

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 10, 1991 Hearing Room 357 2:00 p.m. Tapes 119 - 120

MEMBERS PRESENT: Rep. Kelly Clark, Chair Rep. Marie Bell Rep. Jim Edmunson Rep. Kevin Mannix Rep. Del Parks Rep. Ron Sunseri

MEMBER EXCUSED: Rep. Judy Bauman Rep. Tom Mason

VISITING MEMBER: Senator Paul Phillips

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

MEASURES CONSIDERED: SB 342 PH (Juveniles) SB 980 PH (Juveniles) HB 3449 WS (Juveniles) HB 3515 WS (Child Custody)

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TAPE 119, SIDE A

003 CHAIR CLARK: Calls the meeting to order at 2:10 p.m.

SB 980 - PUBLIC HEARING

010 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes SB 980 which reinserts the notification procedures to juveniles and parents regarding detention hearings.

017 LARRY OGLESB Y, OREGON JUVENILE DEPARTMENT DIRECTORS ASSOCIATION: SB 980 addresses an oversight when the statute was rewritten. It's a due process issue.

CHAIR CLARK: Closes hearing on SB 980.

SB 342 - PUBLIC HEARING

026 HOLLY ROBINSON: Summarizes SB 342 which changes the filing notice of appeal statutes in juvenile cases. No witnesses have signed up to testify.

043 CHAIR CLARK: Closes public hearing on SB 342. Recesses at 2:13 p.m. Reconvenes at 2:15 p.m.

HB 3449 - WORK SESSION

049 HOLLY ROBINSON, COMMITTEE COUNSEL (EXHIBITS A-E): Summarizes HB 3449 which modifies numerous provisions of the Juvenile Code. There has been significant opposition to some of the proposed changes. Refers to EXHIBITS A-E.

078 SENATOR PAUL PHILLIPS, DISTRICT 4: Refers to Section 4 of HB 3449. That is what SB 784 dealt with. Discusses issue of expungement in relation to major crimes and murder. People agree those crimes should not be expunged. A mistake was made in drafting SB 784 concerning expungements of juvenile records and those crimes committed against juveniles. That was not our intent. Our intent was that if a juvenile committed those crimes mentioned against anybody, those crimes would not be expunged. Requests the amendments enumerated in SB 784- 1 (EXHIBIT B) be inserted into Section 4 of HB 3449.

104 HOLLY ROBINSON: Discusses HB 3449 and the proposed amendments. The proponents and opponents agree that Sections 1, 2 and 3 of HB 3449 would be deleted.

110 REP. BELL: When referring to opponents, was the Oregon Juvenile Department Directors Association included?

120 HOLLY ROBINSON: They are. They agreed to these proposed amendments. Section 4 is amended which includes the five homicide charges mentioned by Senator Phillips. Section 6 is deleted. Section 7 is restored with the addition of a new section. Section 8 is deleted. Discusses Section 5 concerning juvenile court referees that will need committee arbitration.

149 REP. EDMUNSON: Are the referees referred to elected?

HOLLY ROBINSON: No.

REP. EDMUNSON: Then they cannot constitutionally be designated a judge under Oregon law. Refers to Article 7, Section 1 of the Oregon Constitution.

157 REP. MANNIX: It's appropriate to be cautious about that. This discussion is about creeping labeliSMwhere referees could eventually be referred to as judges. Support allowing the affidavit process.

168 REP. EDMUNSON: Designating someone as a judge who is not elected raises a tremendous jurisdictional problem.

173 REP. BELL: What is a juvenile court referee?

178 HOLLY ROBINSON: Don't know that the statute specifically designates the qualifications. Generally requires that the person be an attorney with trial experience in juvenile law.

185 MOTION, REP. EDMUNSON: Moves the deletion of Sections 1, 2, 3, 6 and 8.

There being no objection, it is so adopted.

196 MOTION, REP. MANNIX: Moves the modified version of Section 4 (used in SB 784-1) as presented by Senator Phillips.

CHAIR CLARK: Rep. Mannix moves the insertion of a new Section 4 constituted by the SB 784 -1 amendments.

201 REP. MANNIX: It's a nice balance compromise.

CHAIR CLARK: The motion is technically only moving line 5 of the dash 1 amendments.

There being no objection, it is so adopted.

213 MOTION, REP. MANNIX: Moves to incorporate the concept of Section 5 but modifying it to remove the word "judge."

220 REP. MANNIX: To add Juvenile Court referee and the references to "judge" in all those sections. They will be subject to affidavit of prejudice.

224 REP. PARKS: Would like more information about how much of a problem this would cause to the mid-size counties.

234 LARRY OLEGSB Y, OREGON JUVENILE DIRECTORS ASSOCIATION: Three counties use referees on a regular basis; Washington, Deschutes, and Marion counties. Multnomah County has three referees. Other counties use referees but not routinely.

246 REP. PARKS: If the same statute is used for judges, referees could be put out of business.

250 OLEGSB Y: That's correct.

252 REP. PARKS: Discusses concern.

260 REP. MANNIX: Raises concern about referee use and affidavits of prejudice. Should rely on the DAs to use due discretion.

284 REP. PARKS: Is there a special problem with some referees?

295 MARK McDONNELL, ODAA, MULTNOMAH COUNTY DA'S OFFICE: Discusses a situation in Multnomah County concerning a referee and the attempted filing of an affidavit of prejudice in 1985. It was appealed to the presiding judge of the county and ruled that a referee does not qualify under the term "judge" under the provisions mentioned in Section 5.

319 REP. MANNIX: They get to have their cake and eat it too. They get to act like a judge except when it comes time to have an affidavit of prejudice.

323 CHAIR CLARK: Calls the question.

326 REP. BELL: Are the witnesses happy with Rep. Mannix's motion?

327 CHAIR CLARK: Suspends the call.

328 OGLESB Y: No.

330 CHAIR CLARK: Calls the question on Rep. Mannix's motion.

VOTE: 4-2

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

Motion carries as amended.

359 MOTION, REP. EDMUNSON: Moves to restore the current language and add the new Subsection in the May 10, 1991 Memo (EXHIBIT A) of Section 7.

There being no objection, it is so adopted.

388 MOTION, REP. EDMUNSON: Moves HB 3449 as amended to the Full Committee with a "do pass" recommendation.

VOTE: 6-0

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

Motion passes, Rep. Mannix to carry.

407 CHAIR CLARK: Closes the work session on HB 3449.

SB 342 - WORK SESSION

414 MOTION, REP. EDMUNSON: Moves SB 342 to the Full Committee with a "do pass" recommendation.

VOTE: 6-0

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

Motion passes, Rep. Bell to carry.

425 CHAIR CLARK: Closes work session on SB 342.

SB 980 - WORK SESSION

427 MOTION, REP. EDMUNSON: Moves SB 980 to the Full Committee with a "do pass" recommendation.

VOTE: 6-0

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

Motion passes, Rep. Edmunson to carry.

HB 3515 - WORK SESSION

TAPE 120, SIDE A

014 HOLLY ROBINSON, COMMITTEE COUNSEL (EXHIBIT F): Summarizes HB 3515 and refers to the dash 1 proposed amendments, HB 3515-1, which delete the entire bill and replace it with a singular provision (lines 13-14 of the dash 1 amendments).

019 MOTION, REP. EDMUNSON: Moves the dash 1 amendments, HB 3515-1.

022 CHAIR CLARK: The dash 1 amendments take the concept of HB 3515 and asks the court when considering custody to consider which parent is most likely to facilitate contact with the other parent as one of several factors. Several states already do this.

There being no objection to the dash 1 amendments, they are adopted.

029 MOTION, REP. EDMUNSON: Moves HB 3515 as amended to the Full Committee with a "do pass" recommendation.

VOTE: 6-0

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

Motion passes, Rep. Clark to carry.

035 REP. MANNIX: Moves to reconsider the action on HB 3449 concerning length of waiting time for expunction.

044 CHAIR CLARK: Rep. Mannix moves that the committee reconsider the vote by which HB 344 9 passed the subcommittee.

There being no objection to the reconsideration, it is so ordered.

044 MOTION, REP. MANNIX: Moves to increase the waiting period for expunction from three years to five years.

There being no objection, it is so adopted.

050 MOTION, REP. MANNIX: Moves HB 3449 as amended to the Full Committee with a "do pass" recommendation.

VOTE: 6-0

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

Motion passes, Rep. Mannix to carry.

053 CHAIR CLARK: Adjourns the meeting at 2:40 p.m.

Submitted by,                      Reviewed by,

Holly Blanchard                      David Harrell

EXHIBIT LOG:

A - Memorandum, dated 5/10/91, HB 3449, Committee Counsel, 1 page B - Proposed Amendments, SB 784-1, dated 4/26/91, Re HB 3449, Committee Counsel, 3 pages C -Written testimony and proposed amendments, only, HB 3449, Mark McDonnell, DDA, Multnomah County, 3 pages D - Written testimony, HB 3449, Larry OgleSB y, ODDA, 2 pages E - Fiscal Analysis, HB 3449, dated 4/19/91, 1 page F - Proposed Amendments, HB 3515-1, dated 5/1/91, Committee Counsel, 2 pages