

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 29, 1991 Hearing Room 357 2:00 p.m. Tapes 72 - 73

MEMBERS PRESENT: Rep. Kelly Clark, Chair Rep. Judy Bauman Rep. Marie Bell Rep. Jim Edmunson Rep. Kevin Mannix Rep. Del Parks

MEMBER EXCUSED: Rep. Tom Mason Rep. Ron Sunseri

STAFF PRESENT: Holly Robinson, Committee Counsel Kathy Neely, Committee Assistant

MEASURES HB 2708 WS (Appointment of Guardian)
CONSIDERED: HB 2415 WS (Sexual Penetration) HB 2388 WS
(Testing for Controlled Substances) HB 2193 PH (Inmate Medical Records)

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TAPE 72, SIDE A

003 CHAIR CLARK: Calls meeting to order at 3:15 p.m.

HB 2415 - WORK SESSION

033 HOLLY ROBINSON: Need a motion to suspend the rules because this is a reconsideration.

MOTION: REP. EDMUNSON: Moves suspension of the rules for purposes of reconsideration.

CHAIR CLARK: Rep. Edmunson moves suspension of the rules for purposes of reconsidering HB 2415. Hearing no objection, so ordered.

038 HOLLY ROBINSON: Discusses previous hearing and work session. As amended, this bill is object neutral, gender neutral penetration not including rape. *Amendments (EXHIBIT A) make it sexual penetration with anything except a penis. Issue was how does this merge with the rape statute. *Penalties remained the same and the parameters remained the same as rape. *The committee can create a set of sexual offenses that are gender and object neutral in terms of penetration.

079 REP. MANNIX: The reason for this policy direction is a recognition that rape is largely a crime of violence. Moving away from the "sex act" as being the crime but making the victimization of the individual. *The amendments incorporate what was discussed in the last hearing. Are there any other changes that need to be made?

094 HOLLY ROBINSON: The amendments adopted (EXHIBIT A) is worded to leave the crime of rape intact.

MOTION:REP. MANNIX: Moves the amendments (EXHIBIT A) to the bill.

CHAIR CLARK: Rep. Mannix moves the amendments to the bill.

110 REP. MANNIX: Reason for leaving the rape statute intact is the tremendous public misperception of what is being done.

HOLLY ROBINSON: If rape were merged into this, would also have to deal with the crime of sodimony, which is unlawful penetration.

127 CHAIR CLARK: Hearing no objection to the motion, it is adopted.

MOTION:REP. MANNIX: Moves HB 2415 as amended to the full committee with a do pass recommendation.

CHAIR CLARK: Rep. Mannix moves HB 2415 as amended to the full committee with a do pass recommendation.

VOTE: 6-0 Motion passes AYE: Bauman, Bell, Edmunson, Mannix, Parks, Clark NO: 0 EXCUSED: Mason, Sunseri

CHAIR CLARK: HB 2415 is passed to full committee. Rep. Clark will carry.

(Tape 72, Side A) HB 2388 - WORK SESSION

148 HOLLY ROBINSON: Discusses the amendments (EXHIBIT B).

158 CHAIR CLARK: Comments on the last work session with HB 2388 regarding the conception of the amendment.

165 HOLLY ROBINSON: This combines numerous previous amendments.

CHAIR CLARK: Page 1, lines 19 and 20 should be deleted.

HOLLY ROBINSON: Section 1 states that if a health care provider gets in the indication that the patient is abusing drugs or alcohol, then a referral is made to the Health Division and an assessment would be performed. Lines 19 and 20 deals with testing and subsequent assessment. *Bill does not address refusal of services or assessment at birth which is no longer necessary.

196 REP. PARKS: Concern is this will not be construed as requiring pregnant women, seeking government assistance, to have a drug analysis.

209 CHAIR CLARK: Does not believe it would be construed that way.

REP. MANNIX: Can take out the misleading phrase.

MOTION:REP. MANNIX: Moves the adopted of the amendments.

CHAIR CLARK: Rep. Mannix moves the adoption of the amendments. Hearing no objection, so adopted.

MOTION:REP. PARKS: Moves the deletion of sentence at end of line 19 and 20 on page 1 of the amendments.

CHAIR CLARK: Rep. Parks moves the deletion of the sentence on lines 19 and 20 on page 1. Hearing no objection, so adopted.

MOTION;REP. PARKS: Moves to change on line 14 the phrase "performed" to "make available".

CHAIR CLARK: Rep. Parks moves to change "performed" to "make available" on line 14.

REP. MANNIX: It changes the tone of the bill. Opposes that language because the assessment should be made. This is really a drug or alcohol screening.

246 HOLLY ROBINSON: This is the local health department doing the assessment.

253 REP. MANNIX: Was wrong, was thinking of the medical provider at the screening step.

HOLLY ROBINSON: This is the local health department.

256 REP. BAUMAN: It is a helpful amendment. *One purpose is getting a handle on the problem to create a report on the extend of the problem. *Another purpose was to make treatment available without frightening women away from prenatal care.

271 REP. BELL: What was the amendment?

CHAIR CLARK: "Make available" for the assessment instead of "performing".

REP. BELL: How is an assessment made available?

284 REP. MANNIX: Proposes a friendly amendment to make "shall offer".

REP. PARKS: That is what had in mind.

CHAIR CLARK: The friendly amendment would be "in offering the assessment".

REP. MANNIX: Change "performing" to "offer".

CHAIR CLARK: Hearing no objections, so adopted.

310 HOLLY ROBINSON: Section 1 also states any test assessment and written plan are confidential. On page 1, lines 21 through 28.

CHAIR CLARK: The definition of health care provider is page 2 of the amendments.

325 HOLLY ROBINSON: The concern is physicians, nurse practitioners, nurses, etc. Should it be "licensed health care" to be clear on licensed health care professionals since a list will not be included. *Currently this definition means the health care provider, not required to be licensed or regulated. *Committee does not want to list the people. This is a broad definition without that list.

350 CHAIR CLARK: Why not leave it broad?

REP. BAUMAN: Already took out supervisors and administrators.

360 HOLLY ROBINSON: It is generic. The concern raised by Legislative Counsel is a health care provider as a person who delivers health care, medical services is not much of a definition.

371 REP. BAUMAN: Health care provider is not currently defined in ORS?

380 HOLLY ROBINSON: There is a definition in the power of attorney for health care statutes, list in the tort immunity damages section and one in the OARS.

389 JIM CARLSON, OMA: Should leave the definition broad. Comments on lay midwives that deliver a number of babies who would no be covered by a narrow definition.

ART GYLE, HEALTH DIVISION: Agrees.

TAPE 73, SIDE A

003 REP. PARKS: Section 1 provides for a mandatory reporting with the private physician contrasting with Sub 4 in Section 1 that provides a public agency may refer. Is that distinction intentional?

009 HOLLY ROBINSON: No distinction was intended.

011 REP. PARKS: Offers conceptual amendment that private physician have same duty as public agency.

013 HOLLY ROBINSON: Public agency in line 29 is not intended to be medical providers.

REP. PARKS: Withdraws motion.

019 MOTION:REP. MANNIX: Wants to include abuse of alcohol where it discusses controlled substances not prescribed by a physician.

HOLLY ROBINSON: It should be.

CHAIR CLARK: That is consistent. Rep. Mannix moves on line 30 on page 1 substituting "uses or abuses drugs or alcohol". Hearing no objection, so adopted.

MOTION:REP. MANNIX: Should have some recurring phrases that can agree on. "Abuses alcohol and uses or abuses controlled substances not prescribed by a physician".

026 CHAIR CLARK: Rep. Mannix moves to adopt the phrase as so described.

038 REP. BELL: Comments on other places that phrase should be inserted.

041 CHAIR CLARK: Rep. Mannix moves to use the phrase "uses or abuses drugs or abuses alcohol".

REP. MANNIX: It should say "controlled substances not prescribed by a physician".

050 HOLLY ROBINSON: Can abuse a controlled substance that has been prescribed.

MOTION:REP. MANNIX: Will want a definition for a catch phrase used in

the bill which would be "includes abusing alcohol, using controlled substances not prescribed by a physician, abusing controlled substances not prescribed by a physician and abusing controlled substances prescribed by a physician". And the catch phrase could be "abuses drugs".

060 CHAIR CLARK: Rep. Mannix moves the aforescribed language. Hearing no objection, so adopted.

REP. BAUMAN: Comments on legal definition. Looking for a health impact definition. The purpose is to identify and treat health problems.

072 REP. MANNIX: Suggests "suffers from substance abuse".

CHAIR CLARK: Suggests letting Counsel work in the language.

077 CHAIR CLARK: Adopted conceptual amendment.

080 MOTION:REP. BAUMAN: Moves on page 1, subsection 2, would like to tie the "offered assessment" to the risk tool developing on pages 3 and 4, Section 10 to make sure the public health provider uses the tool designed and referred to in that section to perform the offered assessment.

093 HOLLY ROBINSON: Understands the intent of language in Section 10 as a screening device and not an assessment done by the local health division. Understands this as a screening device.

107 CLARK CAMPBELL, OFFICE OF ALCOHOL AND DRUG ABUSE: Concern is person doing assessment in Section 2 be familiar with abuse problems and be able to identify them. *Could say, in Section 2, the person doing the assessment needs to be trained by the Office.

128 REP. BAUMAN: Would like to spread training capacity among all groups mentioned on page 3. Don't want to create a line item in budget if other agencies are willing to help with training.

140 CHAIR CLARK: Rep. Bauman moves language similar to what Mr. Campbell has suggested in Section 1 rather than other approach?

MOTION:REP. BAUMAN: No. Believes Campbell's proposals for training by the office will create a problem. Prefers language stating the Health Division, Office of Alcohol and Drug Abuse Programs, OHSU shall provide training to public health care providers who shall offer drug and alcohol assessment of pregnant women. This would be page 1, line 13.

170 CHAIR CLARK: Rep. Bauman moves the "training language" after word "provider" in line 13, page 1 of the amendments. Hearing no objections, so adopted.

MOTION:CHAIR CLARK: Moves the deletion of lines 26, and 27 on page 4.

180 HOLLY ROBINSON: If the money is not there, should the assessments be done?

186 REP. BAUMAN: Likes tying decisions to fiscal responsibilities.

200 CHAIR CLARK: However there is value in the data that might come from the assessments.

REP. BAUMAN: Not at the expense of programs which would be treating or a public health department and not if it shows the numbers exceed the treatment capacity by more than currently known.

CHAIR CLARK: Trying to build recognition for need.

221 REP. BELL: On page 3, regarding standardized risk assessment tool and asking the responsible licensing boards to conduct training sessions. Need to get the profession aware of the problem.

235 CHAIR CLARK: The Chair has moved the deletion of lines 26 and 27 on page 4.

REP. PARKS: Would like to think about this issue.

CHAIR CLARK: Withdraws motion. This bill will be before the committee again.

REP. BAUMAN: Discusses the grant program referred to as Section 3 on page 2.

HOLLY ROBINSON: Will go back through to make consistent.

263 MOTION:REP. MANNIX: Moves conceptually to put in language to make it clear that the screening, assessment, and treatment can be compressed together to allow a single entity or individual to perform all.

CHAIR CLARK: Rep. Mannix moves the "compression amendment". Hearing no objection, so adopted.

HOLLY ROBINSON: Section 10 should be placed in 430.900, the current statute and not freestanding.

MOTION:CHAIR CLARK: Moves Section 10 on page 3 and 4 be placed into ORS Chapter 430 rather than freestanding. Hearing no objections, so adopted.

302 REP. PARKS: Will the standardized definition be used?

CHAIR CLARK: Yes.

HOLLY ROBINSON: The language previously included tobacco. The committee adopted alcohol, tobacco, and controlled substances in that one place.

CHAIR CLARK: Discusses Rep. Mannix's outline for uniform language not including tobacco.

321 REP. MANNIX: It would not include tobacco.

CHAIR CLARK: Closes work session on HB 2388.

HB 2708 - WORK SESSION Witnesses: Judge Lee Johnson Bob Jeudef, Oregon Advocacy Center Scott McGraw Bill Linden, State Court Administrator

351 CHAIR CLARK: HB 2708 is the guardianship bill.

372 BOB JEUDEF, OREGON ADVOCACY CENTER: (AMENDMENTS - EXHIBIT C)
Discusses amendments which address concerns raised at last hearing.
*Expand the appropriate circumstances for obtaining temporary

guardianships. *Reduces duration of temporary guardianship to 30 days.
*Allows ex parte orders for emergencies.

TAPE 72, SIDE B

GREG CHAIMOV: Proposed amendment (EXHIBIT C) are attached a hand engrossed version, not in LC form.

CHAIR CLARK: Committee will refer to these as the "-2 amendments" (EXHIBIT C).

022 JEUDEF: On page 2, line 7, will state that within 72 hours after entry of ex parte order and before appointment, the petition shall provide notice *Further discusses the proposed written amendments (EXHIBIT C).

053 CHAIR CLARK: What does "in other warranted circumstances" mean?

055 JEUDEF: If the court were to determine it wants to hold a hearing it can. To assure this was not restrictive on the court, allows discretion. *Continues discussion of proposed amendments (EXHIBIT C).

080 GREG CHAIMOV: Why take out right to counsel for placements?

090 JEUDEF: In response to costs concerns of the committee. *Line 25 discusses being informed of right to be represented by counsel and informed of availability of free or low cost counsel.

REP. PARKS: Where does that exist today? What is "low cost legal services"?

094 JEUDEF: Being referred to legal aid or Oregon Advocacy center, a probono program. No court appointed counsel in guardianship proceedings currently. *Continues discussion of amendments (EXHIBIT C).

149 JUDGE LEE JOHNSON: The bill as written does not make substantial changes to existing law. *Problems are in original bill: narrowing down to psychiatric hospitalization involved, and does not address it; reacquiring a hearing when not requested; and appointed counsel is inconceivable and not practical. *The present statute is sufficient. *Proposed amendments are narrower than Oregon Advocacy Center and were passed out when came before committee on 3-15-91. -Appointment of temporary guardian will not be made unless there was notice 48 hours prior to hearing. Court can waive that requirement. -Notice provides hearing will be scheduled within 48 hours. *Burden to show mental incapacity is very high.

291 REP. MANNIX: Comments on working with the Oregon Advocacy Center to make a compromise.

JUDGE JOHNSON: No.

299 CHAIR CLARK: Comments on direction of the Advocacy Center. Would there be any benefit gained to create a group to working on compromise?

JUDGE JOHNSON: Basic issues are requiring a hearing immediately; requiring clear and convincing evidence.

328 REP. MANNIX: Clear and convincing evidence standard will not stay in the bill, not appropriate for guardian.

JUDGE JOHNSON: Would be wiling to discuss the appointment of counsel.

341 JEUEDEF: Comments on conflict of interest with Judge Johnson.

349 REP. MASON: Is the lawsuit involving this issue?

JEUEDEF: Yes. The merits of the suit have been concluded but there are post judgment matters to be decided. *Only standard applied to guardianship is the clear and convincing evidence standard. There is case law that this must be used for constitutional matters.

369 JUDGE JOHNSON: Comments on the idea of a pending lawsuit.

TAPE 73, SIDE B

043 BILL LINDEN, STATE COURT ADMINISTRATOR: Discusses appointment of counsel at state expense. *Judge Frye's opinion does not provide a right to state appointed counsel. Attorney General agrees in this opinion. *Argues not to provide right to appointed counsel. Comments on implications on the state general fund and indigent defense fund. *Regarding amendments from Advocacy Center (EXHIBIT C) the procedure for requesting hearings. Needs to be more structure for requesting hearing.

069 SCOTT MCGRAW, CITIZEN: Discusses own law firm providing informal public guardian and conservator services for four counties. *Agree that Grant v. Johnson requires court appointed counsel and do agree there must be greater notice and opportunity to be heard regarding due process provisions. *HB 2708 is broader than necessary to meet constitutional requirements. *Do not have substantial objection hearings in these matters. Discusses temporary guardianships and emergency basis.

115 REP. MANNIX: Be willing to work with a group on this issue?

MCGRAW: Yes.

124 CHAIR CLARK: Rep. Mannix will head the working group. *Limit focus on areas of dispute: 1) notice; 2) clear and convincing evidence; and 3) counsel. Closes work session on HB 2708.

(Tape 73, Side B) PUBLIC HEARING ON HB 3105

158 REP. MANNIX: Proposing to "gut and stuff the bill".

HB 3105 - WORK SESSION

162 MOTION: REP. MANNIX: Moves the amendments to HB 3105 (EXHIBIT E).

CHAIR CLARK: Rep. Mannix moves the amendments.

REP. MANNIX: The original version of HB 3105 dealt with the statute of limitations that was not needed. It was addressed in other bills. These amendments (EXHIBIT E) toll the statute of limitations during the time a victim is incapable of communicating. The victim is in a coma, etc. Circumstances are rare but do occur.

CHAIR CLARK: Purposes of amendments to exclude from statute of limitations the period of time the victim is incapable of communicating. Hearing no objections, so ordered.

MOTION:REP. MANNIX: Moves HB 3105 as amended to the full committee

CHAIR CLARK: Rep. Mannix moves HB 3105 as amended to the full committee with a do pass recommendation.

VOTE: 5-0 Motion passes AYE: Bell, Edmunson, Mannix, Parks, Clark,
NO: 0 EXCUSED: Bauman, Mason, Sunseri

CHAIR CLARK: Closes the work session on HB 3105. Adjourns at 5:00 p.m.

Submitted by: Reviewed by:

Kathy Neely, Assistant David Harrell, Office Manager

EXHIBIT LOG:

A	-	Amendments to HB 2415 - 3 pages	B	-	Memorandum and
amendments to HB 2388 - Holly Robinson - 5 pages	C	-	Hand		
engrossed HB 2708 with amendments - Oregon Advocacy Center - 7 pages					
D	-	Amendments to HB 2708 - 2 pages	E	-	Amendments to HB
3105 - Rep. Mannix - 2 pages					