

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

January 24, 2005 Hearing Room 357

8:30 A.M. Tapes 4 - 5

MEMBERS PRESENT: Rep. Bob Ackerman, Chair

Rep. Linda Flores

Rep. Bill Garrard

Rep. Kelley Wirth

STAFF PRESENT: Sam Sears, Counsel

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD & WITNESSES:

HB 2215 Public Hearing and Work Session

David Leith, Assistant Attorney General, Department of Justice

Paul Lipscomb, Presiding Judge, Marion County Circuit Court

Bruce Miller, State Court Administrator's Office

HB 2221 Public Hearing and Work Session

Marshall Brogie, Department of Justice, CAMI

HB 2230 Public Hearing

Fred Boss, Chief Counsel, Civil Enforcement Division, Department of Justice

Bradd Swank, Special Counsel for Government Relations, Oregon Judicial Department

Jason Barber, Assistant Director, Crime Victims' Assistance Section, Department of Justice

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
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TAPE 4, A

004	Chair Ackerman	Calls the meeting to order at 8:35 a.m. Opens a public hearing on HB 2215, which provides, with certain exceptions, that actions and other proceedings against state government and subdivisions of state government must be commenced in Marion County or in county in which cause of action arises..
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HB 2215 – PUBLIC HEARING

013	David Leith	Assistant Attorney General, Department of Justice (DOJ). Submits testimony and testifies in support of HB 2215 (EXHIBIT A).
061	Paul Lipscomb	Presiding Judge, Marion County Circuit Court. Testifies as neutral on HB 2215. Expresses concern for additional workload from other courts to Marion County, causing an additional strain on already limited resources.
085	Rep. Garrard	Asks about the number of cases involved.
086	Lipscomb	Responds, unsure, possibly 15 or more cases a year.
103	Rep. Macpherson	Asks how the language change affects what is really happening.
127	Leith	Responds that “may” in existing statute is ambiguous. Replacing “may” to “must be” is the key change.
142	Leith	Responds to earlier question about number of cases involved. Comments on cases that were filed in Multnomah County that should have been filed in Marion County.
168	Chair Ackerman	Asks if this bill passes and a claim is filed against Multnomah County, would the court would have two choices -- Marion County or the county where the action arose.

172	Leith	Responds, that is correct.
173	Rep. Garrard	Asks why the filing is not in the county where the incident occurred.
175	Leith	Responds that it has been historical practice to file in Marion County as the seat of government.
188	Rep. Flores	Asks if more statistics are available.
104	Leith	Replies that an informal survey was conducted, and if the committee is interested, it could be expanded to cover a 12-month period.
202	Rep. Flores	Asks if other counties, in addition to Multnomah County, might be of concern.
206	Leith	Responds, no.
210	Lipscomb	Comments on Rep. Garrard's suggestion to eliminate the language that refers to Marion County. Says this bill represents the "tip of the iceberg" as there are 40-60 statutes that make special venue provisions for Marion County.
225	Chair Ackerman	Asks Mr. Leith if there would be cases referred to Marion County where there would be no contact with witnesses.
239	Leith	Replies, possibly. Explains that one purpose of venue is convenience and it makes sense for venue where cause of action arose, as that is likely to be where the witnesses are located.
257	Chair Ackerman	Asks for clarification on the case on mandamus referred to in Exhibit A .
259	Leith	Replies that it is typical of what we see but a ruling has not been issued.
291	Bruce Miller	Office of State Court Administrator. Asks for time to further assess the impact of the changes.
313	Rep. Macpherson	Asks if suits can be filed anywhere in the state that is considered a principal place of business.

331	Miller	Responds, yes, if the appropriate contacts can be established in those counties.
346	Rep. Macpherson	Asks if Mr. Miller agrees with the premise that current law allows a case to be brought in a county other than where the action arose.
356	Miller	Replies that Multnomah County judges have so ruled.
368	Leith	Comments that venue is typically a right of the defendant and it has been our practice not to object to venue in Marion County.
394	Chair Ackerman	Closes the public hearing and opens a work session on HB 2215.

HB 2215 – WORK SESSION

401	Rep. Garrard	States that he cannot support the bill the way it is written.
404	Rep. Flores	Requests expanded data on potential impacts going back at least a year.
418	Rep. Garrard	MOTION: Moves HB 2215 to the full committee with a DO NOT PASS recommendation.

VOTE: 4-0-0

AYE: In a roll call vote, all members present vote Aye.

422	Chair Ackerman	The motion CARRIES. REP. GARRARD will lead discussion in the full committee.
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423	Chair Ackerman	Closes the work session on HB 2215 and opens a public hearing on HB 2221.
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TAPE 5, A

HB 2221 – PUBLIC HEARING

052	Marshall Brogie	
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Program Representative, Child Abuse Multidisciplinary Intervention Account, Crime Victims' Assistance Section, Department of Justice. Submits testimony and testifies in support of HB 2221, which establishes Child Abuse Multidisciplinary Intervention Program in Department of Justice **(EXHIBIT B)**.

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| 081 | Rep. Macpherson | Asks about the source of funding for the account. |
| 083 | Brogie | Responds that funding comes through the criminal fines and assessment account also known as the criminal fines and public safety fund. |
| 088 | Chair Ackerman | Asks if this bill is in reaction to the recent high profile child abuse cases in Oregon. |
| 091 | Brogie | Replies, not specifically. States that this bill cleans up language and provides methods for review and analysis of county team functions. |
| 101 | Rep. Wirth | Asks about the percentage of child abuse cases in Oregon yearly that are due to threat of harm as opposed to physical violence. |
| 102 | Brogie | Responds that the information will be provided. |
| 103 | Chair Ackerman | Closes the public hearing and opens the work session on HB 2221. |

HB 2221 – WORK SESSION

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| 109 | Rep. Garrard | MOTION: Moves HB 2221 to the full committee with a DO PASS recommendation.

VOTE: 4-0-0

AYE: In a roll call vote, all members present vote Aye. |
| 114 | Chair Ackerman | The motion CARRIES.

REP. WIRTH will lead discussion in the full committee. |
| 118 | Chair Ackerman | Closes the work session on HB 2221 and opens a public hearing on HB 2230. |

HB 2230 - PUBLIC HEARING

122	Fred Boss	Chief Counsel, Civil Enforcement Division, Department of Justice. Submits testimony and testifies in support of HB 2230, which defines “economic damages” for purposes of restitution (EXHIBIT C) .
190	Rep. Krieger	Asks about the priority of restitution and an explanation of the Criminal Injuries Compensation Account.
196	Boss	Responds that the restitution task force established the order for compensation: the actual victim of a crime, the criminal injuries compensation account, then all others who suffered an economic loss.
211	Chair Ackerman	Asks if the definition of “economic damages” under ORS 31.710 is the one now commonly used in tort cases and refers only to objectively verifiable losses such as medical bills, hospital bills, nursing and the like.
217	Boss	Replies, that is correct.
219	Chair Ackerman	Requests clarification that this change is not allowing compensation for pain and suffering.
222	Boss	Replies, that is correct.
223	Rep. Macpherson	Asks if the amount an offender would be obligated to repay would include compensation to the victim and for property damage.
240	Boss	Replies, that is correct.
257	Rep. Macpherson	Inquires about the proportion of restitution judgments by offenders that are actually recovered.
261	Jason Barber	Special Counsel for Government Relations for the Oregon Judicial Department. Responds they collect about 12 percent of what is expended. Submits testimony and testifies in support of HB 2230 (EXHIBIT D) .

301	Rep. Macpherson	Asks for clarification of fiscal year or calendar year for the \$3.3 million claim benefits.
309	Barber	Replies, calendar year.
311	Rep. Macpherson	Asks how much is spent in efforts to collect restitution judgments.
315	Barber	Indicates that those figures are not available, but the positions are revenue generating.
321	Rep. Macpherson	Expresses concern about recovering restitution from offenders.
371	Boss	Responds that the restitution reform task force held that the criminal defendant should accept full responsibility for actions. The 12 percent figure is not across the board, as it is not possible to predict when people will have the money.
388	Rep. Garrard	Asks Mr. Barber if the extent of powers of collection his staff possesses is equivalent to the Internal Revenue Service.
397	Barber	Indicates they have the power to garnish.
400	Boss	Responds that the full powers are the same as a civil creditor.
408	Chair Ackerman	Asks if they have civil judgment for restitution against the defendant.
409	Boss	Replies, no; they have a criminal judgment by statute.
411	Chair Ackerman	Asks if the judgment is from which a collection emanates, garnishment or levies on property, for example.
413	Boss	Responds, correct.

TAPE 4, B

001	Rep. Flores	Asks if there is ever an instance when awards are fully paid.
010	Barber	Replies, yes, there are many success stories.

015	Rep. Flores	Asks if the amount can be quantified.
016	Barber	Responds that last calendar year revenue agents collected \$410,000 or about \$35,000 per month, but did not have specific data on criminal judgments paid in full.
019	Rep. Flores	Asks if the expectation is that there is full compensation in each category in the priority list.
020	Barber	Responds, correct; revenue agents collect the full money judgment.
028	Bradd Swank	Special Counsel for Government Relations for the Oregon Judicial Department. Has no position on the bill. Is working on a fiscal impact as there may be a cost for reprogramming the judicial computer program.
051	Swank	Raises concern with the amendments proposed by Mr. Boss in lines 11 and 12, page 5, that appear to direct payments to the Criminal Injuries Compensation Account that were not in the judgment.
075	Swank	Comments that the Department of Revenue and third-party collectors are used to make restitution collections. Requests time to look into a possible fiscal impact of this bill.
100	Sam Sears	Submits written testimony from Kelly Skye, Legislative Representative, Oregon Criminal Defense Lawyers Association who was unable to attend this meeting (EXHIBIT E).
107	Chair Ackerman	Asks the participants in the public hearing to confer on the amendments proposed by the DOJ in Exhibit C . Advises that the public hearing will be continued to consider the fiscal impact. Requests that Kelly Skye testify at the next hearing.
112	Chair Ackerman	Closes the public hearing on HB 2230 and adjourns the meeting at 9:38 a.m.

EXHIBIT SUMMARY

- A. **HB 2215, written testimony, David Leith, 1 p**
- B. **HB 2221, written testimony, Marshall Brogie, 2 pp**
- C. **HB 2230, written testimony, Frederick Boss, 13 pp**
- D. **HB 2230, written testimony, Jason Barber, 1 p**
- E. **HB 2230, written material submitted for the record without public testimony, Kelly Skye, 1 p**