

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 20, 1991Hearing Room 357 3:00 p.m.Tapes 130 - 131

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

MEMBER EXCUSED: Rep. Jim Edmunson

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

MEASURES HEARD:HB 2674 - ALLOWS ADOPTEE AND CERTAIN PERSONS RELATED TO ADOPTEE BY BIRTH, ADOPTION OR MARRIAGE ACCESS TO ADOPTION RECORDS. WORK SESSION.

HB 3116 - REQUIRES PHYSICIAN TO ADVISE PARENT OR LEGAL GUARDIAN OF MINOR OF TEST RESULTS RELATING TO PRESENCE OF ALCOHOL OR CONTROLLED SUBSTANCES IF PARENT OR LEGAL GUARDIAN REQUESTS RESULTS. WORK SESSION.

HB 2673 - ALLOWS COURT, UPON CONSENT OF ALL PARTIES TO ADOPTION, TO INCLUDE PROVISIONS IN DECREE OF ADOPTION THAT NATURAL FAMILY BE ALLOWED TO VISIT CHILD AND ADOPTIVE FAMILY, THAT CHILD BE ABLE TO INHERIT FROM NATURAL FAMILY AND THAT NATURAL PARENT OR PARENTS BE APPOINTED CHILD'S GUARDIAN OR GUARDIANS IF ADOPTIVE PARENTS ARE UNABLE TO CONTINUE CUSTODY AND CARE. WORK SESSION.

HB 3449 - PROVIDES THAT COURT CANNOT AMEND JUVENILE PETITION ON ITS OWN MOTION OR THAT OF INTERESTED PARTY IN DELINQUENCY PROCEEDINGS. WORK SESSION.

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TAPE 68, SIDE A

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

HB 3116 - WORK SESSION

018 REP. MANNIX: Explains proposed amendments to HB 3116.

027 MOTION, REP. MANNIX: Moves -1 amendments. EXHIBIT A

046 CHAIR CLARK: Can conceive that there might be the situation where a psychologist or clinical social worker would be treating a 16 year old on some issue involving the parent where contact with the parent might not be helpful.

050 HOLLY ROBINSON: There are other sections that address that situation. ORS 109.675 is a second provision involving parents and treatment. The true test is if it is clinically appropriate and will serve the best interests of the minor.

058 CHAIR CLARK: Is there some standard to which the practitioner is held?

060 No objection. Motion passes.

062 MOTION, REP. MANNIX: Moves HB 3116 as amended to Full Committee with a "do pass" recommendation.

069 VOTE: Motion passes. Rep. Mannix to carry.

AYE: 6 NO: 0 EXCUSED: Rep. Bauman reserved the right to vote at a later time.

HB 2674 - WORK SESSION

Witnesses: Bill Bossert Sharon Colser Toni Peterson, Children's Services Division

079 HOLLY ROBINSON: Summarizes HB 2674.

086 CHAIR CLARK: Brings the Bill back for rehearing.

100 Bill Bossert and Sharon Colser: Comments by Bill were in support of HB 267 4. Feels sealed records concerning adoptions are harmful to all concerned. HB 2674 opens opportunity for adoptees to find families. Cited personal experience.

191 CHAIR CLARK: Is that an Oregon Court and did the court have the authority to release those records?

196 BOSSERT: No. Why keep the law as it is? Do adult adoptees not have the right to their own records? A person who is not adopted can get his records, but an adoptee cannot get the truth.

219 REP. BELL: Has not formed a definite opinion. Has concern about women who have given up babies with the agreement that they could start a new life. It bothers her that, by law, they could wipe out the agreements that were made.

231 BOSSERT: The problem is that it takes away the rights of the adoptee. It takes away the rights for that person to know mother, father, siblings and roots.

242 REP. BELL: Understands that, but there are a lot of women in society today who aren't coming forward because they don't want anyone to know this happened to them.

248 COLSER: Reads from prepared testimony in favor of HB 2674. Informed the Committee of her personal situation with the State of Washington concerning finding the daughter she adopted out 25 years ago.

265 CHAIR CLARK: If you had decided to leave this in your past, but the daughter had searched and found you, would you have felt violated when you had found out this person got the records, found you, and tried to initiate contact? And wouldn't you have the option to say to that person "I don't want to establish a relationship with you right now"?

266 COLSER: Some birth mothers do say that when they are found. There are 14 confidential intermediaries in the Seattle area.

377 REP. MANNIX: Could have a state organization to educate people about the availability of the system, rather than to open the door for one party or the other to barge in on one party or the other. Why not a voluntary education program getting this information out to people about finding families?

TAPE 131, SIDE A

003 TONI PETERSON, CHILDREN'S SERVICES DIVISION: Describes process for searching for adoptive parents or child.

016 CHAIR CLARK: It is limited in terms of outreach.

018 REP. MANNIX: How would C.S.D. react if funding was provided to make it more active so that when anyone signs up for the registry, C.S.D. initiates a search to contact the other sides of the triad to advise them of the inquiry and possibly make the link?

023 PETERSON: Tough question. They would like to see the statute expanded to allow C.S.D. to tell people another member of their family has registered. They have no concept of what the fiscal impact would be.

032 REP. MANNIX: What if we allowed people to pay a fee, so that the cost of the contact would be covered?

039 REP. SUNSERI: A part of the healing is the looking and doing it yourself. Are we circumventing that by creating another agency in government that would be the intermediary?

043 REP. MANNIX: Does not mean that there would no longer be confidentiality. He is not willing to do that. Would be willing to compromise on a system where you can reach out and touch someone, but you are going to have to rely on an intermediary contact network.

054 BOSSERT: Would that not violate the rights of the adoptee? As basic rights of a human being, don't they have a right to know who they are?

061 CHAIR CLARK: You were not a party in the agreement that was reached?

062 BOSSERT: No. Let's suppose that the birth mother said no. Does that mean because she is uncomfortable that the adoptee should not have the access to information and history?

074 CHAIR CLARK: In some sense this is the equivalent of the state saying if you have two siblings separated by fate, they cannot unite.

083 REP. BELL: That is not really the case. It could become a media situation. Does not believe that it is that simple.

097 COLSER: Aware of the potential for abuse.

HB 3449 - WORK SESSION

Witnesses: Bill Linden, State Court Administrator Mark McDonnell Lynn Travis, Juvenile Rights Project

122 HOLLY ROBINSON: Sent back from Full Committee to look at the policy issue of expungement. Explained the history of the bill and HB 3449-3 amendments. (EXHIBIT B)

145 CHAIR CLARK: There are 4 issues in HB 3449.

149 ROBINSON: Section 1 is the expungement section. Section 2 is in the increase in the period of time which much elapse prior to expungement from 2 years to five years. Section 3 is a conformance. Section 4 is the affidavit section that Mr. Linden is going to discuss. Section 5 establishes that D.A.'s have standing in all juvenile court proceedings.

156 BILL LINDEN, STATE COURT ADMINISTRATOR: Discusses why this is a bad idea. This is a second attempt to deal with a particular juvenile referee in Multnomah County. In 1986, there was a mandamus proceeding filed in that county by the District Attorney against the presiding judge and the chief juvenile judge who had denied affidavits of prejudice that were filed against a juvenile referee. Case came to the Supreme Court who threw out the mandamus proceeding. It is clear that these referees are not judges. They are appointed by the Circuit Court. All decisions they make are subject to de novo review.

171 REP. PARKS: What does de novo review amount to in this situation?

173 LINDEN: If a party does not agree with or takes issue with the decision of the juvenile referee, he can to go the circuit court asking it be heard de novo, which means all over again. What the referee did would have no affect. The case would be heard from scratch by a Circuit Judge.

179 REP. MANNIX: The D.A. has to try every case twice if they don't have an Affidavit of Prejudice available?

187 LINDEN: Outside Multnomah County there are two other juvenile referees. To his knowledge, there have been no Affidavits of Prejudice against those referees. Their performance is also periodically reviewed by the Circuit Court. Feels there are sufficient safeguards presently against any possible abuse. Strongly recommends they reconsider section 4.

219 Mark McDonnell: There is one exception to de novo review and that is in a delinquency proceeding that is adverse to the State. Cannot be de novo as there is a constitutional right against double jeopardy.

224 REP. MANNIX: You want the affidavit for delinquency proceedings only?

226 Mark McDonnell: More important for delinquencies than dependencies. Important in dependencies because of child protection issues.

231 REP. BAUMAN: Interesting comment as D.A. does not get an appeal if the decision is adverse to the D.A. because of delinquency in any criminal case.

240 REP. MANNIX: If they don't get to affidavit a referee they think is prejudiced, saying they have de novo review doesn't mean a thing in a delinquency proceeding.

246 REP. BAUMAN: In France the Judge is also the prosecutor in their justice system.

256 McDONNELL: In dependencies the State does have the right to ask for de novo review. There are other referee positions in Multnomah County other than juvenile court.

276 Lynn Travis, Juvenile Rights Project: This is a bill that is specific to Multnomah County. It is designed to address the District Attorney's concerns about some very specific problems raised in a very limited number of cases. Asked the committee to consider whether they want to make the sweeping changes in process and philosophy of juvenile court that this bill creates to address problems that are specific to one county. This is a process-heavy bill. Each provision in this bill is going to increase the amount of process.

294 REP. MANNIX: Every time that there is going to be an adjudication that the juvenile committed an act, which committed as an adult would be a crime, has to be beyond a reasonable doubt, doesn't it?

301 TRAVIS: For dependency cases, the court is available to juveniles within 24 hours of the issue raised that there is endangering to the child. With delinquency proceedings, the goal is to get kids before the court while they still remember what they are being consequence for. There is an air of informality about juvenile court that this bill affects greatly. Regarding expunction, oppose the provisions because they believe it is important for children to start their adult lives with clean slates if they meet the expectations of the expunction statute. It is their position that expunction is a privilege that children purchase by trading certain due process rights.

330 CHAIR CLARK: You would not like a trade off that said trial by jury and eliminate the right to expunction altogether?

333 TRAVIS: Feels that is the inevitable outcome of eliminating the expunction. Would not support that.

339 CHAIR CLARK: Your first concern is the child being able to enter adult life with a clean slate. How far does that go? Does that include any crime committed as a child?

344 TRAVIS: Yes, that is their position. The purpose of the juvenile system is rehabilitation.

358 CHAIR CLARK: Philosophy behind the expunction statute?

362 TRAVIS: The philosophy behind expungement statute is the children are more amenable than adults to rehabilitation. The way rehabilitation

is demonstrated is by completing probation successfully and remaining free from involvement in the juvenile justice system for a period of time after probation.

368 CHAIR CLARK: And you make no distinction between shoplifting and homicide?

369 TRAVIS: Correct.

371 REP. PARKS: It seems that there is the public right to know or the right of people to be on guard. There is more to it than what is in the best interest of the juvenile. There is a little protection for society in there, and not so grandly sweeping out all these convictions. Would invite her to address that.

391 TRAVIS: Not comfortable with discussing the merits of an individual case, in particular the Michelle Travis case.

396 CHAIR CLARK: If your office was not involved in the case, why are you not able to talk about it?

TAPE 130, SIDE B

002 REP. MASON: Advised her to address Rep. Parks' question.

008 TRAVIS: The reality is that there is going to be a situation where laws don't work. The question that you need to ask is, do you want to deprive other people who are capable of having their record expunged because of the Michelle Gates case? If Legislature passes this law, she will be able to come back in five years and give examples of kids who were convicted of negligent homicide who had no further involvement in the juvenile court system and now can't get a job or get into college because of one mistake.

020 CHAIR CLARK: There is no negligent homicide in the bill. There is criminally negligent homicide. As a policy matter, it raises a different issue. The crimes contemplated by the bill and amendments are very serious crimes and ones that involve a victim in a very real way. If there is anything being called into question in this bill, it is that the victim should not be engaged in the balance of the criminal justice system. What does it say to a victim to pretend that a murder or a manslaughter or a criminally negligent homicide never happened and how does that benefit anyone?

039 TRAVIS: The first thing to consider is the treatment of the child.

052 REP. BAUMAN: Why aren't kids remanded? There is so much in common between the remand statute and the expunction statute. Where are we missing with the framework so that children are committing crimes with an adult mindset, but we are not able to try them as adults?

081 TRAVIS: Recalls that in the Gates case, when the remand age was older, she didn't fit under the remand criteria for 1981. Children who commit homicides can be remanded at the age of 15. In Multnomah County, crimes of that severity are subject to remand proceedings.

090 REP. BAUMAN: The article talked about how she had applied for jobs and got herself in a position where she was working at Y.W.C.A. swimming pool with pre-school kids learning how to swim, which was a danger area for her. The expungement process was not challenged on the basis of

that job application.

096 TRAVIS: It wasn't a job. She was a volunteer.

100 REP. MANNIX: Didn't pass this bill based on Michelle Gates or any other individual, but based on pure concept. Doesn't intend to vote for or against the bill because of a given case.

110 REP. MASON: These victims are not just abstractions. The pain is real. Don't the victims have some rights? Don't they have the right in their heart of hearts to know that in memory of the child, the offense has not been forgotten?

132 CHAIR CLARK: What did the criminal justice system do before expungement?

138 TRAVIS: Does not know.

141 CHAIR CLARK: The issue is the legal fiction that we are going to wave a magic wand and the crime goes away. It doesn't. If it takes a jury trial to provide a proper balance to taking away the expunction statutes, he is willing to do that.

148 TRAVIS: That may be the best solution. To say if you are going to treat children like adults, then they receive all the procedural protections.

150 CHAIR CLARK: There are those who argue if that were to be done, there would be fewer convictions of juveniles because juries are going to be easier on juveniles than courts would be.

153 TRAVIS: That is the conclusion of Judge Harrell.

156 REP. MANNIX: It is based on the logical fallacy that to forgive requires that you forget and that somehow rehabilitation requires that you wipe away the past instead of dealing with it. That is always going to be a philosophical question to be addressed.

162 TRAVIS: Directs comments to other portions of HB 3449. In terms of the affidavit section, agrees with Mr. Linden about the purpose of that bill. Would also point out the appeal process protects all parties in terms of having to second guess a referee as to whether they are biased. To Mr. McDonald, how many cases are there on the dependency side that the D.A.'s office chooses to appeal? Thinks the number is fairly low. Reminded the Committee that in Multnomah County there are approximately 100 cases every week on the trial court docket and hears 20 to 30 matters per day with the two and a half referees and one judge that is available. In terms of the provision about giving D.A.'s party status in juvenile court proceedings, feels the reason this provision arose was a disagreement between the juvenile justice division and the District Attorney's office in Multnomah County regarding conditional postponements. Juvenile counselors allow first time offenders to be on probation for a year and allow the charge to be taken off their record if they complete probation. The D.A. has wanted the right to proceed with prosecution in those cases. There has been an arrangement worked out between the court counselors in Multnomah County and the District Attorney's office to have an informal appeal to the supervisor to negotiate an agreement. Hope this will be a preferable solution to that problem as opposed to giving the District Attorney the right to prosecute all cases over the objection of the court counselor. This may

have an impact on the informal disposition bill which extends the period of informal dispositions to five years. There is a juvenile code revision committee that is active this session with an eye towards presenting the Legislature with a full revision of the juvenile code of Chapter 419.

222 MOTION, REP. BAUMAN: Thinks that the Committee did make changes which she can support. Concerned about the purpose and application of Sections 4 and 5. Suggest deleting Sections 4 and 5. Discusses reasons.

294 REP. MANNIX: Opposes Motion.

316 REP. SUNSERI: What is the net effect of removing section 4?

323 ROBINSON: Deleting Section 4 and 5 of -3 amendments.

344 VOTE: Motion passes.

AYE: 4 NO: 3 EXCUSED: 1

345 MOTION, REP. MANNIX: Amends the bill to insert section 5 of the HB 344 9-3 amendments.

361 REP. BAUMAN: Opposes this motion.

389 REP. MANNIX: DA's are elected to office. Would like to have the guardian of the public trust entitled to appear on behalf of that public trust when dealing with appointed government civil servants.

TAPE 131, SIDE B

001 VOTE: Motion

AYE: 5 NO: 2 EXCUSED: 1

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

003 REP. MASON: If they have a de novo appeal there is no need for the affidavit.

013 REP. BAUMAN: This is a case where the district attorney's office is disturbed about individual cases and individual children. Believes the District Attorney's office is concerned about the attitude of individual officers of the court who are hired by the Circuit Court.

024 REP. MASON: Defense attorneys file affidavits too.

035 REP. PARKS: What remains in the bill as non-expungable offenses.?

037 CHAIR CLARK: Appears on page 3 of the -3 amendments.

038 ROBINSON: Aggravated murder, murder, manslaughter 1 and 2 and criminally negligent homicide. Plus sex abuse that would constitute child abuse, which is current law.

040 CHAIR CLARK: Sex abuse if created by an adult would be some form of child abuse and different versions of homicide are not expungable.

042 REP. MASON: Explain why criminally negligent homicide is in there?

043 ROBINSON: It was all homicide statutes. It results in a death.

047 McDonnell: Frequently an intoxicated driver kills someone. Someone intoxicated shoots someone else with a gun.

054 ROBINSON: The only Class C felony.

058 McDonnell: Could be applied to drive-by shooting situations. Lesser included of all other homicides.

062 REP. BAUMAN: Is this a crime that is eligible for remand at the age of 15? Does the D.A.'s office seek remand on serious crimes?

070 McDonnell: In the last five aggravated murder remands that Multnomah County has had, only one has been successful. Cited cases. They are not being successful on remands of serious cases, because there is a prejudice, he feels, upon the majority of the bench that handles these cases.

082 REP. SUNSERI: Question.

088 VOTE: Motion passes. Rep. Kelly Clark to carry.

AYE: 7 NO: EXCUSED: 1

HB 2673 - WORK SESSION

Witnesses: Toni Peterson, Children's Services Div.

100 HOLLY ROBINSON: Summarizes HB 2673. The bill has been amended as presented to them. The HB 2673-1 Legislative Counsel amendments have been adopted, as well as the proposed amendments which set the penalty at \$50,000. or three times the greater fee.

123 MOTION, REP. MASON: Discusses -1 amendments and changes. Might read better if it read "the Children's Services Division shall not delay any adoption due to the lack of a potential adoptee family based solely upon race, creed or national origin." Makes in form of motion.

138 No objection. Motion passes.

150 MOTION, REP. MANNIX: Moves HB 2673 as amended to Full Committee with a "do pass" recommendation.

157 REP. BAUMAN: Finds policy issue distressing.

180 REP. MANNIX: Allows for expenses to be paid, birth recovery, adoption process, birth mother's pregnancy. Bill discourages baby selling.

190 REP. BELL: Who gets the child?

191 REP. MANNIX: Child stays with the parents, but they will probably have their parental rights terminated for being willing to try to sell the child.

196 TONI PETERSON: Upon discovery of a parent seeking to sell a child, the District Attorney may file a petition on the child's behalf.

200 CHAIR CLARK: Let's say that under existing law, you find out an adoptive family has engaged in some fraud on the Court or on C.S.D. in regards to a pre-placement report. What happens?

203 PETERSON: There is very little recourse now. Would write a report to the Judge who reviews the adoption petition and the Judge would make a decision about what action to take.

207 CHAIR CLARK: Would C.S.D. consider moving to terminate parental rights?

210 PETERSON: There would be no grounds to terminate parental rights because the child would not be within their jurisdiction.

208 VOTE: Motion passes. Rep. Mannix to carry.

AYE: 7 NO: EXCUSED: 1

220 CHAIR CLARK: Adjourns at 5:30 p.m.

Submitted by:

Reviewed by:

Diane Bassett, Assistant

Pat Zwick, Office Manager

EXHIBITS LOG:

A - Amendment - HB 3116 - 1 page B - Amendment - HB 3449 - 5 pages