

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

April 22, 1991Hearing Room 357 3:00 p.m.Tapes 101 - 104

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 Jeff Steve, Committee Assistant Holly Blanchard, Transcriber

MEASURES HEARD:HB 3224, PH HB 3515, PH HB 3516, PH HB 3545, PH/WS

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TAPE 68, SIDE A

004 CHAIR CLARK: Opens Subcommittee on Family Justice at 3:10 p.m.

HB 3545 - PUBLIC HEARING

015 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes HB 3545 which concerns health insurance benefits in dissolution proceedings. The fiscal impact is a projected savings of \$40,000 in this biennium and \$50,000 in the next biennium.

028 WILLIAM LINDEN, JR., STATE COURT ADMINISTRATOR (EXHIBIT A): Found the Insurance Notice under ORS 107.092 would save the state some money. HB 354 5 would shift the obligation of notification of health insurance from the state to the petitioner. It would save us money and time. I question the need for the courts to be involved in this which puts us in the "middleman" role.

042 CHAIR CLARK: How long has the requirement been in existence concerning the courts'involvement?

044 LINDEN: Recalls it went into effect as a result of the 1987 legislature. An argument in favor of it was that a petitioner couldn't be relied upon to provide the notice. This requirement of notification

would open the petitioner up to potential liability. The notice itself is provided by the Department of Insurance and Finance.

052 MARY ALICE BJORK, MANAGER, RATES AND FORMS, DEPT. OF INSURANCE AND FINANCE: Supports HB 3545. The form was designed by our staff.

HB 3545 - WORK SESSION

060 MOTION, REP. MASON: Moves HB 3545 to the Full Committee with a "do pass" recommendation.

068 VOTE: 7-0 AYE: Bauman, Bell, Edmunson, Mason, Parks, Sunseri, Clark  
NO: None EXCUSED: Mannix

Motion passes, Rep. Mason to carry.

HB 3224 - PUBLIC HEARING

078 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes HB 3224 which concerns enhanced earning capacity in marital dissolutions.

094 REPRESENTATIVE DEL PARKS, DISTRICT 53 (EXHIBITS B & C): Testifies in favor of HB 3224. Refers to original legislation, Page 1, beginning on line 27 and ending on Page 2, line 37 dealing with spousal support or alimony. The bill brought before the committee is not designed to replace alimony (see EXHIBIT C). That amendment puts back language Legislative Counsel deleted. Discusses enhanced earning capacity that would probably involve largely professional people. Gives example of wife contributing to huSB and's education during a 15-year marriage.

166 CHAIR CLARK: How does HB 3224 dovetail with existing law? There's property division and child support, currently alimony is considered part of property division.

173 REP. PARKS: Don't agree with that. Alimony is awardable in cases where the court feels it's just to equal out the relative position of the parties.

176 CHAIR CLARK: What's the result of the proposed bill granting alimony or shifting the distribution of property?

187 REP. PARKS: Gives example of distribution which could include a charge against a business (practice), depending on the circumstance. Think of spousal support as private alimony.

209 CHAIR CLARK: Gives case scenario of a woman who married and supported the family for about 6 years of a 12-year marriage. During the last 6 years, the huSB and earned twice as much as the wife. How would this bill affect that situation?

229 REP. PARKS: It would allow a judge to consider the wife's contribution as substantial, material, and of a prolonged duration. And whether the person had an enhanced earning capacity as contrasted to someone else in like circumstances.

239 CHAIR CLARK: Recalls the huSB and didn't have any particular identifiable interest in the business in which he was working.

247 REP. PARKS: This bill addresses the economic partnership of marriage. Refers to EXHIBIT B, Page 4, Chart. This is based on earning

capacity--there's a distinction between that and potential earning capacity. This bill refers to demonstrated earning capacity. View this bill as more restrictive than other Oregon law on this type of issue.

385 CHAIR CLARK: The bill takes contribution to earning capacity and makes an award through property distribution by looking back? Discusses future spousal support from future earnings.

407 REP. PARKS: The bill is a little bit of both because it does anticipate that demonstrated earning capacity will continue for a reasonable period of time in the future.

TAPE 102, SIDE A

019 REP. BELL: Raises questions concerning material contribution of substantial and prolonged duration. Does that refer to dollars?

023 REP. PARKS: Dollars is part of it but not all. It also refers to people who've given up a lot for the benefit of the spouse.

024 REP. BELL: Thought it would take more than just being a homemaker?

027 REP. PARKS: Yes, it would.

042 REP. PARKS: This is a partial solution to all the problems. This will change the rule for enhanced earning capacity.

069 REP. BELL: Don't see how this bill will address the problem of the contribution of the spouse.

071 REP. PARKS: HB 3224 is not designed to address the whole problem. Defines reference to substantial contribution over a prolonged duration.

105 REP. BELL: Concerned about the homemakers who are full time homemakers who can't show their financial contribution on a credit sheet. Would like that built into the bill.

112 REP. PARKS: It's in the law already in the spousal support section.

127 KATE BROWN, WOMEN'S RIGHTS COALITION (EXHIBIT D): We support the concept of HB 3224 which addresses a very specific fact situation for which there are no other remedies. The Coalition believes the rebuttable presumption of equal contribution should be left in the statute and incorporated into this concept which would address Representative Bell's concern about homemaker contribution. Discusses situations concerning spousal support.

172 REP. BAUMAN: Thought it was pretty rare to have a spousal support award modified because it's based on the lifestyle linked to the marriage. Is it something that can be modified based upon any change in circumstances?

181 BROWN: Yes. Spousal support is modified whenever either party can show a substantial change in circumstances.

187 REP. BAUMAN: Alimony being the terminology for permanent spousal support.

192 BROWN: I used alimony and spousal support interchangeably. Very

rarely is either one permanent and it's only used in long term marriages--generally over 20 years.

190 ROBINSON: Seems this could apply equally to people who don't have professional degrees but were self-employed. Questions reference to degrees only.

209 BROWN: That's correct. Would also see it apply to a business.

224 CHAIR CLARK: Is there something that the Committee can do with this bill to eliminate your concern yet maintain its intent?

228 BROWN: Suggests deleting language "material contribution and of substantial long term duration" and including the language "rebuttable presumption with equal contribution".

237 MICHAEL WELLS, CHAIR, LEGISLATION SUBCOMMITTEE OF THE FAMILY & JUVENILE LAW SECTION, OREGON STATE BAR (EXHIBIT E): Interesting concept but oppose HB 3224 which attempts to cure a legitimate problem. Even if the bill put back in the factor in the spousal support award section, it still has problems relating to the homemaker issue raised by Representative Bell. Argues that the work the homemaker does in social and public functions is a direct contribution to the earning capacity of the spouse. This causes a burden of proof when it isn't in the spousal support statute. Discusses issue of spousal support awards and the ability of the obligor spouse to pay.

306 REP. PARKS: What have Oregon courts done with this problem since the Grove cases of 1977? Do you perceive this as an inequity?

315 WELLS: I perceive that in some cases there are inequitable results from application of the current statute on spousal support.

318 REP. PARKS: What has the Oregon Supreme Court done since Grove?

322 WELLS: The court has followed the legislative changes which have generally tracked Grove. Discusses the Grove case relative to future earnings and flexibility in court findings.

338 REP. PARKS: That flexibility has always meant that the wife has no interest in the huSB and's future earning capacity under any circumstances.

343 WELLS: The court cannot currently award as a property right an interest of the spouse who has that type of earning capacity.

344 REP. PARKS: If we eliminated the language, "the prolonged and substantial duration" and the "material contribution" aspects of this change, would you support the change?

349 WELLS: Can't speak for the committee without the amendments. Would tend to oppose it personally for several reasons (lists them).

372 REP. PARKS: This bill addresses the enhanced earning capacity during the marriage--not its potential.

379 WELLS: Reviews situations.

386 REP. BELL: Even if the spouse graduated from professional school

there would be years of struggle. Why can't they assign as property a percentage of the practice or business?

401 WELLS: It's conceivable to do that but I wouldn't support it due to its inflexibility. Gives examples of change of income due to career changes.

TAPE 101, SIDE B

007 REP. BELL: Not trying to restrict the spouse's career changes.

012 REP. BELL: Discusses buy out of percentage agreed.

017 WELLS: Those would be radical shifts in current law. See this bill as a significant shift from Oregon law that our committee suggests is an inappropriate means to address what is a legitimate problem.

037 DIANE THELEN, PUBLIC SCHOOL TEACHER (EXHIBIT F): Supports HB 3224 and reads written testimony. Discusses personal divorce situation relative to future earning capacity of huSB and. Object to spousal support because it would be "on the dole with alimony." Alimony is almost always temporary and suggests no value to my contribution.

132 REP. MASON: Discusses an article about no-fault divorce.

153 HELENJANE WILLIAMS, OREGON OLDER WOMEN'S COALITION (EXHIBIT G): Opposed to HB 3224 and discusses divorce reform that began in 1977. Resents remarks that the homemaker has not contributed. Object to language "material contribution, prolonged, substantial, etc." This would give the court an excuse to say the contribution wasn't enough. Refers to proposed amendments (EXHIBIT G).

HB 3515 and HB 3516 - PUBLIC HEARING

291 CHAIR CLARK: Recesses committee for five minutes.

292 CHAIR CLARK: Reconvenes committee at 4:39 p.m.

312 RICHARD KOENIG, CITIZEN (EXHIBIT H): Supports HB 3515 and HB 3516. Reads written testimony.

396 CHAIR CLARK: Fan of joint custody wherever possible. Refers to ORS 107 .137 and suggests adding a subsection (e) concerning which parent is most likely to facilitate a strong relationship with the other parent.

TAPE 102, SIDE B

009 KOENIG: That is indicated on Page 4 of my presentation (EXHIBIT H). This should be the priority factor in awarding custody.

020 KENNETH SMARD, CITIZEN: Supports HB 3515 and HB 3516 because it would limit state interference in domestic situations and allow children to have a relationship with both parents.

072 KOENIG: The NF rating (no fiscal impact) for HB 3515 and HB 3516 from the Legislative Fiscal Office is inaccurate. There were 89,812 domestic relations filings in 1989 at a cost of \$13.5 million to the state. This legislation would minimize hours in initial trial phase of custody proceedings and repeat business to the court on contempt. Discusses the Oregon State Bar's objections to past joint custody

proposals. This bill proposes incentives to cooperate between the parents.

158 JOHN BRUCE, CITIZEN, CENTRAL POINT (EXHIBIT I): Involved in support group for divorced, non-custodial fathers. Supports HB 3515 and HB 3516. It's unfortunate the courts don't address issues on a case-by-case basis.

216 REP. MASON: Been listening to people's horror stories for seven sessions. (Tape inaudible.)

235 BRUCE: Notes that about 70 percent of divorce petitions filed in California and Jackson County are filed by women. Courts are not at liberty to take cases on an individual basis.

253 REP. MASON: Seems the issue here is not joint custody but to address very basic inequities.

274 BRUCE: Part of the issue is joint custody. Respect the mediators who have an objective viewpoint.

338 CHAIR CLARK: Your perspective is helpful and the chair understands.

346 REP. MANNIX: The statutory scheme itself isn't so much the hindrance as is the judicial system. Is there something we could do to assist the system by making mediators available on a routine basis?

362 BRUCE: Good question but don't have any answers.

367 REP. MANNIX: Perhaps we could have church groups to act as mediators.

374 BRUCE: That would be good.

380 REP. MANNIX: Encourage you to talk with your support group and mediators in your local area concerning a new approach and report back to the committee with findings.

387 REP. MASON: The big issue is who has custody. We should look at the responsibilities of the spouse who has custody.

TAPE 103, SIDE A

015 LORAH SEBASTIAN, PhD, OREGON PSYCHOLOGICAL ASSOCIATION (EXHIBIT J): Testifies in opposition to HB 3515 and HB 3516.

043 DR. HAROLD BOVERMAN, OREGON PSYCHIATRIC ASSOCIATION AND THE OREGON COUNCIL OF CHILD PSYCHIATRY (EXHIBIT K): We are opposed to HB 351 5 and HB 3516.

048 KEITH CHENG, PSYCHIATRIST, OREGON PSYCHIATRIC ASSOCIATION (EXHIBIT L): Opposed to HB 3515 and HB 3516.

052 SEBASTIAN: I'm very much in favor of mediation as noted by Representative Mannix. Concerned that children, as the victims of divorce, be represented adequately.

077 BOVERMAN: Discusses mandated joint custody issue. Notes the number of contested custody cases rose with the implementation of no-fault divorces. Then when there was a perception of being coerced, mandated

or adjudicated into anything resembling joint custody, a new kind of child sex allegation began to appear clinically.

087 REP. MASON: One thing that appears to be missing is someplace to assign blame.

105 BOVERMAN: It is as if people no longer have anything to fight about except the children. Now they fight about who has them on what day at what time. Not saying all allegations of child sex abuse are related to this problem but it's a rash of allegations we've never seen before.

119 REP. MASON: Think this does have relevance to the bills before the committee because the only vehicle for some of the bitterness is joint custody.

123 BOVERMAN: Parties in these instances are very willing to fight but not willing to pay for treatment, remedies or mediation. Joint custody would financially benefit child psychiatrists while giving the judges a chance to abdicate their responsibility.

136 CHAIR CLARK: If HB 3516 doesn't work, what's wrong with taking HB 3515 and putting it into the statute?

146 BOVERMAN: Refers to HB 3516, Page 1, lines 11-12, which says only psychologists are competent to conduct the evaluation.

162 SEBASTIAN: Discusses HB 3515 and forcing joint custody.

174 CHAIR CLARK: Discusses the success of some judges in getting people to comply with the divorce decree.

184 BOVERMAN: Refers to laundry list in the existing law, ORS 107.137. Agrees with Dr. Sebastian about adding a subsection (e) dealing with contentiousness or "shall consider joint custody."

195 SEBASTIAN: This is used in a lot of states as criteria.

200 CHENG: Discusses divorce issues from "The Child Psychiatry Test", pub. 199 1.

232 CHAIR CLARK: Suspect you wouldn't feel comfortable with HB 3516?

242 CHENG: It makes the presumption that joint custody is in the best interests of the child.

246 CHAIR CLARK: Discusses inserting a rebuttable presumption that joint custody is in the best interests of the child.

255 REP. BAUMAN: How often would do you turn the reluctant parent into a willing joint custody participant?

273 BOVERMAN: Can't remember one. But many women will agree to joint custody in bartering for a perceived better financial settlement.

288 REP. BAUMAN: Heard disturbing news reports of children of divorce.

295 CHENG: Almost 90 percent of the hospitalizations to my unit concern divorced families.

299 REP. BAUMAN: One change might require counseling.

306 SEBASTIAN: Notes problem maintaining statistics but they would be helpful.

318 CHAIR CLARK: Had a couple of bills on surrogacy. You cannot mandate a relationship to work.

334 CHENG: Research indicates that voluntary joint custodies work and those that are mandated do terribly.

355 MICHAEL WELLS, FAMILY AND JUVENILE LAW SECTION, OREGON STATE BAR (EXHIBITS M & N): Testifies in opposition to HB 3515 and HB 3516. We can't legislate away family disputes. Discusses problems with both bills.

TAPE 104, SIDE A

011 CHAIR CLARK: The proposal is to add one other factor to ORS 107.137 concerning which parent would be most likely to facilitate contact with the other.

013 WELLS: Don't have a problem with that so long as one factor is not used in isolation of all the other factors would remain in the statute. And the amendment would state that under certain circumstances that factor would be appropriate.

026 REP. BAUMAN: It is coming through loud and clear that a decision is being made concerning custody based upon the willingness of the parent to facilitate visitation.

040 CHAIR CLARK: Discusses other factors the judge can consider in the best interests of the child.

043 REP. MASON: These factors come into play in a modification.

050 WELLS: That's correct. Notes a pending Uniform Visitation Rule being promoted by the Uniform Rules Committee. It's an attempt to standardize access to the non-custodial parent which might address some of the concerns raised.

062 KATE BROWN, WOMEN'S RIGHTS COALITION (EXHIBIT O): We are opposed to mandatory joint custody because it places parents in close proximity of one another thereby increasing stress and tension. Joint custody poses a problem of moving the child's residence.

071 CHAIR CLARK: There can be joint custody with physical custody residing with one parent so it's not an inherent problem with joint custody.

073 BROWN: Assume the requirement of joint physical custody means joint physical and joint legal custody, so the children are being time-shared.

077 CHAIR CLARK: There's a variety of ways to work that out.

079 BROWN: One of the Coalition's major concerns about mandatory joint custody is that battering of a spouse often escalates during and after a divorce. This puts the children at risk both emotionally and physically. National trend is moving away from requiring joint custody.



Notes that in joint custody cases, child support goes down and the collection rate does not rise.

136 DAVID NEBEL, FAMILY LAW TASK FORCE (EXHIBITS P-T): Testifies in opposition to HB 3515 and HB 3516. Thinks the "friendly parent factor" into the custody equation would increase child custody as a bargaining chip in divorces. Would put domestic violence victims in a terrible situation.

168 CHAIR CLARK: Suggests language. Wants to avoid abusive situations.

197 BROWN: Assumed "facilitating contact" was over and above court-ordered visitation.

205 NEBEL: Discusses opposition to HB 3516. Research from experts shows no evidence that joint custody is in the best interests of the children--it tends to indicate the opposite. Concerned that the bill repeals the list discussed.

251 CHAIR CLARK: Adjourns Subcommittee at 6:00 p.m.

Submitted by: Reviewed by:

Holly Blanchard  
Manger

David Harrell Transcriber

Office

#### EXHIBIT LOG:

A - Written testimony, William Linden, Jr., State Court Administrator, HB 354 5, 2 pages B - Written testimony, Rep. Del Parks, HB 3224, 4 pages C - Proposed Amendments, HB 3224-1, Rep. Del Parks, 1 page D - Written testimony, HB 3224, Kate Brown, Women's Rights Coalition, 2 pages E - Written testimony, HB 3224, Michael Wells, Oregon State Bar, 2 pages F - Written testimony, HB 3224, Diane Thelen, 3 pages G - Written testimony, HB 3224, Helenjane Williams, Oregon Olden Women's Coalition, 5 pages H - Written testimony, HB 3515, Richard Koenig, 4 pages I - Written testimony, HB 3515, submitted by John Bruce for a Southern Oregon Dad, 2 pages J - Written testimony, HB 3515 and HB 3516, Dr. Lorah Sebastian, Psychologist, Oregon Psychological Association, 3 pages K - Written testimony, HB 3515 and HB 3516, Dr. Harold Boverman, Oregon Psychiatric Association, 1 page L - Written testimony, HB 3515 and HB 3516, Dr. Keith Cheng, 1 page M - Written testimony, HB 3515, D. Michael Wells, Oregon State Bar, 2 pages N - Written testimony, HB 3516, D. Michael Wells, Oregon State Bar, 2 pages O - Congressional Statute, HB 3515 and HB 3516, Kate Brown, Women's Rights Coalition, 2 pages P - Written testimony, HB 3515, David Nebel, Legal Aid Family Law Task Force, 3 pages Q - Written testimony, HB 3516, David Nebel, Legal Aid Family Law Task Force, 4 pages R - Article, HB 3515, David Nebel, Legal Aid Family Law Task Force, 4 pages S - Article, HB 3516, David Nebel, Legal Aid Family Law Task Force, 5 pages T - Article, HB 3516, David Nebel, Legal Aid Family Law Task Force, 2 pages U - Written testimony, only, Vietta Helmle, Oregon Coalition Against Domestic and Sexual Violence, 2 pages