

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, 17, 1991Hearing Room 357 3:00 p.m.Tapes 94 - 96

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 CONSIDERED: HB 2669 PH (Obscene Material) HB 2944 PH (Mental Health Services) HB 2721 PH (Civil Liability) HB 3112 PH (Court Authority)

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TAPE 94, SIDE A

003 REPRESENTATIVE CLARK, CHAIR: Calls the meeting to order at 3:00 p.m.

HB 2944 - PUBLIC HEARING Witnesses: Peter Grundfossen, Oregon Housing Authority Norma Jaeger, Multnomah County Debbie Wood, Central City Concern Robert Dugrath, Association of Portland Progress Vern Ryles, Portland David Findanque, ACLU Dan Barker, Offie of Mental Health Service

020 REP. MANNIX: HB 2944 dealings with the issue of involuntary commitment and those effected by alcohol and drugs. \*Changes law to define persons in need of metal health services to include people who are dangerous to others because of the abuse and dependency.

031 PETER GRUNDFOSSEN, ASSOCIATION OF OREGON HOUSING AUTHORITY: (EXHIBIT A) Concerned about the involuntary commitment of chronic alcohol and drug abusers. \*HB 2944 amends the state's mental hearing involuntary commitment and treatment statute to include people who abuse alcohol or drugs. \*Discusses what is changed in the existing statute as set out in written testimony. (EXHIBIT A).

084 CHAIR CLARK: A person who abuses alcohol or drugs may be determined in need of mental health services if certain conditions are present is current law. \*Would abuse of alcohol and drugs qualify as chronic mental illness under current law?

096 GRUNDFOSSEN: Not under current law.

098 CHAIR CLARK: Under the bill would chronic alcohol and drug abuse

qualify for mental illness?

107 GRUNDFOSSEN: Yes, moves it along side mental illness.

CHAIR CLARK: Written testimony, Section 2 sub c, lists chronic mental illness as a person who is mentally ill. \*Under HB 2944, would the mere fact of drug and alcohol abuse qualify within the meaning of that statutory phrase?

GRUNDFOSSEN: Yes. On page 1 line 12 of HB 2944.

112 REP. MANNIX: The bill makes reference on page 1, line 22 to a person who is chronically mentally ill as defined in ORS 426.495 which defines it as "18 or older, diagnosed by a psychiatrist as suffering from chronic schizophrenia or another chronic psychotic mental disorder other than those caused by substance abuse."

122 CHAIR CLARK: The committee could amend the definition.

124 HOLLY ROBINSON: Understands Chair's question to be if an abuser, do they fall within the parameters of the bill? The answer is no with exception of 2 or more DUIs convictions.

132 REP. MASON: Line 11 changes definition from "mentally ill person" to "person in need of mental health services". The abuse could be proved by other means.

146 GRUNDFOSSEN: Agrees with interpretation. \*Continues discussion of written testimony (EXHIBIT A). \*HB 2944 needs to have secured holding facilities to work. -State is not required to commit anyone under this law. -State is not required to build new or reorganize old facilities. \*HB 2994 gives state option to no treatment. -Counties can open a treatment facility under this law.

203 CHAIR CLARK: Do other states do this?

204 GRUNDFOSSEN: Yes other states do. New York and Hawaii have something similar. Remaining have involuntary commitment tied to other crimes or misdemeanors.

214 CHAIR CLARK: Previous line of thought was that someone could not be made to get treatment.

228 GRUNDFOSSEN: Substantial information indicates involuntary commitment is effective.

238 REP. PARKS: Asking for sense of problem's scope. How many people? A cost per person?

242 GRUNDFOSSEN: HB 2944 does not require the state to take any action. Can not give any figures regarding number of people involved. Will be up to local discretion.

263 REP. PARKS: In testimony stated the state does not have to put this into effect, where is it stated in the bill?

267 GRUNDFOSSEN: Section 13, page 9, lines 41 and 42 gives the examiner acting for the court authority to determine if there is a suitable facility for the person to be committed under HB 294 4.

274 REP. PARKS: Asks about the Association of Oregon Housing Authorities.

278 GRUNDFOSSEN: The Association is the largest public provider of low income housing in the state. Discusses the Association.

295 REP. PARKS: Sounds like a treatment facility is just a part of the grand scheme to make sure everyone has a decent place to go and stay.

304 GRUNDFOSSEN: Not advocating that. Discussing a specific class of individuals who cannot take care of themselves.

333 NORMA JAEGER, MANAGER OF DRUG AGENCY, MULTNOMAH COUNTY: Believes a major advance in alcohol and drug treatment has been the involuntary treatment. Wanting treatment is not a pre-condition for getting treatment. \*Discusses intervention programs. \*Those that continually abuse alcohol or drugs are at great risk of serious accident, injury, acute chronic health problems and victimization by others. They pose a risk to others by inflicting property damage. \*In many cases compelled treatment is far more effective than voluntary treatment. \*Interested in having this additional tool to get people, who have reached the point where they cannot reach a decision on their own behalf, to have the community act and allow them to go into treatment.

TAPE 95, SIDE A

017 CHAIR CLARK: Is there data comparing voluntary and involuntary treatment as to how they do 10 or 15 years down the road?

023 JAEGER: Not aware of any data that exists. Not much data about long term effectiveness.

032 DEBBIE WOOD, EXECUTIVE DIRECTOR OF CENTRAL CITY CONCERN: Discusses what Central City Concern does. \*Offer a variety of services for dependency treatment under contract by Multnomah County. \*Discusses the "sobering station". \*Serve about 30,000 admissions, actually about 9,000 separate individuals. There is a recidivism and revolving door issue. HB 2944 will help end that "revolving door". \*This would allow for a permanent change in their lives. \*Discusses Tacoma, Washington's program and their success rate with involuntary commitment. It is a deterrent.

094 REP. MANNIX: What kind of technical work does this bill need?

WOOD: One issue concerned with is to add physical standards for determination on what is committable, and language separating being "substance dependant" from "mental illness". They are different.

106 REP. MANNIX: That terminology is not used in the bill any more. It is a "person who needs mental health services" not defined as being mentally ill.

114 ROBERT DUGRATH, FIELD SERVICES DIRECTOR, ASSOCIATION OF PORTLAND PROGRESS: Discusses the Portland Progress and its purpose. \*There is an impact to the downtown merchants who have to deal with visibly intoxicated people everyday by either removing them from the shop door, dealing with customer conflicts and employee problems as a result of them. \*Discusses financial risk perceived by downtown investors by this problem.

\*HB 2944 is humane and economically sensible.

147 VERN RYLES, PAST CHAIR OF PORTLAND METRO CHAMBER OF COMMERCE:  
Testifies in favor of concept of HB 2944 as it relates to efforts to  
resolve homelessness in. \*Comments on agreement to eliminate  
homelessness from downtown Portland and what is needed to solve it.  
Discusses programs that were implemented and what they have done to  
date. \*Difficult to deal with the substance dependent person. \*Need to  
have some method of placing these people in a humane facility for  
treatment and care.

186 REP. BELL: Do the Portland downtown businesses contribute to the  
"Cheirs" program?

DUGRATH: CHEIRS is supported by the City of Portland and Multnomah  
County business licenses revenues. \*Businesses are providing jobs for  
alcoholics who have gotten through the CHEIRS program and are in  
treatment.

RYLES: Part of the program is designed to have the private sector  
contribute for the case management portion. \*Funding is set up through  
United Way. \*Discusses Funders Advisory Committee that coordinate all  
homeless programs.

225 REP. PARKS: "Socialpathic militen personality" used in testimony.  
What is that?

RYLES: The person taking welfare checks from mentally ill, beating  
drunks, knifing people.

243 REP. PARKS: Criminals then. Not intending to deal with them?

RYLES: No. The justice system will have to deal with it. Part of the  
problem is the difficulty in telling them appear from alcoholic behavior  
and mental illness. \*Facility is outside the measure 5 cuts.

250 REP. PARKS: In favor of a pilot program.

257 REP. MANNIX: This is authorization for a procedure in a process.  
Does not say someone must do it. Who ever does it will have to come up  
with the money.

REP. PARKS: Sure it is not Portland that has the problem but that it is  
statewide.

264 REP. MANNIX: Don't know who has the resources and who will come up  
with them. \*Don't want to eliminate another city or county that may want  
to do with because a pilot program was set up in one city.

27DAVID FINDANQUE, ACLU: Opposes HB 2944. \*Discusses general philosophy  
on involuntary commitment. \*Concerned with imposition on current civil  
commitment process a "different type of client" that may not fit.  
\*Subcategory C, definition of mentally ill person, was added recently  
and expands definition. \*Previously civil commitment could only be used  
when someone was dangerous to themselves and others.

358 CHAIR CLARK: Asks to highlights of systems problems and submit  
written comments.

369 FINDANQUE: Subsection C will be over broad. \*Discusses report by

local mental health agency to the court regarding person taken into custody under current mental illness civil commitment statute. Unclear on what happens to the report. \*Current statute allows person to be taken into custody and to a treatment center and held for 48 hours. If the center cannot convince someone to stay in treatment after that time, should not be allows for them to hold them longer than that.

TAPE 94, SIDE B

017 DAN BARKER, DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF MENTAL HEALTH SERVICE: (EXHIBIT B) Testifies in opposition to HB 2994. Understands and is sympathetic to the situation this attempts to address.

025 REP. MANNIX: According to written testimony the problem is all of this goes into the typical mental health commitment statutes creating a tremendous obligation.

BARKER: That is an issue.

REP. MANNIX: Financial issue is to not have control over how the obligations start.

030 BARKER: The state assumes responsibility when a person is civilly committed. \*Substantial fiscal implications with HB 2944. State hospitals are typically used to treat these people.

037 REP. MANNIX: Would re-orienting the bill towards a special process for drug and alcohol dependent people to get treatment that does not involve state hospital and have a funding mechanism address those concerns?

043 BARKER: Best way is to not "superimpose" it on a commitment system that is focused on mental ill patients. \*Discusses fiscal impact. Discusses those who could get committed under this law. Will cause a \$15,000,000 per biennium effect. \*State hospital costs about \$140 per day.

FINDANQUE: Many projections against involuntary commitment are there to insure due process for those who have been seized by the government with or without a warrant.

078 CHAIR CLARK: Section 44 of HB 2944, "any person who is intoxicated ... in a public place may be take or sent home or to a treatment facility by the police." Is that true?

082 FINDANQUE: Yes. To the constitutionality of it, there have been challenges to incarceration of a "drunk" person but not specifically to this statute.

REP. EDMUNSON: How long can police hold someone without bringing charges?

FINDANQUE: Believes within 72 hours.

107 CHAIR CLARK: Closes hearing on HB 2944.

(Tape 94, Side B) HB 2669 - WORK SESSION

120 REP. MANNIX: Comments on witness here from Yamhill County.

CHAIR CLARK: In the amendments (EXHIBIT C) marked "ROUGH", civil cause of action is pulled out. \*If the civil case of action is pulled out what is left?

138 REP. MANNIX: A criminal code that is unconstitutional. \*Criminal laws regarding furnishing obscene material to a minor do not meet the US or Oregon Supreme Court constitutional standards. \*Focused on making the current criminal code constitutional under both Oregon and US. \*Under current law a prosecutor can do nothing.

171 WILLIAM HOUSER, YAMHILL DEPUTY DISTRICT ATTORNEY: There are portions of the draft amendments (EXHIBIT C) that are still ruled unconstitutional by the State of Oregon.

183 CHAIR CLARK: Suggesting these amendments still have problems?

HOUSER: Yes, just need to delete a few words. \*Page 1 line 11, the word nudity appears. Discusses State of Oregon v. Frink determined that does not meet constitutional challenge. \*Line 15, the words "or obscenities". State v. Woodcox determined that unconstitutional. Should delete that also. Discusses case. \*Supreme Court may take a different cause on these two cases since they are Court of Appeals opinions. \*Line 18, the new language is out of Miller v. California which is the US standard. That should be law. Lines 18 through 24 on the amendments. \*ORS 167.060 is the definition section. Subsection 10 defines "sexual conduct". State v. House ruled that subsection to be over broad but did not rule on the constitutional issue on that case.

236 REP. EDMUNSON: Understands the new language adds several elements to the crime in terms of prosecution. \*Subsection 1 of ORS 167.065 sets out what the crime is.

253 HOUSER: Nudity will need to meet constitutional challenge.

REP. EDMUNSON: Originally were going to put in qualifying wording. The essential statutory language retains the over broad language. To make it consistent with Section 6, need some word that might direct it with a qualification. There is no constitutional standard.

267 HOUSER: Suggests language that is on page 2 "taken as a whole is harmful to minors in that it appears to ...."

270 CHAIR CLARK: Suggested taking out the word "nudity" in line 11 and "obscenity" in line 15.

REP. EDMUNSON: That would address that.

CHAIR CLARK: Another question raised, in line 6 through 17 of the amendments, the crime is set out. After defining the crime, "must be proved beyond a reasonable doubt" is an element of the crime in certain portions of the new language. \*Should those elements be in the definition of the crime.

289 REP. MANNIX: Drafting technique used by Legislative Counsel caused that.

CHAIR CLARK: Would there be any problem with defining the crime and setting out the elements in one place.

302 REP. MASON: Discusses approaching this from the stand point of child

abuse by exposing the children to this material. \*Believes court would be more reluctant to declare an abuse statute unconstitutional, so suggests putting this as an abuse statute dealing with obscenity.

CHAIR CLARK: Suggesting that the crime be renamed.

306 REP. MASON: Believes the crime should be "child abuse by exposure to obscene materials". It is the psychological impact on the child that causes the crime by viewing this material.

314 HOUSER: Suggests looking at the "lack of consent by a minor to consent to viewing of this type of material".

328 THOMAS HALL, VIDEO SOFTWARE DEALERS ASSOCIATION: The Association can support. Suggests drafting to absolutely meet the GindSB urg standards of the US Supreme Court.

358 CHAIR CLARK: Comments on discussions with Washington DC lawfirms and their opinion that this will bring Oregon in compliance with GindSB urg.

REP. MANNIX: Oregon Supreme Court will not allow the use of a community standard where the US Supreme Court has relied on it in adult obscenity cases.

370 DEBORAH GARMAN, EXECUTIVE DIRECTOR OF PACIFIC NORTHWEST BOOKSELLERS ASSOCIATION: (EXHIBIT D) Agrees with the changes from civil to criminal arena. \*Dictionaries which include definitions of some obscene words could be challenged under the provisions of HB 2669 if obscenity were left in. \*Falls short of GindSB urg because of the use of "patently offenses" in the case.

TAPE 95 SIDE B

015 REP. MANNIX: The amendments say "knowingly arranges for, dispatches for delivery to a minor". Will have to know that it violates the law and that it is going to a minor.

GARMAN: The proof is on the state then.

020 REP. BAUMAN: Appears if the defendant knows the materials are being sent to a minor and sends a book which defendant has not read, if it contains a racy passage even with a disclaimer, the defendant can be prosecuted. Is that accurate?

032 CHAIR CLARK: Section 2 of the bill is existing law. \*Subsection 1 states "knowingly dispatches", subsection 2 offers an affirmative defense if they did not know it was a minor.

040 REP. MANNIX: Read them together in that person knew the materials to be obscene and if did not know recipient was a minor, had to take the precaution of putting the stamp on the outside.

REP. BAUMAN: Is there a requirement under existing law that includes person has knowledge of the obscene material.

CHAIR CLARK: "Knowingly" modifies "arranges for delivery of materials" enumerated in ORS 167 .065.

051 REP. MANNIX: Reads it that way.

058 REP. BAUMAN: Concern over placing potential liability on bookstores that have not previewed all their material.

065 REP. MANNIX: Ought to take a look at the language "furnishing obscene materials".

CHAIR CLARK: Could clarify the mailing portion by putting "knowingly" in there.

073 REP. BAUMAN: Would a bookstore owner have good reason to know every book in their store?

GARMAN: Not considering the volume of books that come through the store.

077 CHAIR CLARK: Would want a standard that the person knows the material is obscene.

079 REP. SUNSERI: On what basis do they order those books.

HOLLY ROBINSON: Agrees there is some basis on which a bookstore places their orders. \*How may prosecutions have been brought in the state of Oregon under current statute? \*Would anything change?

GERMAN: Do not know the number and does not believe anything would change.

099 DAVID HENDRICKS, LEGISLATIVE COUNSEL: The questions concerning obscenity and nudity are referring back to Court of Appeal cases. \*Both cases held the present statute, of furnishing any materials containing obscenity or nudity, constitutionally over broad. \*Tried to respond to those cases while drafting these amendments (EXHIBIT C). \*Discusses Frink and Woodcox Oregon Court of Appeals cases and the statutes applicable.

163 REP. MANNIX: Standards in this language cover the concepts of GindSBurg.

CHAIR CLARK: Trying to define the crime in one place.

HENDRICKS: Would not be difficult to move the provisions to go with the definition.

MOTION:REP. MANNIX: Moves adoption of the amendments (EXHIBIT C).

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

MOTION:REP. MANNIX: Moves lines 18 on page 1 of the proposed amendments through line 2 on page 2 into the initial charging portion of each of the statutes listed on lines 2 and 3 of the amendments (EXHIBIT C).

CHAIR CLARK: Rep. Mannix moves a conceptual amendment to define the crime in one subparagraph rather than 2.

191 REP. EDMUNSON: Explains the suggestion of making only one subparagraph.

212 CHAIR CLARK: Hearing no objection to the amendment, so adopted.



219 MOTION, REP. MANNIX: Moves on page 2, line 9 where it states "if within the state..." to change "if knowingly or had good reason to know the character of the material furnished" Makes it clear they knew or should have known the character of the material.

CHAIR CLARK: Rep. Mannix moves the conceptual amendment, above. Hearing no objections, so adopted.

233 MOTION, REP. MANNIX: Moves HB 2669 as amended to full committee with a do pass recommendation.

CHAIR CLARK: Asks to withdraw the motion briefly. Would like to delete the word "nudity" on line 11 and "obscenity" on line 15 notwithstanding Mr. Hendrick's testimony.

242 REP. MANNIX: Have less problem with obscenities, it is language and hard to define. There is a very specific definition of nudity in ORS 167.060.

253 CHAIR CLARK: Suggesting taking the definition of nudity and applying GindSB urg and Miller standards to it and have it be constitutional sound.

REP. MANNIX: Yes.

257 REP. BAUMAN: Inquires about a circumstance where nudity alone without the other factors could possibly constitute evidence rising to the level required in Subsection 2.

267 REP. EDMUNSON: Believes nudity could be thinly disguised and then gets into one of these other terms.

281 MOTION:CHAIR CLARK: Moves deletion of word "obscenity" on line 15. Hearing no objection, so adopted.

284 REP. MANNIX: Discusses the contextual language.

299 REP. EDMUNSON: Suggests word nudity is redundant because of language "representation or images of a person or portion of the human body" in the amendments.

308 REP. MANNIX: Nudity is a limiting phrase.

REP. EDMUNSON: Does not limit because "sexual conduct or sexual excitement" is included and that uses the human body. \*Removing that word would removes some of the problems with the bill.

318 REP. MANNIX: Will not object to the removal of word "nudity".

322 MOTION:REP. EDMUNSON: Moves the deletion of the word "nudity" on line 11.

CHAIR CLARK: Hearing no objection, so adopted.

325 REP. BAUMAN: Whose interest is to be "incited", the interest of the minor?

357 REP. MANNIX: Interest of person viewing the material.

REP. BAUMAN: Should that language be included? Not clear whose interest

is at stake.

371 REP. MANNIX: Cautious of using that because of who else may be involved, a jury.

375 CHAIR CLARK: Or a judge who is a decision maker.

REP. MANNIX: Objective rather than subjective standard.

384 HOLLY ROBINSON: In determining this it intends to incite interest. Reason is to incite the person's interest.

406 MOTION, REP. MANNIX: Moves HB 2669 as amended to the full committee with a do pass recommendation.

CHAIR CLARK: Rep. Mannix moves HB 2669 to the full committee as amended with a do pass recommendation.

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

CHAIR CLARK: HB 2669 as amended is passed to the full committee.

TAPE 96, SIDE A HB 3112 - PUBLIC HEARING Witnesses:Rep. Mannix Jeff Kushner, Alcohol and Drug Division

018 HOLLY ROBINSON: Under current law the court directs an individual to separate programs for drug or alcohol treatment if available. This allows use of one program for both.

024 JEFF KUSHNER, ALCOHOL AND DRUG DIVISION: Support of HB 3112. \*Need to maintain legislative intent of earlier bills passed. \*Discusses Marion County having designated a single agency doing both. \*HB 3112 would allow for exceptions only where demonstration was designated to occur and establish an administrative rule to define that. \*Would clarify and provide an exception where there is merit.

050 REP. MANNIX: The also updates terminology.

056 REP. BAUMAN: Believes the issue is an economical interest in treatment and ongoing treatment.

063 KUSHNER: Have not yet developed the language or criteria. Would want to insure the issue of "featherbedding" be dealt with if evaluator is also the treater.

073 REP. EDMUNSON: No further questions of the witnesses.

079 CHAIR CLARK: Closes public hearing on HB 3112.

(Tape 96, Side A) HB 3112 - WORK SESSION

082 MOTION, REP. MANNIX: Moves HB 3112 to the full committee with a do pass recommendation.

CHAIR CLARK: Rep. Mannix moves HB 3112 to the full committee with a do pass

recommendation.

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

CHAIR CLARK: HB 3112 is passed to the full committee. Adjourns meeting  
at 5:35 p.m.

Submitted by: Reviewed by:

Kathy Neely, Assistant David Harrell, Office Manager

EXHIBIT LOG:

A - Testimony on HB 2944 - Peter Grundfossen - 2 pages  
B - Testimony on HB 2994 - Dan Barker - 2 pages  
C - Amendments to HB 2669 - Rep. Mannix - 5 pages  
D - Testimony on HB 2669 - Debby Garman - 2 pages E - Letter  
on HB 2669 - Jack Cooper - 2 pages