

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 20, 1991 Hearing Room 357 2:00 p.m. Tapes 65 - 67

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 2993 PH (Domestic Disturbances)  
CONSIDERED: HB 2994 PH (Domestic Disturbances) HB 3051 PH  
(Civil Compromise)

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TAPE 65, SIDE A

003 REPRESENTATIVE CLARK, CHAIR: Calls the meeting to order at 2:55 p.m.

PUBLIC HEARING ON HB 2993 Witnesses: David Nebel, Oregon Coalition Against Domestic Violence Judith Armatto Holly Pruitt Julie Stevenson, Family Law Center, Mult. County Doug Belof, Mult. County DA Representative Minnis Lloyd Smith, Law Enforcement Data System

005 HOLLY ROBINSON: HB 2993 requires that peace officer investigating instances of domestic violence file a written report. The purpose of the report is to have that data entered into Law Enforcement Data System to compile domestic violence statistics. There is a fiscal impact.

020 DAVID NEBEL, OREGON COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE: (EXHIBIT A and B) HB 2993 and 2994 are the Coalition's priority bills. \*Describes the Coalition and the services provided. \*According to the Surgeon General, domestic violence affects 50% of all marriages and is the leading cause of injury to women. Accounts for 1/5th of all emergency room admissions. \*These bills are part of a process developed to deal with the problem better. \*Discusses the aim of the Family Abuse Prevention Act. \*HB 2993 requires a report be made by a peace officer at scene of domestic disturbance. Law enforcement agencies can use reports to defend against claims brought by victims regarding no arrest made; useful in dealing with domestic violence recurrence in the same home; helpful to attorneys in preparing for cases; and reports would create a data basis for domestic violence.

082 CHAIR CLARK: Any comments on the fiscal impact?

084 NEBEL: Have not seen the report.

086 CHAIR CLARK: It is large and perhaps someone can study it and comment on it.

089 NEBEL: When researching this bill, felt fiscal impact would be 1/2 FTE over biennium. \*Understands that cities would be eligible for new federal funding being considered by Congress if there were such as data base as described in HB 2993.

103 REP. PARKS: What is the statute that requires police to take action at scene?

106 NEBEL: ORS 133.055(2).

108 REP. PARKS: Supports HB 2993. Concerned about this being used in "pre-divorce". Would like to amend to provide that these reports could not be used for divorce cases as evidence because the reports would be hearsay.

132 CHAIR CLARK: For clarification, the report would not be able to be used for what purposes?

134 REP. PARKS: For any purpose in the conventional domestic case. Uncomfortable about the reports being admissible as evidence under the Uniform Business Records Act.

164 NEBEL: Believes reports would be admissible as business records unless specifically excluded but even then they could be used as something that would refresh officer's recollection.

181 CHAIR CLARK: Comments on line 11 of HB 2993 regarding the description of the relationship between the alleged assailant and the complainant.

188 NEBEL: Should be put in report as either married, living together, something of that nature.

192 CHAIR CLARK: Line 9 discusses the name and the address of the alleged assailant. How would the officer make a determination who is the assailant?

199 NEBEL: This requires the name and address of both. The complainant would be the person who called the police department. It could even be a neighbor or. Just want the name and address of the parties to the dispute.

214 JUDITH ARMATTO, OREGON COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE: The other part of the concern is how do you tell who is the real aggressor. Will discuss that with HB 2994.

219 REP. MANNIX: Understand problem is officers called to a scene don't document the incident at all.

222 NEBEL: Correct. Also a problem with no data base in existence.

224 REP. MANNIX: In comparison to other situation where police are called to the scene, do they normally document those in a report and this is one area where they do not?

228 NEBEL: Do not know.

231 REP. MANNIX: This is an area where the reporting needs to be done.

233 REP. BELL: Concern about excluding these records from a divorce proceeding unless the hearsay portion was separated from the actual evidence part of the report. If the report has in it the type and extent of abuse, if the officer is unavailable, that is an important piece of evidence that should not be excluded.

249 REP. PARKS: In the context of a report it is all hearsay. Could demonstrate an unavailability and make the records admissible.

259 NEBEL: Could do that.

266 REP. BELL: Senses women are not comfortable with excluding that information from a divorce proceeding.

270 ARMATTO: Only reason uneasy about it is the need to bring evidence of abuse forward in some cases. This violence affects the children also. Believes good evidence of domestic violence should be brought up in the hearing.

298 HOLLY PRUITT, OREGON COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE, EXECUTIVE DIRECTOR: Discusses a recent Congressional Resolution.

302 ARMATTO: Discuss the Congressional Joint Resolution that encouraged states to make abuse between spouses relevant in custody proceedings.

317 REP. MANNIX: Is this fiscal analysis on the mark or not substantiated?

NEBEL: It is larger than expected.

REP. MANNIX: Would like discussions with the LEDs people to see what they anticipate.

PRUITT: Realized this could be a strain on LEDs. Comments on data collected for LEDs.

344 HOLLY ROBINSON: The committee has been dealing with issued of getting restraining orders similar to this for children. Does the reference to injuries on lines 15 and 16 include any injuries of anyone in the household or just the alleged complainant?

361 NEBEL: Intent to include all.

HOLLY ROBINSON: Might want to look at, on line 13, separate children out as a category.

379 REP. MANNIX: Is there language to address the description of the relationship? Would classification of the relationship work?

383 CHAIR CLARK: Classification might work.

NEBEL: That is an approach that would work. Don't have any language currently.

401 JULIE STEVENS, MULTNOMAH COUNTY LEGAL AID FAMILY LAW CENTER: (EXHIBIT C) HB 2993 will provide documentation that is important to domestic relation practition in helping judges determine custody and visitation disputes. \*Problem is when an officer does not make an arrest there is little documentation on what was found. \*Brings in a neutral

party to comment on the violence. The abuser is not arrested because they might have fled. \*Comments on information obtained in a police report.

TAPE 66, SIDE A

027 CHAIR CLARK: If, in a domestic case, the attorney needs more evidence, would there be a tendency to tell the client to call police next time there is violence in the home? This would document it. What will be an effect of reports used in a domestic relations case?

037 STEVENS: Worried about events that will occur that do not requires police. Comments on cases.

049 CHAIR CLARK: Is there a threshold regarding discretion over whether it is a domestic disturbance or not?

STEVENS: Would like a report even if that is the conclusion.

056 REP. PARKS: Agrees with testimony. Point is to not put the parties in a position where they would abuse the police in development of their case.

STEVENS: For purposes of discover the reports are helpful.

REP. PARKS: Purposes they not be admissible as evidence but the attorney can still use them as discovery. Could use as evidence when the officer is not available.

STEVENS: Comfortable. Would like these instances documented in some way.

077 REP. PARKS: Documented for purpose of representation or for evidence?

STEVENS: For documentation with evidence being secondary.

081 STEVENS: There are a number of federal housing and welfare programs that are available on an emergency basis if there has been documented abuse. \*HB 2993 would benefit victims of violence and the children who will witness that.

091 DOUG BELOOF, DIRECTOR OF VICTIMS ASSISTANCE IN MULTNOMAH COUNTY: Supports the idea of collecting a data base on domestic violence. \*Discusses a consideration that should be taken into account regarding admissability of police report in court is 1) if not admissible, essentially making the officers have to come to the court to testify; 2) could stipulate to the report.

113 REP. BELL: If going to require officers to come into court, will change the fiscal impact statement.

BELOOF: In trying to solve the problem about reports as evidence, there will be more inconvenience on the police. Would be more helpful to have that information discoverable.

134 REP. PARKS: Agrees.

BELOOF: This might be a greater priority of statistic keeping than others issues.

140 CHAIR CLARK: Closes hearing. Work session on HB 2993

(Tape 66, Side A) WORK SESSION ON HB 2993

146 MOTION:REP. MANNIX: Moves to amend HB 2993 on line 11 to change "description" to "classification"; in subsection H, add phrase "of any persons" before "observed" to make it clear if they see children injured should be reported also; add "on the premises" after "observed"; line 18 add "the District Attorney and to"; add a new subsection H and renumber the H and I to I and J to cover the intoxication factor to read "any apparent intoxication of any person present as a result of ingestion of controlled substance or alcohol".

CHAIR CLARK: Rep. Mannix moves the aforementioned amendments to HB 2993. Is there discussion?

174 REP. MASON: The report that goes to the DA be discoverable.

176 REP. MANNIX: Not addressing discovery because these will be standard report.

185 CHAIR CLARK: Hearing no objection, the amendment is adopted.

188 MOTION:REP. PARKS: Proposes conceptually to say "any party can introduce any reports in a civil action that as a condition of their admissibility they must, 15 days before trial, provide the other side with copies of those or notice of their intent."

CHAIR CLARK: Rep. Parks moves the aforescribed conceptual amendment.

202 REP. MASON: How will it get around the hearsay rule?

REP. PARKS: As a business record.

209 REP. MASON: The idea of the reports coming into evidence is disturbing.

219 CHAIR CLARK: Would it address concern if this were brought before the legislature next session to be looked at?

REP. MASON: Why should they go to the DA?

REP. MANNIX: Reason, maybe the DA will get this information and decide if the police are being aggressive enough about a potential prosecution. Makes the DA responsible by reviewing the records and discussing with the police.

230 NEBEL: Allows the DA to review decisions of whether charges should be brought. No problem with that.

236 REP. MASON: Why will there be a requirement that a police report go to the DA in domestic violence cases no matter what the resolution is rather than cases of drugs. No other situation where police have to write a report each time this type of call comes up.

247 MOTION:REP. MANNIX: Moves to modify the bill to delete the reference to the DA and include a provision that a copy of report shall be provided to the complainant.

253 CHAIR CLARK: Rep. Mannix is proposing language that report being

sent to DA be removed and that copy of report be sent to complainant only.

REP. MANNIX: "Provided to the plaintiff in addition to LEDS". Reason is for documentation of calling the police, identify what officers were involved, some documented information that can be used at a future date. Can be discovered in a civil case.

278 CHAIR CLARK: Rep. Mannix moves deleting the language regarding the DA and having a copy of report sent to complaint.

REP. PARKS: Friendly amendment to add: "to complainant if requested".

NEBEL: Advocates in all cases the complainant be given a copy.

294 REP. PARKS: Complainant would be allowed to obtain a copy at a later date.

298 REP. MANNIX: Does not accept as a friendly amendment.

CHAIR CLARK: Rep. Parks moves to amend Rep. Mannix's proposed amendment that would add the words "if requested".

310 REP. MANNIX: Opposes the motion. Wants to make sure the complainant is aware they can get a copy of the record.

CHAIR CLARK: Calls for vote.

VOTE: 4-3 Motion passes. AYE: Bauman, Mason, Parks, Sunseri NO: Bell, Mannix, Clark EXCUSED: Edmunson

CHAIR CLARK: Motion is passed. Next vote on Rep. Mannix's motion as amended.

331 REP. MASON: The statute is just data collection.

344 HOLLY ROBINSON: If it were a data collection document, wouldn't that substantiate Rep. Park's position that it is a business record.

REP. MASON: There is still the right of confrontation.

352 HOLLY ROBINSON: Argument for it being a business record will become stronger. This record would be admissible under the Business Records Exception.

357 REP. PARKS: There is a legitimate issue here.

CHAIR CLARK: Is there objection to including a copy of the report to the complainant if requested? Hearing none, so adopted.

371 MOTION: REP. MANNIX: Moves to reinsert the phrase "also to the DA and to LEDS".

CHAIR CLARK: Rep. Mannix moves reinsertion of including a copy of the report to the DA.

373 REP. MANNIX: There is a special duty to arrest in many of these circumstances. There is no monitoring capability for the DA to determine if the officers are following through on obligation. This will allow the DA to monitor and to review the documentation to make sure others are doing their duties.

CHAIR CLARK: Rep. Mannix moves the inclusion that the report be sent to the DA.

391 REP. MASON: The bill reads "whenever a peace officer is at the scene of a domestic disturbance under ORS 135.055(2)". Understands to mean they have gone to the scene.

407 NEBEL: The intent is to require a report anytime a peace officer is called to the scene of a disturbance.

TAPE 65, SIDE B

011 PRUETT: There will be stories where the failure to document police response did have a negative impact on the victim involved.

013 REP. MASON: Why domestic violence and not other offenses?

019 PRUETT: That issue was examined in 1977 by creating the Family Abuse Prevention Act. This documents the required arrest.

024 REP. MASON: Does not answer question. Repeats question.

028 PRUETT: The legislature has recognized there is a special duty to arrest, mandatory provision to arrest in domestic disturbances which do not exist with other types of cases.

033 REP. BELL: Discusses the leading cause of injury to women in US as domestic violence. Sees this as a way to get a handle to protect women and children of violence.

042 REP. MANNIX: Calls for the question.

CHAIR CLARK: Rep. Mannix calls for the question on the motion to amend.

VOTE: 5-2 Motion passes. AYE: Bauman, Bell, Mannix, Sunseri, Clark NO: Mason, Parks EXCUSED: Edmunson

CHAIR CLARK: The motion passes and the amendment is inserted.

053 REPRESENTATIVE JOHN MINNIS: Requests HB 2993 be referred to Ways and Means where currently working on the executive and LEDS' budget and there be a through fiscal impact prepared. \*Need to consider the time it will take officers to compile the information suggested in the report. HB 2993 really only speaks to time when officer does not make arrest. \*The time needed to write the reports and the subsequent copies made will have a fiscal impact on local governments.

109 REP. BELL: Discusses a scenario regarding domestic violence and the family moving and the violence continuing with no arrests.

120 REP. MINNIS: Discusses statute of domestic violence law where mere probable cause to believe an assault has occurred is enough.

159 LLOYD SMITH, LAW ENFORCEMENT DATA SYSTEM, MANAGER: Discusses a fiscal impact of \$314,000 for first biennium based on assumption there would be about 20,000 cases reported around the state per year.

176 REP. SUNSERI: Just asking with this bill is to have some additional paperwork be done.

SMITH: The officers will respond to those calls regardless of reporting requirement. Responding to cost to LED to collect reports and coming up with form to fulfil this requirement. Discusses process of creating this collection process.

REP. MANNIX: Already have 6,000 reports every year?

200 SMITH: The figure is 18,000.

REP. MANNIX: There is a large overlap between those and what this bill deals with? With no fiscal impact to the overlap.

210 SMITH: Assuming many will be the same. There will be an impact because this information is not collected on assaults. Need resources to deal with these reports.

217 REP. MANNIX: To get the reports done, take out the LED documentation requirement. If this goes to Ways and Means, it is history.

246 CHAIR CLARK: Closes work session on HB 2993.

(Tape 65, Side B) HB 2994 - PUBLIC HEARING Witnesses: David Nebel, OCADSV Holly Pruett Judith Armatto Marcy Westerling, Columbia County Women's Resource Cheryl Schultz, Battered Person's Advocacy Center Theresa Russell Deborah Jones, Central Oregon Battering and Rape

251 HOLLY ROBINSON: HB 2994 proposes to make changes in statutes that require police officers make arrests under the Domestic Violence Statutes and to identify the prime aggressor. Prohibits officers from threatening the affected parties in order to discourage request for intervention. Increases amount of damages in small claims court. Adds a statutory form that may be used.

266 DAVID NEBEL, OREGON COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE: (EXHIBIT D) \*Section 1 requires police officer at scene to arrest the primary physical aggressor to avoid practice of arresting both parties when each shows evidence of injury. \*Discusses the purpose of the Family Abuse Prevention Act. \*Discusses the affect of mutual arrests. \*Gives police factors to consider when determining who is the primary physical aggressor.

301 REP. MASON: Is it intended that the officer conduct a hearing on the spot of the scene with regard to these factors?

314 NEBEL: The officer will make this decision by relying on community history. Some of this information will not be available at the scene. Realizes this bill requires officers to make a judgment call in ambiguous situations.

REP. MASON: What about training?

JUDITH ARMATTO, COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE: Programs in local communities often provide training to police departments.

340 REP. MASON: What about liability for the officer?

ARMATTO: Law already protects them.

NEBEL: As long as arrest was made in good faith without malice, insulated from liability under ORS 133.315.



REP. MASON: Bill states that the officer shall arrest the primary physical aggressor.

366 ARMATTO: The factors are listed to assist the officer in determining who is the primary physical aggressor.

370 REP. PARKS: One criteria is whether an assault was committed in self defense. Comments on self defense. HB 2994 absolutely changes the judicial system for this limited class of people.

401 REP. MASON: Basically HB 2994 is summary justice. Asking police officer to be judge and jury on the street.

421 REP. MANNIX: Really getting at here is the macho police officer who do not want the hassle of figuring out what is happening in domestic violence situations and will arrest both parties.

440 PRUETT: What distinguishes domestic crimes from others regarding police officer's role is that there are not other crimes where victims are being arrested.

TAPE 66, SIDE B

029 REP. BELL: Amazed at the way the committee bounces back and forth between protecting one class of people and the judicial system. Discusses situations under HB 299 4.

043 NEBEL: Offers amendment to the language about definition of primary physical aggressor to make it clear that is the most significant aggressor, not necessarily the first person to strike a blow. Intent it is to aim at person causing the most physical damage.

065 ARMATTO: Talking about domestic violence. It is a pattern of behavior over a long period of time that increases in severity. Discusses cycle of abuse. The victim will start to anticipate the explosion of abuse and push towards that because the anticipation is too frustrating.

081 CHAIR CLARK: Asking a lot of a police officer. Does HB 2994 change the way police officers think or what they do?

089 ARMATTO: HB 2994 is trying to see that officers do their job.

099 REP. SUNSERI: Comments on fact police officers cannot make those determination especially in heat of conflict.

105 PRUETT: Law requires that an arrest is made in this type of situation. This bill would improve intent of original law requiring arrest. Question is do the officer arrest only the assailant or the victim as well. HB 2994 provides some guidelines drawn from other states.

120 REP. MANNIX: Discussing a particular arrest of a particular individual. What about a prohibition on dual arrests when it is not appropriate. This is telling the officer they must arrest one of the parties.

134 NEBEL: Discusses other parts of the bill not dealing with primary physical aggressor.

144 REP. MANNIX: Have written testimony and would like to hear from other witnesses.

175 MARCY WESTERLING, COLUMBIA COUNTY WOMEN'S RESOURCE CENTER: (EXHIBIT E) Supports the bill. Discusses crisis center and what the center does. Discusses an example of case with regards to HB 2994.

229 CHERYL SCHULTZ, BATTERED PERSONS' ADVOCACY , IN ROSEBURG OREGON, CASE MANAGER: (EXHIBIT F) Introduces herself and asks that Theresa Russell testify and then will summarize.

234 THERESA RUSSELL, CITIZEN: (EXHIBIT F) Discusses personal experience of domestic violence and mutual combat arrests. Explains emotional state of two children. Comments on reception from police officers responding to the call.

TAPE 67, SIDE A

013 RUSSELL: Comments on impressions of the domestic violence and the cycle of violence. Makes victim totally dependant on abuser.

032 DEBORAH JONES, CENTRAL OREGON BATTERING AND RAPE ALLIANCE: (EXHIBIT G) Supports HB 2994 and 2993. Defers to written testimony.

041 CHAIR CLARK: Closes public hearing on HB 2994.

(Tape 67, Side A) HB 3051 - PUBLIC HEARING Witness: Doug Belof, Multnomah County Victims Assistance Division

067 DOUG BELOF, MULTNOMAH COUNTY VICTIMS ASSISTANCE: (EXHIBIT H) Civil compromises are used by perpetrator to reassert control over the victim and get case out of criminal courts. \*Crimes concerned about are those involving family members in assault 4s, harassments, telephone harassments, menacings and criminal mischief. Suggests adding those to the bill. \*Goal is to eliminate civil compromise in domestic violence cases. \*Comments on Judge Harl's testimony.

078 CHAIR CLARK: Is excluding civil compromise for certain crime unusual?

080 BELOF: It has been done elsewhere. Defers to written testimony. \*Need to intervene in some effective way with these families and need some way, which currently is the criminal justice department. a \*Civil compromise sends the case back and there will be re-victimization of the victim.

100 CHAIR CLARK: Closes public hearing on HB 3051. Adjourns meeting at 5:00 p.m.

Submitted by: Reviewed by:

Kathy Neely, Assistant David Harrell, Office Manager

EXHIBIT LOG:

A	-	Testimony on HB 2993 - David Nebel - 3 pages
B	-	Testimony on HB 2993/2994 - David Nebel - 2 pages
C	-	Testimony on HB 2993 - Julie Stevens - 3 pages
D	-	Testimony on HB 2994 - David Nebel - 6 pages
E	-	Testimony on HB 2993/2993 - Marcy Westerling - 2 pages

F - Testimony on HB 2994 - Cheryl Schultz/Theresa Russell - 3  
pages G - Testimony on HB 2994 - Deborah Jones - 1 page  
H - Testimony on HB 3051 - Doug Belof - 39 pages  
I - Testimony on HB 3051 - David Kenney - 2 pages