

SENATE COMMITTEE ON  
JUDICIARY  
SUBCOMMITTEE ON JUVENILE JUSTICE

Hearing Room  
Tapes - 19

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

CHAIR HAMBY: Brings the committee to order at 3:20 p.m.

OPENS WORK SESSION ON SB 1

07 Witnesses: Craig Campbell, Juvenile Justice Task Force Coordinator  
Theodore R. Kulongoski, Oregon Attorney General  
Rick Hill, Juvenile Corrections, Children's Services Division  
Timothy M. Travis, Juvenile Rights Project, Inc.  
Nancy Miller, State Court Administrator's Office  
Marc McDonnell, Multnomah County District Attorney's Office  
Sgt. Mike Ramsey, Oregon State Police  
Ingrid Swenson, Oregon Criminal Defense Lawyers Association  
Bob Koontz, Crime Victims United  
Larry OgleSB y, Oregon Juvenile Department Director's Association

24 THEODORE R. KULONGOSKI, Oregon Attorney General also Chair of the Governor's Task Force on Juvenile Corrections: Begins testimony regarding the Second Look issue of SB 1. Would like to present an amendment that would as to Measure 11 offenses, take out the second look provision and keep in the bill as it relates to 14 year olds who are tried for the five offenses and for the 12/13 year olds who are judicially waived for those same offenses.

Continues to explain reasons for his proposed amendment. Will prepare an actual draft for bill and deliver to Counsel.

72 BILL TAYLOR: The rules do allow us to adopt an amendment now - conceptually.

76 SEN. SPRINGER: What is the estimated number of children to be impacted by this?

84 KULONGOSKI: Currently have 598 beds available. By the end of 1987 will need 1,050 beds.

130 MOTION: CHAIR HAMBY: Moves to ADOPT conceptually the amendment as that removes the 15, 16, and 17 year olds from the possibility of having a second look after they have completed a certain portion of their sentence.

Retains the second look for 14 year olds.

VOTE: CHAIR HAMBY: Hearing no objection the amendment is ADOPTED. All members are present and vote AYE.

169 KULONGOSKI: Continues his testimony by further explaining his proposed amendment.

175 BILL TAYLOR: From last meeting: Tim Travis suggested an amendment to Section 55 that would make the date the offense took place the determinate factor as to whether Measure 11 applied.

SEN. SPRINGER: Do we have the actual language in front of us? What sections are we referring to in the bill?

189 TIMOTHY M. TRAVIS, Juvenile Rights Project, Inc.: Describes his amendment: Page 17, section 55 starting at line 31 change "charges are filed" to "offenses committed". Would also necessitate a change on page 45, section 84 lines 15, 16, 17 - District attorney may not delay or prevent the filing of the petition under this section for the sole purpose of allowing the person to attain the age at which the person may be charged

and prosecuted. - language surplus - not relevant.

Page 20, Section 56, lines 28, 29 & 30 - has to do with the age 14. It also has the same provision, age 14 at the time of charges filed.

239 BILL TAYLOR: Page 17, section 55 line 31, deletion of the words "charges are filed" and insert "offenses are committed".

Page 20, section 56, line 29 after the word "after the age of 14 years of age at the time the charges are filed - delete "are filed" insert "offenses are committed".

Page 45, section 84 subsection 5 would be deleted.

MOTION: CHAIR HAMBY: Moves to conceptually ADOPT the amendment presented by Timothy Travis as stated.

VOTE: CHAIR HAMBY: Hearing no objection, the amendment is conceptually ADOPTED. All members are present and vote AYE.

263 BILL TAYLOR: Moving on to sections 73 through 77 pertaining to juvenile sex offender registration; registration, fingerprinting and photographing; and juvenile court records, expunction.

286 CRAIG CAMPBELL, Juvenile Justice Task Force Coordinator: Presents testimony regarding proposed amendments, referring to [EXHIBIT A]:

- Task force proposes to make certain crimes non-expungeable.
- - Changes to Section 75 - Amendments adjust the number of crimes within

that section.

- Intent was to have all Class A person-to-person felonies non-expungible.

- Refers to [EXHIBIT A] bottom of page - second page, subsection (J) that

previously listed the sex offenses that were non-expungible; now includes the Class A person-to-person felonies that are not sex

offenses along with those that are sex offenses. Have moved aggravated murder, murder, attempt, solicitation or conspiracy to commit murder or aggravated murder, manslaughter in the first degree, manslaughter in the second degree, assault in the first

degree, kidnapping in the first degree, rape in the first degree, sodomy in the first degree and unlawful sexual penetration in the first degree all under same section.

- Deleted subsection (L).
- Section 77 would provide for expunction of certain offenses after a hearing before a court judge. - Changes to Section 77, subsection (1) referring to [EXHIBIT B]. District Attorney would have to consult with the victim's of the offenses that we being sought to be expunged as well as other legal parties. Provides one clear voice to okay not having a hearing.

358 Continues to explain amendments [EXHIBIT B]

- Subsection (a) deleted language would constitute child abuse as described in ORS 419B.005 and - carryover language from section 75.
- Subsection (b)(C) deleted An attempt to commit a crime listed in this paragraph. Unnecessary language.

444 Continues to explain amendment changes [EXHIBIT B] backside.

- Needed some provision that the cost of expunction would lay with those that were applying for expunction. Subsection (6) Requires that the petitioner send notice to those agencies that would be performing the expunction of the records.
- Subsection (10) grant those agencies the ability basically to bill the petitioner for the actual cost of doing the expunction.

TAPE 19, SIDE A

NANCY MILLER, State Court Administrator's Office: Begins testimony. Agrees with the changes made.

- Section 75, subsection (j), turn to next side: sexual abuse in the first degree deleted from that list and not added to the list in Section 77.

CAMPBELL: That was an unintentional omission.

52 MILLER: Continues: Agrees with Mr. Campbell that in subsection (2) of section 77 it should read "a hearing under this section must be commenced in the county of the most recent termination." Gives the victims and the district attorney who was actually involved in the case easier access.

61 TIMOTHY R. TRAVIS, Juvenile Rights Project, Inc.: Shares his concerns with Committee regarding bottom of page 42 of the bill, line 45. States that the rules of evidence in an expunction hearing shall be the same as in a hearing to establish juvenile court jurisdiction. Means a full evidentiary hearing.

- Expunction hearings use evidence and records that are quite old. Could be difficult to find the person who wrote the record of treatment and the recommendation. Also could be difficult to find the victim and the victim's statements.

79 BILL TAYLOR: What language are you suggesting?

TRAVIS: Suggests the words "the rules of evidence are the same as in a hearing to establish juvenile court jurisdiction" be stricken and immediately before "to that cites" language, add "and 419B.325.

91 MARC McDONNELL, Multnomah County District Attorney's Office: Seems reasonable that the standard used in dispositional hearings should be applied to these hearings; which means that hear say evidence is admissible provided that there is some basis of reliability. Holding to the strict standards of a trial seems unreasonable.

- Concurs with suggested language deletion of Tim Travis as a reasonable alternative.

111 CAMPBELL: Explains a policy position important to next section. Should certain sex offenses be expungible based on a hearing.

128 McDONNELL: Page 1- makes sense to delete language which constitute child abuses defined as ORS 419B005. Means that if an individual committed rape against an adult, it's an expungible offense. If they commit rape against another child, it is not an expungible offense.

- Has problem with allowing expunction of certain types of offenses provided a period of time goes by and certain criteria is met.

179 Continues his comments regarding proposed amendments.

218 Continues his remarks referencing the additional language. Has no problem with the addition of the language proposed - Section 77 subsection (1) [EXHIBIT B]

244 CHAIR HAMBY: Crimes that Marc noted - Craig are you still recommending the deletion of "promoting prostitution, compelling prostitution" ,ext. [EXHIBIT A]

249 CAMPBELL: Crimes listed came out of the task force, came originally from the Juvenile Justice Summit. The changes that Mr. McDonnell mentioned

- manslaughter in the second degree, promoting prostitution, and prostitution should remain as non-expunbigle crimes.

Can't speak for the task force as to whether those crimes mentioned can be moved to non-expungible offense again.

267 McDONNELL: Was pretty much the lone objector to this proposal. These are my own personal opinions.

319 CAMPBELL: Refers to Section 66 as the other section previously mentioned that was an attempt to rectify the changes we are making. It is a mirror of a bill placed in the House by state police would create a change in the registration of a sex offender.

- Refers to line 30, provides that juveniles that commit a sex offense as it is currently defined under the adult provisions; they would then be required to register with the Sex Offender Registration Program. Once a juvenile has been discharged, they would within a certain amount of time register with the state police or a local law enforcement agency as to their whereabouts. .

- Section 67: Once discharged, required to provide address within 72 hours.

- Section 68: New language. Allows law enforcement officials to give information to the public about the person who is on the Sex Offender Registration Program including name, address, physical description, type of vehicle they drive, restrictions placed upon them when

released, etc.

- Will be some technical amendments: page 30, line 34 - the name or work telephone phone number of the person's probation officer.

361 CAMPBELL: Continues with his explanation.

- Section 69: After a 10 year period of time, the juvenile can petition the court for removing their address. Still remain on the Sex Offender Registration.

TAPE 18, SIDE B

07 CAMPBELL: Continues to explain.

27 SEN. SPRINGER: What group of kids are we applying this to?

29 CAMPBELL: Those who would be convicted of a sex offense - definition of a Youth Offender. Page 29, line 24 - When a person have having been found

to be within the jurisdiction of the Juvenile Court - - - - Would apply to any to any person regardless of age.

40 SEN. SPRINGER: Section 68, are we asking more information from the juveniles than adults? e

47 BILL TAYLOR: Going back to page 29 of the bill, section 66, section 1: This applies to both juveniles and adults - only to juveniles?

57 CAMPBELL: The provision sub 3 applies only to juveniles. Otherwise the section applies equally to adults as it does to juveniles.

BILL TAYLOR: We are making changes in the law that applies both to adults and juveniles?

CAMPBELL: The way this is written, that is correct.

BILL TAYLOR: I have some concerns because the relating clause is relating to Juvenile Justice. The language if it applies to adults would not fit within the relating clause. We would violate the single subject law.

69 CAMPBELL: Would be more than willing to work with Counsel to eliminate that problem.

76 INGRID SWENSON, Oregon Criminal Defense Lawyers Association: Refers to House Bill 2160. Currently a work group is working on this provision and expects to see different language.

94 Returns to the list of offenses relating to expungement. Section 75 - Asks Committee to give some consideration to limiting -refers to bottom of page 1, top of page 2 - [EXHIBIT A] - specifically the offenses of rape, sodomy, and unlawful sexual penetration. This offense can be committed in a number of ways. Can be committed by forcible compulsion (Section 1a of each ORS sections) and it can be committed because of the age of the victim.

- Laws were not written with juveniles in mind.

134 McDONNELL: Never made any sense why that 3 year age defense does not apply to individuals under 12.

153 BILL TAYLOR: Ms. Swenson, are you suggesting changes or elimination in language. If so where?

160 SWENSON: If the committee elected to limit the offenses of rape 1, sodomy 1 and unlawful sexual penetration 1, you could simply list the subsections of those statues which would not permit expungment along with other sections other than the age limit section. You would want to include in non-expungible offenses the 1(a) offenses and 1(d) offenses.

175 McDONNELL: I'm not in favor expunction of these offenses.

183 TRAVIS: Wants to augment Ms. Swenson's comments. Asks that the Committee consider these changes in light of the factors the court will be considering in determining whether to allow the expunction.

200 CHAIR HAMBY: Regarding the recent testimony regarding rape in the first degree, sodomy in the first degree, etc. We would need further concise amendments.

210 BILL TAYLOR: If committee decided to go in that direction, would help to have exactly what we are doing in from of us.

220 SWENSON: Will prepare written changes. Would also like to prepare a proposed amendment that would permit the defense of a three age difference for these offenses as an alternative.

244 Comments on Section 66. References the Committee to HB 2160. Couple of issues that have been raise there include looking at section 67, page 30 of the bill, lines 9 through 11. With respect to HB 2160, what the Committee

is considering is using language from the sentencing guidelines which would identify the elements of the out of state offense and require that they match the elements of the Oregon offense.

- With respect to the provision on page 31, line 22, section 70: That is a repeal of the sunset of the registration laws. House has not determined their final position will be.

Criminal Defense Lawyers have suggested on the House side was that the Sunset be continued until further information and not deleted at this time.

260       CAMPBELL: Listed in section 77 page 42, beginning at line 12, there are a certain number of finds that the court has to make. Not just a generalized hearing.

294       MCDONNELL: Has done a lot of research as the Legislative history for the basis of making these offenses non-expungible.

- Makes reference to the list of things a court is to consider. Are very subjective type of things.

324       BILL TAYLOR: Section 77, subsection 8. Correct.

332       CAMPBELL: Ready to move into Section 73 which is the fingerprinting and photographing section.

346       HAMBY: Set aside section 75 - come back at later date.

357       CAMPBELL: Section 73 begins the section that would require that all youth would be fingerprinted and photographed upon being taken into custody. Information would be placed in the state police repository for a period of 5 years and 30 days.

- page 36, line 5 - beginning with "youth shall be photographed or fingerprinted after the youth                    has been taken into custody." Youth is defined as a person under 18 years of age.

- page 36, line 2 - Information would then be sent to central state repository of the state police.

- page 37, line 29 - depending on what happens to juvenile, state police needs to know so that they        can dispose of file properly.

TAPE 19, SIDE B

13       CAMPBELL: Continues with his review.

23       CHAIR HAMBY: Do we have anyone who objects with language found on pages 36 and 37?

35       SGT. MIKE RAMSB Y, Oregon State Police, Investigative Services Division :

Gives testimony. Adult system is not perfect, but is working fairly well overall. Haven't had any sort of recordkeeping system for juveniles in the

past. Record keeping system is essential if we are going to move forward and be able to make some sort of evaluation of what does and does not work.

38       NANCY MILLER, for the State Court Administrator's Office: Offers comments on proposed amendments. Had discussed in technical amendments group about taking the burden off the court to notify the central registry for the very reasons outlines. It was suggested that putting the burden for notice on the District Attorney or on the juvenile departments. Because these departments are jointly involved in the filing of the petitions, it makes more sense to put one of those entities in charge.

- Judicial Department is working on the creation of the Oregon Judicial Information Network for Juveniles. Does have that system in place for adults. Have funded the design of Juvenile OJ. It is happening -- not here yet.

80 McDONNELL: Asks the Committee to keep in mind before making any decisions, go back and consider prior discussion and prior sessions.

87 RAMSB Y: Have been asked what programs are working. We have no way of knowing if adult offenders have been ejudicated as juveniles in the past.

96 CABBELL: If the state police have not received notice of any sort, after one year , these provisions require that they automatically delete the file.

106 BOB KOONTZ, Crime Victims United: Presents testimony relative to issue.

Entire system is predicated on knowing what people do. It is a value when people are hired, to a victim who has been assaulted, and just if we want people to believe in our institutions of justice. Feels SB 1 is a wild step in the dark at best.

124 LARRY OGLESB Y, Oregon Juvenile Department Director's Association: Presents his concerns. Talking about a lot of notifications. Refers to page 36, lines 5 through 7 gets into the broader issue of when these photographs and fingerprints are going to be done and by whom. Bill makes no reference to whom. Current law says law enforcement will do it. Also "any youth taken into custody" would have to be fingerprinted and photographed.

Not all juvenile departments do fingerprinting, some do photographs. Fingerprints have to be done in a fairly precise manner. Work Group looked at a modification - only deal with ejudicated crimes. We support the direction, but who is going to handle the work load?

157 CAMPBELL: Task force didn't specifically identify that as a juvenile comes into the system in so many ways.

165 BILL TAYLOR: Talking about section 73 -- current law. Just amending current law. Page 35, line 33 states that a child may be photographed and fingerprinted by a law enforcement agency. Would that answer the question of "who" on page 36, line 5?

174 McDONNELL: If a youth is not fingerprinted when taken into custody by a police agency, then who does it? Would suggest Committee consider adopting language similar to ORS 137.074 which applies to adult proceedings and says - "the law enforcement attending upon the court is the agency responsible for obtaining the fingerprints".

190 SEN. STULL: Needs suggestions on finding a better solution to this problem.

200 RAMSB Y: Suggests that the notification procedure needs to go through to the criminal history repository. So many different entities involved - need to find who maintains the records for the juveniles.

213 TRAVIS: One piece of this that is important to him: If after one year, there was not confirmation of ejudication, the record would fall from the computer. If you are not convicted of anything, why are you in a data base? We want guilty people to have records, not innocent people.

265 RAMSB Y: Currently our criminal history system is managed by our identification bureau. Waits for information to come to it rather than going out for that ejudication information.

281 McDONNELL: Adult system works in a vast number of cases. Juvenile system would also work.

301 SWENSON: Haven't heard any good reason to photograph and fingerprint every child that comes into the system. We don't do it with all adult offenders. Huge waste of time and money.

332 CAMPBELL: One of the philosophies the task force made all of its decisions on was based on immediacy of sanction and appropriateness of sanction.

354 McDONNELL: Use as a tracking system from county to county not a sanction..

377 HAMBY: Senator Springer has a previous commitment. First on agenda tomorrow will be comments on Sections 65 through 77. The meeting will start at 3:45 p.m.

CLOSES WORK SESSION ON SB 1

Adjourns Committee at 5:05 p.m

Additional written testimony submitted for the record received from Rick Abbeg, MSW and Gary Timm, Juvenile Parole Officer.

Submitted by:

Reviewed by:

Julie Clemente  
Committee Assistant

Bill Taylor  
Committee Administrator/Counsel

EXHIBIT LOG:

- A -- Amendments SB 1, Section 75 -- Craig Campbell -- 2 pages
- B -- Amendments SB 1, Section 77 -- Craig Campbell -- 2 pages
- C -- Written Testimony SB 1 -- Gary Timm -- 2 pages.
- D -- Written Testimony SB 1 -- Rick Abbeg -- 2 pages