

HOUSE COMMITTEE ON JUDICIARY

May 10, 1991 Hearing Room 357 1:00 p.m. Tapes 42 - 43
MEMBERS PRESENT: Rep. Randy Miller, Chair Rep. Tom Mason, Vice Chair
Rep. Judith Bauman Rep. Marie Bell Rep. Kelly Clark Rep. Jim Edmunson
Rep. Rod Johnson Rep. Kevin Mannix Rep. Del Parks Rep. Ron Sunseri

MEMBER EXCUSED: Rep. Ray Baum Rep. Tom Brian Rep. Tom Mason STAFF
PRESENT: Greg Chaimov, Committee Counsel Holly Robinson, Committee
Counsel Jim Dole, Assistant Committee Counsel Kathy Neely, Committee
Assistant MEASURES CONSIDERED: HB 2374 WS (Indigency Verification) HB
2586 WS (Crime) HB 2802 WS (Support Enforcement) HB 2721 Ws (Civil
Liability) SB 372 WS (Discovery of Accident Information) SB 426 WS
(Nonprofit Corporation) HB 2935 WS (Juvenile Remand) HB 3111 WS
(Juveniles) HB 2667 WS (Child Abuse) HB 3456 WS (Juveniles) HB 3493 WS
(Grand Jury) HB 3224 WS (Domestic Relations) SB 61 WS (Records
Confidentiality) SB 1006 WS (Legal Services) HB 2788 WS (Criminal
Procedure) HB 3154 WS (Crime) HB 3492 WS (Probation) HB 3444 WS (Blood
Testing) HB 3448 WS (Peace Officers) HB 2577 WS (Firearms) 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 42, SIDE A 003 REPRESENTATIVE MILLER, CHAIR: Calls meeting to
order at 1:04 p.m. House Committee on Judiciary May 10, 1991 _ Pago 2

HB 2374 - WORK SESSION

011 GREG CHAIMOV: Assist the State Court Administrator to verify if a
defendant is poor enough to get a court appointed lawyer. Requires
financial institutions to provide defendant's account balance to them.
(AMENDMENTS - EXHIBIT A) 019 MOTION: REP. EDMUNSON: Moves the
amendments (EXHIBIT A).

CHAIR MILLER: Rep. Edmunson moves the amendments to HB 2374. *Hearing no
objection, so adopted.

027 MOTION: REP. EDMUNSON: Moves HB 2374 as amended to the House with
a do pass recommendation. CHAIR MILLER: Rep. Edmunson moves HB 2374 as
amended to the House. VOTE: 8-0 Motion pass. AYE: Bell, Clark, Edmunson,
Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Bauman,
Mason CHAIR MILLER: HB 2374 as amended is passed to the House. Rep.
Mason to carry.

HB 2586 - WORK SESSION

029 GREG CHAIMOV: Authorizes courts to evaluate all criminals for
alcohol and drug dependency and then order them into treatment. The
fiscal impact raised concerns regarding the fact Dept. Of Corrections
would have to "kick prisoners out of programs" they are currently in to
make room, and the defendant could have probation revoked if they could
not pay for treatment. (AMENDMENTS - EXHIBIT B)

037 MOTION: REP. EDMUNSON: Moves the amendments (EXHIBIT B). CHAIR
MILLER: Rep. Edmunson moves the amendments to HB 2586. Hearing no
objection, so adopted.

039 MOTION: REP. EDMUNSON: Moves HB 2586 as amended to the House with

a do pass recommendation. CHAIR MILLER: Rep. Edmunson moves HB 2586 as amended to the House. VOTE: 9-0 Motion passes. AYE: Bauman, Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Brian, Mason

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CHAIR MILLER: HB 2586 as amended is passed to the House. Rep. Bauman to carry.

HB 2802 - WORK SESSION

048 HOLLY ROBINSON: Provides that canceled checks drawn on the account of the obligor, marked as payment for child support, and either endorsed by the obligee or deposited to an account of the obligee is sufficient evidence to establish payment of the support obligation. (AMENDMENTS - EXHIBIT C) Intent of bill is to minimize disputes over support.

053 MOTION: REP. EDMUNSON: Moves the amendments (EXHIBIT C).

CHAIR MILLER: Rep. Edmunson moves the amendments. Hearing no objection so adopted.

055 MOTION: REP. EDMUNSON: Moves HB 2802 as amended to the House with a do pass recommendation. CHAIR MILLER: Rep. Edmunson moves HB 2802 as amended to the House. VOTE: 9-0 Motion passes AYE: Bauman, Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunjai, Miller NO: 0 EXCUSED: Baum, Brian, Mason CHAIR MILLER: HB 2802 as amended is passed to the House. Rep. MinnisEdmunson to carry.

HB 2721 - WORK SESSION

065 HOLLY ROBINSON: Allows custodial parents to be held civilly liable for damages to property caused by reckless acts of their children. Increase cap on monetary damages that may be paid. Limits liability for private landowners who allow public access to their property which is adjacent or contiguous any and all bodies of water. (AMENDMENTS - EXHIBIT D)

071 MOTION: REP. EDMUNSON: Moves the amendments.

CHAIR MILLER: Rep. Edmunson moves the amendments (EXHIBIT D) to HB 2721. Hearing no objection, so adopted.

073 MOTION: REP. EDMUNSON: Moves HB 2721 as amended to the House with a do pass recommendation. CHAIR MILLER: Rep. Edmunson moves HB 2721 as amended to the House. 075 REP. CLARK: Discusses case regarding this exact statute. 082 CHAIR MILLER: Calls for the vote.

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VOTE: 9-0 Motion passes AYE: Bauman, Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Brian, Mason

CHAIR MILLER: HB 2721 as amended is passed to the House. Rep. Mannix will carry.

SB 426 - WORK SESSION

091 GREG CHAIMOV: Makes technical corrections to the 1989 NonProfit Corporation Act. Authorizes public benefit and religious corporations to loan money to prospective officers or directors as part of a recruitment package. (AMENDMENT - EXHIBIT E). This helps in recruiting qualified administrators. 098 MOTION: REP. EDMUNSON: Moves the amendments. (EXHIBIT E)

CHAIR MILLER: Rep. Edmunson moves the amendments to SB 426. Hearing no objection, so adopted.

101 MOTION: REP. EDMUNSON: Moves SB 426 as amended to the House with a do pass recommendation.

CHAIR MILLER: Rep. Edmunson moves SB 426 as amended to the House.

VOTE: 9-0 Motion passes. AYE: Bauman, Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Brian, Mason

CHAIR MILLER: SB 426 as amended is passed to the House. Rep. Clark to carry.

SB 372 - WORK SESSION

111 GREG CHAIMOV: Requires DA's to give the victims of drunk drivers the same reports and information the defendant drivers receive. (AMENDMENTS - EXHIBIT F)

120 MOTION: REP. BAUMAN: Moves the amendments. (EXHIBIT F)

CHAIR MILLER: Rep. Bauman moves the amendments to SB 372. Hearing no objection, so adopted.

124 MOTION: REP. BAUMAN: Moves SB 372 as amended to the House with a do pass recommendation.

CHAIR MILLER: Rep. Bauman moves SB 372 as amended to the House.

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VOTE: 9-0 Motion passes AYE: Bauman, Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Brian, Mason

CHAIR MILLER: SB 372 as amended is passed to the House. Rep. Bell to carry.

HB 2935 WORK SESSION

138 HOLLY ROBINSON: Modifies juvenile remand law by allowing all criminal charges arising out of a remandable offense to be heard in adult court. It is a sweeping reform of the juvenile remand laws. Allows a court to enter a permanent remand order unless in a subsequent case the court specifically finds that facts supporting previous remand no longer exist. (AMENDMENTS - EXHIBIT G).

144 MOTION: REP. EDMUNSON: Moves the amendments to HB 2935.

CHAIR MILLER: Rep. Edmunson moves the amendment to HB 2935 (EXHIBIT G). Hearing no objection, so adopted.

147 MOTION: REP. EDMUNSON: Moves HB 2935 as amended to the House with a do pass recommendation. CHAIR MILLER: Rep. Edmunson moves HB 2935 as amended to the House. VOTE: 8-0 Motion passes AYE: Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Bauman, Brian, Mason CHAIR MILLER: HB 2935 as amended is passed to the House. Rep. Mannix/Barns to carry.

HB 3111 - WORK SESSION 171 HOLLY ROBINSON: Creates specific grounds for juvenile court jurisdiction in addition to the more general ones. (AMENDMENTS - EXHIBIT H)

175 MOTION: REP. EDMUNSON: Moves the amendments (EXHIBIT H).

CHAIR MILLER: Rep. Edmunson moves the amendments to HB 3111. Hearing no objection, so adopted.

177 MOTION: REP. EDMUNSON: Moves HB 3111 as amended to the House with a do pass recommendation.

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CHAIR MILLER: Rep. Edmunson moves HB 3111 as amended to the House.

VOTE: 8-0 Motion passes AYE: Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Bauman, Brian, Mason

CHAIR MILLER: HB 3111 as amended is passed to the House. Rep. Mannix will carry.

HB 2667 - WORK SESSION 188 HOLLY ROBINSON: HB 2667 adds employees of drug and alcohol treatment programs to the lists of mandatory reporters of child abuse. (AMENDMENTS - EXHIBIT I) 193 MOTION, REP. MANNIX: Moves the amendments (EXHIBIT I)

CHAIR MILLER: Rep. Mannix moves the amendments to HB 2667. They were adopted by the subcommittee and do not need to be adopted here.

REP. MANNIX: Withdraws motion on amendments.

MOTION: REP. MANNIX: Moves HB 2667 to the House with a do pass recommendation.

CHAIR MILLER: Rep. Mannix moves HB 2667 to the House with a do pass recommendation.

201 REP. JOHNSON: Asks about the burden of this on the treatment employees.

REP. EDMUNSON: Believes they were an omission and should have been included originally.

207 REP. MANNIX: The only reason they were excluded in the earlier law was the federal restrictions. When those were dropped they could have been put back on the list.

217 CHAIR MILLER: Calls for vote.

VOTE:8-0 Motion passes. AYE: Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Bauman, Brian, Mason

CHAIR MILLER: HB 2667 is passed to the House. Rep. Mannix to carry.

HB 3456 - WORK SESSION

232 HOLLY ROBINSON: Extends application of criminal procedures rules of discovery to juvenile delinquency procedure.

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237 MOTION: REP. EDMUNSON: Moves HB 3456 to the House with a do pass recommendation.

CHAIR MILLER: Rep. Edmunson moves HB 3456 to the House with a do pass recommendation.

VOTE: 8-0 Motion passes. AYE: Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Bauman, Brian, Mason

CHAIR MILLER: HB 3456 is passed to the House. Rep. Bauman to carry.

HB 3493 - WORK SESSION

250 HOLLY ROBINSON: Amends existing law to allow the judge, upon motion by the DA to appoint a parent, guardian, or appropriate person to accompany any person with mental retardation during an appearance before the grand jury.

255 MOTION: REP. EDMUNSON: Moves HB 3493 to the House with a do pass recommendation.

CHAIR MILLER: Rep. Edmunson moves HB 3493 to the House.

VOTE: 8-0 Motion passes AYE: Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Bauman, Brian, Mason

CHAIR MILLER: HB 3493 passed to the House. Rep. Sunseri to carry.

267 HOLLY ROBINSON: Designates "enhanced earning capacity" acquired during marriage as property for purposes of division of property in a dissolution. (AMENDMENTS EXHIBIT J). . MOTION: REP. PARKS: Moves the amendments to the bill.

279 CHAIR MILLER: Rep. Parks moves the amendments to HB 3224 (EXHIBIT J). *Hearing no objection, so adopted. 280 REP. JOHNSON: Asks about the need for this. 285 REP. PARKS: This only effects a very limited number of cases where there is a long duration marriage and there was an enhanced earning capacity acquired. It considers nonmonetary contributions by the spouse to the other. REP. JOHNSON: Once that is made an item of property to be divided, is there a reduction in - These minutes contain materialr. which paraphrase and/or surrnarize statements made during this session. Only text enclosed in quotalion marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. House Co nntittee on Judiciery May 10, 1991 - Page 8

the amount of spousal support that might otherwise have been granted?

304 REP. PARKS: It is divided on basis of earned" and that necessarily reduces the need for spousal support. Discusses criteria of spousal support.

309 REP. JOHNSON: Asks about leaving it as spousal support and have the judge take into account the "certificate holder's future earning" in determining spousal support.

REP. PARKS: They don't currently do that. Discusses "goodwill".

345 CHAIR MILLER: Current law provides that, in making a support order, a court shall consider length of marriage, age, mental heath, physical health, etc. The law goes on to say the earning capacity of each party, including educational background, training, employment skills, and work experience are considered. What does HB 3224 add to that consideration by a court? 357 REP. PARKS: That language appears in section dealing with spousal support. - *Spousal support is mostly on demonstrated need. *HB 3224 changes, for a very limited number of people, to being based on what they have accumulated together. If one of those things is a "demonstrated earning", not a potential earnings capacity, is an asset with has value and should be considered in property division. REP. JOHNSON: Will support be reduced by a corresponding amount? REP. PARKS: Spousal support in Oregon is only appropriate on a showing of need. REP. JOHNSON: Line of concern is giving double value to the same thing. REP. MANNIX: Not doing that. Allowing similar things to be considered in two different contexts: first is establishing whether support is appropriate, need to also consider the earning capacity of the parties and second the contribution of one spouse to the other's education. *Value and income from enhanced earning capacity is considered in property distribution.

TAPE 43, SIDE A 039 REP. JOHNSON: Where is the phrase "enhanced earning capacity" defined?

REP. MANNIX: In case law.

REP. JOHNSON: It can be redefined by other case law. *Discusses the bill regarding spousal support. 050 REP. BELL: Asks where referring to in the bill.

HOLLY ROBINSON: Discusses the way dissolutions are done. There is a division of property and then the decision of need. . .

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057 REP. JOHNSON: If not trying to "double count" why not state that in the bill? *If it is counted as property then it will not be counted again for purposes of determining spousal support.

REP. CLARK: Calls the question.

CHAIR MILLER: Question has been called.

VOTE: 7-1 Motion passes. AYE: Bell, Clark, Edmunson, Mannix, Parks, Sunseri, Miller NO: Johnson EXCUSED: Baum, Bauman, Brian, Mason

CHAIR MILLER: HB 3224 is passed to the House. Rep. Parks will carry.

SB 61- WORK SESSION 080 JIM DOLE: Changes designation of organization acting pursuant to federal law which collects confidential information relating to health care peer review. (AMENDMENTS - EXHIBIT K)

MOTION: REP. EDMUNSON: Moves the amendments to the bill.

CHAIR MILLER: Rep. Edmunson moves the amendments to SB 61. Hearing no objection, so adopted.

MOTION: REP. EDMUNSON: Moves SB 61 to the House with a do pass recommendation.

CHAIR MILLER: Rep. Edmunson moves SB 61 to the House.

VOTE: 84 Motion passes AYE: Bell, Clark, Edmunson, Johnson Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Bauman, Brian, Mason

CHAIR MILLER: SB 61 is passed to the House. Rep. Bell will carry.

SB 1006 - WORK SESSION

100 JIM DOLE: Provides that AG and deputies or assistants may provide pro bono legal services. 110 MOTION: REP. EDMUNSON: Moves SR10~ to the House with a do pass recommendation.

CHAIR MILLER: Rep. Edmunson moves SB 1006 to the House with a do pass recommendation.

VOTE: 8-0 Motion passes . . . 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 Coratitto. on Judiciary May 10, 1991 Page 10

AYE: Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO:
0 EXCUSED: Baum, Bauman, Brian, Mason

CHAIR MILLER: SB 1006 is passed to the House. Rep. Clark will carry.

HB 2788 - WORK SESSION

· 120 HOLLY ROBINSON: Deletes requirement that an offender consent to community service ordered by a judge as part of the offender's sentence for a crime. (AMENDMENTS EXHIBIT L)

MOTION: REP. EDMUNSON: Moves amendments to HB 2788.

CHAIR MILLER: Rep. Edmunson moves the amendments. Hearing no objection, so adopted.

MOTION: REP. EDMUNSON: Moves HB 2788 as amended to the House with a do pass recommendation.

CHAIR MILLER: Rep. Edmunson moves HB 2788 as amended to the House with a do pass recommendation.

VOTE: 8-0 Motion passes AYE: Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Bauman, Brian, Mason

CHAIR MILLER: HB 2788 as amended is passed to the House. Rep. Baum will carry.

HB 3154 - WORK SESSION

180 HOLLY ROBINSON: Adds three trafficking offenses to the Oregon racketeering statutes.

MOTION, REP. MANNIX: Moves HB 3154 to the House with a do pass recommendation.

CHAIR MILLER: Rep. Mannix moves HB 3154 to the House with a do pass recommendation.

VOTE: 8-0 Motion passes. AYE: Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Bauman, Brian, Mason

CHAIR MILLER: HB 3154 is passed to the House. Rep. Johnson will carry.

HB 3492 - WORK SESSION House Committee on Judiciary May 10, 1991 - Pag.
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210 HOLLY ROBINSON: Makes random urinalysis, breath, or blood tests a general conditions of probation rather than a special condition of probation. There does not need to be any correlation between the nature of the offense and the testing.

220 MOTION, REP. MANNIX: Moves HB 3492 to the House with a do pass recommendation.

CHAIR MILLER: Rep. Mannix moves HB 3492 to the House with a do pass

recommendation.

VOTE: 8-0 Motion passes AYE: Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Bauman, Brian, Mason

CHAIR MILLER: HB 3492 is passed to the House. Rep. Parks will carry.

HB 3444 - WORK SESSION

HOLLY ROBINSON: Gives the court authority to order a person to provide a blood sample upon conviction or adjudication of certain sex offenses for purpose of DNA analysis to identify perpetrators of sex crimes. DNA may be used to either prove or disprove the identity of the person.

(AMENDMENTS - EXHIBIT M)

MOTION REP. PARKS: Moves the technical amendments to the bill.

CHAIR MILLER: Rep. Parks moves the technical amendments to the bill.
*Hearing no objection, so adopted.

MOTION: REP. PARKS: Moves HB 3444 as amended to Ways and Means with do pass recommendation.

CHAIR MILLER: Rep. Parks moves HB 3444 as amended to Ways and Means.

VOTE: 8-0 Motion passes AYE: Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Bauman, Brian, Mason

CHAIR MILLER: HB 3444 as amended is passed to Ways and Means.

HB 3448 - WORK SESSION

HOLLY ROBINSON: Gives police specific statutory authority to perform community caretaking functions and defines it as noncriminal investigation law enforcement activity. (AMENDMENT - EXHIBIT N)

MOTION: REP. PARKS: Moves the amendments. House Committee on Judiciary May 10, 1991 - Page 12

. CHAIR MILLER: Rep. Parks moves the amendments. Hearing no objection, so adopted.

MOTION: REP. PARKS: Moves HB 3448 as amended to the House with a do pas recommendation.

CHAIR MILLER: Rep. Parks moves HB 3448 as amended to the House.

VOTE: 8-0 Motion passes AYE: Bell, Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: 0 EXCUSED: Baum, Bauman, Brian, Mason CHAIR MILLER: HB 3448 as amended is passed to the House. Rep. Parks to carry.

HB 2577 - WORK SESSION

HOLLY ROBINSON: Grants express authority to Legislative Assembly to regulate firearms, with certain local government exemptions. It voids certain existing local ordinances, and repeals current preemption statutes. (AMENDMENTS - EXHIBIT O)

MOTION: REP. CLARK: Moves the amendments. CHAIR MILLER: Rep. Clark moves the amendment to HB 2577. Hearing no objection so adopted.

MOTION: REP. CLARK: Moves HB 2577 as amended to the House with a do pass recommendation. CHAIR MILLER: Rep. Clark moves HB 2577 as amended to the House with a do pass recommendation.

VOTE: 7-1 Motion passes. AYE: Clark, Edmunson, Johnson, Mannix, Parks, Sunseri, Miller NO: Bell. EXCUSED: Baum, Bauman, Brian, Mason

CHAIR MILLER: HB 2577 as amended is passed to the House. Rep. Clark to carry. Adjourns at 1:50 p.m.

Submitted by: Reviewed by: Kathy Neely, Assistant Office
Manager

EXHIBIT LOG:

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