

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 27, 1991Hearing Room 357 3:00 p.m.Tapes 44 - 45

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

MEMBER EXCUSED: Rep. Jim Edmunson

STAFF PRESENT: Holly Robinson, Committee Counsel Kathy Neely,
Committee Assistant MEASURES CONSIDERED: HB 2395 WS
(Hearsay Exception)

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TAPE 44, SIDE A

002 REPRESENTATIVE CLARK, CHAIR: Calls the meeting to order at 3:15 p.m. Starting with HB 2395.

WORK SESSION ON HB 2395

021 HOLLY ROBINSON: Discusses packet. (AMENDMENTS - EXHIBITS A, MEMO - EXHIBIT B, AMENDMENTS - EXHIBIT C, AMENDMENTS - EXHIBIT D) Discusses the amendments

in packets. Reads the bill with the amendments and explains changes from current law and changes in amendments. Reminds committee on the issues on the table from last hearing.

079 CHAIR CLARK: If a child is unavailable the other issues of reliability comes in to play. Unavailability can be physical or determination that testifying will be traumatic.

082 ROBINSON: Yes. That is current law. Comments on unavailable.

087 REP. PARKS: When the child is there, then they are in for any purpose. That is the only qualification, the child is available for cross examination.

091 ROBINSON: And the statement describes the conduct.

092 REP. PARKS: The second one on reliability. What is that?

094 ROBINSON: Substantial lack of memory, incompetence to testify, unable to communicate about the offense. Established by expert testimony.

CHAIR CLARK: Lines 14 through 18 on page 3. Reliability are lines 26 through 43 on that page.

ROBINSON: Proposal has 2 tiers. One is indicia of reliability for noncriminal cases.

110 REP. MASON: Why 2 different standards?

CHAIR CLARK: Burden of proof.

113 ROBINSON: Position of Task Force is to get a child within jurisdiction of the court information want to bring before trier of fact, the amount of information as opposed to the burden of proof should be lower. Constitutional test is high in criminal case and in a juvenile proceeding burden of proof is generally lower. It is a whole different ball park.

133 REP. MASON: Have three hearings, juvenile, civil and criminal.

135 ROBINSON: Yes. Previously the statute did not deal with civil. The bill extends to all proceedings.

139 CHAIR CLARK: Includes juvenile court.

140 ROBINSON: Yes.

142 REP. MASON: There is no right to confrontation in civil proceeding. Is there one in juvenile proceeding?

145 ROBINSON: Correct. In a criminal case but if issue is a single episode of severe abuse where the perpetrator gets charged in criminal court at the same time having a juvenile court dependency petition filed. The child may have made statements on the abuse in the juvenile court. The issue is in juvenile court proceeding where the court is attempting to ascertain certain facts and the child makes statements to a CSD worker and want to get those statements into court. In a juvenile court proceeding, the standards of proof would be lower because of the nature of the proceeding and no right to confrontation.

REP. MASON: Seems from a basic policy standpoint, the idea of having three different standards does not make sense. Should have one standard. Discusses confrontation clause/rights.

188 REP. CLARK: Why not have two standards?

192 HOLLY ROBINSON: Based on conversations believes, given fact of Supreme Court decision on what is constitutional and what has to be decided on a case by case basis, it is workable. Comments on what a court will look at. Comments on termination of parental rights case.

210 REP. MANNIX: Seems ought to have 2 standards, criminal and civil and recognize that juvenile proceedings take on nature of both and they should apply when needed. Requires focusing on where the case is proceeding.

229 HOLLY ROBINSON: The bill speaks only to juvenile proceedings and does not distinguish between dependency and delinquency.

REP. CLARK: Could have a laundry list within juvenile proceedings on

what gets what standard.

235 DEBORAH WILSON, DEPARTMENT OF JUSTICE: Comments on right to confrontation. There needs to be: 1) witness be truly unavailable and 2) child....

CHAIR CLARK: What does "truly unavailable" mean?

DEBORAH WILSON: Defined as lack of memory, incompetent to testify, unable to communicate because of fear, expert testimony that witness suffers from severe emotional trauma.

CHAIR CLARK: That qualifies ...

DEBORAH WILSON: Yes. The second part is child's statement must be reliable and trustworthy. All required by Ohio v. Roberts and right to confrontation. Discusses what was done last session regarding corroborative evidence. Understands bill now requires 1) if available for cross examination anything can come in because there is no right to confrontation problem, no hearsay issues; 2) if unavailable, for civil have to have indicia of reliability, if criminal need indicia of reliability and corroborative evidence.

271 REP. PARKS: The distinction between criminal and civil is corroboration?

DEBORAH WILSON: Correct.

REP. PARKS: That is what this bill does?

DEBORAH WILSON: Yes. Comments on last session. Discusses right to confrontation clause.

280 REP. CLARK: Would the Department have a position on proposal that: if child is available to testify, the statement can come in regardless of corroborating evidence.

DEBORAH WILSON: There is no right to confrontation clause issue because of availability.

REP. CLARK: A policy decision have to make.

285 REP. PARKS: The 3 criteria are: unavailability, reliability, and corroboration.

293 REP. CLARK: No, would be unavailability, corroboration, and reliability.

HOLLY ROBINSON: Only civil and criminal.

REP. PARKS: In criminal, availability is just if there and can be cross examined.

REP. CLARK: Yes.

298 REP. PARKS: It is really a 2 tier test: finding cannot testify for some reason and if it is reliable without any corroboration.

HOLLY ROBINSON: Corroboration is required in criminal.

303 REP. CLARK: Any further comments on that issue?

HOLLY ROBINSON: That is just the overview.

REP. CLARK: Would like to go through the bill issue by issue.

HOLLY ROBINSON: Attempted to rewrite page 3 of bill, section of the evidence code that is being dealt with. Discusses EXHIBIT C, amendments to the bill.

400 REP. CLARK: Have take opportunity to participate and moved it into corroborative evidence and pulled it out of indicia of reliability.

404 HOLLY ROBINSON: Correct. Explains a criminal trial regarding a child not being available. Threshold is corroborative evidence.

REP. PARKS: Are we going to leave these example in?

412 HOLLY ROBINSON: Except delating lines 42 and 43 because Supreme Court held that is unconstitutional, and line 35, leaving list alone.

REP. PARKS: Taking substantial out?

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014 HOLLY ROBINSON: Correct and adding, as is constitutionality required to be admitted. That language came from the rape/shield language.

DEBORAH WILSON: Idaho v. Wright talks about indicia of reliability.

020 HOLLY ROBINSON: Clear that is has to be a case by case determination.

023 REP. CLARK: What is being proposed?

HOLLY ROBINSON: At the end of line 10 after "conduct" of the printed bill, lines 2 through 10 would be deleted.

028 REP. CLARK: Start up with "no statement may be admitted" on line 10.

029 HOLLY ROBINSON: Correct.

CHAIR CLARK: Where does "unless otherwise agreed by the parties"?

HOLLY ROBINSON: Line 18.

REP. CLARK: Take out of printed bill lines 18 beginning with "unless" through line 25.

039 REP. BAUMAN: Questions the rational behind Idaho v. wright and removing the extrinsic evidence to show opportunity to commit the crime, removing that as an indicia of reliability but allows its use as corroborative evidence.

046 DEBORAH WILSON: Correct. Discusses Idaho v. Wright regarding trustworthiness of the statement not facts that showed whether act occurred or not. Comments on factors discussed.

058 REP. CLARK: They drew a distinction between corroborative evidence

as to what happened and what is in statement.

DEBORAH WILSON: Whether the statement is trustworthy. Factors are age, maturity, motive, stories, etc. A distinction between that and whether or not it really occurred.

067 REP. CLARK: Has nothing to do with the statement itself.

DEBORAH WILSON: Correct.

068 REP. BAUMAN: Looking at it anilitically: go through the reliability of the statement to decide if going to consider or not. If it is reliable enough it must be corroborated, in criminal trial.

DEBORAH WILSON: Correct. The first threshold is child's available, if unavailable, is the statement reliable. If a criminal proceeding, the safeguard of corroborating evidence.

REP. BAUMAN: Opportunity is a much lower degree than in past.

082 DEBORAH WILSON: Last time had participation in it. Was that meant in a broad general sense, it has been a problem.

093 CHAIR CLARK: Who wanted this?

DEBORAH WILSON: Oregon District Attorneys Association.

CHAIR CLARK: Is opportunity to participate in the conduct broadly construed to include dinner with daughter and driving her home?

DEBORAH WILSON: Depends on how the judge rules.

102 REP. BAUMAN: Probably is because talking about opportunity. Appears there is a conjunctive requirement.

DEBORAH WILSON: Corroboration of evidence of the act of sexual conduct and that perpetrator's opportunity to participate in conduct. Comments on broadness of statute.

118 CHAIR CLARK: "Opportunity to participate" is very broad.

DEBORAH WILSON: Yes, broader than what was in statute last time. Includes more than just actual participation in the act.

119 REP. MANNIX: Happy with first paragraph. Wants to deal with second paragraph.

121 CHAIR CLARK: Attorney General has come in. Asks if he has any comments, which he does not.

124 HOLLY ROBINSON: Points out difference between opportunity to participate and participate. Comments on sufficant testimony before the committee on children not remembering actual event.

131 CHAIR CLARK: Have 3 things: availability, reliability of statement itself, and corroborating evidence.

135 REP. MANNIX: Questions what age does witness recommend for blank in amendments provided. Thinking of 8 years.

139 DEBORAH WILSON: It was 10 years the last time because it was an ABA recommended age. Some would like it to be any where from 12 to 14 years. It is policy question.

149 MARY HOYT, CHAIR, TASK FORCE ON SEX OFFENSE AGAINST CHILDREN: Intent was to extend the hearsay to civil proceedings. Did not discuss changing age from 10 years.

156 REP. MANNIX: Favors 14 years.

REP. SUNSERI: Favors 14 also.

REP. PARKS: 10 years. Reason is ABA standards.

REP. BELL: Comments on different reasons for different ages. Comment on fear of younger children and social fear of older teens. Remember testimony of mother of son who would rather die than speak up. Comments on children in early teens and reasons.

172 CHAIR CLARK: Any constitutional issues wrapped up in age?

DEBORAH WILSON: No. Uses the word "child", so it should be under 18 years.

175 HOLLY ROBINSON: Refreshes committee memory on discussion about addressing victims over 10 years that are disabled. If raise age could catch them.

178 CHAIR CLARK: Rep. Bell is around 12 or 14.

REP. BELL: Yes.

REP. BAUMAN: Stay with 10 years. Reasons are: carving an exception, have not been asked by Task Force to move the age up. Comments on why young children are unavailable. Lot to do with developmental considerations.

206 MOTION:CHAIR CLARK: Gives direction of discussion. The Chair moves the "-1" amendments (EXHIBIT C) into the bill. Moves it with the blanks. Any discussion, any objections? Hearing none, it is adopted.

229 HOLLY ROBINSON: Other issues are the examination to determine child's availability done as close to hearing as possible.

220 REP. MANNIX: Language is stilted in one sense. Comments on language and asks about clarification.

HOLLY ROBINSON: Move the phrase "of the child" and say "a parent who is not the alleged perpetrator".

246 CHAIR CLARK: Is there a motion to remove that?

MOTION:REP. MANNIX: Moves to delete "of the child" and insert "or" to make it read: "In the presence of the attorneys and a parent who is not the alleged perpetrator or legal guardian".

258 REP. BELL: Say "or who is", otherwise it is an alternative to alleged perpetrator.

263 CHAIR CLARK: Leave it to counsel to draft it. Explains where the committee is current. Rep. Mannix has moved deletion of "of the child"

and insertion of "or".

274 REP. PARKS: Clarify what happened to the defendant.

HOLLY ROBINSON: Defendant is not in there.

REP. PARKS: Only the attorneys.

CHAIR CLARK: On competence issue.

REP. PARKS: Asks Deborah Wilson if it will fly.

283 HOLLY ROBINSON: Current law, current hearsay statute.

287 REP. MASON: Questions Deborah Wilson on the Oregon court opinion on the Oregon confrontation clause.

DEBORAH WILSON: Looked at last time. Determined it would not necessarily require a face to face confrontation.

REP. MASON: Could have a stricter state standard.

300 REP. MANNIX: Would have a catch 22 if defendant was there. Point is to not have the child testify while defendant is there.

301 CHAIR CLARK: The issue is not question of defendant being present but when have hearing.

REP. MANNIX: Not changing current law.

CHAIR CLARK: Just moving time of hearing to immediately prior to trial. Is there objection to motion?

322 REP. PARKS: Would like clarification.

325 CHAIR CLARK: Motion is to delete words "of the child" and insert word "or" on line 14. Is there objection to that?

REP. MASON: Looked up ORS 138.060(3).

CHAIR CLARK: Is there objection to the motion? Hearing none, so ordered.

335 MOTION:REP. MASON: The statute says only the state can appeal, the defendant cannot appeal. Moves the deletion of the last sentence on line 15 and the first words on line 16.

CHAIR CLARK: Rep. mason moves the deletion of last sentence on line 15 and first words on line 16.

348 REP. MASON: Good place to start and then run into appeals.

REP. MANNIX: To the motion: point is defendant only cares about appealing at end of proceeding. State can't appeal at end of adjudication. Comments on pretrial appeals by state because they are only ones jeopardized. Defendant can let it go and appeal at the end.

368 REP. MASON: It is the other way around. The state would make appeal because child has to testify.

370 9REP. MANNIX: If defendant loses at trial, can appeal. If defendant

is found not guilty, state cannot appeal.

383 REP. MASON: If state wins motion, the trial goes ahead without the child.

REP. MANNIX: Talking about if the state wanted to exclude the child.

REP. MASON: The state wants the hearsay to come in. Without the child being there.

393 CHAIR CLARK: Yes. State is looking for determination that the child is unavailable. If court finds child is available, the statement comes in.

401 REP. MANNIX: What really matters is what happens after the trial. If defendant is found guilty, gets to appeal and if not, double jeopardy applies and state cannot appeal.

412 REP. BAUMAN: Believes that hearsay comes in based on reliability and corroboration whether the child is available or not.

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009 CHAIR CLARK: True, whether child is available or not. If not available, the statement comes in depending on corroboration.

REP. BAUMAN: Not determination of availability that will be appealed, the determination of reliability.

CHAIR CLARK: Are there other pretrial issues that get appealed under ORS 138 .060.

015 DEBORAH WILSON: Motions to suppress in criminal cases.

023 CHAIR CLARK: As a technical matter the language in lines 15 and 16 is not necessary because it is not the introduction of the statements that hangs on this, simply the declaration of availability. Statement comes in based on different criteria.

DEBORAH WILSON: Agrees but whether a child is unavailable or available might be an issue.

CHAIR CLARK: Technical matter, not actually required.

033 REP. MANNIX: Taking out language from the statute that leaves in purpose of examination shall be to aid the court in making findings regarding child's availability and reliability.

038 CHAIR CLARK: The way issue has been proposed, that language comes out.

HOLLY ROBINSON: In place would read: "if child is found to be unavailable, the court shall then determine the admissibility of the evidence". Confusing on meaning.

043 REP. MANNIX: Should have statement making separation clear. Put in purpose of hearing after line 16.

049 CHAIR CLARK: Would you propose statement be the existing law.

REP. MANNIX: Yes.

CHAIR CLARK: Would Rep. Mason accept that as a friendly amendment?

REP. MASON: Yes.

CHAIR CLARK: The proposed amendment, as amended, is to take out words "such

determination shall be appealable under ORS 138.060(3)" and reinsert the sentence from printed bill beginning on line 21, page 3, ending on line 23 "the purpose of the examination shall be (a)"

064 REP. PARKS: Don't want to lose the statute by not having some severability in there in case it is a confrontation issue. Discusses hearings and concern.

074 CHAIR CLARK: If able to propose, would be to have the statement about purpose of hearing be limited to child's availability so any determination on reliability of statement happens in defendant's presence.

REP. PARKS: Yes.

CHAIR CLARK: Makes certain amount of sense.

REP. PARKS: Defendant contributes nothing to a competence hearing.

081 CHAIR CLARK: On reliability of statement, defendant needs to be there. Understand point.

082 REP. MANNIX: Request that Rep. Mason's motion not have friendly amendment attached. Support the friendly amendment but not Rep. Mason's amendment.

089 CHAIR CLARK: Is there objection to taking out the friendly motion?

REP. PARKS: Back to just taking the sentence out?

CHAIR CLARK: Is there objection? Hearing none, so ordered. The motion on the floor is Rep. Mason's motion to delete the sentence beginning on line 15 of the 2395-1 amendments. Further discussion on that motion?

096 REP. MASON: This creates an uneven situation because if the state loses, they would have lost in a trial where the child was present.

105 HOLLY ROBINSON: Can have an unavailable child but not get over the threshold of unavailability. Believes that is what the state wants to appeal.

DEBORAH WILSON: Have a judge say a child is available and state could say child is really not and cannot testify. Prior to going to trial state wants to know whether or not judge is wrong.

111 HOLLY ROBINSON: If found child is available but the indicia of reliability is not high enough to warrant admissibility of evidence, believes that was intent.

115 CHAIR CLARK: Sure that proposal from Mr. Gardner was an attempt to make sure reliability issue was appealable before trial. Need to assure

that reliability issue is appealable.

HOLLY ROBINSON: This does. Intent was admissability of evidence being appealable.

131 CHAIR CLARK: Proposal to pull out is "such determination shall be appealable" meaning the admissability of the evidence. Need to determine if "determination" should be plural or singular. Rep. Mason has moved the sentence out. Would Rep. Mason consider a friendly amendment to have phrase be changed to "such determination", singular.

144 REP. MASON: Yes. ORS 138.060, 138.070, and this taking place right before trial, don't think that statute works well in this situation.

151 CHAIR CLARK: Not a friendly amendments. Chair calls question on Rep. Mason's motion. Restates the motion.

VOTE: Deletion of sentence on lines 15 and 16.

AYE: Mason, Clark NO: Bauman, Bell, Mannix, Parks, Sunseri EXCUSED: Edmunson

CHAIR CLARK: Motion fails.

166 MOTION:REP. MANNIX: Moves to reinsert "the purpose of the examination shall be to aid the court in making its findings regarding the child's availability as a witness and the reliability of the child's statement". Right before "if the child is found".

CHAIR CLARK: Rep. Mannix has moved line 22-24 of the printed bill be reinserted back on line 14 of the 2395-1 amendments.

171 REP. BAUMAN: Comments on defendant being in the room. Defendant is not in the room?

REP. MANNIX: Not in the room.

DEBORAH WILSON: Not a change in current law. Discusses the difference.

184 HOLLY ROBINSON: It is on the record outside the presence of the jury.

DEBORAH WILSON: Yes.

187 CHAIR CLARK: They are troubled by "in current law".

190 REP. MANNIX: During trial, defendant is able to bring evidence to challenge hearsay evidence. Point is whether or not it gets in front of jury. Only reason for pretrial hearing. No problem with defendant not being present.

201 REP. BAUMAN: Question is oriented to practitioners, the law does not appear clear on face.

CHAIR CLARK: Is that the practice?

210 DEBORAH WILSON: Not sure about practices.

212 REP. BAUMAN: In own experience, defendant has been present.

CHAIR CLARK: Very sure since last session, the practice is attorneys and parents are there.

219 REP. MANNIX: Not legally requiring exclusion of the defendant. Saying who has to be there.

226 REP. BAUMAN: On page 4, regarding current law, says "only the judge". On line 27.

HOLLY ROBINSON: That concerns video taping.

237 CHAIR CLARK: Recesses hearing at 4:25. Reconvenes at 4:35 p.m. Rep. Mannix has moved insertion of purpose of examination. Is there further discussion, any objection? Hearing none, so ordered. Question of age now.

MOTION:REP. MANNIX: Moves to insert age of 14 on lines 4 and 5 of 2395-1.

248 CHAIR CLARK: Rep. Mannix moves the insertion of age 14 on lines 4 and 5 of the 2395-1 amendments. To the motion.

251 REP. MANNIX: To the motion: believes there is a substantive concept that can be applied when dealing with age of consent regarding statutory rape for example. Discusses that point.

CHAIR CLARK: Committee is discussing the age issue.

265 REP. BELL: Plead case about raising age. Strongly believes earlier teen years, young people are facing their own sexuality and very traumatic time of life and when it gets mixed up with sexual crimes, can be devastated. Comments on cases of friends. Would go as high as 16, with 14 being minimal.

309 REP. MANNIX: Statutory rape the ages are 12, 14, and 16, in middle range if use 14.

312 CHAIR CLARK: Further discussion on proposal. Calls for vote

VOTE: Raise age from 10 to 14. AYE: Bell, Mannix, Sunseri NO: Bauman, Mason, Parks, Clark EXCUSED: Edmunson

CHAIR CLARK: Motion fails.

323 MOTION:REP. MANNIX: Moves to make the age 12 years.

CHAIR CLARK: Rep. Mannix moves the insertion of 12 years. Calls for the vote.

VOTE: Raise age from 10 to 12 years. AYE: Mannix, Sunseri, Clark NO: Bauman, Bell, Parks EXCUSED: Edmunson, Mason

CHAIR CLARK: Motion fails. Further issues in the bill.

335 REP. MANNIX: Assumes it is at 10 years currently.

338 HOLLY ROBINSON: Reinsert current statute.

348 CHAIR CLARK: Need a motion.

HOLLY ROBINSON: Current law stands.

CHAIR CLARK: Other issues.

HOLLY ROBINSON: "Substantial" is being removed because of lines 2 through 9 and fact language inserted to possess indicia of reliability, replaces substantial language. Do not need motion.

351 REP. PARKS: What would be the effect of dropping substantial?

HOLLY ROBINSON: Allows the two tiers. Discusses indicia of reliability that has constitutional basis.

361 CHAIR CLARK: Move on.

HOLLY ROBINSON: Committee has adopted the amendments but on page 3, it states to delete lines 35 and 42, currently in list of indicia of reliability that are not constitutionally allowable under Idaho.

372 CHAIR CLARK: Not constitutionally allowable on the question on reliability but are for corroboration.

HOLLY ROBINSON: Right. Line 44 on has been rewritten. New issue: SubSection 24 on page 4 lines 16 through 29 discuss use of contemporaneous video taping for children under 10. Line 27 talks about whether defendant should be there. Recommendation is parties come out on line 27. Insert language on line 29 allowing judge and perpetrator to communicate with persons in room where child is testifying by appropriate electronic method. Have attorneys and child in one room and the rest in other room. There has to be way which objections can be answered.

426 CHAIR CLARK: Effect is to take defendant out of room but to allow defendant's attorney to talk to defendant and defendant can watch it.

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014 HOLLY ROBINSON: Yes, and to allow judge to talk to attorneys, if not in the room.

018 MOTION:REP. MANNIX: Moves those amendments.

CHAIR CLARK: Don't have to because they are already in the amendments in the bill.

REP. MANNIX: Withdraws.

023 MOTION:REP. BELL: Moves to reconsider the amendment that dealt with age 12.

CHAIR CLARK: Rep. Bell moves for reconsideration of the vote on the proposed amendment to increase the age to 12. Does that requires unanimous consent?

HOLLY ROBINSON: Two-thirds vote.

CHAIR CLARK: Is there objection to reconsideration? Calls for vote.

VOTE: Reconsideration of age 12. AYE: Bell, Mannix, Sunseri, Clark NO: Bauman, Mason, Parks EXCUSED: Edmunson

CHAIR CLARK: Motion fails for lack of 2/3 majority.

033 MOTION: REP. MANNIX: Moves to insert the age of 13.

CHAIR CLARK: Rep. Mannix moves to insert the age of 13. Calls for vote.

VOTE: Insert the age of 13. AYE: Bell, Mannix, Sunseri, Clark NO: Bauman, Mason, Parks, EXCUSED: Edmunson

CHAIR CLARK: Motion is adopted.

046 MOTION:REP. MANNIX: Moves HB 2395 as amended to the full committee with a do pass recommendation.

047 CHAIR CLARK: Rep. Mannix moves HB 2395 as amended to full committee with a do pass recommendation. Is there discussion?

048 MOTION:REP. MASON: Makes motion to change to age 16. Moves to amend Rep. Mannix's motion to insert 16.

052 CHAIR CLARK: Rep. Mason has proposed a friendly amendment to insert the age 16. Would Rep. Mannix consider it?

REP. MANNIX: No.

CHAIR CLARK: Does not consider.

REP. MASON: Was moving to amend the motion to the full committee.

064 CHAIR CLARK: Have a vote on the motion to amend the motion to the full committee. To the motion.

REP. MASON: Erked that wanted 12 and could win at 13. Makes no sense.

REP. BELL: If motion fails, back to

CHAIR CLARK: Back to moving the bill as amended to full committee. Reminds committee there is another chamber that might not like what committee has done. Motion on floor is to amend Rep. Mannix's motion to increase age to 16.

076 REP. MANNIX: There is a big difference between the ages. Will vote against.

CHAIR CLARK: Rep. Sunseri calls the question.

VOTE: To amend motion to insert age of 16. AYE: Bell, Mason NO: Mannix, Parks, Sunseri, Clark EXCUSED: Edmunson, Bauman

CHAIR CLARK: Motion fails. Back at motion to full committee as amended with do pass recommendation. Question has been called.

VOTE: To full committee as amended with do pass recommendation.

AYE: Bauman, Bell, Mannix, Mason, Parks, Sunseri, Clark NO: 0 EXCUSED: Edmunson

090 CHAIR CLARK: HB 2395 as amended is passed to the full committee with do pass recommendation.

095 REP. BAUMAN: Had proposed amendment related to ORS Chapter 675 that was not discussed.

099 CHAIR CLARK: That deals with?

REP. BAUMAN: With psychiatrists, psychologists, ...

101 MOTION:CHAIR CLARK: This was an issue that was brought last time. Did not get to its. Chair will move reconsideration for the purpose of considering the amendment only. Is there objection, hearing none, it is so ordered.

107 REP. BAUMAN: Would like to hear discussion on amendment before making motion.

111 CHUCK BENNET, OREGON PSYCHOLOGICAL ASSOCIATION: Proposed amendment was worked with Committee Counsel. Discusses amendment which addresses question of including diagnosis done with practitioners licensed under ORS 675. Comments on role of psychologist.

126 REP. BAUMAN: Answers question.

REP. MANNIX: Was this intended to be listed at page 1 after subsection 4?

130 HOLLY ROBINSON: Yes.

133 REP. MANNIX: Would like to have age be consistent with rest. Referring to ORS Chapter 675 rather than giving specific individual was alright. Would read for a child under 13 years old.

141 REP. BAUMAN: Concern is treatment is quite different. Concern is lack of a distinction between a child victim and a child or adult defendant. Very high premium placed on treatment.

159 MOTION:REP. MANNIX: Don't think it should be limited to children. Should parallel the medical diagnosis, sub 4. Moves it to read "Statements made to persons licensed under ORS Chapter 675 for purposes of diagnosis or treatment of a mental or

emotional disorder insofar as those statements are reasonably pertinent to that diagnosis or treatment."

167 CHAIR CLARK: Rep. Mannix has moved the proposed amendment without reference to age.

REP. BAUMAN: Is the purpose to do away with privilege between psychiatrist and patient?

REP. MANNIX: No. Discusses purpose - to include adult.

CHUCK BENNET: Correct.

CHAIR CLARK: Confidentiality issues is totally separate.

REP. MANNIX: Yes.

178 CHAIR CLARK: Is there objection? Hearing none, it is so ordered.

MOTION:REP. MANNIX: Moves HB 2395 as amended to the full committee with a do pass recommendation.

CHAIR CLARK: Rep. Mannix moves HB 2395 as amended to the full committee with do pass recommendation. Further discussion. Calls for vote.

VOTE: HB 2395 as amended to full committee. AYE: Bauman, Bell, Mannix, Mason, Parks, Sunseri, Clark NO: 0 EXCUSED: Edmunson

CHAIR CLARK: Bill is passed to the full committee. Rep. Parks will carry the bill. Adjourns hearing at 5:02 p.m.

Submitted by: Reviewed by:

Kathy Neely David Harrell Assistant Office Manager

EXHIBIT LOG:

A - Amendments to HB 2395 - 1 page B- Memorandum on HB 2395
- Holly Robinson - 3 pages C - Amendments to HB 2395 - Holly
Robinson - 2 pages D - Amendments to HB 2395 - 1 page