

SENATE COMMITTEE ON
JUDICIARY
SUBCOMMITTEE ON JUVENILE JUSTICE

Hearing Room
Tapes - 40

MEMBERS PRESENT:
SEN. JEANNETTE HAMBY, Chair
SEN. DICK SPRINGER
SEN. SHIRLEY STULL

STAFF PRESENT:
BILL TAYLOR, Committee Counsel
JULIE CLEMENTE, Committee Assistant

MEASURES HEARD: Work Session - SB 1

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 , SIDE A

OPENS WORK SESSION ON SB 1

003 CHAIR HAMBY: Calls committee to order at 3:20 p.m.

Invited Testimony: Craig Campbell, Juvenile Justice Task Force Coordinator
Nancy Miller, State Court Administrator's Office
Michael Livingston, Assistant Attorney General, Department of Justice
Rick Hill, Office of Juvenile Corrections
Bob & DeDe Kouns, Oregon Crime Victims United
Timothy M. Travis, Attorney, Juvenile Rights Project, Inc.
Rich Peppers, Political Director, Oregon Public Employee's Union/Local
Larry Ogelsby, Director, Family Court, Marion County
Marc McDonnell, Deputy District Attorney, Multnomah County
Ingrid Swenson, Oregon Criminal Defense Attorney's Association

AFSME

007 CRAIG CAMPBELL, Juvenile Justice Task Force Coordinator: Presents technical amendment to SB 1 section 2, subsection 3, page 2 to make consistent with rest of the bill. [EXHIBIT C]. Delete "over 11" and insert "12", after "age" insert "or over".

MOTION: SEN. SPRINGER: Moves the ADOPTION of the Task Force's to SECTION 2, subsection 3. ame

CHAIR HAMBY: Hearing no objection the MOTION is ADOPTED. All members are present.

024 NANCY MILLER, State Court Administrator's Office: Presents Oregon Judicial Department's amendment to Section 87 dated March 6, 1995. [EXHIBIT D]

046 CAMPBELL: This language looks consistent to the discussions I heard between Ms. Miller and Mr. Livingston.

MOTION: SEN. STULL: Moves the ADOPTION of the Oregon Judicial Department's amendments to SECTION 87 dated 3/6/95 adding subsection 4 "A judge's consideration of matters under this section shall only be addressed

on appeal if raised before the judge by a party at a dispositional hearing."

CHAIR HAMBY: Hearing no objection the MOTION is ADOPTED. All members are present.

056 BILL TAYLOR: Next two issues are related. Section 56 extends Measure 11 to 14 year olds and Section 85 sets forth issues for a person potentially under 14. Questions what would be subject to Second Look. What issue first?

069 SEN. SPRINGER: Would like Mr. Campbell to explain the recommendation the Task Force decided to go beyond Measure 11 and pick up 14 year olds.

CAMPBELL: Conversation relative 12, 13, and 14 year olds occurred as things were getting close to election on Ballot Measure 11. Belief of Task Force was there are certain very violent offenses that younger people are committing and wanted a second look if these children were reformable.

092 SEN. SPRINGER: If applied to 14 year olds and if convicted, they would serve the minimum times specified on the top of page 21.

106 CHAIR HAMBY: Has some of the same questions.

112 CAMPBELL: Current sentence that could be imposed for a 12 year old is 9 years; 13 year old, 8 years; 14 year old, 7 years. Current punishment for murder under Ballot Measure 11, minimum sentence if you gave them a second look would be 12 years 6 months.

CHAIR HAMBY: First major decision is whether to consider this younger age group at all in the bill.

147 MICHAEL LIVINGSTON, Assistant Attorney General, Department of Justice: SB 1 still proposes that juvenile court jurisdiction be extended to age 25.

That is a factor that goes into the ultimate determination.

169 CHAIR HAMBY: "My preference is not to deal with 14 year olds."

177 BILL TAYLOR: Asks Livingston if Section 56 makes Measure 11 applicable to 14 year olds for certain limited crimes. Correct?

LIVINGSTON: "In substance, that's correct."

183 BILL TAYLOR: Crimes are listed at the top of page 21 of the bill. Issue of second look is an issue which comes in later.

190 CHAIR HAMBY/LIVINGSTON: Discuss concerns relative to age and length of stay for clarification.

213 BILL TAYLOR: What sections in the bill relate to remand under age of 12?

LIVINGSTON: "I think it is Section 85." Allows discretionary remand for 13 and 12 year olds alleged to have committed basically the same crimes set out in Section 56. If you remove the 14 year old section (Section 56), you could put the same group into Section 85. Saying 14 and under would be the change to make to Section 85.

BILL TAYLOR: Would have to do that or would have a gap in the Bill.

236 SEN. STULL: Regarding certain sex offenses, under current law offenders are not spending the time in a custody situation?

CAMPBELL: That is the information I had. Would be released at times much earlier.

252 RICK HILL, Office of Juvenile Corrections: Can read average length of stay currently by offense - all different ages. Very few stay in system past age of 18 years 5 months. Potential for longer stay is there.

SEN. STULL: How are we accomplishing the minimal amount of hopeful treatment under current law, if we are unable to keep them long enough to complete the program?

282 HILL: Would be ideal to keep much longer. Currently transitioning out much earlier than two years. Have after care programs established to pick up that treatment and continue in the community. Still feels we are releasing them much too quickly.

295 CHAIR HAMBY: Do you recall the numbers in this particular age group?

HILL: What I recall is that our consultants estimated a need for an additional 24.5 beds to accommodate the 14 year olds under those five Measure 11 crimes.

270 BILL TAYLOR: As the bill is currently written, does the issue of second look apply to 14 year olds and under?

LIVINGSTON: It does. Reference in Section 59.

BILL TAYLOR: "Would that also apply to Section 56?"

LIVINGSTON: Individuals are identified in subsection 4 of Section 56. Continues to explain

BILL TAYLOR: We could make Second Look applicable to these offenses?

342 LIVINGSTON/TAYLOR: Continue discussing Section 56 and Second Look provision.

BILL TAYLOR: There may be three alternatives for this particular Section.

427 LIVINGSTON: Obviously would be more flexibility in alternative just discussed. Builds in second look for everybody. You have the intervention of the juvenile court to make the final decision.

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026 CAMPBELL: Relates State Police numbers previously requested.

036 CHAIR HAMBY: Asks that Livingston repeat comment regarding keeping the juvenile in the system until opportunity for a second look is remanded.

LIVINGSTON: Under SB 1 there are two ways juveniles can be tried and sentenced in adult court in addition to Measure 11's coverage.
- Section 56: applies to those who are 14 at the time the act was committed. They are charged, tried and if found guilty, sentenced in adult court.

- Section 85: 12 and 13 year olds may be remanded .

Difference is that the 14 year olds must be tried in adult court. The 12 and 13 year olds may be tried in adult court. Second Look would apply to both groups if sentenced in adult court.

061 CHAIR HAMBY: Senator Springer, are you more comfortable with the Juvenile Department issue for that age group?

SEN. SPRINGER: " Know we want to protect the second look." "I like the second look. Don't like the automatic remand for 14 year olds." "Don't like the remand for 11 and 13 year olds, period."

068 LIVINGSTON: Sentence in Measure 11 is when a person is convicted of one of the offenses listed. Convicted means in adult court. Person means once you get in the adult court, you can become that person.

093 BILL TAYLOR/LIVINGSTON: Measure 11 does not apply to 14 year olds. Continues to discuss Section 56 and Second Look.

126 MARC McDONNELL, Deputy District Attorney, Multnomah County: Disagrees with Mr. Livingston's interpretation of Section 56 and its requirement of a 2/3rds vote. Sentencing court is going to follow the scheme provided.

151 TIMOTHY M. TRAVIS, Attorney, Juvenile Rights Project, Inc. Kids who are waived into adult court are not subject to Measure 11 penalties because Measure 11 penalties put 15, 16 and 17 year olds into the original jurisdiction of the court. No one voted for kids 14 and under to get these mandatory penalties. Feels it was not the intent of the voters for anyone under the age of 15 be treated in any way by Measure 11. States that waiver is different than original jurisdiction in adult court.

168 McDONNELL: Refers to language of first sentence of Section 56, line 28.

Offers verbiage to make clearer: include "notwithstanding any other provision of law but including Section 1, Chapter 2 Oregon Laws 1995" which is Measure 11.

176 BILL TAYLOR: After one of these meetings, we had a discussion on this issue. This may be one that may have to be clarified by supreme court. Suggests committee might want to adopt language that would not have to be clarified.

McDONNELL: System to clarify will be much more cumbersome than language now in the bill.

195 CHAIR HAMBY: Marc, your feelings in the inclusion of any kids 12, 13 & 14.

McDONNELL: "I would ask the committee to include the possibility of remand for individuals down to 12 years of age." Gives example and reasons.

237 CHAIR HAMBY/McDONNELL: Share concerns and possible solutions.

244 DeDe KOUNS, Oregon Crime Victims United: Shares two examples of juveniles who have committed terrible crimes. Being victimized by a 13 or 14 year old is no different than if you are the victim of an older person.

293 BOB KOUNS, Oregon Crime Victims United: It is important that 12 and 13 year olds be waiveable to adult system. Flexibility is needed when a child offender is evaluated.

323 CHAIR HAMBY: While waiting for Counsel to return, makes reference to a letter received from a Judge in her district [EXHIBIT A] on the issue of inclusion of Burglary I. He recommends incorporation of language that speaks to actual physical injury to the victim.

BILL TAYLOR: Referring again to Section 56, three options: Leave as is, take Section 56 out, or remove subsection 4 so that second look would apply regardless if you are the person who committed the crime or the person who was there when it was happening. Does not apply to 14 year olds.

374 McDONNELL: Agrees with Mr. Taylor's representations.

BILL TAYLOR: Regarding other issue, suggests work group session to work out language and present at Wednesday's meeting.

395 CHAIR HAMBY: Marc, would you agree to incorporating language on Burglary I that would read "resulting in actual physical injury".

McDONNELL: No problem with modifying: dwelling is occupied; perpetrator is armed with a deadly weapon or the dwelling is occupied and the perpetrator causes physical injury.

411 SEN. SPRINGER: Makes reference to Exhibit A., second paragraph. Is that knowledge imputed or do you have to prove that the person knew that someone was in the dwelling when they entered?.

McDONNELL: Believes the State would have to prove the burglar knew the

building was occupied at the time.

445 BILL TAYLOR: Committee can make the policy decision. Can meet later to clarify language.

CHAIR HAMBY: Policy decision - are they in or out. " Shirley you want them in, Senator Springer, you want them out."

TAPE 38, SIDE B

047 CHAIR HAMBY: We do have a choice of deleting this language of this young age group right now?

CAMPBELL: System needs some opportunity to deal with the very violent offenders. Some of them are as young as 12, 13 & 14 years of age. Reason why the Task Force put it in the bill.

CHAIR HAMBY: Will join Senator Stull on Campbell's counsel.

092 BILL TAYLOR: Policy decision can be reached today just as easily as on Wednesday. Believes Second Look applies to 14 year olds who committed these offenses, but personally did not do it.

104 INGRID SWENSON, Oregon Criminal Defense Attorney's Association: There is a distinction to be made in Section 56 between homicide and other offenses. May want to separate out the homicides from the other cases. May have to treat kids as adults to have enough time to deal with people who are committing homicides.

122 SEN. STULL: Relates a conversation with a 16 year old victim of a sexual assault. She felt that sexual assaults should be treated like murder. Don't have resources to implement the whole ideal SB 1.

138 CAMPBELL: Am I correct that the Committee is trying to consider one of three options: Section 56 remain as it is; take Section 56 out altogether or delete subsection 4?

164 CHAIR HAMBY: Preference is with a judicial remand.

BILL TAYLOR: Reiterates what he understands the Committee wants adopted.

SEN. SPRINGER: I would like to see them treated as separate issues. Still reluctant to see 12 and 13 year olds waived.

199 CHAIR HAMBY: Pass over this, go on to other issues. #5. Section 91, page 48, line 1, Dependency versus Delinquency.

214 NANCY MILLER, State Court Administrator's Office: Turns over to Mike Livingston.

MICHAEL LIVINGSTON, Assistant Attorney General, Department of Justice: Makes reference to [EXHIBIT E]. Relates current law as it pertains to a delinquency petition. - Change from CSD to DYA would require a change in the language automatically.

- There is a particular group of delinquent youth for whom the juvenile court may need the option to still commit to the Children's Services Division. This amendment does that.

- Subsection 3 states circumstances under which the juvenile court is authorized to commit to CSD.

- Language is drafted to clearly state that this is an exception to the general rule.

260 RICK HILL, Office of Juvenile Corrections: Juvenile court judge needs to have some discretion here. Explains the group in question and why decision was made.

275 MILLER: Population isn't limited by mental capacity. Includes cross-over kids who have been in the system for dependency matters and then commit delinquency. Needs to be in a foster home.

298 LIVINGSTON: Language drafted was not intended to reach so broadly. Cautions the creation of an exception.

354 MILLER: Agrees with Mr. Livingston. Can live with this language. Trying to avoid putting the court in the position to have to issue dependency petitions. Cites a couple of changes in subsection 2 believed to be typographical in nature.

LIVINGSTON: Happy to get a draft to you that incorporates the changes.

MOTION: SEN. SPRINGER; Moves the ADOPTION of the AG Conceptual Amendment dated 3/6/95 Section 91A [EXHIBIT E] amending ORS 419C.478 including additional changes.

CHAIR HAMBY: Hearing no objection the MOTION is ADOPTED. All members are present.

TAPE 39, SIDE B

010 BILL TAYLOR: Section 82, Jayjack. Am confused. Referencing [EXHIBIT F] Amendment from Oregon Judicial Department dated 3/6/95.

MILLER: It is relatively the same. Made a couple of changes. Creating a

new Section 82A and a new subsection 3 under Section 82.

25 Amendment puts a system in place to have communities involved in the decision making process regarding sanctions that are imposed by the juvenile departments prior to the filing of a petition in the juvenile court. Continues explaining the new amendment and how it came to be.

61 LARRY OGELSB Y, Director, Family Court, Marion County: Comments on subsection 2c. - Section 82A - Issue has already been addressed. Additional council isn't needed. 82A has a lot of shells requiring a lot of time. In many cases a duplication of councils already in place. Subsection 6 isn't needed.

CHAIR HAMBY: Takes more than agency people.

112 MILLER: Concerned that only 30% of the felonies are being filed upon.

130 SEN. STULL: Share some of the concerns expressed. Enjoys the broad-based support in own community of everyone being involved in the solution. Is a resource issue.

149 CHAIR HAMBY: Not very well organized and this is an effort to organize.

158 OGELSB Y: Two issues here. This proposal creates a body to study the issue.

CHAIR HAMBY: You read this as a study?

OGELSB Y: What I see is a group that meets to review the policy and make recommendations back to the juvenile department on how to do it differently.

176 MILLER: Reads more broadly than Mr. OgleSB y. Continues to explain.

188 BILL TAYLOR: Refers to sentence Ms. Miller just read. Solely recommendations, nothing binding?

MILLER: That's correct.

201 CHAIR HAMBY: Subsection 6 was left over from the JayJack bill?

MILLER: Yes. Continues with explanation.

213 SEN. SPRINGER: Has another meeting. Generally supports the provisions of this amendment. Questions Miller on subsection 3. Would prefer to use the word "shall" in place of "should".

232 BILL TAYLOR: Thought committee previously adopted the language on top except for subsection 3.

SEN. SPRINGER: That's my understanding.

238 MOTION: CHAIR HAMBY: Moves the ADOPTION of the Oregon Judicial Department dated 3/6/95 creating new section 82A, including additional changes.

253 SEN. STULL: Questions wording. The word "may" is a good idea .

BILL TAYLOR: Section 82A - the membership of the council "may" include. Changing "shall" to "may".

CHAIR HAMBY: Hearing no objections the MOTION is ADOPTED. All members are present

276 CHAIR HAMBY: Has Mr. Livingston had a chance to look at the Oregon Newspapers Association's recommendation? [EXHIBIT B]

LIVINGSTON: Have had no time to review. Asks for time.

CHAIR HAMBY: #7. Section 99, page 51, line 51 - Transfer of State Employees to Counties.

305 Recalls from previous testimony that Bodkin would like to see lines 24 - 25 retained in bill with rest of language deleted.

MARY BODKIN, AFSME: Answers: with the addition at the end of line 25, State employed supervisors ", and is subject to collective bargaining agreements."

CHAIR HAMBY: Restates: As you move to the county level, the county will assume the supervision and it will no longer be, - - - -etc. by the state.? Correct?

335 OGELSB Y: The position of the Directors in the Association of Oregon Counties was that subsection 2 a & b should remain in the bill intact without the amendment proposed by Ms. Bodkin.

RICH PEPPERS, Political Director, Oregon Public Employee's Union/Local 503:

Reason for the proposed amendment: These employees are still technically state employees under this language. Collective bargaining agreements should be the guide for discipline and supervision. Wanted it spelled out in the bill.

OGELSB Y: Our position is that at some point during this session those questions will be resolved and spelled out. Against including reference to

collective bargaining agreements at this time.

363 SEN. STULL: Asks OgleSB y for a clarification on line 25.

OGLESB Y: Subsection b - If there is some resolution about the employee transfer issue, would make clearer. Continues with further explanation.

399 SEN. HAMBY: Relates her concern on same issue. Would feel much better deleting all reference to this language. How does that sound Larry?

OGLESB Y: Unless the other legislation specifically addresses this question, you would have a hole -

SEN. HAMBY: He has committed this issue..

OGLESB Y: Explains his further concern regarding Section 99, subsection 1.

439 BILL TAYLOR: We are talking about transferring state employees by contract to the county. Correct? Doesn't know how we can mitigate a contract through state law.

TAPE 40, SIDE A

012 BODKIN: That is not our concern. Continues to explain her concerns. Change the rules, but the process still goes back to the original employer, a state agency.

034 OGLESB Y: There is some precedence for this. Desires that at some point in time there is a clear break and they become a county employee at that time.

046 BODKIN: Nothing precludes you from doing that now.

PEPPERS: Have a possible solution.

BILL TAYLOR: Raises a legal issue. These employees when transferred are still state employees. Still subject to state collective bargaining agreement.

BODKIN: You just can't do this. At some point there is going to be a legal maneuver to see who is responsible for what. Doesn't want to force anyone through that legal process.

071 TAYLOR: Going back to contract law -- Those employees are still under that contract. Under contract law, the state can delegate its authority for supervision. What it cannot do is abrogate a contract that is in existence.

OGLESB Y: I would concur. Need to have an ability to have a clear delineation.

CHAIR HAMBY: More comfortable to have it in this bill or in the major bill Senator Derfler is working on now?

OGLESB Y: Committee already made the policy choice to move it to the other form. We can work through that process.

091 PEPPERS: Seems to us to be in line. Add in Bodkin's amendment on line 25.

BODKIN: Might read better if we put "subject to current collective bargaining agreement's supervision under this section include"

104 CHAIR HAMBY: Will make recommendation to Senator Derfler's committee that this language be incorporated in his master bill.

104 PEPPERS: Wants lines 21 through 25 left in bill with Bodkin's amendment so there is some bridge between this bill and the employee transfer.

My understanding is that subsection b would say "subject to existing collective bargaining agreement." At the beginning a & b would be as they are currently.

CHAIR HAMBY: Exactly.

MOTION: CHAIR HAMBY: Moves the ADOPTION of the amendment suggested with the insertion on page 51, line 24 after (b) "Subject to any collective bargaining agreement".

VOTE: Hearing no objection, the MOTION is ADOPTED. Senator Springer is excused.

MOTION: SEN. STULL: Moves to delete lines 26 through 45 on page 51 and page 52, delete lines 26 through 45.

VOTE: CHAIR HAMBY: Hearing no objection the MOTION is ADOPTED. Senator Springer is excused.

139 LIVINGSTON: Briefly comments on executive clemency as requested by Chair. The governor's office is opposed to making that a part of the bill.

SEN. STULL: As for clarification regarding Mr. Livingston's reference to Second Look.

LIVINGSTON: Understood that proposal for executive clemency was in lieu of the Second Look. Could be mistaken.

LIVINGSTON: Think equal access question is easily resolved by express reference.

173 CHAIR HAMBY: Discussing option of deleting subsection 4 in section 56.

185 CAMPBELL: By deleting subsection 4 you would allow the Second Look to apply for all 14 year olds who are automatically waived to adult court.

MOTION: CHAIR HAMBY: Moves that subsection 4 of Section 56 on page 20, lines 42 through 45 be deleted in addition to line 37 through the word "section" to the first comma.

CHAIR HAMBY: Hearing no objection the MOTION is ADOPTED. Senator Springer is excused.

BILL TAYLOR: For the record: on page 20 removed lines 41 through 45 as well as line 37 through the word section to the first comma.

202 LIVINGSTON: Was Section 87 on the agenda?

BILL TAYLOR: Issue resolved before Mr. Livingston arrived.

CLOSES WORK SESSION ON SB 1

CHAIR HAMBY: Adjourns at 5.30 p.m.

Submitted by:

Reviewed by:

Julie A. Clemente
Committee Assistant

Bill Taylor
Committee Administrator/Counsel

EXHIBIT LOG

A - Proposal to Amend Measure 11 received from Judge Donald R. Letourneau --

Chair Hamby - -1 page

B - Proposed Amendments to SB 1 received from Oregon Newspaper Publishers Association -- Chair J. Hamby -- 2 pages

C - Amendments to SB 1 -- Craig Campbell -- 1

D - Proposed Amendments to SB 1, section 87 -- Nancy Miller -- 2 pages

E - Proposed Amendments to SB 1, section 91A -- Mike Livingston -- 2 pages

F - Proposed Amendments to SB 1, Section 82 -- Nancy Miller -- 2 pages