

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

March 8, 1991Hearing Room 357 2:00 p.m.Tapes 50, 51, & 54

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

MEASURES HB 2669 PH (Obscene Material)  
CONSIDERED: HB 2681 PH (Pornographic Videos) HB 2668 PH  
(Tort Action For Child Abuse)

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TAPE 50, SIDE A

004 CHAIR CLARK: Calls the meeting to order at 2:35 p.m. Discusses the agenda.

HB 2681 - CHILD PORNOGRAPHY - PUBLIC HEARING

Witnesses: Representative Kevin Mannix, District Chuck Adams, Oregon Women's Leadership Task Force Olive Hodson, Executive Director, OWLTF Jeffrey Kent, US District Attorney for Oregon Warren Deras, Chief Counsel Holly Pruet, Executive Director, Oregon Coalition Dean Renfrow, Oregon State Police Marcus Lawson, US Customs Service Paul Groza, US Postal Inspector Patrick Grace, Oreogn Library Association Senator Larry Hill

017 HOLLY ROBINSON: Makes possession of child pornography a class C felony.

033 REP. MANNIX, DISTRICT 32: HB 2681 addresses possession of child pornography.

054 OLIVE HODSON, EXECUTIVE DIRECTOR, OREGON WOMEN'S LEADERSHIP TASK FORCE: (EXHIBIT A) Supports HB 2681 criminalizing possession of child pornography. \*Child pornography is an epidemic level in the US. \*Child pornography is used along with child abuse. \*Discusses child abuse cases with regard to pornography. \*Discusses state wide petition drive to get a law like HB 2681.

101 SENATOR LARRY HILL: (EXHIBIT B) \*19 other states have made possession of child pornography illegal. \*HB 2681 will provide law enforcement with a tool. Currently they must prove the person produced,

dealt, or transported the material over state lines in order to prosecute. \*Discusses a 1986 criminal case from Bend Oregon, Langley. \*Must take the Oregon Constitution into account while criminalizing child pornography. \*Must be in the state's compelling interest to protect the victims. Possession is a necessary link in the change of abuse of the child. \*Comments on free speech rights and protection.

206 JEFFREY KENT, US ASSISTANT ATTORNEY, TASK FORCE: (EXHIBIT C) Comment on written material given to the committee. \*Discusses the Langley case, OSB orne v. Ohio, and State v. Henry. \*State v. Henry indicates that while prohibiting distribution of obscene material, it reserves the ruling on a form of expression regulated in the interest of minors and laws to protect children.

259 CHAIR CLARK: The issue is the Oregon constitution. Will this under the Oregon constitution? State v. Henry was an adult and hinted at the court taking a different view along the lines of child pornography.

274 KENT: Accepts that interpretation.

286 CHAIR CLARK: What are other states doing?

293 KENT: In written material (EXHIBIT C) there is a list of states that have laws making it a crime to possess child pornography along with state court decisions which upheld the constitutionality both state and federal. No state has yet invalidated this type of law as unconstitutional. \*Comments on link between child pornography and child sexual abuse.

366 WARREN DERAS, ATTORNEY: (EXHIBIT D) The existing statute prohibits child

pornography on the production level (class A felony), distribution system (class B felony) and consumption. \*Proving consumption is the difficult. \*HB 2681 adds as possession as a class C felony. \*Child pornography is the actual visual representation of obscenity. \*Comments on first case in Oregon dealing with freedom of speech clause, Deras v. Meyers. \*Some situations where the freedom of expression or speech are not constitutional protected. \*Discusses bench-mark tests regarding protected speech.

TAPE 51, SIDE A

039 CHAIR CLARK: No one from any civil liberties organization signed up in opposition to this bill. Comments on the exceptions written into the bill.

048 DERAS: The written summary covers those. Section 3 is a rewrite of existing section, ORS 163 .685. Broadest exception is the medical profession.

085 HOLLY PRUETT, EXECUTIVE DIRECTOR, OREGON COALITION AGAINST DOMESTIC AND SEX VIOLENCE: (EXHIBIT E) Supports HB 2681. Discusses what the Coalition does. \*Pornography harms those used in its manufacture and those abused by its consumers.

149 MAJOR DEAN L. RENFROW, CRIMINAL INVESTIGATION DIVISION DIRECTOR, OREGON STATE POLICE: (EXHIBIT F) Supports HB 2681. Comments on investigations by undercover police officer regarding child pornography. Summarizes written testimony. \*This bill would identify the offenders,

lead to sources of production, identify unknown victims, and break the cycle of abuse. It is a needed tool to protect children.

189 MARCUS LAWSON, U.S. CUSTOMS SERVICE: Central issue before the committee is if this bill is a child protection statute which the state has a compelling interest dealing with the constitutional issues. \*Comments on personal experience dealing with offenders dealing in child sexual abuse and pornography in undercover investigations. \*Making child pornography illegal is a child protection statute.

215 PAUL GROZA, US POSTAL INSPECTOR: (EXHIBIT G) Investigates child pornography undercover for 8 years. Refers the committee to written testimony which contains summaries recent cases involving child pornography in Oregon. Supports the bill.

239 CHAIR CLARK: Does Postal Services see differences in activities between states where possession is illegal and those not?

GROZA: Comments on territory. Utah and Idaho have possession statutes.

253 PATRICK GRACE, OREGON LIBRARY ASSOCIATION: (EXHIBIT H) Does not either endorse or condemn the bill. \*Although there is an exception for educational activities there is none for libraries. Protected literature could be interpreted as being prohibited \*Recommends that libraries be specifically exempted.

287 CHAIR CLARK: There might be things that do not fall within Section 3 sub 1 to 4 that are in possession of a library?

295 GRACE: By not specifically exempting libraries in as education facility, things exempted for educational facility will not be exempted for a library.

300 REP. MASON: What is the definition of a library?

GRACE: Defines library: public, academic, collection of books in home would be a library. Academic libraries would be exempt under this but not public libraries.

310 CHAIR CLARK: Does Counsel know of a definition in statutes?

HOLLY ROBINSON: There is language in statutes. In current criminal code it is "an affirmative defense for defendant to prove in other materials that there is such a thing called the bonified public library."

321 CHAIR CLARK: Closes public hearing on HB 2681.

(Tape 51, Side A) WORK SESSION ON HB 2681

325 MOTION:CHAIR CLARK: Moves conceptual amendment to add to exceptions public libraries.

331 REP. MANNIX: The language in current ORS 167.085 allows for affirmative defense for other statutes.

CHAIR CLARK: Rep. Mannix has amended the Chair's motion.

343 HOLLY ROBINSON: Is intent to only make the things included in the printed bill to be things that a library can hold or are there things not on that list in a library's possession?

CHAIR CLARK: Is exception's intent to be broader than subsections 1, 2, or 3 of Section 3?

HOLLY ROBINSON: Discusses Section 3 regarding things that will be outside HB 2681.

363 CHAIR CLARK: Any objection to accepting public libraries? Hearing none, so adopted.

365 MOTION: REP. MANNIX: Moves HB 2681 as amended to full committee with do pass recommendation.

CHAIR CLARK: Rep. Mannix moves HB 2681 as amended to full committee with a do pass recommendation.

VOTE: HB 2681 as amended to full committee. AYE: Bauman, Bell, Edmunson, Mannix, Mason, Parks, Sunseri, Clark NO: 0 EXCUSED:

CHAIR MILLER: HB 2681 is passed to full committee as amended. Rep. Mannix will carry.

(Tape 51, Side B) PUBLIC HEARING ON HB 2669 Witnesses:Rep. Kevin Mannix Patrick Grace, Oregon Library Association Thomas Hall, Video Software Dealers Association Jeannette Gardner Kathy LeCompte Boyd Ruhter, National Assoc. of Record Manufact. Jack Cooper, Video Software Dealers Assoc. Jim Walker, Store Owner Ted Hughes, Motion Picture Industry Jim Garrett, Attorney Jim Lowick Richard Price Duc Le, Tower Records James Lily

408 REP. MANNIX: There is a current law that makes it a crime to furnish obscene material to a minor this bill just draws from that law to make the person who furnishes it to a minor can be sued civilly by the parent or guardian of the child. \*Section 3 cleans up part relating to crime of furnishing this material to a minor. This tightens up the law to make it meet constitutional standards. \*Discusses definitions in criminal code part that are important. ORS 163 .665. \*Creates a civil cause of action in Section 1. Parent or legal guardian can sue with the burden of showing by a preponderance of the evidence that defendant furnished or sent obscene material to the minor. Definition is the same as the criminal code will be.

TAPE 50, SIDE B

012 REP. MANNIX: There is a civil defense which is to have on outer part of the package stating "this package contains materials that by Oregon law can not be furnished to a minor". Another defense is being the parent or guardian of the child; or if provided by a school, museum, or bonified library or acting in course of employment for such organizations. \*Important defense is defendant had reasonable cause to believe person involved was not a minor. \*For the book sellers, the defense is the objectionable portions of the material sent or furnished to the minor are merely an incidental part of a nonoffending whole. \*Allows the court to award punitive damages of not less than \$200 and not more than \$25,000 with an award of reasonable attorneys fees to prevailing party.

069 JEANNETTE GARDNER, CITIZEN: Current law is not being enforced and/or prosecuted. \*Parents should have the right to intervene in something like this. \*Needs to be deterrent to keep people from furnishing it to

minor.

KATHY LECOMPTE, CITIZEN: Testifies in favor of HB 2669. \*HB 2669 moves action from the DAs office to the family where it belongs. Current law does not really protect children. \*Current law places an unreasonable burden on merchants who cannot legitimately know, at whatever level, what is in every peice of merchandise well enough. \*Not censorship but opportunity for parents to decide if child has been abused and to sue for damages. \*Most published area of pornography sold to children is in the area of music.

130 REP. MANNIX: Met with the DA and the explanation is lack of resources and need to prioritize other kinds of criminal activities. Discusses parallel between this and bad check laws regarding bounced checks. Allows a private cause of action for that which is already a crime.

144 CHAIR CLARK: Recesses at 3:40. Convenes at 3:50 p.m.

157 BOYD RUHTER, NATIONAL ASSOCIATION OF RECORD MERCHANDISERS: Opposes HB 2669. recording contents of HB 2669 is so broad it will include many mainstream recordings. \*With libraries being exempt, minors could check out and record music they are not able to buy at a retail store. \*Hurts the consumer by reducing inventory or becoming an adult's only store. \*Shifts the monitoring of what minors purchase from the parents to the stores. \*Comments on what the recording industry has done to warn parents of material in records. \*The companies and industries have taken voluntary actions.

196 JACK COOPER, VIDEO STORE OWNER, VIDEO SOFTWARE DEALER ASSOCIATION: The impact of HB 2669 is very far reaching, it would touch galleries, music stores, and book stores or retailer dealing in any type of visual or audio medium. \*If purchaser judges it as obscene the retailer is liable.

217 JIM WALKER, VIDEO STORE OWNER: Discusses procedures of rental within store, adhering to the movie theater guidelines on who can see the movie. HB 2669 will bring future problems regarding renting. Comments that cable is easy access to the same material. \*Discusses the Video Software Dealer Association.

244 REP. MASON: HB 2669 says furnished means to "sell, give, rent, loan or otherwise provide", believes this applies to the cable networks.

252 WALKER: Explains comments on cable as being easily accessed to movies carried in video store. Cable carries "R" rated movies.

270 REP. MANNIX: Discusses the point "furnished to the minor". Minors do not sign up for the cable, not being furnished to minors.

WALKER: Store regulates the movies rented or sold to minors. Comments on computer system about advice from parents. The cable industry can be viewed by the minor easily.

299 CHAIR CLARK: There may not be anything the committee can do in terms of amending this bill to cover that point.

315 REP. MASON: Discusses television as a larger issue.

339 TED HUGHES, MOTION PICTURE INDUSTRY: (EXHIBIT I) Discusses the

Motion Picture Association of American as the leading distributor of motion pictures. \*Comments on the written testimony. Concern is that this would subject legitimate film makers to the never ending litigation.

376 JIM GARRETT, ATTORNEY: Comments on HB 2669, line 20 referring to the definitions in ORS 167.060 as applying. \*Comments on cases in the Supreme court regarding these sections. Found portions to be constitutionally unenforceable. \*Dealing with Article I, Section 8.

TAPE 51, SIDE B

016 CHAIR CLARK: It the objection presenting one to HB 2669 or is it objection to existing statutory definition and criminal statute on obscenity? Would existing statute survive constitutional scrutiny?

027 GARRETT: Concern about attaching definitions of ORS 167.060 to HB 2669. Believes bill could be written without that language.

034 REP. MANNIX: Believes the Supreme Court will define obscenity when dealing with children more broadly.

050 CHAIR CLARK: Asks for a legal analysis setting out some of the constitutional points.

REP. MASON: Comments on crimes that have allowed civil causes of actions.

071 GARRETT: There are several private of actions that are covered in the criminal statute.

REP. MASON: Point of HB 2669 is taking a definition out of the criminal code and making it civil cause of action which is the impact and injury to the child.

081 GARRETT: That cause of action exists without necessity of HB 2669.

086 REP. MASON: If the tort against the child exists, then the tort is constitution and the bill reflects that. How can the bill be unconstitutional?

GARRETT: Suggesting the language for common law tort does not carry the baggage of definitional wording in statutes the Supreme Court has already reviewed.

094 REP. MASON: Would this pass constitutional test if the criminal definition were pulled out?

GARRETT: No. Cannot define obscene material.

REP. MASON: What about saying outrageous material depicting some type of sexual conduct. Merely codify the common law tort.

GARRETT: Not sure able to define it.

101 REP. EDMUNSON: Concerned over definition of nudity. Should say nudity for the purpose of titilaztion. Explains about artistic expression.

GARRETT: Requests to respond in writing.

127 REP. BELL: Comments on protection of children. Parallels the subject of HB 2669 with the laws that hold bartenders liable for selling too much to an individual. \*HB 2669 puts civil action in a defined limitation so a parent may sue but not at their whim. \*There would be an understanding what industry's responsibility is and a parents limitations are.

144 GARRETT: Believes there is a constitutional right, currently for a parent to sue a retailer who "damages" a child by selling the child obscene material.

157 THOMAS HALL, VIDEO SOFTWARE DEALERS ASSOCIATION: (EXHIBIT J) Testifies against HB 2669. Believes it unreasonable, unfair, and unnecessary and probably unconstitutional. \*Creates undo risk of civil liability and punitive damages for any person in the video industry found to provide obscene material to a minor based on an extremely broad definition. \*Discuss video stores as community based industries who follow movie industry movie rating. \*Discusses the Pledge to Parents. (EXHIBIT J). It provides the store will not provide videos to minors if they have been rated R or NC-17.

199 REP. MANNIX: If there is an exception provision for a signed parental consent that would take care of that current practice?

HALL: Yes it would. Continues discussion of the Pledge. \*HB 2669 is an unwarranted government regulation in a self regulating, responsible and extremely market sensitive industry.

225 REP. MANNIX: A parental consent provision would eliminate the store's liability?

HALL: It would be a great help.

238 JIM LODWICK, VIDEO STORE OWNER: (EXHIBIT K) Opposes HB 2669. \*This bill is too broadly construed for civil action. Anyone can bring an action. \*Creates undue risk and exposure to specific segments of the retail community. \*Comment on Motion Picture rating system and how any movie could be construed to be obscene. \*Could protect self by perging inventory of all movies except children and family films.

304 RICHARD PRICE, WHOLESALE DISTRIBUTOR FOR VIDEO AND AUDIO IN PORTLAND: Discusses company policy and how, with HB 2669 describing obscenity so broadly, that retailers may hesitate to buy mainstream movies. HB 2669 is unnecessary.

378 REP. BELL: If nothing is changed the very same definitions being contested will still be there.

326 HALL: It is unnecessary because it is redundant.

332 REP. BELL: This will define what the limitations are on a parent for their course of action.

365 PATRICK GRACE, OREGON LIBRARY ASSOCIATION: (EXHIBIT I) HB 2669 does has a defense for libraries in performance of their educational function. Definitions of obscene materials may include artistic material or literature.

392 REP. SUNSERI: When will a library have sexual material?

GRACE: Sex education material.

409 DUC LE, EMPLOYEE OF TOWER RECORDS IN PORTLAND: Member of National Association of Recording Merchandisers. \*Unclear on definition of obscene, as to where the line is drawn. Should establish what is obscene before allowing a parent to sue a retailer for selling a minor that material. \*The family should be important factor in educating child.

TAPE 54, SIDE A

046 JAMES LILY, EMPLOYEE: Opposes HB 2669. \*Comments on obscenity within the music industry. \*The family should take the responsibility not the retailer.

100 REP. SUNSERI: Certain music and videos are becoming a major contributor to child abuse and so on. Where would the witnesses draw the line to protect the lives of children being destroyed?

119 LILY: Comments on "shock value" of argument. Should narrow down the bill a little more.

142 REP. BELL: Believes it is parent's responsibility to teach children what is right. Comments on people who have inadequate skills to guide children on what they listen to and view.

168 REP. MASON: Comments on the strength of the family and general morality.

185 CHAIR CLARK: Closes hearing on HB 2669.

(Tape 54, Side A) PUBLIC HEARING ON HB 2668 Witnesses: Rep. Kevin Mannix Margaretta Eakin, Lawyer Nancy Hansen Kate Brown

192 HOLLY ROBINSON: Comments on last session's HB 2668, passed a law which extended statute of limitation for child abuse victims to their 23rd birthday to bring civil action. This HB 266 8 would allow an action to be brought for a period of 3 years after injury has been established or discovered if later than 23rd birthday.

220 REP. MANNIX, DISTRICT 32: Addresses additional concepts not addressed last session: \*Realization of victims that occurs after a long black out on it. Currently no way to bring action against abuser. \*Broadens the opportunity of the victim to bring legal action against the offender. \*Comments on Section 2 of HB 2668 regarding the effectiveness date. This allows it to be retroactive.

258 MARGARETTA EAKIN, ATTORNEY: (EXHIBIT N) Comments on client regarding sex abuse case and claims being time barred. \*Subsection 2 of HB 2668 clarifies the legislative intent that it apply to actions that are time barred prior to effective date. This was taken from the California Code and tested.

290 NANCY HANSEN, PRIVATE CITIZEN: Comments on daughter's sexual abuse and own sexual abuse. Discusses counseling received during time after revelation. \*This bill could enable victims to tap abuser's income to help get counselling. \*Discusses sexual abuse of children and the danger it put child and rest of family in. There are problems with relationships and trust of others.



354 CHAIR CLARK: Closes hearing on HB 2668.

(Tape 54, Side A) WORK SESSION ON HB 2668

365 MOTION:REP. MANNIX: Moves to amend HB 2668 to add an emergency clause.

CHAIR CLARK: Rep. Mannix moves to amend HB 2668 to add an emergency clause. Is there objection? Hearing none, so ordered.

371 REP. MASON: Where is it clarified this bill is retroactive?

REP. MANNIX: On page 2, hoping that language will make it clear.

MOTION:REP. MANNIX: Moves to change 5 years on line 8 to 6 years. Discusses statute of limitations.

389 CHAIR CLARK: Rep. Mannix has moved to delete "5" on line 8 and to insert "6".

REP. MASON: Points out this bill on line 18 includes any mental injury to a child which results in observable and substantial impalement of the child's mental or psychological functions. This is existing law.

413 CHAIR CLARK: Any objections to Rep. Mannix's motion? Hearing none, so ordered.

TAPE 51, SIDE B

MOTION: REP. MANNIX: Moves HB 2668 as amended to full committee with a do pass recommendation.

002 CHAIR CLARK: Rep. Mannix moves HB 2668 to full committee.

007 REP. PARKS: States conflict for the record of being relation to one of the witnesses. HB 2668 brings civil sanctions in line with criminal sanctions, which is reason why supports bill.

CHAIR CLARK: Calls for vote.

VOTE: HB 2668 as amended to full committee. AYE: Bell, Edmunson, Mannix, Mason, Parks, Sunseri, Clark NO: 0 EXCUSED: Bauman

CHAIR CLARK: HB 2668 as amended is passed to full committee. Rep. Mannix will carry. Adjourns meeting at 5:05 p.m.

Submitted by: Reviewed by:

Kathy Neely, Assistant David Harrell, Office Manager

EXHIBIT LOG:

A	-	Testimony on HB 2681 - Olive Hodson - 2 pages
B	-	Testimony on HB 2681 - Senator Larry Hill - 5 pages
C	-	Material and Testimony on HB 2681 - Jeff Kent - 72 pages
D	-	Testimony on HB 2681 - Warren Deras - 3 pages
E	-	Testimony on HB 2681 - Holly Pruett - 2 pages
F	-	Testimony on HB 2681 - Dean Renfrow - 4 pages

G - Testimony on HB 2681 - Paul Groea - 11 pages  
H - Testimony on HB 2681/2669 - Patrick Grace - 1 page  
I - Memorandum on HB 2669 - Ted Hughes - 3 pages  
J - Material on HB 2669 - Tom Hall - 3 pages K - Testimony  
on HB 2669 - James Lodwick - 1 page L - Material on HB 2669 - Ed  
Baker - 1 page M- Letter on HB 2669 - Gregory Millard - 2 pages  
N - Testimony on HB 2668 - Margaretta Eakin - 2 pages