

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

February 23, 1999 Hearing Room 357

8:30 AM Tapes 54 - 55

MEMBERS PRESENT: Rep. Mannix, Chair

Rep. Prozanski, Vice-Chair

Rep. Bowman

Rep. Gianella

Rep. Hansen

Rep. Simmons

Rep. Sunseri

STAFF PRESENT: John Horton, Legislative Counsel

Patsy Wood, Administrative Support

MEASURE/ISSUES HEARD:

HB 2226 Public Hearing

HB 2270 Public Hearing

HB 2307 Public Hearing

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 54, SIDE A		
004	Chair Mannix	Calls meeting to order at 8:34 AM.

HB 2226 PUBLIC HEARING

016	Merry Larsen	Department of Justice Testifies and submits written testimony in support of HB 2226. (EXHIBIT A) Explains that child support program staff includes Department of Human Resources, District Attorney Family Support, and the Department of Justice Support Enforcement Division. Support Enforcement Division employees were inadvertently omitted from the current reporting statute.
054	Chair Mannix	Closes public hearing on HB 2226.

HB 2226 & HB 2270 COMBINED PUBLIC HEARING

088	Bob Oleson	Oregon State Bar Professional Liability Fund Testifies and submits written testimony in support of HB 2270. (EXHIBIT B). Proposes that HB 2270 clarifies if failure to report child abuse implies a private right of action.
109	Rep. Prozanski	How would HB 2270 be enforced?
117	Oleson	Explains that HB 2270 is a sound policy in the public interest, but the current reporting statute unfairly applies to a limited group of adults.
134	Rep. Simmons	How is abuse defined in the statutes? If I see someone spanking her child, am I required to report her?
137	Chair Mannix	Child abuse is defined in HB 2226.
140	Rep. Bowman	Will we educate the public to identify child abuse?
143	Oleson	I don't know.
149	Rep. Bowman	Explains that false child abuse complaints may arise from family disharmony.
155	Carl Meyers	Oregon State Bar Testifies in opposition to HB 2270. Discusses the current statutes relating to child abuse. Asserts that HB 2270 encourages adults to inspect each child for physical flaws and decide the nature of those flaws. Discusses the requirement to make an initial report and subsequent interaction with child enforcement agencies.
202	Chair Mannix	Inquires if the Committee prefers to limit our discussion to the liability issues of

		HB 2226 and HB 2270?
248	Rep. Simmons	Explains that civil liability is a significant issue.
257	Chair Mannix	Decides to limit discussion to liability issues. Determines from committee that the child abuse report requirement will not extend to the public.
260	Rep. Prozanski	Suggests extending HB 2270 to cover HB 2226 because HB 2270 would allow for a broader relating clause than HB 2226.
337	Chair Mannix	Proposes clarifying the language of HB 2270 to extend the child abuse reporting requirement to adults only during the course of official duties.
344	Meyers	Discusses the recent standard and penalty of the child abuse report requirement. Explains that professionals may have difficulty obtaining malpractice insurance to cover private right of action cases.
402	Chair Mannix	Inquires which option is less cumbersome: to address when a professional must report child abuse or to address whether the report requirement implies a private right of action?
409	Meyers	Addressing the private right of action issue is less cumbersome.
416	Chair Mannix	Shall we maintain the current statute and include that a private right of action is not implied?
422	Meyers	Encourages removing the ambiguity of civil liability from the current child abuse statute.
437	Rep. Prozanski	Explains why extending the child abuse reporting requirement to all adults is not beneficial to anyone.
TAPE 55, SIDE A		
009	Rep. Hansen	Does any legislation require all adults to protect children?
014	Chair Mannix	No. There is no law requiring any citizen to report any kind of crime. Relates specific cases of limited liability.
025	Rep. Bowman	There is no consensus in the general public of what constitutes child abuse.
028	Chair Mannix	Suggests limiting the child abuse report requirement to felonies.

HB 2226 WORK SESSION

044	Chair Mannix	Discusses amending the language of HB 2270 to require reporting only if abuse is observed during the course of one's professional duties.
059	Meyers	HB 2270 creates an impossibility: A layperson must determine child abuse solely from visual contact, at a distance in a public setting. Asserts that a professional could not make a valid assessment under such conditions.
069	Rep. Bowman	Only those acting in a professional capacity are required to report child abuse, correct?
079	Meyers	Not necessarily. Asserts that a professional outside of his professional capacity may be subject to reporting statutes.
098	Rep. Prozanski	Questions how a professional can legitimately report child abuse in a non-professional capacity involving strangers.
104	Chair Mannix	Contact in the course of that official's duties. No objections. Sunseri excused.
107	Rep. Prozanski	MOTION: Moves to AMEND HB 2270 on page 1, in line 6, after "contact," insert "in the course of that official's duties," and on page 1, in line 7, after "contact," insert "in the course of that official's duties".
		VOTE: 6-0-1 EXCUSED: 1 - Rep. Sunseri
Chair Mannix		Hearing no objection, declares the motion CARRIED.
110	Rep. Prozanski	MOTION: Moves to AMEND HB 2270 on page 1, in line 2, before "relating to child abuse; amending 419B.010," change entire relating to clause and bill's contents into HB 2226."
		VOTE: 7-0-0
Chair Mannix		Hearing no objection, declares the motion CARRIED.

116	Rep. Prozanski	MOTION: Moves to AMEND HB 2226 on page 1, "where appropriate in bill," insert ""Violation of subsection (1) (a) does not give rise to a private right of action or claim for relief."
		VOTE: 7-0-0
		Chair Mannix
		Hearing no objection, declares the motion CARRIED.
136	Rep. Hansen	Would a professional be protected from legal liability as a consequence of reporting child abuse?
142	Meyers	Explains that current statutory language eliminates professional liability from reporting child abuse.
156	Rep. Gianella	Inquires if the language in HB 2226 line 8 will remain intact.
159	Chair Mannix	Explains that the current language will remain in the statute. Discusses the goals of HB 2226.
185	Rep. Sunseri	As a realtor, am I subject to the child abuse reporting statute?
188	Chair Mannix	No. The list of reporting professionals is limited.
194	Rep. Prozanski	MOTION: Moves HB 2226 to the floor with a DO PASS AS CONCEPTUALLY AMENDED recommendation.
		VOTE: 7-0-0
		Chair Bryant
		Hearing no objection, declares the motion CARRIED.
		REP. PROZANSKI will lead discussion on the floor.
199	Chair Bryant	Closes Work Session on HB 2226 and the HB 2270.
<u>HB 2307 PUBLIC HEARING</u>		

211	Counsel Horton	Introduces HB 2307 and related amendments that increases the penalty for assault when victim is less than two years of age. (EXHIBITS C, D, E, F, G, AND H)
276	Walt Beglau	Oregon District Attorney's Association (ODAA) Testifies in support of HB 2307's amendments. States that the amendments exclude motor vehicle accident injuries and resolve proportionality issues.
294	Rep. Prozanski	Inquires about how the penalties for assaulting a victim less than 2 years of age were decided.
298	Beglau	Explains the difference between the maximum indeterminate sentence and the proposed assault II.
307	Ingrid Swenson	Oregon Criminal Defense Lawyer's Association Testifies in opposition to HB 2307. Discusses the complexities of the assault statutes. Discusses differences between minor injury and serious injury. Cites situations in which the proposed law could be applied inappropriately.
373	Chair Mannix	Asks for a distinction between a parent recklessly causing injury to a child as opposed to negligently causing injury to a child. Questions if a jury would convict a parent in the situation previously cited.
379	Swenson	Asserts that the law should not be constructed in such a way that a jury must disregard it to do justice.
402	Chair Mannix	Discusses the term "recklessly" as it relates to HB 2307.
TAPE 54, SIDE B		
015	Phil Lemman	Oregon Criminal Justice Commission Testifies as neutral to HB 2307. Discusses sentencing for conduct at the current time. States that the amendments would not allow for post-prison supervision following the sentence.
047	Chair Mannix	Are you concerned that we are establishing presumptive sentencing guidelines?
050	Lemman	Yes. Only 1/3 of the offenders would get the presumptive sentence; 2/3 of these sentences would be a downward departure.
052	Rep. Bowman	Is that because most offenders accept plea agreements?

054	Lemman	Yes. Explains that HB 2307 establishes a higher threshold for assault.
063	Rep. Bowman	How do the ñ6 amendments fit into current law?
069	Lemman	Explains the current assault statutes require proof of intent and physical injury.
082	Rep. Sunseri	Does a judge have the latitude to adjust a sentence based on an offenderís intent?
085	Lemman	Yes. The parties negotiate a plea agreement.
093	Chair Mannix	Discusses the definition of physical injury and serious physical injury. Is substantial physical injury defined in statute?
108	Lemman	Yes, Measure 11 ORS chapter 137 contains a substantial physical injury definition.
120	Beglau	In criminal prosecutions, we distinguish between physical injury and serious physical injury. The latter is very difficult to prove. Discusses the ambiguous nature of physical injury and serious physical injury.
136	Chair Mannix	Reviews the Measure 11, Assault 2 definition of "significant physical injury." Would this definition apply to HB 2307?
144	Beglau	Yes, but it is too strong.
151	Rep. Sunseri	Distinguishes between intentional injury to a child and parenting mistakes without malice. Asserts that the latter should not be subject to criminal prosecution.
165	Beglau	Discusses the sentencing scheme under the ñ6 amendments.
177	Rep. Prozanski	Explains that HB 2307 will be used as a tool to plea bargain cases. Discourages the creation of special assault statutes for specific groups of people.
217	Counsel Horton	Discusses legislative history of HB 2307 as it relates to shaken baby syndrome.
230	Chair Mannix	Proposes changing "recklessly" to "knowingly."
241	Counsel Horton	Does the term "knowingly" satisfy the goals of HB 2307?
244	Beglau	No. Our goal was to reach those individuals who were harming children with

		reckless behavior.
251	Counsel Horton	Would "intentionally" or "knowingly" suffice?
254	Beglau	Suggests addressing physical injury and reckless conduct separately.
261	Chair Mannix	Should HB 2307 specifically refer to shaking an infant?
263	Beglau	Clarifies the intent of HB 2307: to address reckless conduct, not the intent of the perpetrator.
272	Rep. Bowman	Asserts that current assault laws apply to young children.
280	Beglau	Explains that HB 2307 will increase the penalties for assault.
291	Rep. Bowman	Does the current law addresses "reckless" behavior in assault cases?
295	Beglau	Yes in terms of extreme indifference to the value of human life.
300	Rep. Bowman	Cites example of an adult who throws a child. Doesn't that behavior alone establish intent and an indifference to that child's life?
303	Beglau	Stresses that intent is difficult to prove.
331	Rep. Sunseri	Suggests narrowing the application of HB 2307 to specific conduct and situations such as shaken baby syndrome.
343	Chair Mannix	What are your priorities in relation to HB 2307?
344	Beglau	States his priorities: Assault I, 90 month minimum sentence for causing serious, physical injury recklessly to a child under that 3 years of age.
352	Chair Mannix	Closes HB 2307 Public Hearing.
353	Rep. Bowman	Requests a copy of the 1995-1997 legislation relating to Shaken Baby Syndrome.
358	Chair Mannix	Adjourns meeting at 9:52 AM.

Submitted By, Reviewed By,

Kathy Courtney Sarah Watson,

Administrative Support Administrator

EXHIBIT SUMMARY

A. Testimony in support of HB 2226, Merry L. Larsen, 3pp

B. Testimony in support of HB 2270, Kirk R. Hall, 4pp

C. -1 amendments to HB 2307, John Horton, 1p

D. -2 amendments to HB 2307, John Horton, 2pp

E. ñ3 amendments to HB 2307, John Horton, 1p

F. ñ4 amendments to HB 2307, John Horton, 2pp

G. ñ5 amendments to HB 2307, John Horton, 2pp

H. ñ6 amendments to HB 2307, John Horton, 2pp

I. ñ1 amendments to HB 2270, John Horton, 1p