it is common law. Discusses Welby which sets forth the problem of stipulation. Comments on the difference between evidence that has been adjudicated and evidence which has only been stipulated to. If judge has not seen the evidence, should not be bound to ignore that evidence.

376 REP. PARKS: Comments on written testimony: "Strict laws like these allow shrewd lawyers to keep judges from hearing all of the evidence, forcing judges to award children to convicted felons and keeping lawyers well fed." You want the committee to codify the case law out of the two cases cited.

STEVE RICHKIND: No.

REP. PARKS: How did Ortiz not embrace the dissent in Welby?

403 STEVE RICHKIND: Ortiz distinguished a visitation order from an custody order. Change in circumstance rule only applies to custody issues and not visitation.

420 CHAIR CLARK: The original award of custody is determined by child's best interest. This should also apply to modification orders. Not sure this bill does that. Trying to avoid having a hearing in every change of custody case.

TAPE 32, SIDE B

023 STEVE RICHKIND: Sees reasons in opponent's arguments.

CHAIR CLARK: Discusses an example of when a hearing is not a good idea.

STEVE RICHKIND: The bill would not force anyone to have to go to court. Could have two classes of custody orders.

041 CHAIR CLARK: Suggests hearing from those opposed to the bill because they can sometimes point out possible solutions.

STEVE RICHKIND: Addresses the shifting of burden. It is not unreasonable to shift the burden of proof to the convicted parent to show fitness for custody.

CHAIR CLARK: Is that central to the bill?

STEVE RICHKIND: No. Most important is the change of circumstance rules itself.

056 REP. MASON: If this were passed, will you inform clients, before entering guilty pleas to felonies, this may cost custody of children.

STEVE RICHKIND: Interesting question. Yes, would advise them. The bill doesn't create a conclusive presumption. Family Law Section suggests there are several felonies which are ....

CHAIR CLARK: Cuts off because of volume of work today. Need to hear opposition.

073 REP. BELL: Comments on re-wording the bill, conceptually, to state it is an opportunity to revisit the case not assuming they will lose custody or the case.

080 KAREN BERKOWITZ, OREGON LEGAL SERVICES, FAMILY LAW TASK FORCE OF OREGON'S LEGAL AID PROGRAMS: (EXHIBIT C) Gives background of experience. Summarizes and highlights opposition to the bill. Likes change in circumstance rule, and the finality and stability it promotes for families and children. This will cause a lot of litigation.

109 CHAIR CLARK: The change of circumstance rule provides a helpful gate and finality?

KAREN BERKOWITZ: Yes.

CHAIR CLARK: Once establish change in circumstance, the determination is made on best interest of child.

KAREN BERKOWITZ: Yes. Just a threshold question.

116 CHAIR CLARK: Would you agree there could be situations where it cannot meet the threshold of change of circumstance within meaning of case law but as advocate could prove change of custody was in child's best interest?

KAREN BERKOWITZ: Only imagines it if have case where someone settled knowing there was some skeleton in the closet.

124 CHAIR CLARK: Helpful to hear what the courts are saying constitutes a change in circumstance.

KAREN BERKOWITZ: If the court wants to hear it, will find a change in circumstances. Don't want to see "I changed my mind" as a change in circumstances.

134 REP. PARKS: Stipulation of custody is made for all kinds of consideration.

KAREN BERKOWITZ: Yes.

REP. PARKS: There is a halfway between stability and upsetting the child. Discusses going back to the point where court reviewed the circumstances to get past stipulated orders.

149 KAREN BERKOWITZ: Uncomfortable with messing with the change of circumstance rule. It has been around for 15 years and believes it works.

REP. PARKS: Can't get into court unless show change in circumstances. Once that has been demonstrated, the scope of review, would be to go back to the last time the court actually looked at it.

KAREN BERKOWITZ: Interprets that as being able to introduce older evidence after showing change in circumstance. No real objection to that. Judges would take into consideration how old and relevant the evidence is. Comments on criminal convictions and shifting burdens.

174 JUDY SNYDER, OTLA: (EXHIBIT D) Opposes legislation. Ms. Berkowitz's testimony summed up position.

185 MICHAEL WELLS, FAMILY AND JUVENILE LAW SECTIONS OF THE OREGON STATE BAR: (EXHIBIT E) Opposes the legislation. Echoes same comments. Stipulations between parties should have some force and effect. Change in circumstance rule should apply to provide children a stable home



life.

193 REP. BELL: Presently is conviction of felony considered a change of circumstance?

JUDY SNYDER: The court will make whatever they find to be relevant a change of circumstances.

200 MICHAEL WELLS: Current law requires conduct of a party be related to emotional and physical well being of a child.

210 VICTOR SMITH: Opposes bill. All points have been made.

246 CHAIR CLARK: Closes hearing on HB 2447.

(Tape 32, Side B) PUBLIC HEARING ON SB 387 Witness: Mike Wells

HOLLY ROBINSON: Overview of bill.

267 MICHAEL WELLS, FAMILY LAW SECTION OF OSB : (EXHIBIT E) Testifies in favor of the bill. This is a technical amendment designed to allow what is currently happening.

REP. MASON: This is one of the best little bills coming through.

CHAIR CLARK: Surprised it is not in the statute now, but it happens all the time.

MICHAEL WELLS: When parties appear formally in sense of court papers.

WORK SESSION

278 MOTION: REP. MASON: Moves SB 387 to full committee with do pass recommendation.

296 CHAIR CLARK: Rep. Mason moves the bill to full committee. Any discussion? Asks for roll call vote.

VOTE:COMMITTEE ASSISTANT: Roll call vote.

Rep. Bauman: excused Rep. Bell: Aye Rep. Edmunson: excused Rep. Mannix: aye Rep. Mason: Aye Rep. Parks: Aye Rep. Sunseri: Aye Chair Clark: Aye

CHAIR CLARK: SB 387 is passed to full committee with a do pass recommendation.

(Tape 32, Side B) PUBLIC HEARING ON SB 388 Witnesses: Mike Wells, Victor Smith

HOLLY ROBINSON: Gives summary of bill. Current statutory rate of interest is 9%. This bill will raise it to 4% greater than the rate of interest otherwise allows on child support judgements in arrears.

298 MICHAEL WELLS, FAMILY LAW SECTION, OSB : (EXHIBIT G) Testifies in favor of the bill. The bill will raise interest rates on child support obligation. The purpose is to make people who owe and can pay but will not, have greater incentive to pay the support over other competing obligations. Rep. Edmunson was correct, should not have used the term "consumer obligations". Believes child support should become competitive status with other obligations. It will not make a difference to those

who cannot pay but to encourage it from those who can but choose not to.

365 CHAIR CLARK: Understands public policy aspect of bill. Gives an example of a child support problem. Wonders how the bill will get to those who can afford to pay and don't and those who cannot legitimately afford to pay.

395 MICHAEL WELLS: Cannot legislate away every individual family law problem. Those who don't take action, we can't help. A person should know, because of notice, when child support is entered it will be more expensive if don't pay it. Person receiving the payment can waive the interest on the accrued amount.

TAPE 33, SIDE B

012 REP. EDMUNSON: Anything that can enforce payments is good. Not confronting the concept of interest on judgments. Suggests the interest on judgments be increased to deal with this. Other obligations are at higher rates and tend to be paid first. Why is it more important to pay a child support than judgment for personal injury to child or for judgments on wages owed to a family, etc.? Secondly, there are millions of dollars in child support arrearage, shouldn't we go after those who just are not paying at all? Adding interest is a "paper victory". Finally, there are contempt proceedings available for those who don't pay. They can go to jail but judges don't send them.

058 MICHAEL WELLS: First, there are many contempt laws. There will be a number of revisions to those which may help. Use of contempt is not very effective. Threats to put in jail do not put money in the pocket of the support receiver. Believes the support enforcement agencies are going after those who have not been paying. Experience is they are low income obligor and almost always men who have not been paying what they do have. They will not be affected by this. There is a financial motivation for the State to collect on these debts for financial benefits from the federal government. Personal observation, raising interest rates on judgments may be a good idea but it would be contested and not serve purpose of getting money to children. Discusses priority obligations and interest rates.

117 CHAIR CLARK: Seems this can be carried one step further to say interest on personal injury to a child, all other examples raised by Rep. Edmunson, are all indirectly related to child's welfare. Child support is directly related to child's welfare.

127 REP. MANNIX: Don't see this bill as giving it a higher priority in collection terms but higher interest rate. Concerned about waiver of interest by judgment creditor. Can't this be done now?

MICHAEL WELLS: Yes.

REP. EDMUNSON: Child support judgments are not a higher priority than other judgments?

MICHAEL WELLS: They don't rank any differently than other judgments. Date of entry determines priority for enforcement of judgment.

REP. EDMUNSON: Are there liens that are given priority?

MICHAEL WELLS: Yes, they are statutory liens regarding contractors liens, attorneys liens, tax liens, etc. Statutory liens, in chapter 80,

have provision of simply entering a notice of assertion and they have priority. Discusses liens.

REP. MASON: Comments on notice.

REP. EDMUNSON: Child support falls after all of those.

MICHAEL WELLS: Gives example to clarify. Monies due for child support technically become a judgment when not paid.

REP. MASON: Isn't there an amount, a threshold before become a lien?

MICHAEL WELLS: Not a lien on real property before execute and foreclosure. \$3,000.

REP. MASON: Thinks it was \$3,000.

MICHAEL WELLS: The distinction is there might be lien but could not enforce until it accumulates to a certain amount.

REP. EDMUNSON: Have a person who owes child support and other liens and has not been paying anyone. Court seizes property and creditors stand in line to be paid. The child stands near the end of the line but their interest will be a higher rate.

MICHAEL WELLS: Yes.

REP. EDMUNSON: What would reaction be if legislature were to make child support liens a higher priority.

MICHAEL WELLS: Personal opinion: can see technical problems because of the on going nature of the obligation. Discusses an example where people will be paid to the extend that money is available and in order of priority.

REP. EDMUNSON: Child is way back.

MICHAEL WELLS: Yes.

213 VICTOR SMITH, PRESIDENT OF DADS AGAINST DISCRIMINATION: Opposes the bill. There is already a statute in support section of ORS and under rules there is phrase with every divorce decree that after 30 days delinquency, there is possible of wage assignment. This bill would focus on those having problems and not employed. Discusses ORS 25.023. Suggests many cases of support are tied into other items in the decree. No consideration for other interest in the decree such as visitation and denial thereof. Charging obligor 4% more than statutorily required singles him out for special treatment. Discusses class of obligers. Discusses administrative rules and Measure 5.

CHAIR CLARK: Asks to limit testimony to the bill.

277 VICTOR SMITH: Comments on outstanding child support the state would like to get a hold but cannot, suggests keeping list of those in hospitals, prisons, etc. who cannot pay because they don't have a job. This might clarify the arrearages.

CHAIR CLARK: Closes hearing on SB 388.

(Tape 33, Side B) PUBLIC HEARING ON HB 2596 Witness: Judy Snyder

313 JUDY SNYDER, OTLA: (EXHIBIT H) Offers testimony in favor of bill. This did make it through the House last session but got bogged down in the Senate. The purpose of the bill is to give "teeth" to law in juvenile system that has very little effectiveness. Comments on ORS 419.582. This encourages and promotes the payment of restitution and other obligations by juvenile offenders. ORS 419.511 provides the court's jurisdiction ends at age 21 and opportunities are extinguished if not paid by then. This makes court order docketed as judgments in favor of the state so it will continue beyond age of 21 to secure payment.

352 CHAIR CLARK: Comments on the bill last session.

JUDY SNYDER: It ultimately passed through the committee.

REP. MASON: How does adult restitution work?

JUDY SNYDER: It is ORS 137.106.

REP. MASON: This bring in conformity with that.

364 JUDY SNYDER: Yes. Restitution is pecuniary damages, special damages. Comments on definition of restitution.

CHAIR CLARK: Closes hearing on HB 2596.

WORK SESSION ON HB 2596

MOTION:REP. MANNIX: Moves HB 2596 to the full committee with a do pass recommendation.

CHAIR CLARK: Rep. Mannix moves HB 2596 to full committee with do pass recommendation. Asks for further discussion.

398 REP. MANNIX: Supported this bill last session. Believes it is important to recognize there are limitations on restitution. It is appropriate to allow collection on it when ordered. In the discretion of the court.

CHAIR CLARK: The restitution is within the court's discretion?

REP. MANNIX: Yes.

CHAIR CLARK: The bill says the order shall be docketed.

403 REP. PARKS: Why does the last sentence say restitution is in favor of the state?

CHAIR CLARK: Asks Judy Snyder to answer.

411 JUDY SNYDER: Attempted to bring it to conformance with adult restitution statutes. It would be passed on through to the victim.

TAPE 34, SIDE A

012 MOTION:REP. MANNIX: Moves to change the word "shall" on line 31 to "may".

CHAIR CLARK: Need to withdraw earlier motion to the floor.

REP. MANNIX: Withdraws earlier motion.

CHAIR CLARK: Any objection to the withdrawal, hearing none it is so ordered. Rep. Mannix moves to change the word "shall" to "may" on line 31.

019 JUDY SNYDER: Understands reasons to give court discretion. No objection to the change.

021 CHAIR CLARK: Rep. Mannix would you consider a friendly amendment for the language to be "the order may be docketed and if so shall have the same effect as a judgment in civil action":?

REP. MANNIX: Yes.

023 CHAIR CLARK: Further discussion on proposed amendment. Any objections? Hearing none, it is so ordered.

024 MOTION:REP. MANNIX: Moves the bill as amended to the full committee with a do pass recommendation.

CHAIR CLARK: Rep. Mannix moves HB 2596 as amended to the full committee with a do pass recommendation. Any discussion? Discusses opposition to bill in the last session.

VOTE:COMMITTEE ASSISTANT: Roll call vote:

Rep. Bauman: excused Rep. Bell: aye Rep. Edmunson: aye Rep. Mannix: aye  
Rep. Mason: aye Rep. Parks: aye Rep. Sunseri: aye Chair Clark: aye

CHAIR CLARK: HB 2596 passes to full committee with a do recommendation. Rep. Mannix will carry the bill.

(Tape 34, Side A) PUBLIC HEARING ON HB 2593 Witness: Charles Williamson

048 HOLLY ROBINSON: Provides overview of HB 2593. Discusses history of the bill.

063 CHARLES WILLIAMSON, OTLA: (EXHIBIT I) Offers testimony in favor of the bill. The bill essentially recognizes the situation of families today regarding step children and parents and permits the courts to take that relationship into consideration for wrongful death judgments. Washington has a similar provision.

071 CHAIR CLARK: Comments on past bills.

WORK SESSION ON HB 2593

077 MOTION:REP. MASON: Moves HB 2593 to the full committee with a do pass recommendation.

CHAIR CLARK: Rep. Mason moves HB 2593 to the full committee with a do pass recommendation.

VOTE:COMMITTEE ASSISTANT: Roll call vote:

Rep. Bauman: excused Rep. Bell: aye Rep. Edmunson: aye Rep. Mannix: aye  
Rep. Mason: aye Rep. Parks: aye Rep. Sunseri: excused Chair Clark: aye

CHAIR CLARK: HB 2593 passes to full committee with a do recommendation.

Rep. Edmunson will carry bill. Adjourns the meeting at 4:30 p.m.

Submitted by:      Reviewed by:

Kathy Neely              David Harrell Assistant Office Manager

EXHIBIT LOG:

A            -            Testimony on HB 2519 - Kevin Gage - 2 pages  
B            -            Testimony on HB 2447 - Steve Richkind - 14 pages  
C            -            Testimony on HB 2447 - Karen Berkowitz - 3 pages  
D            -            Testimony on HB 2447 - Judy Snyder - 2 pages  
E            -            Testimony on HB 2447 - Mike Wells - 4 pages  
F            -            Testimony on SB 387 - Mike Wells - 2 pages G            -            Testimony  
on SB 388 - Mike Wells - 3 pages H            -            Testimony on HB 2596 - Judy  
Snyder - 1 page I            -            Testimony on HB 2593 - Charles Williamson - 4  
pages