

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 10, 1991 Hearing Room 357 3:00 p.m. Tapes 86 - 87

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 Holly Blanchard, Transcriber

MEASURES CONSIDERED: HB 2673 WS (Adoption) HB 3114 PH/WS (Paternity)

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TAPE 86, SIDE A

003 CHAIR CLARK: Calls the meeting to order at 3:20 p.m. and advises HB 266 9 will be rescheduled for Friday, April 17, 1991.

HB 2673 - WORK SESSION

010 HOLLY ROBINSON, COMMITTEE COUNSEL (EXHIBIT A): Discusses amendments to HB 2673-1 dated 4/9/91 with proposed amendments, HB 2673-2 concerning open adoptions. Discusses committee work on the bill.

028 CHAIR CLARK: Committee needs to consider adoption of the dash 1 amendments and what the stakes would be for baby selling.

052 ROBINSON: The concept of making this a Class C felony has a \$100,000 fine.

056 REP. BELL: When the fee is set, need to consider there are two different groups of people (HB 267 3-1, Page 2, Subsection (4)) yet equal violations. Person selling the baby is usually indigent while people or agencies buying them may be able to pay a high fee.

061 CHAIR CLARK: The way the language reads, a judge would have some discretion on fines.

073 REP. BELL: Concerned about agencies that might be operating for profit as opposed to the parents selling and buying.

077 CHAIR CLARK: Don't know if that exists. Abuse discussed probably came from overly aggressive attorneys trying to arrange private

adoptions.

082 REP. BAUMAN: Shares the concern about the amendments on Page 2. Discusses surrogacy bill to be heard. Think this would outlaw surrogacy.

092 ROBINSON: It would prohibit surrogacy contracts if allowed that had dollars attached above and beyond costs reasonably related to the expenses of the pregnancy period.

099 CHAIR CLARK: The legislature could adopt this statute, a surrogacy statute and make reference to this statute in that surrogacy bill.

102 REP. BAUMAN: Discusses the issue of money for kids.

127 REP. SUNSERI: Don't think the transaction of adoption is being prohibited just the elimination of the "for profit" element which also can involve stealing children to sell for profit.

144 REP. BAUMAN: This language won't discourage people who steal children for profit.

146 REP. EDMUNSON: Support this amendment notwithstanding the concerns of Rep. Bell. In all laws governing children, the purpose of the law is the protection of the child. Discusses the motive of the sale or adoption and the Thirteenth Amendment of the U.S. Constitution which prohibits categorizing people as "things."

177 REP. BAUMAN: Would assume reasonably related expenses would include attorney's fees that are profitable to the practicing attorney. Also involves doctors' fees and hospital fees that are profitable to those groups.

186 CHAIR CLARK: Argues those are both necessary to complete the adoption. Fees beyond those expenses arguably are not necessary to complete the adoption.

190 REP. SUNSERI: That depends but it could also include costs for housing and food which would be reasonable expenses connected with the adoption.

193 CHAIR CLARK: Don't anticipate those expenses would be a problem. It's when someone says they now need more money, \$10,000 for example, and that's what this bill would address. Suggests Subsection 5 not be made a crime but rather a hefty penalty at the discretion of a judge.

214 REP. BELL: Concern was with the assessment of the fee and not the amendment. Suggests language for Subsection 5.

223 CHAIR CLARK: Suggestion raises a technical issue.

226 REP. MANNIX: Suggests possible language involving a set fine and an alternative.

236 REP. SUNSERI: This is a repugnant practice--selling babies. Like the idea of a formula.

248 CHAIR CLARK: Confirms the dash 1 and 2 amendments were adopted at a prior hearing.

252 REP. MANNIX: Makes an amendment to the dash 2 amendments to include reference to race, creed, color or national origin because sometimes they are distinguishable considerations.

258 CHAIR CLARK: There being no objection, it will be made as a friendly amendment to the previously adopted amendments.

260 REP. BAUMAN: Opposed to the amendment due to concerns about placing children with families with no cultural heritage consideration.

287 REP. BELL: Maybe the amendment is too cut and dry. Agree with the idea of preference when it's available if there's a choice of homes. But is concerned about keeping a child institutionalized when there isn't an appropriate home available.

348 MOTION: REP. BAUMAN moves to delete the language in the dash 2 proposed amendments from consideration by the committee.

354 REP. SUNSERI: Why is it important that babies be placed with families that speak the same language to which they were born? Discusses foster families that have taken children of different backgrounds and supportive emotional bonds have been formed.

371 REP. BAUMAN: Gives example of cultural chauvinism.

TAPE 87, SIDE A

MOTION: REP. MANNIX moves to amend Rep. Bauman's motion to change the deletion of the language instead to modify it to read, "and administering any of its adoption programs to Children's Services Division shall not give priority to any adoptee or potential adoptive family solely based upon race, creed, color or national origin."

034 MANNIX: Race, creed, color or national origin is an appropriate consideration in the adoptive process but should not be treated as the priority consideration. There are other factors and interests to balance.

041 CHAIR CLARK: Do you consider that a friendly amendment?

045 REP. BAUMAN: This is a very difficult issue to deal with--the marketability of babies.

060 TONI PETERSON, CHILDREN'S SERVICES DIVISION (CSD): CSD has been looking at foster care and adoption policies at the request of ethnic communities in Oregon. The main concern is that children of color placed in white homes are often not prepared to deal with racism as adults.

085 CHAIR CLARK: What would stop a child of color in a white family from learning about their own culture?

091 PETERSON: A black child placed in Ontario or Klamath Falls, for example, may not have the experience of being with other black people.

094 CHAIR CLARK: What about a child born of a Jewish mother who is placed with a protestant family?

099 PETERSON: A Jewish community person might think the child won't learn the richness of our religion and a protestant family may say the

child will because their religion is based on the Judeo-Christian ethic.
These are difficult issues.

109 REP. BELL: Comments on NAACP meeting where discussion included
local gangs and the police stopping innocent residents of color.

127 REP. MANNIX: Purpose of the motion is to give CSD a bit of backing
to respond to people who think race, creed, color or national origin
should be the end-all of the process.

132 CHAIR CLARK: Rules this an unfriendly amendment and asks for a vote
on Rep. Mannix's motion to amend Rep. Bauman's motion.

150 REP. BAUMAN: Don't want to tie CSD's position which is to act in
the best interests of the child. Considers this amendment an effort to
hamper their ability to exercise sensitivity to ethnic considerations.

VOTE: 6-2

AYE: Bell, Edmunson, Mannix, Mason, Sunseri, Clark NO: Bauman, Parks
EXCUSED: None

Motion is adopted.

CHAIR CLARK: Motion is now Rep. Bauman's motion as amended.

168 REP. MANNIX: Reads the motion as amended.

172 REP. PARKS: Concerned about the Indian Child Welfare Act.

174 CHAIR CLARK: Federal law preempts regardless of what is done
here--the Indian Child Welfare Act takes precedence.

179 REP. MASON: Vehemently disagrees with that Act. Can't affect the
Indian side of it but everything else can be.

182 CHAIR CLARK: Practical effect of the amendment is this provision
will not apply to Indian children.

VOTE: 7-1

AYE: Bell, Edmunson, Mannix, Mason, Parks, Sunseri, Clark NO: Bauman
EXCUSED: None

Motion is adopted.

193 MOTION: REP. MANNIX moves the dash 1 amendments with the following
modification: Page 2, line 10, to read, "punishable by a fine not to
exceed \$10,000 or three times the improper fee, whichever is greater."

207 MOTION: CHAIR CLARK moves to amend Rep. Mannix's motion to change
\$10,000 to \$50,000. In this market, it's not uncommon to see dollars
substantially exceeding \$10,000.

211 REP. MANNIX: Consider that a friendly amendment.

216 CHAIR CLARK: The motion is "not to exceed \$50,000, or three times
the actual fee, whichever is greater."

Motion is adopted.

225 REP. MASON: It would be irrelevant when this contract for sale was made. Can't transfer an unborn child.

239 REP. EDMUNSON: Understands that surrogacy typically involves the father's sperm being used for impregnation purposes. Therefore, one of the parties to the contract is a genetic parent.

258 REP. BAUMAN: Don't want to narrow the definition for surrogacy that much.

260 MOTION: REP. MANNIX moves to conceptually amend HB 2673 to include a specific provision that the provisions of this bill do not address surrogacy one way or another and define surrogacy.

273 REP. EDMUNSON: That's too big a loophole. Discusses problem of defining surrogacy.

278 REP. MANNIX: Withdraws his motion.

281 CHAIR CLARK: Closes work session on HB 2673 in order to first hear the surrogacy bill before proceeding with this bill.

HB 3114 - PUBLIC HEARING

305 HOLLY ROBINSON: Discusses HB 3114 which concerns establishing paternity of unborn children.

231 REP. MANNIX: Testifies in support of HB 3114 which would speed the administrative process for establishing paternity for support and medical expenses prior to the child's birth.

363 REP. MASON: HB 3114 resembles a bill with the same concept which involved paying for support of the child regardless of whether or not the mother was receiving welfare benefits. Wants HB 3114 to address the father's responsibility.

398 KATE BROWN, WOMEN'S RIGHTS COALITION: Refers to ORS 109.115 (4) and the

affiliation proceedings. Under the statute, an unmarried, pregnant woman can currently initiate paternity proceedings for prenatal care expenses.

433 REP. MASON: Want to expand it so the state could do it administratively for her.

435 BROWN: Propose an amendment to HB 3114, Page 1, Section 1, line 5 to read, "The administrator may establish paternity before or after the birth of the child. . .".

TAPE 86, SIDE B

011 REP. MANNIX: On line 5, the proposed language is, "The administrator may establish paternity before or after the birth of a child." On lines 7 and 8 change to, "of the child or child to be born." On line 12, change "unborn child" to "or child to be born" and on lines 20 and 21, change "or unborn child" to "or child to be born." This moves away from the sensitive issue of abortion.

018 REP. BAUMAN: Discusses a 1986 case concerning a delay in testing because of a medical protocol and not a legal one. Has the situation changed concerning medical technique?

031 REP. MANNIX: Don't know.

033 BROWN: If the father contests custody, blood tests are required no sooner than three months after the birth of the child. Many laboratories won't do the tests sooner than six months after the child's birth.

037 JOHN ELLIS, SUPPORT ENFORCEMENT DIVISION, DEPT. OF JUSTICE (EXHIBIT B): Addresses questions.

045 REP. MASON: The state's policy on making fathers pay for mothers who are on welfare but not for those who are not receiving welfare benefits is ironic. Think that policy should extend to mothers not receiving welfare.

062 ELLIS: The state has a child support program that provides paternity establishment services to anyone who asks. Welfare recipients must be part of that program. Discusses what the state can and will do under the provisions of Chapter 416 and Chapter 109 (EXHIBIT B).

091 REP. MASON: Discusses cases pursued by the state in which the mother is receiving ADC. This amendment isn't needed because this bill would enable a woman who had a child and not receiving ADC to use the administrative procedure to establish paternity.

106 REP. BAUMAN: The bill would get testing done at the woman's request for support from the punitive father prior to the birth of her child.

117 ELLIS: Chapter 416 does not provide for prenatal care or for an order prior to the child's birth. Chapter 109 deals substantively with these matters.

131 REP. MANNIX: Confirms Chapter 416 cannot be used to lock in the question of child support.

138 ELLIS: The Dept. of Justice doesn't do it as a policy matter because of the problem with genetic testing. Men who admit they are the father before the child is born often renege later. Some men admit they're the father when testing proves they are not.

152 REP. MANNIX: What is the problem if they are willing to accept responsibility?

157 ELLIS: As policy makers, do you want a process that encourages nonbiological fathers to be the fathers?

164 REP. MANNIX: We're encouraging them to pay support to someone they've apparently had sexual activity with anyway.

184 MARK JOECKEL, CITIZEN: Not taking a position on HB 3114 but establishing paternity is a very expensive court process. Concerned about the children and not the costs involved. Paternity laws need to be revamped. The amendments have made paternity easy for the mother and difficult for the father.

220 REP. MASON: There's a conclusive presumption.

221 JOECKEL: Only if the child is conceived in wedlock. I took the responsibility for the child and married the mother who later said I wasn't the father in a custody case.

229 REP. MANNIX: HB 3314 does not address that issue.

232 JOECKEL: The paternity laws need to be rewritten.

237 REP. PARKS: There's a psychological parent statute in Oregon under which the psychological parent can get custody without being the natural parent.

241 JOECKEL: Gives example of how CSD got involved in a divorce case where paternity was established. CSD came back to court to establish the man was not the biological father. The man lost all his rights.

251 RICHARD KOENIG, CITIZEN: My comments echo those of Mr. Joeckel. The paternity laws should favor both parents equally. Discusses interpretive problems in HB 311 4. Don't think the amendments go far enough. Discusses HB 3514 that will plug into this bill making it a two- edged sword.

349 CHAIR CLARK: Closes the public hearing on HB 3114.

HB 3114 - WORK SESSION

386 REP. MANNIX: Refers to ORS 416.415 dealing with the support system in welfare and changes that need to be made for consistency.

390 MOTION: REP. MANNIX moves to amend HB 3114 as follows: On line 5, "may establish paternity, before or after the birth of a child, in the course of the support proceeding." On lines 7 and 8 to read, "is the father of the child or child to be born." Line 12 to read, "as the legal father of the child or child to be born." Lines 20 and 21 to read, "child or child to be born."

394 CHAIR CLARK: Is there a substantive change in that amendment?

399 REP. MANNIX: No, it doesn't change the meaning of the printed bill.

VOTE: 3-2

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

TAPE 87, SIDE B

014 MOTION: REP. MANNIX moves to conceptually amend ORS 416.415 to make the language consistent with the statute.

Motion is adopted.

025 ROBINSON: Clarifies ORS 415 relates to notice procedures rather than determination of paternity.

031 MOTION: REP. MANNIX moves HB 3114 as amended to the Full Committee with a "do pass" recommendation.

VOTE: 4-1

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

051 REP. PARKS: Think it's bad social policy to have people labeled parents who are not the parents even if they're willing to assume the responsibility.

068 CHAIR CLARK: Rep. Mannix changes his vote to "No" and gives notice of possible reconsideration. Closes work session on HB 3114 having not received the vote of the majority.

104 CHAIR CLARK: Recesses committee for five minutes.

125 CHAIR CLARK: Reopens work session on HB 3114.

139 MOTION: REP. MANNIX moves the reconsideration of the vote for HB 3114 to the Full Committee.

There being no objection, HB 3114 is back before the committee for consideration.

143 MOTION: REP. MANNIX moves HB 3114 as amended to the Full Committee with a "do pass" recommendation.

152 REP. PARKS: Explains his position on the bill.

157 REP. MANNIX: Concerned with providing the pregnant mother with continuity, support and stability as soon as possible. The Attorney General's Office will defer this in questionable situations.

160 REP. BAUMAN: Gives reason for voting against HB 3114.

168 REP. MASON: Calls the question.

VOTE: 5-2

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

Motion passes, Rep. Mannix to carry.

172 CHAIR CLARK: Adjourns the meeting at 5:00 p.m.

Submitted by, Reviewed by,

Holly Blanchard
Manager

David Harrell Transcriber

Office

EXHIBIT LOG:

A - Staff Measure Summary and Proposed Amendments, HB 2673-1 and HB 2673-2, dated 4/9/91, 4 pages B - Written testimony, John Ellis, Dept. of Justice, HB 3114, 2 pages