

CONFERENCE COMMITTEE ON HB 2312 B

July 20, 2005 Hearing Room D
2:15 P.M. Tapes 1 - 2

MEMBERS PRESENT: Rep. Wayne Krieger, Chair
Rep. Jeff Barker
Rep. Andy Olson
Sen. Ginny Burdick
Sen. Avel Gordly
Sen. Doug Whitsett

STAFF PRESENT: Heidi Moawad, Counsel
Patsy Wood, Committee Assistant

MEASURES/ISSUES HEARD:
HB 2312 B – Work Session

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 1, A		
003	Chair Krieger	Calls the meeting to order at 2:30 p.m. and opens a work session on HB 2312 B.
<u>HB 2312 B – WORK SESSION</u>		
011	Brad Berry	Oregon District Attorneys Association (ODAA). Asks what the committee would like to hear regarding the DNA post-conviction relief piece of this legislation.
019	Chair Krieger	Clarifies the committee needs to hear about any potential problem of people who have pled when other charges may have been dismissed.
022	Mark McDonnell	Multnomah County Senior Deputy District Attorney. Says the ODAA prefers the House version, but an amendment would be needed to the Senate version. Details specific case of Ronald Ray Weaver, the t-shirt rapist, who was sentenced to 70 years in prison but later had his convictions set aside because of inadequate counsel. Discusses the difficulty in trying to re-prosecute these cases 20 years later.
061	McDonnell	States his proposed amendment would put all parties back to “square one” if a guilty plea is set aside, even though this is expensive because DNA would have to be retained for a long period of time. Notes a conceptual compromise to extend the statute of limitations.
077	Berry	Describes problems with an unlimited statute of limitations and concerns expressed by the ACLU (American Civil Liberties Union). Suggests a compromise of two years to find witnesses and evidence and prepare a new case.
088	Sen. Burdick	Asks if this would apply to cases that the statute of limitations has expired on or only apply to cases after this legislation has become law.

099	McDonnell	Answers, once the statute of limitations has run, you can't resurrect it, so doesn't know the answer.
111	Sen. Burdick	Wants this policy question answered.
121	McDonnell	Replies this might prevent frivolous claims from being filed.
123	Sen. Burdick	Asks about double jeopardy – if it would apply if there had been a trial.
125	McDonnell	Notes this only applies toward a conviction based upon a guilty plea or dismissal.
132	Sen. Whitsett	Describes a case in Massachusetts where a man was convicted of child abuse and the case was eventually overturned. Wonders if this amendment would allow the district attorney (DA) to charge on any related cases.
143	McDonnell	Replies he is not familiar with that particular case. Says DAs need to identify what cases are being dismissed and what cases are not being brought when a plea is entered. Opposed to someone loading things on later. Emphasizes they don't want to convict an innocent person; cites a specific case where they overturned the conviction.
170	Berry	Confirms that the overall plan would revert back to original charges brought against defendant. Agrees innocent people shouldn't be jailed.
198	Sen. Whitsett	Comments that the case in Massachusetts took over 20 years to right the wrong.
212	Sen. Burdick	Thinks legal community works hard to not put innocent people in jail, but there has to be a safety valve so guilty people don't get released.
227	Sen. Gordly	Asks the DAs present to speak to a communication from the ACLU regarding the previous legislation opening the floodgates for abuse when, in fact, no one has used the law.
251	McDonnell	Replies that the Senate version changes the fact that identity is an issue in the original case, and though there haven't been many (if any) cases, there are still costs to retain evidence (a huge cost to law enforcement).
272	Berry	Believes when SB 667 (2001) was first enacted, many people were waiting to file these cases, but there have been fewer cases than they expected. States that including no contest and guilty pleas opens a door that would invite abuse. Indicates the people who may be filing these cases and the time and effort involved in those cases.
309	David Schmierbach	Director, Forensic Services Division, Oregon State Police. Testifies in support of a post-conviction relief bill, but does not have the resources to do testing right now. Discusses possibilities of future cases – gives statistics on OSP's current workload. Says DNA kits are paid for by the Indigent Defense Fund.
347	Sen. Whitsett	Asks how long evidence is kept in a criminal case.
353	McDonnell	Replies evidence is kept in homicide cases, but not other cases; doesn't believe there is a time period for keeping such evidence.
363	Berry	Responds that homicide and sexual assault evidence is kept until an appeal is exhausted or not filed. Discusses the issue of lost evidence.
363	Sen. Whitsett	Asserts losing evidence could work both ways – lack of ability to prosecute or lack of defense to exonerate.
368	Berry	Says lost evidence works against the state in 95 percent of cases.
409	John Hummel	Oregon Criminal Defense Lawyers Association (OCDLA). Uses

an analysis of people utilizing DNA to prove innocence which shows how the courts will not be flooded by these cases **(EXHIBIT A)**.

TAPE 2, A

040	Hummel	Discusses the issue of “innocent people don’t plead guilty.” Relates example of defendant pleading guilty to a crime even though he knew he was innocent. Submits Legal and Ethical Implication of Post-Conviction DNA exonerations (EXHIBIT B) .
104	Hummel	Supports conceptual amendment for cases that were dismissed pursuant to this DNA bill.
127	Andrea Meyer	ACLU of Oregon. Strongly endorses the B-engrossed version of the bill. Emphasizes two points: <ul style="list-style-type: none">• Requirements of defense/prosecution/court• Cost and retention of evidence (should study during interim)
171	Meyer	Speaks to conceptual amendments which amend ORS 131.125 – can’t support changing statute of limitations. Doesn’t oppose bringing person back if limited to DNA process set up in separate statute.
192	Chair Krieger	Suggests working on an amendment specific to HB 2312 B and coming back for another conference committee.
198	Sen. Burdick	Thanks DAs for bringing this approach forward and appreciates OCDLA for working with DAs to limit statute of limitations to a set period after this process goes into effect. Points out the need for a safety valve when justice is not served.
215	Meyer	Expresses final concerns about “tolling” the statute of limitations after charges are brought.
226	Sen. Burdick	Clarifies that the defendant would return to the original charge before the guilty plea was made.
228	Hummel and Meyer	Agree to work together on moving this legislation forward.
239	Chair Krieger	Closes the work session on HB 2312 B and adjourns the meeting at 3:15 p.m.

EXHIBIT SUMMARY

- A. **HB 2312B, analysis of people using DNA to prove innocence, John Hummel, 4 pp**
- B. **HB 2312B, Legal and Ethical Implications of Post-Conviction DNA Exonerations, John Hummel, 9 pp**