

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

April 13, 1993 Hearing Room H-177 3:00 p.m. Tapes 72 - 73
MEMBERS PRESENT: Rep. Bob Tiernan, Chair Rep. Kate Brown Rep. Peter
Courtney Rep. Veral Tarno MEMBER EXCUSED: VISITING MEMBER: STAFF
PRESENT: Julie Nolta, Committee Clerk Holly Robinson, Committee
Counsel MEASURES CONSIDERED: HB 2843 - Relating to criminal law HB
2887 - Relating to abuse of children HB 3052 - Relating to reporting of
child abuse

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 72, SIDE A

005 CHAIR TIERNAN: Calls meeting to order at 3:05 p.m.

HB 3052 - PUBLIC HEARING Witnesses: John Stratford, Washington Co.
Sheriff's Office Victor Congleton, Children's Services Division Bob
Keyser, Oregon Council of Police Associations Steven Kafoury, Assiance
of Children's Programs

016 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 3052 deletes requirement
that public or private official must come into contact with the child in
an official capacity in order to have a duty to report abuse.

041 JOHN STRATFORD, WASHINGTON CO. SHERIFF'S OFFICE: Submits and
reviews written testimony in support of HB 3052. (EXHIBIT A)
Subcommittee on Crime and Corrections April 13, 1993 - Page 2

074 CHAIR TIERNAN: Which public officials does HB 3052 cover?

STRATFORD: Lists public officials.

CHAIR TIERNAN: This would apply to reporting at any time?

STRATFORD: Under this bill, yes. Lists other officials. Department of
Corrections is not mentioned.

093 STRATFORD: In the case of hearsay reporting, believes the
legislature would want action taken. CHAIR TERNAN: What kind of
reporting are you referring to? STRATFORD: A phone call is all that is
required to law enforcement or Children's Services Division (CSD) if you
have reasonable belief and it is verifiable. 109REP. BROWN:
Concerned about the deleting the language "with whom the official comes
in contact" regarding the child. STRATFORD: Gives an example of
negligence in reporting. 127 HOLLY ROBINSON, COMMITTEE COUNSEL: The
bill is proposing to change current law in two ways: 1) to require the
reporting of hearsay evidence and, 2) to require the reporting of
contacts made directly to a person who at the time is not acting in
their official capacity. 170 VICTOR CONGLETION, CHILDREN'S SERVICES
DIVISION: Submits and reviews written testimony and an amendment in
support of HB 3052. (EXHIBIT B) 257 REP. TARNO: Who would be the
specified designee at CSD behind a hotline call? CONGLETION: The

designees would be entities with whom CSD contracts for that service. Lists institutions. 270 REP. TARNO: Would those agencies be able to do any investigative evaluation? CONGLETON: No. They take the information and direct it to the proper point. REP. TARNO: In the event of emergency on weekends, would local law enforcement be contacted? CONGLETON: Yes. It is part of the expectation of the hotline that they make emergency calls to law enforcement. 296 CHAIR TIERNAN: If this law were passed, would it help you do your job?

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks represent a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Subcommittee on Crime and Corrections April 13, 1993 - Page 3

CONGLETON: Yes. Reporting of reasonably believed child abuse and neglect is a good thing and the list of mandatory reporters have that kind of obligation to children.

304 REP. BROWN: What was the legislative intent regarding hearsay contacts and/or official capacity of reporters when this was first enacted?

HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses legislative history and intent regarding voluntary vs. mandatory reports and the balance between the two. Immunity for reporting in good faith has not been entered into statute and has been addressed several times throughout the years.

351 CHAIR TIERNAN: Reasonable cause to believe has been in statute for some time.

HOLLY ROBINSON, COMMITTEE COUNSEL: Concerned about the child with whom the official comes into contact in an official capacity. The direct reporting from the child triggers the reporting requirement for which you are criminally liable.

CHAIR TIERNAN: So a public official off duty would have no obligation to report under existing statute?

362 HOLLY ROBINSON, COMMITTEE COUNSEL: Correct. Important to separate the hearsay issue and the official capacity issue. Hard to define "with whom the official comes into contact" and "reasonable belief" in that situation particularly when there are criminal penalties for not reporting.

CHAIR TIERNAN: But that has always been the standard.

HOLLY ROBINSON, COMMITTEE COUNSEL: "With whom the official comes into contact" is one piece and "in an official capacity" is the second. If you delete "in an official capacity" only, then the child has to have contact with the official. But the context of contact can be outside of the official capacity. "With whom the official comes into contact" is the hearsay piece. Concerned because there are criminal liabilities if you don't report. The bill doesn't address failure to report.

442 CHAIR TIERNAN: Asks witness if it would bother him to delete "with whom the official comes into contact."

449 STRATFORD: The official does not have an obligation to report

second hand information even if it is from an adult. 480REP. TARNO:
Asks CSD how they handle reporting of second hand information.
CONGLETON: A large number of referrals are second hand and it is the
case worker's task to sort it out and decide the appropriate course of
action.

TAPE 73, SIDE A

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. Subcommittee on Crime and
Correction' April 13, 1993 - Page 4

033 BOB KEYSER, OREGON COUNCIL OF POLICE ASSOCIATIONS: Testifies in
favor of HB 3052. 037 CHAIR TIERNAN: Asks the witness if he has any
problems with the statements "with whom the official comes in contact"
or "in an official capacity." KEYSER: No. 042 REP. TARNO: Asks the
witness if he would object to an amendment to say that either CSD or law
enforcement would be notified. KEYSER: We would support that.

054 SIEVEN KAFOURY, ALLIANCE OF CHILDREN'S PROGRAMS: Testifies in
support of HB 3052. 080 CHAIR TIERNAN: Asks Mr. Kafoury if he has
problems with "with whom the official comes in contact" or "in an
official capacity." KAFOURY: Has no comments on behalf of his
organization. The original intent was directed towards officials who had
relationships with children. It is reasonable to place some kind of
restrictions. CHAIR TIERNAN: Do you agree with "official capacity?"
KAFOURY: Yes, because some don't ever go off "official capacity."

099 REP. BROWN: Concerned with holding someone criminally liable for
third or fourth hand knowledge. Could accomplish the same thing by
deleting "in an official capacity." KAFOURY: It makes sense to me.

HB 2843 - PUBLIC HEARING

(HB 2843 collapses the offenses of sodomy and unlawful sexual
penetration into a single offense of rape, so the gender of the victim
is no longer an issue.)

Witnesses: Rep. Gail Shibley, District 12 Jill Odey, Sexual Assault
Survivors Rep. Lisa Naito, District 15 Martin McDonald, Mult. Co.
District Attorneys Office Fred Avera, Polk Co. District Attorney Laurie
Wimmer, Oregon Commission for Women Russ Spencer, Oregon State Sheriffs
Association Duncan Fagan, Citizen Lauren Moughon, Women's Rights
Coalition Subcommittee on Crime and Correction April 13, 1993 - Page 5

128 REP. GAIL SHIBLEY, DISTRICT 12: Submits and reviews written
testimony in favor of HB 2843. (EXHIBIT C, D)

167 HOLLY ROBINSON, COMMITTEE COUNSEL: Gives background on HB 2843.

201 CHAIR TIERNAN: Is this actually changing the law as far as
penalties?

HOLLY ROBINSON, COMMITTEE COUNSEL: No.

209 JILL ODEY, SEXUAL ASSAULT SURVIVORS: Testifies in favor of HB
2843.

260 CHAIR TIERNAN: Do you agree with counsel that it doesn't change the
actual application of law but the terminology?

ODEY: Yes.

263 REP. TARNO: Do you see a significant difference between date rape and more violent abuse? Would those issues still be brought out as part of rape charge? Concerned about the difference between implied threat and severe sexual abuse.

ODEY: The -2 amendments deal with the concept of merger. Every separate act of a sexual assault would still be separately punishable. Sentencing guidelines recognize degrees of sexual assault.

338 Rh P. LISA NAITO, DISTRICT 15: Testifies in support of HB 2843.
355 MARTIN MC DONALD, MULTNOMAH COUNTY DISTRICT ATTORNEYS OFFICE:
Testifies on HB 2843. 377 CHAIR TIERNAN: Asks Mr. McDonald to explain
the potential problem. MC DONALD: Discusses the definition of "sexual
intercourse" and the potential confusion for jurors. 393REP. BROWN:
Is there another term that can be used? MC DONALD: Would rather define
each of the acts separately. 411FRED AVERA, POLK COUNTY DISTRICT
ATTORNEY: -2 amendments adequately handle the concerns. Discusses
emotionally charged terms which could confuse a juror. Removing that
language would be a positive step. 480 REP. BROWN: How does
Washington deal with the issue? MC DONALD: Doesn't know. 489 REP.
TARNO: Are we broadening the definition of sexual intercourse? ..
Three minutes contain materials which paraphrase and/or summarize
statements made during this session. Only text enclosed in quotation marks
repeats a speaker's exact words. For complete contents of the proceedings,
please refer to the typeset Subcommittee on Crime and Corrections April
13, 1993 - Page 6 TAPE 72, SIDE B

028 AVERA: Doesn't know how other states define "sexual intercourse."

029 HOLLY ROBINSON, COMMITTEE COUNSEL: We are renaming acts, not
changing the definitions. Most states use the same words to define the
alleged criminal conduct.

REP. TARNO: So the language on lines 20-32 is fairly universal?

HOLLY ROBINSON, COMMITTEE COUNSEL: It is not uncommon.

043 MC DONALD: That is the conduct that is defined in most
jurisdictions. They don't all call it "sexual intercourse."

HOLLY ROBINSON, COMMITTEE COUNSEL: Washington does.

CHAIR TIERNAN: Agrees with comments by witnesses that the terminology is
confusing.

OSS LAURIE WIMMER, EXECUTIVE DIRECTOR, OREGON COMMISSION FOR WOMEN:
Submits and reviews written testimony in support of HB 2843. (EXHIBIT E)
096 RUSS SPENCER, OREGON STATE SHERIFFS ASSOCIATION: Testifies in
support of HB 2843. 116 CHAIR TIERNAN: What is the difference between
HB 2483 and SB 904?

REP. BROWN: It is part of a package submitted to the Senate called the
"Women's Health and Wellness Act." Because of time constraints it was
not introduced in its entirety on the House side.

138 DUNCAN FAGAN, PORTLAND BUSINESSMAN, FORMER DEPUTY SHERIFF, CLARK
CO.: Testifies in support of HB 2843. 168 CHAIR TIERNAN: Gives chair

to Rep. Courtney. 174 FAGAN: Continues testimony.

223 LAUREN MOUGHON, WOMEN'S RIGHTS COALITION: Submits and reviews written testimony in favor of HB 2843. (EXHIBIT F)

HB 2887 - PUBLIC HEARING

(HB 2887 replaces generic terms of "sexual abuse" and "child sexual abuse" with more specific terms of "assault" and "rape.")

Witnesses: Arnie Green, Interim Children's Care Team Rep. Lisa Naito, District 15 . Subcommh~e on Crune and Corrections April 13, 1993 - Page 7

292 ARNIE GREEN, MEMBER, INTERIM CHILDREN'S CARE TEAM: Testifies in favor of HB 2887. 345 REP. LISA NAITO, DISTRICT 15: Submits and reviews written testimony in favor of HB 2887. 381 REP. BROWN: Concerns have been raised that those required to report will be more reluctant if the level of abuse is not actually the level of rape. GREEN: Doesn't agree because there is so little reporting going on now. Suggests an amendment to delete "sexual abuse" from line 15 of the bill and create a new sentence that would require the reporting of sexual abuse. 423 REP. BROWN: Assuming HB 2843 is passed, sodomy and unlawful sexual penetration will be rape of a child. GREEN: They may want to keep "sexual exploitation" as a separate category. Suggests "sexual abuse" may be a separate category as well. 435 REP. BROWN: We don't want to further discourage dismal reporting rates. 443 REP. BROWN: Rate of sexual abuse of boys is similar to that of girls. The problem lies in reporting. REP. NAITO: Believes that rape and sexual abuse of young men is very high but is not reported. There is social pressure not to report. GREEN: Runs two homes for male and female victims of abuse. Almost all of the boys are there for delinquent offense but after treatment starts it is found that half have been sexually abused as well. Believes the rate of incidents are much higher than we want to believe.

TAPE 73, SIDE B

035 CHAIR COURTNEY: Understands that we don't know that much about sexual abuse of boys because they are much less likely to talk about it than girls.

GREEN: Believes it is high but not as high as the incidents against women.

CHAIR COURTNEY: It may be much higher than we know because boys don't talk about it.

GREEN: The point is that both are victims of crimes of violence.

055 CHAIR COURTNEY: Regarding HB 2887 and HB 2843, rape by a foreign object. Will that still be a crime? We won't lose the crime in any way? HOLLY ROBINSON, COMMITTEE COUNSEL: Yes. Subcommittee on Crime and Corrections April 13, 1993 - Page 8

088 CHAIR COURTNEY: Adjourns meeting at 4:20 p.m.

Submitted by: Reviewed by:

Julie Nolta Anne May Committee Clerk Committee Coordinator

EXHIBIT LOG:

A - Testimony on HB 3052 - Washington County Sheriff's Office - 6 pages
B - Testimony on HB 3052 - Children's Services Division - 4 pages C -
Testimony on HB 2843 - Rep. Gail Shibley - 1 page D - Testimony on HB
2843 - Rep. Gail Shibley - 1 page E - Testimony on HB 2843 - Oregon
Commission for Women - 1 page F - Testimony on HB 2843 - Women's Rights
Coalition - 2 pages G - Testimony on HB 2843 - 2 pages H - Proposed
Amendments to HB 2843 - 3 pages I - Testimony on HB 2887 - Rep. Lisa
Naito - 1 page ,

' : ~ . These minutes contain materials which paraphrase and/or
summarize ~atomena made curly thia session. Only text enclosed in
quotation mar}a report & spe&ker's ex&ct worde. For complete contenta of
the proceedingr, plea~e rebr to the tapec.