

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 2395 (Public) HB 2408 (Public) HB 2409 (Public) HB 2410 (Public)

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE

February 6, 1991 Hearing Room 357 1:00 p.m. Tapes 20 - 23

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: Don Welch (HB 2410, 2409, 2408) Chris Gardner (HB 2395) Donna Granger (HB 2408, 2410, 2415) Major Dean Renfrow (HB 2408) Tina Nash (HB 2408, 2410, 2415) Sarah Castner, Dpt. Justice (HB 2408) Loretta N. Clark (HB 2408, 2410) David Nebel (HB 2410) Katherine Brown, WRC (HB 2410) Vietta Helmle (HB 2410) Rene McDaniel (HB 2410) Joan Simmons (HB 2410)

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 20, SIDE A

005 REPRESENTATIVE CLARK, CHAIR: Calls the meeting to order at 1:00 p.m.

PUBLIC HEARING ON HB 2408

070 REPRESENTATIVE PETER COURTNEY, HOUSE DISTRICT 30: Brings up Don Welch.

081 DON WELCH, GOVERNOR'S TASK FORCE ON SEX OFFENSES AGAINST CHILDREN: Offers testimony in favor of the bill. (EXHIBIT A). Speaks first to HB 2408. Attached to Exhibit B is the written testimony of Judge Elizabeth Welch. HB 2408 and 2410 try to do the same things to two different populations. There are two categories of abused children, those who have the advantage of a parent who is not an abuser and will protect them and those who are abused and the nonabusing parent is not able to provide support or protect the child. Discusses a hypothetical situations to emphasis point of latter type where the dilemma is that no one has the authority to remove the abuser. Sometime the juvenile court will be involved and will remove the child instead of the abuser from the home. Discusses a statute in California that allows a juvenile judge to have an ex parte hearing, by telephone, to remove the abusing parent. This has been added to give Oregon judge's that authority. We took the Family Abuse Prevention Act language, in chapter 107, and put it in the Juvenile Code and basically gave the judge the authority. The

FAPA allows an abused mate to have the abuser removed. This was transferred to the Juvenile court and allows the judge to do it ex parte. If HB 2408 were passed it would allow a judge to leave the child in the home and remove the abuser from the home. Discusses material in written testimony.

175 REP. MASON: Comments on "gender bashing". Asks to use neutral terms.

186 DON WELCH: Apologizes. Uses the term because statistically it is an accurate term. Agrees to use more neutral phraseology.

189 REP. MANNIX: On page one, comments on suggested removal of "or threat of abuse". There might be a situation where someone in the household threatens abuse but there has been no incident of abuse yet a restraining order could not be granted.

197 DON WELCH: The language makes a specific reference to ORS 418.740, the definition of child abuse, which does not include the threat of abuse. Only looking for statutory consistency.

201 REP. MANNIX: We use it to define immediate and present danger of abuse. But then say based on a recent incident or threat of abuse it leaves a window open to state there is a threat of abuse as defined by the statute and it is enough for the restraining order.

207 DON WELCH: Not arguing with position but bringing attention an issue that needs to be ironed out since definitions are not entirely consistent.

212 REP. MANNIX: On page 2, lines 7 and 8, "the officer who requested the emergency protective order while on duty shall carry copies of the order". Did not understand that. Are they available to hand out, what is the point?

217 DON WELCH: This is taken in whole from the Family Protection Act process and therefore whatever the present practice of a police officer is, relative to responding to those kinds of complaints, is being replicated here.

224 REP. MANNIX: No harm done as long as they know what to do with them. Shouldn't we say "a copy", how many copies is "copies"?

232 REP. EDMUNSON: On page 2 lines 13 and 14 about the availability of an order shall not be effected by the leaving of a child from the household to avoid abuse.

238 DON WELCH: Cannot make it clearer. This is extracted from an existing statute. To guess, when a person feels they have been abused and goes before the court they may be in the situation where the child has fled temporarily and that absence should not be used to foreclose judicial response. Anticipates that is the basis.

250 REP. MANNIX: Would that be better if said "The emergency protective order shall be available regardless of whether or not the endangered child leaves the household to avoid abuse"?

253 DON WELCH: Yes.

255 CHAIR CLARK: Can you explain the procedure currently followed when a law enforcement officer goes in. Is this just giving a judge the

authority to do what he can now do from 8-5 Monday to Friday over the telephone at other time?

263 DON WELCH: No the Juvenile Court under the code, presently has no authority to require an adult to do anything other than pay support or lose custody of a child. It would be specifically empowering the court to have jurisdiction over person currently not within that jurisdiction.

274 REP. PARKS: Section 1 of the bill on line 4 is existing language from what statute?

DON WELCH: That language is in Chapter 107 relevant to abuse. Specifically where LC got the language on line 4, cannot say. Intended to parallel the 107.710 language.

294 HOLLY ROBINSON: Discusses the attached ORS Chapters to SMS of 2410. Do you intend this would be the Juvenile Court Circuit Judge or all Circuit Court Judges?

316 DON WELCH: View the language to be any Circuit Court Judge.

HOLLY ROBINSON: Not your intent to parallel the current Family Abuse proceedings?

DON WELCH: Not in that regard.

HOLLY ROBINSON: Understands HB 2408 can remove the child, correct?

DON WELCH: One can always remove the child under chapter 419. It can always be a part of 2408 that it is a possibility, if it is it is redundant with present language.

325 HOLLY ROBINSON: Discusses sections. One of the options would be to remove the child. That currently exists between 8-5 Monday through Friday but not over the telephone.

DON WELCH: It does exist at night but differently. By statute court staff has authority to affect an emergency shelter care order. It would be orally.

HOLLY ROBINSON: The issue is as to whom the protective order is being addressed, needs to be clarified.

346 CHAIR CLARK: Understands there is a bill that would allow a parent to go in the Family Abuse Protection Act and seek protection on behalf of child only. Is that the same issue as 2408?

355 DON WELCH: The same as 2410.

REP. MANNIX: If we change the language on the availability of the protective order, lines 14 and 15 on page 2, to say, for example, "the emergency protective order shall be available regardless of whether or not the endangered child leaves the household to avoid abuse." And qualify it by stating it is available. The child may be at Grandma and Grandpa's. The premises needs to be precise. What if we added "however the court shall consider the location of the child in determining the premises which are subject to a protective order." Any problems?

373 DON WELCH: No. Needs to know if that language has been necessary for an allegedly abused spouse also.

383 REP. MANNIX: Asks these questions so other witnesses can also try to answer also.

387 CHAIR CLARK: Closes hearing on HB 2408 temporarily. Will take testimony on HB 2410.

PUBLIC HEARING ON HB 2410

394 HOLLY ROBINSON: Discusses and describes the bill. Expands the FAPA to children or step child of persons who are already protected under the statute. Includes a copy of the statute for reference.

439 DON WELCH: Offers testimony in favor of HB 2410. (EXHIBIT B) HB 2410 would sound redundant to HB 2408 unless you focus on the distinction in the two populations. This bill seeks to make available to the nonoffending parent the same protection to the child as to them if abuse occurs. The Family Abuse Prevention Act does not include children. We seek a policy decision to decide if more than one court is involved. Submits there has to be. Need to truly conform Family Abuse Prevention Act to be a "family abuse" prevention alternative. Offers amendments. The present bill is good, however, it creates an issue where one of the parties seeks to raise as an issue of custody the parenting practices of the other. Did not want those arguments to be under the FAPA process. Seeks to restrict its jurisdiction to specific kinds of abuse. Seeks to add on page 2 to subsections d and e which narrow the field of subject matter relative to a child. The Task Force has affectively agreed to the language there.

TAPE 21, SIDE A

077 CHAIR CLARK: HB 2408 and 2410 do some of the samethings or the samething?

DON WELCH: The same to different populations.

CHAIR CLARK: How so?

082 DON WELCH: The juvenile victim in HB 2408 is also in a situation where there is no other parent able to exercise control and protection and therefore is a proper subject for the juvenile court. HB 2410 deals with more common situation. A child is abused and there is another parent who is there and would be available to protect the child but could be aided in that protection by having the recourse to a judicial process to remove the assaulter under FAPA. If these merge they merge under the juvenile code.

CHAIR CLARK: Don't understand that.

DON WELCH: The only jurisdiction to place the child outside the home is the juvenile court. Seeking to differentiate those two populations on the basis that the Juvenile court is overkill in a majority of those cases. The court becomes technically the guardian of the child and the parent the physical custodian.

105 CHAIR CLARK: Just to clarify, HB 2408 is necessary for the child who does not have a parent able or willing to go into family court to get a restraining order on the child's behalf.

DON WELCH: Yes that is my position.

122 REP. SUNSERI: Not following this. Could you give a "thumbnail

sketch" of what this accomplishes?

DON WELCH: There is a domestic environment, two adults and a child. The child is abused. An officer goes to the scene and assessment is the abuser needs to be removed to stop the abuse, but also the officer's judgment is the other parent is not adequate to provide care. The child could still be in detrimental care circumstances because of the incapacity of the nonabusing parent to protect the child or it might be a parent who denies the legitimacy of the complaint relative to the abuse. The child is not in safe hands. The child would be removed to a CSD home pending a trial. A Judge may write an order to that effect. Changes the fact situation to put a competent, in control, willing to provide care, other responsible adult. No reason to get the Juvenile Court involved. But that person might need the services of the FAPA to force this individual who is the abuser to leave the scene. It seeks to afford to these two populations the same kind of protection that is available to adults under FAPA.

148 REP. PARKS: What is different about that first situation from what is done currently done?

DON WELCH: That is what we do today.

REP. PARKS: Understands about requiring the offending parent to leave. Don't understand the child being taken into protective custody is not changed from current standard except the judge is authorizing?

167 DON WELCH: Attempts to clarify. Currently in the first fact situation, the court would be to remove the child to protective environment. What this would afford is the Juvenile Court the authority, in the alternative, to order the malefactor out of the situation.

REP. PARKS: Which bill does that? What way are they different?

DON WELCH: Each does. They are different because you have two different kinds of juvenile populations. One is both an abusing parent and an inadequate parent and the other is an abusing parent and a competent parent who needs some judicial support in effort to get the abuser out.

REP. PARKS: That is HB 2410 which provides the court can issues order by phone? Tell me the mechanics. 187 DON WELCH: Under HB 2408 the telephonic exclusion is available. Under HB 2410 its the same process under FAPA but broadens the definition of household member which requires the individual to testify before the court.

187 REP. PARKS: The same routine as a family abuse order.

DON WELCH: Yes. It just expands the definition for a limited purpose.

CHAIR CLARK: Are you creating a two tiered system. What happens now under FAPA on an evening or weekend when a judge is not available by telephone?

194 DON WELCH: Don't know.

198 HOLLY ROBINSON: In response to Rep. Parks. The way 2408 is written, is a stand alone provision which was not suppose to be added to juvenile code. It is your intention that Section 1 be part of the code?

DON WELCH: That is my intention.

HOLLY ROBINSON: As this bill is written and FAPA are hardly different at all but the intent, is to have Section 1 of HB 2408 added to the provisions of the Juvenile Code. As they now stand in front of us they are parallel perhaps with the exception of adding the ability to use the FAPA for child. It is the intent to give the JC judges the same ability as Circuit Court judges.

225 DON WELCH: No response. The nuance of LC drafting is not within my province. We dealt with this in telling LC what we wanted.

229 CHAIR CLARK: On 2410 if you have a parent who is willing to assist and wants to go in under FAPA to get restraining order on behalf of the child, could that parent, without 2410, cause what envisioned under 2408 to happen? Concerned child abuse would be extended to one who is afraid to intervene. Afraid it drew the child in the middle of the parents, creating a new domestic violence. Does 2410 have the same danger?

248 DON WELCH: Hopes it does not.

263 CHAIR CLARK: Gives example of where 2410 and 2408 will be used.

DON WELCH: As a practical matter under that fact situation, would intervene.

273 HOLLY ROBINSON: The answer is the JC would have the ability to remove the child. What 2408 does is restrain the adult from the household. It gives the JC another tool. Currently the JC has jurisdiction over the child and could not in that situation keep the abuser away from the child.

284 CHAIR CLARK: Discusses Chair's intentions. Rescesses hearing on HB 2410.

PUBLIC HEARING ON HB 2408

301 SARAH CASTNER, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, FAMILY LAW SECTION: In concept HB 2408 is good. (EXHIBIT C) Recommends changing "emergency protective order" to "emergency restraining order". A protective order can be confused with protective custody which does not require prior judicial notification. Section 2, allows the restraining order after the petition is filed which is very important for JC purposes to have authority over a person with no legal relationship to the child. Suggests including a section on enforcement to make it clear how these will be enforced.

362 CHAIR CLARK: Suggesting similar language?

SARAH CASTNER: Would suggest similar language as 107.720. Final suggestion is on page 3, lines 12 to 15 about "issuing an order excluding a person from a residence" where you have to affirmatively show the person seeking the order has a right to possession of premises. Would change "person seeking the order" to "person having physical custody".

394 CHAIR CLARK: What happens if they nab the kid?

SARAH CASTNER: Under the JC if you nab a kid, committing custodial interference.

CHAIR CLARK: Does not matter because under the language they have

physical custody.

405 HOLLY ROBINSON: In scenario raised, CSD is trying to keep father away from that residence?

SARAH CASTER: Right, CSD often has legal custody but the child may be in foster care and CSD wants to return the child home or to grandparents. CSD will seek this restraining order.

430 HOLLY ROBINSON: The key in that situation is the issue of possession of the premises.

SARAH CASTNER: Yes.

HOLLY ROBINSON: Lines 14 and 15, the issue is how to make sure you are getting the right person away. How do you determine the person who has the right to possession of the premises?

TAPE 20, SIDE B

020 SARAH CASTNER: If CSD goes to JC to obtain a restraining order they have the right to do that. Rather than having the other parent, with possession of the premises.

028 REP. BAUMAN: Concerned with how much protection there is in a restraining order. Not much. Concerned children will be penalized in cases where there was abuse going on around the child because they are being removed. Frustrated with the bills presented and wants feedback on what the objective is.

057 SARAH CASTNER: Share same concerns that a restraining order does not do what it is suppose to do. Believes it is another tool and enforcement method of making sure the children are protected the best we can do.

082 REP. BAUMAN: Concerned neither bill brings us much closer and have a risk of bringing in the court as a not very well informed partner to one side of the power struggle. Not sure we can solve the problems here but just don't want to make them worse.

097 SARAH CASTNER: Believes having the law enforcement officer request the emergency restraining order gives a better balance to bill. It is not like the nonoffender getting the restraining order at 3:00 a.m. Does not think it makes it worse but give police officers and the courts and the children some added protection.

106 CHAIR CLARK: Wants to hear from someone outside the system.

114 CHRISTINA NASH, PRIVATE CITIZEN: Offers testimony on personal experience.

121 DONNA GRANGER, PRIVATE CITIZEN: Simply a support person for Tina's family. This is a situation that would cover everyone of these bills. This is an actual case.

132 CHAIR CLARK: Understand you are here in support of all the bills before the committee.

TINA NASH: Yes.

CHAIR CLARK: Will take testimony in that light regarding all bills.

138 TINA NASH: Reads from written testimony. (EXHIBIT D) Discusses own experience of children being raped by a family friend.

176 REP. PARKS: What county was this in?

TINA NASH: Crook County.

178 REP. PARKS: Stated children would not have an advocate in court, what do is meant by that?

TINA NASH: Thinks the advocate could be a parent to speak for and with them or a counselor. Discusses hardship on a 4 year old to explain what happened because they don't know what happened.

195 CHAIR CLARK: Several of the bills on the agenda could have helped in your family's situation.

198 REP. BELL: Have you read through the bills you have listed?

TINA NASH: Not really.

REP. BELL: The point is if you review the bills and find there were additional needs, would be interested in knowing what they are.

215 TINA NASH: Discusses experience of the other child discussed in written testimony. The offender paid the children with candy and beating to keep quite.

231 CHAIR CLARK: Thanks the witnesses.

TINA NASH: This is just a portion of what three years took us to get. There are a lot of things in each bill that people should see as people instead of words.

239 CHAIR CLARK: Recesses at 2:20 p.m. Reconvenes at 2:35 p.m. Discusses plan for the remaining time of the meeting.

CONTINUING PUBLIC HEARING ON HB 2408

276 MAJOR DEAN RENFROW, OREGON DEPARTMENT OF STATE POLICE, CRIMINAL DIRECTOR: Offers testimony in support. (EXHIBIT E) Reads from written testimony.

327 CHAIR CLARK: Comments to committee. Don't believe will be moving HB s 240 8, 2409, 241 0 today. Encourages undivided attention to the testimony given. Closes hearing on HB 2408.

PUBLIC HEARING ON HB 2410

335 LORETTA CLARK, PRIVATE CITIZEN: Offers testimony in favor of HB 2410. Offers personal experience regarding abuse and how 2410 relates. HB 2410 should be expanded to cover everyone. Children should have no fewer rights than adults and should be able to be protected by the same reasoning as an adult. Refers to testimony from Don Welch on HB 2410. The existing bill should include any child living in the house not just children and stepchildren. In Mr. Welch's testimony it refers to Section 5, comments on that.

TAPE 21, SIDE B



023 CHAIR CLARK: Made excellent points.

031 DAVID NEBEL, OREGON LEGAL SERVICES, OREGON COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE: Offers testimony against HB 2410. (EXHIBIT F)

Introduces Karen Berkowitz. We do not feel amendment to FAPA is an appropriate means to the end that we agree with, preventing child abuse and aiding victims of that abuse. This bill will allow one parent to obtain an order restraining the other from abusing and perhaps removing that parent based on the mere allegation of abuse. Don't believe that was the purpose behind FAPA. Believes it would weigh FAPA down with baggage that ultimately could impede its effectiveness.

077 KAREN BERKOWITZ, OREGON LEGAL SERVICES: Offers further testimony against HB 241 0. By allowing FAPA to be used as a "quick out" you circumvent the juvenile system by the criminal system. There is no need to have any kind of criminal intervention. If take the authority to get a restraining order away from the JC and put it in this general area of abuse laws, not solving the problem. Procedurally, it allows any victim of abuse to petition or get a restraining order. The victim is a child, who is going to petition on behalf of a child? It means either a parent or the child will have to do it through a guardian ad litem appointed. It potentially allows a third party to come into this case and interfere with the family relationship.

109 REP. EDMUNSON: Does this open the door to abuse of the law? That there could be 3rd party adults that could use this?

KAREN BERKOWITZ: Right.

REP. EDMUNSON: Is that what you are saying?

KAREN BERKOWITZ: Yes. The language really does not go far enough to protect against so called "spanking" but in addition you have the victim with the right to petition. Discusses a minor child petitioning.

127 REP. EDMUNSON: In the adult case is there any potential for third party petitioner?

KAREN BERKOWITZ: Do not understand?

REP. EDMUNSON: Is this available in an adult situation?

KAREN BERKOWITZ: No because they have the right to go and petition on own behalf but a minor would have the right under the statute but no capacity under the law and would need someone to go in.

139 REP. MANNIX: Under FAPA as written, it appears children can be subject to the proceedings they simply can't be the petitioners or the ones alleging the abuse. Discusses provisions in FAPA except the child is not allowed to assert they are the subject of the abuse.

147 KAREN BERKOWITZ: Suggests if go beyond the face of this statute and look at ORCP on party status on the minor case.

150 REP. MANNIX: Under 2410, would avoid going through JC proceedings and use FAPA proceeding. Your concern is it will be used as leverage against one and other.

KAREN BERKOWITZ: Yes.

REP. MANNIX: Isn't that the case with any restraining order law in the state? Aren't we really relying, under both these bills, on a smart decent judge exercising some sort of discretion? Shouldn't we lean over backwards to protect the children and not worry about whether people will abuse the system?

167 KAREN BERKOWITZ: That concern would be addressed more powerful by HB 240 8.

REP. MANNIX: But then we drag the Juvenile Court in.

KAREN BERKOWITZ: Believes they can provide the services not available in a FAPA hearing.

166 REP. MANNIX: Why can't a judge say "I am not satisfied that you ought to be using this statute and will send you in to use the JC proceeding or you will have to file under that because I am not going to give you an order."

KAREN BERKOWITZ: The judge could but don't see the need have a proceeding under 2410.

171 REP. MASON: Comments on what has been previously said. It would be nice if judges had lots of time to look at these things. Discusses experience in these situations.

200 KAREN BERKOWITZ: Another concern is with the child needing an adult to intervene. The rest of FAPA statute discusses a custody aspect. Someone has to be awarded custody. What do you do? It is too messy to include children in this particular statute.

212 REP. PARKS: Under the impression if allege in affidavit either harm or threat of harm that is basis for restraining order and a temporary custody order, right?

KAREN BERKOWITZ: Correct.

REP. PARKS: This would put family abuse restraining order on par with an average divorce case restraining order, right?

KAREN BERKOWITZ: Does not understand.

REP. PARKS: This seeks to have a restraining order against someone under FAPA and they just want to add the children in. You can do that if you file a divorce and say the child is in danger of abuse.

KAREN BERKOWITZ: If it is in context of divorce with an on going case, no problems. This kind of statute is not one of those. It is intended to be an emergency stop gap measure and contemplates there will be another case.

241 REP. PARKS: The party seeking to restrain is entitled to a hearing. Understands you saying a judge will not decide on it if there is not enough time because it may be complicated. Don't think judges do that.

KAREN BERKOWITZ: Responds on experience in own county.

REP. PARKS: Do you have to be in a criminal proceeding to be entitled to compensation in some way?

274 KAREN BERKOWITZ: At least need some kind of police record or reported crime.

REP. PARKS: Basic objection is this is not elaborate enough or not enough services provided back and forth?

KAREN BERKOWITZ: It is geared to avoiding the juvenile system. The object is to solve the problem to provide services.

283 KATHERINE BROWN, WOMEN'S RIGHTS COALITION: Offers testimony on 2410. Echoes thoughts and concerns of the two previous witnesses. (EXHIBIT G) Believes HB 2408 solves the problems presented by Mr. Welch. Does not make same distinction he made in testimony. HB 2408 would cover any situation discussed. HB 2410 muddies the waters. The FAPA is a quick fix in an emergency situation if children can petition for help under act there will be an evidentiary problem because of hearsay.

341 REP. MANNIX: How would you feel about opening up 2408 a little. It starts off by requiring this temporary order be sought by a law enforcement officer. Do the police have to be called in every time in order to trigger 2408. Sees 2410 as an alternative where the police did not have to be called in.

354 KATE BROWN: Concerned is with custody cases and by involving police officer, there is a third party involved to cooperate evidence.

360 REP. MANNIX: Can we define "law enforcement officer" or add Child Services Protection Agency?

KATE BROWN: Social workers, CSD, another party involved would be satisfactory.

REP. MANNIX: As long as you have some third party, would not mind to opening that up to give alternative to using FAPA. Would not have to call cops.

364 REP. EDMUNSON: Please address the issue of third party adult, noncustodial parent, grandparent, neighbor or, who thinks the family's lifestyle is wrong. Do you see potential for abuse of this law?

371 KATE BROWN: There is no proceeding for them to get temporary custody other than temporary protective order restraint. It prohibits anyone from moving the child from the home. Understands under this bill, any person could become the child's guardian. Definitely see the potential for abuse.

387 REP. PARKS: Right now you get a leg up in the divorce itself. Don't see that as a valid objection.

398 KATE BROWN: Parties are already getting orders now.

401 REP. PARKS: This is an advantage in a divorce case. What is the advantage here?

TAPE 22, SIDE A

002 KATE BROWN: The orders that judges, in the Tri-County Area, are giving allowing temporary protective orders restrain for custody, which prohibits either party from taking the child out of the family residence. It forces both parents to stay in the home or make a decision on what will happen with the child. Very different from an award of

temporary custody.

008 REP. PARKS: Is it common for one of the parents to leave the house?

010 KATE BROWN: At least in Mult. County the judges are not awarding temporary custody without a full hearing which means mediation.

014 REP. PARKS: You file a petition for temporary custody and you get a hearing and everyone stays in the house until the hearing date?

016 KATE BROWN: No. In an abuse situation where someone applies under FAPA, will get a temporary custody order. If there is no abuse, the Mult. County judges are not awarding temporary custody without a full hearing on that issue.

021 REP. PARKS: You can't get an order when the huSB and has yelled, threatened, and pushed around the wife, to get him out?

024 KATE BROWN: Under the abuse prevention act, yes.

025 REP. PARKS: Talking about in the restraining order for a divorce.

028 KATE BROWN: No.

030 CHAIR CLARK: They are often done simultaneously.

033 REP. MASON: You articulated my concerns better, with regard to written testimony, second paragraph. This would be used inappropriately used in a custody battle.

043 KATE BROWN: Frowned up to use this to solely to get a leg up in custody.

054 VIETTA HELMLE, DIRECTOR, MID-VALLEY WOMEN'S CRISIS SERVICE: Opposed to HB 2410. We would join with Coalition. (EXHIBIT H) Would like to have the abuser jailed and upon release not allowed to contact the family again. FAPA was developed because it is not that simple.

090 REP. PARKS: Setting up a thing that guarantees a large involvement of government. May be taking boarder line cases or prolonging the situation. Do you see the fact that a women might let it ride when confronted with having to call the police as a potential problem?

099 VIETTA HELMLE: Almost all of us do. What happens is the abuse goes on and on. Believes citizens don't have enough clarity and understanding of child abuse to mange it in the family. Needs to be dealt with in the family.

115 JUDE ARMITA, ATTORNEY FOR THE OREGON COALITION: Here to lend support to Ms. Helmle. Believes what happens with child sexual abuse if there is enough evidence you have a criminal prosecution. If there is not, that is where the dilemma is.

142 JOAN SIMMONS, PRIVATE CITIZEN: Came to talk generically. I mother of a sexually abused child. (EXHIBIT I) Reads from the written testimony given to the committee.

202 ZETTA MCDANIEL, PRIVATE CITIZEN: Offers testimony on the bills. (EXHIBIT J) Reads from written testimony concerning personal experiences.

283 REP. MASON: Refers to brochure handed out entitled MOMs.

JOAN SIMMONS: Comments on handout, they are in Eugene.

REP. MASON: Comments on statistics in the pamphlet. Wants to know where they come from? One of three girls is molested before the age of 18.

JOAN SIMMONS: There are a number of studies done. Choose that because majority of women do not tell of abuse.

307 REP. MASON: It says 50% of the molesters are family members.

JOAN SIMMONS: Do not have most recent statistics from CSD. They generally point towards the offenders being known to the victims and over half are family members of some kind. Most frequently parents or parent figures.

319 REP. MASON: According to this, simple math, would mean that 1 out of 6 is molested by a family member.

JOAN SIMMONS: Of the children molested, yes.

331 CHAIR CLARK: Have to move on.

JOAN SIMMONS: Statistics change on boys, fair to say 1 out 6 boys.

342 REP. MASON: Do you maintain incest is occurring in 1/3 to 1/6 of the families in this state?

JOAN SIMMONS: Believes 1/3 of the women are mothers of molested children. Very prevalent problem.

354 CHAIR CLARK: Asked Counsel to put an amendment together that goes in the direction Rep. Mannix suggested that takes the approach of HB 2408 and broadens it so that not dependent on a law enforcement officer. Closes hearing on HB 2410.

PUBLIC HEARING ON HB 2409

384 DON WELCH: Offers testimony in favor of HB 2409. (EXHIBIT J)

TAPE 23, SIDE A

004 DON WELCH: Specifically this group would be young people brought to the attention of the Juvenile Court as victims released to the custody of a nonabusing parent and are, in the eyes of an investigator, being subjected either subtle or overtly pressured to take back the allegation. This could be a reaction of that parent to the circumstances of the incident when they believe it is the child's fault the whole thing happened. Discusses definitions in the juvenile code specifically 419.476(1)(c) concerning jurisdiction.

041 CHAIR CLARK: Is the person pressuring the child to recant the same person who the allegation of abuse is?

DON WELCH: No, it is the custodial person, the nonoffender. We can prove it if done with enough frequency.

057 REP. SUNSERI: Struggling to keep up with all of this. Sees potential for abuse of these things. There is an open door for abusing this and

making the child the victim again.

DON WELCH: Can understand dilemma, it is a confusing subject matter. Trying to protect the child from further confusion and pressure and seeking to minimize the pressure.

071 REP. SUNSERI: Appreciates the intent and willing to say error on side of children but see potential of others being harmed.

DON WELCH: Judges are paid to decide on the basis of evidence, must have a cause for concern that will show a change in the child's expression.

083 REP. MASON: This is the worse bill before Judiciary because there is an abused child and if that child makes some statements, the DA can decide if the story is beginning to get weak, can pull the child out. This will destroy the relationship between the child and nonabusing parent. Basically saying to the child if they do not keep the story consistent, they will be pulled out of the home.

108 DON WELCH: The DA will not pull, the judge will write an order. The person who is presumed impartial will make an assessment.

113 REP. BELL: What is the penalty for pressuring a witness when it is not domestic relations case?

CHAIR CLARK: "Pressuring a witness"?

REP. BELL: Tampering with witnesses.

120 HOLLY ROBINSON: A C felony.

121 REP. EDMUNSON: Did not hear substantive response to Rep. Mason's comments.

DON WELCH: The primary focus was this victim is the person abused by the system also. It is a difficult decision to remove a child from home. Comments on the testimony heard.

146 REP. EDMUNSON: Don't want to beat this into the ground. It seems the point Rep. Mason is making is in every 100 of these cases perhaps there is one where the child is not telling the correct story. If the prosecutor proceeds and questions the child about the truthfulness of the story and the story begins to change, concerned the DA will then say the story is changing. Would that be grounds to remove the child? How is this balanced? Did the committee consider protection for that unlikely but possible situation?

171 DON WELCH: Yes. There was a fair amount of discussion dealing with how many children make false allegations. Can only presume a judge would except the showing in context of more information. It would be a broader inquiry.

182 REP. BAUMAN: Discusses experience with JC. Judges look very carefully at parent's ability of to protect against further abuse. Removal under these circumstances would be like a removal with the danger of on going abuse where there is no abuse at all. There is just the danger of manipulation.

205 DON WELCH: Refers to the second paragraph of written testimony, EXHIBIT K. There are judges that would agree and not agree with

characterization. The effort was to make a solid frame of reference for debate and a decision be made. There is a potential for making a policy statement relative whether is or not emotional abuse and reason for removal.

218 REP. BAUMAN: The reasonable extension is there will be judges deciding whether a child is in danger of having his testimony pressured away by a parent. If the offending partner gets back with the custodial partner there is always the danger there would have to be removal in every case. Maybe we have to land on the policy statement which is, if abuse has occurred in the family then the child has got to be removed from all participants in the family altogether or this danger indeed exists.

243 CHAIR CLARK: To make an order provided for the change of custody of the child, a judge has to decide that it is in the best interest of the child to be pulled out of the home. All circumstances aside, the belief by a judge that the child is being subject to recant allegations of abuse by definition transcends all other considerations on what is in the best interest of the child. Wouldn't a judge now on finding the child has been subject to abuse, be able to revisit that issue and make the same order based on the abuse itself?

264 DON WELCH: You are asking if currently a judge could revisit it on the basis of existing jurisdiction? Some judges appear to be willing and some do not, that is the reason for this bill.

273 REP. PARKS: How many more bills do you have coming up? Interested in methodology. What you did in formalizing this could have been accomplished by adding "emotionally" to the section that talks about physical danger. That would make it one of the considerations. You have lowered the burden of proof when you said reasonable belief. Was that intentional?

293 DON WELCH: Yes. This is at a preliminary level when the court is proceeding prior to an adjudication on the facts. We were working in the context of probable, reasonable cause.

REP. PARKS: That would run through the physophysical make up of your approach.

DON WELCH: Some of the bills don't deal with pre-adjudicative procedure. These three today all are pre-adjudicative.

305 REP. MANNIX: We are dealing with a lot of technicalities. Supports what the task force is trying to do. Wouldn't it make it stronger if line 20 is changed to "if substantial evidence establishes". Then you have an evidentiary standard. Add at the end "and the court determines that it is in the best interest of the child to order a change in custody." All we care about is the best interest of the child.

340 DON WELCH: Has no problem with approach.

343 REP. BELL: Problem with that approach. What is best for child and family? Even if the mother is trying to convince the child to drop the charges, not convinced that is the best time to take the child out of the home. Maybe requiring counsel and keeping child with her is more appropriate than taking the child away.

360 REP. MANNIX: That is something that can be addressed in every instance. Just saying to look at the best interest of the child. This

language would not preclude that.

364 CHAIR CLARK: Will have a chance to look at these in work session.  
Closes hearing on HB 240 9.

PUBLIC HEARING ON HB 2395

390 HOLLY ROBINSON: Discusses HB 2395. This bill contains hearsay provisions to make them amendable to facilitating child victims in the courtroom. There was previous testimony regarding US Supreme Court decisions in packets.

TAPE 22, SIDE B

005 HOLLY ROBINSON: Discusses packet of information provided.

018 CHRIS GARDNER: Offers testimony in favor of HB 2395. Discusses child abuse and the consequences of it. Discusses studies done on child abuse and sexuality.

052 REP. MASON: The implication is there are 100,000 felons out in society.

065 CHRIS GARDNER: That is exactly correct.

REP. MASON: We are maxed out already. Wonders were the source of this problem is. Can't send that many through the system.

070 REP. MANNIX: Can debate the statistics. Interested in dealing with the felon and victims. Interested in hearing what we can do to help and protect victims and either rehabilitate or put the felons away.

CHRIS GARDNER: When we deal with child abuse as a criminal phenoma, the victim is a very profound part of this equation. Discusses another study on history of abuse and neglect.

099 REP. MASON: What is the correlation with single parent families?

102 CHRIS GARDNER: There may or may not be a problem with single parent families.

REP. MASON: There is. The correlation is extremely high.

CHRIS GARDNER: The second thing is a sense in custody fights an explosion of false allegations. Suggests having specific proposals to change HB 2395 to make it more effective in giving the court's the ability to get the information needed to properly adjudicate these cases.

125 CHAIR CLARK: Is it true the bill takes the basic concept and extend to civil context?

CHRIS GARDNER: Yes. Suggests:

1. If this bill applies to civil cases, will come into the courtroom under six situations: custody fights, civil damage litigation, tort litigation, termination of parental rights litigation, criminal litigation, juvenile dependency litigation, where the child is alleged to be the victim of a crime and in need of services, and juvenile criminal litigation where the sexual abuse offender is a juvenile themselves. Four of these are focused on perpetrator and have sanctions.



Two have an ultimate goal in doing what is right for the child.

1.1 Recommends line 2 of page 3 the words "a statement made by a child victim who is under 10 years of age, which states describes an act of sexual conduct performed with or on a child by another" that the word "describes" be changed to "concerns".

1.2 When a child is unavailable as a witness and is under 10 years of age is to change language found on line 10 "of the defendant's participation in the conduct to..." to the "defendant's opportunity to participate". Specific reason is the list of factors on the bottom of page 3 used to consider for these statements to be admitted. Discusses Idaho v. Wright. Discusses and defines hearsay evidence.

1.3 Redrafting the statute to allow out of court statements concerning sex abuse of a child of any age without showing that they are available to testify and cross examination. In typical child sexual abuse case, the most compelling evidence is the history of how the child revealed the abuse and is frequently the only evidence available.

1.4 Suggests defining a lower standard of admissibility for use of hearsay statement in juvenile court dependency cases than is in criminal cases. There is only one ultimate issue, what is in the best interest of this child. Comments on the evidence that would be available in these types of cases. There may be physical evidence, behavioral changes, etc.

TAPE 23, SIDE B

032 CHRIS GARDNER: Continues testimony on the bill.

040 REP. BAUMAN: Wondered if your county most frequently would try the criminal case first?

CHRIS GARDNER: Yes. Would be concerned if lose the juvenile case we might be foreclosed on res judicata, from the criminal proceeding.

059 REP. BAUMAN: Concerned about protecting criminal process when a juvenile case brings in evidence that is not admissible in the criminal case. Is there some way to protect this process?

061 CHRIS GARDNER: Trying to make it so one system is not reacted to the other. The juvenile evidence is not admissible in the criminal case. All those issue still arise in the criminal standards and have meet those in the criminal case.

067 REP. BAUMAN: What about the court record?

CHRIS GARDNER: Not directly admissible in criminal case.

REP. BAUMAN: Making sure it is possible to do one without the other.

074 CHRIS GARDNER: Do not have an absolute answer to right now.

077 CHAIR CLARK: Thanks witness. Will be asking for views on some other bills.

082 CHRIS GARDNER: Would like to come back. Offers to work with Counsel on amendments suggested.

085 CHAIR CLARK: Adjourns at 4:45 p.m.

Submitted by: Reviewed by:

Kathy Neely David Harrell Assistant Office Manager

EXHIBIT LOG:

A - Testimony on HB 2408 - Don Welch - 2 pages B - Testimony  
on HB 2410 - Don Welch - 7 pages C - Testimony on HB 2408 - Sarah  
Castner - 3 pages D - Testimony on all bills this hearing - Tina  
Nash - 1 page E - Testimony on HB 2408 - Mj. Dean Renfrow - 3  
pages F - Testimony on HB 2410 - David Nebel - 3 pages  
G - Testimony on HB 2408 - Kate Brown - 1 page H - Testimony  
on HB 2410 - Kate Brown - 1 page I - Testimony on HB 2408, 2409,  
2410 - Joan Simmons - 1 page J - Testimony on HB 2408, 2409, 2410  
- Zetta McDaniel - 1 page K - Testimony on HB 2409 - Don Welch - 2  
pages L - Testimony on HB 2410 - Joan Simmons - 2 pages