

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

May 1, 1991Hearing Room 357 3:00 p.m.Tapes 111 - 112

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 2802, PH/WS HB 2721, PH/WS HB 3450, PH

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TAPE 111, SIDE A

003 CHAIR CLARK: Calls the meeting to order at 3:10 p.m.

HB 2802 - PUBLIC HEARING

012 HOLLY ROBINSON, COMMITTEE COUNSEL (EXHIBIT H): Summarizes HB 2802 and submits a written definition of "prima facie evidence" from Black's Law Dictionary (EXHIBIT H).

020 REPRESENTATIVE JOHN MINNIS, DISTRICT 20: Testifies in support of HB 280 2 which addresses payment for child support.

040 CARL STECKER, DEPUTY DISTRICT ATTORNEY, MARION COUNTY (EXHIBITS A & B): Any negotiable instrument which should be credited ought to bear an endorsement by the person to whom it's paid or a stamp indicating it's paid to an account controlled by that person. HB 2802 is to assure that payment has been made to the obligee. This is for cases seeking to establish the amount of a support obligation that has accrued before a case is maintained on the Department of Human Resources computer system.

066 REP. MASON: Assume a check will show payment in any action?

071 STECKER: Yes, we make an effort to see that a credit is granted. There are circumstances where a reluctant sector refuses continually to make those payments.

082 REP. MASON: The computer system is there not for the convenience of the state but so that obligees get their money.

090 JOHN ELLIS, ASSISTANT ADMINISTRATOR, DEPARTMENT OF JUSTICE (EXHIBIT

C): Testifies in support of HB 2802.

093 REP. PARKS: What are the mechanics of this?

096 ELLIS: Gives example of how it would work. This is an attempt to avoid contested case hearings through prima facie evidence.

106 REP. PARKS: Why was the additional language needed?

108 STECKER: The purpose is to assure that there is a prima facie in accordance with these kinds of documents. Under current statute, there is no necessary evidentiary effect to be given. This gives a clear validity to prima facie evidence. There may be rebuttals that are appropriate (gives examples).

123 CHAIR CLARK: Closes public hearing on HB 2802.

HB 2802 - WORK SESSION

128 MOTION, REP. EDMUNSON: Moves to amend HB 2802 on Page 2, line 17, following the ",," by inserting the words, "endorsed by the obligee or deposited to an account of the obligee,".

131 CHAIR CLARK: Rep. Edmunson has moved the amendment proposed by Mr. Stecker (EXHIBIT B).

There being no objection, the amendment is so adopted.

145 MOTION, REP. EDMUNSON: Moves HB 2802 as amended to the Full Committee with a "do pass" recommendation.

VOTE: 7-0

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

Motion passes, Rep. Minnis to carry.

151 CHAIR CLARK: Closes work session on HB 2802.

HB 2721 - PUBLIC HEARING

158 REP. MANNIX: HB 2721 is actually a duplicate of A-Engrossed HB 2574 from the 1989 legislative session. HB 2721 addresses the broader issue of parental liability for actions of their children. *Currently, parents are only liable for intentional acts of their children and this bill would include reckless acts. *The liability amount has not be changed for about 15 years. The \$5,000 cap on liability would increase to \$10,000. *This allows a cause of action for a bad check.

208 CHAIR CLARK: Why is there a civil penalty?

212 REP. MANNIX: Gives example of a vandalism case. This is in lieu of the Juvenile Justice System and will make people responsible for their own actions.

225 REP. EDMUNSON: Did a bill pass that allows judgment to follow a minor?

230 REP. MANNIX: A bill passed the House that says if there's a restitution order against a juvenile it can be entered as a judgment when the juvenile becomes an adult. That bill is now in the Senate. Juvenile justice authorities don't have the resources to deal with petty vandalism.

241 REP. EDMUNSON: Isn't it true that many times a homeowner's policy or auto policy would pay for the damages and get recovery through subrogation? Gives burglary example.

263 REP. MANNIX: HB 2721 would allow recovery due to clear recklessness described in that situation.

271 Notes that in many states there are no limits whatsoever on the liability of parents for the acts of their custodial children; Hawaii, for example.

283 CHAIR CLARK (EXHIBIT D): Raises issue in ORS 105.655 concerning current statute which limits liability for private landowners who allow general members of the public access to their property for recreational uses. Asks for amendment to the statute concerning bodies of water and public access (EXHIBIT D). The amendment would change the definition of "land" under that statute and add, "any and all bodies of navigable water and water courses."

325 REP. MANNIX: It would apply to someone who has beach front property. If the property owner allowed the public to cross their property to the beach they would be protected.

354 CHAIR CLARK: Temporarily closes public hearing on HB 2721.

HB 3450 - PUBLIC HEARING

372 HOLLY ROBINSON: Summarizes HB 3450.

399 PAUL SNIDER, ASSOCIATION OF OREGON COUNTIES: Testifies in support of HB

345 0. Discusses appropriation for the service made in previous legislative sessions. The appropriation continued to decline. The problem now involves flexibility and fiscal issues due to Ballot Measure 5. HB 3450 would allow the court to determine whether to have an attorney present in these proceedings rather than in all cases.

TAPE 112, SIDE A

027 CHAIR CLARK: Questions "special circumstances" reference.

030 SNIDER: The word "special" is intended to say there should be an extraordinary circumstance that requires the presence of an attorney to represent the state's interest rather than a local mental health agency. Someone will be there representing the state's interest--it's just a question of who.

040 REP. PARKS: What is meant by the state's interest in this?

048 SNIDER: Understands this came as a result of perceptions in the mental health community that the court's function in a mental commitment

hearing is to be an objective gatherer and analyzer of evidence presented. Before this change were to occur the court would undertake active questioning of the patient--perceived to be inappropriate at times.

061 CHAIR CLARK: Temporarily closes public hearing on HB 3450.

HB 2721 - WORK SESSION

066 CHAIR CLARK: Discusses proposed amendment (EXHIBIT D). Committee Counsel, Greg Chaimov, advises the amendment may not be necessary.

MOTION, CHAIR CLARK: Moves the addition of a Section 2 of HB 2721 amending ORS 105 .655 (2) to add the words, "any and all navigable bodies of water and water courses and."

076 REP. EDMUNSON: Any reason for it to be just "navigable waters"? Navigable to humans is not the same as navigable to fish. There are streams in Eastern Oregon that aren't navigable but the ranchers are gracious in allowing fishermen to cross them.

080 CHAIR CLARK: The amendment was at counsel's suggestion. The concern was "a body of water" and a "water course" in Oregon can be anything from the Willamette River to a mud puddle.

085 REP. EDMUNSON: Refers to "for recreational purposes."

090 CHAIR CLARK: Take that as a friendly amendment and withdraws the phrase "navigable."

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

093 MOTION, REP. SUNSERI: Moves HB 2721 as amended to the Full Committee with a "do pass" recommendation.

VOTE: 6-0

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

Motion passes, Rep. Mannix to carry.

100 CHAIR CLARK: Reopens public hearing on HB 3450.

102 FRED AVERA, DISTRICT ATTORNEY, POLK COUNTY: Available to answer questions.

109 REP. EDMUNSON: This bill is about money?

112 AVERA: Yes.

118 REP. EDMUNSON: Would DAs have any problem appearing in these proceedings if there was funding for that?

124 AVERA: Our only objection would be that it's not an appropriate expenditure of money in most cases. A typical mental commitment case is not conducted in a very adversarial manner.

133 REP. PARKS: Why not say the district attorney shall appear and represent the person to be committed at the direction of the court?

144 AVERA: That was the bill's intent. Reference to "special circumstances" was to give judges the option.

149 CHAIR CLARK: Suggests putting a "." after the word "court". Concerned about leaving it up to the judges to try to define what is meant by "special circumstances."

152 AVERA: Has no problem with the suggestion.

155 HOLLY ROBINSON: Given the time factor for civil commitment hearings, wouldn't someone need to be on-call to do this anyway?

160 AVERA: We usually get a call with a 24 to 48-hour notice. Whoever is free does them.

166 REP. BAUMAN: Remembers discussion about having a DA present at such a hearing. The feeling was a DA should be present to represent the public and the justice system in what otherwise is a very closed process.

205 AVERA: Our point is generally the person is represented by competent counsel who could look out for the person's best interests.

230 REP. BAUMAN: Raises concern that a defense attorney might release a dangerous client to the streets.

248 REP. BELL: Questions what is meant by "state's interest" and "client's interest."

250 CHAIR CLARK: The state's interest would be to make sure that if someone needs to be committed and off the streets it is done.

261 HOLLY ROBINSON: There is a right to counsel for the alleged incapacitated person in these hearings. This bill does not propose to change the client's right to counsel or representation.

269 KINGSLEY CLIFF, DEPUTY STATE COURT ADMINISTRATOR: The Judicial Department is opposed to HB 3450 as is the Circuit Court Judges Association. Refers to conclusions of a Task Force that studied the civil commitment of mentally ill persons laws (EXHIBIT E) during the 1985-87 interim.

278 CHAIR CLARK: Notes Mr. Linden's written testimony is included in the committee packet from a previous hearing.

292 CLIFF: One recurring problem noted by the Task Force was that frequently no legally trained person represented the state's interest at these hearings. Courts see an improvement having the DAs present--they like the state's representation. It appears the state wouldn't save money because the responsibility would shift to state mental health professionals. The mental commitment proceeding is an adversarial proceeding by definition--the threshold to commit a person is a legal definition to which the evidence is applied.

394 REP. BAUMAN: Did you speak with any representatives of local mental health agencies? This bill would remove the DAs from the requirement and put it on mental health.

TAPE 111, SIDE B

011 REP. PARKS: Opposed to the bill. The state should be represented and citizens protected.

034 JOHN McCULLEY, OREGON PSYCHIATRIC ASSOCIATION (EXHIBIT G): Opposed to the bill for reasons previously discussed and urges that the policy established in 1987 be maintained.

050 DAN BARKER, MENTAL HEALTH AND DEVELOPMENTAL DISABILITY SERVICES DIVISION: Opposed to HB 3450. *These proceedings should include legal representation. *Mental health programs are not adequately staffed. *HB 3450 would make mental health professionals act as judges.

074 CHAIR CLARK: Closes public hearing on HB 3450.

HB 3450 - WORK SESSION

077 CHAIR CLARK: Discusses concerns about the bill (for the record).

083 REP. MANNIX: Concurs with concerns raised by witnesses. Sympathetic to DAs concerning tight funding but they should represent the state in these proceedings. Opposed to the bill.

095 CHAIR CLARK: A fiscal statement shows a \$200,000 savings in the Governor's budget.

098 REP. BELL: Opposed to the bill. Testimony has been on side of expediency and costs rather than the patient.

106 REP. BAUMAN: Don't think \$200,000 covers the cost to the DAs in 36 counties.

119 REP. MASON: (Tape inaudible.)

131 CHAIR CLARK: Closes work session on HB 3450.

CHAIR CLARK: Adjourns the meeting at 4:15 p.m.

Submitted by, Reviewed by,

Holly Blanchard
Manager

David Harrell Transcriber

Office

EXHIBIT LOG:

A - Written testimony, HB 2802, Carl Stecker, Marion County DA, 1 page
B - Proposed Amendments, HB 2802, Carl Stecker, Marion County DA, 1 page
C - Written testimony, HB 2802, John Ellis, Dept. of Justice, 1 page
D - Written testimony, HB 2721, submitted by Chair Kelly Clark, 2 pages
E - Written testimony, HB 3450, submitted by Kingsley Cliff for Mr. Linden, State Court Administrator, 5 pages
F - Written testimony only, HB 3450, Richard Lippincott, M.D., DHR, 2 pages
G - Written testimony, HB 3450, John McCulley, Oregon Psychiatric Assoc., 4 pages
H - Legal definition, Black's Law Dictionary, HB 2802, Committee Counsel, 1 page