

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON FAMILY LAW

April 29, 1997 Hearing Room 357

3:15 P.M. Tapes 79 - 80

MEMBERS PRESENT:

Rep. Ron Sunseri, Chair

Rep. George Eighmey, Vice-Chair

Rep. Roger Beyer

Rep. Peter Courtney

Rep. Charles Starr

Rep. Judy Uherbelau

VISITING MEMBER:

Rep. John Minnis

STAFF PRESENT:

Bill Taylor, Counsel

Lisa Fritz, Administrative Support

MEASURE/ISSUES HEARD:

HB 2315 - Work Session

HB 2423 - Public Hearing

HB 2652 - 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 79, A		

006	Chair Sunseri	Calls the meeting to order at 3:20 p.m.
<u>HB 2315 - WORK SESSION</u>		
010	Bill Taylor	Committee Counsel Discusses HB 2315 and -6 amendments to the bill (EXHIBIT A) .
019	Rep. Eighmey	Discusses -6 amendments. Proposes conceptual amendments to correct typos found in the -6 amendments. Discusses concerns about retroactivity.
055	Rep. Eighmey	MOTION: Moves to ADOPT HB 2315-6 amendments dated 4/29/97 and that the measure be FURTHER AMENDED on page 3, lines 6 and 9, by changing "6" to "8".
		VOTE: 5 - 0 - 1 EXCUSED: 1 - Rep. Uherbelau
057	Chair Sunseri	Hearing no objection, declares the motion CARRIED.
058	Rep. Eighmey	MOTION: Moves HB 2315 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 6 - 0 - 0
060	Chair Sunseri	Hearing no objection, declares the motion CARRIED. REP. BEYER AND REP. EIGHMEY will lead discussion on the floor.
080	Chair Sunseri	Closes work session on HB 2315.
<u>HB 2423 - PUBLIC HEARING</u>		
084	Bill Taylor	Committee Counsel Discusses HB 2423, HB 2652, and the -3 amendments to HB 2652 (EXHIBIT B) .
094	Rep. Uherbelau	Relays details of conversation between her and Rep. Minnis. Comments that Rep. Minnis mentioned that Rep. Piercy has concerns as well, and more work will need to be done to address those concerns.
111	Rep. John	District 20 Comments that Dale Penn from the Oregon District Attorneys Association (ODAA) sent him a letter with proposed amendments to HB

	Minnis	2433. Asks if counsel or the committee has received the letter.
117	Taylor	I think Susan Tripp can address that. Legislative Counsel advised both her and I that the amendments were broader than the "relating to" clause of the bill.
126	Susan Tripp	ODAA We did meet and discuss HB 2423. I did send out proposed amendments to Legislative Counsel. I was then told the "relating to" clause was too narrow, and they put those amendments into HB 2652. I testified briefly at a tap-tap hearing, and there was discussion regarding removing language from HB 2652, and I think that's where the -3 amendments came from.
146	Taylor	Discusses differences between the -1 and -2 amendments, concerning constitutional issues.
149	Tripp	That's correct. Some parts of the statutes, concerning furnishing obscene materials to minors, have been found unconstitutional, and rather than going down that whole road, I suggested that the committee might strike that language. That's how we got to the -3 amendments.
159	Rep. Minnis	HB 2652 is now the vehicle for the amended HB 2423. Is that correct?
162	Chair Sunseri	It replaces it. Closes public hearing on HB 2423.
174	Janet Arenz	Executive Director for the Oregon Alliance for Children's Programs Submits and discusses proposed amendments to HB 2652 (EXHIBIT C).
196	Rep. Minnis	I'm a little confused about how this bill would affect the types of organizations you mentioned.
199	Arenz	The bill is intended to address those adults or individuals who are not adequately providing for the best interests of the children. The environment, in which the Oregon Alliance for Children's Programs care for the children, is the antithesis of the environment that you are concerned about addressing in the bill.
206	Rep. Minnis	Could you elaborate on your use of "antithesis?"
207	Arenz	We offer secure treatment environments for children, some of who may be perpetrators; some may not be. Some may be survivors of abuse, and so the environment, in which they are in, is one that is specially tailored to address the concerns and the issues of both those types of children. The bill is trying to target non-responsible adults, which are not part of our treatment environment.
215	Chair Sunseri	How would you apply that to foster care, which does not, necessarily, involve professional people?
217	Arenz	The foster care people, who are involved with us, particularly those in proctor care, have received training, supervision, and information that allows them to address the issues and concerns of children, who may be offenders, when they are placed in a home with non-offending children.
	Rep.	

223	Uherbelau	How do the children get into your program?
225	Arenz	They come to us, primarily, through the state of Oregon, through Services to Children and Families (SCF), the Oregon Youth Authority, the Mental Health Division, etc. They identify the needs of these children, and the children are assigned or contracted to be cared for by various programs.
230	Rep. Uherbelau	How do you think this bill affects your organization? Is it your belief that you may have sexual predators in your programs? Where is the problem?
242	Arenz	Our concern is the greater barrier; the criminal liability will be placed on our program. It is very difficult, due to limited funds and services, to be able to maintain the caliber of care that we would like to. The greater an individual may perceive their liability to be, in working with any of our programs, as an employee, the less likely they are to want to participate, which makes it extremely difficult to get good, competent care providers, and that is our goal.
260	Rep. Starr	You told us that your program is providing safe refuge for these young people. If that is, in fact, what you are doing, you should be held to a higher standard.
271	Arenz	This bill is an inappropriate response to a problem that has been identified. Women and other adults, who are in homes, where children are hurt, and where they are not working to help those children, have greater problems, which are not going to be solved by this bill. We are concerned that this bill actually creates a greater liability and creates a lesser likelihood for adults to report abusive situations. We are not supportive of this vehicle. We would like to see liability lifted for those, in treatment situations and responsible environments, who try to assist the children.
292	Rep. Minnis	It sounds to me like the objection is more philosophical than structural. Your organizations are mandated reporters of child abuse. Are they not?
294	Arenz	Yes.
297	Rep. Minnis	So, if you have knowledge that a child is being abused or subject to abuse, you are already required, under law, to report that. The bill doesn't seem to do much more than that, except if you fail to report, then you may be subject to criminal charges. It does require <i>knowledge</i> that the child is or has been subject to unlawful sexual conduct. That seems to be a pretty clear standard. I'm not sure what is going on with these programs that would make you feel you need these amendments.
310	Arenz	We don't believe that this bill is going to provide the kind of relief, for children and families, that you're seeking. We would rather provide an amendment for professional care and treatment providers for children. I understand that you feel that the standard should be even higher, and that we should have an even greater liability, but when you're talking about the possibility of a \$6 an hour employee being charged with a felony because there was, for example, an administrative glitch, it's just too much.
		The bill says that, if you have knowledge, you're supposed to, under the

330	Rep. Minnis	definition of "reasonable steps," report to the appropriate law enforcement agency, which is something you are already mandated to do under law. I don't understand what the "beef" is, unless you are not reporting these things.
340	Arenz	I understand what you are asking me, and I'm trying to respond by letting you know that we do not think this bill is a good idea. We do not think that criminalizing the failure to report is going to have more children saved or protected or a greater effect on those adults who have not been responsible in reporting. Our adults are responsible in reporting, and their personal liability should not be increased with a criminal felony charge.
347	Rep. Minnis	You just don't think the concept of the bill.
348	Arenz	We don't feel the bill addresses the issues you are concerned about, in terms of safety for children and responsible adult reporting.
351	Rep. Minnis	Am I characterizing that correctly?
353	Arenz	Yes, we don't think the bill adequately addresses the problem. However, we are trying to support your attempt to make homes safer for children. We would just like an exclusion for professional treatment community programs.
360	Taylor	Are you saying that, if a staff employee notices that a child has been sexually abused, they report that to their supervisor, and the supervisor fails to report that information, the staff person would be liable? I don't believe they would be in that particular situation.
367	Arenz	I don't think we have an absolute answer to that without testing the statute.
374	Taylor	Maybe Susan Tripp should address that. My understanding of criminal liability is that, if you take "reasonable steps," and this person has taken "reasonable steps," you can't hold them criminally liable for doing that.
378	Tripp	When I met with Ms. Fagel, from Oregon Youth Authority, she had concerns because in section one, originally, it said "knew or should have known." Her concern was that, if you have a treatment facility, full of sex offenders, "should have known" is awfully broad. If you have a situation where there is actual knowledge, that would solve that problem. Then, the next step is: What are reasonable steps? We decided on the language of 2(b), "reasonable steps includes but is not limited to," to address that problem. "Reasonable steps," for a staff person, would involve reporting to your supervisor, and the supervisor would then take "reasonable steps" to protect that child. That was why that language was decided on.
405	Rep. Uherbelau	Discusses terms of "reasonable steps" and "includes but is not limited to." Would a supervisor be on the same level as law enforcement?
TAPE 80, A		

007	Rep. Minnis	Gives a scenario. I don't know if that would serve the purposes of a "mandated reporter."
012	Tripp	We have this situation, sometimes, with doctors and nurses. What Rep. Minnis said is true; the obligation, under mandated report, always falls to the person, the individual. You are talking about an anonymous report to SCF.
019	Rep. Minnis	Every county in the state is required to have a multidisciplinary team (MDT). Often the report is accomplished through a call to the child abuse hotline, which, maybe an MDT, SCF, or law enforcement member would handle. We could add some additional language to include those people.
024	Rep. Uherbelau	If you gave an anonymous tip, you'd never be able to prove that you took "reasonable steps," under this bill.
028	Tripp	The person can always release their name.
032	Rep. Uherbelau	So, when you talk about an "anonymous tip," you're not saying that someone can call in, someone who doesn't want to get involved, and say, "I know this is happening. I don't want to give my name."
035	Tripp	In the context of this bill, if the abuser was prosecuted, and eventually charged, the caller would have to give that information.
037	Chair Sunseri	Any other questions or comments?
039	Tripp	My understanding is that Tim Travis, from Juvenile Rights Project, Inc., has an extensive amendment that he wishes to bring before the committee.
045	Chair Sunseri	Closes the public hearing on HB 2423.
<u>HB 2652 - WORK SESSION</u>		
047	Timothy Travis	Juvenile Rights Project, Inc. Submits written testimony, regarding HB 2652, and proposed amendments to the bill (EXHIBIT D).
095	Tripp	Discusses EXHIBIT D in detail.
145	Tripp	Continues testimony.
295	Tripp	Continues testimony.
228	Rep. Uherbelau	Discusses a scenario. That grandmother has absolutely no authority to take that child from his or her legal guardian. How can we tell people to do something that they have no legal authority to do?
259	Tripp	The question for the jury would be: Has this person, under the criminal mistreatment statute, taken on the care and responsibility for this child? If the jury finds that they have, then they would have the duty to report that. If a grandmother walks in, sees a father sexually assaulting a child, calls the police, and asks them for help, I'm sure they would help her to separate the

		perpetrator form the victim.
269	Rep. Uherbelau	The police are overburdened now, and they don't always get to the scene of the crime right away. What does she do in the mean time? What is her duty? If she took the child, she, possibly, could be sued for kidnapping the child because she has no legal authority to take the child, and the police haven't shown up.
276	Tripp	That is why we left in the language "includes but is not limited to." The jury would have to decide if the person took "reasonable steps" to protect that child.
284	Travis	That gets to the second argument I made, in my written testimony, about overbreadth and unconstitutionality: What are reasonable steps? The answer is vague, and I believe that is a constitutional problem. That is why, in my proposed amendments, I took out "but not limited to," so the "reasonable steps" are more clear.
340	Taylor	Reiterates what he believes Mr. Travis' concerns to be. Is that correct?
352	Travis	Yes.
353	Taylor	Ms. Tripp raised the issues about the defenses that are now in ORS 163.345 (ages of defense) in certain cases. If that were included in this proposal, would that take care of those potential problems that you see, where we have a 15- and 16-year-old having consensual sex?
360	Travis	No, because I, as the father of the 16-year-old girl, still have to report her to the police, and she has to raise that defense in a proceeding. I'm not going to report my daughter, and I don't know very many fathers who would. Unless you say, in the bill, that the three year period of time excuses my duty to report, I have to do so. I think we should get rid of the problem altogether because we are not trying to get at teenagers, who are having sex, we are trying to get at parents who are subjecting their children to sexual contact.
384	Rep. Beyer	Isn't it currently illegal for a parent not to turn in someone they know is abusing a child?
385	Travis	Parents are not "mandatory reporters" in that circumstance.
393	Rep. Beyer	If my daughter is currently having sex with someone over the age of 18, I'm not required, by law, currently, to turn them in.
395	Travis	No, it's not a crime to not turn them in.
403	Rep. Uherbelau	You are perfectly welcome to do that.
407	Rep. Minnis	Since the inception of MDTs in Oregon, there has been a concentrated effort, by law enforcement, district attorneys, SCF, etc., to investigate child sexual and physical abuse cases. There are more interviews and investigations occurring. Some adults, who know that their children are being abused, refuse to protect their children from those harming them. Under this law, we can tell them that if they don't, they are subject to criminal charges.

TAPE 79, B		
022	Rep. Uherbelau	One thing I've learned, from being on this committee is that every county operates differently. My inclination would be that, if the intent is to protect these children from family situations, then we should make the bill as tight as possible, so the district attorneys don't use it in a broader sense than what we are trying to address.
037	Kathy Sevickie	Legislative Chair, Oregon Chapter of the National Association of Social Workers Testifies in opposition to HB 2652 Discusses what the association is involved in. Explains that parents aren't as opened when threatened, and the bill would make them less amenable to treatment. I think the bill would cause you to lose testimony from children, as they tend to pull back when they fear their parents will be taken away from them.
078	Rep. Minnis	You are absolutely wrong, particularly with respect to children who recant. The strongest influence we have, with children who recant, is that parent who refuses to protect the child.
091	Sevickie	I agree with you that recantation occurs early on in the cases, but it also occurs much later in cases, where children believe that the best way to get back home is to believe it never happened. I believe that getting the parent to the point of supporting her child's allegations, until proven otherwise, is more likely to come when she is not fearing prosecution.
100	Rep. Uherbelau	If we protect this parent, in the sense that we are not going to allow criminal sanctions, we are allowing this conduct to continue. The issue becomes: Who do we protect? They are both vulnerable, but isn't the child the most vulnerable?
115	Sevickie	I do not believe we should protect the parent by any means. I think the child welfare system is quite effective in making sure that, in these types of situations, these children are no longer in the care of these types of parents. My belief is that we will have a better outcome in protecting children, if we work with the parents, who have parenting capacity, rather than prosecuting them.
122	Rep. Minnis	One of the reasons for the bill is to prevent having to take the child into protective custody.
138	Sevickie	I think the difference is that you believe the fear of prosecution will be more powerful in motivating parents than the other forces, which already motivate them, and I don't think it will work. If the committee is committed to going forward, we would prefer the version offered by Mr. Travis. We think that it limits the difficulties and would be a more workable version for families.
146	Chair Sunseri	Closes work session on HB 2652.
148	Chair Sunseri	Adjourns at 5:02 p.m.

Lisa Fritz, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2315, proposed amendments (-6), Legislative Counsel, 7 pages.

B - HB 2652, proposed amendments (-3), Legislative Counsel, 2 pages.

C - HB 2652, proposed amendments, Janet Arenz, Executive Director of the Oregon Alliance for Children's Programs, 1 page.

D - HB 2423 and HB 2652, written testimony and proposed amendments, Timothy Travis, Juvenile Rights Project, Inc.