

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

April 3, 1991Hearing Room 357 3:00 p.m.Tapes 78 - 80

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

VISITING MEMBER:Rep. Tom Brian

STAFF PRESENT: Holly Robinson, Committee Counsel Jeff Steve, Committee Assistant Holly Blanchard, Transcriber

MEASURES HEARD:HB 3438 - Juvenile Corrections Grant Program (PH/WS) HB 2388 - Substance Abuse and Pregnant Women (WS)

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TAPE 78, SIDE A

004 CHAIR CLARK: Opens Subcommittee on Family Justice at 3:10 p.m.

HB 3438 - COMMUNITY JUVENILE CORRECTIONS GRANT PROGRAM - PUBLIC HEARING

013 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes HB 3438 which would establish a community juvenile corrections act and a pilot grant program. Refers members to the 343 8-1 amendments dated 3/26/91.

029 JAMES SEYMOUR, OREGON JUVENILE JUSTICE COALITION (EXHIBIT A): We support the -1 amendments but three additional areas that need to be addressed: oversight, establishing benchmarks, and data collection (see EXHIBIT A).

052 ROBINSON: You want to change the entire statutory scheme for the membership of the Juvenile Corrections Council?

055 SEYMOUR: Yes.

058 CHAIR CLARK: What does the reference to "oversight" mean?

060 SEYMOUR: Discusses the requirements of HB 3438 that the Children's Services Division (CSD) establish different rules and policies. We're recommending the Juvenile Corrections Council be the advisory and oversight group in this pilot.

063 CHAIR CLARK: What does the Juvenile Corrections Council do under current law?

066 SEYMOUR: It provides the same oversight and advice regarding the downsizing.

070 CHAIR CLARK: Are the proposed changes about the membership of the Council are found in subsections (3), (5), and (2)(b),(d) and (e)?

073 SEYMOUR: Yes. Reviews what the subsections will do concerning membership. This would expand the members from seven to 11.

080 REPRESENTATIVE TOM BRIAN, DISTRICT 9: Strongly recommend for the implementation of HB 3438 that an advisory group be involved. Gives history of Adult Community Corrections Act that had similar proposed changes that were invaluable in terms of assisting with implementation. Looked at existing groups to form the advisory body without creating a brand new body.

108 CHAIR CLARK: Would the changes in the Council sunset at the same time as the pilot project, or would they be permanent changes to the Council?

111 REP. BRIAN: The proposed changes would not be for the sunset because that Council has other purposes. As HB 3438 sunsets, so does this.

117 SEYMOUR: Refers to EXHIBIT A, establishing benchmarks, and also the collection of baseline data. A fourth issue concerns the ability of CSD to limit the number of counties that might want to participate in pilots. The juvenile departments strongly oppose any limits on counties participating.

164 LEN MUNKS, ASSISTANT ADMINISTRATOR, CHILDREN'S SERVICES DIVISION (CSD): Would support the Juvenile Corrections Council as an oversight group to CSD for these pilots. I'm the current president of the Juvenile Corrections Council and support its expansion.

183 REP. BRIAN: To make this work, the Council will be an independent advisory group to CSD.

198 CHAIR CLARK: Any concern about limiting counties that can participate in the pilot?

199 MUNKS: Yes, the concern relates to whether general fund money will be available to do anything substantial. If there's no restriction to the number of counties that can participate, a lack of funding might diminish the effectiveness of the pilot. Would let CSD and the Council make the decision about county participation according to resources available. Agrees with the other two issues--establishing benchmarks and data collection.

234 MARY BOTKIN, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME) (EXHIBITS C & D): Discusses impact on employees when

pilot program is implemented. Refers to new language in HB 3438-1, Page 9, Section 15 (1) which works for us in defining the employer. Our concern with pilot programs is that employees are not moved around from one employer to another. Continues to discuss HB 343 8-1 proposed amendments.

297 PAUL SNYDER, ASSOCIATION OF OREGON COUNTIES: Supports HB 3438; haven't reviewed the -1 amendments but know the concepts. Local case management system is more likely to produce effective results in helping these juveniles. Think the concept is sound.

333 CARLOS CARTLIDGE, JUVENILE PAROLE OFFICER, CSD: Testifying on own behalf-- not CSD. Supports the concepts of HB 3438; especially using a case management system to manage local resources. Lane County needs an alternate model pilot due to procedures.

396 LARRY OGLESB Y, DIRECTOR, MARION COUNTY JUVENILE DEPT., REPRESENTING OREGON JUVENILE DEPT. DIRECTOR'S ASSOC. (EXHIBIT B): The Association supports the concept of HB 3438 because it makes sense to deliver services to delinquent children on a local level. Urges there not be limits placed on the number of counties that can participate in the pilot. Don't believe the number of counties participating would fiscally impact the state appreciably.

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022 SEYMOUR: Discusses fiscal options to implement the pilot.

HB 3438 - WORK SESSION

053 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses HB 3438-1 amendments, EXHIBIT C.

061 MOTION: CHAIR CLARK moves the 3438-1 amendments.

There being no objection, amendments are adopted.

062 CHAIR CLARK: Rep. Brian suggests a proposed amendment by AFSCME, EXHIBIT D.

076 MOTION: REP. SUNSERI: Moves the AFSCME amendments to HB 3438-1.

There being no objection, the AFSCME amendments are adopted.

102 MOTION: REP. BAUMAN moves a conceptual amendment for the House Judiciary Subcommittee on Family Justice, EXHIBIT A, Subsection C (Data Collection).

There being no objection, the conceptual amendment is adopted.

120 SEYMOUR: Explains Subsection B (Establishing Benchmarks) which refers to resource assessment by the Legislative Fiscal Office for transfers.

121 MOTION: REP. BAUMAN moves the conceptual amendment establishing benchmarks.

There being no objection, the conceptual amendment is adopted.

122 SEYMOUR: Benchmark refers to the amount of money that was spent

this biennium by CSD for those services.

124 REP. MANNIX: This is an independent audit function in determining how much is actually spent.

127 CHAIR CLARK: Describes further amendments concerning Section A, Oversight and the Juvenile Corrections Council.

130 MOTION: REP. MANNIX: Moves that amendment, EXHIBIT A.

There being no objection, the amendment is adopted.

134 REP. BRIAN: Discusses criteria for limiting the number of counties participating in the pilot.

154 CHAIR CLARK: Currently, how many counties are interested in the pilot?

157 SEYMOUR: About 15 counties.

159 CHAIR CLARK: How many are in the Eastern Oregon Coalition?

160 SEYMOUR: About eight counties as part of that Coalition. Supports Rep. Brian's position that the Juvenile Corrections Council be the advisory group to CSD.

176 MOTION: REP. MANNIX: Moves the conceptual amendment that the Juvenile Corrections Council provide advice to the Director concerning how many counties may participate in the pilot. Intent of the legislation is that as many counties as can be reasonably accommodated be allowed to participate in the pilot project.

There being no objection, the amendment is adopted.

187 REP. BRIAN: Refers to ORS 420.035 which addresses the membership of the Juvenile Corrections Council and ORS 420.037 which addresses its purpose.

193 MOTION: CHAIR CLARK: Moves a conceptual amendment to ORS 420.037 expanding the purposes for which the Juvenile Corrections Council exists.

There being no objection, amendment is adopted.

190 MOTION: REP. MANNIX: Moves HB 3438 as amended to the Full Committee with a subsequent referral to Ways and Means with a "do pass" recommendation.

211 VOTE: 8-0

AYE: Bauman, Bell, Edmunson, Mannix, Mason, Parks, Sunseri, Clark  
None EXCUSED: None

Motion passes, Rep. Brian to carry.

HB 2388 - WORK SESSION

229 HOLLY ROBINSON, COMMITTEE COUNSEL (EXHIBIT E): Summarizes HB 2388 and 238 8-10 proposed amendments (EXHIBIT E).

290 REP. EDMUNSON: Does the phrase, "other substances with abuse potential" include tobacco?

292 REP. MANNIX: Grappled with the tobacco issue and decided it would create more opposition to a revolutionary bill. Might consider it in the future.

304 ROBINSON: This is current law. Continues to summarize the bill.

351 REP. EDMUNSON: Raises issue of tobacco smoking on pregnant women.

379 REP. BELL: Concerned about reporting system between local and state health care agencies. Would rather have records stack up than people.

396 DR. GRANT HIGGINSON, OREGON HEALTH DIVISION: This has already been discussed with local health departments. This refers to ORS 433.017 which concerns reportable diseases. The report goes to local health departments and then to the Oregon Health Division. We'd have it go through local health departments.

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003 ROBINSON: This has been removed from the reporting section so discussion might focus on where to put it.

012 REP. MANNIX: Do you want it put into those reporting statutes?

013 HIGGINSON: That's up to the committee that may want to specify reporting to the Oregon Health Division is through local health departments.

021 REP. MANNIX: Since this is now free standing, wouldn't specify it to a certain statutory provision.

026 REP. BAUMAN: Concerned with our double intent to get a prevalence figure and not engage the "fear factor."

051 REP. MANNIX: To address that concern, the referral would be made to the local health department which is obligated to report the statistical incidence to the Health Division without identification information.

055 HIGGINSON: The State Health Division is not interested in getting clients' names. We're interested in the statistical information. The local level is another issue.

062 ROBINSON: If Section 1 were put into ORS 433, aren't there confidentiality and disclosure provisions?

068 HIGGINSON: Not sure.

071 JIM CARLSON, OREGON MEDICAL ASSOCIATION (OMA) (EXHIBIT F): Explains EXHIBIT F which addresses technical changes to HB 2388-10.

079 REP. MANNIX: HB 2388-10 refers to probability of drug use and not definiteness.

083 CARLSON: The problem arises from guess work.

089 REP. MANNIX: On Page 1, line 5, change "determines" to "finds" and

insert "probably" before "a pregnant substance abuser". Does that help the situation?

094 CARLSON: Yes. Our proposed amendments for Page 2 would address language in the 2388-10 amendments we felt might be too open-ended.

115 REP. EDMUNSON: Would like Dr. Lowensohn to address the danger of tobacco relative to other substances.

121 DR. RICHARD LOWENSOHN, OREGON HEALTH SCIENCES UNIVERSITY (EXHIBIT G): Tobacco is a highly-addictive drug. Discusses tobacco's negative impact on baby birth weight.

145 REP. PARKS: Leery about including tobacco because it tends to minimize the serious of controlled substances in the public's mind.

146 LOWENSOHN: I want to maximize the appreciation of risk for what we call minimal-risk drugs--cigarettes and alcohol. These drug cause far more harm than those this committee is focusing on.

Discusses first proposed amendment (EXHIBIT G). This would allow someone to side step this entire process if a patient enters treatment.

177 REP. MANNIX: That's consistent with the general statement made in Section 12 but more precise.

181 REP. BAUMAN: The responsibility still remains to get statistical information without regard to the availability of ancillary treatment?

185 LOWENSOHN: Absolutely.

187 CHAIR CLARK: Is entry of the patient into substance abuse treatment clearly defined?

191 LOWENSOHN: I don't have a clear answer for that.

201 CHAIR CLARK: Would the provider monitor the patient to know treatment was implemented and ongoing?

203 LOWENSOHN: I would assume that.

205 REP. MANNIX: Is this a narrow exception for placement into treatment?

212 LOWENSOHN: Yes, even if an agency could perform the evaluation and treatment. It would accomplish the same goal.

Discusses other proposed language for Section 10 (2) and Section 10 (3) (EXHIBIT G).

241 ROBINSON: Questions the 10-day assessment requirement.

250 CARLSON: Believe current law requires an assessment within the first trimester.

254 LOWENSOHN: Has personal reservation concerning Section 10 (1) that refers to the standardized screening instrument. Feels screening process is more important than method used.

280 REP. MANNIX: Not requiring people to use standardized screening.

The operative language is, "offer a substance assessment, . . .".  
There's no requirement concerning screening.

295 ROBINSON: Need to delete lines 24 and 25 on Page 4 to accomplish that.

302 REP. MANNIX: This is mandating a screening--not the kind of screening.

306 ROBINSON: Discusses language in lines 24 and 25.

315 REP. BAUMAN: This is not consistent with Section 1 (1). It sets up an internal problem. Concerned with Section 10 (3) in relation to the "fear factor."

359 REP. MANNIX: Recommends line 23 be changed to read, "an appropriate substance screening."

362 REP. BAUMAN: Are we repealing an existing screening requirement?

364 HOLLY ROBINSON: ORS 430.920 refers to risk assessment. Seems this dovetails with that.

377 REP. BAUMAN: Rep. Mannix had mentioned the requirement in lines 22-24 is in current law.

380 REP. MANNIX: That's what counsel said.

383 HOLLY ROBINSON: Lines 22-24 is there with the exception that it be done in the first trimester and not the first 10 days.

385 MOTION: REP. BAUMAN: Moves deletion of lines 22-25 and lines 22-24 because it's in existing law, and line 25 due to Dr. Lowensohn's objection.

393 CHAIR CLARK: Rep. Bauman suggests Subsection 3 of Section 10 be removed.

408 HOLLY ROBINSON: Reads current risk assessment language.

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There being no objection, the amendment is adopted.

008 MOTION: REP. BAUMAN: Moves the deletion of Section 10 (4).

There being no objection, the amendment is adopted.

016 MOTION: REP. MANNIX: Moves the conceptual amendment that the language be changed to require that the report be to local health departments which are required to pass on the statistical information without the identity of the individual to the Oregon Health Division, pursuant to the rules of the Oregon Health Division.

There being no objection, the conceptual amendment is adopted.

022 REP. BAUMAN: Question on the amendment concerning the physician's obligation to report patient information.

033 REP. MANNIX: Intent is to have the identification information

reported to the local health agency even if the physician has arranged for treatment.

031 HOLLY ROBINSON: Reads "disclosure" provisions for health agencies relating to identification information.

037 REP. BAUMAN: Concern was this would allow CSD to get that information based on the welfare of the child. Want to be sensitive to the "fear factor."

055 MOTION: REP. MANNIX moves an amendment that the full identification information will be provided to the local health department but it can only be used as follows: -To offer a substance assessment to the pregnant woman -To provide the non-named statistical information to the Oregon Health Division -Forbid them to use that information for any other purpose.

067 REP. BAUMAN: Questions the patient/physician relationship concerning a possible informed consent requirement.

078 REP. MANNIX: Object to that. Gives example of possible child abuse and reporting it to CSD. Informed consent would create more barriers.

084 REP. BELL: A prescription by the physician for services to the patient might solve the problem.

091 REP. BAUMAN: Won't participate in the analogy to child abuse. Support Rep. Bell's suggestion because can't see a way around the violation of the physician/patient privilege.

111 CHAIR CLARK: Is the proposal that the patient must give informed consent prior to screening?

114 REP. BAUMAN: No. If there is a referral of every positive assessment by name and address to the local health department, then there needs to be a consent requirement to protect the physician from a mandated violation of the physician/patient privilege.

123 CHAIR CLARK: How is the physician/patient relationship treated in the child abuse reporting context?

131 CARLSON: There is no informed consent in cases of suspected child abuse. Statute requires the reporting of any cases of suspected child abuse by any of the designated reporters of which physicians are included.

138 CHAIR CLARK: Don't physicians explain this?

LOWENSOHN: Child abuse is a poor example for this and probably more appropriate would be hepatitis, gonorrhea, or syphilis that is a reportable disease to the Health Division.

153 CARLSON: Refers to language in Section 1, Subsection 3 (a).

161 CHAIR CLARK: Concerned about a pre-testing informed consent requirement and whether the language mentioned in Section 1 gets the same thing?

175 REP. BAUMAN: Agrees and withdraws suggestion. Endorse Rep. Bell's



suggested amendment that it not be a report but rather a prescription to the local health department.

185 REP. BELL: The prescription could be an official form of referral to the health department for screening, care and services. Then the decision to proceed is only with the patient.

194 REP. MASON: Not going to support the bill in its present form because there's nothing left. The idea of giving a drug-addicted pregnant woman a card (prescription) is absurd. What will it do?

108 CHAIR CLARK: Redirects the committee.

213 REP. MANNIX: Agrees that Rep. Bell's suggestion does nothing for the situation. Thinks an assessor who is trained in drug issues will help in working with the pregnant woman.

235 REP. BELL: Think this route would be useful in building trust for these women to use these services.

243 MOTION: REP. MANNIX: Moves on Page 1, line 5, change "determines" to "finds", on line 7, change "determination" to "finding". Moves the dash 10 amendments with the prior modifications.

CHAIR CLARK: Rep. Mannix moves the OMA amendments as a working document.

There being no objection, the -10 OMA amendments are adopted.

276 MOTION: REP. MANNIX: Moves HB 2388-10, Page 1, line 5, insert the word "probably" before "a pregnant substance abuser" and on Page 2, line 5, insert the word "probably" before "a pregnant substance abuser".

There being no objection, the amendments are adopted.

280 REP. MANNIX: Makes technical changes. Page 1, lines 17, insert a "," after "written plan" and on line 18, insert a "," after "for services relating to any substance problems".

There being no objection, the technical changes are adopted.

MOTION: REP. MANNIX: Moves on Page 4, line 16, after the words, "urine screening" insert "or similar test" recognizing future tests may not be urine screening.

CHAIR CLARK: Rep. Mannix moves the insertion as noted.

There being no objection, the amendment is adopted.

307 MOTION: REP. MANNIX: Moves on Page 4, lines 18 and 19, the language needs to be clear it refers to full agency terminology.

CHAIR CLARK: Moves for terminology reference.

There being no objection, terminology reference is adopted.

318 MOTION: REP. MANNIX: Moves to add "attending health care provider" phraseology with modification.

CHAIR CLARK: Rep. Mannix moves to modify Part 1 of the Dr. Lowensohn amendments.

345 REP. MANNIX: Want to make it clear it doesn't mean a physician has to personally conduct the assessment, just that it was done by someone the physician was working with.

350 REP. BAUMAN: Raises grammatical problem concerning the performance of the assessment.

357 REP. MANNIX: Takes that as a friendly amendment.

CHAIR CLARK: Rep. Mannix moves the language "to assure that the substance assessments will be performed."

350 There being no objection, it is adopted.

356 MOTION: REP. MANNIX moves Dr. Lowensohn's second and third proposals to replace the language in Section 10 (2) and Section (3) as noted in EXHIBIT G.

360 There being no objection, the amendments are adopted.

361 CHAIR CLARK: Recesses committee at 5:00 p.m. convenes at 5:02 p.m.

376 JEFF KUSHNER, OFFICE OF ALCOHOL AND DRUG, DEPT. OF HUMAN RESOURCES (DHR): Concerned about the deletion of the 10 days. Most physicians would say the damage to the fetus from alcohol and drug use happens primarily during the first trimester. Discusses proposed amendment on Page 2, Sections 3 and 4 and the intent of the original bill. Think Section 3 was intended to give the Dept. of Human Resources money for planning grants--not to fund treatment (refers to Section 8 of the original bill).

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033 HOLLY ROBINSON: Don't believe the Task Force intended that all treatment dollars go only to the Office and Alcohol and Drug and not to others under the DHR umbrella.

038 REP. BAUMAN: Agrees with Rep. Mason that money should go directly into treatment since that's where the primary need is. Want to leave door open for DHR to respond to requests for money if it's available.

046 KUSHNER: Concerned that a longer waiting period opens the door for more potential damage to the fetus. Suggests language, "within 10 days wherever possible" during the first trimester.

059 REP. BAUMAN: What if the pregnant mother doesn't come in until after the first trimester?

063 MOTION: REP. MANNIX: Moves the conceptual amendment to say the screening be done as soon as possible within the first trimester or if the visit is after the first trimester, within 10 days of the first visit.

069 REP. BAUMAN: Raises physician concern about liability if the physician is not able to meet the 10-day standard.

080 MOTION: REP. MANNIX: Moves a conceptual amendment that the screening shall be conducted as soon as reasonably possible within the first trimester or if after the first trimester, within 10 days of first

seeing the patient.

092 REP. BAUMAN objects to the motion.

The motion for the conceptual amendment is adopted.

099 MOTION: REP. EDMUNSON moves HB 2388-10, Page 2, line 17, after the words, "alcoholic beverages" to insert "or tobacco".

104 REP. EDMUNSON: Discusses statistics report concerning pregnant users of tobacco.

116 REP. MANNIX: Agree with the concept but concerned about the political reality of adding tobacco. Want the bill to pass. Opposed to the amendment under that concept.

118 REP. EDMUNSON: That's the height of hypocrisy. Here's a bill that truly deals with a health concern that's legitimate. Strongly support the motion.

127 REP. BELL: Refers to Page 4, Section 10(5), line 28, concerning the definition of "substance". Mandating discussion about substance abuse with the patient would also involve enforcement.

141 REP. MANNIX: Tobacco can cause low birth weight but haven't seen evidence of any deformities or developmental disabilities. Agree that tobacco is a problem that should be addressed but not willing to address it in this program.

150 CHAIR CLARK: Intend to call the question.

158 REP. EDMUNSON: Discusses Page 1 of the report concerning size and nature of the problem concerning tobacco use during pregnancy which includes reference to infant mortality.

170 CHAIR CLARK: Calls the question to the proposed amendment to add "tobacco" to the definition of "substance" on Page 2.

VOTE: 6-1

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

Motion passes, the amendment is adopted.

180 MOTION: REP. MANNIX moves HB 2388 as amended to the Full Committee with a subsequent referral to Ways and Means with a "do pass" recommendation.

VOTE: 6-1

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

Motion passes, Representatives Bell and Bauman to carry.

248 CHAIR CLARK: Adjourns the meeting at 5:25 p.m.

Submitted by:

Reviewed by:

Holly Blanchard  
Manager

Pat Zwick Transcriber

Office

EXHIBIT LOG:

A - Written testimony, James Seymour, Hse. Jud. Subcommittee on Family Justice, HB 3438, 1 page B - Written testimony, Larry OgleSB y, Oregon Juvenile Dept. Director's Association, HB 3438, 1 page C - Proposed Amendments, HB 3438-1, dated 3/6/91, Mary Botkin, AFSCME, 10 pages D - Proposed Amendments, HB 3438-1, Mary Botkin, AFSCME, 1 page E - Proposed Amendments, HB 2388-10, dated 4/2/91, Committee Counsel, 5 pages F - Proposed Amendments, HB 2388-10, Jim Carlson, Oregon Medical Association, 1 page G - Proposed Amendments, HB 2388, Dr. Richard Lowensohn, OHSU, 1 page