

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 19, 1991 Hearing Room 357 2:00 p.m. Tapes 97 - 100

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 3418 PH (Public Records) HB 3317 PH (Juveniles) HB 3449 PH (Juveniles) HB 3450 PH (Involuntary Mental Commitments) HB 3509 PH (Public Records)

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TAPE 97, SIDE A

003 CHAIR CLARK: Calls the meeting to order at 2:00 p.m.

HB 3418 - PUBLIC HEARING

020 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes HB 3418 which would amend

ORS 192.501 concerning public record disclosure.

042 REPRESENTATIVE MARIE BELL, DISTRICT 41: Sponsored HB 3418 at the request of the City of Eugene. HB 3418 is harmonious with previous work of this committee concerning items intended to help victims and secondary victims.

052 TIM BIRR, PUBLIC INFORMATION OFFICER, CITY OF EUGENE POLICE DEPARTMENT: Discusses role in dealing with the media concerning divulging case information and issue of victim identity. Traditional policy has been to withhold the names of rape and sex abuse victims but release most other victim identifications. Vast majority of cases get handled using a systems approach whereby decisions about information are made by an information officer or records clerk. The situation becomes more complex with automation and computerization (gives examples). HB 3418 would not put the lid on the information forever but would apply to the critical investigatory pretrial phase.

137 CHAIR CLARK: There's an assumption being given that the broadcast media would not consider what is and is not appropriate for release.

Isn't that assumption a little broad?

137 BIRR: In 11 years as a press officer, experiences with media institutions varies widely. Some have sound policies, some use far less judgement.

148 REP. MASON: Give an instance in Oregon concerning this type of situation.

164 BIRR: The notion of going over the line would be a personal opinion. Gives recent example in Eugene concerning victim identification and intimidation cases.

220 REP. EDMUNSON: Agreed to sponsor HB 3418, however, has concern that what lacks in the law is a policy of privacy. -Doesn't the community have some right to know who is the victim of a serious crime for no other reason than to control rumors? -Far more troubled by release of names of people who are arrested than with the names of the victims. When a person recovers from violent assault the newspaper will often report it but rarely do they report that the charges were dropped.

267 BIRR: Concurs somewhat with the later point but has concerns about rights to privacy in the first issue raised by Representative Edmunson.

297 CHAIR CLARK: Why is HB 3418 necessary given language that addresses the issue in existing law?

313 BIRR: This becomes a judgment call that has no absolute answer. Suspect there would be varying opinions in this room.

319 REP. MASON: That wouldn't matter because it would be your call. If the ability to protect someone's name exists now then this bill is onto a different subject.

336 REP. BELL: Discusses judgment calls being made and the use of computers for information.

347 REP. MASON: This bill concerns police reports and it wouldn't do anything vis-a-vis 911.

353 BYRON VANDERPOOL, CITY OF SPRINGFIELD POLICE DEPT. (EXHIBIT A): Works with records and releasing of that information. Legal opinions indicate 911 transcripts are police record under the law.

390 REP. MASON: Why can't you withhold under your present statute?

394 VANDERPOOL: The practical difficulty is the person on the spot.

405 REP. MASON: There are two different laws here--one that authorizes withholding information versus a shield law which prohibits the publishing of certain information. Don't see where the bill does anything more than what you already have.

412 REP. BELL: Think the source needs to be addressed and not be party to causing any more pain and injury to the victim. Wants to deter spotlighting the victim.

016 REP. MANNIX: This is a gray area because it's a balancing of freedoms. HB 3418 does not affect First Amendment freedoms. This bill doesn't touch allowing a reporter to publicize information about the victim or the defendant. HB 3418 just says that the government will not be a party to the provision of that information by releasing certain information.

031 BIRR: Often times we don't fully understand the consequences of release of information.

045 VANDERPOOL: Advises that every year University students, hired by local burglar alarm companies, call to request a list of burglary victims and their addresses. Would prefer not to be a party to that.

054 CHAIR CLARK: The bill has nothing to do with that.

057 REP. BELL: It goes back to the ambulance chasing bill. The police department doesn't want to be a party to taking advantage of someone's misfortune.

063 REP. SUNSERI: How many categories will be created for this? Maybe protection should be created for everyone rather than special situations.

068 BIRR: The bill speaks specifically to complaining parties and victims of crimes.

071 REP. SUNSERI: Understood you wanted other categories.

073 BIRR: Made reference to rape and sex abuse victims and mentioned the committee might consider other categories.

077 VANDERPOOL: We find ourselves balancing public information and privacy. We have responsibility to inform the public. HB 3418 will not lessen public oversight of our activities nor will it limit an arrested suspect's rights with respect to due process.

119 REP. PARKS: Disagrees that the appropriate place to get information is in court. This is a legitimate problem but it runs over the Bill of Rights to get a solution. Gives examples.

156 REP. BELL: The point of HB 3418 is to help victims.

189 LES ZAITZ, PUBLISHER, OREGON NEWSPAPER PUBLISHERS' ASSOCIATION: Comments on HB 3418 and HB 3509 since they are essentially identical. We begin with the premise that government should operate in the open with complete public access. Society has delegated to government tremendous police powers where public oversight is critical. HB 3418 and HB 3509 restrict the ability to monitor police actions. Discusses public benefit to access of identification information.

267 REP. MANNIX: This isn't forbidding newspapers from printing what it wants to print but rather the information wouldn't be handed over to them.

269 ZAITZ: There are advantages to having this information public--that withholding it can have a harmful affect.

276 REP. MANNIX: Heard that but there seems to be alternative methods of gathering this information. This bill deals with the identity and

biographical information concerning both the complaining party and victim. Your example doesn't fit.

296 ZAITZ: Refers to example of numerous complaints concerning a restaurant and the media's ability to investigate those complaints.

298 REP. MANNIX: Wouldn't the final resolution of that be whether the district attorney has ever brought any charges and any prosecution?

300 ZAITZ: Not necessarily. Gives restaurant example.

303 REP. MASON: Discusses the abstractness of the issues being raised. This is truly a gray issue.

329 REP. EDMUNSON: If the identity of the complaining party and victim is kept confidential, it would be difficult to tell how the police responded to a complaint. Maybe your point is, when the police can keep secrets, the closer we get to having secret police.

341 ZAITZ: That's exactly the point--the delegation of police power is something we need to carefully monitor. Law enforcement agencies are not the least bit bashful about holding this information. Notes the informant statute, ORS 192.502(3), and the personal privacy exemption, ORS 192.500(2).

381 CHAIR CLARK: What's the difference between the "complaining party" in current law and the informant?

387 ZAITZ: There are cases where the complaining party is the informant. Oregon's media is generally very responsible to these issues and doesn't freely identify sex abuse and rape victims. In my publication, we never report street addresses for burglary victims. This bill does nothing to protect victim identification because it can be obtained through discovery. Recommend HB 341 8 be tabled.

TAPE 97, SIDE B

010 KARYLINN HUNTTING-ECHOLS, CRIME VICTIMS' ASSISTANCE NETWORK OF OREGON: Support HB 3418. There's an assumption being made that the cases will go through the criminal justice system when most will not. Discusses right to privacy versus right to public information.

072 REP. BELL: Part of this deals with the judgement of the media.

084 CHAIR CLARK: Advises Rep. Bell and proponents of HB 3418 to work with Rep. Edmunson and Mr. Zaitz to look for ways to strengthen the existing law under ORS 192.501(3).

103 REP. BELL: Oppose that idea but will work on it.

116 CHAIR CLARK: Will bring HB 3428 back in a week to 10 days.

118 REP. MANNIX: Suggests some language.

124 REP. BAUMAN: Appreciate concerns raised but have greater concern about victim anonymity.

152 CHAIR CLARK: Closes public hearing.

HB 3317 - PUBLIC HEARING

168 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes HB 3317 which provides a small exception to the prohibition of disclosure against juvenile records.

174 REPRESENTATIVE MARIE BELL, DISTRICT 41: Supports HB 3317 which deals with prevention and safety, and protection of a potential victim.

189 STEVE CARMICHAEL, DIRECTOR, DEPT. OF JUVENILE SERVICES, LANE COUNTY: HB 3317 is a top priority bill for Lane County. The bill also has the endorsement of the Oregon Juvenile Department Directors. Discusses juvenile cases concerning possible endangerment of potential victims.

231 MARCIA MORGAN, LANE COUNTY: The statute governs only records in juvenile courts and departments. Its terms do not affect CSD caseworkers or private therapists.

241 REP. MANNIX: Do they have obligations to warn potential victims?

243 MORGAN: ORS 179.505 does govern mental health records and this parallels mental health professionals.

284 REP. MANNIX: Maybe we should look at other statutes concerning duties to warn.

288 MORGAN: Discusses circumstances for release of juvenile information and liability. Suggests language regarding "agency immunity." This bill parallels ORS 179.505(10) which governs mental health records. The bill is in the public's best interest and helps to ensure protection for innocent victims.

294 CHAIR CLARK: Wouldn't it make more sense to have the disclosure be to an appropriate authority rather than the person who is in danger (refers to Page 2, line 11)?

310 CARMICHAEL: Refers to a California case where that's what happened and the victim was not notified and was killed. That's the danger.

314 CHAIR CLARK: Then how about the language, "the appropriate authority and"?

315 CARMICHAEL: That would be fine.

316 REP. BAUMAN: Did this language come from the California case?

320 HOLLY ROBINSON: That language is from ORS 179.505(10).

327 REP. BAUMAN: Is there a definition of "professional judgement"?

329 HOLLY ROBINSON: Don't think so.

333 REP. BAUMAN: Concerned that all that privileged information would be available in court in any subsequent legal proceeding.

372 REP. MANNIX: The answer is that here is a definition. Disclosure only includes an indication of a "clear and present danger to another person."

387 REP. BAUMAN: Wonder how this would impact treatment? Privileged

information is shared with treatment counselors that is not admissible as evidence in trial.

401 REP. MANNIX: That could be addressed by adding a sentence to Page 2, Subsection 6(c), "Nothing in this subsection affects the provisions . . . nor does the mere disclosure of this information make it admissible." That would protect and take care of that whole issue.

TAPE 98, SIDE B

009 REP. MASON: Doesn't like equating the statute, rule, or canon with real ethics.

027 REP. MANNIX: Agrees but wants to give leeway to do what's reasonable.

039 CHAIR CLARK: Closes public hearing.

HB 3317 - WORK SESSION

047 MOTION, REP. MANNIX: Moves to amend HB 3317 on Page 2, line 11, by adding the phrase "appropriate authority and" to read, "society may be disclosed to the appropriate authority and the person or entity who is in danger from the child." On line 12, insert the words, "or agency" after "A person" to read, "A person or agency who discloses, . . .". On line 16, or wherever appropriate, add the following sentence: "The disclosure of this information does not make this information admissible in any court or administrative proceeding if it is not otherwise admissible."

There being no objection to the amendments, they are so adopted.

MOTION, REP. MASON: Moves to amend HB 3317, Page 2, line 12, by deleting the language "or fails to disclose". Wants life-threatening information to be disclosed.

080 REP. MANNIX: Would like to hear from a proponent of HB 3317 on the proposed amendment.

082 CARMICHAEL: In California, information gained concerning possible life-threatening situations must be reported. HB 3317 was drafted to allow for professional judgment depending on the circumstance. If it were worded only one way like in California, people would be required to report to protect themselves from immunity.

095 HOLLY ROBINSON: Disagrees because the failure to disclose could be used either way.

103 REP. MANNIX: Concurs with counsel because this refers to subjective judgement, in the professional judgment of the person.

107 There being no objection, the amendment is so adopted.

109 MOTION, REP. MANNIX: Moves a conceptual amendment that CSD workers be added to the coverage of HB 3317.

114 HOLLY ROBINSON: Questions who would make a professional judgment.

119 REP. MANNIX: Refers amendment to any CSD caseworker or professional.

124 There being no objection to the amendment, it is so adopted.

126 MOTION, CHAIR CLARK: Moves on Page 2, line 10, to delete the words "a clear and present" and insert the words "an imminent".

137 There being no objection to the amendment, it is so adopted.

139 MOTION, REP. BELL: Moves HB 3317 as amended to the Full Committee with a "do pass" recommendation.

149 VOTE: 7-0

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

Motion passes, Rep. Bell to carry.

HB 3449 - PUBLIC HEARING

160 HOLLY ROBINSON: Summarizes HB 3449 which makes a variety of changes to the Juvenile Code.

184 MARK McDONNELL, SENIOR DEPUTY, JUVENILE COURT UNIT, MULTNOMAH COUNTY DISTRICT ATTORNEY'S OFFICE (EXHIBITS F & G): HB 3449 deals with several problems that arose as the result of SB 404 passed last legislative session. SB 404 made non-expungeable certain juvenile court convictions. Refers to proposed amendments, HB 3449-1 (EXHIBIT F).

245 HOLLY ROBINSON: The intent of this bill is to respond to the way the courts are implementing the change in the expunctional?

249 McDONNELL: Yes, with the exception of the provision concerning the right to affidavit referees. Discusses proposed amendments, HB 3449-1.

273 REP. PARKS: What was the rationale for making it non-expungeable?

275 McDONNELL: The rationale was from testimony that sex offenders can be treated but not cured.

290 REP. BAUMAN: How would you define a true predator sex offender?

293 McDONNELL: I would define it as an individual who uses a threat, multiple victims, been engaged in this type of conduct for a substantial period of time, and a large disparege of age between the offender and their victim.

320 REP. BAUMAN: Discusses the intent of SB 404.

328 McDONNELL: The legislature considered any sex offender.

329 REP. BAUMAN: Seems like now is the time to offer any proposed revisions to the bill.

335 McDONNELL: I don't. The legislature correctly recognized that sex offenders pose a continuing threat. Continues with proposed amendments (see EXHIBIT G). There are sanctions for the offender who fails to actively participate in treatment or violates the terms of the agreement. Informal dispositions on the current state of law are only

for six months duration. Successfully treating a sex offender may take many months or even years.

TAPE 99, SIDE A

018 REP. BAUMAN: Would five years change your opinion?

019 McDONNELL: It would make it better but wouldn't solve the problem. Aware of HB 2413 which would extend it to five years--the problem is it would prohibit an admission of responsibility.

027 REP. BAUMAN: Does the Multnomah County DA's office use any informal disposition in sexual offenses?

029 McDONNELL: The use of informal dispositions doesn't involve the DA's office. Informal dispositions are agreements between the child and the Juvenile Department.

031 REP. BAUMAN: Would the DA's office object to any use of informal disposition in sex offense cases?

032 McDONNELL: Yes, but the problem is DAs are not parties to juvenile court proceedings. Discussion follows about the DA office's role in relation to these juvenile court proceedings. 084 CHAIR CLARK: Advises there will be another hearing on the bill for further testimony.

109 DON WALTERS, CITIZEN: Testifies in support of HB 3449. Advises his son was murdered by a gang member. Records of juvenile offenders should not be destroyed.

191 CHAIR CLARK: Understands that originally, the idea behind expungement was to give youngsters who get into trouble a second chance. Obviously, it's gotten out of control if a young man murders someone and can have that record expunged.

206 TERRY LEGGERT, SPECIAL DEPUTY DA, MULTNOMAH COUNTY: Discusses Multnomah County's problems trying to circumvent the legislative intent regarding sex offenses.

226 REP. BAUMAN: Could you elaborate on the purpose for circumventing and why it's happening?

233 LEGGERT: Haven't talked to judges about it.

246 REP. BAUMAN: Where do you go with your objection to the procedure in these cases?

251 McDONNELL: Once the contract is dismissed in a year or two, maybe we could appeal the dismissal.

254 REP. BAUMAN: So, you don't object at the time the contract is entered.

255 McDONNELL: Yes, we do. We go to the judge and ask for a rehearing. But we're told, "You are not a party--you represent the Juvenile Dept. If they want to do it, you have to go along with it."

262 REP. BAUMAN: So, there's never any statement of purpose.



283 LARRY OGLESB Y, OREGON JUVENILE DEPARTMENT DIRECTOR'S ASSOCIATION (EXHIBIT H): Testifies in opposition to certain sections of HB 3449 and proposes an amendment. Discusses the sections of the bill. Not in support of Sections 1 and 2. No position taken on Section 3. Provides proposed amendment dealing with the issue of expungement, Section 4. Refers to SB 784 and SB 1042 (EXHIBIT H). Suggests qualifying the specific counties for affidaviting referees, Section 5, if there's a need for that law. Support the deletion of Section 6. The amendments by the DAs for Section 7 would appear to be better than the initial bill which is unacceptable to us. The DAs' proposed amendments for Section 8 don't appear to be a problem.

TAPE 100, SIDE A

006 STEVE CARMICHAEL, DIRECTOR, DEPT. OF YOUTH SERVICES, LANE COUNTY (REPRESENTING SELF): Testifies in opposition to HB 3449; specifically, the DA appears to be in a position of judging the judge. Think the informal dispositions are appropriate in some cases. The whole area of juvenile sex offense behavior is relatively new in terms of treatment programs and whether they will work. Think it's dangerous and extreme to establish a law that says all of those youngsters must be formally treated in the court and must have a record for their life.

027 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: I am the author of the section concerning delinquency proceedings in the Oregon State Bar publication of juvenile law. Section 1, as drafted, appears to prohibit a court from dismissing an unproven count in a delinquency petition or entering a judgment on a lesser included offense. The court needs flexibility in determining how much jurisdiction the court needs over a child. This bill would severely hamper that flexibility of the court. These are not difficulties in Lane County.

048 CHAIR CLARK: Adjourns the meeting at 4:30 p.m.

Submitted by,

Reviewed by,

Holly Blanchard  
Manager

David Harrell Transcriber

Office

EXHIBIT LOG:

A - Written testimony, Byron Vanderpool, Springfield Police Dept., HB 3418, 1 page B - Written testimony only, Jeff Miller, Mayor, City of Eugene, HB 3418, 2 pages C - Written testimony only, Douglass Harclerod, Lane County DA, HB 3418, 2 pages D - Written testimony only, Sandra Arp, League of Oregon Cities, HB 3418, 1 page E - Proposed Amendments, HB 3449-1, Mark McDonnell, Multnomah County, 2 pages F - Written testimony, HB 3449, Mark McDonnell, Multnomah County, 9 pages G - Written testimony, HB 3449, Larry OgleSB y, OJDDA, 3 pages