

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 15, 1991Hearing Room 357 3:00 p.m.Tapes 126 - 127

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

MEMBER EXCUSED: Rep. Tom Mason

STAFF PRESENT: Holly Robinson, Committee Counsel Jeff Steve, Committee Assistant

MEASURES HEARD:SB 451 - Requires presentence reports for all defendants convicted of felony sexual offense.

SB 376 - Revises procedures for imposition of sanctions for alleged contempt of court.

HB 3375 - Allows owner of record of real property to file petition in circuit court for removal of provision in title to property that violates statutory prohibition against covenants in conveyances restricting property based on color, race, religion, national origin, physical or mental handicap or use as residential facility.

HB 3313 - Establishes Sex Offenses Against Children Task Force.

HB 3418 - Deletes name of complaining party and victim from record of arrest that may be made public.

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TAPE 68, SIDE A

004 CHAIR CLARK: Opens Subcommittee on Family Justice at 3:45 p.m.

HB 3375 - WORK SESSION

014 HOLLY ROBINSON: Gave overview of HB 3375 for Committee. Referred to HB 3375-1 amendments in members' packets.

029 Craig Campbell: EXHIBIT A Rule in Shelley's case. Presented and paraphrased Exhibit A. Discussed amendment. EXHIBIT B.

069 REP. SUNSERI: If the owner of the property conveys title to the property to another individual apart from the family and retains a life estate upon the sale, does the property revert to the deed holder at the demise of the owner or does it still go to the child?

073 Campbell: Not sure of what you are asking. The reversion goes back to the deed holder, who can do what he pleases. Has the same affect as the rule in Shelley's case, but the rule in Shelley's case only applies to a conveyance to someone and then to his children.

085 CHAIR CLARK: Your amendment basically abolishes the rule of Shelley's case?

086 CAMPBELL: Yes. It was already abolished in relation to wills under ORS 112.345.

088 CHAIR CLARK: Why, as a matter of policy, do we want to do that?

089 CAMPBELL: The Rule has never been applied in Oregon. Right now it acts as a pitfall for an unwary lawyer. As a result, if a lawyer was to write up an instrument that qualified under the rule, the person who would end up paying would be the lawyer's client. Unless there is a real affirmative reason to keep something that was developed under feudal law, it should be taken out of the existing body of law.

108 MOTION, REP. MANNIX: Moves -1 amendments to HB 3375.

113 No objection. Motion passes.

114 MOTION, REP. MANNIX: Moves HB 3375 as amended to Full Committee with a "do pass" recommendation.

123 VOTE: Motion passes. Shibley to carry.

AYE: 7 NO: EXCUSED: 1 - Mason

HB 3418 - WORK SESSION

132 HOLLY ROBINSON: EXHIBIT C (HB 3418-1 Amendments) Summarizes HB 3418 and HB 3418-1 amendments.

155 TIM BIRR, EUGENE DEPARTMENT OF HEALTH AND SAFETY: Testifies in favor of HB 3418. There was concern about the language in the bill as drafted. The language in the amendment which Mr. Zeitz proposed gives recognition to the concerns regarding safety of complainants and victims. It also sets forth victim and complainant safety as a criteria or test in determining what information to release.

167 BOB ZEITZ, PUBLISHER, KEISER TIMES: Appearing as representative of the Oregon Newspaper Publishers Association. They do support the HB 3418-1 amendments.

173 ROBINSON: Do not go into effect until July of 1995. Section 2 of the printed bill inserts the same language that is on page 1, lines 4 through 8 into the second section of the statute.

179 REP. PARKS: Wants to go into more detail concerning - 1 amendments

regarding the rights of the press, the restrictions that would be on it and the right of the victim.

188 ZEITZ: Amendment maintains the press access and the public's access to police reports and documents. Recognizes that there are, in specific cases, good reasons to protect the name of a complaining party or a victim. Does sensitize law enforcement agencies to look at a report as to whether or not the information should be withheld. If the agency does make that determination, it still leaves the window open for the press and public to appeal the retention of that information through the normal public records policy.

205 REP. PARKS: To Mr. Birr, do you agree with Mr. Zeitz?

207 BIRR: Concurs.

212 REP. PARKS: In the vast majority of cases, that information would be available. Would this only affect a limited number of cases?

214 REP. MANNIX: On last page of amendments it states that it will become operative on June 30, 1995. Section 2 of this act is now going to be presented in the amendments. Not following which sections are being talked about.

220 ROBINSON: Page 1, lines 4 through 9 is the new language that goes into the printed bill. The new section 2 is an add-on to this bill. Section 2 actually exists in statute.

238 REP. MANNIX: So the language that says "the amendments to ORS 192.501 by section 2 of this act" is in the current ORS?

239 ROBINSON: It is in current ORS and awaiting June 30, 1995 to become effective. Because it is currently in statute, it was not necessary to make changes.

241 REP. PARKS: Moves HB 3418-1 amendments.

242 CHAIR CLARK: Suggests friendly amendment page 1, line 6 and page 2, line 14, take out the words "in a particular case".

250 REP. PARKS: Better wording.

253 REP. BELL: Would like to hear from Mr. Zeitz.

259 ZEITZ: Agrees.

264 REP. MANNIX: Language that states "shall not be confidential unless and only so long as" is a double negative concept. It is in the amendments and current statutes. State "shall be confidential so long as there is a clear need".

279 REP. EDMUNSON: This would not be a technical amendment. The policy should be that the records should be open and with exceptions. The phrase "unless and only so long as" incorporates two situations. One would be they will not be confidential unless, which is open-ended secrecy. "Only so long as" imposes a limit on that.

297 REP. MANNIX: Suggests "shall be disclosed"?

309 No objection. Motion passes.

311 REP. PARKS: Moves HB 3418 as amended to the Full Committee with a do pass recommendation.

321 VOTE: Motion passes. Edmunson, Bell to carry.

AYE: 7 NO: EXCUSED: 1

HB 3313 - WORK SESSION

338 HOLLY ROBINSON: Referred to HB 3313-1 amendments in members' packets. EXHIBIT D. They are a rewrite of the bill that would Legislatively create a Sex Offenses Against Children Task Force.

352 REP. MARIE BELL: Introduced Andrea Pisula.

361 ANDREA PISULA: EXHIBIT E and F Discusses proposed amendments.

383 REP. MANNIX: Has a problem with all those different groups having to be represented. Is 15 members going to be enough when you have two Senators, two Representatives and 11 slots left?

396 REP. SUNSERI: Was the one who made the motion to have two Senators and two Representatives on the Task Force. He is open to changing that to one each if that would facilitate the amendments.

399 CHAIR CLARK: On page 2, lines 2 and 3, there is an entry for parent and representatives of parents groups. What is the policy reason for both those entries?

401 PISULA: That is taken from the Child Abuse Prevention Act. EXHIBIT G.

TAPE 127, SIDE A

003 REP. MANNIX: There is no requirement in Federal law that you have to have a separate person representing each of these groups.

010 REP. BELL: EXHIBIT G. Believes it is important to leave that in because of the nature of the legislation that hopefully will come from this Task Force.

016 REP. MANNIX: Is there a Federal requirement that the Senators and Representatives have these experiences?

024 PISULA: Continued explanation of amendments. Requested one additional amendment. After F on line 24, add in section C "that the Task Force will act in an advisory capacity to the designated agency for receipt of Federal dollars through the Childrens' Justice Act".

034 CHAIR CLARK: Those are under the hand engrossed.

037 REP. BELL: Do we need to conceptually amend that to include the numbers that might be appropriate?

039 ROBINSON: Would be advisable to substitute the public law number in lieu of the Childrens' Justice Act, but can do that in drafting.

048 REP. BELL: Referred them to the Legislative Fiscal Impact Statement and the expenditures for the Task Force last interim.

057 CHAIR CLARK: Suggests moving to Full with subsequent referral to Ways and Means and then ask Rep. Bell to visit with Legislative Fiscal between now and full to possibly revise their fiscal statement. If the numbers look different, possibly full could rescind the referral.

062 REP. BELL: Wants to make sure that we have drafted this so that if the amount of money that is received from the grant is less than their fiscal estimate, it can be done with less.

067 REP. MANNIX: What do you think about putting in that this Task Force will be implemented, if Federal grant is received.

070 CHAIR CLARK: One of the reasons for the bill to go to Ways and Means Committee is so they can insert appropriate appropriations language, which is a trigger for the Federal dollars.

078 REP. MANNIX: Moves -1 amendments with the changes noted on the hand engrossed version relating to the "act in advisory capacity to the designated agency for receipt of Federal dollars through the Childrens' Justice Act.

081 No objection. Motion passes.

083 MOTION, REP. MANNIX: Moves HB 3313 as amended to Full Committee with a "do pass" recommendation.

089 VOTE: Motion passes. Bell to carry.

AYE: 7 NO: EXCUSED: 1

SB 376 - PUBLIC HEARING

101 HOLLY ROBINSON: Summarizes SB 376.

109 PAUL LIPSCOMB, DISTRICT COURT JUDGE, MARION COUNTY: Testifies in favor of SB 376A. Was a member of the Contempt Committee that began work on this issue last session. This bill is also supported by Judicial Administration Committee, the Oregon State Bar and the District Court Judges Association who support SB 376 and urge its adoption. Spoke to the history of why the contempt laws were reviewed. The problem is the Appellate Court opinions on contempt procedures regularly show that the attorneys and courts are confused about what the required procedures are under the existing laws and statutes. The statutes do not correctly correspond with one another or with existing caseload. They don't feed the practitioner the basic procedural information necessary to effectively use the contempt power. The idea was to codify the law as close to existing format, simplify it and provide a roadmap to both the practitioners and judges. Most of the provisions in SB 376 are specifically authorized under existing case law or statutes.

148 CHAIR CLARK: What is the problem being addressed?

151 LIPSCOMB: Hard to use. The law exists in pieces in various places and statutes are not consistent with the case decisions. The Federal law changed in 1988 and forced everyone to look at contempt in a different way.

159 CHAIR CLARK: The reason that we care about this is because someone raised a Federal Constitutional issue?

162 LIPSCOMB: Believes it was a 1983 action.

166 REP. MANNIX: The Supreme Court required that a distinction be made between punitive sanctions and remedial sanctions.

168 LIPSCOMB: The terminology has to change.

171 REP. MANNIX: The reality is the sanction you are imposing rather than the label that you use. This is a new labeling system and new sanctioning system.

173 LIPSCOMB: It is going to be easier to exercise the contempt powers as a result.

176 CHAIR CLARK: A judge just can't bang or gavel anymore and say you are in contempt?

177 LIPSCOMB: If it happens in the presence of the judge, yes. For an indirect contempt, no, the judge can't do that.

184 REP. MANNIX: If you refer to a case out of Washington D.C., regarding a woman who would not tell the court where her child is due to alleged abuse by the father, Congress passed a law limiting how long a person can be jailed for that kind of contempt. Does this bill provide any standards or sentencing guidelines for that kind of contempt?

195 LIPSCOMB: We did deal with it. It was a concern that when there is a stubborn defendant and stubborn judge, something has to give. Set a time limit that a litigant had to be brought back into court. Litigant has to have opportunity to have a different judge hear it.

210 BILL LINDEN: EXHIBIT H Reads from Exhibit H.

293 CHAIR CLARK: Suggests hearing other people and he could come back for comment and walk them through the bill.

325 MICHAEL PUGH, LANE COUNTY: EXHIBIT H Reads from Exhibit I. Has two problems with SB 376. < preclusion of private bar from seeking punitive contempt. The bill limits prosecution of punitive contempt with punitive sanctions to a State agent. It precludes the private bar from pursuing that on behalf of a party who was actually injured by the non-compliance.

342 CHAIR CLARK: Give us a scenario.

343 PUGH: The way it plays out as proposed in the testimony is that assuming there is an order in effect and non-compliance by a party to that order injures another party. Historically the injured party has the remedy of going back to the same court under the same order and asking that the non-complying party be held in contempt and sanction be applied. The injured party has always had the opportunity through private counsel to go before the court and declare the damage cannot be fixed, but please punish this person by putting him in jail. Under the proposed legislation, that remedy is no longer available to private parties at least through their own attorney. They can go through a State agency, if the agency is willing to do so.

381 CHAIR CLARK: Will they be able to come to the D.A.'s office and ask for a prosecution?

382 PUGH: Yes. Feels this will create the potential for substantial increase in the already overburdened workload of District Attorney offices and Attorney General offices. > SB 376 does not clearly define the elements of what constitutes contempt. It would be helpful if the Legislature would take this opportunity to clearly define exactly what constitutes a contempt or what is required to prove contempt.

TAPE 126, SIDE B

004 CHAIR CLARK: What does existing law or SB 376 say about state of mind in the criminal context?

015 PUGH: That is unclear in current law. Not sure what degree of mens rea is. The bill, as proposed, does say the contempt must be willful, but does not define it more than current statute. Does add one aspect which is it provides that inability to comply with the order is an affirmative defense. Valuable and necessary addition. But it does not make it any more clear what the elements, including intent of non-complying persons, is.

027 CHAIR CLARK: Suggestions?

028 PUGH: Suggests amendments such as "proof of the existence of an order, proof of the contemnor's knowledge of that order and proof of non-compliance with that order establishes a prima facia case." The next element of the law is the provision that provides that "inability to comply is an affirmative defense". This does nothing to make it any more clear what the elements, including the intent of the non-complying person, is.

045 CHAIR CLARK: Suggestions?

048 PUGH: Repeated. If a contempt action is brought on the underlying order then it can only involve a party to that underlying action.

054 CARL R. STECKER: EXHIBIT J. Reads from Exhibit J.

121 CHAIR CLARK: Do you have proposed language?

124 STECKER: Does not.

125 CHAIR CLARK: Suggested he work with Mr. Linden or submit brief letter for their consideration.

129 STECKER: If the private bar is allowed to invoke transactional immunity, there has to be notice to the State.

145 REP. MANNIX: Suggests letter of proposed amendments.

148 PUGH: Points out to the Committee that SB 376 provides for two separate contempt procedures. One for punitive contempt and one for remedial contempt. His suggestion is that two procedures are not necessary. They are not required by Constitutional or Federal law, nor the State Constitution. His proposal is to create only one clearly defined procedure. There will be some additional safeguards in a punitive contempt action that are not necessary in a remedial contempt action, but that does not mandate two separate procedures. He enclosed additional language and amendments with his testimony.

168 JAMES McLAUGHLIN: EXHIBIT K. Reads from Exhibit K, which included testimony and proposed amendments.

222 REP. BAUMAN: If you were required to make an election as a prosecutor in a case and you elected for incarceration sanction and couldn't prove the case beyond a reasonable doubt, even if you reached clear and convincing, you would get nothing. If we don't make the distinction and you don't have to elect and you don't prove your case beyond a reasonable doubt, you still have the remedial sanction available to you. Is that more the interest?

231 McLaughlin: You would do your best to prove beyond a reasonable doubt. The way the bill came over from the Senate, it is not at all clear what would happen if you didn't. Need to provide for a single burden of proof standard in the remedial contempt area.

252 REP. MANNIX: Why can't there be a provision saying that in six months another judge would have to re-evaluate the entire matter, have an appearance, have a contempt proceeding and there could be further sanction imposed. Can't there be a balance where there would be a time limit?

262 McLaughlin: The proposal you make allowing successive remedial or civil contempt actions is one method of dealing with that problem. Their problem with the six month limit without an ability to bring it back to another judge is, if you set out in the statute a six month limit, you are essentially telling folks they can do six months and get away with it. Inviting the kind of conduct you are trying to deter.

280 CHAIR CLARK: Suggests that people get together and deal with agreements and disagreements. Rep. Mannix will work with them.

287 LINDEN: Same thing happened on the Senate side.

293 REP. BAUMAN: Some of her experience has been as deputy D.A. doing child support enforcement. Occasionally the judge would send a person to jail for a couple days to make it clear that he was serious. Did the discussion about the election and the problem that creates come up in the Senate?

310 LINDEN: Was not his impression that they were taking away any tool for enforcement. The difference on the burden of proof issue, in particular, ended up with three different types of cases and proceedings in which they wanted to distinguish the burden of proof. In punitive sanctions, beyond a reasonable doubt had to apply. Originally the remedial sanctions were the clear and convincing standard, however, the Senate Judiciary Committee decided to apply beyond a reasonable doubt in remedial sanctions involving confinement. Theory - these people are being confined just as someone can be confined in a punitive sanction and they ought to have the same standard burden of proof apply in those settings.

SB 451 - PUBLIC HEARING

360 HOLLY ROBINSON: Explained SB 451.

373 Marsha Morgan, Lane County: Referred to the Governor's Task Force on Corrections Planning which existed from 1988 through 1990, which came out with a ten year plan and a report on specific areas. Governor Goldschmidt asked them to look specifically at adult sex offenders from

the point of conviction on. What types of issues can be addressed and hopefully deal with this growing population. Of the 6,200 jail population, about 1,200 are sex offenders. Another 2,400 sex offenders are out on parole or probation. SB 451 is one of the bills they came up with. Mandatory presentence investigation is a very important tool to find out the history and more information about sex offenders, mostly in terms of punishment and control of those offenders. Three critical reasons: 1) so prosecutors and defense attorneys could help determine appropriateness of plea negotiations; 2) help judges determine the appropriateness of sentences of incarceration and community supervision; 3) Department of Corrections to determine the appropriate placement of sex offenders in community sanctions and supervision. In 1990, in 54 percent of all convictions of rape and sodomy, a P.S.I. was requested.

TAPE 127, SIDE B

020 CHAIR CLARK: Went into work session on SB 451.

SB 451 - WORK SESSION

027 REP. BAUMAN: Moves SB 451 to Full Committee with do pass recommendation.

028 VOTE: Motion passes. Bauman to carry.

AYE: 7 NO: EXCUSED: 1

033 CHAIR CLARK: Adjourns meeting at 5:13 p.m.

Submitted by:

Reviewed by:

Diane Bassett, Assistant

David Harrell, Office Manager

EXHIBITS LOG:

A	-	Testimony on HB 3375 - Campbell - 2 pages	B	-	Amendment on HB 3375 - 1 page
C	-	Amendments on HB 3418 - 5 pages			
D	-	Amendments on HB 3313 - 4 pages	E	-	Information on HB 3313 - Pisula - 1 page
F	-	Information on HB 3313 - Pisula - 1 page			
G	-	Information on HB 3313 - Pisula - 2 pages			
H	-	Testimony on SB 376 - Linden - 23 pages	I	-	Testimony on SB 376 - Pugh - 14 pages
J	-	Testimony on SB 376 - Stecker - 3 pages			
K	-	Testimony on SB 376 - McLaughlin - 5 pages			
L	-	Written Submission on SB 451 - Clawson - 1 page			