

HOUSE JUDICIARY
SUBCOMMITTEE ON CRIME AND CORRECTIONS

Hearing Room
Tapes - 38

MEMBERS PRESENT:

Rep. Veral Tarno, Chair
Rep. Floyd Prozanski, Vice-Chair
Rep. Peter Courtney
Rep. Jerry Grisham
Rep. Leslie Lewis

STAFF PRESENT:

Holly Robinson, Committee Counsel
Janet Ellingsworth, Committee Assistant

MEASURES HEARD:

Public hearing on HB 2681
Public hearing on HB 2682
Public hearing on HB 2683
Public hearing on HB 2684
Public hearing on HB 2685
Work session on HB 2212

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 , A

004 CHAIR TARNO: Convenes meeting at 8:33 A.M.

OPENS the WORK SESSION on HB 2212

006 ROBINSON: Gives overview of HB 2212. Discusses amendments. [EXHIBIT A]

035 MOTION: REP. PROZANSKI: Moves the amendments to HB 2212.

042 CHAIR TARNO: Hearing no objections the motion CARRIES.

045 MOTION: REP. PROZANSKI: Moves HB amended.

048 CHAIR TARNO: Hearing no objections the motion CARRIES.

CLOSES the WORK SESSION on HB 2212

OPENS the PUBLIC HEARING on HB 2681, HB 2682, HB 2683, HB 2684, HB 2685

060 REPRESENTATIVE JOHN MINNIS, DISTRICT 20: Testimony on all of the above bills.
Submits [EXHIBIT B and C].

100 REP. PROZANSKI: Your statement regarding section 1, is that your gearing this toward someone with direct knowledge of the abuse occurring?

106 REP. MINNIS: That is the intent. I don't believe the bill is actually drafted to do that.

110 REP. PROZANSKI: On line 7, we talk about what would be the element "knows or should have known". Do you believe that the "should have known" should stay in there based on direct knowledge?

113 REP. MINNIS: I'm open to any form that you could change this to tighten it up. On line 9 I did insert the word "intentionally fails".

119 REP. PROZANSKI: It seems like we need to put more of a definition on line 9.

134 REP. MINNIS: Right.

136 REP. PROZANSKI: On line 12, where we limit it to "lawful custodian".

I've looked at the statute that defines "lawful custodian" and I'm wondering if we should consider broadening that.

139 REP. MINNIS: I have no problem with broadening it to the extent that we don't make it so difficult to potentially prosecute.

141 REP. LEWIS: Is there already a crime of failure to protect a child from other types of abuse?

144 REP. MINNIS: No.

147 REP. LEWIS: Then why are you leaving this just to sexual abuse?

148 REP. MINNIS: The only reason is because in the case load that I have in the child abuse team about 95 percent of what I investigate are child sexual abuses.

160 REP. MINNIS: Explains remaining bills, HB 2682, HB 2683, HB 2684, HB 2685

198 REP. COURTNEY: Is there any distinction about non violent sex offenses?

203 ROBINSON: It's non forcible.

205 REP. COURTNEY: That is interesting because I understand we're going to move away from a law and order type of approach. What about this non forcible issue?

207 REP. MINNIS: Explains the distinction between the non forcible sexual offense.

231 REP. COURTNEY: So then you wouldn't want to make a distinction at all in your piece of legislation on that basis?

233 REP. MINNIS: No, in fact it appears to me that this legislation, what it does is move these crimes, at the court or the district attorney's discretion, be pled down as a misdemeanor.

249 REP. PROZANKSI: Discusses his interpretation of section 1 of the bill.

260 REP. MINNIS: I think your right.

270 REP. MINNIS: Discusses HB 2683.

277 JIM BELLOW, DETECTIVE, PORTLAND POLICE BUREAU: Testimony on HB 2683.

298 HELEN SMITH, DEPUTY DISTRICT ATTORNEY, MULTNOMAH COUNTY: Testimony on HB 2683.

328 REP. PROZANSKI: Do you think we should look at changing the language to "may" in place of "shall"?

334 SMITH: I think it should be explored. I think that it should be discussed more with members of the Oregon District Attorney's Association (ODAA).

345 REP. MINNIS: Discusses HB 2684.

406 SERGEANT BOB WALAKER, MULTNOMAH COUNTY CHILD ABUSE TEAM: Testimony on HB 2684.

420 REP. COURTNEY: What did you say about an inside resident?

422 WALAKER: You can expose yourself inside a residence and its legal. Explains current law.

435 CHAIR TARNO: That even pertains to other children besides those children that live in the home?

440 WALAKER: That is correct.

444 REP. MINNIS: Discusses HB 2685.

455 WALAKER: Gives example of a child giving information to a court appointed special advocate.

TAPE 38, A

038 REP. COURTNEY: What did we do in 1989-91 with regard to sex abuse?

040 ROBINSON: The legislature has added through the years numerous individuals who would have to report, but this year it has not been presented to the legislature that I am aware of.

044 WALAKER: The last people who were added were emergency medical technicians (EMT).

046 ROBINSON: Last session the legislation also added counselors and mental therapists.

048 REP. COURTNEY: I thought that somewhere in there we had a generic statement that would bring in allot of people.

050 WALAKER: It does say employees of the juvenile court.

053 REP. MINNIS: Section 2 of the bill is intended to allow the judge to issue a protective order excluding a suspect. Discusses intent of the bill.

076 SMITH: Currently there is a law that was passed in the last session. That deals with a similar subject.

082 REP. MINNIS: The current process is implemented within the juvenile court system.

090 REP. PROZANSKI: The intent is to defuse a situation that is on going at that time.

095 REP. MINNIS: That is correct.

109 REP. PROZANSKI: I assume that you feel that as a detective, you don't have the power to remove someone or require someone to move from the home without the authority of the court.

112 REP. MINNIS: I don't have that power, other than a stern voice.

114 REP. PROZANSKI: When a judge issues an order it has some meaning in it.

117 REP. MINNIS: Sometimes it puts the detectives and the police in a position of making an arrest prematurely.

123 REP. PROZANSKI: And possibly you may not have all the elements that you need to present to a grand jury.

124 REP. MINNIS: That is correct.

126 REP. COURTNEY: On HB 2683 the presentence report bill, did you talk with any members of the judiciary about that?

128 REP. MINNIS: No.

129 REP. LEWIS: Are you familiar with the stalking protective order?

132 REP. MINNIS: To the extent that it could be understood.

134 REP. LEWIS: Did you consider doing something like that, where the officer could issue a protective order?

136 REP. MINNIS: Yes I did, the difference here is with the stalking provision, that is something that is usually handled by uniformed police officers.

146 REP. LEWIS: This is an easy procedure for you to do, where as it might be difficult for a uniformed police officer to do that in the case of a stalking protective order.

149 REP. MINNIS: It's much easier for us to do it because we will eventually have memory resident documents within our computer system.

157 REP. COURTNEY: I want to thank Rep. Minnis for bringing this group of bills to us.

161 REP. MINNIS: These bills are intended to be flexible.

172 CHAIR TARNO: We will take these bills as previously described by Rep. Minnis in order.

OPENS the PUBLIC HEARING on HB 2681

182 TIMOTHY TRAVIS, ATTORNEY, JUVENILE RIGHTS PROJECT INC.: Testimony in opposition to HB 2681. [EXHIBIT E]

235 REP. COURTNEY: Where are you on section 3, the section that refers to buying and selling a child?

238 TRAVIS: The one case that I know of was indeed a drug affected mother who offered to sell her child to a couple who wanted a child.

253 REP. PROZANSKI: Earlier I asked the other panel some questions regarding HB 2681, based on that dialogue of trying to tighten up the language in section 1, I assume your position is still the same?

262 TRAVIS: I think if they are actively aiding and abating, yes.

276 CHAIR TARNO: The word "physical" be inserted on line 4. That would make it a crime for failure to protect a child from "physical and/or sexual abuse". Would your opinion still be the same?

282 TRAVIS: It would be. If your going to do this, those are changes you should definitely make.

287 REP. PROZANSKI: I'm having difficulty seeing how we are going to protect a child by not holding someone that has direct knowledge of this

type of crime occurring.

298 TRAVIS: I'm not saying that by passing this law, you will not have people coming forward.

325 REP. COURTNEY: You used a phrase "actively aiding and abetting", you draw the line there?

328 TRAVIS: Yes I do.

332 REP. COURTNEY: What would be actively aiding and abetting?

336 TRAVIS: Physically holding the child, delivering the child, participating in the act.

340 REP. COURTNEY: But to be present while it's going on is not aiding and abetting?

352 TRAVIS: Gives example.

359 REP. COURTNEY: That's the distinction I am making here, if your willing to accept this as a crime for actively aiding and abetting, it seems your being inconsistent.

375 TRAVIS: Gives example.

382 REP. COURTNEY: You started your testimony with the statement that we have a parent, or someone other than a mother and father that needs counseling, if that is the situation the actively aiding and abetting and passive aiding and abetting goes out the window.

388 TRAVIS: I understand your point, I don't agree.

390 REP. PROZANSKI: If an individual is going to be charged under aid and abet, they can actually be charged with the actual crime that the perpetrator is doing.

392 TRAVIS: Discusses HB 2685. I don't think it's a bad idea, but I would like it in the juvenile code.

423 REP. LEWIS: Rep. Minnis' point was that the suspect would ultimately not be charged in juvenile court.

437 TRAVIS: The juvenile court restraining orders we now have cover exactly those circumstances.

TAPE 37, B

030 CHAIR TARNO: I've heard negative concerns of yours on two bills, could you review all of these bills and submit your objections in writing to the committee?

034 TRAVIS: I would be glad to.

040 ROBINSON: Juvenile courts are in fact circuit courts.

047 REP. MINNIS: Mr. Travis indicated that the current restraining order process in juvenile court occurs at the preliminary hearing.

055 REP. PROZANSKI: If a circuit court is sitting as a juvenile court you wouldn't have any objection for that restraining order to come from that judge, your just wanting to remove the person from that situation at that time, correct?

060 REP. MINNIS: As long as the juvenile court judges are responsive.

061 REP. PROZANSKI: In Multnomah county, juvenile judges are not responsive?

063 REP. MINNIS: That is correct.

069 INGRID SWENSON, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Testimony on HB 2681.

134 REP. PROZANSKI: Regarding the failure to act and the context of this bill, do you not see a distinction between that as compared to John Q. citizen who walks down the street and sees the fire and does not respond?

142 SWENSON: There is a distinction between people who have a duty toward that child and people whom we could argue do not have a duty toward that child.

150 SWENSON: Testimony on HB 2682.

183 REP. PROZANSKI: How would you distinguish this from a judge giving up front misdemeanor treatment as compared to earned misdemeanor treatment?

188 SWENSON: I think this is a more appropriate mechanism for dealing with reduction of offenses.

200 REP. PROZANSKI: I have seen in my practice where attorney's will come in representing a defendant and ask the court for up front misdemeanor treatment.

209 SWENSON: That appears to be the case. I still think there are cases that that would not happen.

213 CHAIR TARNO: Would you do us a favor and review these bills and submit to the committee a brief overview of your concerns?

217 SWENSON: I would be happy to do that.

220 REP. COURTNEY: You very accurately described the tradition of criminal law with regard to failure to act versus conduct.

247 SWENSON: In terms of the legislature taking actions which are likely to reduce child abuse, we would concur that those are appropriate.

262 REP. LEWIS: Would it be a common occurrence that a mother would have someone abusing their child and then there is intervention, the problem seems to cleaned up and later on the problem occurs again?

276 SWENSON: There are representatives from children's services division who can answer that.
In my own experience it is not a situation of letting themselves know that is happening.

303 REP. LEWIS: In talking with people who work with children, it seems that there is a revolving door of child's in the home, the child is in foster care.

315 BETTY UCHATYL, ASSISTANT ADMINISTRATOR for CHILDREN'S SERVICES DIVISION:
Testimony on HB 2681. [EXHIBIT D].

387 JOY KLAUS, MOTHERS RESOURCE NETWORK: Testimony on HB 2681. Submits [EXHIBIT H].

TAPE 38, B

030 KLAUS: Testimony continued. I urge you to carefully construct the language so that many good caring protective mothers are not inadvertently caught in the net.

080 CHAIR TARNO: With nothing further from the committee, the meeting is adjourned at
10:06 A.M.

Submitted by, Reviewed by,

Janet Ellingsworth Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

A - Amendment to HB 2212 - Staff - 1 page
B - Letter HB 2681- Minnis - 1 page
C - Letter HB 2685 - Minnis - 3 pages
D - Testimony on HB 2681 - Uchytel - 1 page
E - Testimony on HB 2681 - Travis - 3 pages
F - Testimony on HB 2681 - Helme - 1 page
G - Testimony on HB 2681, HB 2682. HB 2684 - Snider - 3 pages
H - Testimony on HB 2681 - Klaus - 7 pages