

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.

Measures Heard HB 2099 (Public) HB 2406 (Public) HB 2395 (Public) HB 2411 (Public) HB 2412 (Public)

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE

January 30, 1991Hearing Room 357 3:00 p.m.Tapes 13-14

MEMBERS PRESENT:Rep. Kelly Clark, Chair Rep. Judy Bauman Rep. Marie Bell Rep. Jim Edmunson Rep. Kevin Mannix Rep. Tom Mason Rep. Del Parks Rep. Ron Sunseri

STAFF PRESENT: Holly Robinson, Committee Counsel Kathy Neely, Committee Assistant

WITNESSES: Paul Drews, CSD (2411, 2412, 2395) Joe Spenner (2411) Chris Gardner, Deschutes Co. DA (2411, 2412, 2395) Rep. Peter Courtney (2411, 2412, 2395) John Collins, Task Force (2411, 2412, 2395) Stan Robson, Benton County Sheriff (HB 2411)

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TAPE 13, SIDE A

003 CHAIR CLARK: Opens the hearing at 3:05 p.m. Starts with HB 2099.

WORK SESSION ON HB 2099 RECONSIDERATION

042 CHAIR CLARK: Moves for reconsideration of HB 2099. Any objections to reconsideration of HB 2099? Hearing none, so ordered.

049 REP. MANNIX: Moves the -2 amendments to HB 2099 which will be substituted for previous amendments. Recalls discussion of constitutional requirements that might exist regarding parents also consenting. In a situation where the minor has counsel, we should not add on another layer of consent requirements. This minor with the advice of counsel has the right to waive. This amendment takes care of the constitutional concern.

060 CHAIR CLARK: Questions counsel about the amendment regarding two provisions about minor children. The first is with the representation of counsel and the second being in some other civil proceeding where counsel is not involved. Are you satisfied that this will eliminate any problem?

072 HOLLY ROBINSON: Satisfied that it will.

078 REP. EDMUNSON: If this is used in juvenile court proceeding, does Part B mean the student has not had the opportunity to engage counsel? At what point does Part B occur?

084 HOLLY ROBINSON: If a child is referred to the court on a crime which under 4761(a) would be a criminal offense and the court decides not to proceed and does an informal disposition, the right to counsel does not attach, then the second option would kick in.

107 REP. EDMUNSON: For interpretation, "is represented by counsel" means has the right to be represented.

HOLLY ROBINSON: Yes. It is implied on line 6.

REP. EDMUNSON: Wants the record to be clear on that.

114 CHAIR CLARK: Because of the reference to ORS 419?

HOLLY ROBINSON: Correct, and the additional sentence in terms of becoming an adult.

118 REP. BAUMAN: Have we already adopted the 2099-1 amendments?

REP. MANNIX: Yes.

HOLLY ROBINSON: Clarifies the -2 amendments.

REP. BAUMAN: Wonders if the federal statute has any requirements pertaining to signed parental consent to records being transferred. On page 3, line 1 after subsection 3, in -2 on lines 20 and 21.

HOLLY ROBINSON: That is consistent with federal law.

154 CHAIR CLARK: Are there objections? Hearing none, it is so ordered.

156 REP. MANNIX: Moves HB 2099 as amended to the full committee with a do pass recommendation.

CHAIR CLARK: Rep. Mannix moves the bill. Further discussion?

COMMITTEE ASSISTANT: Roll call vote:

Rep. Bauman: Aye Rep. Bell: Aye Rep. Edmunson: Aye Rep. Mannix: Aye  
Rep. Mason: Aye Rep. Parks: Aye Rep. Sunseri: Aye Chair Clark: Aye

CHAIR CLARK: The motion passed. Asks Rep. Mason to carry the bill.

PUBLIC HEARING ON HB 2412

187 REPRESENTATIVE PETER COURTNEY, TASK FORCE ON SEX OFFENSES AGAINST CHILDREN: Offers testimony on HB 2412. Reads a testimony received. Exhibit A. Talks about sexual abuse on children.

256 CHAIR CLARK: Discusses his intent regarding the agenda.

261 JOHN COLLINS, DISTRICT ATTORNEY FOR YAMHILL COUNTY: Offers testimony in favor of HB 2412 (Exhibit B for written testimony) Discusses the trauma that children experience in a court/trial experience. The number 1 concern is the traumatic effect of trial delay.

300 REP. MANNIX: Do you want use to defer questions?

CHAIR CLARK: Yes. Closes hearing on 2412 temporarily.

PUBLIC HEARING ON HB 2411

319 JOHN COLLINS: Offers testimony in favor of HB 2411. (See Exhibit C). This is one of the most under reported crimes and very often not reported until sometime after the crime. Discusses research and studies done on sexual abuse crimes. This bill would extend the statute of limitations until the victim's 23rd birthday.

342 REP. PETER COURTNEY: Emphasizes a point in written testimony in Exhibit A. Victims do not express what was done to body parts because it is not easy to talk about. It is very hard for people to come forward and deal with this. That is the reason for this bill. Felt it was important to give a little more time to come forward to deal with this.

360 JOHN COLLINS: Discusses personal experience with these kinds of cases.

382 REP. COURTNEY: Should not assume that all sexual abuse is physically painful or torture.

CHAIR CLARK: Closes hearing on HB 2411 temporarily.

PUBLIC HEARING ON HB 2395

407 JOHN COLLINS: Offers testimony in favor of HB 2395. (See Exhibit D) Discusses the bill. It extends hearsay evidence to apply in sexual abuse cases dealing with a child under 10 in juvenile and criminal proceeding. The Task Force was questioned on why a child has to testify in the trial after telling doctors, police officers, CSD, etc. The new law provides some circumstances where a child may not have to personally testify. HB 2395 would extend that rule to other proceedings.

464 REP. MASON: Wants clarification regarding specifically mentioned domestic relation cases.

TAPE 14, SIDE B

030 JOHN COLLINS: The two would be domestic relations and possible civil suits with regard to children coming to testify.

CHAIR CLARK: Closes the hearing on 2395 temporarily.

PUBLIC HEARING ON HB 2406

040 JOHN COLLINS: Offers testimony on HB 2406 (see Exhibit E for written testimony). Discusses the bill in an overview fashion.

072 CHAIR CLARK: Allows committee members to ask questions on any of the work of the Task Force and any bills heard thus far. After that we will go back to the first bill and hear testimony from other witnesses.

071 REP. COURTNEY: Informs the committee of another bill on compensation. Discusses counselling of secondary victims.

087 REP. MASON: Comment on the bills brought by Rep. Courtney. This is a 23 year statute of limitations on a non capitol crime. It is probably unprecedented in criminal law. All others run 7 or 10 years. This

basically triples the statute of limitations. What was the thinking the Task Force did regarding this statute of limitations?

108 REP. COURTNEY: Did not analyze it with regard to history of statute of limitations. Believes it was decided at this time in society abuse signs are not realized but in the future may not need this as people get more open. Was not offended by extending the statute of limitation in such a way. We must allow the extended time limit to allow people come forward and talk about it.

143 REP. SUNSERI: On 2395, couldn't a person be falsely accused? Is there any danger in extending hearsay ability to false acquisitions?

152 REP. COURTNEY: This is very risky because this is an area where once you are accused you are considered guilty by society. There may be abuse under this bill if it become law.

171 JOHN COLLINS: HB 2395 does not change anything in the criminal law case. Only extends the exception to hearsay rule to other cases. For the out-of-court statement to be admission, there must be a showing of certain reliability. An example is any motive the person testifying might have to falsely represent what the child said. States an example of a person who might have something to gain. There are safeguards built in.

192 REP. SUNSERI: Is there a danger that someone could be falsely accused and once that is out the damage is done?

REP. COURTNEY: Yes.

199 REP. MANNIX: It is important to say that a person can be falsely accused regardless of what is done in a proceeding with hearsay exception. The concern may be how that acquisition is used in the proceeding.

217 REP. CLARK: There are other bills the Task Force did that will be before us later. Curious as to whether those bill have funding components and how you expect to do on the funding battles.

225 REP. COURTNEY: Comments on the bills. Do not know what can be expected with regard to funds.

237 CHAIR CLARK: Expresses thanks to Rep. Courtney. Comments on the agenda.

243 REP. COURTNEY: Asks about work session on these bills.

CHAIR CLARK: Verifies a possible work session on all of them.

PUBLIC HEARING ON 2412

251 CHAIR CLARK: What are the other expedite matters before the court currently?

259 JOHN COLLINS: Believes there is only one where the defendant is in custody no matter what the charge. They must be given priority.

263 CHAIR CLARK: Further comments.

JOHN COLLINS: Criminal cases have a priority over civil.

270 CHAIR CLARK: This bill is across the board, civil or criminal, any case where a child is witness?

271 JOHN COLLINS: Yes. Focus on reducing the delay for a child witnesses.

291 CHAIR CLARK: Concerned that all domestic relations cases with a child under 18 who might be called to testify shall take priority. What would be your reaction to tailoring this bill down to cases where there is an allegation of sexual abuse?

296 JOHN COLLINS: Have no objection. Interest in protecting child witness no matter what type of case.

302 CHAIR CLARK: Comments on dealing with family law.

310 REP. MASON: Comments on CLE presentation by Judge Welsh. Part of her testimony is that one should go to the greatest extent possible to avoid having children testify in domestic relations cases. The judge states this is psychologically devastating to the child.

343 REP. BELL: Perceives children in general, find it hard to make decisions that will affect someone else's life and where the child will have to account for pointing the finger.

359 REP. MANNIX: Recalls legislation on video taping children's testimony in sex abuse cases.

JOHN COLLINS: Little more restrictive since a showing must be made that the child will be traumatized by testifying.

REP. MANNIX: Because we are dealing with the balancing and confrontation clause.

JOHN COLLINS: The circumstances where it is used are limited.

374 REP. MANNIX: Recalls several statutes stating precedence to different types of matters. Isn't there a shopping list of precedent statutes and the courts have to decide how to juggle many statutes?

383 JOHN COLLINS: Comments on experience in criminal cases.

REP. MANNIX: Comments on others.

394 CHAIR CLARK: Will ask counsel to do investigate it further.

REP. MANNIX: Would be helpful to talk about it in this context. How do you feel about limiting those cases?

403 JOHN COLLINS: Believes the Task Force would not object.

TAPE 13, SIDE B

012 REP. MANNIX: Comments on shifting focus to the nature of the causes of action. The major emphasis of the case, not whether it is juvenile, domestic, etc. Why is the child being called to testify, what is the subject matter of the testimony?

019 HOLLY ROBINSON: Questions on the intent of the Task Force: The way this is written, it would apply to a 17 year in a traffic offense. Assumes this was not the intent.

JOHN COLLINS: Yes, it does appear to do that and it was not our intend.

028 HOLLY ROBINSON: It would include to a 17 year old witness to a traffic case.

JOHN COLLINS: It would and that is not our intent.

028 HOLLY ROBINSON: Comments on last session bills dealing with setting ages. Does Task Force have an opinion on why it is set at age 18?

035 JOHN COLLINS: Cannot recall a discussion on that except 18 years is the juvenile adult distinction. Thinks it could be set lower than 18.

044 HOLLY ROBINSON: What was the rational for exempting juvenile court proceedings?

049 JOHN COLLINS: The Task Force realized by definition every juvenile case would involve a case with witnesses under 18 years.

054 CHAIR CLARK: Perhaps it needs a lower age in juvenile court.

064 PAUL DREW, ACTING ASSISTANT ADMINISTRATOR, CHILD PROTECTIVE SERVICES, CHILDREN'S SERVICES DIVISION: Offers testimony in support of HB 241 2. See Exhibit F for written testimony. It is acceptable to CSD to structure this bill as discussed with Mr. Collins and Rep. Courtney. Suggests some consideration be given to not limiting it to trials of just sexual abuse cases but other kinds of abuse for very young child.

083 CHRIS GARDNER, DESCHUTES COUNTY DISTRICT ATTORNEY, ODAA: It is the position of ODAA to strongly support the bill. Comments on studies done on all relevant factors of children coming to court as witnesses to crime to determine how much trauma is caused. Number one factor was delay in going to trial. Discusses experience with trial delays and children witnesses.

124 REP. MASON: Comments on experience and excuses of getting things out of trial.

137 CHRIS GARDNER: Discusses what might happen if the bill is passed. It would cause DAs to make sure a date is appropriate date for all.

148 REP. MASON: Expresses opinion that if case is serious enough for a police officer to be a witness it is serious enough for him to be there.

157 CHRIS GARDNER: Comments on experience with police officers in this regard.

154 REP. MANNIX: What about adding, as an alternative that in case of any continuance the court has the authority to order a video tape deposition of the child's testimony be take at the originally scheduled trial time and it shall be perpetuation testimony used at the trial.

161 CHRIS GARDNER: The dilemma is with the confrontation clause.

REP. MANNIX: What if all parties are there for a special deposition session in front of a magistrate.

165 CHRIS GARDNER: Discusses the application of the current video tape statute.

170 REP. MANNIX: Not talking about an video tape interview but having the examination and the cross examination of the child.

176 CHRIS GARDNER: That statute addresses testimony.

REP. MANNIX: Could it be expanded on to take out some restrictions. Just wants to raise this as an alternative.

186 CHRIS GARDNER: Gives statute citation.

REP. MANNIX: Comments on reasons for raising the idea.

189 CHRIS GARDNER: Comments on Supreme Court decision, Maryland v. Craig regarding constitutionality of video taped testimony.

195 REP. PARKS: Asks for that citation.

HOLLY ROBINSON: Will make copy.

PUBLIC HEARING ON HB 2411

208 JOE SPENNER, CITIZEN: Offers testimony on HB 2411. See Exhibit H.

249 CHAIR CLARK: Asks Mr. Spenner to address comments to the bill.

254 JOE SPENNER: Comments that expanding the limitation is good.

268 CHRIS GARDNER: Offers testimony in favor of HB 2411. Discusses examples regarding statute of limitations. The state of Kentucky has no statute of limitations for these crimes. Suggests there is a need for this because victims are prevented from coming forward because of the nature of the crime. This elevates the pressure. Offenders frequently have multiple victims. This is a tool that would allow us to address past abuse as well as current abuse.

346 CHAIR CLARK: Calls for a recess at 4:30. Reconvenes at 4:35 p.m.

355 REP. MANNIX: Asks about extending the statute to felony crimes and misdemeanor crimes against a person across the board and then say the statute of limitations does not start to run until, if a minor, 18 years of age.

368 CHRIS GARDNER: Believes it will still have the same amount of time but be triggered at a different time.

383 REP. MANNIX: Would like to have Stan Robson comment.

389 STAN ROBSON, CHIEF CRIMINAL DEPUTY FOR BENTON COUNTY SHERIFF'S DEPARTMENT: Introduces himself.

402 REP. MANNIX: Asks for comments on long term exposure if extend the statute of limitations as proposed.

408 STAN ROBSON: Believes it would be a fair way to deal with it. The offender does not quit and cases may not be reported for a long time after the incident.

439 CHAIR CLARK: What point do statute of limitations serve? What are we giving up in exchange for allowing this?

TAPE 14, SIDE B

021 STAN ROBSON: Believes it should run forever in these types of cases because of the uniqueness of the crime and what happens to the victim.

As to other crimes it is more logistics.

029 CHAIR CLARK: Why?

030 STAN ROBSON: To take care of a case presented after some period of time where it is difficult to prepare.

CHAIR CLARK: Because of witnesses' memory.

STAN ROBSON: That and evidence.

033 REP. MANNIX: He addressed the issue of why we would want to open it up.

036 CHRIS GARDNER: One of the things we know is the general criminal personality. Discusses sex offenders.

053 CHAIR CLARK: Would still have to convince a jury that it occurred. They need to consider how well this person remembers. Explores the ramifications.

059 CHRIS GARDNER: As well as the issue of the delay in reporting.

060 REP. MASON: Comments on the function of the statute of limitation as clearing the system out because we cannot handle things that old.

069 CHRIS GARDNER: Discusses the publication by the Department of Justice that does comparative analysis of child abuse laws in all states. Kentucky does not have a statute of limitations in these cases. Can provide copies.

077 CHAIR CLARK: Ask for information on what other states do.

080 REP. MASON: Suggests seeing what Canada does in this.

083 REP. MANNIX: Would like to see what Oregon did before 1970.

086 PAUL DREWS: Offers testimony on HB 2411 in support of the bill. See Exhibit J. This bill deals with people who may not come forward because of shame. Sex abuse offenders have multiple victims. Responds to suggestion of having the statute triggered at the age of 18, believes the CSD would support but is concerned about lessening the chances of passing what is already in this bill. Asks to waive that in consideration.

117 REP. MANNIX: Maybe we can do it with two bills.

118 REP. PARKS: Don't have doubt that people hold this in and at some point it is triggered. Once someone is accused, they are guilty until proven innocent. What is the social utility for society in prosecuting these crimes 20 years later?

133 PAUL DREW: The primary interest is in making sure other children are protected. These people do not stop.

150 REP. MANNIX: Comments on testimony presented. Parallels the crime of burglary to sexual abuse with regard to statute of limitation. The abuser is more of a current threat.

161 PAUL DREW: Yes.

163 REP. MASON: When the argument is presented that way it is very



valid. On the other hand it opens up the question of protection of society. These sanctions don't protect society very well because long term control of these people is not adequate.

190 CHAIR CLARK: Closes hearing on HB 2411. The subcommittee will try to revisit these bills Wednesday or Friday of next week. Adjourns hearing at 4:55 p.m.

Submitted by:      Reviewed by:

Kathy Neely              David Harrell Assistant Office Manager

EXHIBIT LOG:

A            -            Testimony on HB 2412 - Rep. Peter Courtney - 1 page  
B            -            Testimony on HB 2412 - John L. Collins - 1 page  
C            -            Testimony on HB 2411 - John L. Collins - 2 pages D -Testimony  
on HB 2395 - John L. Collins - 2 pages E -Testimony on HB 2406 - John L.  
Collins - 3 pages F - Testimony on HB 2412 - Paul Drews - 1 page G  
-Testimony on HB 2412 - Juvenile Rights Project, Inc. - 2 pages H  
-Testimony on HB 2411 - Joe Spenner - 1 page I -Testimony on HB 2411 -  
Chris Gardner - 2 pages J - Testimony on HB 2411 - Paul Drews - 1 page K  
-Testimony on HB 2406 - Juvenile Rights Project, Inc. - 3 pages