

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 3, 1991Hearing Room 357 2:25 p.m.Tapes 113 - 114

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

VISITING MEMBERS:Rep. Jerry Barnes

STAFF PRESENT: Holly Robinson, Committee Counsel Kathy Neely, Committee Assistant Holly Blanchard, Transcriber MEASURES

CONSIDERED: HB 2935 PH (Juvenile Remand) HB 3111 PH (Juveniles) HB 3116 PH (Children) HB 2667 PH (Child Abuse)

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TAPE 113, SIDE A

003 CHAIR CLARK: Calls the meeting to order at 2:25 p.m.

HB 2935 - PUBLIC HEARING

005 HOLLY ROBINSON, COMMITTEE COUNSEL (EXHIBIT A): Summarizes HB 2935 which

proposes significant change in Oregon's juvenile laws concerning remand. Refers to fiscal impact statement, EXHIBIT A.

015 REPRESENTATIVE JERRY BARNES, DISTRICT 52: Urges support of HB 2935. Provides background information about how the bill transpired. HB 2935 was prompted as a means to toughen up on incorrigible juveniles.

030 BILL JUBA, JACKSON COUNTY DISTRICT ATTORNEY: Believes the amendments to

HB 2935 will streamline the remand process and give the juvenile court flexibility. Gives example of repeat juvenile offender. If these juveniles insist on acting like criminal adults they should be treated as such. These amendments will eliminate the problem of split jurisdiction and save time, energy, paperwork and money. The impact in Jackson County will be approximately 10-20 remand cases per year.

056 GEORGE BROWN, JACKSON COUNTY JUVENILE DEPARTMENT: This would serve the public in two ways--contribute to public safety and the administration of justice. Gives example of repeat juvenile offender.

078 REP. BAUMAN: When a child is remanded to adult court does the child serve time in an adult penitentiary?

084 BROWN: If a person 16 or 17 years of age is remanded, then they serve adult time. If a person falls under the provisions of the 15-year-old remand, that person would begin serving time in a juvenile institution.

090 REP. BAUMAN: The 15-year-old would begin serving time in a juvenile institution and then at age 16 move to an adult facility?

093 BROWN: There'd be a review of the circumstances at the state training school. This bill would not expand the number of offenses to be remanded for 15-year-olds. It would allow us to remand on felonies and Assault 4's for persons 16 years of age.

103 REP. BAUMAN: Is more concerned with the penal consequences.

121 REP. MANNIX: Refers to fiscal impact analysis (EXHIBIT A). Discusses the remainder of HB 293 5 which would require that charges that have been remanded, and any future charges, would automatically be brought into the adult system. Wouldn't that be a significant improvement without having more indigent defense and jail space?

129 JUBA: That goes back to streamlining the process. The change pertains mostly to C felonies and Class A misdemeanors (Assault 4). C felonies usually involve about 30 days in jail and not the penitentiary. If HB 2935 is passed and C felonies are added, it doesn't involve putting juveniles in the penitentiary.

157 CHAIR CLARK: Is that true regardless of one's criminal history?

162 JUBA: That's correct and it's one of the problems we face in the criminal justice system--the present sentencing guidelines. Discusses types of sentences for offenses.

180 REP. MASON: Would remand ever be used as a possible bargaining tool?

182 BROWN: Generally, we have nothing to do with the remand process in our office. That comes from the juvenile system. That statute has not changed--it's still up to a juvenile court judge as to whether or not a juvenile will be remanded. Our office doesn't use it as a bargaining chip.

194 REP. MASON: Don't you bring the motion?

195 JUBA: No, we bring the motion from the Juvenile Department and we argue it if we request the DA. Discusses process for remand.

198 CHAIR CLARK: Asks committee counsel for clarification in HB 2935, Page 1, line 18, the words, "A felony". Is that "a felony"? or "A" "Felony"?

200 HOLLY ROBINSON: A singular, any felony.

203 CHAIR CLARK: That is not a Class A felony.

105 REP. MASON: Can a Class C felony be named that could not be pled

into that "willful manner" category? Gives example of a welfare fraud.

214 JUBA: Generally, we would indict a child remanded into adult court. We don't use this language in indicting someone--that's not required in the statute. This language is required for the judge to review to make a determination.

223 REP. MASON: Discussion follows concerning remanding.

251 JUBA: Some of these juveniles are sophisticated criminals and need to be treated as adults.

263 REP. MASON: Why not drop the age to 16 or 17?

265 BROWN: Wouldn't oppose that.

267 REP. BARNES: Point is the law enforcement people's hands are tied and something needs to be done about these juvenile repeat offenders.

279 CHAIR CLARK: The recidivism rate for adult corrections in Oregon is about two-thirds. Concerned about a blanket remand for 16-year-olds. Understands need to remand but questions a blanket remand for any felony.

297 JUBA: HB 2935 does not make an automatic remand. It's still up to the judge's discretion concerning remand. This addresses those juvenile offenders that the juvenile justice system cannot help.

316 BROWN: Discusses cases recommended for remand.

325 CHAIR CLARK: Discusses the concept of a boot camp option for juveniles.

345 BROWN: As an approach, it's fine. If it becomes "the" approach, forget it. Discusses theories. Likes idea of a boot camp for select offenders.

361 REP. BELL: Concerned about possible abuse in adult prison situations due to the age and physical size of these young offenders.

376 BROWN: Describes a 6'2", 230-pound, 16-year-old with a black belt in Karate. Most juveniles don't have self-control.

392 REP. BELL: Suggests most adults know how to work a system. Believes an emotional maturity takes place between 16-20 years of age.

TAPE 114, SIDE A

006 BROWN: If they're behaving like adults, they should be dealt with as adults.

007 REP. BELL: Respectfully disagree.

009 REP. PARKS: What happened to the concept of a junior penitentiary to house younger offenders?

010 BROWN: Already have Maclaren School, Hillcrest School. There's the Oregon Corrections Institute (OCI) which is like the Oregon State Penitentiary--they're out in about 30 days on most offenses.

016 REP. PARKS: There's no segregation by age there?

017 BROWN: Not sure.

018 JUBA: Think OCI is used for the younger offenders. The older, more hardened criminals go to the state penitentiary.

020 REP. BARNES: This bill is in recognition of a problem and would give the court more tools to deal with it.

028 CHAIR CLARK: Closes public hearing.

HB 2935 - WORK SESSION

036 MOTION, REP. MANNIX: Moves on Page 2, lines 18-23, to keep that language in the bill. On Page 3, lines 8-9, to keep that language in the bill. All other changes to be bill would be deleted.

045 CHAIR CLARK: Rep. Mannix moves to restore existing statute on Page 1 of HB 2935 and to restore existing language in the statute on line 24-38 on Page 2. And to restore existing law on lines 12-14 of Page 3.

068 REP. MANNIX: Agrees that once charges are presented, it's really now a transaction. This bill would allow a change in the law to say all charges that arise out of that same act of transaction are remanded to the adult court. Feel O.K. on that limited concept. Reviews changes on Page 3 concerning remand decisions.

092 REP. PARKS: What about the felony in the Assault in 4th degree?

094 REP. MANNIX: That's all coming out of the bill.

098 CHAIR CLARK: The motion is to delete the changes proposed by Page 1 of the bill.

100 REP. MASON: Have no problem with Page 2, lines 21-23. Little uncomfortable with Page 3.

105 CHAIR CLARK: Asks Representative Mannix to amend his motion and make three separate motions--Page 1, 2 and 3.

106 MOTION, REP. MANNIX moves to restore the language in the existing statute on Page 1 of HB 2935.

There being no objection, it is so ordered.

109 MOTION, REP. MANNIX moves to amend HB 2935 on Page 2 by restoring the language in lines 24-38 of the bill.

There being no objection, it is so ordered.

112 MOTION, REP. MANNIX moves the deletion of the changes made by lines 12-14 on Page 3 of HB 2935.

115 REP. EDMUNSON: Appears that leaving in the language on lines 12-14 is a presumption that once remanded those reasons for remand continue to exist.

133 REP. MANNIX: On Page 3, the language will remain on lines 12-14 but make the changes shown on lines 8-9.

135 CHAIR CLARK: Right.

There being no objection, it is so ordered.

136 MOTION, REP. MANNIX: Moves HB 2935 as amended to the Full Committee with a "do pass" recommendation.

VOTE: 8-0

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

Motion passes, Rep. Barnes to carry.

151 CHAIR CLARK: Closes work session.

HB 2667 - PUBLIC HEARING

150 HOLLY ROBINSON (EXHIBIT B): Summarizes HB 2667 which proposes significant changes to the child abuse reporting statutes. Refers to the dash 1 amendments (EXHIBIT B) which reflect that which Janice Yaden previously introduced to the committee.

HB 2667 - WORK SESSION

179 MOTION, REP. EDMUNSON: Moves the dash 1 amendments.

197 REP. MANNIX: Discusses importance of the proposed amendments.

There being no objection, the amendments are adopted.

MOTION, REP. EDMUNSON: Moves HB 2667 as amended to the Full Committee with a "do pass" recommendation.

VOTE: 8-0

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

Motion passes, Rep. Mannix to carry.

HB 3116 - PUBLIC HEARING

322 HOLLY ROBINSON (EXHIBIT C): Summarizes HB 3116 proposes to modify Oregon law regarding disclosure of information pertaining to a minor. Submits article concerning rights of consent by minors (EXHIBIT C).

249 REP. MANNIX: Discusses HB 3116. Staying away from the issue of medical service or sexually-related medical services. Wanted to focus on drug use by minors and parental access to that information.

276 JIM CARLSON, OREGON MEDICAL ASSOCIATION (EXHIBIT D): Refers to written information provided (EXHIBIT D) which concerns state and federal statutes on alcohol and drug use. There might be some conflict with federal statute in some areas. Appreciate the intent of HB 3116 to involve parents in problems of alcohol and chemical addiction and dependency. There is federal law that governs treatment programs which is broadly defined (refers to EXHIBIT D, Page 8-15).

366 REP. PARKS: Do you oppose the bill?

370 CARLSON: We have some concerns with regard to making sure it won't do anything to discourage someone to get into treatment.

379 REP. PARKS: Do you oppose the bill or not?

384 CARLSON: Yes, I speak in opposition although it appears to be in the grey area.

426 BRUCE BISHOP, KAISER PERMANENTE: We oppose the bill because we think it's unnecessary. Parents have the right to obtain medical information about their children; providers furnish that information with the exception of specifically protected information under federal confidentiality laws. HB 3116 wouldn't overrule those federal laws so HB 311 6 contributes nothing more to the current state of the law.

TAPE 113, SIDE B

013 REP. EDMUNSON: Shouldn't this be consistent with present law that allows a minor 14 years or older to obtain drug treatment without parental knowledge or consent?

017 BISHOP: The issue is whether the consent to treatment is the same as the right to release medical information.

026 REP. EDMUNSON: Consent should be allowed but not the records?

030 BISHOP: Even if consent is not required from the parents, they still may have a right to information from the medical record--maybe. Our position is that for federally protected information, it cannot be released.

036 REP. EDMUNSON: Would you agree there's a statutory distinction between ages 13 and 14 in the area of drug treatment where patients are concerned and parental consent or knowledge of the treatment is an issue?

039 BISHOP: I would agree to that.

040 REP. MANNIX: Maybe HB 3116 addresses only a piece of the broader philosophical question concerning the relationships between parent and child and ages of consent and disclosure. Maybe it's a constantly shifting grey area.

051 BISHOP: That's a controversial area. Impression is that it has tried to draw those lines in the area of alcohol and drug treatment. Current law strongly encourages treatment providers to include parents and families in a treatment program for a minor but doesn't go any further than that. Federal law would overrule anything done on a state level.

070 REP. SUNSERI: Potentially, the child could be a victim of all this. Discusses written consent of parent for hospitalization. How can a parent make an intelligent decision to give consent for medical treatment without all information about a child's physical condition?

084 BISHOP: Agree, it's important to have information about procedures and services they're going to receive. The question is who has the

legal responsibility to make that decision.

090 REP. SUNSERI: Gives example of child needing emergency treatment without knowledge of the child's physical condition.

098 BISHOP: Our objective would be for the physician to have all necessary information to treat the child adequately.

102 CARLSON: A similar situation can occur with adults as well. 110
REP. BELL: Does treatment for alcohol and drug treatment refer to public or private entities?

114 CARLSON: It refers to the whole range of services available--private and public clinics, hospitals, private and public treatment programs, etc. Current law allows for 15-year-olds to consent to their own medical treatment. The medical professional can release medical information to the parent if it's felt to be in the best interests of the patient.

129 REP. BELL: Do those children take the financial responsibility?

134 CARLSON: Some treatment is provided on a non-reimbursed basis and some through public clinics.

140 REP. BELL: Who is responsible if a child seeks treatment without parental consent?

143 CARLSON: Some of that is up to the treatment provider. The parent wouldn't know of the treatment if it was provided by a public clinic.

151 CHAIR CLARK: Closes the public hearing.

HB 3111 - PUBLIC HEARING

157 HOLLY ROBINSON: Summarizes HB 3111 which would allow a court to take jurisdiction of a child impaired by controlled substances.

166 STEPHEN KAFOURY, OREGON CONFERENCE OF PRIVATE CHILD CARING AGENCIES: Testifies in favor of HB 3111. We don't think HB 3111 changes the Juvenile Dependency statutes very much. Refers to HB 3111, Page 1, lines 12-13 concerning the broad language. Lobbying for the welfare of children and child protective services. There's a movement by CSD to limit the number of children served by CSD. If HB 3111 is intended to increase the number of children under the care of the state, there's a movement in the opposite direction caused by Ballot Measure 5. Urges the passage of HB 3111.

209 REP. BAUMAN: Discusses problem of treatment versus funding issue due to Measure 5.

226 CHAIR CLARK: The language in HB 3111 doesn't appear to be limited to drug or alcohol abuse on behalf of the child--also would include the parent's drug problems. Does the bill broaden the courts' jurisdiction to include parents when they would not now be covered by behavior, condition or circumstance?

241 KAFOURY: My guess is this doesn't change the law a lot.

246 CHAIR CLARK: Rep. Mannix: Behavior, condition or circumstance

right now is probably broad enough to allow a juvenile court to assert jurisdiction over a child because of drug- dependent parents?

260 REP. MANNIX: Yes. This bill exists due to vulnerability indexes and was designed to state that these kinds of circumstances call for intervention. Early intervention is much better than waiting and dealing with problems later on. Open to the idea of limiting the bill to just the juveniles affected by drugs or alcohol rather than extending it to the parents as well.

274 CHAIR CLARK: If we did that on Page 1, lines 21-24, is it your opinion that existing law (lines 12-13) would cover a situation where a parent of a minor has a severe drug or alcohol problem?

284 HOLLY ROBINSON: Current law is now being used to cover those situations.

290 CHAIR CLARK: Does existing law allow juvenile court to take jurisdiction over a child who is neglected due to parental drug problems?

294 HOLLY ROBINSON: Yes.

297 REP. PARKS: Prefers to leave the law as it is. Discusses consumption of alcohol by minors.

320 HOLLY ROBINSON: This language is identical to HB 2481 last session--the drug-addicted babies bill.

338 REP. MANNIX: Should limit it to, "the person's use of controlled substances or chronic abuse of alcohol."

345 REP. BAUMAN: Will need a funding source for CSD for treatment. Suggests putting something together with the funding source for HB 2388.

358 REP. MANNIX: Discusses a beer and wine tax bill before Consumer Business and Affairs in reference to funding possibilities for drug and alcohol treatment.

401 TONI PETERSON, CSD, DEPT. OF HUMAN RESOURCES (EXHIBIT E): Opposed to HB

311 1. The courts can already take jurisdiction of children described in this bill (ORS 419 .476(c)). CSD has introduced HB 2540 in response to Measure 5 and would eliminate CSD's involvement with the population defined in HB 3111. CSD must limit the number of children it serves.

421 CHAIR CLARK: Testifying in opposition due to CSD's intent to limit the population of children it serves. CSD wants to unplug the ORS 419.476(e) language from existing law.

TAPE 114, SIDE B

014 PETERSON: We're not seeking to limit the courts' jurisdiction but to limit who can be committed to CSD based on available funds.

018 CHAIR CLARK: Under what circumstances is a child referred to CSD or the county juvenile department?

022 HOLLY ROBINSON: Would be an initial discretionary decision based on the referral and response of local juvenile departments and local CSD. Gives example.

038 CHAIR CLARK: Has personal interest in HB 3438 and the pilot program. Don't hear county juvenile departments trying to limit the number of kids they're serving. Understand CSD's concern but not sure that population needs to go unserved.

050 HOLLY ROBINSON: Broadening the grounds of jurisdiction would not dictate the child's referral to any particular system.

055 REP. EDMUNSON: Do you agree that a child's well being is impaired by the use of controlled substances or alcohol?

058 PETERSON: Absolutely. There aren't enough services for those youth.

061 REP. EDMUNSON: You're not saying this sort of treatment is not within the philosophical policy role of CSD?

063 PETERSON: We are seeking to serve youth who have problems where this would be an additional problem.

068 REP. EDMUNSON: How many Oregon children would fall into the category of the need for detoxification?

070 PETERSON: Don't have that information.

072 REP. EDMUNSON: It's more than 100.

074 PETERSON: The cases that come to our attention for parents--about 90 percent involve drugs or alcohol. Can't address adolescents because the majority of that population is not served by CSD.

077 CHAIR CLARK: Closes the public hearing.

HB 3111 - WORK SESSION

080 MOTION, CHAIR CLARK: Moves to amend Page 1, line 21, by deleting the word "the" before the word "use" and inserting the word "person's". On line 22, place a "." after the word "alcohol" and delete the remainder of the sentence. The affect of the amendment is to refer to the juvenile's use of a controlled substance or alcohol.

085 REP. BAUMAN: Opposed to the amendment due to CSD's testimony concerning limited funding.

VOTE: 6-1

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

The motion passes, and the amendment is adopted.

116 MOTION, REP. MANNIX: Moves HB 3111 as amended to the Full Committee with a "do pass" recommendation.

VOTE: 6-1

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

Motion passes, Rep. Mannix to carry.

125 CHAIR CLARK: Adjourns the meeting at 4:00 p.m.

Submitted by, Reviewed by,

Holly Blanchard
Manager

David Harrell Transcriber

Office

EXHIBIT LOG:

A - Fiscal Impact Work Sheet, HB 2935, Committee Counsel, 2 pages B -
Written testimony and proposed amendments (HB 2667-1), Janice Yaden,
DHR, 6 pages C - Article written by Holly Robinson, Committee Counsel,
HB 3116, 3 pages D - Statutes, HB 3116, Jim Carlson, Oregon Medical
Association, 8 pages E - Written testimony, HB 3111, Toni Peterson, CSD,
1 page