Monday April 8,1991 Hearing Room A 3:15 p.m. Tapes 61- 62 MEMBERS PRESENT:Sen. Bill McCoy, Chair Sen. Cliff Trow, Vice-Chair Sen. Shirley Gold Sen. Bill Kennemer Sen. Paul Phillips STAFF PRESENT:Janice J. Fiegener, Committee Administrator Mike Meriwether, Research Assistant Debbie Schieno, Committee Assistant Andra Woodrum, Page MEASURES CONSIDERED: SB 509-Establishes bill of rights for adults who are mentally ill or developmentally disabled - PH/WS SB 510-Establishes bill of rights for adults who are mentally disabled - PH/WS

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 61, SIDE A

003 CHAIR McCOY: Calls the meeting to order at 3:22 p.m.

PUBLIC HEARING ON SENATE BILLS 509 AND 510 Witnesses: Ella Johnson, Mental Health Association of Oregon Robert Joondeph, Oregon Advocacy Center Richard Lippincott, Mental Health Association Eva Kutas, Mental Health Association Liam Callen, Community Mental Health Provider's Association Janna Starr, Association for Retarded Citizens John McCulley, Oregon Psychiatric Association

- 012 ELLA JOHNSON, MENTAL HEALTH ASSOCIATION OF OREGON (EXHIBIT A and EXHIBIT B): Testified in support of SB 509 and SB 510, and outlined EXHIBIT A. >Submitted proposed amendments SB 509-1 EXHIBIT B. She reviewed the proposed amendments to the bill. >Brief overview of the previous testimony given March 18, 1991 and the history of the bill.
- 100 SEN. KENNEMER: The bill states "every adult shall have the right to...", is this meant to be generic or does it refer back to people in mental health facilities? Senate Committee on Human Resources April 8, 1991 Page 2
- 103 JOHNSON: This does refer back to the definition of adult, which includes the mentally ill and developmentally disabled adults that are receiving services from a mental health community program and the facility. It is not a generic term, it is limited by the definition of adult and the definition of facility.
- 113 JOHNSON: Continued testimony.
- ROBERT JOONDEPH, INTERIM DIRECTOR, OREGON ADVOCACY CENTER (EXHIBIT C): Testified in support of SB 509 and SB 510 and outlined EXHIBIT C. 327 SEN. KENNEMER: Do patients have the opportunity to sue a facility if they breach ethical standards? 333JOONDEPH: Depending upon the facility. If a public facility were to violate a right that was an administrative rule, a person would have the right to seek an action to enforce the administrative rule. If they were to receive any compensation for the injury, they would have to prove damages and pay their attorney fees.

001 JOONDEPH: Continues with testimony. 035 RICHARD LIPPINCOTT, M.D., HUMAN RESOURCES ADMINISTRATOR FOR MENTAL HEALTH (EXHIBIT D): Testified in support of SB 509 and SB 510 and outlined EXHIBIT D. EVA KUTAS, MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES DIVISION: They now offer investigations at the training centers and are working on a revision of the administrative rule to do the same for the state hospitals. There are investigations of complaints from individuals served in the community programs. She offered support on SB 509 and SB 510. 086LIAM CALLEN, PRESIDENT ELECT, COMMUNITY MENTAL HEALTH PROVIDER'S ASSOCIATION (EXHIBIT E): Testified in support of SB 509 and SB 510 and outlined EXHIBIT E. 197 JANNA STARR, EXECUTIVE DIRECTOR, THE ASSOCIATION FOR RETARDED CITIZENS OF OREGON (EXHIBIT F): Testified in support of SB 509 and SB 510 and outlined EXHIBIT F. 298 McCULLEY, OREGON PSYCHIATRIC ASSOCIATION: Testified in opposition to SB 509 and SB 510 and expressed their concerns with the bills. He further offered a statement from Joseph D. Bloom, M.D. of the Oregon Health Sciences University. (EXHIBITS G AND gon Health Sciences University. н). н). 369 SEN. PHILLIPS: Where do you see (EXHIBITS G AND the rights of action occurring in SB 509 ? 375 McCULLEY: This occurs by the fact the bill establishes certain specifics. We feel the Senate Committee on Human Resources April 8, 1991 - Page 3

responsibilities for the providers could be subject to litigation if they are not followed under Section 4. There is great concern with the stigmatization of the mentally ill. Mental illness is a treatable biological illness.

TAPE 61, SIDE B

- 031 McCULLEY: Offered proposed amendments SB 509-3 and SB 510-3 (EXHIBIT 1). WORK SESSION ON SENATE BILL 509 AND SENATE BILL 510
- O65 SEN. PHILLIPS: There are slight differences in definitions between SB 509 and SB 510. >Suggested the words "neglect" and "financial exploitation" remain in the bill. O84MOTION: SEN. TROW moves the hand-engrossed SB 520 dated 314191.

VOTE: Hearing no objection, Chair McCoy so moves.

- MOTION: SEN. PHILLIPS moves to reinstate lines 20 and 29. 114 FIEGENER: Explains the fiscal impact of the bill (EXHIBIT J). 122 ELLA JOHNSON: Agrees with Sen. Phillips. When we find neglect, it is just the tip of the iceberg. The committee needs to be aware that including this language does increase the fiscal impact, substantially.
- 144 SEN. TROW: Section 2 is defining abuse. If we define abuse and leave out neglect and financial exploitation, this may say something about what you think abuse is, by consciously leaving them out.
- 149 SEN. PHILLIPS: Do we know that adding this definition costs us \$7 or \$8 million? If we do, we are creating a precedence for what is defined and the rest of the bill is muted in effect.
- 159 EVA KUTAS: Administrative rule that govern the programs serving the developmental disability section of the state do define neglect and they are being investigated.

VOTE: Hearing no objection, Chair McCoy so moves.

182 SEN. PHILLIPS: In Section 9, if you don't notify the adult quardian

- conservator of a complaint, you have taken one essential element out of the bill.
- 213 MOTION: SEN. PHILLIPS moved to reinstate the entire Section 9.
- 225 SEN. GOLD: Agrees that this is all common sense, but can we trust the division to see that it happens that way.
- 234 SEN. KENNEMER: A facility that failed to notify the appropriate people about important allegations would be in serious jeopardy. If we are going to persist in this mode, we are going to add back all of the Ways and Means impact. Senate Committoe on Human Recourca April 8, 1991 PJIge 4
- 250 SEN. PHILLIPS: Suggested the Chair submit a letter to Ways and Means stating the policy decisions.
- 278 MOTION: SEN. GOLD moved a friendly amendment taking Section 9, through line 5, after "notice." deleting the specificity of what the notification should contain.
- 290 SEN. TROW: If you look at the specificity, there are good things which they need to know about the abuse. We should leave the language and see if there is a fiscal problem.
- 304 SEN. GOLD: Withdraws friendly amendment.
- 306 VOTE: In a roll call vote, the motion carries, with Senator Kennema voting NAY.
- 357 SEN. KENNEMER: Explained the proposed amendments submitted by John McCulley (Exhibit I). The proposed amendments eliminate the private right of action which would help deal with some of the adversarial and cost questions. This requires that each program and facility create a list of items that their bill of rights must adjust.
- 400 BOB JOONDEPH: Posting of rights is a very good thing, but posting of rights does not enforce rights. The question for the committee is how to best enforce rights. The state cannot adequately enforce those rights given its fiscal situation and the capacity of the state to do so.

TAPE 62, SIDE B

- 020 MOTION: SEN. KENNEMER moves the SB 510-3 amendments dated 418191.
- 036 VOTE: In a roll call vote, the motion fails, with Senators Kennemer and Phillips voting AYE. Senators Gold, Trow and McCoy voting NAY.
- MOTION: SEN. PHILLIPS moves to delete Sections 13 and 15(3) of the hand-engrossed SB 510, dated 3/4/91. 073 VOTE: In a roll call vote, the motion fails, with Senators Kennemer and Phillips voting AYE. Senators Gold, Trow and McCoy voting NAY. 080 MOTION: SEN. KENNEMER moves to conceptually clarify language that this does not apply to out patient services. 096 ELLA JOHNSON: This language refers back to the definition of adult. To clarify, we could say "all adults as defined". VOTE: Hearing no objection, Chair McCoy so moves. 103 MOTION: SEN.TROW moves to send SB 510, as amended to the Judiciary Committee with a do pass recommendation. VOTE: In a roll call vote, the motion carries, with Senator Kennemer voting NAY. Senate Committee on Human Resources April 8, 1991- Page S

116 CHAIR McCOY adjourns the meeting at 4:58 p.m.

Submitted by: Reviewed by: Debbie Schieno Janice J. Fiegener

Assistant Committee Administrator

EXHIBIT LOG:

A - Testimony on SB 509 and 510, Ella Johnson, 7 pages B - Hand-engrossed SB 509, 3 pages; hand-engrossed SB 510, 7 pages C - Testimony on SB 509 and 510, Robert C. Joondeph, 2 pages D - Testimony on SB 509 and 510, Richard C. Lippincott, 1 page E - Testimony on SB 509 and 510, Liam Callen, 1 page F - Testimony on SB 509 and 510, Janna Starr, 8 pages G - Testimony on SB 509 and 510, John McCulley, 5 pages H - Testimony on SB 509 and 510, Joseph Bloom, 9 pages I - Amendments to SB 509, 1 page; amendments to SB 510, 1 page J - Fiscal Analysis on SB 510, 1 page K - Testimony on SB 510, Jeffrey Davis, 1 page

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