

**HOUSE JUDICIARY SUBCOMMITTEE**

**ON CRIMINAL LAW**

**April 19, 2005 Hearing Room 357**

**8:30 A.M. Tapes 42 - 44**

**MEMBERS PRESENT:           Rep. Jeff Barker, Chair**

**Rep. Greg Macpherson**

**Rep. Andy Olson**

**Rep. Kim Thatcher**

**GUEST MEMBER:           Rep. Wayne Krieger**

**STAFF PRESENT:           Heidi Moawad, Counsel**

**Elizabeth Howe, Committee Assistant**

**MEASURES/ISSUES HEARD:**

**HB 3337 – Public Hearing**

**HB 2974 – Public Hearing**

**HB 2410 – Public Hearing**

**HB 2444 – Work Session**

**These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.**

**TAPE/#    Speaker                    Comments**

## TAPE 42, A

004 Chair Barker Calls the meeting to order at 8:43 a.m. Opens a public hearing on HB 3337, which allows person under investigation for child abuse to request polygraph examination.

### HB 3337 – PUBLIC HEARING

008 Rep. Gordon Anderson House District 3. Testifies in support of HB 3337. Submits copy of conceptual amendments to the bill (**EXHIBIT A**) and testimony from Amanda Boatman (**EXHIBIT B**) and Teresa Walker (**EXHIBIT C**).

077 Robert Alberoni Citizen. Testifies in support of HB 3337. Offers his personal experience where a polygraph examination would have proven his innocence to the Department of Human Services (DHS).

154 Rep. Krieger Questions comments about source of money and who receives it.

158 Alberoni Explains the funding and how DHS spends it.

162 Chair Barker Provides statistic on how many polygraphers are in the state.

168 Rep. Anderson Explains that the intent of HB 3337 is to direct the results of the polygraph to the right place.

174 Chair Barker Comments that an attorney may suggest that the polygraph not be sent if the results are negative, while they would be sent regardless of the results if HB 3337 were in effect.

185 Rep. Anderson Clarifies that a person could take a polygraph now, but it is not currently required that it be admitted. Reads a letter from Amanda Boatman (**EXHIBIT B**) to illustrate the need to allow parents a way to prove their innocence to DHS.

212 Rep. Olson Reiterates that a parent has the right currently to seek a polygraph.

220 Rep. Anderson States that the statute would require the judge and/or the Department of Human Services (DHS) to admit the results.

227 Chair Barker

Questions whether the test results are sent in this instance regardless of results.

- 231 Rep. Anderson Responds that the results are sent regardless of the results, and it is a chance a parent would take to assert their innocence.
- 238 Alberoni Relates a story of his friend who could have been proven innocent if a polygraph test were admitted into the case.
- 264 Moawad States that HB 3337 would only allow a polygraph examination for cases where abuse were the accusation.
- 279 Rep. Anderson Explains that HB 3337 is being introduced to help establish credibility of the parents.
- 290 Chair Barker Reiterates that some problems would not be covered by this statute.
- 298 Rep. Thatcher Seeks clarification that the polygraph is only being used as a tool to prove that the agency is incorrect in their assumptions about the parent.
- 308 Rep. Anderson Responds that it is a tool to establish the credibility of the parents. Relates a situation where the results of a polygraph would end the actions taken against the parents.
- 336 Rep. Thatcher Suggests that HB 3337 does not go far enough in instructing DHS.
- 347 Rep. Anderson Mentions the conceptual amendments (**EXHIBIT A**).
- 351 Rep. Krieger Comments on the number of bills referring to interactions between parents and DHS. Suggests amending the bill further.

#### **TAPE 43, A**

- 002 Lt. Sam Salazar Oregon State Police (OSP). Submits written testimony (**EXHIBIT D**) and testifies in opposition to HB 3337. Discusses the issues with allowing polygraphs upon request as addressed in HB 3337.
- 068 Salazar Mentions a conflict with another statute that does not allow OSP to release polygraph results.

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| 084 | Chair Barker  | Offers an illustration to question whether the polygraph is meaningless.   |
| 090 | Salazar       | Explains that when a polygraph is requested by a qualified candidate, it will rarely be turned down by OSP.  |
| 099 | Chair Barker  | Inquires if one could currently request and receive a polygraph.   |
| 105 | Salazar       | Explains that the right information would have to be received before an accurate test could be administered.   |
| 108 | Rep. Thatcher | Recalls points about needing case information and suitable candidates.   |
| 112 | Salazar       | States that release of reports would be counterproductive in an OSP investigation. Comments again on suitable candidates for a polygraph.  |
| 128 | Rep. Thatcher | Questions whether someone could demand a test even if they were considered unsuitable.   |
| 131 | Steven Hebner | Polygrapher, Springfield. Explains how a polygraph works and why someone might be unfit to test. Explains that a test would not be administered if the validity of the results could not be trusted. |
| 190 | Rep. Thatcher | Questions whether a person who was refused by one polygrapher could be accepted by another polygrapher.  |
| 197 | Hebner        | Responds that polygraphers are subject to peer review, which offers some consistency among administering tests.  |
| 253 | Rep. Thatcher | Inquires about the range of subjectivity for one's suitability.  |
| 258 | Hebner        | Explains the pre-test that is given by polygraphers, though it is a judgment call.   |
| 277 | Rep. Olson    | Recalls that 200 tests are required for a polygrapher to be certified. Questions how many tests the polygraphers have administered.  |

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| 282 | Detective C.W. Bryant | Polygrapher, Portland, OR. Responds that he has administered over 1,100 tests over more than 10 years.                                 |
| 288 | Hebner                | Responds that he has administered over 2,000 exams with OSP and his private business.  |
| 292 | Rep. Olson            | Questions whether the polygraphers have participated in child abuse investigations where the examination supported an innocent parent. |
| 298 | Bryant                | Responds affirmatively.  |
| 300 | Hebner                | Responds affirmatively, on more than one occasion.   |
| 303 | Salazar               | Reiterates that the polygraph should not be used to override investigative information.  |
| 325 | Kelly Skye            | Oregon Criminal Defense Lawyers Association (OCDLA). Testifies in opposition to HB 3337. Explains concerns.                            |

**TAPE 42, B**

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| 011 | Rep. Thatcher   | Recalls that HB 3337 is not to be used in criminal cases, but only to rebut an agency's determination of guilt against a person.  |
| 019 | Skye            | Clarifies that a polygraph is not admissible in court in any case. Speaks to its influence on the determination made by an agency and the influence of the agency's determination on the criminal case. |
| 037 | Rep. Olson      | Clarifies that other states can admit polygraphs in courts.   |
| 040 | Skye            | States that it is not admissible in Oregon at all, and she cannot speak to other states' policies.  |
| 043 | Rep. Macpherson | Questions whether the advance notice would give any credibility to the result as opposed to a privately administered test.  |
| 056 | Skye            | Addresses the validity of the test results and the role of peer review.   |
| 110 | Moawad          | Asks at what point right to counsel applies during a DHS case.  |

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| 118 | Skye          | Explains the process for right to counsel in juvenile court.   |
| 145 | Rep. Anderson | Comments on indigent defense.  |
| 162 | James Wygant  | Private Polygrapher. Addresses the lack of information available for an individual who comes to a polygrapher without an attorney.   |
| 198 | Chair Barker  | Questions whether HB 3337 would allow the results to be confidential.  |
| 203 | Wygant        | States that currently results can be confidential until the court demands them by threatening contempt.  |
| 208 | Rep. Anderson | States that Legislative Counsel informed him that polygraph results could be admitted for civil cases.   |
| 216 | Chair Barker  | Closes public hearing on HB 3337. Opens a public hearing on HB 2974, which requires notification to crime victim when person who committed crime is going to be released from mental health facility to which person has been committed. |

### **HB 2974 – PUBLIC HEARING**

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| 235 | Mark McDonnell  | Deputy District Attorney, Multnomah County. Testifies in support of HB 2974. Provides background for the bill.   |
| 251 | Chair Barker    | Clarifies that HB 2974 offers the same rights of notification to a victim of an offender committed civilly as victims in criminal cases.                                   |
| 259 | McDonnell       | Responds affirmatively.  |
| 263 | Rep. Macpherson | Questions if victim is notified when inmate is released from sentence currently.   |
| 270 | McDonnell       | Responds that a victim who asks to be notified would be notified upon release of the offender.   |
| 277 | Rep. Macpherson | Inquires if existing requirement of notice would apply where person is convicted of the crime, serving time, then put into a mental facility, is there still notification. |

- 290 McDonnell Relates that the Department of Corrections would still have obligations to notify the victim upon release.
- 294 Rep. Macpherson Restates the intent of the bill to address cases where the offender is committed civilly because they were not charged criminally due to their mental state. States that the bill may be drafted too broadly.
- 318 McDonnell Explains the intent of the bill to notify victims only about crimes related to the victim.
- 333 Rep. Macpherson Addresses burden on the mental health facility to determine crimes committed and victims of those crimes. Suggests mechanism to provide information at the beginning of the stay.
- 351 McDonnell Offers to work on amendments to addresses those issues.
- 364 Michael Morris Office of Mental Health and Addiction Services, Department of Human Services (DHS). Submits written testimony in opposition to HB 2974 (**EXHIBIT E**) and states that the amendments would begin to address DHS's concerns. Clarifies that HB 2974 only applies to civil cases.

**TAPE 43, B**

- 007 Moawad Questions criminal case where the defense is successful in getting the defendant committed civilly.
- 015 Morris Confirms that there are cases like that which would apply here.
- 018 Chair Barker Closes public hearing on HB 2974. Opens public hearing on HB 2410, which creates unlawful employment practice of workplace bullying.

**HB 2410 – PUBLIC HEARING**

- 025 Rep. Diane Rosenbaum House District 42. Testifies in support of HB 2410. Shares a letter from a constituent experiencing work place bullying.
- 069 Mary Botkin

American Federation of State, County, and Municipal Employees (AFSCME). Submits written testimony (**EXHIBIT F**) and testimony from a union member (**EXHIBIT G**) and in support of HB 2410.

- 096 Olivia Jonason Citizen. Submits written testimony (**EXHIBIT H**) and the book, *Mobbing: Emotional Abuse in the American Workplace* (**EXHIBIT I**) and testifies in support of HB 2410. Provides information on work place harassment.
- 160 Rep. Krieger Comments on the definition of harassment. Questions whether HB 2410 would apply to remonstrances on the House Floor.
- 191 Dave Raahahn AFSCME. Testifies in support of HB 2410. Addresses issues with negotiating policy to address work place harassment.
- 266 Cedric Hayden Northwest Religious Liberty Association (NRLA). Submits written testimony (**EXHIBIT J**) and testifies as neutral on HB 2410.
- 323 Chair Barker Illustrates a question about a possible harassment situation.
- 333 Hayden Believes the person in his illustration acted inappropriately, but as for a union worker on contract he cannot say what the union would do.
- 340 Joe Schaeffer Service Employees International Union (SEIU) Local 503, Oregon Public Employees Union. Submits written testimony (**EXHIBIT K**) and testifies in support of HB 2410. Relates case of Renee Zipser.
- 401 Chair Barker Closes public hearing on HB 2410. Opens a work session on HB 2444, which authorizes circuit court to place probationer under supervision of court.

### **HB 2444 – WORK SESSION**

- 403 Heidi Moawad Counsel. Explains -2 amendments (**EXHIBIT L**) to HB 2444.
- 002 Rep. Olson** **MOTION: Moves to ADOPT HB 2444-2 amendments dated 3/23/05.**

**VOTE: 3-0-1**

**EXCUSED: 1 - Thatcher**



- 007 Chair Barker Hearing no objection, declares the motion CARRIED.
- 008 Rep. Olson MOTION: Moves HB 2444 to the full committee with a DO PASS AS AMENDED recommendation.
- VOTE: 3-0-1
- AYE: In a roll call vote, all members present vote Aye.
- EXCUSED: 1 - Thatcher
- 015 Chair Barker The motion CARRIES.
- REP. OLSON will lead discussion in the full committee.
- 016 Chair Barker Closes work session on HB 2444. Adjourns the meeting at 10:35 a.m.

#### **EXHIBIT SUMMARY**

- A. HB 3337, conceptual amendments, Rep. Anderson, 1 p
- B. HB 3337, written testimony of Amanda Boatman, Rep. Anderson, 1 p
- C. HB 3337, written testimony of Teresa Walker, Rep. Anderson, 1 p
- D. HB 3337, written testimony, Lt. Sam Salazar, 5 pp
- E. HB 2974, written testimony, Michael Morris, 1 p
- F. HB 2410, written testimony, Mary Botkin, 1 p
- G. HB 2410, written testimony of a union member, Mary Botkin, 4 pp
- H. HB 2410, written testimony, Olivia Jonason, 6 pp
  - I. HB 2410, book, Olivia Jonason, 217 pp
  - J. HB 2410, written testimony, Cedric Hayden, 2 pp
- K. HB 2410, written testimony, Joe Schaeffer, 1 p
- L. HB 2444, -2 amendments, staff, 1 p