

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

May 21, 1991 Hearing Room 357 1:00 p.m. Tapes 48 - 49

MEMBERS PRESENT: Rep. Randy Miller, Chair Rep. Tom Mason, Vice Chair Rep. Ray Baum Rep. Judith Bauman Rep. Marie Bell Rep. Tom Brian Rep. Kelly Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix Rep. Del Parks Rep. Ron Sunseri

STAFF PRESENT: Greg Chaimov, Committee Counsel Holly Robinson, Committee Counsel Jim Dole, Committee Counsel Jeff Steve, Committee Assistant

MEASURES HEARD: HB 3222 - W.S. HB 3418 - W.S. HB 3313 - W.S. HB 3052 - W.S. HB 2354 - W.S. HB 3449 - W.S. HB 3101 - W.S.

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TAPE 48, SIDE A

004 CHAIR RANDY MILLER: Opens House Committee on Judiciary at 1:00 p.m.

HB 3222 - WORK SESSION

016 CHAIMOV: Reviews provisions of HB 3222 which prohibits public officials from entering into confidential settlement agreements except where the court finds that privacy interests outweigh the public interest in knowing the terms of the settlement.

017 MOTION: REP. EDMUNSON: Moves adoption of HB 3222-1 amendments (EXHIBIT

A).

VOTE: Without objection, amendment is adopted.

020 MOTION: REP. EDMUNSON: Moves HB 3222, as amended, to the floor with a do pass recommendation.

022 VOTE: On a roll call vote motion passes. AYE: Reps. Baum, Bauman, Edmunson, Johnson, Mannix, Mason, Parks, Sunseri, Miller NAY: Rep. Bell EXCUSED: Reps. Brian, Clark

028 CHAIR MILLER: Rep. Parks will carry the bill.

Closes work session on HB 3222.

Opens work session on HB 3418.

HB 3418 - WORK SESSION

029 HOLLY ROBINSON: Reviews provisions of HB 3418 which specifies in Oregon Public Record Law that the need to protect the complaining party or a victim is a clear need which would allow a law enforcement agency to delay disclosure of a crime or arrest report.

036 MOTION: REP. PARKS: Moves adoption of HB 3418-2 amendments (EXHIBIT B).

040 VOTE: Without objection, amendment is adopted.

041 MOTION: REP. PARKS: Moves HB 3418, as amended, to the floor with a do pass recommendation.

045 VOTE: On a roll call vote, motion passes. AYE: Reps. Baum, Bauman, Bell, Brian, Edmunson, Johnson Mannix, Mason, Parks, Sunseri, Miller  
NAY: None EXCUSED: Rep. Clark

050 CHAIR MILLER: Reps. Bell and Edmunson will carry the bill.

Closes work session on HB 3418.

Opens work session on HB 3313.

HB 3313 - WORK SESSION

051 HOLLY ROBINSON: Reviews provisions of HB 3313 which would continue the work started by the Governor's Task Force on Sex Offenses Against Children. The bill has a subsequent referral to Ways and Means and was amended to allow the state of Oregon to collect federal dollars to fund the work of the task force.

060 MOTION: REP. BELL: Moves adoption of HB 3313-2 amendments (EXHIBIT C).

VOTE: Without objection, amendments are adopted.

062 MOTION: REP. BELL: Moves HB 3313, as amended, to the Committee on Ways and Means with a do pass recommendation.

VOTE: On a roll call vote, motion passes. AYE: Reps. Baum, Bauman, Bell, Brian, Edmunson, Johnson, Mannix, Mason, Parks, Sunseri, Miller  
NAY: None EXCUSED: Rep. Clark

070 CHAIR MILLER: Closes work session on HB 3313.

Opens work session on HB 3052.

HB 3052 - WORK SESSION

069 CHAIMOV: Reviews provisions of HB 3052 which provides an alternative to the current bar examination and allows a person to become

an attorney by completing a prescribed course of study and comprehensive examination at an accredited Oregon law school.

080 REP. BAUM: Some subcommittee members gave courtesy votes to the bill.

Intends to vote no. Bill was passed to the full committee for a full discussion by the members concerned about the bar exam being unfair. Has not seen a better alternative. Is not excited about this bill.

094 REP. JOHNSON: Thinks there were four courtesy votes in the subcommittee so that the full committee could have the pleasure of killing the bill in front of its owner.

098 REP. MASON: The bill has a long history. Reviews 1975 hearing on the bill.

120 REP. BRIAN: Speaks against the bill.

125 MOTION: REP. BRIAN: Moves adoption of HB 3052-1 amendments (EXHIBIT D).

VOTE: Without objection, amendments are adopted.

144 MOTION: REP. EDMUNSON: Moves to table HB 3052.

VOTE: On a roll call vote, motion fails. AYES: Reps. Bauman, Brian, Edmunson, Mannix, Parks NAYS: Reps. Baum, Bell, Johnson, Mason, Sunseri, Miller EXCUSED: Rep. Clark

161 MOTION: REP. MANNIX: Moves HB 3052, as amended, to the floor with a do pass recommendation.

180 REP. MANNIX: Will vote against the motion. Concerned with consumer protection and regulation of the attorneys who practice at the bar. Not sure that pulling law schools into the process through their curriculum or use of their professors is appropriate. Impressed by statistics heard on the number of states who have moved away from the diploma situation. We don't want to regulate the course content of law schools as much as we want to regulate the knowledge of attorneys who practice at the bar.

Encourages members to read mailings from the bar. Is impressed by great lengths to which the Oregon Board of Bar Examiners has gone to document the validity of the bar exam, ferret out problems with the bar examination process to make it even more valid, and work closely with the volunteer bar examiners who grade the exams to make sure that they are fully able to do the job. Would not find many other professions in the state who donate so much pro bono time to insure the proficiency of profession members.

Feels the bar exam is not keeping people out for the sake of keeping them out, but setting standards that have to be met. Disappointed that we do not have a limit on the number of times a person can take the bar exam.

213 CHAIR MILLER: States his views on the current practice.

245 REP. CLARK: HB 3052 does not replace the bar exam, but supplements it for those who take the prescribed curriculum and complete the comprehensive exams. It provides an alternative method of admission to

the bar.

275 VOTE: On a roll call vote, motion fails. AYE: Reps. Clark, Johnson, Mason, Sunseri, Miller NAY: Reps. Baum, Bauman, Bell, Brian, Edmunson, Mannix, Parks

295 CHAIR MILLER: Closes work session on HB 3052.

Opens work session on HB 2354.

HB 2354 - WORK SESSION

300 CHAIMOV: Reviews provisions of HB 2354 which extends the statute of limitation for wrongful death actions from three years from when the deadly injury occurred to three years from when the deadly injury is discovered or reasonably should have been discovered.

310 REP. BAUMAN: What was the outcome of the conversation about whether extending the statute of limitations would cause a significant increase in the cost of insurance?

326 CHAIMOV: No representatives from the insurance or medical industry provided that testimony. A representative of the Oregon Association of Defense Counsels suggested the possibility.

331 MOTION: REP. MANNIX: Moves HB 2354-A to the floor with a do pass recommendation.

334 REP. JOHNSON: Identified what may be a fatal flaw in the bill that may need adjustment after the vote in subcommittee.

As the bill is written we are saying that the action can be filed three years after the death or date the injury should have been discovered. If someone is injured and dies from the injuries 20 years later his personal representative has three years after the death to file the suit. What happened to the ten year statute of ultimate repose?

350 REP. MANNIX: Believes the statute of ultimate repose would apply and would overrule it. The amendment requires that the action be brought within three years after the death of the decedent so addresses the other time limit provision.

362 CHARLES WILLIAMSON: The action would have to be brought within three years of the time the injury was discovered or reasonably should have been discovered. The intent is that the ultimate repose statute would still apply.

370 REP. JOHNSON: Presuming that the discovery of the injury happens at autopsy nine years after the injury, is there three years from the date of death or the end of the tenth year to file suit?

374 WILLIAMSON: By the end of the tenth year. The ultimate repose statute would still apply.

382 VOTE: On a roll call vote, motion passes. AYE: Reps. Baum, Bauman, Bell, Brian, Edmunson, Johnson, Mannix, Mason, Parks, Sunseri, Miller NAY: None EXCUSED: Rep. Clark

398 CHAIR MILLER: Rep. Bauman will carry the bill.

Closes work session on HB 2354.

Opens work session on HB 3449.

HB 3449 - WORK SESSION

388 HOLLY ROBINSON: Reviews provisions of HB 3449 which proposes to change three parts of the juvenile code: expands offenses which may not be expunged to include the five types of homicide offenses; increases the period of time which must elapse before a juvenile may apply for an expungement of records; and specifies that the district attorney is entitled to appear in any juvenile court proceeding.

393 MOTION: REP. BRIAN: Moves HB 3449-4 amendments (EXHIBIT E).

395 VOTE: Without objection, amendments are adopted.

400 REP. BAUM: What is the existing time period for expungement?

401 ROBINSON: Two years on some cases, and three years for juveniles in state custody, depending on how termination of the case is defined.

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006 REP. BAUM: Was under the impression that some juvenile offenses are automatically expunged at the time the juvenile reaches majority.

007 ROBINSON: Juvenile court records can be closed but there is nothing automatic.

011 REP. MANNIX: There is a difference between closure of the records and expunction.

022 MOTION: REP. BRIAN: Moves HB 3449, as amended, to the floor with a do pass recommendation.

025 CHAIR MILLER: Other than the addition of homicide are there a number of other things that are not going to be expunged?

026 ROBINSON: The bill as it came to the committee included all person to person felonies. The expansion from current law to include all homicides was done at the first work session. The committee chose to make no further changes in that part of the amended bill. They did delete a provision that dealt with the affidaviting of referees.

After discussing the list of expungeable offenses subcommittee chose to take no additional action.

045 REP. MANNIX: Was opposed in subcommittee to the deletion of the provision that said you could file an affidavit of prejudice against juvenile court referees. Felt that the concern was limited to Multnomah County and that referees should be subject to an affidavit of prejudice.

057 ROBINSON: Bill Linden testified before the subcommittee yesterday for the first time discussing the affidavit section of the bill.

064 VOTE: On a roll call vote, motion passes. AYE: Reps. Baum, Bauman, Bell, Brian, Edmunson, Johnson, Mannix, Mason, Parks, Sunseri, Miller  
NAY: None EXCUSED: Rep. Clark

065 CHAIR MILLER: Rep. Clark will carry the bill.

Closes work session on HB 3449.

Opens work session on HB 3101.

HB 3101 - WORK SESSION

072 MOTION: REP. MANNIX: Moves for reconsideration of HB 3101.

074 REP. MANNIX: When the bill first came up the full committee was not present and we did not have a complete explanation of the limitations in the bill. A further debate may change the result.

105 REP. BAUMAN: Told Rep. Mannix I would support his reconsideration motion even though I was a no vote. Have changed my mind and will be voting no.

108 REP. JOHNSON: Rep. Mannix did serve notice of reconsideration.

121 VOTE: On a roll call vote, motion passes. AYE: Reps. Baum, Bell, Brian, Johnson, Mannix, Mason, Sunseri, Miller NO: Reps. Bauman, Edmunson, Parks EXCUSED: Rep. Clark

123 MOTION: REP. MANNIX: Moves HB 3101, as amended, to the floor with a do pass recommendation.

130 REP. MANNIX: This bill has to do with the liability of the ambulance driver or police officer, not for his own acts, but for the acts of another driver.

The subcommittee carefully worked through the bill to make sure that current law contains protective clauses requiring that the driver in the exercise of driving an ambulance or police vehicle, is showing due concern for the public safety.

Received extensive testimony about pursuit training and the requirements that officers must follow. Also had testimony that police officers, as a result of a recent court decision which reversed a prior holding, now are worried about civil liability every time they initiate or maintain a pursuit because that person might drive negligently and injure someone else.

160 REP. PARKS: Will vote no on the bill. Five people in my community have been killed or seriously injured in the past six years as a result of the state police chasing people.

Point is not whether the police did the right thing, but whether society should walk away and leave those people abandoned to their own resources.

187 REP. EDMUNSON: Not a question of whether police are going to be held liable for damage solely caused by people they are pursuing. In the case cited, parties stipulated that the officer should have terminated the chase before the collision occurred. The court held that it could not say that there is no evidence of negligence on the part of the pursuing officer. Do not think we are in a position to protect the innocent police officer doing everything by the book, reasonably, and prudently. Sees no reason to excuse a police officer from the burden we put on all citizens to act in a reasonable manner.

209 REP. BRIAN: Appreciates the comment of all three speakers.

Police officers will only be protected by this bill if they are not a contributing factor to an accident.

The third party accepts a responsibility to safely respond to emergency vehicles when driving.

238 REP. MANNIX: If committee is concerned about setting pursuit policies and wants to do it on a statewide level, we can do so. We don't have to do it through the back door of civil liability.

If police officers are violating pursuit policies, the answer is to impose discipline.

299 REP. EDMUNSON: What happens if a police officer engaged in a chase strikes another car and injury is caused by the actions of the police officer?

305 REP. MANNIX: The police officer would be liable.

306 REP. EDMUNSON: Then you still require a minute by minute evaluation of whether to continue the pursuit.

324 REP. BAUM: Does not think the bill accomplishes the desired end.

337 REP. BAUMAN: If it weren't for the police officer in pursuit, the person being pursued would not be driving the way he is.

(tape inaudible)

396 VOTE: On a roll call vote, motion passes. AYE: Reps. Baum, Bell, Brian, Clark, Johnson, Mannix, Sunseri, Miller NAY: Reps. Bauman, Edmunson, Mason, Parks

400 CHAIR MILLER: Rep. Mannix will carry the bill.

Adjourns House Committee on Judiciary at 1:30 p.m.

Transcribed by,

Pat Zwick

EXHIBIT LOG A:HB 3222-1 Amendment - Staff - 1 page B:HB 3413-2 Amendment - Staff - 5 pages C:HB 3313-2 Amendment - Staff - 4 pages D:D:HB 3052-1 Amendment - Staff - 2 pages E:HB 3449-4 Amendment - Staff - 5 pages