

House Committee on Judiciary Family Justice Subcommittee April 29, 1991
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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.

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE

April 29, 1991Hearing Room 357 3:00 p.m.Tapes 109 - 110

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

MEASURES HEARD:HB 2708 W.S. HB 2397 W.S.

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TAPE 109, SIDE A

004 CHAIR CLARK: Opens Subcommittee on Family Justice at 3:06 p.m.

HB 2708 - WORK SESSION

018 HOLLY ROBINSON: Summarizes provisions of HB 2708. Notes memo dated 4/29/91 (EXHIBIT A) and HB 2708-2 amendments (EXHIBIT B).

HB 2708 was introduced because Oregon's temporary guardianship statutes were declared unconstitutional because of due process and lack of notice provisions.

Committee was concerned about length of the original bill and established a new set of procedures and notice requirements separate from current statute. Committee was also concerned with the issues of appointment of counsel and mandatory hearings. Those issues remain unresolved.

Work group decided that rather than develop a parallel system to deal with temporary guardianship the changes would be incorporated into current law. HB 2708-2 amendments presented are a total rewrite of the original bill and begin to incorporate some of the changes suggested.

Reviews provisions of 2708-2 amendments.

139 BOB JOONDEPH, OREGON ADVOCACY CENTER: Reviews Grant v. Johnson.

189 REP. MASON: How did your group get involved?

190 JOONDEPH: A sympathetic nurse brought the matter to our attention.

194 REP. MASON: Why did you go to federal court?

198 JOONDEPH: There was no appealable order from the case.

216 REP. MASON: Thinks the group was out of line by going to federal court. Federal court should not be involved. Thinks it is inappropriate that we are having to react to a federal court order in something that should be a state matter.

227 REP. MANNIX: Has not reacted to the federal court order but looked at statute on its face.

244 JUDGE JOHNSON: When this matter was brought to my attention recognized that the statute was deficient because it did not provide for notice and a hearing.

I adopted rules approved by the Chief Justice to cure that defect.

Judge Frye held that the fact that the court has adopted rules to correct the deficiency is not enough and the legislature has to act.

293 MOTION: REP. MANNIX: Moves HB 2708-2 amendment (EXHIBIT B).

302 VOTE: Without objection, amendment is adopted.

306 MOTION: REP. MANNIX: Moves to amend HB 2708-2 amendment on page 3, line 8 by replacing "days after the notice is given" with "days after the filing of a request for hearing".

317 VOTE: Without objection, amendment is adopted.

326 MOTION: REP. MANNIX: Moves that there be a right to counsel with counsel to be paid for by the petitioner in circumstances where justice requires and where substantial liberty interests of the proposed ward are at stake.

355 REP. MANNIX: Speaks to his motion.

369 REP. BAUMAN: What is the difference between the process that we are talking about and a civil commitment and why was that not the course pursued by the family?

379 JOONDEPH: Does not know. The lengthy and involved procedural protections that attach to civil commitment do not exist in this forum. When a person is civilly committed they are normally placed under the jurisdiction of the state which has some say in placement and length of stay. In a temporary guardianship that is left to the discretion of the temporary guardian.

402 CHAIR CLARK: What is your reaction to placing the payment of attorney fees on the petitioner?

TAPE 110, SIDE A

001 JOONDEPH: Could increase cost of bringing a temporary guardianship action and might dissuade some people from using that remedy.

005 JUDGE JOHNSON: The principle that you are talking about is a principle we currently apply throughout the whole guardianship proceeding.

Does not think it is necessary or advisable to specify in statute.

040 REP. MASON: Will support the payment provision. Does not think guardianships should be taken lightly and wants petitioner to consider seriously what they are doing.

056 JUDGE JOHNSON: Ninety nine percent of guardianships are members of family trying to take care of someone who is ill and needs immediate treatment.

085 REP. MANNIX: Modifies motion to have it not be in regard to substantial liberty interests, but in regard to the restrictive placement language at the bottom of page 4 and on page 5.

096 REP. BAUMAN: Concerned about what Joondeph told the Committee about reason for choosing a temporary guardianship over a civil commitment and the way that dovetails with counsel to be paid for by petitioner.

142 ROBINSON: Reminds committee that the HB 2708-2 amendments have a provision that requires the appointment of a visitor and a visitor's report which provides an extra level of review.

155 VOTE: On a roll call vote, modified motion is adopted. Reps. Mason and Parks are excused.

163 REP. MANNIX: Compares various standards of evidence.

Continues explanation of the bill.

210 JUDGE JOHNSON: Guardianship is a restriction of liberty. At the time of the petition the placement is often not known.

Suggests saying there is a right to counsel in any guardianship proceeding and not limit it to restrictive placements. Would apply it to both temporary and permanent guardianships.

225 MOTION: REP. MANNIX: Moves to provide for a right to counsel as justice requires when substantial liberty interests are at stake in a guardianship proceeding.

245 REP. MANNIX: Concerned with judges saying they are going to appoint counsel in every case.

238 JOONDEPH: ORS 126.103 currently gives the court discretion to appoint an attorney to represent an allegedly incapacitated person.

253 REP. MANNIX: Wants to use "shall appoint" instead of "may".

258 REP. BAUMAN: The point now is who defines substantial liberty interests.

262 REP. MANNIX: Would define substantial liberty interests as specifically including the restrictive placements here, but it may be more than that.

280 MOTION: REP. MANNIX: Moves to further modify motion to add language "including but not limited to restrictive placement". "Restrictive placement" will be defined.

267 JUDGE JOHNSON: Agrees with Rep. Mannix. The most significant provision put in the bill is concept that the visitor has to interview the protected person within three days of the appointment.

285 VOTE: Without objection, amendment is adopted.

293 SCOTT McGRAW: Concerned with committee's choice to expand upon the appointment of counsel that is currently discretionary.

Counsels committee that by creating a situation where we are now going to mandatorily appoint counsel at any point there is an objection, we will paralyze the temporary guardianship system because people will seek to effect the same form of treatment through the mental health commitment process when in many cases that process is not the appropriate way to proceed.

339 CHAIR CLARK: What is the standard if I go into circuit court and get a restraining order under rules of civil procedure?

352 McGRAW: Does not know. Concerned that the distinction is that I am going to be harmed. Believes that the standard of proof should be dated more in the area of temporary guardianships. Believes that the standard of satisfactory or prima facie case is appropriate in temporary guardianship when there is going to be an appointment ex parte.

TAPE 109, SIDE B

008 REP. MASON: Why should the person who got the order be immune from later action?

014 ROBINSON: There are statutory provisions that allow a temporary guardian to be removed if they are not doing their job or doing it in inappropriately. You can also bring actions for violations of fiduciary duties and if the guardian is also a conservator or has filed a bond you may be able to bring an action on the bond.

Not aware of other causes of action that one could bring subsequent to the removal of a guardian.

027 MOTION: REP. MANNIX: Moves HB 2708, as amended, to the full Judiciary Committee with a "do pass" recommendation.

035 VOTE: On a roll call vote, motion passes. Rep. Mason votes No. Rep. Parks is excused.

037 REP. MASON: Gives vote explanation. Is disturbed that the issue ended up here and by the fact of the federal suit. Think other methods should have been used.

052 CHAIR CLARK: Closes work session on HB 2708.

Opens work session on HB 2397.

HB 2397 - WORK SESSION

050 HOLLY ROBINSON: Summarizes provisions of HB 2397 which was introduced at the request of the Governor's Task Force on Sex Offenses Against Children. The bill addresses the issue of what, if any, training should be required of persons who are required to report child abuse.

Cost of providing required training, who would prepare curriculum, and who the appropriate people would be to report were issues raised.

In the attempt to address concerns, a work group met and the memo before members (EXHIBIT C) and the HB 2397-1 amendments (EXHIBIT D) are result of group's work.

085 CHAIR CLARK: Recalls the breadth of HB 2397.

After work group efforts, the bill is back before the committee to see if we can create a workable system.

095 REP. EDMUNSON: Reviews discussion and result of work group meeting.

Not sure we reached any consensus on when the employer should be the primary deliverer and when licensing board should be.

145 ROBINSON: Reviews provisions of HB 2397-1 amendments (EXHIBIT D) which is a rewrite of the original bill.

232 REP. MASON: Do you keep a list as specified in the bill?

236 PAUL DREWS, CHILDRENS SERVICES DIVISION: No. We have lists for certified day care providers.

244 SCOTT GALLANT, OREGON MEDICAL ASSOCIATION: Oregon Health Sciences University has presented numerous courses for physicians regarding these issues.

Objected to mandated continuing education in the 1989 Session and that is still the policy.

States specific objections to HB 2397-1 amendments.

294 CARL MEYERS, OREGON STATE BAR: Details planned training by Oregon State Bar. HB 239 7-1 amendments are more acceptable to the Bar than the original bill and the Bar is prepared to continue working to implement the ideas behind the problem.

329 REP. BELL: Do physicians currently have a mandatory continuing education rule?

336 GALLANT: No.

341 REP. BELL: As I read the bill, you only have to provide physicians with the information that a course is available if they wish to take it.

346 GALLANT: Feels the vast majority do participate in continuing education through membership in specialty societies.

373 REP. BELL: Are most general practitioners in rural areas members of

a specialty society?

375 GALLANT: Yes.

379 REP. BELL: How do you feel about allowing victims to sue for gross negligence if a physician does not diagnose abuse when someone brings a child in?

393 GALLANT: Not sure that anyone can say that anyone who is required to report is right 100% of the time.

TAPE 110, SIDE B

001 REP. MANNIX: How do you feel about changing "shall provide to its members" to "shall make available to its members" on page 2, line 8 of the HB 2397-2 amendments?

003 GALLANT: That is a significant difference.

009 REP. EDMUNSON: Is his opinion that any organization that has people within its membership who should be reporting child abuse would be well advised to make sure that those members receive the training and that it works. Intends to bring a bill to address the issue in the 1993 legislature if those people are not receiving training.

030 CHAIR CLARK: Janice Yaden has a proposed amendment to HB 2397 which would add drug and alcohol counselors to the list of those required to report child abuse (EXHIBIT E).

032 MOTION: REP. MASON: Moves the amendment.

033 VOTE: Without objection, Chair Clark declares the amendment adopted.

032 MOTION: REP. MANNIX: Moves HB 2397-1 amendment.

VOTE: Without objection, amendment is adopted.

036 MOTION: REP. MANNIX: Moves to modify (5) of the HB 2397-1 amendment by

changing "shall" to "may" on page 2, line 3; change "provide" to "make available" on line 8; and delete the sentence about "if the bar or board enforces a mandatory.." on lines 10 through 13.

048 VOTE: Without objection, HB 2397-1 amendment is modified.

050 CHAIR CLARK: Closes work session on HB 2397.

Adjourns subcommittee at 4:35 p.m.

Transcribed by,

Pat Zwick

EXHIBIT LOG A:HB 2708 Testimony - Staff - 2 pages B:HB 2708-2 Amendment - Staff - 5 pages C:HB 2397 Testimony - Staff - 1 page D:HB 2397-1 Amendment - Staff 2 pages E:HB 2397 Testimony - Janice Yaden - 2 pages