

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

May 19, 1993 Hearing Room 357 3:00 p.m. Tapes 109 - 110

MEMBERS PRESENT: Rep. Bob Tiernan, Chair Rep. Kate Brown Rep. Peter Courtney Rep. Veral Tarno

VISITING MEMBER: Rep. Del Parks

STAFF PRESENT: Holly Robinson, Committee Counsel Julie Nolta, Committee Clerk

MEASURES CONSIDERED: SB 199 - Relating to juveniles SB 200 - Relating to juveniles SB 204 - Relating to juveniles

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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. [--- Unable To Translate Graphic ---]

TAPE 109, SIDE A

001 CHAIR TIERNAN: Calls meeting to order at 3:10 p.m.

SB 199 - PUBLIC HEARING

Witnesses: Timothy Travis, Juvenile Rights Project Mark Mc Donnell, Oregon District Attorneys Association

005 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 199 clarifies that a juvenile court may amend a delinquency petition to a dependency petition when the court finds that the child is unable to aid and assist in the child's defense due to mental retardation or mental illness. Gives background

on the bill. Explains subsection (2) and subsection (3) of Section 1.

Explains that language on line 14 and 15 of p. 1 is not in conflict with Section 3.

076 REP. BROWN: Is this what is happening in juvenile court?

HOLLY ROBINSON, COMMITTEE COUNSEL: Yes and no. New language in subsection (2) is what actually happens. New language in subsection (3) is new policy. 107 CHAIR TIERNAN: Asks how a delinquency petition is amended to a dependency petition.

HOLLY ROBINSON, COMMITTEE COUNSEL: If it becomes clear after investigation that a child is mentally retarded or mentally ill, and everyone concurs at the pre-trial conference, the motion is made at the first court proceeding. Appropriate sanctions or services for the child are also determinants.

172 CHAIR TIERNAN: This just affects the penalty?

HOLLY ROBINSON, COMMITTEE COUNSEL: No. There is a finding on a petition made prior to an adjudicatory hearing or plea hearing. Discusses petitions on criminal acts on children.

268 REP. TARNO: Confirms that subsection (1)(a) of SB 199 can be amended to include (b) or (c). That would change it from a delinquency to a dependency situation.

297 MARK MC DONNELL, OREGON DISTRICT ATTORNEYS ASSOCIATION:
Testifies in

favor of SB 199.

373 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT: Testifies in favor of SB 199 .

433 REP. TARNO: Refers to "may" on line 22 of section 3 Who has the authority to turn it into "shall?"

TRAVIS: District Attorneys, not the court. Can make the motion at any time and the judge still must get approval from the District Attorney.

455 REP. COURTNEY: Questions the finding of guilty but insane in the area of mental disease or defect to make subsection (2) apply.

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044 TRAVIS: These findings of mental disease or defect are after hearings and testimony of expert witnesses. Describes aid and assist hearings.

This puts prosecutors in a position of authority.

REP. COURTNEY: Feels subsection (2) will create a new controversy.

084 MC DONNELL: The ability of the court to amend delinquency to dependency is a small part of changing sex offenses to something less to avoid having a permanent record. The state still has to prove beyond a reasonable doubt that the person has a culpable mental state.

109 REP. BROWN: The finding of unable to aid and assist is fairly narrow

regardless of how it is qualified. Asks Rep. Courtney why he thinks this will this cause problems.

REP. COURTNEY: Judges feel they should be left alone to make decisions regarding expungement of records of sex offenses and have ignored legislative intent.

180 TRAVIS: The original bill ended on line 19 after "mental illness." Everything else has been added.

191 CHAIR TIERNAN: Asks Mr. Travis if the bill needs all the language regarding mental illness.

TRAVIS: We wrote the original language and then defended a case where a child was found guilty but insane, which is not covered in the juvenile code. Not sure how "mental disease or defect" got into the bill but it is appropriate.

233 MC DONNELL: Is happy that subsection (3) is part of HB 3033. Subsection (2) will encourage more filings for unable to aid and assist and more filings for findings of guilty but insane.

276 TRAVIS: Totally opposed to HB 3033. Taking a rehabilitative based juvenile court system and turning it into a retribution based system.

316 REP. COURTNEY: Confirms that if an amended petition is successful, as in subsection (2) of the bill, that child would not be concerned about

expungement. Believes that any defense attorney should be guilty of malpractice who did not file such a petition.

MC DONNELL: There are very few cases filed where children are molesting other children. There will be a substantial increase in motions filed

under subsection (2). It would be unethical conduct to file such a motion if there was not some basis.

REP. COURTNEY: As a former lawyer, reading this statute, I would file a motion every single time or run the risk of malpractice.

394 MC DONNELL: We are getting motions for informal disposition in every

sex offender case filed. This narrows the field to aid and assist and mental disease or defect, a definition of standards.

REP. BROWN: It may be the case that anyone who represents a child sex offender may file a motion but it would be absurd. It is that problem of mental disease or defect that makes them unable to aid or assist.

438 REP. COURTNEY: It is possible that something could go on their record and not be expunged. All remedies must be exhausted. The categories in SB 199 are too numerous and broad. This will not resolve the expungement crisis but will shift it to another discussion before the court.

TRAVIS: Defends children in this circumstance. Has never filed an aid and assist motion. Has only filed one petition to amend from delinquency to dependency.

490 REP. COURTNEY: States that little is known about the sex offender and why they offend. As an attorney you have to take that into consideration in terms of how you represent the client.

TAPE 109, SIDE B

042 REP. TARNO: Asks if the witness's concerns were addressed in Senate hearings.

MC DONNELL: Thought the Senate should look at the issue of expungement of juvenile records. Current situation is unsatisfactory. Delays court proceeding and increases costs.

057 CHAIR PARKS: Asks about expert witnesses being hired repeatedly.

MC DONNELL: Talks about number of judges and referees.

CHAIR PARKS: Asks about the frequency of witnesses reappearing.

067 MC DONNELL: The numbers of motions are running high and is such a predisposition by judicial officers not to handle these cases formally that it is used as a basis for reaching the decision rather than as an objective examination of the facts.

CHAIR PARKS: Prosecutors are not prosecuting people who they think are innocent. Someone has to be in middle to make the decision and this bill takes that out and allows the prosecutor to make the decision.

087 MC DONNELL: Disagrees. The prosecution still has to prove delinquency beyond a reasonable doubt.

CHAIR PARKS: It can only be amended upon the motion or with concurrence of the state which gives veto on any amendment.

MC DONNELL: It only makes a veto over whether or not it should be prosecuted as a delinquency or a dependency.

CHAIR PARKS: The judge could say there is no jurisdiction and acquit the person?

MC DONNELL: Have had a case where the court did not find the person guilty beyond reasonable doubt but that the person needs to be within jurisdiction of the court.

106 CHAIR PARKS: What is wrong with a judge doing that?

MC DONNELL: Questions whether some judges are honest. This bill determines whether or not a case is prosecuted as delinquency or dependency.

115 CHAIR PARKS: Afraid of creating a situation of encouraging judges to be intellectually dishonest.

MC DONNELL: Trying to enforce the law that says offenses shall not be expunged when obviously cases are amended and not entered on the record because they don't want a sex offense on a juvenile's permanent record.

132 CHAIR PARKS: The case hasn't been proven that judges are disobeying the law.

MC DONNELL: Can give examples.

CHAIR PARKS: Wants examples where the judge said on the record that a case was amended to evade this law.

MC DONNELL: Can give those examples.

CHAIR PARKS: Asks for copies of those court transcripts.

SB 200 - PUBLIC HEARING

Witnesses: Timothy Travis, Juvenile Rights Project Victor Congleton, Children's Services Division Mark Mc Donnell, Oregon District Attorneys Association

179 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 200 gives attorney for a child

access to a child's records in juvenile court proceedings. Four issues have been raised: 1) Is the intent of the bill to give the attorney access to the records which are the child's only? Whose records are being accessed must be clarified. 2) Whether or not attorneys who are representing parents were being placed in a different position than attorneys representing children. Sen. Dwyer submitted the -3 amendments (EXHIBIT B) 3) The bill only speaks to court appointed counsel and may or may not impact an attorney retained by a child. 4) SB 200A-4 amendments presented by Rep. Brown (EXHIBIT C) deal with issue of individuals granted intervener status and allowed access to juvenile court records related to the child.

252 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT: Submits and reviews written

testimony in favor of SB 200. (EXHIBIT D)

286 HOLLY ROBINSON, COMMITTEE COUNSEL: Refers to line 17 of p. 2 of the bill. If we deleted "relating to" and inserted "of" would that make it clear?

TRAVIS: Yes. Continues testimony.

378 REP. COURTNEY: Asks about adoption records.

TRAVIS: Adoption records are never opened.

HOLLY ROBINSON, COMMITTEE COUNSEL: The bill as drafted only applies to juvenile court records.

TRAVIS: Only apply if a child is in a juvenile court action.

HOLLY ROBINSON, COMMITTEE COUNSEL: And only kicks in if a child is in a juvenile court proceeding.

TRAVIS: Does not apply to children who are represented in divorce cases.

392 REP. BROWN: Agrees in terms of limitation to ORS 109.119. Intent of my amendment was to limit it to people who are in a parent-like relationship.

402 MARK MC DONNELL, OREGON DISTRICT ATTORNEYS ASSOCIATION: Testifies in

favor of SB 200.

445 HOLLY ROBINSON, COMMITTEE COUNSEL: The parent's attorney is already entitled to those records.

MC DONNELL: Parents and attorneys are entitled to anything in the social file. Explains uniform protective orders.

474 VICTOR CONGLETON, CHILDREN'S SERVICES DIVISION: Testifies in favor of SB 200.

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025 CONGLETON: Continues testimony.

030 CHAIR TIERNAN: Asks Mr. Congleton if he has problems with Rep. Brown's amendments.

CONGLETON: Thinks it makes good sense. There is provision in SB 1051 to make explicit the kinds of information that are required to be shared with the parents or other parties.

044 TRAVIS: Discusses the requesting of a protective order.

054 REP. TARNO: Agrees with Sen. Dywer's amendments. Discusses the need to involve the parents in the process.

HOLLY ROBINSON, COMMITTEE COUNSEL: Explains that the parents are already involved. Discusses the dissemination of information contained in children's records. Clarifies the committee's intentions regarding

A-3 amendments.

088 REP. BROWN: Should keep current law. Wouldn't agree to making access easier unless there is a real problem.

SB 204 - PUBLIC HEARING

Witnesses: Timothy Travis, Juvenile Rights Project

109 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 204 amends notification requirements when a child is taken into temporary custody to include notice of the action taken and the time and place of the hearing.

118 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT: Discusses the need for a hearing within 24 hours.

124 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses the practical impact of

the change in current law.

140 CHAIR TIERNAN: Adjourns the meeting at 4:47 p.m.

Submitted by:

Reviewed by:

Julie Nolta
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Testimony on SB 199 - Children's Services Division - 1 page B - Proposed amendments to SB 200 - Sen. Bill Dwyer - 2 pages C - Proposed amendments to SB 200 - Rep. Kate Brown - 4 pages D - Testimony on SB 200 - Juvenile Rights Project - 2 pages E - Statutes relevant to SB 200 - Committee Counsel - 2 pages F - Testimony on SB 204 - Children's Services Division - 1 page