

HOUSE JUDICIARY
SUBCOMMITTEE ON
JUVENILE JUSTICE

Hearing Room
Tapes - 5

MEMBERS PRESENT:

Rep. Del Parks, Chair
Rep. Lisa Naito, Vice-Chair
Rep. Kate Brown
Rep. Floyd Prozanski
Rep. Eileen Qutub
Rep. Veral Tarno

STAFF PRESENT:

Holly Robinson, Committee Counsel
Janet Ellingsworth, Committee Assistant

MEASURES HEARD: Public Hearing on HB 2732
 Public Hearing on HB 2906
 Public Hearing and Work Session on HB 2730
Public Hearing on HB 2733
Public Hearing and Work Session on HB 3027
Public Hearing on HB 2689

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 PARKS: Convenes meeting at 8:33 A.M.

OPENS the PUBLIC HEARING on HB 2732

006 REPRESENTATIVE KATE BROWN, DISTRICT 13: What we would like to do is go through the delinquency bills and then do the dependency bills. Gives brief overview.

011 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT, INC: Testimony on HB 2732.

CLOSES the PUBLIC HEARING on HB 2732
OPENS the PUBLIC HEARING on HB 2906

037 REPRESENTATIVE KATE BROWN, DISTRICT 13: Brief overview of HB 2906.

045 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT, INC.: Testimony on HB 2906.
 [EXHIBIT A]

116 TRAVIS: There was a recent case, MT, that found according to a lot of people that the conditional postponement procedure cannot be used.

122 CHAIR PARKS: What does "low end kid" mean?

125 TRAVIS: A first offender, someone who maybe a rider in a stolen car, or someone who gets into a school yard fight.

128 CHAIR PARKS: What does MT mean?

129 TRAVIS: MT, are the initials of a child who was put on probation for a sex offense.

130 CHAIR PARKS: Do you have a citation number for that case?

131 TRAVIS: I do not, but I will provide one this afternoon.

133 CHAIR PARKS: You were talking about amendments for sex offenses, and firearms offenses.

134 TRAVIS: Yes, and to limit informal dispositions to two separate felony petitions. Those are limitations that are in SB 1.

135 CHAIR PARKS: You could have two separate felonies treated that way?

137 TRAVIS: Two different petitions alleging felonies.

139 REP. BROWN: Mr. Travis mentioned level 7 kids, and I want to make sure everyone on the committee is aware of what a level 7 kid is.

142 TRAVIS: Level 7 kids are young teenagers, 13 or 14 years old maybe acting out in anti social ways but are not technically delinquents as of yet, but they do commit low level types of delinquency acts.

147 REP. TARNO: Is it your opinion that we should give the local juvenile departments the flexibility to determine how many "bites of the apple" the kids get?

152 TRAVIS: Yes, I do believe that is the case. A conditional postponement is something a judge has to approve of.

159 CHAIR PARKS: Referring to conditional postponements, how often does it happen now?

160 TRAVIS: Since the MT case it has not happened. I don't have the statistics.

164 CHAIR PARKS: But would it happen quite a bit in view of Measure 11?

166 TRAVIS: It can't happen for measure 11, the measure 11 kids will not be within the juvenile court.

167 REP. PROZANSKI: It could happen if they don't charge them with the crime that would kick them over to the adult system.

170 TRAVIS: That is correct.

172 CHAIR PARKS: If the legislature removes some of the measure 11 offenses from it's term then would it be subject to this?

178 TRAVIS: I believe it would be.

180 REP. BROWN: Prior to the MT case all of these were done prior to filing the petition. An agreement was worked out prior to filing the petition.

183 TRAVIS: In the case of a conditional postponement that cannot happen until there is a petition filed.

187 REP. TARNO: As part of the conditional postponement, is that an automatic expungement?

191 TRAVIS: A conditional postponement ends in the dismissal of the petition.

193 REP. TARNO: But there is an arrest record, right?

194 TRAVIS: Yes there is an arrest record.

195 REP. TARNO: And that would stand?

195 TRAVIS: Yes that would stand. In SB 1, the way they are doing the photographing and fingerprinting and arrest records is they are putting them all in the state police computer now.

199 REP. TARNO: It would still stay within the local files?

201 TRAVIS: Yes it would.

204 REP. PROZANSKI: Explains conditional postponement.

212 TRAVIS: That is correct. As part of conditional postponement or an informal dispositional agreement, a child can be required to do anything a child is required to do while on probation.

217 CHAIR PARKS: How does this kid get before the court if there is no charging document?

222 TRAVIS: If there is no charging document it is an informal disposition agreement.

223 CHAIR PARKS: But how does a kid get to the juvenile court?

226 TRAVIS: A child is arrested and brought to the juvenile court.

230 CHAIR PARKS: What's the distinction between the two?

233 TRAVIS: Explains the difference between an informal disposition agreement and conditional postponement.

241 CHAIR PARKS: So then when you say there is a conditional postponement there is some kind of a charging document?

243 TRAVIS: Yes, conditional postponement arises as a result of a petition being filed.

246 CHAIR PARKS: To what extent does the district attorney have to "veto" a conditional postponement?

248 TRAVIS: The district attorney has the opportunity to appear in front of the court and persuade the court that this is a bad idea.

250 REP. TARNO: Would there be any kind of fiscal impact on the juvenile department?

253 TRAVIS: I don't think so.

255 CHAIR PARKS: Would it in fact be a negative fiscal impact?

257 TRAVIS: I think it's a neutral fiscal impact.

262 CHAIR PARKS: What's the number of the bill Rep. Tiernan has?

263 ROBINSON: HB 2478 and HB 2479.

264 CHAIR PARKS: Are you going to talk about this issue in the context of HB 2478 and HB 2479?

267 TRAVIS: I'm not sure what those bills are.

269 REP. BROWN: Explains HB 2478 and HB 2479.

281 CHAIR PARKS: Explains concerns.

288 REP. BROWN: They need to be interfaced is what your saying?

289 CHAIR PARKS: They are totally inconsistent.

291 TRAVIS: They are totally inconsistent. To give the district attorney a "veto" puts the district attorney on the bench.

293 REP. BROWN: Does that regarding informal disposition agreements or conditional postponements?

298 CHAIR PARKS: It's one or the other and what ever one it is I'm not in favor of it. Why don't you prepare the amendments and we will bring this back.

308 INGRED SWENSON, OREGON CRIMINAL DEFENSE LAWYER'S ASSOCIATION: Testimony in favor of HB 2906.

380 REP. QUTUB: Could you explain again what "MT" is?

383 SWENSON: "MT" was a case charging a juvenile with a sex offense. The child completed what amounted to a conditional postponement agreement.

420 REP. QUTUB: The whole issue about the "MT" case is the type of case it was and the length of time he was on this type of probationary period and they are questioning whether that is valid?

427 SWENSON: The court indicated there was no statutory authorization for it.

445 REP. PROZANSKI: In reference to conditional postponement, do you think there should be some type of numerical number placed as to how often a child should be allowed to have a disposition that would be this type of conditional postponement?

456 SWENSON: I have never seen it offered more than once to any child and if a child failed on a conditional postponement by committing a new offense, which would amount to a failure, I would be surprised if a court would be willing to attempt the same type of intervention again.

TAPE 5, A

035 REP. QUTUB: What sort of things would a juvenile be ordered to do?

040 SWENSON: The bill describes probation conditions so what I will describe are some of the conditions that can be placed on a juvenile on probation. Gives examples.

066 CHAIR PARKS: Those are the same conditions that you'd have if you were on probation.

068 SWENSON: That is correct.

069 CHAIR PARKS: What's the purpose?

071 SWENSON: I think there a couple of purposes, but I think the principal attraction is that it is a very strong incentive for kids to fully comply and follow through because there is an added benefit.

079 REP. QUTUB: My concern is that when I was at Hillcrest and MacLaren, I discovered that those kids had probably committed many crimes before they ever got there.

095 SWENSON: I think there are situations in the juvenile court where kid's aren't dealt with on the first offense.

Closes t PUBLIC HEARING on HB 2906
OPENS the PUBLIC HEARING on HB 2730

124 REPRESENTATIVE KATE BROWN, DISTRICT 13: Testimony on HB 2730.

140 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT, INC.: Testimony on HB 2730.
[EXHIBIT B]

179 REP. PROZANSKI: Aren't we talking apples and oranges here? The children your talking about would be under measure 11 there no longer children, they are in the adult system.

181 TRAVIS: I'm not talking about the kids under measure 11, those kids are going to get a jury trial because they are not in the juvenile system anymore.

188 REP. PROZANSKI: Should we just do away with juvenile court?

190 TRAVIS: Interesting idea, it's something we have batted back and forth. I don't think I'm ready to of that far yet but it's moving more and more in that direction every session.

193 REP. BROWN: Do you think it will have a fiscal impact?

197 TRAVIS: Nancy Miller from the State Court Administrator's office is here and can answer that for you.

200 NANCY MILLER, CITIZEN REVIEW BOARD ADMINISTRATOR, STATE COURT ADMINISTRATOR'S OFFICE: Based on the 5 percent trial rate, it looks like \$35,000 for the biennium.

209 REP. TARNO: Looking at the juvenile code 1419C.005, it refers to violations. Those classifications of crimes if connected by an adult would be classified as a felony, correct?

215 TRAVIS: We are talking about any crime that a child is charged with that if an adult were charged with it they would qualify for a jury trial.

222 CHAIR PARKS: Five percent of the people charged with juvenile offenses would like to have a trial?

224 MILLER: That is the figure that Ann Christian gave me that 5 percent of the cases actually go to trial.

228 CHAIR PARKS: I agree with Mr. Travis on the philosophical impact, and I think your figures are way off. It is my intention that if the committee wants to pass this bill it will go to the Ways and Means Committee.

239 REP. BROWN: I assume this leaves it up to the child to choose a jury trial, and that the \$35,000 price tag would be for all juvenile cases that went to trial.

245 CHAIR PARKS: I can't feature an attorney not exercising the right to a jury trial.

250 TRAVIS: We all make tactical decisions about that, sometimes when your defense is a point of law you would prefer a judge to here it.

254 ROBINSON: These are all juveniles that already have court appointed counsel. The additional costs are either the revised case costs that would be determined by contract or the actual cost to the courts doing the trials.

271 TRAVIS: This is a bill that has been in front of the legislature before and in going through by files I found a memorandum dated March 29, 1993 written to me by some research people who were dealing with the fiscal impact that we had.

281 MILLER: All of the measure 11 kids have been backed out of this number.

285 TRAVIS: There was a study in 1978 from the youth law center that showed the rates of jury trials in the 11 states which allowed jury trials for children are significantly lower.

290 INGRED SWENSON, CRIMINAL DEFENSE LAWYER'S ASSOCIATION: Testimony in support of HB 2730.

316 CHAIR PARKS: I would not allow this as an amendment to SB 1, they had to much trouble with that bill already.

CLOSES the PUBLIC HEARING on HB 2730
OPENS the WORK SESSION on HB 2730

328 CHAIR PARKS: We're really getting a lot of bills backed up, we have to make some decisions.

333 MOTION: REP. TARNO: Moves HB 2730 to the full committee with a pass recommendation and a subsequent referral to Ways and Means.

342 REP. PROZANSKI: I have some problems with pushing this bill forward. I would like some input from judges as well as some advocates who represent juveniles.

377 REP. BROWN: There is a judge in the room.

386 JUDGE MERRI SOUTHER-WYATT, MULTNOMAH COUNTY COURTHOUSE: Testimony on HB 2730.

398 REP. PROZANSKI: Why do we even have a juvenile court? To me it's a falsehood or we're setting up a different tier.

415 JUDGE SOUTHER-WYATT: I feel a bit paternalistic toward the juveniles and families that appear in front of me in court, and I don't want the children who have not been scooped up in measure 11 treated as adults in the adult system.

437 REP. PROZANSKI: My concern is we're saying that if they are going to be treated like adults, we should give them the same safeguards as adults.

441 JUDGE SOUTHER-WYATT: I'm not saying that they should be treated like adults either, I'm saying that if they are going to go to trial they should have all the safeguards that an adult would have going to trial.

445 REP. PROZANSKI: Why should that change today in 1995, as compared to 20 or 50 years ago or whenever juvenile court began?

TAPE 4, B

027 REP. BROWN: The reason is that the first child in 1890 that went to what was then the first training school at that time, did so for stealing a newspaper off his neighbors front porch.

036 REP. NAITO: This bill simply gives a child an additional right. It doesn't treat the child any worse than the existing system would but gives them one more tool they might use in their defense.

040 CHAIR PARKS: I have spent a lot of time in juvenile court as a customer, I know from my experience that if you make a system more adversarial you get a more adversarial system.

048 VOTE: In a roll call vote REPS. BROWN and NAITO vote AYE.
REPS. PROZANSKI, QUTUB, TARNO and CHAIR PARKS vote NAY.

051 CHAIR PARKS: The motion FAILS.

CLOSES the WORK SESSION on HB 2730
OPENS the PUBLIC HEARING on HB 2733

064 REPRESENTATIVE KATE BROWN, DISTRICT 13: Testimony on HB 2733.

150 REP. BROWN: Discusses fiscal impact.

172 JUDGE MERRI SOUTHER-WYATT, MULTNOMAH COUNTY COURTHOUSE: Testimony in support of HB 2733.

209 REP. BROWN: Submits and discusses [EXHIBIT D].

225 JUDGE SOUTHER-WYATT: If I could just add that Judges from Lane county, Aiken and Brewer support this bill also as well as Judge OSB orne from Klamath county.

232 REP. NAITO: Do you have the authority now to appoint counsel if you choose to do so?

233 JUDGE SOUTHER-WYATT: Yes.

235 CHAIR PARKS: Why should we make you do it if your going to do when you think its appropriate? Why should it be mandatory?

236 JUDGE SOUTHER-WYATT: Like I stated before, it may be easier not to
appoint counsel. I tend to appoint attorneys because I think they are
wonderful.

240 REP. BROWN: What is happening state wide is you have great
inconsistencies between counties.

246 REP. QUTUB: The case that you gave at the beginning of your testimony,
were you appointed
to that case by a judge?

250 REP. BROWN: I was appointed by a judge but that was only after the
case had been in the system for two years.

253 REP. QUTUB: Why was this child in court?

256 REP. BROWN: I believe the reason was do to neglect.

265 NANCY MILLER, CITIZEN REVIEW BOARD ADMINISTRATOR: Testimony to HB
2733.

271 CHAIR PARKS: Maybe Rep. Brown can discuss this with you further.

275 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT, INC.: Testimony on HB 2733.
Submits [EXHIBIT E]. Discusses conceptual amendments.

331 MURIEL GOLDMAN, LEGISLATIVE CHAIR, CHILDREN FIRST FOR OREGON: Testimony
on HB 2733. [EXHIBIT F].

392 NANCY MILLER, CITIZEN REVIEW BOARD: Testimony on HB 2733. [EXHIBIT G]

430 CHAIR PARKS: This bill, if you want to vote on it needs to be
scheduled for next Monday because in the scheme of things this will go to
Ways and Means.

441 REP. BROWN: What I would like to do is meet with the "certified smart"
people and figure out
ways we can narrow this to lessen the financial impact.

CLOSES the PUBLIC HEARING on HB 2733

445 CHAIR PARKS: We will return at 10:10 for full committee and after full
committee we will
reconvene this hearing. Meeting is adjourned.

TAPE 5, B

020 CHAIR PARKS: Reconvenes meeting at 10:45 A.M.

OPENS the PUBLIC HEARING on HB 3027

023 REPRESENTATIVE KATE BROWN, DISTRICT 13: Gives brief overview of HB
2037.

045 REP. PROZANSKI: You don't believe that the court has that authority,
or they are not exercising it?

047 REP. BROWN: In talking with judges in Multnomah county, they do not
believe that they have
this authority.

054 JUDGE MERRI SOUTHER-WYATT, MULTNOMAH COUNTY COURTHOUSE: Testimony on HB
3027.

CLOSES the PUBLIC HEARING on HB 3027

OPENS the WORK SESSION on HB 3027

069 REP. NAITO: Would it ever happen that a judge would order a child to a
specific type of residential placement?

071 CHAIR PARKS: How could that be in the best interest of the child?

073 MOTION: REP. BROWN: Moves HB 3027 to full committee with a
do pass recommendation.

075 VOTE: In a roll call vote all members present vote AYE. REFS. TARNO
and REP. QUTUB are excused.

079 CHAIR PARKS: The motion CARRIES.

CLOSES the WORK SESSION on HB 3027

OPENS the PUBLIC HEARING on HB 2689

090 DOCTOR JEANNE ETTER, Ph.D., EUGENE: Testimony on HB 2689. [EXHIBIT H]

100 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT, INC.: Testimony on HB 2689.
Submits and discusses amendments. [EXHIBIT I and J]

155 DR. ETTER: We had \$300,000 from the federal government to do
Children's Services Division pilot project.

183 REP. NAITO: Mr. Travis was addressing the amendments and has not
spoken to the overall

bill yet.

185 TRAVIS: This is a bill that we wrote to amend the termination of parental rights statutes.

300 TRAVIS: Gives examples of foster care. I have spoken to Children's Services Division and a number of child advocates and they are appalled by this.

323 REP. PROZANSKI: This seems to be a very successful pilot program. I assume you would agree with that?

327 TRAVIS: Absolutely.

329 REP. PROZANSKI: There's nothing in here that states what type of mediation program is going to be required, could you share your thoughts on this issue?

336 TRAVIS: I would like that the mediation that is provided for, be with people who have training in mediation.

365 BETTY UCHYTIL, ASSISTANT ADMINISTRATOR, CHILDREN'S SERVICES DIVISION:
Testimony on HB 3027. [EXHIBIT K]

422 CHAIR PARKS: With nothing further from the committee the meeting is adjourned.

Submitted by, Reviewed by,

Janet Ellingsworth Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

A - Testimony on HB 2906- Travis - 4 pages
B - Testimony on HB 2730 - Travis - 49 pages
C - Testimony on HB 2730 - Middleton - 1 page
D - Testimony on HB 2733 - Poole - 3 pages
E - Testimony on HB 2733 - Travis - 3 pages
F - Testimony on HB 2733 - Goldman - 1 page
G - Testimony on HB 2733 - Miller - 2 pages
H - Testimony on HB 2689 - Etter - 2 pages
I - Amendment on HB 2689 - Travis - 1 page
J - Testimony on HB 2689 - Travis - 17 pages
K - Testimony on HB 3027 - Uchytel - 2 pages