

HOUSE JUDICIARY SUBCOMMITTEE

ON CRIMINAL LAW

January 20, 2005 Hearing Room 357

8:30 A.M. Tapes 2 - 4

MEMBERS PRESENT: Rep. Jeff Barker, Chair

Rep. Greg Macpherson

Rep. Andy Olson

Rep. Kim Thatcher

GUEST MEMBER: Rep. Wayne Krieger

STAFF PRESENT: Heidi Moawad, Counsel

Elizabeth Howe, Committee Assistant

MEASURES/ISSUES HEARD & WITNESSES:

HB 2140 – Public Hearing

Max Williams, Department of Corrections

Dr. Steve Shelton, Department of Corrections

Mary Botkin, American Federation of State, County, and

Municipal Employees

Martin Pittioni, Board of Psychologist Examiners

Paul Snider, Association of Oregon Counties

Geoff Sugerman, Western Prison Project, Oregon Criminal

Justice Reform Coalition

Brigette Sarabi, Western Prison Project

Andrea Meyer, American Civil Liberties Union

HB 2141 – Public Hearing and Work Session

Max Williams, Department of Corrections

Arthur Tolan, Department of Corrections

Dr. Marvin Fickle, Oregon Department of Human Services

Mary Botkin, American Federation of State, County, and

Municipal Employees

Bob Joondeph, Oregon Advocacy Center

Terrie Quinteros, Western Prison Project

Philip Cox, Oregon Youth Authority

HB 2143 – Public Hearing

Max Williams, Department of Corrections

Stan Czerniak, Department of Corrections

Mary Botkin, American Federation of State, County, and

Municipal Employees

Paul Snider, Association of Oregon Counties

Andrea Meyer, American Civil Liberties Union

Terrie Quinteros, Western Prison Project

HB 2144 – Public Hearing and Work Session

Scott Taylor, Department of Corrections

Max Williams, Department of Corrections

John Hummel, Oregon Criminal Defense Lawyers Association

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
TAPE 2, A		
005	Chair Barker	Calls the meeting to order at 8:40 AM. Opens public hearing on HB 2140, which requires persons confined in correctional facilities to exhaust administrative remedies before filing complaints with health professional regulatory boards.

HB 2140 PUBLIC HEARING

012	Max Williams	Director, Department of Corrections (DOC). Submits and explains issue brief and review of inmate grievance system regarding the DOC's position on HB 2140 (EXHIBITS A & B).
038	Dr. Steven Shelton	Medical Director, DOC. Submits and presents written testimony supporting HB 2140 (EXHIBIT C).
047	Rep. Macpherson	Inquires about negligence claims.
054	Dr. Shelton	Answers about different types of claims inmates can make.
065	Rep. Macpherson	Inquires about the number of claims made by inmates.
069	Dr. Shelton	Answers, and explains the problem HB 2140 addresses.
079	Rep. Macpherson	Inquires regarding administrative procedures for inmates making a claim.
087	Dr. Shelton	Refers to OAR 291-109-0140 on page 3 of Exhibit B regarding the inmate complaint process, and gives examples of grievances.
121	Rep. Thatcher	Inquires as to the length of the grievance process.
124	Dr. Shelton	Discusses timelines on responding to inmate grievances.
137	Williams	

Discusses final level of review for grievances, and results of frivolous complaints against nurses and doctors working within the DOC.

- 166 Rep. Macpherson Notes ways inmates could lose grievance rights (**Exhibit C**, page 3).
- 185 Dr. Shelton Explains the DOC's intent to efficiently address grievances, not create burdens on inmates.
- 196 Williams Discusses potential interpretations of HB 2140, and DOC's intent.
- 232 Rep. Olson Asks for background information to explain the reason for HB 2140.
- 242 Dr. Shelton Answers regarding number and type of complaints from inmates.
- 254 Williams Adds that the drain on resources requires that the issue be addressed.
- 272 Dr. Shelton Describes how current grievance process drains resources.
- 293 Mary Botkin American Federation of State, County, and Municipal Employees (AFSCME). Testifies in support of HB 2140.
- 332 Botkin Describes cases that caused AFSCME to introduce this idea last year.
- 380 Botkin Expresses desire for inmates to exhaust internal grievance process.
- 393 Rep. Krieger Asks about likelihood of inmates receiving medical care for the first time within DOC.
- 410 Botkin Describes budget problems when DOC doctors must address an inmate's healthcare for the first time.

TAPE 3, A

- 036 Paul Snider Association of Oregon Counties. Testifies in support of an amendment to HB 2140, and describes similar issues in county jails as are in state prisons. Requests an amendment that will include county jails.
- 048 Martin Pittioni

		Executive Director, Board of Psychologist Examiners. Requests more time on HB 2140 in order to work on the intent and language.
070	Geoff Sugerman	Western Prison Project, Oregon Criminal Justice Reform Coalition. Submits and presents written testimony in opposition to HB 2140 (EXHIBIT D) .
104	Brigette Sarabi	Executive Director, Western Prison Project. Submits and presents written testimony in opposition to HB 2140 (EXHIBIT E) .
128	Sarabi	Describes why deadlines are difficult to meet for some ill inmates.
136	Andrea Meyer	American Civil Liberties Union (ACLU). Describes the ACLU's concerns about HB 2140.
169	Meyer	Describes dangers of deadlines, costs associated with long internal process, and "tying the hands" of regulatory boards.
194	Rep. Macpherson	Asks about differences in HB 2143 and HB 2140.
210	Meyer	Describes her idea of regulatory boards protecting the "general public."
224	Sarabi	Notes the problems with filing complaints within a "closed system."
238	Rep. Thatcher	Asks about current timeline for inmates filing a complaint.
243	Meyer	Discusses different types of investigations and different timelines.
258	Heidi Moawad	Committee Counsel. Recalls ORS 676.165 which defines reporting and investigations.
275	Williams	Explains intent of DOC to streamline, not foreclose upon an inmates right to due process.
325	Williams	Describes prompt responses regarding serious situations, and different ways grievances can be addressed.
335	Rep. Macpherson	Asks about urgent care claims and concerns raised by other witnesses.

- 365 Williams Invites discussion of alternatives, and describes response to claims.
- 413 Chair Barker Closes public hearing on HB 2140, opens public hearing on HB 2141.

TAPE 2, B

HB 2141 PUBLIC HEARING

- 013 Heidi Moawad Committee Counsel. Introduces HB 2141, which modifies provisions that allow Department of Corrections and Oregon Youth Authority to transfer persons committed to their custody to state mental hospital for evaluation and treatment.
- 022 Max Williams Director, Department of Corrections (DOC). Submits and presents an issue brief in support of HB 2141 **(EXHIBIT F)**.
- 040 Arthur Tolan Mental Health Services Administrator, Department of Corrections. Submits and explains written testimony in support of HB 2141 **(EXHIBIT G)**.
- 072 Philip Cox Oregon Youth Authority. Describes transfer of youth offenders to mental hospital, and announces support of HB 2141.
- 089 Dr. Marvin Fickle Superintendent, Health Services, Oregon State Hospital, Oregon Department of Human Services. Submits and explains written testimony supporting HB 2141 **(EXHIBIT H)**.
- 106 Mary Botkin American Federation of State, County, and Municipal Employees (AFSCME). Describes her support of HB 2141 and how it offers flexibility in helping youth with chronic mental illness.
- 136 Rep. Krieger Asks about the cost, and about accommodating the bill within budget.
- 145 Botkin Agrees to find information and share it.
- 148 Terrie Quinteros Western Prison Project. Announces support of HB 2141.
- 154 Bob Joondeph Executive Director, Oregon Advocacy Center (OAC). Submits and presents neutral written testimony explaining OAC's position on HB 2141 **(EXHIBIT I)**.

193 Joondeph Points to written testimony regarding transfer of inmates to mental hospital (**Exhibit I**, page 1).

220 Joondeph Discusses involuntary and voluntary transfer to hospital, and notes that it is not addressed in HB 2141.

228 Chair Barker Invites Max Williams to address cost.

230 Williams Explains cost differences and quality of care associated with institutionalization and state hospital care.

258 Dr. Fickle Describes costs associated with treating inmates at the mental hospital, and explains the potential savings with superior treatment.

265 Chair Barker Inquires about the constitutional requirements of an inmate transfer.

270 Williams Agrees to follow constitutional requirements of transfer in drafts.

274 Chair Barker Closes public hearing and opens a work session on HB 2141.

HB 2141 WORK SESSION

276 Rep. Macpherson **MOTION: Moves HB 2141 to the full committee with a DO PASS recommendation.**

VOTE: 4-0-0

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

284 Chair Barker **The motion CARRIES.**
REP. MACPHERSON will lead discussion in the full committee.

287 Chair Barker Closes work session on HB 2141. Opens public hearing on HB 2143.

HB 2143 PUBLIC HEARING

294 Heidi Moawad Committee Counsel. Introduces HB 2143, which requires that inmate exhaust all administrative remedies before filing action against public body.

- 302 Max Williams Director, Department of Corrections. Submits and presents an issue brief in support of HB 2143 **(EXHIBIT J)**.
- 337 Stan Czerniak Assistant Director for Operations, Department of Corrections. Submits and explains written testimony in support of HB 2143 **(EXHIBIT K)**.

TAPE 3, B

- 007 Chair Barker Asks about remedies when inmate files suit and claims that something without monetary value has been damaged.
- 013 Czerniak Answers regarding risk management.
- 015 Williams Describes protections of inmates property and legal files within DOC.
- 040 Rep. Macpherson Asks what “public body” could refer to when all testimony has referred to small claims issues.
- 054 Williams Explains that Legislative Counsel may have covered a broader group than DOC originally intended.
- 075 Rep. Macpherson Asks about claims for serious bodily injury.
- 092 Williams Explains that the primary driver for HB 2143 was small claims issues. Addresses other types of claims and DOC’s procedures for them.
- 112 Mary Botkin American Federation of State, County, and Municipal Employees (AFSCME). Explains her support of HB 2143.
- 145 Paul Snider Association of Oregon Counties. Describes his support of HB 2143 and his understanding that the language in HB 2143 refers to county jails as well.
- 158 Rep. Macpherson Asks if county jails have procedures for administrative remedies.
- 163 Snider

Answers affirmatively, and describes that processes vary between counties.

- 174 Andrea Meyer American Civil Liberties Union. Relates her position against HB 2143, and her desire that definitions be narrowed before bill is considered. Expresses concern about timelines, especially in county jails.
- 210 Meyer Describes concern about affidavit that is required and notarization.
- 252 Meyer Explains cost potential and timeliness issues.
- 261 Terrie Quinteros Mentions prior written testimony presented by Mr. Sugerman that also addresses HB 2143 (**EXHIBIT L**).
- 275 Chair Barker States that HB 2143 needs a work group.
- 282 Chair Barker Closes public hearing on HB 2143, and opens public hearing on HB 2144.

HB 2144 PUBLIC HEARING

- 285 Heidi Moawad Committee Counsel. Introduces HB 2144, which modifies conditions of probation for person previously convicted of sex offense.
- 310 Scott Taylor Community Corrections Chief, Department of Corrections (DOC). Submits and explains written testimony in support of HB 2144 (**EXHIBIT M**).
- 324 Commander Pat Schreiner Marion County Community Justice. Testifies that HB 2144 will allow DOC more flexibility in reviewing criminals from out-of-state and requiring sex offender treatment.
- 356 John Hummel Attorney in Bend, representing the Oregon Criminal Defense Lawyer's Association (OCDLA). Testifies in opposition to HB 2144.
- 410 Hummel Suggests that a time limitation be added for certain offenders whose sex offense was committed while a juvenile.
- 415 Rep. Macpherson Asks about current law regarding juvenile adjudications.

TAPE 4, A

007 Hummel Notes that the law does not address juvenile adjudications at this time, and explains the intent and outcome of HB 2144.

010 Rep. Macpherson Seeks clarification about time limits for in-state and/or out-of-state.

013 Hummel Advocates no time limit for any adult convictions, wants time limit for juvenile convictions in and out of state.

018 Rep. Macpherson Notes Mr. Hummel suggested a five-year time limitation.

020 Hummel Says OCDLA is open to discussion about length of time limit.

023 Chair Barker Asks about youth offenders who are dangerous sexual predators.

035 Hummel Relates his view of juvenile convictions in different situations.

049 Chair Barker Closes public hearing and opens a work session on HB 2144.

HB 2144 WORK SESSION

051 Rep. Olson **MOTION: Moves HB 2144 to the full committee with a DO PASS recommendation.**

VOTE: 4-0-0

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

055 Chair Barker **The motion CARRIES.**

REP. OLSON will lead discussion in the full committee.

058 Chair Barker Closes work session on HB 2144. Adjourns meeting at 10:20 AM

EXHIBIT SUMMARY

1. A. HB 2140, issue brief, Max Williams, 1 p
2. B. HB 2140, Review of inmate grievance system, Max Williams, 9 pp
3. C. HB 2140, written testimony, Dr. Steven Shelton, 2 pp
4. D. HB 2140, written testimony, Geoff Sugerman, 1 p
5. E. HB 2140, written testimony and copy of Anstett case, Brigette Sarabi, 38 pp
6. F. HB 2141, issue brief, Max Williams, 1 p
7. G. HB 2141, written testimony, Arthur Tolan, 2 pp
8. H. HB 2141, written testimony, Marvin D. Fickle, MD, 1 p
9. I. HB 2141, written testimony, Bob Joondeph, 2 pp
10. J. HB 2143, issue brief, Max Williams, 1 p
11. K. HB 2143, written testimony, Stan Czerniak, 1 p
12. L. HB 2143, written testimony of Geoff Sugerman, Terrie Quinteros, 1 p

M HB 2144, written testimony, Scott Taylor, 1 p

The following material is submitted for the record without public testimony:

1. N. HB 2143 – written testimony and copy of Anstett case, Brigette Sarabi, 38 pp