

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE

May 6, 1991 Hearing Room 357 3:00 p.m. Tapes 115 - 116
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
Jeff Steve, Committee Assistant MEASURES HEARD: HB 3493 - Grand Jury
Proceedings (PH/WS) HB 3456 - Rules Of Discovery In Juvenile Proceedings
(PH/WS) HB 3481- Artificial Insemination (WS) HB 3224- Division of
Property (WS)

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. -

TAPE 115, SIDE A 004 CHAIR CLARK: Opens Subcommittee on Family Justice
at 3:11 p.m. HB 3493 - GRAND JURY PROCEEDINGS PUBLIC HEARING

Witnesses

Dale Penn, Marion County District Attorney Hank Bursani, Northwest
Regional Center For Mental Retardation David Beem, Northwest Regional
Center For Mental Retardation 012 HOLLY ROBINSON: EXHIBIT A
Summarizes HB 3493. Allows the judge in a grand jury proceeding, upon
the motion of the district attorney, to appoint a parent, guardian or
other appropriate person to accompany any person with mental retardation
during an appearance before the grand jury. 019 DALE PENN, MARION
COUNTY DISTRICT ATTORNEY: Refers to and reads from EXHIBIT A. House
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042 CHAIR CLARK: Why should this be available only for grand jury
proceedings?

044 PENN: Statute specifies who is allowed in the grand jury room.
There is a procedure to allow other people, but it is very precise. HB
3493 would amend the exemption.

052 HANKBURSANI, NORTHWEST REGIONAL CENTER FOR MENTAL RETARDATION:
Supports passage of HB 3493.

063 DAVID BEEM, NORTHWEST REGIONAL CENTER FOR MENTAL RETARDATION: ,
Supports passage of HB 3493. 083 REP. PARKS: Understands that one of
the functions of the grand jury is to test the stability of the
witnesses in order to determine whether or not the case can go to trial.
These people are not going to have this help in a trial situation. What
is the benefit of having this service in the grand jury setting and not
in the trial setting? 091 PENN: Refers to Exhibit A.

HB 3493 - GRAND JURY PROCEEDINGS - WORK SESSION

123 MOTION, REP. MANNIX: Moves HB 3493 to Full Committee with a "do
pass" recommendation. 128 VOTE: 7 - 0 Motion passes. Rep. Sunseri to
carry.

AYE: Bauman, Bell, Edmunson, Mannix, Parks, Sunseri, Clark NO: 0
EXCUSED: Mason HB 3456 - RULES OF DISCOVERY IN JUVENILE PROCEEDINGS -
PUBLIC HEARING

Witnesses:

Richard Carlson, Lane County District Attorney

145 HOLLY ROBINSON: HB 3456 extends application of the rules of discovery to juvenile delinquency proceedings. 149 RICHARD CARLSON, LANE COUNTY DISTRICT ATTORNEY: Proposer of bill. HB 456 came about as a result of basic frustrations of acquiring information in juvenile proceedings.

HB 3456 - RULES OF DISCOVERY IN JUVENILE PROCEEDINGS - WORK SESSION

184 REP. EDMUNSON: Moves HB 3456 to Full Committee with a "do pass" recommendation.

190 VOTE: 8 - 0 Motion passes. Rep. Bauman to carry.

AYE: Bauman, Bell, Edmunson, Mannix, Mason, Parks, Sunseri, Clark House Committee on Judiciary May 6, 1991 Page 3

NO: 0 EXCUSED:

HB 3481 - ARTIFICIAL INSEMINATION - WORK SESSION

witnesses:

Kathryn Brown, Womens' Rights Coalition Mark Johnson, Attorney

206 HOLLY ROBINSON: Summarizes HB 3481. Allows the donor in an artificial insemination to retain all the rights, obligations and interests of a father if a written agreement has been signed. Repeals provision requiring that artificial insemination be performed by doctor or person under supervision of a doctor. 238 CHAIR CLARK: When is the agreement presented, to whom and where? 262 ROBINSON: Based upon the McIntyre decision understands that an individual who signed an agreement that was not subsequently honored would file a paternity action in the appropriate jurisdiction. 269 CHAIR CLARK: Why does it say that the donor will have the rights, obligations and interests of the father while the child does not have any rights, obligations or interests with respect to the donor? 279 ROBINSON: The language is to keep HB 3481 in line with the legislative intent. 306 KATE BROWN, WOMEN'S RIGHTS COALITION: What HB 3481 does is to give the father standing to exercise his rights. If the father does act on those rights and is adjudged to be the father, then likewise the child would have the same inheritance and child support rights as any other child. 320 CHAIR CLARK: That is not what HB 3481 says. HB 3481 does not make the same exception in subsection 2 of section 1 for the child as it does for the donor. 324 REP. BAUMAN: Talks about history of rights and obligations. 334 CHAIR CLARK: Understands HB 3481 to say that if you have the donor and there is an agreement that the donor is going to be an active part in the child's life, this child shall have no rights if the father dies. 357 BROWN: Under your scenario you assume that the father/donor has not come forward and made a paternity determination, correct? 363 CHAIR CLARK: No. Assumes that he has. 368 REP. EDMUNSON: Understands that if the donor has obligations and rights agreed upon and pursues those to a legal order of paternity then the rights and obligations would be available to House Committee on Judiciary May 6, 1991 Page 4

the child.

383 CHAIR CLARK: What is the policy reason behind this. 391 MARK
JOHNSON, CHAIR OF BILL COMMITTEE: No, there is no policy consideration
for the language used here. The Committee did not want to make the semen
donor the father by operation of law, but rather give the donor the
ability to assert those rights at a later time should he so desire.

TAPE 116, SIDE A

001 CHAIR CLARK: Agrees with Edmunson's understanding, but considers
that there are some issues left unresolved. 006 REP. EDMUNSON:
Suggests adding the language "if the donor is determined in a paternity
proceeding to be the legal father, then the child shall have all rights
pursuant thereto." This would make it clearer. 012 CHAIR CLARK: Are
there some other ramifications that we are not aware of here. Has
trouble with this. 015 JOHNSON: Is not sure. 018 REP. SUNSERI:
Understands that the father will have rights and obligations if there is
an agreement which means that he will be responsible for child support.
If there is no agreement and the child wants to see the father and sees
the father, is the father then responsible for child support?
030 CHAIR CLARK: Only if the father comes forth and establishes
paternity. 032 REP. SUNSERI: Understands, but what if the child comes
forth. 033 CHAIR CLARK: The statute does not allow that.
035 JOHNSON: Rep. Sunseri has pointed out the flaw in the Chair's
proposed amendment as opposed to Rep. Edmunson. 038 REP. BAUMAN:
Concerned that there has been no testimony from the parents of children
born using artificial insemination or from the mother or donors.
Concerned about HIV infection and mechanical failure when insemination
is performed by anyone other than a physician. Refers to Sections 2 and
3. Should this still be a misdemeanor? 077 BROWN: To her knowledge,
no one has been prosecuted under this statute. The Committee addressed
this issue in Sections 2 and 3 because of the potential constitutional
ramifications of making this form of artificial insemination be
criminal. 084 REP. MASON: What is the constitutional argument?

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proceedings, please refer to the tapes. House Committee on Judiciary May
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085 BROWN: The constitutional right to privacy in one's own
home. . 088 REP. MASON: If you want to reproduce by rape, there
are laws against that. Right to privacy has limits.

095 BROWN: Compares this situation to Griswold v. Connecticut where
the Supreme Court refused to police people's bedrooms for contraceptive
devices. 103 REP. MANNLY: Concerned about setting up contractual
situations without having personal relationships in a very personal
area. 118 BROWN: Concerned about prohibiting persons from engaging in
artificial insemination in the privacy of their own homes. 122 REP.
MANNIX: The House last week voted against a measure to allow an already
pregnant woman to use administrative procedures to establish paternity
before the child was born. Do you think that the House is going to now
vote for a measure that would allow a woman to make a deal with someone
to be artificially inseminated and have parental rights established even
before conception has occurred? 139 BROWN: Thinks that the arguments
that are presented here are different from those presented in HB 3481.
151 REP. MASON: What if artificial insemination is not done right?
152 JOHNSON: There are no more consequent hazards other than those

that follow from sexual intercourse. 158 CHAIR CLARK: Assumes that there is some process by which a physician can screen for health purposes. 165 REP. MASON: Wants to have this semen tested. 188 BROWN: People have sexual intercourse every day without regard to quality of the sperm. 196 CHAIR CLARK: The state does not regulate private sexual conduct. It does regulate artificial insemination and therefore the state should have some say. 208 JOHNSON: The concerns that the two of you have expressed is that artificial insemination is not controlled. More and more women are seeking to use the artificial insemination. 255 REP. BAUMAN: This is a very political issue. One issue that is significant is the procedure of handling the semen after it is taken away. There is nothing in current law to test for HIV. 346 REP. MANNIX: Understands that what the court did in McIntyre was apply the law as it is. 361 BROWN: Understands what McIntyre says is that the current law with respect to artificial

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insemination is unconstitutional because it does not provide the donor with a way to exercise his rights as a father. HB 3481 is designed to address this.

368 REP. BELL: Thinks that the Committee should leave Section 3 of current law alone. Concerned about establishing the validity of the agreement.

TAPE 115, SIDE B

007 JOHNSON: Would be willing to have Sections 3 and 4 deleted.

015 MOTION, REP. PARKS: Moves to delete Sections 2, 3 and 4

022 REP. BAUMAN: Opposes deletion of Section 2.

037 CHAIR CLARK: Calls vote on Rep. Parks' request to delete Sections 3 and 4.

040 VOTE: 7-1 Motion passes.

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

042 MOTION, REP. PARKS: Moves deletion of Section 2. 043 VOTE: C - 2 Motion passes.

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

045 MOTION, REP. EDMUNSON: Moves on line 15, subject to Legislative Counsel, drafting "if a donor under this Section is determined to be the legal father of the child in a paternity proceeding then the child should be entitled to all rights, obligations and interests with respect to the donor." DISCUSSION ON THE MOTION 062 BROWN: This leaves the question of whether or not we want to allow the child to go forward to establish inheritance rights if the father has not gone forward to establishing paternity. 065 REP. EDMUNSON: Understands if the father

had not gone to establish paternity then such rights will not exist.

071 REP. BELL: Understands that the mother could instigate a paternity suit to establish paternity to be used against the father.

074 CHAIR CLARK: There must still exist an agreement prior to insemination for any action to take place. . - House Committee on Judiciary May 6, 1991 - Page 7

080 REP. SUNSERI: What we are trying to do is establish rights for the child, but still sees the problem that the father is not going to come forth to establish those rights in order to get out of paying child support. The child has no power to establish the rights. The decision is totally with the donor.

086 REP. MASON: There are no rights or chance for establishing rights prior to an agreement. All the amendment says is that the if the father does sign the agreement and comes forth the rights attach.

126 VOTE: 6 - 0 Motion passes.

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

127 MOTION, REP. MANNIX: Moves to amend HB 3114 to repeal ORS 109.239.

DISCUSSION ON THE MOTION

154 JOHNSON: The policy debate on artificial insemination has already been conducted by the 197 7 legislature. The issue here is the due process problem articulated by McIntyre. Rep. Mannix does resolve the due process problem. There will still be semen donors who have unresolved due process interests in parenting the children. 168 REP. MANNIX: They would have the same right as the mother and the father. If ORS 109.239 is eliminated it allows the parties to establish paternity and establish rights like everyone else. This would make sure that there was neither social favoring or disfavoring through legislation through that process. 178 REP. BELL: Concerned about leaving this "open season" to every party involved. It could be potentially hard on the children. 189 REP. PARKS: Objects to amendment. 193 REP. SUNSERI: What does that do with the physician requirement. 195 CHAIR CLARK: That would remain. 201 VOTE: 3 - 5 Motion fails.

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

HB 3224 - DIVISION OF PROPERTY IN A MARITAL DISSOLUTION - WORK SESSION

204 HOLLY ROBINSON: Summarizes HB 3224. Designates "enhanced earning capacity" as property for the purposes of division of property in a dissolution. Requires spouse asserting an . . House Committee on Judiciary May 6, 1991 Page 8

interest in the income to show that the spouse made a material contribution to the enhancement.

219 MOTION, REP. PARKS: Moves HB 3224-1 Amendments See EXHIBIT B and on page 3, line 24 insert after the word "party" the phrase "during the marriage". Makes it clearer that the only enhanced earning capacity that is talked about is that which occurs during the marriage.

246 ROBINSON: Summarizes Motion. 255VOTE: No objection. Motion

passes. 256 MOTION, REP. MANNIX: Motions to delete language on line
24 beginning with "the presumption of equal contribution" all the way
through line 30. 273 VOTE: No objection. Motion passes.
276 MOTION, REP. PARKS: Moves HB 3224 as amended to Full Committee
with a "do pass" recommendation. 280 VOTE: 5 - 0 Motion passes. Rep.
Parks to carry.

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

287 CHAIR CLARK: Adjourns Subcommittee on Family Justice at 4:30 p.m.

Submitted by: Reviewed by: J. Kennedy Steve, AssistantDavid
Harrell, Office Manager

EXHIBITS LOG:

A Testimony on HB 3493 - Dale Penn - 3 pages B Amendments to HB 3224 -
Rep. Parks - 1 page -

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