

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

February 11, 1999 Hearing Room 357

1:00 p.m. Tapes 30 - 31

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

**Rep. Max Williams, Vice-Chair**

**Rep. Judy Uherbelau, Vice-Chair**

**Rep. Vic Backlund**

**Rep. Randall Edwards**

**Rep. Kathy Lowe**

**Rep. Vicki Walker**

**Rep. Larry Wells**

**Rep. Bill Witt**

**STAFF PRESENT: Aaron Felton, Counsel**

**Nancy Richards, Administrative Support**

**MEASURE/ISSUES HEARD: HB 2221**

**HB 2222**

**HB 2451**

**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 30, A		

004	Chair Shetterly	Call meeting to order at 1:09.
<b><u>HB 2221 Public Hearing</u></b>		
015	<b>Joanne Bowman</b>	<b>Representative, District 19</b>  Testifies against HB 2221. Discusses the bill and how it will effect the unresolved subject of video visitation and that the language is too broad and gives the Department of Corrections too much authority on this matter.
030	<b>Benjamin De Haan</b>	<b>Deputy Director, Oregon Department of Corrections</b>  Testifies and submits testimony in support of HB 2221 ( <b>EXHIBIT A</b> ). Gives reasons why this bill would protect the safety of the correctional staff and inmates.
075	Bowman	States that the language in the bill as presented does not state the issues that Mr. De Haan has expressed to the committee.
078	De Haan	Expresses that maybe the language is not presented well and that they could work together to define it.
083	Bowman	Agrees that they could work together to solve this problem.
087	Rep. Uherbelau	States that the way the bill is worded now and if you deny a visitor of an inmate access for visitation, you will be able to deny it for any reason.
091	De Haan	Our intent would be to limit those people who represent a threat. We would be willing to narrow the language in the bill.
100	Chair Shetterly	Closes public hearing.
<b><u>HB 2222 Public Hearing</u></b>		
102	Counsel Felton	HB 2222 allows Department of Corrections and State Board of Parole and Post-Prison Supervision to limit inmate participation in rule hearings to written submissions.
123	<b>Ben De Haan</b>	<b>Oregon Department of Corrections</b>  Testifies and submits written testimony in support of HB 2222 ( <b>EXHIBIT B</b> ). Discusses why oral hearings would be more beneficial for the Department of Corrections.
142	Rep. Backlund	What are the statistics regarding the abuse of the hearings process by inmates.

146	De Haan	There are about 6 hearings a year that this bill would affect. The number of events do not tell the entire story, it is the complexity of the hearings process that is the problem and can become very expensive.
154	Rep. Wells	Asks that the hearings will still be permitted, just in oral form?
162	De Haan	The proposed changes would allow us an option of taking oral testimony in those areas where we think it would be appropriate. This would be for efficiency and for true intent.
169	Rep. Wells	Can the DOC force a hearing by this process of wanting oral testimony? Do they still request a hearing?
166	De Haan	Unclear as how far we can restrict it, but if the inmate gets enough signatures on a petition then we have to give them a hearing.
185	<b>Dave Schumaker</b>	<b>Administer of Rules and Compliance, Department of Corrections</b>  States that he is there to answer questions regarding HB 2222.
200	Rep. Wells	Does this process force a hearing, or does the hearing still happen, just with a lot of inmates testifying?
199	Schumaker	Discusses the hearing process in the State of Oregon.
205	Rep. Wells	Can they still have a hearing even though they have to submit oral testimony?
210	De Haan	They can still request the hearing, but the testimony would be in writing and not in person.
215	Schumaker	Explains that administratively, it is much easier to manage when it is in written form and discusses why it is easier.
224	Rep. Uherbelau	Advises that if this rule was adopted, it would give those that cannot write and alternative to submitting testimony.
230	De Haan	Relates that they could make that assurance, not only for the illiterate, but for any language barriers.
235	Rep. Walker	Asks for an explanation as to why this bill was filed in 1991 and 1997 sessions?
240	Schumaker	Discusses what happened to the bill during those years.

248	Rep. Walker	Why didn't this bill make it into law?
250	Schumaker	States that he is not sure what happened to the bill after it went through the House and Senate.
257	De Haan	Explains why the bill did not make it into law.
264	Rep. Edwards	Would if the inmate couldn't write?
265	Schumaker	We would make the commitment to have a process where they could still be a part of the process.
276	<b>Diane Rea</b>	<b>Chair, the Board of Parole and Post-Prison Supervision , Oregon Department of Corrections</b>  Testifies and submits written testimony in support of HB 2222 ( <b>Exhibit C</b> ). Discusses the authority of the Board in this process and the reasons why it wouldn't be abused.
309	Chair Shetterly	Closes public hearing.
<b><u>HB 2222 Work Session</u></b>		
310	Chair Shetterly	Opens work session on HB 2222.
323	<b>Rep. Witt</b>	<b>MOTION: Moves HB 2222 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 9-0</b>
	<b>Chair Shetterly</b>	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>REP. WITT will lead discussion on the floor.</b>
335	Chair Shetterly	Closes work session.
<b><u>HB 2451 Public Hearing</u></b>		
345	Chair Shetterly	Opens public hearing on HB 2451.

347	Counsel Felton	HB 2451 authorizes Board of Governors of Oregon State Bar to create personal and practice management assistance committees to provide assistance to lawyers who are suffering from impairment or other circumstances that may adversely affect professional competence.
364	<b>Bob Oleson</b>	<b>Oregon State Bar, Professional Liability Fund</b> Testifies in support of HB 2451. Introduces Kirk Hall.
381	<b>Kirk Hall</b>	<b>Oregon State Bar, Professional Liability Fund</b> Testifies and submits written testimony in support of HB 2451 ( <b>Exhibit D</b> ). Discusses the history of Professional Liability Fund and how this bill would improve the profession and provide protection for the Oregon public.
<b>Tape 31, A</b>		
038	Hall	Continues testimony on HB 2451.
070	Rep. Uherbelau	States that this bill will not effect the open process that occurs when a claim is made against a lawyer, that is a public record.
082	Hall	Malpractice claims are not a public record, but ethics claims are.
084	Rep. Uherbelau	Defines the second statute and that it seems to have broad enough language to cover your concern.
091	Hall	Discusses the rules of the State Lawyers Assistance Committee and the public perception of this committee and the need for this bill.
116	Chair Shetterly	If this bill does increase the cost of the bar, who pays for it?
117	Hall	In this case, just the lawyers in private practice.
118	Rep. Lowe	Explains that ethics claims are public record so someone could damage a lawyer's reputation. Why is there no provision for <u>Specious</u> ? ethics claims to be wiped of the lawyer's records?
129	Hall	Discusses the discipline procedures of the State Lawyers Assistance Committee and the fact that there were no problems that came from public files.
137	Chair Shetterly	Isn't there a bill that would authorize sealing of a file in a case where there was a complaint?

148	Oleson	States that there is more concern about drawing the line on closed files and the perception that these files are not totally open.
155	Rep. Uherbelau	Expresses her feeling that this is a healthy bill and wishes it would apply to other professions as well.
160	Rep. Edwards	Has there been an instance where you had a problem with a public record request?
171	Hall	Relates that it could create terrible damage to our programs if even one person in one instance could get this involuntary information.
179	Chair Shetterly	This bill is just an extension of that confidentiality privilege that already exists in other professional relationships.
192	Hall	States that if we hired just Psychologists to do this work, then we would not need this bill. We found it much more effective to have lawyers in recovery themselves, deal with other lawyers.
196	Rep. Uherbelau	Comments on the fact that these are lawyers are that are very close to the edge, their practice is suffering, and they are seeking help which prevents harm to the public by dealing with this issue.
204	Rep Walker	Discusses the benefits her husband's employer offers and how it is held in confidentiality.
213	Rep. Lowe	If the impaired lawyer and then has a claim, is the preexisting record made public?
217	Hall	The assistance is given on a voluntary basis and we would not want to make it public. Malpractice claims are only made public if the claimant chooses to make them public.
224	Rep. Lowe	Gives an instance where a lawyer uses the process to shield himself. Can this happen?
243	Hall	Discusses the ethics side of volunteering information as it relates to discipline.
265	Chair Shetterly	Comments that if an lawyer is impaired and has an ethics problem, they cannot go to the committee and be shielded from any responsibility regarding any ethics proceedings. What they tell the assistance committee will be held in confidentiality.
278	Rep. Edwards	Will this bill help the program regarding confidentiality?

281	Hall	Discusses the confidential assistance given by the committee and who they give it to and how this bill will make it more absolute.
294	Rep. Lowe	Do you have statistics on how many clients you serve by your committee?
297	Hall	Relates that they serve several Hundred a year. In 1198, we had 40 or 50 new people into the alcohol program which can include intervention. We had 4-5 hundred lawyers participate in other parts of our alcohol/stress program which includes visiting and counseling.
313	Chair Shetterly	Closes public hearing.
<b><u>HB 2451 Work Session</u></b>		
318	Rep. Lowe	<b>MOTION: Moves HB 2451 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 9-0</b>
	<b>Chair</b>	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>REP. EDWARDS will lead discussion on the floor.</b>
<b><u>HB 2264 Public Hearing</u></b>		
338	Chair Shetterly	Opens public hearing on HB 2264.
346	Counsel Felton	HB 2264 prohibits Mental Health and Developmental Disability Services Division from collecting for cost of care in state institutions under certain circumstances.
356	<b>Bob Joondeph</b>	<b>Director, Oregon Advocacy Center</b>  States that he is available for any questions.
360	<b>Allen Tressider</b>	<b>Oregon Advocacy Center</b>  Discusses the language of HB 2264 and how it might allow a resident of a state hospital facility to instigate litigation based upon the fact that they were in the institution.

390	Rep. Williams	Feels that the initial problems with the way the bill has been written has been resolved.
412	Rep. Uherbelau	States that people who are confined have already gone through an adjudication and had do-process of the law.
419	Chair Shetterly	Did anyone testify in opposition to this bill when it was in public hearing before?
423	Tressider	No one testified against it, we have been the only people before you on this issue.
433	Rep. Witt	Believes that there were several cases that would have cost the state significant amount of dollars.
440	Rep. Williams	Discusses the cases brought up in the last committee meeting and why these cases were not prosecuted. States that there might be a situation where someone who is institutionalized might bring a case for injury based upon the level of care being provided by the institution.
474	Rep. Witt	Expresses the concern of Rep. Williams that it wasn't that the state would lose the cost of care that was provided for the patient, but that a resident of the facility would make a claim and blame the facility for negligence.
490	Rep. Williams	Feels that with further explanation about those kind of suits from Mr. Joondeph and Mr. Tressider , he dropped his concerns about this bill.
<b>Tape 30, B</b>		
041	<b>Margaret Johnson</b>	<b>Deputy Administrator, Oregon Department of Human Resources</b>  Testifies that her division does not oppose HB 2264. Discusses that no case she knows of would be affected by this bill, but there remains a possibility that there would be an increase in liability to the state.
059	Chair Shetterly	Closes the public hearing.
<b><u>HB 2264 Work Session</u></b>		
061	Chair Shetterly	Opens work session on HB 2264.
062	Rep. Witt	Expresses his opposition to the bill. States that this bill undermines the policy of the money going to the cost of care and causes a risk to the tax payers.
078	Rep. Walker	Relates that there are no checks and balances if the state takes back the money



		for cost of care because the facility was negligent. Feels that if the facility is at fault and they still receive their money back, they will never change the level of care.
087	Chair Shetterly	Comments on the two issues: Recoupment of costs previously incurred and liability to pay for care in the future at the state's expense.
096	Joondeph	Defines that the way the bill is written, any monies that can be identified as coming from a damage award could not be collected as cost of care.
103	Tressider	This bill does not effect any other assets that the patient might have now or in the future, but it sets aside the award amount as not recoverable.
109	Rep. Lowe	Would if a resident is injured by someone not connected to the institution, could they recoup costs from the awarded damages?
123	Joondeph	Yes, those monies would not be protected by this bill.
125	Rep. Lowe	Asks whether the injured person be allowed to make the institution accountable?
131	Rep. Uherbelau	Discusses that the state does have to be accountable if they are negligent and the policies effecting this negligence.
153	Rep. Williams	Discusses how this bill will require these institutions to make it safer for the residents.
175	Rep. Witt	Expresses concern whether the level of care would be a higher level due to this bill passing and discusses different situations involving the effect of care.
202	Chair Shetterly	Discusses economic damage for cost of future care.
216	Joondeph	States that the patients who may have been injured will have to prove damages in order to collect an award and the medical will be paid.
238	Chair Shetterly	How about non-economic damages and what is the torte limit in a suit against the state?
240	Joondeph	Relates that for individual harm it is \$250,000.00.
244	Rep. Uherbelau	Expresses her concern for the patients that have no choice, but to be there and this person should have redress.
263	Rep. Walker	Advises that according to this bill, family members will be able to collect on any

		judgement received, but will not be able compensated for the loss of their loved ones. Are pain and suffering awards exempt from execution under normal circumstances?
280	Rep. Witt	Refers to the fact that the tax payers are providing the dollars that are required to support these residents of these institutions. Asks if it is appropriate to ignore the tax payer's contribution?
304	Rep. Backlund	States that if the state could not recapture the money, it would be unfair to the state.
328	Johnson	Expresses her feeling that these people are patients, either involuntary or voluntary, and are receiving treatment for their mental illness.
337	Rep. Backlund	If this bill passes, the state would have no claim to the money that was awarded to the patient.
345	Tressider	States that if the institution was liable for the injury, they would not have a claim against that award.
350	Rep. Backlund	Comments on fairness, if the state was liable and the patient's award was used for his cost of care.
366	Joondeph	Reiterates the policy of the bill which is justice to the patient and to allow the patient compensation for damages. Discusses a case where the money is voluntarily turned over to the state for cost of care and that there is that option.
440	Rep. Witt	Relates that these institutions are giving a very high level and expensive care to the patients, but is it fair if they are never given any money for this quality care.
472	Rep. Uherbelau	Most of the people that are in these facilities are there involuntarily. The state has decided that these people cannot be out in the streets, so they put them in an institution and then if their actions injure a patient, they make them pay for cost of care with the award. This is not just an issue of justice, but a moral issue.
<b>Tape 31, B</b>		
036	Rep. Wells	Asks if a patient that was awarded money for injuries could be represented if that award money was going to the state?
043	Chair Shetterly	States that the attorney's compensation comes from the award, so if there is no net award, there is no compensation.
046	Rep. Wells	Feels that justice would not be served in this case.

051	Chair Shetterly	States that if risk management saw this as representing a substantial risk expense to the state, they would be here to testify.
063	Johnson	Discusses the incidents where the state isn't liable and there is an agreement instead of a law suit.
078	Rep. Backlund	Feels this bill is very difficult because of his responsibility toward the state and the tax payers, but with empathy toward the patient of the institution.
<b>087</b>	<b>Rep. Edwards</b>	<b>MOTION: Moves HB 2264 to the floor with a DO PASS recommendation.</b>
<b>100</b>	<b>Rep. Uherbelau</b>	<b>VOTE: 7-2</b> <b>AYE: 7 - Edwards, Lowe, Uherbelau, Walker, Wells, Williams, Shetterly</b> <b>NAY: 2 - Backlund, Witt</b>
	<b>Chair Shetterly</b>	<b>The motion CARRIES.</b>  <b>REP. WILLIAMS will lead discussion on the floor.</b>
097	Chair Shetterly	Introduces LC 2553 for vote.
100	Rep. Uherbelau	Discusses her objection of this committee bill.
110	Rep. Williams	Explains LC 2553 and what it accomplishes.
138	Rep. Uherbelau	Further discusses her objections to this bill.
<b>152</b>	<b>Rep. Edwards</b>	<b>MOTION: Moves to ADOPT LC 2553 amendments dated 02/08/99.</b>
<b>160</b>	<b>Chair Shetterly</b>	<b>VOTE: 7-2</b> <b>AYE: 7 - Edwards, Lowe, Walker, Wells, Williams, Witt, Shetterly</b> <b>NAY: 2 - Backlund, Uherbelau</b>
	<b>Chair Shetterly</b>	<b>The motion CARRIES.</b>

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,  
Administrative Support Counsel

**EXHIBIT SUMMARY**

**A - HB 2221, Written testimony, Ben De Haan, p. 3**

**B - HB 2222, Written testimony, Ben De Haan, p. 1**

**C - HB 2222, Written testimony, Diane Rea, p. 1**

**D - HB 2451, Written testimony, Kirk Hall, p. 7**

**E - Copy of LC 2553, p 1**