

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 26, 1991Hearing Room 357 2:00 p.m.Tapes 107 - 108

MEMBERS PRESENT:Rep. Kelly Clark, Chair Rep. Judy Bauman Rep. Marie Bell Rep. Jim Edmunson Rep. Kevin Mannix Rep. Tom Mason Rep. Ron Sunseri

MEMBER EXCUSED: Rep. Del Parks

STAFF PRESENT: Holly Robinson, Committee Counsel Kathy Neely, Committee Assistant MEASURES CONSIDERED: HB 3312 PH (Post-Prison Supervision) HB 3313 PH (Sex Offenses Against Children Task Force) HB 3318 PH (Sex Offenses Against Children) HB 3417 PH (Criminal Procedure)

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TAPE 107, SIDE A

003 REPRESENTATIVE CLARK, CHAIR: Calls the meeting to order at 2:05 p.m.

HB 3313 - PUBLIC HEARING Witnesses: Rep. Marie Bell Rep. Peter Courtney

014 REP. BELL: Discusses the bills before the committee. They include items that the Sex Offense Task Force was unable to get to, Washington law, concerns of citizens. Goal is to keep the effort of the Task Force moving. *HB 3313 would extend the activities of the Sex Offenses Against Children Task Force. *Have to address specifically the inability of the service providers to adequately recognize the symptoms of child abuse. More prevalent in rural areas than urban. *Should keep taps on those who should recognize abuse and their training to recognize symptoms. *Discusses reasons for continuing the Task Force during the interim period.

100 CHAIR CLARK: Committee does not have a problem with the bill but can it be structured into an existing commission or agency to reduce the cost and increase chances of passing through the legislative process?

106 REP. BELL: Had it written as if state would fund it just to get a fiscal impact statement. Discusses other options regarding funding.

116 REPRESENTATIVE PETER COURTNEY: Testifies on HB 3313. *Does not believe impact of Task Force work would be as "powerful" if it is folded into another agency or entity even to save money. It was allows to concentrate on these issues. *Comments on composition of the Task Force.

Not having a lot of law makers is a good idea. Cautions on the quality of people chosen to serve on the Force. *Committee needs to decide what the Task Force should do. Human Resources fashioned the previous Force.

196 CHAIR CLARK: Asks about filling in the blank with 2 members from each chamber with one from the majority and one from the minority party.

201 REP. COURTNEY: Fine, but that starts the politicalizing of the Force.

206 CHAIR CLARK: What was the nature of the charge given to the 89-91 Task Force.

211 REP. COURTNEY: Governor Goldschmidt asked to focus on 4 areas: sex offender registration laws, issues relating to the prosecution of sex crimes including evidentiary issues, examining the statutory classification of sex crimes and determining whether revisions are necessary in sentencing guidelines, and programs and treatment of juvenile sex offenders. *The Task Force examined self, services and other issues relating to sexual abuse.

229 CHAIR CLARK: The language in Subsection 2, would like it more specific.

233 REP. BELL: The goal with HB 3313 was to be a vehicle to keep the Task Force moving. Would like the current Task Force's help in fashioning the bill. Would like to see victims or parent of victims on the Force. *The advantage of having legislatures on the force, need people to carry them to the chambers.

256 REP. COURTNEY: Discusses the party lines. *Comments that the Judiciary committee is the "work horse" for these bills.

*Comments on partisim in committees.

281 CHAIR CLARK: Appreciates the work of the current Task Force.

284 REP. COURTNEY: Comments on having victims and victims' parents on the task force.

296 CHAIR CLARK: Recesses at 2:30 p.m. Convenes at 2:35 to continue with HB 331 3.

(Tape 107, Side A) HB 3313 - WORK SESSION

305 REP. BELL: Discusses what the Task Force could look at: quality of services available in the state, pursue regional assessment centers, analyzing curriculum and working with professionals, training for state workers, dealing with the very young sex offender, need to merge the juvenile system with the mental health system.

329 CHAIR CLARK: Asks about SB 1018 is being passed out of Senate Human Resources.

336 MARY HOYT, CHAIR TASK FORCE: Believes it is SB 1081 that passed out.

341 CHAIR CLARK: Rep. Bell is suggesting that the Task Force deal with young offenders who were victims.

349 HOLLY ROBINSON: Discusses SB 1081.

354 CHAIR CLARK: Make sure there is not a duplication of effort.

357 REP. BELL: Another area is to take a closer look at victims' assistant regarding children who have been sexual abused. Need to take into account the change in the victim's lives. Counseling should be available as needed. *Look into ritualistic abuse. *Comments on bill in Human Resources that provides a toll free number for assistance.

384 CHAIR CLARK: Would like to coordinate with other bill and the language from executive order creating current Task Force.

391 REP. BELL: Would like a recommendation of the makeup of the Force.

393 CHAIR CLARK: Suggests in Subsection 2a, b, and c after "monitor or study" include "make recommendations". They will be making specific recommendations to the legislature.

406 REP. MANNIX: Subsequent referral to Ways and Means?

CHAIR CLARK: As currently written, yes.

TAPE 108, SIDE A

001 MOTION:REP. SUNSERI: Moves to fill in blank space on line 9 with "2" and on line 11 add a "2".

002 CHAIR CLARK: Friendly amendment to assert ", one member each of the minority and majority parties".

003 REP. SUNSERI: Accepts friendly amendment.

CHAIR CLARK: Rep. Sunseri has moved on lines 9 and 11 insertion of number 2 and one from each the minority and majority. Hearing no objection, so adopted.

MOTION:CHAIR CLARK: Moves lines 15, 17, 18, 19 after "monitor or study" insertion of "make recommendation regarding".

013 REP. MANNIX: Friendly amendment: add sub e and state "make recommendation".

CHAIR CLARK: Accepts friendly amendment. Conceptual amendment to include that the Task Force make recommendations on the studies. Hearing no objection, so adopted.

MOTION:REP. BELL: Moves on line 18 after "extent" insert "and quality".

CHAIR CLARK: Rep. Bell moves insertion of "and quality" on line 18.

021 REP. EDMUNSON: Friendly amendment to consider families and child victims.

025 CHAIR CLARK: Line 18 would say "study the nature and extent and quality of services available to child victims and their families". Hearing no objection, so adopted.

030 REP. BELL: Draws attention to sub 8, line 6 on page 2 , the

alternate funding clause in the bill.

032 CHAIR CLARK: What if the language stays in and the bill goes to Ways and Means? Nothing.

REP. BELL: Comfortable with language. If Ways and Means chose not to put money in to it, could it still be passed out with no funding?

036 CHAIR CLARK: Yes, did it with the Juvenile Justice Community Corrections bill. Discusses the paragraph that stated it.

041 HOLLY ROBINSON: Difference between that bill and this is the other did not require money, it set up an account. Could put similar language in here so an account can be established.

MOTION: REP. BELL: Moves as a conceptual amendment.

048 CHAIR CLARK: Rep. Bell moves a conceptual amendment to the effect of Counsel's explanation. Hearing no objections, so ordered. Closes work session on HB 331 3.

(Tape 108, Side A) HB 3417 - PUBLIC HEARING Witnesses:John Bradley, Mult. County DA

059 HOLLY ROBINSON: Discusses current law regarding incompetency and when the person can be released or civilly committed. HB 3417 would state those charged with sex offense and not competent to proceed with trial after 5 years would be retained within jurisdiction of the mental health division for full extent of sentenced time.

087 JOHN BRADLEY, MULTNOMAH COUNTY DISTRICT ATTORNEY: (EXHIBIT A) Supports HB 3417. *Changes to help stand Constitutional attack and to expand offenses to include homicides. *Discusses amendments (EXHIBIT A). *Discusses Jackson v. Indiana. *Cannot simply have a statute that states a person charged with sex offense and it will be up to 20 or more years. Too broad under Jackson.

132 CHAIR CLARK: These people cannot be tried because they cannot assist in their own defense. Current statute says they can be held for 5 years. HB 3417 allows them to be held indefinitely so long as there is a yearly review?

141 BRADLEY: In homicide that could be correct. HB 3417 states they can be held no longer then the period which they were charged. Do not have to hold them, it is just an option.

148 CHAIR CLARK: Troubled with fact that a person is being held without being tried, is the presumption of innocence thrown out?

156 BRADLEY: It is like a civil commitment. This keeps it in the area of the criminal law. *Discusses State v. Eaton.

167 CHAIR CLARK: Why can't the person be held under the civil commitment statutes but the case be held in abeyance in the criminal case.

173 BRADLEY; Could do that by deleting the provision of dismissal after 5 years.

176 CHAIR CLARK: Would be like an indefinite statute of limitations.

177 BRADLEY: Need to delete the language about dismissal after 5 years.

179 REP. BAUMAN: In terms of civil commitment, all examples Mr. Bradley presented are where the person is a danger to himself or others.

*Comments on person who is incompetent to stand trial but not dangerous.

*Maximum civil commitment is 180 days. *Can the cycle of commitment keep going indefinitely?

199 HOLLY ROBINSON: Correct. There are many people in state institutions that have regular commitment hearings every 6 months.

203 REP. BAUMAN: Asks about the civil commitment process in the Eaton case previously discussed.

205 BRADLEY: Discusses the case and commitment.

208 REP. BAUMAN: He is currently a danger to others?

209 BRADLEY: Yes. The original bill had Constitutional problems but the amendments will help.

213 REP. MANNIX: HB 3417 is more limited than civil commitments. Under the proposed amendments, a judge can make a determination that the person is dangerous to others which is more appropriate in the criminal context.

223 BRADLEY: Reason for 1 year cycle on hearings was just a date put in.

227 REP. MANNIX: Due process will eventually requires a routine procedure.

229 CHAIR CLARK: Expresses concern about leaving case in criminal justice system because person is in "limbo" in the system. Person has not been convicted but accused and now "stuck" in the system with routine review for a long time.

247 REP. MANNIX: Comments a large number of people in institutions do not belong there but were using the system to get in to the institution because they believed they were "beating out a sentence". *Concern on the civil side is person goes though civil commitment process with desire of having the criminal charges dropped. After the time spent committed claim competency and get off.

262 CHAIR CLARK: Is there authority to dismiss a criminal case without prejudice?

263 BRADLEY: The statute of limitations is the problem, will generally be 3 years. With the exception for murder cannot bring the charges up.

268 CHAIR CLARK: If the statute of limitations legislation makes it tough, it will help.

204 BRADLEY: If it were a murder case, the defendant would have the right to a hearing to see if the state can prove a jury would convict.

*If "with the dismissal" were deleted, would do the same thing as "without prejudice".

CHAIR CLARK: Closes hearing on HB 3417.

(Tape 108, Side A) HB 3312 - PUBLIC HEARING Witnesses:Cindy Burgess,

Board of Parole Sylvan Simmons, Stop It, Coalition against Sex Abuse

320 HOLLY ROBINSON: HB 3312 would allow for the State Board of Parole to let an offender participate in the victim impact treatment session. The Board may require a fee from the offender to participate in the program.

333 CINDY BURGESS, BOARD OF PAROLE AND POST PRISON SUPERVISION: The Board does not oppose the bill and would be willing to order this. Would not revoke parole if this were the only condition they were violating.

346 CHAIR CLARK: What is a victim impact treatment session?

361 REP. BELL: Victim impact panel is based on an idea used for drunk drivers. The victims meet with offenders and discuss what effects the incident had on their lives. Has been successful. *Idea is to intervene with offender at a deep personal emotional level so that the offender may know the potential for personal tragedy that may come from the offender's actions. *Believes most offenders of sexual abuse have no idea what damage they do to the victim's life. This may have an impact to change their ways.

402 CHAIR CLARK: Understands why but not what happens at the victims impact session.

TAPE 107, SIDE B

006 SYLVAN SIMMONS: (EXHIBIT C AND D) Discusses family experience with sexual abuse. Explains disclosure of youngest son's incest by older brother and the latter's incarceration and rehabilitation. *Reads letter from incarcerated son, who was also a victim of abuse, regarding his situation and outlook on life. *Comments on the need for a number people can call to get help because they don't know where to turn. *Needs to be an Ombudsman to help channel people to the right assistance.

104 REP. MANNIX: The victim impact treatment program's idea is that perpetrator of crime will de-personalize the crime. Part of the process of the victim dealing with the crime is to: *Opportunity to truly confront the offender. *The perpetrator may realize that the crime affected a person not a thing. *Therapeutic for both the victim and the offender.

124 REP. SUNSERI: Directs comments of appreciation to Sylvan Simmons regarding her dedication to the area of sexual abuse.

133 REP. BELL: Discusses a victim group confronting offenders and the questions the victims had about why they were chosen to be victimized.

156 REP. MASON: One problem about the programs is the tendency to put real con-artist offenders in personable situations with the victims in order to make them feel better. Does not believe that is the purpose of incarceration. *Social services tendency is to hand their hold. *Starting to hear the affirmative defense to crimes that "I was abused as a child".

183 CHAIR CLARK: There is a difference between a defense of abuse and an explanation of the origin of the tendency. *HB 3312 is making this a condition of parole or post prison supervision. It can be helpful but understands it should no be treated as the end all. Closes public hearing.

(Tape 107, Side B) HB 3312 - WORK SESSION

194 MOTION, REP. MANNIX: Moves to delete the phrase on line 19 "if the person was convicted of a sexual offense".

CHAIR CLARK: Rep. Mannix moves the deletion of the first 9 words on line 19.

196 REP. MANNIX: Victims impact sessions should not be exclusive to sexual abuse crimes but available to other crimes. It is an option that the court can or can not use.

203 CHAIR CLARK: Would that amendment change the position of the Board?

BURGESS: No.

206 REP. BELL: In response to Rep. Mason's comments, this is dealing with someone not in prison. There would be discretion used on whether it would help or not.

217 REP. BAUMAN: Seems this allows for the use of this. Leaving determination to the Board.

226 CHAIR CLARK: Any objection to Rep. Mannix's motion? Hearing none, so adopted.

229 REP. BELL: That amendment might really be effective especially with juveniles.

MOTIONREP. BELL: Moves HB 3312 as amended to the full committee with a do pass recommendation.

CHAIR CLARK: Rep. Bell moves HB 3312 as amended to the full committee with a do pass recommendation.

VOTE: 7-0 Motion passes. AYE: Bauman, Bell, Edmunson, Mannix, Mason, Sunseri, Clark NO: 0 EXCUSED: Parks

CHAIR CLARK: HB 3312 as amended is passed to full committee. Rep. Bell will carry.

(Tape 107, Side B) HB 3318 - PUBLIC HEARING Witnesses:Lorri Thomas, Victim's Mother Sylvan Simmons

254 HOLLY ROBINSON: HB 3318 would create the Office of Children's Ombudsman and prescribes the duties of the office and establishes confidentiality of information provided.

262 REP. BELL: In Section 1 of the bill, line 5 "shall function separately and independently from any other state agency". That is important so the person can help without pulling interests and can be effective.

279 LORRI THOMAS: (EXHIBIT E) Reads from written testimony. *Shares experience as mother of victim in sexual abuse case. -Offender fled the state and was still put out on bail. -Continued to harass the family. -The DA's plea bargained the case. -Offender did not spend any time in jail. *Describes feelings regarding sentencing and court proceeding and final decision as being unjust, unfair and unbalanced.

347 REP. BELL: Questions about feeling while this was happening. Was there anyone to turn to in home town and if so, what was the response?

352 THOMAS: Took 5 months to find someone.

363 REP. BELL: Any knowledge about state agencies or advocacy groups in area?

THOMAS: No. Did not get any help until moved to the State of Washington.

367 REP. BELL: Believes the ordinary person does not know about the agencies or where to go.

377 REP. MANNIX: Seems it should be about a victims advocate generally with a focus on sex abuse and children.

384 THOMAS: Believes there should be both. The adult goes through just as much as the child victim and needs someone also.

398 REP. MASON: There is a fiscal impact. Is there a subsequent referral to Ways and Means?

402 REP. BELL: Asks if any committee members believe this should be incorporated into the Task Force or any other way to fund it better.

TAPE 108, SIDE B

004 SYLVAN SIMMONS: The goal of Crime Victim's Assistance in Multnomah County was to be there as a child advocate but there is no funding.

013 REP. MASON: DAs offices are cutting back currently. Have to realize the consequences of Measure 5 cutbacks.

031 REP. BELL: Comments regarding the person being too local and defeating the purpose of a non-bias advocate. *Discusses having a person with a toll free line with access to other agencies and help groups in order to people for assistance.

042 REP. MASON: Will eventually have to spend money on programs. Cannot run it just on volunteers.

048 CHAIR CLARK: Bill has a subsequent referral to Ways and Means.

052 CHAIR CLARK: Closes hearing.

(Tape 108, Side B) HB 3318 - WORK SESSION

055 MOTION, REP. MANNIX: Moves to amend to provide for victims advocate and change thrust of bill as: provide for the Office of Victim's Advocate, call for advocate to be available to any victim to coordinate services, asks for emphasis on dealing with child victims of abuse and sex crimes and adult victims of sex crimes.

064 CHAIR CLARK: Is that in the relating clause? With the emphasis language might be able to make it work. Any objections to Rep. Mannix's conceptual amendment. Hearing no objections, so adopted. *Suggests moving the bill to full committee and ask the Chief Clerk about the relating clause.

080 MOTION, REP. MANNIX: Moves deleting Section 3 from the bill. It is unclear. Would prefer having nothing about confidentiality so advocate's hands are not tied.

089 REP. EDMUNSON: Victims have to tell story over and over to a lot of people. Suggests the ombudsman role would be to assist in the disclosure of story but not do the disclosing.

REP. MANNIX: Withdraws motion. Would like to tighten up Section 3 to make it clear that any confidential information provided will remain so and the victim will disclose information.

103 MOTION:REP. EDMUNSON: If the ombudsman has knowledge or is provided confidential information will cover things that are in file that were not known.

101 CHAIR CLARK: Rep. Edmunson moves the insertion of "provided or" on line 27 before "has knowledge". Hearing no objections, so adopted.

110 MOTION, REP. MANNIX: Moves HB 3318 as amended to the full committee with a do pass recommendation with referral to Ways and Means.

CHAIR CLARK: Rep. Mannix moves HB 3318 as amended to the full committee.

VOTE: 7-0 Motion passes. AYE: Bauman, Bell, Edmunson, Mannix, Mason, Sunseri, Clark NO: 0 EXCUSED: Parks

120 CHAIR CLARK: HB 3318 is passed to full committee. Adjourns at 3:50 p.m.

Submitted by: Reviewed by:

Kathy Neely, Assistant David Harrell, Office Manager

EXHIBIT LOG:

- A - Amendments to HB 3417 - John Bradley - 3 pages
- B - Material on HB 3417 - Holly Robinson - 6 pages
- C - Testimony on HB 3312 - Sylvan Simmons - 7 pages
- D - Material on HB 3312 - Sylvan Simmons - 8 pages
- E - Testimony on HB 3318 - Lorri Thomas - 2 pages