

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.

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE

February 13, 1991Hearing Room 357 3:00 p.m.Tapes 30-31

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

VISITING MEMBER:Rep. Peter Courtney

STAFF PRESENT: Holly Robinson, Committee Counsel Jeff Steve, Committee Assistant

MEASURES CONSIDERED:HB 2411 - Statute of Limitation, PH-WS HB 2412 - Expedited Judicial Proceedings, PH-WS HB 2406 - Crime Victims Compensation, WS HB 2492 - Crime Victims Compensation, PH-WS

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TAPE 30, SIDE A

004 REP. CLARK: Calls meeting to order at 3:25 p.m.

(Tape 30, Side A) HB 2411 - PUBLIC HEARING Witnesses: Jane Aiken, OCDLA John Collins, Governor's Task Force

019 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes HB 2411. >This bill extends the statute of limitations for certain felony and misdemeanor sexual offenses. Felony offenses increase to five years after the victim turns 18 years of age, rather than six years after the commission of the offense. >Supplied background information on the statute of limitations on sex offenses. (EXHIBIT A)

042 JANE AIKEN, ATTORNEY AT LAW, REPRESENTING OCDLA: >Stated concerns with HB 2411. >Does not know the actual number of cases or number of

incidences effected by this bill.

077 REP. BELL: Is the expense of a case criteria on which to make a decision on this bill?

079 AIKEN: No. There would be an impact from the standpoint of either a defense attorney or a prosecuting attorney making decisions based on the evidence, gathering of the evidence, and determining what can be taken to a jury or a grand jury.

093 REP. PARKS: Has there been consideration concerning the aspect of the constitutional right to a speedy trial?

099 ROBINSON: There is no correlation between a right to a speedy trial and the length of time on the statute of limitations.

112 REP. MASON: Why is the bill written in terms of five years after the victim becomes 18 years of age?

118 JOHN COLLINS, GOVERNOR'S TASK FORCE: This is the language of a bill regarding civil cases. >The procedure is called "do process", as it relates to a preindictment delay. Once an indictment is made, it then becomes an issue of speedy trial. There can be situations where a lengthy period of delay, prior to being charged, may make it impossible for a person to defend themselves.

136 REP. MANNIX: Is there any magic to the "five years" language?

144 COLLINS: No. This was the language of the prior bill. There is no reason the language could not be changed to accomplish the same thing.

(Tape 30, Side A) HB 2411 - WORK SESSION

188 MOTION:REP. MASON moves to amend HB 2411 Section 1 (2), line 7, by changing "five years after the commission of the crime" to "the time before the victim obtains the age of 21 years of age,..."

216 REP. MANNIX: Disagrees with the amendments. This will shorten the statute of limitations, which were expanded two years prior. Preferred language would be "six years after the commission of the crime, or six years after the victim obtains 18 years of age".

234 ROBINSON: Current law states "10 years" for the crimes on lines 10 through 24 in HB 2411. The remaining felonies would be "3 years". >Law currently states, for the crimes listed on lines 10 - 24, there is now a six year statute of limitations which was passed during the 1989 Session. There is no symmetry because there are separate statute of limitations for sex offenders.

253 CHAIR CLARK: The purpose of the bill is to get at the situation where a person does not recall, remember, or has blocked out the incident, and at a later age would recall the incident. The bill would not precluded a person in coming forward with what has happened. The lack of symmetry is explainable for this reason.

267 REP. MASON: Restates motion.

289 VOTE:In a roll call vote, the motion fails, with Reps. Edmunson, Mason, and Parks voting AYE. Reps Bell, Mannix, Sunseri and Clark voting NAY.

307 MOTION:REP. MANNIX moves to amend HB 2411 Section 1 (2) lines 7 and 8 would read "A prosecution for any of the following felonies may be commenced within six years after the commission of the crime, or six years after the victim attains 18 years of age, whichever is later,...." and to separate the misdemeanors.

335 REP. MANNIX: If the word "five" were left in the bill, there would be people for whom the statute of limitations presently would allow prosecution. He asked to leave in the six year concept, adding "attains 18 years of age". >The language could state that the statute of limitations for sexual offenses is six years, and if the victim is under 18 years of age, it would be six years from the 18th birthday. The present law is six years for those under 18 years of age.

370 REP. MASON: Why are we wed to the phrase "six years after the victim obtains the age of 18", instead of 24 years of age?

TAPE 31, SIDE A

002 ROBINSON: Suggested the following: "A prosecution for any of the following felonies may be commenced before the victims, if the victim was under 18 at the time the crime was committed." The Committee can then agree upon an age, but it is very clear that the offense occurred before the victim turned 18 years of age. This would also clarify the statute of limitations.

015 REP. MASON: Are the changes to the statute of limitations retroactive?

020 COLLINS: No. The Legislature has the power to make this retroactive, but unless stated it will not be retroactive. If the statute has run under existing law, or pre-1989 law, it cannot be resurrected unless stated by the Legislature.

040 ROBINSON: If the Legislature changed the statute of limitations, making age of majority the issue, would this assist prosecution?

043 COLLINS: Believes the court would come to the same conclusion, unless the Legislature specifically stated that it be retroactive.

047 CHAIR CLARK: How can the Legislature specify that this is retroactive?

050 COLLINS: The statute of limitations are very much a matter of public policy.

068 REP. MANNIX restated his motion amending HB 2411 lines 7-9 to read "A prosecution for any of the following felonies may be commenced within the later of the following dates: Six years after the commission of the crime or, if the victim, at the time of the crime, was under 18 years of age, by the victim's 23rd birthday.

075 REP. SUNSERI: Offers a friendly amendment changing the language "by the victim's 24th birthday".

080 REP. MANNIX: Agreed.

100 REP. MASON: If we do this there will be a substantial fiscal and correctional impact.

174 VOTE:In a roll call vote, the motion carries, with Representatives Bell, Edmunson, Mannix and Sunseri voting AYE. Representatives Mason, Parks and Clark voting NAY.

182 MOTION:REP. MANNIX moves to amend HB 2411 Section 1 (3), lines 25 and 26 to read "A prosecution for any, of the following misdemeanors may be commenced within the later of the following dates: four years after the commission of the crime or, if the victim, at the time of the crime, was under 18 years of age, by the victim's 22nd birthday.

VOTE:Hearing no objection, Chair Clark so moves. Rep. Bauman was excused.

207 MOTION:REP. MANNIX moves HB 2411, as amended, to the full Judiciary Committee with a do pass recommendation.

237 ROBINSON: HB 2411, as amended, currently does the following: >The felony offenses listed in lines 10 - 24 of HB 2411, the statute of limitations would be six years for adult victims or up to the age of 24 for child victims. >The misdemeanor offenses listed on lines 28-32, page 1, the statute of limitations would be four years for adult victims, or for victims under the age of 18, at the time of the commission of the crime, up to their 22nd birthday.

258 REP. EDMUNSON: Supports the fact that the bill may have a fiscal impact. If we are going to spend money in the criminal justice system, this is an area where it should be done.

286 REP. PARKS: When the statute of limitations is changed from three to six years there is a dynamic potential to increase the cost, therefore limiting the services available to children. What is the responsibility to Ways and Means with regard to HB 2411?

311 ROBINSON: Should HB 2411 be moved in its current form, it will be scheduled for a full committee, allowing Legislative Fiscal to create a fiscal analysis, and the criminal justice counsel to prepare a prison impact statement. Since the impact is indirect on the system, and because those decisions are discretionary, it would not go to Ways and Means. It would have the fiscal impact statement when going to the floor, as well as the potential prison bed impact statement.

370 MOTION:REP. BAUMAN moved the committee to suspend the rules allowing her to enter a vote on REP. MANNIX'S previous amendment.

TAPE 30, SIDE B

025 VOTE:In a roll call vote, the motion fails, with Representatives Bauman, Edmunson, Mason and Parks voting AYE. Representatives Bell, Mannix, Sunseri and Clark voting NAY.

040 REP. EDMUNSON: Called for the question, sending HB 2411, as amended, to the full Judiciary Committee.

047 VOTE:In a roll call vote, the motion carries, with Representatives Bauman, Bell, Edmunson, Mannix, Mason, Sunseri and Clark voting AYE. Representative Parks voting NAY.

058 CHAIR CLARK: Calls for a recess.

059 CHAIR CLARK: Reconvenes the hearing.

(Tape 30, Side B) HB 2412 - PUBLIC HEARING Witnesses: Debbie Waddell, Medford, Oregon Jane Aiken, OCDLA

079 DEBBIE WADDELL, MEDFORD, OREGON: Testified in support of HB 2412. (EXHIBIT B)

241 REP. MANNIX: There is a civil remedy still available to the witness under ORS 12.117. The law was changed during the 1989 Legislative Session to allow a child victim of intentional abuse to bring a civil action up to five years after the child attains 18 years of age.

271 JANE AIKEN, ATTORNEY AT LAW, REPRESENTING OCDLA: >Stated concerns with HB 2412. >HB 2412 is much more broad than the intended purpose.

297 ROBINSON: Gives overview of the bill and background included in the Federal Victim's Service and Protection Act of 1990. (EXHIBIT C) >Page 8187 was the model which the Task Force drew from when looking for a speedy trial provision. >An option available to the committee is to limit this to children who have been victims of physical abuse, sexual abuse or exploitation. This would make HB 2412 parallel to the federal statute. >Another option would be a witness to a crime committed against another person.

332 AIKEN: There are several areas of the law, other than domestic relations, criminal or juvenile proceedings, where a child may be a witness. >If the bill is to be narrowed, it should be addressed with specific statutes. >The matter could be addressed more appropriately through uniform trial court rules that would direct the courts to take these factors into consideration when setting trials.

(Tape 30, Side B) HB 2412 - WORK SESSION

384 MOTION:CHAIR CLARK moves to amend HB 2412 Section 1 line 4, strike "in any proceeding" inserting " in any case where the child is a victim of a crime,..."

TAPE 31, SIDE B

018 REP. PARKS: Suggested a friendly amendment to section the bill by chapters, allowing each crime to be specified by chapter pertaining to the crime. The "family" term should be defined in the step-parent family.

035 CHAIR CLARK: Restating motion to HB 2412, Section 1 line 4, "Except for good cause shown by either party, in any case where a child or member of the child's family is a victim of a crime, other than juvenile proceeding,...."

062 VOTE: Hearing no objection, Chair Clark so moves.

066 MOTION:REP. BAUMAN moves to amend HB 2412 Section 1, lines 7 and 8, deleting "The court shall insure a speedy trial..."

070 VOTE:In a roll call vote the motion carries, with Representatives Bell, Mannix and Sunseri voting NAY.

080 MOTION:REP. BAUMAN moves to amend HB 2412 Section 1, lines 8 and 9, deleting "In cases in which the judge is deciding whether or not to

grant a continuance,".

088 REP. MANNIX: Offered a friendly amendment, adding "When determining whether to grant a continuance, the judge shall ..."

089 REP. BAUMAN restated motion.

VOTE:Hearing no objection, Chair Clark so moves.

095 MOTION:REP. MANNIX moves HB 2412, as amended, to the full Judiciary Committee with a do pass recommendation.

100 VOTE:In a roll call vote, the motion carries with all members voting AYE.

(Tape 31, Side B) HB 2406 - WORK SESSION

139 MOTION:REP. MANNIX moves HB 2406 to the full Judiciary Committee with a do pass recommendation.

140 ROBINSON: Overview of HB 2406 (EXHIBIT D), fiscal impact statement (EXHIBIT E) and submitted written testimony from Gerri Fitzgerald, Director, Crime Victims' Program. (EXHIBIT E)

180 PAUL DREWS, ASSISTANT ADMINISTRATOR, CHILDREN'S SERVICES DIVISION: The Children's Services Division portion of the fiscal impact statement was based on 1990 data.

205 MOTION:REP. MANNIX moves HB 2406 to the full Judiciary Committee with a do pass recommendation, and that it be subsequently referred to the Ways and Means Committee, by which motion his previous motion was effectively withdrawn.

208 REP BELL: Urged the committee to seriously consider the long term effects on youth who are victims of sexual assault.

221 REP. MANNIX: Is it possible to split a bill?

229 CHAIR CLARK: Counsel has suggested inserting Section 1 of HB 2406 into HB 2492, sending Section 2 to the Ways and Means Committee.

234 MOTION:REP. MANNIX withdraws his earlier motion.

235 MOTION:REP. MANNIX moves to amend HB 2492 deleting Section 1 lines 5 - 30.

VOTE:Hearing no objection, Chair Clark so moves.

238 MOTION:REP. MANNIX moves HB 2492, as amended, to the full Judiciary Committee, and that it be subsequently referred to the Ways and Means Committee.

243 VOTE:In a roll call vote, the motion carries with all members voting AYE.

(Tape 31, Side B) HB 2492 - PUBLIC HEARING Witnesses:Representative Peter Courtney Bobbi Shelton, Salem, Oregon

283 BOBBI SHELTON, 3654 47TH AVENUE NE, SALEM, OREGON: Testified in support of HB 2492. >Victim of attempted rape and sodomy. >Feels huSB

and and daughter should have been compensated.

302 REPRESENTATIVE PETER COURTNEY, STATE DISTRICT 33: Secondary language speaks to a child, not adults. The intent would be to speak to Ms. Shelton's daughter's situation.

326 REP. MANNIX: For the record, witnessing an event can also include being on the scene after the event.

(Tape 31, Side B) HB 2492 - WORK SESSION

355 MOTION:REP. MANNIX moves to amend HB 2492 to include Section 1 of HB 240 6, lines 5 - 30, as amended and added to HB 2492.

VOTE:Hearing no objection, Chair Clark so moves.

(Tape 31, Side B) HB 2411 - WORK SESSION

368 MOTION:REP. EDMUNSON moves to suspend the rules for the purpose of reconsidering HB 2411.

VOTE:Hearing no objection, Chair Clark so moves.

390 MOTION:REP. EDMUNSON moves to amend HB 2411 with a conceptual amendment adding a retroactivity clause.

437 REP. PARKS: Suggested this amendment be applied retroactively, and stated his objection to the concept.

VOTE:Hearing no objection, Chair Clark so moves.

445 MOTION:REP. MANNIX moves HB 2411, as amended, to the full Judiciary Committee with a do pass recommendation.

VOTE:In a roll call vote, the motion carries, with Representative Parks voting NAY.

468 CHAIR CLARK: Adjourns meeting.

Transcribed by: Reviewed by:

Debbie Schieno Holly Robinson Assistant Committee Administrator

EXHIBIT LOG:

A - HB 2411 - Staff Measure Summary and Research - 7 pages
B - Testimony on HB 2412 - Debbie Waddell - 7 pages C - HB
2412 - Staff Measure Summary and Research - 17 pages D - HB 2406 -
Staff Measure Summary - 3 pages E - HB 2406 - Fiscal Impact
Statement F - Testimony on HB 2406 - Gerri Fitzgerald - 1 page