

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON FAMILY LAW**

**April 22, 1997 Hearing Room 357**

**3:15 P.M. Tapes 74 - 75**

**MEMBERS PRESENT:**

**Rep. Ron Sunseri, Chair**

**Rep. George Eighmey, Vice-Chair**

**Rep. Roger Beyer**

**Rep. Peter Courtney**

**Rep. Charles Starr**

**Rep. Judy Uherbelau**

**STAFF PRESENT:**

**Bill Taylor, Counsel**

**Lisa Fritz, Administrative Support**

**MEASURE/ISSUES HEARD:**

**HB 3187 - Public Hearing**

**HB 2652 - Public Hearing**

**HB 2315 - Work Session**

**HB 2561 - Public Hearing**

**HB 3703 - Public Hearing and 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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 74, A</b>		

007	Chair Sunseri	Calls the meeting to order at 3:21 p.m.
<b><u>OPENS PUBLIC HEARING ON HB 3187</u></b>		
009	Sen. Mae Yih	District 19 Submits written testimony in support of and proposed amendments to HB 3187 ( <b>EXHIBIT A</b> ).
025	Susy Leonard	Resident of Albany, Oregon Testifies in favor of HB 3187. Discusses her personal experiences, as they relate to the bill. A current picture would be much more helpful.
047	Chair Sunseri	Closes the public hearing on HB 3187.
<b><u>OPENS PUBLIC HEARING ON HB 2652</u></b>		
054	Bill Taylor	Committee Counsel Discusses HB 2652 and -2 amendments to the bill ( <b>EXHIBIT B</b> ).
070	Susan Tripp	Oregon District Attorneys' Association (ODAA) Discusses reasons for and the -2 amendments to HB 2652, as well as the ODAA's suggestions and position, concerning the bill. Suggests taking the language of (e), (f), and (g) out of the bill's definition of "unlawful sexual conduct."
119	Rep. Uherbelau	I'm a little concerned because one of the directions, given to the workgroup, concerned the domestic violence issue, and I don't feel that issue has been addressed. I think we're opening up a "can of worms" in letting this type of discretion be, entirely, in the DAs' hands. Different DAs in different counties operate differently; the inconsistency concerns me.
140	Tripp	We focused on the constitutionality of what was HB 2423. The language of the Wisconsin statute, I believe other members of this group will ask you to include, is probably the best you could include, if you were going to allow that to be an affirmative defense. The ODAA can't support that because we are just talking about an anonymous call.
150	Rep. Uherbelau	Do the DAs get any formal training on domestic violence?
157	Tripp	Yes. Most DAs have spent a lot of time in district court, where the primary case load is domestic violence. So, not only do we get training, we deal with

		it on a day-in, day-out basis.
173	Rep. Uherbelau	I mention that because an anonymous call is not always easy for an abused woman to make. To think that these people could do this freely is worrisome to me.
182	Tripp	I don't think it's necessarily easy or free for them to do this, but I think that they are charged with protecting these children. When you're dealing with domestic violence, you already have children who are being injured. They're either being injured because the batterer is battering them or because they are seeing their mother being battered on a regular basis, and that's doing a lot of psychological harm. If you look at the studies, those children, if they are males, are probably going to grow up to be batterers, and if they are females, they'll probably grow up to be battered. So, if you look at that situation, and then say, in addition, that child is being sexually abused, then I have to say that parent has a duty that she has to overcome. Those children are at significant risk. I am unable, myself, to say that fear should overcome that duty.
199	Rep. Uherbelau	I understand what you are saying, and I agree with you. I have seen the Wisconsin law, and it is an affirmative defense. It doesn't stop you from charging the person in the first place. It's just like any other affirmative defense, and they have to prove it. That seems to be a middle ground, and I'm wondering why the ODAA would oppose that.
211	Tripp	I think that it would be a tough position to prove, from the state's perspective, the emotional capability of a person. If they're able to go to the bar or to work, are they emotionally capable? I don't know. How do you prove emotional capability?
220	Rep. Uherbelau	You don't have to prove it; it's an affirmative defense that they have to prove.
225	Tripp	But, I have to fight it.
227	Taylor	I believe we addressed this issue in HB 2404, regarding the "battered spouse" defense. If I remember correctly, we decided to codify the statutory defense, and the amendment provided that it could be raised at any time, in any manner (whether civil or criminal). My sense is that it could be raised in this issue, the battered spouse.
240	David Nebel	Oregon Coalition Against Domestic and Sexual Violence, Concerned Citizens for the Health and Safety of Women (Lane County) Submits written testimony (the above mentioned Wisconsin statute), relating to HB 2652 ( <b>EXHIBIT C</b> ). Testifies in opposition to HB 2652. This bill, potentially, places liability on the person who is, in effect, powerless to prevent the ongoing sexual abuse. Discusses HB 2404, as it relates to HB 2952. I would urge you to include specific domestic violence language in this statute. The perpetrator should have to be convicted before someone is charged under HB 2652. HB 2652 punishes, as a Class C felony, failure to present conduct that are Class A and C misdemeanors. That is inappropriate.
290	Nebel	Continues testimony.

309	Timothy Travis	Testifies in opposition to HB 2652. I believe this bill will do exactly the opposite of what we want it to; that's why this result is so important. It ought to be a predicate to convicting one person that the other person is convicted. Gives some examples of what he foresees as possible, if the bill were passed. Passage of a bill like this could be another excuse not to provide services to people who need them. There is a lot of conduct that teenage children can engage in that, if the parents don't turn their child's partner in, they could be guilty of this crime.
347	Jeff Watkins	Oregon Alliance of Children's Programs Testifies in opposition to HB 2652. We are already under tremendous pressure to keep these kids in a safe environment, due to funding, but this bill would also add criminal sanctions, if something were to go wrong. I would suggest, perhaps, amending the bill to exclude state agencies or state agency contractors.
377	Jeff Fossum	National Center for Men, Oregon Chapter I am a victim of domestic violence. Discusses his former marriage, as it relates to HB 2652.
<b>TAPE 75, A</b>		
001	Fossum	Continues testimony.
017	Chair Sunseri	Closes public hearing on HB 2652.
<b><u>OPENS WORK SESSION ON HB 2315</u></b>		
022	Rep. Beyer	I think Rep. Eighmey finally has the language to HB 2315 that we completely agree on.
025	Rep. Eighmey	Discusses -5 amendments to HB 2315 ( <b>EXHIBIT D</b> ) and proposed amendments to the -5 amendments.
049	Chair Sunseri	You changed the age to 20, right?
050	Rep. Eighmey	Yes. Continues discussing proposed amendments to the -5 amendments.
066	Rep. Uherbelau	This is not retroactive and does not affect existing court orders. It would not be a change of circumstances. Is that correct?
069	Rep. Eighmey	It is retroactive (page seven, line three). Does the Support Enforcement Division (SED) agree with that?
	Bob	Department of Justice SED I am not an attorney. I cannot, in all honesty, say

084	David	whether this language would make the bill retroactive.
090	Russell Lipetzky	Chair of the Family and Juvenile Law Section of the Oregon State Bar It does not appear to me that there is any language, in this bill, that says anything about retroactivity. The language on page seven, beginning on line three, whatever that language refers to appears in section 12, under ORS 416, administrative proceedings. I think that if you intend for this to be retroactive, you need to explicitly say so; if you intend it not to be, you should also say so.
100	Rep. Beyer	We did agree to make it retroactive.
102	Rep. Eighmey	If we did make it retroactive, would that cause problems for SED?
104	David	I think that it may cause some problems. You immediately have some a certain number of children, who are attending school, who are age 20 and above, that would, upon enactment of this, have support terminated right away. That would certainly be a problem for those children.
113	Taylor	If you have a support order (that goes to 21), do they have a right that we are abolishing? What's their interest in it?
119	Rep. Eighmey	You're right. Discusses how he has handled orders, as an attorney.
127	Rep. Beyer	One of the main reasons for going this route, rather than cutting it off at age 19, was because it would be retroactive. That's one of the trade-offs.
133	Rep. Eighmey	We would have three years of overlap.
135	Rep. Beyer	If you make it retroactive now, would it be a problem for judgments ordered or for the kids in school?
136	Rep. Eighmey	Both.
137	Rep. Beyer	If it's a problem for the kids in school, it could take affect on January 1, 1998.
139	Chair Sunseri	We could go back to 19.
140	Lipetzky	There are two issues you need to address: (1) is it retroactive, and (2) does it cause a change in circumstances to allow people to come in and initiate a modification? You really need to address, for the statute to be interpreted correctly by a judge, practitioner, or lay person, both of those issues.
145	Rep. Uherbelau	This is an expectation. This is like a contract. Can you actually make it retroactive, or can it be a change of circumstances? Do you know an example of something similar?
154	Lipetzky	The problem used to come up right before the support guidelines were changed, and nobody knew. More recently, when those guidelines were changed, there was a specific provision, in the guidelines, which clarifies that the changes only affect orders entered after the effective date of the change. Those were changes to administrative rules, but that's the most

		similar circumstance I can think of to answer Rep. Uherbelau's question.
158	Rep. Uherbelau	As far as you know, the issue has never been litigated.
162	Lipetzky	It very well may have been litigated, but off the top of my head, I can't cite you a case or give you the outcome.
180	Chair Sunseri	Closes work session on HB 2315.
<b><u>OPENS PUBLIC HEARING ON HB 2561</u></b>		
195	Jeff Fossum	National Center for Men, Oregon Chapter The primary problem I have with this bill is that it puts burden of proof on the noncustodial parent. The custodial parent is the one who is trying to change the status quo. The burden of proof should be placed on the person who is trying to change that status quo: the custodial parent. Refers to section three "a." Why are we concerned about the quality of life for the custodial parent? If you were just saying that this is for the quality of life for the child, I would have no problem with that whatsoever. Refers to section three "c." The judge doesn't question why the custodial parent wants to move. Virtually everything I see here is directed at the noncustodial parent. There is no burden on the custodial parent to show what they are trying to do is good for the child.
245	Fossum	Continues testimony.
273	Russell Lipetzky	Family and Juvenile Law Section of the Oregon State Bar The Bar would oppose this bill in its current form. Discusses SB 243 and the changes it makes to ORS 159. On line six, the word "may," under the Task Force legislation, has been changed to "shall," which makes application of this entire bill much more mandatory than the discretionary form it is currently in, and it would make it more applicable, in far more cases, than what you would assume, looking at the current form. There are some ambiguities (refers specifically to line 27). The overall thrust of this bill is that it does place the burden on the noncustodial parent to prove that a move would be detrimental. That's contrary to current law, which simply puts that as the best interests of the child. Refers to <i>Duckett v. Duckett</i> , a 1995 appellate case. We're comfortable with the current status of the law; we're not sure why this is needed and, as drafted, we think there are some problems with it.
303	Chair Sunseri	Closes public hearing on HB 2561.
<b><u>OPENS</u></b>		

<b><u>PUBLIC HEARING ON HB 3703</u></b>		
318	Bill Taylor	Committee Counsel Discusses HB 3703.
332	Rep. Uherbelau	I think you're opening up the door here to a "slippery slope."
341	Chair Sunseri	Closes public hearing on HB 3703. Recesses at 4:11 p.m.
342	Chair Sunseri	Reconvenes at 4:14 p.m.
<b><u>OPENS WORK SESSION ON HB 3703</u></b>		
345	Rep. Eighmey	<b>MOTION: Moves to ADOPT HB 3703-1 amendments dated 4/22/97 (EXHIBIT E).</b>
		<b>VOTE: 6-0</b>
355	Chair Sunseri	<b>Hearing no objection, declares the motion CARRIED.</b>
364	Rep. Eighmey	<b>MOTION: Moves HB 3703 to the full committee with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 6-0</b>
370	Chair Sunseri	<b>Hearing no objection, declares the motion CARRIED.</b>
377	Chair Sunseri	Adjourns at 4:22 p.m.

Submitted by, Reviewed by,

Lisa Fritz, Sarah Watson,

Administrative Support Office Manager

**EXHIBIT SUMMARY**

**A - HB 3187, written testimony and proposed amendments, Sen. Mae Yih, Senate District 19, Linn and Benton Counties, 3 pages.**

**B - HB 2652, proposed amendments, Legislative Counsel, 2 pages.**

**C - HB 2652, written testimony, David Nebel of the Oregon Coalition for Domestic and Sexual Violence, Concerned Citizens for the Health and Safety of Women (Lane County), 1 page.**

**D - HB 2315, proposed amendments, Legislative Counsel, 7 pages.**

**E - HB 3703, proposed amendments, Legislative Counsel, 4 pages.**