

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

May 17, 1991Hearing Room 357 2:00 p.m.Tapes 128 - 129

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

MEMBER EXCUSED: Rep. Ron Sunseri

STAFF PRESENT: Holly Robinson, Committee Counsel Kathy Neely, Committee Assistant Holly Blanchard, Transcriber

MEASURES CONSIDERED: HB 220 PH (Child Support) HB 219 PH (Paternity)

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.

TAPE 128, SIDE A

003 REPRESENTATIVE MASON: Calls the meeting to order at 2:25 p.m.

SB 219 - WORK SESSION

017 COLLEEN SEALOCK, ADMINISTRATOR, SUPPORT ENFORCEMENT DIVISION, DEPARTMENT OF JUSTICE (EXHIBITS A & B): SB 219 establishes a presumption of paternity once a blood test result of 99 percent or higher is received.

038 CHAIR CLARK: How does it currently work?

042 STEVE MAIN, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE: Reviews the process that involves blood tests and in some instances court proceedings. The purpose is to get support through the finding of paternity. We do this through a motion for summary judgement or a prima facie case.

071 CHAIR CLARK: Under the current system, if the father drops out, you have to have a hearing on the merits even if it's just to put on your prima facie case. Under SB 219 you would proceed through the un rebutted presumption?

074 MAIN: In essence, that's true. Currently, Chapter 109 provides establishment of prima facie case of paternity.

080 REP. MASON: You only pursue paternity now when the mother and child

are receiving aid to dependent children?

087 MAIN: Not necessarily. It is possible for a parent involved with a child not receiving public assistance to apply for the establishment of paternity. The Support Enforcement Division primarily handles paternity cases that are welfare related.

096 SEALOCK: The District Attorney's Office has the responsibility of establishing paternity in non-public assistance cases. Anyone may choose to go to the district attorney and receive that same service.

100 REP. MASON: It should be the policy of the state to pursue and establish paternity notwithstanding any welfare recipients. Couldn't seem to get the Department of Human Resources or anyone interested in that policy.

124 SEALOCK: There might have been concern about government getting involved in private cases.

131 REP. MASON: Discusses the responsibility for sexual relations between the two parties involved.

162 SEALOCK: SB 219 would allow us to notify Vital Statistics of paternity actions by regular mail rather than by registered mail. SB 219 would also allow certified mail service return receipt requested for notices initiating administrative actions to establish paternity. If that's not successful, then to personal service of mail. This would allow us to reduce costs involved for about 4,000 paternity cases per year.

181 REP. PARKS: Does certified mail have to be delivered to the person to whom it's addressed?

183 SEALOCK: This would be restricted delivery so it would have to go to the person to whom it's addressed.

185 REP. PARKS: If there's a denial of receiving the notice two or three years later, it seems there would be a very substantial due process.

195 CHAIR CLARK: Discusses the requirement for a prima facie hearing to alleviate the issue raised by Representative Parks.

202 MAIN: In answer to Representative Parks' question, yes, I think there'd be a problem if the alleged father said he didn't receive the notice, and if he said that's not his signature on the postal return card. If it was questionable that service had been made the case would be reopened.

Concerning Chair Clark's question, I think the adjudicator is going to have the opportunity to look at the evidence before entering an order establishing paternity.

222 CHAIR CLARK: Wants to make sure the matter comes before an administrator or judge to establish a prima facie case.

233 MAIN: The current statutory scheme provides that a prima facie case of paternity may be established upon the testimony of a parent plus corroborating evidence. Oregon's trial courts have held that parentage

test results are sufficient corroborating evidence along with parental testimony to establish a prima facie case of paternity. Our proposal fits within that scheme and doesn't deviate from current statute.

254 REP. PARKS: Discusses notice of test results.

265 MAIN: SB 219 addresses three notices. Discusses the notices.

277 REP. PARKS: If the alleged father doesn't respond to the notice he is determined to be the father because he didn't object?

282 MAIN: That is correct to the extent that there would be sufficient evidence to establish a prima facie case of paternity which is still required under the statute. Still need testimony of the parent plus corroborating evidence sufficient to establish a prima facie case of paternity.

286 REP. PARKS: That's not before a judge but rather before someone in your Department?

294 MAIN: That's correct. If the proceeding is initiated administratively it would be by the administrator or an authorized representative of that administrator.

297 REP. PARKS: Before that letter is sent, someone in your Department has determined sufficient evidence to prove the case?

299 MAIN: That's correct.

301 REP. MANNIX: Refers to SB 219 A-engrossed, line 9 for definition of the word "tests". Does the definitions portion of this bill need to be changed to define the word "tests"?

318 MAIN: In our proposed amendment, we have gone back to the term "blood test" (EXHIBIT B).

351 DUANE HALBLEIB, OREGON DISTRICT ATTORNEYS ASSOCIATION (ODAA): We support SB 219 as amended.

363 LAWRENCE GOREN, ATTORNEY, PORTLAND: Testifies in opposition to parts of SB 219. Has concern about eliminating personal service in Section 3 of the bill. Doesn't have any objection to removing the ", " after the word "juvenile court" in Section 2.

410 REP. MANNIX: Refers to the remainder of Section 2 concerning the mailing of information to the Vital Statistics Unit.

421 GOREN: No objection to mailing to the Vital Statistics Unit. Discusses ORCP concerning registered and certified mail. Concurs with the concept of the proposed amendments in EXHIBIT B; however, suggests in Section 1 the amendments be added to ORS 416 .430 instead of ORS 109.258 and limit it to administrative cases.

TAPE 129, SIDE A

068 REP. MASON: Could this paternity information be included in some type of data base for future use?

078 GORAN: No. It's one thing to talk in terms of the identification of

genetic markers. Discusses the results of a blood test.

090 REP. MASON: Is it possible to take blood samples from the mother and child first to determine a profile--and then refer to the data base for the father?

092 GORAN: No. You'd need the genetic profile of the child coupled with the genetic profile of a presumed parent. The comparison and contrast process is the key to the whole paternity identification question.

101 REP. MASON: Looking backward, it would be possible to search the data base for an "X" male that has certain factors?

104 GORAN: Yes. If you have a data base where that could be done, you might end up with hundreds, thousands, perhaps even tens of thousands of men throughout the country who would qualify--none of them would be excluded under the blood tests.

123 MAIN: We would oppose Mr. Goran's suggestion concerning Section 1--moving it to ORS 416 .430 and limiting it to administrative cases. A large number of our cases reach the judicial process due to denial of paternity. There's also a 120-day limitation on holding it in the administrative mode. Stresses savings through efficient resolution of these cases via a uniform procedure.

142 HALBLEIB: ODAA would oppose limiting this process to strictly administrative procedures because the district attorneys rarely use them.

159 REP. MANNIX: Your point is the charged party has to receive written notice properly served. They have 30 days to challenge it and if they do challenge they have a right to appear in court and make their case.

165 MAIN: That's exactly correct.

CHAIR CLARK: Closes the public hearing on SB 219.

SB 219 - WORK SESSION

175 MOTION, REP. MANNIX: Moves the proposed amendments by the Department of Justice (EXHIBIT B) with the correction that an "s" be added to the underlined words "blood test" to read "blood tests".

There being no objection, the Department of Justice amendments are so adopted.

188 MOTION, REP. MANNIX: Moves to further amend the A-engrossed bill to delete Section 3, effectively maintaining the current requirements of service.

The amendment is adopted (Rep. Mason objects).

192 CHAIR CLARK: Discusses limiting the scope of SB 219 to administrative cases.

204 REP. MANNIX: Was convinced this does not weigh down the alleged parent. Refers to Department of Justice amendments (EXHIBIT B).

235 REP. PARKS: Does not see the difference. Essentially that is a motion for summary judgment.

240 MOTION, CHAIR CLARK: Moves a conceptual amendment to limit the procedure to administrative cases only and to have Section 1 of the bill amend ORS 416 .430 rather than ORS 109 .258. The effect of that is to move it out of the evidentiary portions into the procedural portions and limit the application of the bill to administrative cases only.

VOTE: 4-2

AYE: Bauman, Bell, Parks, Clark NO: Mannix, Mason EXCUSED: Edmunson, Sunseri

Motion passes.

270 CHAIR CLARK: Moves SB 219 as amended to the Full Committee with a "do pass" recommendation.

VOTE: 4-2

AYE: Bauman, Bell, Parks, Clark NO: Mannix, Mason EXCUSED: Edmunson, Sunseri

Motion fails, and SB 219 is not passed.

CHAIR CLARK: Closes work session on SB 219.

MOTION, REP. MASON: Moves reconsideration of the vote by which SB 219 failed to pass. The purpose of the motion for reconsideration is to keep the bill alive for further work session and further examination of the issue.

There being no objection to the motion, it is so adopted.

SB 220 - PUBLIC HEARING

326 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes SB 220 which would authorize orders to withhold unemployment compensation, workers' compensation and other benefits for child support. Notes the Senate has amended the bill outside of the relating clause.

378 COLLEEN SEALOCK, ADMINISTRATOR, SUPPORT ENFORCEMENT DIVISION, DEPARTMENT OF JUSTICE (EXHIBIT C): Reviews written testimony (EXHIBIT C) and substantive changes to the bill.

TAPE 128, SIDE B

025 SEALOCK: SB 220 takes what the DAs and the Department of Justice already have in law (since 1989) and gives the same ability to private practitioners.

027 CHAIR CLARK: As an alternative to, or instead of, change of circumstance?

030 SEALOCK: Either one, if there is a change of circumstance. However, the guideline itself can be used as a base line.

032 CHAIR CLARK: Discusses guidelines and parties going back to court for more support.

045 SEALOCK: The order must be two years old before that can happen.

047 CHAIR CLARK: Who changes the guidelines?

048 SEALOCK: The guidelines go through the APA process, a public rule making process. Explains guidelines process that is reviewed every four years.

059 CHAIR CLARK: That would result in a flood of litigation with two-year-old modifications.

065 SEALOCK: That's difficult to predict and would not assume that the guidelines will be modified up.

091 HOLLY ROBINSON: If the bill proposes to amend ORS 25.285, then where is the language being reinserted concerning modification due to change of circumstance?

100 JOHN ELLIS, DEPARTMENT OF JUSTICE: This matter is now covered in ORS 25.285 which Legislative Counsel chose to repeal and rewrote it in Section 3 of SB 220 . It will be codified presumably elsewhere in ORS Chapter 25.

106 REP. MASON: Seems the bill is to institutionalize regular change in child support. Why not eliminate the need for courts and allow one parent to file a request for child support?

115 SEALOCK: There must be a balance between the parents concerning the needs of the child. Child support is becoming more administrative with review by the courts.

128 REP. MASON: Will this bill make it easier for the custodial parent to effectuate a change in support?

133 SEALOCK; We're making it easier for both parties to look at current circumstances. Not all child support amounts go up.

138 CHAIR CLARK: Who is going to make that motion?

142 SEALOCK: Anyone can approach us for a child support modification.

145 CHAIR CLARK: What about people who are paying more than the guidelines--they might want to have a modification for a smaller amount of child support.

157 SEALOCK: The guidelines are a rebuttable presumption. The ability is still there for the opposing party to explain the need for higher support.

170 REP. MANNIX: Section 3 allows for litigating child support every two years--it's a never ending story.

180 SEALOCK: Yes.

181 DUANE TONY HALBLEIB, OREGON DISTRICT ATTORNEYS ASSOCIATION (ODAA): Confirms that child support can be reconsidered every two years without showing a substantial change. Reviews current process. SB 220 would allow private counsel what the DAs and the Support Enforcement Division can now do.

210 REP. MASON: Questions references to federal law; traditionally, domestic relations is not in the area of federal law. Refuse to believe that the Tenth Amendment contemplated that. Don't think changing child support should be made easier. Divorce is much too easy now. Agrees with Rep. Mannix about potential perpetual litigation with this--it's like renewing the corporate minutes.

246 SEALOCK: The concern for Congress is a huge problem with welfare. We're concerned about an equal protection issue.

283 CHAIR CLARK: Advises the committee will not get to SB 221 and SB 222 today.

291 REP. MANNIX: Can anyone go to the Support Enforcement Division and sign up?

293 SEALOCK: Not the Support Enforcement Division but they can go to the DA's office.

302 REP. MANNIX: So, all citizens have equal access to the system through the DA's office.

314 DEBRA WILSON, DEPARTMENT OF JUSTICE: Discusses the option of going to the DA.

316 SEALOCK: We have lost in circuit court on modification requests because the judges believe there's an equal protection issue. We cannot pursue modifications--private trial attorneys can.

323 REP. MANNIX: There is a rational basis for the distinction.

352 SEALOCK: Continues with discussion of SB 220. Asks that judicial orders by the Support Enforcement Division be reviewed by the administrative hearings process. Notwithstanding an appeal they would then be sent to the court for a ratification and entered as a judicial order.

383 HALBLEIB: Refers to proposed amendment on line 28 of Page 4, Section 3 (EXHIBIT D).

402 REP. MANNIX: How many proceedings are there each month involving changes in support statewide?

410 SEALOCK: We look at about 500 cases per month.

415 REP. MANNIX: Ever thought about having a special administrative court with statewide jurisdiction that's only job is to adjudicate support?

420 SEALOCK: That has been heard periodically before the legislature.

428 REP. MANNIX: Seems the circuit courts are being weighed down by something that could be handled by a specialized court.

TAPE 129, SIDE B

016 SEALOCK: That's the reason for the later part of this bill that allows us to use the administrative hearings process first.

018 REP. MANNIX: If Section 3 is deleted from the bill, you'd still want the bill?

020 SEALOCK: Absolutely.

024 HOLLY ROBINSON: Refers to SB 220, Page 1, lines 15-17, language inserted by the Senate that allows for garnishments for support orders. It's broader than what the relating clause indicates. Questions whether the language is meant to apply to all support orders or only to child support.

044 JIM LOCKARD, EUGENE (EXHIBIT F): Reviews written testimony (EXHIBIT F).

053 REP. EDMUNSON (EXHIBIT G): Reviews the proposed amendment which tracks the other state law that when arrearages are collected the amount that is available to satisfy that is limited to 25 percent of available income.

080 LOCKARD: Reviews material in EXHIBIT F.

089 REP. EDMUNSON: Clarifies that the proposed amendments (EXHIBIT G) deals with the collection of arrearage.

111 CHAIR CLARK: Notes that all of these bills will be back before committee next Friday.

117 CAROL ALONGI, SUPPORT OUR SURVIVAL (EXHIBIT H): Reads written testimony

(EXHIBIT H). Supports Sections 1 and 2 of SB 220 but is opposed to the remainder of the bill. Suggests Sections 1 and 2 of SB 220 be put into SB 221. Discusses low level of guidelines for child support and a support formula.

190 CHAIR CLARK: Suggests the material presented by Carol Alongi be reviewed by the committee. Advises SB 220 will be brought back before the committee for another hearing.

CHAIR CLARK: Adjourns the meeting at 4:00 p.m.

Submitted by,                      Reviewed by,

Holly Blanchard  
Manager

David Harrell Transcriber

Office

EXHIBIT LOG:

A - Written testimony, Colleen Sealock, Support Enforcement Division, Department of Justice, 2 pages B - Proposed Amendment, SB 219-A, Colleen Sealock, Support Enforcement Division, Department of Justice, 1 page C - Written testimony, SB 220-A, Colleen Sealock, Support Enforcement Division, Department of Justice, 4 pages D - Proposed Amendment, SB 220-A, Duane Tony Halbleib, ODAA, 1 page E - Statutory Laws, SB 220 and SB 221, Duane Tony Halbleib, ODAA, 2 pages F - Written testimony, SB 220, Jim Lockard, Eugene, 35 pages G - Proposed Amendments, SB 220-A, Representative Jim Edmunson, 1 page H - Written testimony, SB 220 - SB



222, Carol Alongi, Support Our Survival, 12 pages