

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

January 19, 1999 Hearing Room 357

1:30 p.m. Tapes 3-4

**MEMBERS PRESENT:** Rep. Lane Shetterly, Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Max Williams, Vice-Chair

Rep. Vic Backlund

Rep. Randall Edwards

Rep. Kathy Lowe

Rep. Vicki Walker

Rep. Larry Wells

Rep. Bill Witt

**MEMBER EXCUSED:** Rep. Judy Uherbelau, Vice-Chair (Excused).

**STAFF PRESENT:** Aaron Felton, Counsel

Nancy Richards, Administrative Support

**MEASURE/ISSUES HEARD:** HB 2257

HB 2264

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 3, A <u>HB 2264 HEARING</u>		

040	Vice Chair Williams	Calls meeting to order at 1:35.
026	Counsel Felton	Explains HB 2264. Prohibits Mental Health and Developmental Disability Services Division from collecting for cost of care in state institutions under certain circumstances. The amount of the award could not be computed or added to the amount of the cost of care. Residents of state run facilities except prisons are required to be responsible for the cost of their care within the institution and the amount they are required to pay is computed under administrative rule.
045	<b>Bob Joondeph</b>	<b>Director of Oregon Advocacy Center.</b>
		Speaks in favor of HB 2264. Person with a disability in an institution has been injured in a state owned institution or hospital. We will refer this person to a private attorney to seek claim for his injuries. These individuals receive no compensation for his injuries because the money goes toward the bill for their care. There is no monetary incentive for the institution to do a better job at limiting injuries to patients. This HB 2264 resolves this problem in a very narrow way. If a person is injured while in an institution and the state admits that the state is wrong or if the person ends up going through court and a judge or jury makes an award, that amount of money will go to the plaintiff rather than it being automatically deducted by the state for cost of care.
087	Rep. Wells	Discusses four cases in 1995 through 1997 that involved \$890,000. Does the state still try to collect a bill on the person injured?
106	Joondeph	Sometimes in negotiations between plaintiff's attorney and the Attorney General, the parties will arrive at a figure taking into account the fact that there is an outstanding cost-of-care bill and the amount of damages that the plaintiff is claiming. Part of the agreement will be the state does not collect on the amounts the parties settle on.
117	Rep. Wells	If this bill passes the state couldn't come and collect any of the money given because of the judgment. What happens to the bill for the cost of services? Is the bill still outstanding?
120	Joondeph	In the situation you outlined, there wouldn't be a change. If the parties negotiated a settlement prior to the matter moving on to court, then the terms of that settlement would rule. The only difference would be if the parties couldn't arrive at a settlement and the case went to court and the court made an award, then the state couldn't recoup the funds back into the state budget.
130	Rep. Wells	What happens to the unpaid amount of the bill?
129	Joondeph	The bill remains outstanding. Gives example.
141	Rep. Williams	Asks for clarification of line 20 of the bill where it is talking about compensation from the state for injury. Does this bill allow recovery for physical injury and not mental injury?

150	Joondeph	Individuals in the institution so they would receive just compensation for his injuries and there is a deterrent in effect as there would be in a private institution against wrongful acts. The state would have to agree on the amount of damages or a court of law would have to determine that the claim was valid and set an amount of damages. Hesitant to narrowing the damages the resident may receive. If we leave the bill the way it is it would stay in the court system rather than prejudging through narrowing the bill on certain type of injuries and are not compensated.
177	Rep. Williams	Do you feel people are not getting proper representation?
182	Joondeph	Yes, a recent example is where a person in the Oregon State Hospital lost a finger on a circular saw and contacted an attorney. The attorney wouldn't handle it because it would not be any money to pay the attorney, because the attorney would be operating on a contingency fee and that contingency means that the attorney would get a percentage of whatever award was recovered. There were no funds available to pay for representation.
199	Chair Shetterly	Didn't you say that parties negotiate now as to partial offset or a partial discount for the state claim? So, some cases are being settled to some benefit to the resident?
207	Joondeph	The estate of the person s that died at the Oregon State Hospital did have representation and was able to negotiate settlements. Other than that case I know of no other cases.
211	Rep. Witt	Is there any reason to believe the fact that these claims might not be compensated, other than through a credit, the standard of care will decline or will there be a decrease in the quality in care provided?
219	Joondeph	The law now does allow for the offset. The law would remain the same and it would be difficult to obtain damages. The persons in the institutions should receive the same quality care as if they were in a private institution.
249	Rep. Witt	In a private institution they would be paying for their care wouldn't they?
251	Joondeph	In a private institution they would have insurance and insurance would be paying for their care.
254	Rep. Wells	Do you have any idea how many people really pay for their care at the Fairview Training Center? Why if they receive an award wouldn't this go toward paying their care bill?
272	Joondeph	Answer to your first question. At Fairview Training Center because the state is able to bill Medicare and Medicaid, most of the individuals there have insurance. The place where you would have the biggest billing is at the state hospital where people are civilly committed or criminally committed and they are generally indigent are the individuals we are talking about who might be effected. People can be injured or killed and not be compensated.

314	Rep. Williams	Concerned about the safety in these institutions. Those that are people that have been civilly or criminally committed, they are not in the best frame of mind anyway. I am worried about the mental injury and how that might have an impact. As to the physical injury, I think there is a worthy policy here.
334	Rep. Lowe	Clarification The injury or death, you are contemplating physical injury or just any tortious claim?
334	Joondeph	The bill as written would contemplate any claim for any injury. The claim could be mental or physical.
337	Lowe	If we had a severely impaired mental resident and this person was sexually assaulted or became pregnant would this person be compensated for this and the institution would not be able to pocket the money under the guise of the bill having to be paid?
373	Joondeph	That is correct.
374	Rep. Lowe	So this gives the institutions incentives to treat the patients humanly as in the private world?
376	Joondeph	That is correct.
378	Rep. Lowe	Relating to incident where a mentally retarded young woman was sexually assaulted and became pregnant and was not compensated
388	Rep. Walker	When attorneys chose not take cases because there is no recovery, I think that eliminates the checks and balances in our society. She is concerned that the condition of the unsafe condition will continue.
394	Shetterly	Closes the public hearing.
<p><b><u>HB 2257 HEARING.</u></b></p> <p><b>Tape 4, Side A</b></p>		
001	Chair Shetterly	Opens hearing.
003	Counsel Felton	HB 2257 establishes procedures that govern granting or denial of stays of judgement that either require performance of act that person would not perform but for judgment or prohibit performance of act that person would be able to perform but for judgment.
020	<b>Philip Schradle</b>	<b>Assistant Attorney General at the Department of Justice. Testifies in favor of HB 2257. (Exhibit B).</b>

		Gives a historical brief on this bill. Gives clarification of automatic stay. This bill does not bring back the automatic stay of the amendment of 1997.
099	Rep. Williams	What brought about the 1997 amendments?
102	Schradle	In 1997 rather widespread changes to Chapter 19 which deals with appeals were enacted and a whole package was put together. We had some concern about inmates getting released early and by appealing the court's decision we were able to stop that release. We wanted to work together with the legislature carving out some areas or making more substance of changes.
136	Chair Shetterly	Comments on the appellate clean up.
145	Rep. Walker	How about the inmates that are ordered by the court to be released even with appeal?
155	Schradle	Formal request made to trial court showing the harms of putting the trial court judgment into effect or not. We are not attempting to go back to the old regime of where an automatic stay would go into place, but rather have a hearing and have an opportunity to be heard before the trial court. Appellate court is to act as a safeguard.
185	Rep. Backlund	Speaks in support of the bill. Why would anyone oppose the bill?
190	Schradle	Discusses the technical concerns about the bill. When drafting proposed legislation, we need to make sure it doesn't overlap with other existing stay provisions and we don't sweep too broadly.
210	Rep. Edwards	Where these issues you raised in 1997?
212	Schradle	The way the implementations of the legislative amendments occurred has concerned us.
221	<b>Jim Nass</b>	<b>Legal Counsel, Oregon Appellate Courts</b>
		Testimony in opposition of HB 2257 ( <b>EXHIBIT C &amp; D</b> ). Discusses the broad use of language in the bill. Appellate court has a better position to determine the likelihood of winning on appeal.
314	Chair Shetterly	Are you testifying on that point on behalf of the appellate practice section or on behalf of the court?
316	Nass	I am still wearing my appellate practice section hat. Discusses the concern in drafting issues. Discusses the two different categories for judgments. This bill could increase the workload of the courts.

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,  
Administrative Support Counsel

**EXHIBIT SUMMARY**

**A ñ HB 2264, Written testimony, Bob Joondeph, p. 1**

**B ñ HB 2257, Written testimony, Philip Schradle, p. 2**

**C ñ HB 2257, Written testimony, James Nass, p. 1**

**D ñ HB 2257, Written testimony, James Nass, p. 3**