

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE .

March 18, 1991

Hearing Room 357 3:00 p.m.

Tapes 63

- 64 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 MEMBERS EXCUSED: Rep. Mason Rep. Parks

STAFF PRESENT: Holly Robinson, Committee ~ Counsel Jeff Steve, Committee Assistant MEASURES HEARD: HB 2408 - Restraining Orders/Juvenile Court (WS) HB 2415 - Unlawful Sexual Penetration (WS)

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 46, SIDE A

004 CHAIR CLARK: Opens Subcommittee on Family Justice at 3:39 p.m. Discussions for extended hearings on Monday evening or weekend.

HB 2408 - RESTRAINING ORDERS/JUVENILE COURT - WORK SESSION

Witnesses:

Mary Hoyt, Task Force on Sex Abuse of Children Sarah Castner, Department of Justice Michael Ramsby, State Police David Nebel, Oregon Legal Services

053 HOLLY ROBINSON COMMITTEE COUNSEL: Summarizes HB 2408. The primary issue is whether to expand the jurisdiction of the juvenile court to issue restraining orders against an adult offender. Currently, if a petition is filed in juvenile court regarding the abuse of a child the court does not have the authority to issue a restraining order. Because of that, the only option House Committee on Judiciary March 18, 1991 Page 2

left to the court is to remove the child. -HB 2408 and HB 2410 came to the committee and embodied two principles. One was that the juvenile court would be given this authority to handle dependency proceedings and that the Family Abuse Prevention Act would be expanded to include children for those cases where there was a competent and available parent to take care of the child. -There are a number of issues before you -1) The ability of a court to issue a restraining order on an emergency basis ex parte, similar to a search warrant which is the authority that an adult court now has. If an emergency order is issued HB 2408 would force a hearing within 72 hours. -2) Whether to give the court jurisdiction later on in the case. -There are at least 5 states that have granted this power to juvenile courts.

124 REP. CLARK: Are there any committee members opposed to having the juvenile court being able to issue a restraining order? 132 REP. BELL: Feels comfortable with this. 137 REP. MASON: Would not criminal charges apply?

143 ROBINSON: There could be a situation where there have been charges of abuse brought against a boyfriend and the case is still pending. Currently, there is no method for keeping the boyfriend from getting back into the house.

151 MARY HOYT, TASK FORCE ON SEX ABUSE AGAINST CHILDREN: The concept

that the Task Force came up with was there may be a situation where a child is home with a non offending parent and an offending boyfriend or parent, If the child is abused in anyway via a family fight between the couple for example, then the police would come and take the child away. That only compounds the situation. HB 2408 would allow another adult to come into the home to take care of the child or have the non-offending parent remain with the child. Most importantly, the juvenile court would be able to issue a restraining order. 168 REP. MASON: If the police are in the home, why do they not just arrest the person who has caused the abuse? , 171HOYT: Often times the abusive person remains at the home. The police do not take the person away. 173 ROBINSON: Agrees. If the situation were that simple there would not be a Family Abuse Prevention Act. 175 SARAH CASTNER, DEPARTMENT OF JUSTICE: There are situations where there is a report of an abuse but there is not enough information to make an arrest. The police may decide that it is not prudent to make an arrest at that time. 189 REP. MASON: Are you saying that a police officer won't have probable cause to arrest yet there is sufficient fact for a restraining order to issue? 195 CASTNER: The police don't always arrest under a probable cause situation. They may have

These minutes contain materials which paraphrase and/or summarize statements mad 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 March 18, 1991 - Page 3

sufficient probable cause to conclude that the child is in danger, yet not enough to make an arrest.

214 REP. MASON: Sounds like what is trying to be legislated here is inadequacy of police agencies.

216 CHAIR CLARK: Some things are falling through the cracks and those things are kids.

222 MICHAEL RAMSB Y, STATE POLICE: The question is well taken. Police officers often go the home where an alleged offense has occurred especially against young children and choose not to arrest at that time. Generally, where young children are involved and the police require more than a statement a medical exam will be made. Where there is substantial evidence to believe that an offense has occurred medical evidence may be necessary to confirm that evidence. The State Police supports HB 2408 because it allows the police to protect the child and gives them the opportunity to examine the case further to see if there are any grounds for prosecution.

243 REP. MASON: Why do you need more evidence to justify an arrest than a restraining order? 246 CHAIR CLARK: If the state could move in a protective way over a child with less evidence then they would.

249 ROBINSON: In the state Family Abuse Prevention Act there are different thresholds because of the difference in time and scenarios and the immediacy of the circumstances. There is often a gap between the time of reporting of child abuse and enough evidence can be gained to make an arrest. Often a medical examination of the child needs to be made. 266 REP. MASON: The thread that runs throughout these types of legislation is that police agencies don't like these situations. If you have enough information for a temporary restraining order then you probably have enough for probable cause for an arrest. Probable cause is not a tough standard to meet. 280 CHAIR CLARK: What you can say is that there is a violent situation going on and pending further investigation you have to get somebody out of here. That is what HB 2408 contemplates.

~ 1 289 REP. BELL: If the child has been abused in the past by a father and the father upon drinking on a Saturday night starts to threaten the child again does not think that that would be enough to arrest the person. i 308CASTNER: The Police often have enough evidence to arrest. The problem is that there are two standards of proof. A probable cause standard to make that arrest, but the police officer also has to keep in mind that in order to prove that case in court they have to prove it beyond a reasonable doubt. What the police is concerned about is how to prove the case in court. Often the police do not want to make an arrest too soon. 328 REP. MASON: Reads from Family Abuse Prevention Act. The standard for justifying a restraining order appears to be greater than the standard for probable cause. For a restraining order to issue under the Act it must be established that there is a "pattern [of abuse] that is likely to [re]occur." The standard for probable cause is that there must be evidence to prove that the person committed the crime "more likely than not." - 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 March 18, 1991 - Page 4

346 ROBINSON: The police do not file a request for a restraining order. That is a subjective opinion of the requestor whether they are in danger as opposed to a police officer coming in and making that assessment.

353 RAMSB Y: Police officers do have the authority to enforce restraining orders which are on file with the county sheriff. However, the police do not have the authority to enforce the provisions of a release order where a person is subsequently let out on bail.

372 REP. MASON: Thinks that the person would be in violation of the release. 377 ROBINSON: Most release orders do not prohibit a person from going to their own home. 384 RAMSB Y: In those cases the police have to go back to the court and show to the court that the person has violated the terms of the release agreement prior to a rearrest. That can take a long time.

398 ROBINSON: Summarizes proposed amendments to HB 240 8.

TAPE 64, SIDE A

011 CHAIR CLARK: Mark proposed amendments as HB 2408-1 See EXHIBIT A and the other proposed amendments as DOJ-1 See EXHIBIT B. 022 CHAIR CLARK: Moves as working copy HB 2408-1. So ordered. -HB 2408-1 gives the juvenile court the authority to issue restraining orders. 040 CHAIR CLARK: Suggests having 3 categories of people being able to request this restraining order: 1) local law enforcement agency as defined by statute 2) county juvenile department and 3) parents or guardians on lines 5-9 of proposed Amendments HB 2408-1. See Exhibit A 048 REP. MASON: Is comfortable with local law enforcement. Is uncomfortable with the third party (parents or guardians). Sees this as another potential for preemptive strikes. Would want to have the parent or guardian to have to go to CSD as an intermediary or the Juvenile Department. This opens things up for abuse. 067REP. BAUMAN: Agrees about the third party issue. Concerned that this is going to be an institutionalized lever. 077 CHAIR CLARK: If there are domestic relations consequences to that then we can craft situations that would encourage seeking help from local government agencies. Wonders what happens if there is a system where basically everybody but a parent can get a restraining order to protect the child. 084 REP. BAUMAN: One parent is going to have to I make contact to law enforcement anyway. This will serve as a protection on a parent's rights to get a restraining order. 094 CHAIR CLARK: If I am a judge and I get a phone call, wonders how competent he would be

in sorting out the legitimate from the frivolous request.

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 March 18, 1991- Page 5

100 REP. BAUMAN: as judge you would want the law enforcement there as a neutral partner.

101 ROBINSON: There could be a contact number to screen the calls.

113 CHAIR CLARK: Is concerned that you not make this into another arrow in the family dispute quiver. Counsel's suggestion is a good one.

120 REP. BELL: Having the parent call in to an agency such as CSD does not mean that the parent won't get a restraining order.

130 CHAIR CLARK: Sees it as ironic to create a situation where all kinds of people have the power to protect the child except the child's parents. 139 REP. SUNSERI: Agrees with Rep. Clark. It is better to err on the side of safety for the child. 146 CHAIR CLARK: Asks

council to prepare amendments to specify in greater detail what the contact would be for the parent. There are two different options. 1) Situation that does not include the parents. 2) To add parents or guardians, but add a filter or contact person. 156 REP. MASON: Big concern is that the domestic relations members of the Bar are going to see this as a preemptive strike. People will use this. 161 CHAIR

CLARK: How are current procedures under the Family Abuse Protection Act used in subsequent domestic relations proceedings? 170 DAVID NEBEL, OREGON LEGAL SERVICES: The main use of the Family Abuse Prevention Act in a divorce context is in gaining a temporary order for custody of the child that grants custody of the child under the restraining order procedure. That is an order that can be contested from the other side. Once the order is granted then the party in whose favor it is granted has custody of the child and of course courts in making decisions in domestic relations cases often look to what party has had custody of the child for a long time. 182 CHAIR CLARK: Under the amendments you achieve pretty much the same effect by getting the abusive parent out.

189 NEBEL: The remedy you are contemplating here is very limited in time. Whereas the remedy under the Family Abuse Prevention Act is a year. 191 ROBINSON: Mr. Nebel has raised a relevant issue, 'because most of the orders in HB 240 8 are only good for 72 hours. 219 REP. MANNIX: Suggests having a neutral third party. 230 REP. BAUMAN: For practical purposes when an emergency situation occurs people are not going to call a neutral third party. They are going to call 911 . Cannot envision individual parents calling a judge.

HB 2415 - UNLAWFUL SEXUAL PENETRATION WITH A FOREIGN OBJECT - WORK SESSION

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 March 18, 1991Page 6

Witnesses Jeff Van Valkenburg, Department of Corrections

271 HOLLY ROBINSON, COMMITTEE COUNSEL: Sumarizes HB

2415. Currently under the crime of Sexual Penetration with a Foreign Object, which is either a Class A or Class B Felony, if digital or manual penetration occurs on a child it is not considered "sexual penetration with a foreign object." It can only be charged as Sex Abuse I which is a Class C Felony. HB 2415 absent Sections 3 and 15 would

allow such a crime to be charged as a Class A or B Felony as opposed to a Class C Felony. 313 JEFF VAN VALKENBURG, DEPARTMENT OF CORRECTIONS: Would like to reinstate the bracketed portions of Sections 1 and 2 of printed HB 2408. 324 REP. MANNIX: What about including the foot within the definition of digital manipulation? 336 ROBINSON: Suggests "any other body part thereof." 346 REP. SUNSERI: Suggests changing on line 18 "12" to "14" to harmonize with line 10 which lists the age as "14." 356 ROBINSON: Explains discrepancy. If the Committee did that it would be getting rid of the Crime of Sexual Penetration in the Second Degree because it would automatically make the crime First Degree. - 379 REP. MANNIX: Wants to leave ages the same. 385 REP. MASON: When it was just sexual penetration it was one thing and now it is another. Looks at ORS 163.345. It states that, "any prosecution under ORS 163.355, 163 .365, 163 .385, 163.395 in which the victim's lack of consent is due solely to the incapacity to consent by being less than the specified age, it is a defense that the actor was less than 3 years older than the victim." What we have done here is make "heavy petting" a crime.

TAPE 63, SIDE B 015 MOTION, REP. MANNIX: Moves to delete sections 3 and 15 of HB 2415.

#### DISCUSSION ON THE MOTION

023 VAN VALKENBURG: Suggests that on lines 41 and 42, page 9 that the bracketed language be reinstated. 026 REP. MANNIX: Adds Van Valkenburg's suggestion to Motion. 029 VOTE: No objection. Motion passes. 030 MOTION, REP. MANNIX: Moves to amend the phrase "or with the actor's hand or any part thereof" anywhere it appears in HB 2415 to read "any body part of the actor" leaving - These minutes contain materinis 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 March 18, 1991Page 7

to prosecutorial discretion Rep. Mason's concerns.

#### DISCUSSION ON THE MOTION

038 MASON: That is a lot of discretion

043 REP. BAUMAN: Is uncomfortable with this. The criteria has more to do with the victim than it has to do with the perpetrator. 049 REP. MANNIX: Anyone who is under 12 or under 14 has a 3 year time frame as far as consent is concerned. Here we are talking about people who are under age. Does not think that this is an example of heavy petting.

058 REP. MASON: If a 15 year old boy has sex with a 14 year old girl he is exempted from prosecution for rape, but under this bill if penetration was by a finger it would be a crime. 064 REP. MANNIX: You can move to amend the other statutory provision to include these in the consent provisions. 066 REP. MASON: You don't want to give that defense to the foreign object. 070 REP. MANNIX: We could include this amendment, bifurcate it and separate the foreign object and not allow that defense for the foreign object but allow it for the body part. The conceptual amendment would be that we stick with this for body parts and these degrees of offenses then for the consent defense we allow the consent defense as to these crimes when it is a sexual  
... penetration with anything other than a foreign object.

083 REP. BAUMAN: Not talking about teenagers who are exploring about sexuality. 095 VOTE: No objection. Motion passes. 097 MOTION, REP. MANNIX: Moves in Section 4, line 26 to change the 5 years to 6 years after a person obtains 18 years of age. 104 VOTE: No objection. Motion passes. 106 MOTION, REP. MANNIX: Moves HB 2415 as amended to

Full Committee with a "do pass" recommendation.

115 VOTE: 6-0 Motion passes. Rep. Courtney to carry.

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

120 CHAIR CLARK: Closes Work Session on HB 241 5.

125 JUDGE ROBERT THORNTON: Speaks about controlling dangerous sex offenders.

Wrote

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks repon a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. House Conunittee on Judiciary March 18, 1991- Page 8

a supplement research paper prepared in September and at time did research on everything that dealt with dangerous sex offenders. Subsequent to writing that paper he engaged in further research and is here to update the original paper. -This Committee should consider doing what the Washington legislature did which was to have a separately authorized program to evaluate sex offender treatment programs. Understands that Governor Roberts cut out the sex offender treatment program at the state hospital. Ways and Means is going to consider restoring it. If Ways and Means is going to continue with this there should be an insistence that they have adequate evaluation of the program. No one in corrections knows what is happening to these people. You will get more for the money by setting up child safety programs. -Calls attention to the Utah program. It is a four phase program in child safety education. 1) Meeting with parents and teachers. The best way to reach children is through the family. 2) Incorporating the McGruff program. 3) Have it a part of the school system. The extent to which it exists here in schools is unknown. 4) Maintaining the program so that it is not a one shot deal. -With respect to sex offender treatment, Dr. William Pithers, who has done extensive research into the effectiveness of sexual offender programs based on the Vermont program, says that they have a very low recidiviSMrate. In the test group, there was a 10% recidiviSMrate on rapists and 3% on pedophiles. -If it comes down to a choice between the two different programs, put your efforts in on child safety education. 243 CHAIR CLARK: Adjourns Subcommittee on family Justice at 4:52 p.m.

Submitted by: Reviewed by:

J. Kennedy Steve, Assistant David Harrell, Office Manager

EXHIBIT LOG:

A Amendment to HB 2408 - Holly Robinson - 4 pages B Amendment to HB 2408 - Holly Robinson - 3 pages C Testimony on HB 2415 - Paul Drews - 1 page D Testimony on HB 2415 - Dennis Dowd - 2 pages

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.