

HOUSE JUDICIARY COMMITTEE ON CIVIL LAW

February 15, 1999 Hearing Room 357

1:00 p.m. Tapes 32 - 33

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

MEMBER EXCUSED:

STAFF PRESENT: Aaron Felton, Counsel

Nancy Richards, Administrative Support

MEASURE/ISSUES HEARD: HB 2204

HB 2223

HB 2256

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 32, A		

004	Chair Shetterly	Call meeting to order at 1:14 p.m.
HB 2204 Public Hearing		
013	Counsel Felton	HB 2204 allows administrator or court to order support for offender placed in custody of Oregon Youth Authority after prosecution as adult.
025	Kathy Brazeau	Deputy Director, Oregon Youth Authority (OYA) Testifies and submits testimony in support of HB 2204 (EXHIBIT A). Discusses how this bill will help ensure that the parents of all offenders under the age of eighteen fulfill their parental support responsibilities. Gives the background of the support issue in OYA.
048	Rep. Uherbelau	Can you collect child support for the Measure 11 offenders?
051	Brazeau	A strict reading of the bill would not allow us to collect child support for those convicted under Measure 11.
054	Rep. Lowe	Would any of the funds from the parents go toward education?
060	Brazeau	Yes. Discusses what the Oregon Youth Authority provides for the student.
072	Rep. Lowe	Are these funds put into a general fund?
075	Brazeau	These funds go into the OYA General Operational budget.
077	Rep. Lowe	Is there any accountability for these funds and how they are spent?
080	Dick Johnson	Assistant Director, Business Services, Oregon Youth Authority Discusses the funds received from the parents and how they are processed.
088	Rep. Lowe	Under Measure 11 cases, does OYA provide rehabilitation services?
093	Brazeau	When the juvenile is convicted under Measure 11, they must attend school and attend treatment services.
097	Chair Shetterly	Explains the concern of OYA is that they might not have the authority to collect the same kind of support from the youth that are coming to OYA from adult court.
102	Brazeau	This allows us to collect the support while the youth remains in child status.

106	Rep. Lowe	Asks if it cost \$75,000 a year to incarcerate a Measure 11 youth?
110	Brazeau	States that the OYA costs are about \$130.00 per day, per youth in the more secure custody, and educational funds for these youth amount to \$23.00 per day.
119	Rep. Wells	How long is the parent responsible for support enforcement?
124	Brazeau	Discusses the ages that they receive child support and under what circumstances.
136	Rep. Wells	Does the bill apply to those youth of ages 18-25 years old?
142	Brazeau	No, We are only trying to get support for those youth who are 15-17 years old and come through Adult court.
151	Rep. Uherbelau	Asks about ORS 416.483 and ORS 416.417 and the language concerning the child under 18 that is not in custody?
167	Johnson	Discusses that ORS 416 provides us with clear instruction on who we may collect child support for and the statutes regarding this policy.
184	Chair Shetterly	States that line 14 and 15 of HB 2204 relates to physical custody.
187	Rep. Uherbelau	Discusses the word, "may", in ORS 416.417 and that it is a more broad language. What is the policy regarding child support when a child has been released?
204	Brazeau	We do not collect support after a child is released. Discusses the lien issue.
211	Rep. Uherbelau	Advises that the OYA look at the Statutes, 416.417 and 416.483 to see if they conflict.
215	Rep. Witt	Explains his understanding of the word, "may" in ORS 416.417.
230	Rep. Wells	Asks about the meaning of "youth offender" as it applies in Adult court.
236	Brazeau	Defines "youth offender" according to the statutes.
245	Kathie Osborn	<p>Juvenile Rights Project</p> <p>Testifies against HB 2204. Explains the functions of the Juvenile Rights Project. Discusses the process where a youth may move from the Department of Corrections to the Oregon Youth Authority. States concerns that HB 2204 will make it legally possible for the OYA administration to transfer the youth to the Corrections division if the parents are not paying the support and the harm of</p>

		incarcerating youth in an adult facility.
404	Rep. Witt	Would it correct the problem to require the same parental support for the juveniles that come from Adult court as the juveniles that come from Juvenile court?
410	Osborn	States that the costs under the Department of Justice and the costs under the OYA are different, so I do not know if it would solve the problem.
420	Rep. Witt	Would it take away any incentive to pay support by the parents if these kids were shifted into the Department of Corrections?
423	Osborn	If the juveniles were moved to the Department of Corrections and the parents were not paying support, would the department have to keep them.
439	Rep. Witt	States that some kind of requirement is needed so that the Juvenile court cannot transfer a juvenile because a parent is not contributing support.
447	Rep. Wells	Would a parent want the youth moved to the Department of Corrections so they would not have to pay child support?
459	Osborn	The parent would not have the authority to move these youth unless they told the child to sign the waiver.
472	Rep. Walker	There is nothing in the bill that mandates that the OYA can send a juvenile to the DOC, but they could.
480	Osborn	This bill does not go to the statutes which actually deal with the transfer of youth from one division to the other, so the problem is not in this bill.
Tape 33, A		
039	Rep. Walker	Expresses her feelings about parents not able to pay and their child being put into the DOC.
044	Rep. Uherbelau	When you determine what the support should be, do you use the same guidelines as you do in a regular dissolution of marriage case?
047	Brazeau	States that the Support Enforcement Division could elaborate on this question.
049	Rep. Uherbelau	You presume at least a minimum wage to both parents even if they are incapable of working?

054	Brazeau	Adds that the DOC does not have very many youth in their facility.
057	Ronnelle Shankle	Support Enforcement Division (SED), Department of Justice Testifies in support of HB 2204. Discusses the OYA cases that are referred to the SED and how this process works.
064	Rep. Uherbelau	Would you still go to the parents for support if the family was not intact or if the youth was not living at home?
068	Shankle	Explains that there are two cases, one against mother and one against father regardless if the family was intact.
073	Rep. Uherbelau	Would the department have any problem putting some kind of language in the bill that "in no event would the youth be transferred because of failure to pay support"?
083	Brazeau	Discusses the reasons for the transfers.
091	Rep. Witt	Does the Juvenile court have the incentive to transfer youth?
095	Osborn	No, because the Juvenile court orders that they be placed in the custody of the OYA for placement at a training school or parole them which would not involve support orders.
108	Brazeau	States that the DOJ and the SED try to be fair with the youth regarding transfers and they try to do what is the best for all involved. These agencies donit even know which youth receive support.
119	Chair Shetterly	Closes public hearing.
<u>HB 2223 Public Hearing</u>		
126	Counsel Felton	HB 2223 requires that all verdicts, arbitration awards and judgments separately state amount of punitive damages awarded under verdict, award or judgment.
135	David Schuman	Deputy Attorney General, Department of Justice (DOJ) Testifies and submits testimony in support of HB 2223 (EXHIBIT B). Discusses how HB 2223 specifies the DOJ's status as judgment creditor against the plaintiff and the three events that are involved in this process. Discusses how this bill eliminates the attorney's duty to inform the DOJ of judgments and puts that responsibility on the clerk of the court.
190	Rep. Uherbelau	Discusses the language change to page two, lines 25-32 of the bill and the

		interests that it would involve. Should this be clarified?
204	Schuman	I do not see any reason why the language couldn't be changed, making it more explicit.
210	Rep. Wells	Asks how compensatory damages are figured and are they a fixed sum? How would you move those funds from punitive to compensatory without some facts?
224	Fred Boss	Department of Justice Testifies in support of HB 2223. Discusses the punitive damage awards and how they are processed.
241	Rep. Williams	Concerning the language on page two, lines 15-17 of this bill, does it leave the option to the clerks as to which three events triggers the five-day deadline for the arbitration award or entry of judgment?
255	Schuman	Yes, that is what we are intending to accomplish.
261	Rep. Witt	States that the amount of settlement never gets equated into the punitive damages.
268	Boss	Yes. When you have a settlement, rarely do you characterize something as punitive damages
274	Schuman	Many settlements occur before trial has even begun and this bill would have no effect on those settlements.
281	Rep. Lowe	Why is the state getting 60% of the punitive damages?
285	Schuman	Explains the history of this bill.
296	Rep. Lowe	Yes, but why does the state get the 60% of the damages?
298	Rep. Williams	Discusses the theory behind the percentage given the Attorney General and the determination of the state's award.
318	Mary Ellen Johnson	Criminal Injury Compensation Account Administrator Testifies in support of HB 2223. Discusses how the criminal injuries compensation account originated at 50% of punitive damages, then changed to 60%. Discusses statistics on punitive damage awards received.
350	Rep. Lowe	Are punitive damage awards even assessed against wrongdoers?

357	Chair Shetterly	States that the jury doesn't even know about the allocation of the awards, so it wouldn't effect the jury's deliberation.
359	Schuman	Discusses the theory behind punitive damages.
381	Rep. Williams	States that a number of states have abolished punitive damages.
391	Rep. Walker	Comments about the statute that indicates says the state gets 60%, 40% to the prevailing party, 20% goes to the attorney, and the victim gets 20% of the settlement.
398	Boss	States that in his agency, they have not seen any fall-off of punitive damage awards.
407	Chair Shetterly	Explains the contingency fee.
416	Bradd Swank	Oregon Judicial Department Testifies against HB 2223. Discusses how this bill will incur more costs and gives some suggestions on how to lower the these costs. Discusses the word "verdict" on page 2 of the bill and the concern with this language.
Tape 32, B		
020	Rep. Williams	Has an analysis been done on the cost for clerks?
022	Swank	No, but we need to hire someone who is legally trained to read the judgments and interpret them for court clerks. Discusses ways they could afford this study.
034	Rep. Williams	States that the bill requires a line on the judgment that specifically sets out an award of punitive damages and that it seems that it wouldn't take someone legally trained to read this line.
039	Swank	Currently, the clerks are not required to make this determination. Discusses the process of money judgments.
054	Chair Shetterly	Is there an enforcement or penalty for an attorney if they fail to notify the Department of Justice of a judgment.
059	Boss	No, not that I know of.
060	Swank	There is no enforcement involved, we find out from the newspaper.

064	Chair Shetterly	States that there is a mandate, but no penalty.
065	Rep. Williams	Discusses the DOJ and their rights to the judgment and how this process would work.
074	Swank	Discusses that a hearing is required early on when you file a motion to establish grounds that you have punitive damages and how that ties in with the Attorney General's office.
086	Rep. Williams	Explains that there are a number of people that have to make a request for punitive damages with the court and many are resolved before the judgment stage, so this bill is requiring notice to the DOJ.
097	Swank	Discusses less expensive and more efficient ways for the Judicial department to cooperate with the Attorney General's office to find these judgments.
112	Rep. Lowe	Has tort reform accomplished its goal of what it was intended to do?
130	Chair Shetterly	States that nothing has been solved yet.
136	Rep. Williams	Discusses the one bill that has been successful toward tort reform.
165	Chair Shetterly	Closes public hearing.
<u>HB 2256 Public Hearing</u>		
170	Counsel Felton	HB 2256 prohibits court from waiving fees and court costs if an inmate has or will have funds in a trust account to pay fees and court costs.
193	David Schuman	Deputy Attorney General, Department of Justice (DOJ) Testifies and submits testimony in support of HB 2256 (EXHIBIT C). Discusses the provisions that will discourage frivolous prisoner lawsuits in state court.
244	Rep. Uherbelau	Where does the money come from that goes into the trust account?
249	Jan Londahl	Assistant Attorney General, Department of Justice Discusses the inmates trust account.
259	Rep. Uherbelau	What is the trust fund money used for?
261	Londahl	The main purposes used by the trust fund is for canteen purposes, for certain

		medical services, and all copying and mailing during litigation.
274	Chair Shetterly	Does the net of the prisoner's income go into the trust account?
278	Londahl	Yes, it does.
280	Rep. Uherbelau	Do you have a right to the money that the inmate acquires before he is incarcerated?
288	Londahl	Yes, that is correct. States that it is common for the inmates to have accounts outside the prison.
290	Rep. Uherbelau	Is there anyway to prevent the inmates keeping money from the trust account and putting it in an outside account?
297	Schuman	There is no way to guarantee a trust fund. Discusses indigent status for the inmates.
312	Rep. Uherbelau	Discusses what HB 2256 states about the trust accounts and the involvement of affidavits regarding their outside accounts.
328	Londahl	It is impossible for the courts to investigate every inmate's outside financial holdings.
348	Rep. Uherbelau	Do they have to file affidavits in the beginning of their incarceration regarding their outside finances?
353	Londahl	Yes, they have to sign an affidavit or statement as to their resources.
357	Rep. Uherbelau	Discusses Section 3 of HB 2256 and how it effects the trial court judge's decision.
373	Schuman	Discusses the trial court judge's judgments.
384	Rep. Uherbelau	Why isn't the Court of Appeals making that decision instead of the trial court judge?
390	Londahl	Explains that this provision is designed to deter frivolous appeals taking up appellate court's time. A judgment call is made by the trial court whether the appeal was made in good faith.
406	Chair Shetterly	What is the fee that is referred to in ORS 21.605?

410	Londahl	The appellate court fee is \$400.00.
413	Rep. Uherbelau	Why in Section 6 & 7, wasn't it required to have written findings if the case is frivolous or malicious?
429	Londahl	We could require trial courts to make findings, but in the ordinary case, trial courts do not make findings when they dismiss a lawsuit for failure to state a claim.
445	Rep. Uherbelau	States that usually, when an attorney asks for findings, the court gives it to them whether on the record or in a written request.
451	Schuman	States that the most serious consequence for the inmate making a frivolous case is imposing a \$25.00 fee. This bill is to prevent a burden on the judicial system and others who process these appeals to not have to spend time on each frivolous case.
476	Rep. Uherbelau	Feels that this process would close the door for a petitioner to file a claim.
484	Schuman	Clarifies that this is not a dismissal with prejudice, but a dismissal to start the process over again and the inmate pays the fee.
Tape 33, A		
015	Rep. Williams	Discusses Section 7 and what the courts do in civil action cases with misrepresentation of information.
022	Londahl	States that he doesn't know the answer to these problems.
031	Rep. Walker	Does the court take into consideration that inmates are required to have cut backs in their work hours which decreases their pay and then their lawsuits are dismissed?
040	Londahl	Explains that lawsuits will proceed whether or not the inmate has money in his account, unless it is a frivolous suit. Discusses how the court costs are collected from the inmate's account.
052	Rep. Walker	When does an inmate have to pay for litigation?
056	Londahl	Discusses the court costs and how they are instigated.
068	Chair Shetterly	How many frivolous prison litigation cases against the state get filed a year?

074	Londahl	Discusses how many civil tort actions were filed during the last five years.
100	Rep. Lowe	How many of those cases would you consider to be frivolous?
102	Londahl	Discusses the different kinds of frivolous cases and how many times they occur.
127	Rep. Lowe	Asks if this bill would be designed to discourage personal attacks and personal tort claims against the state?
134	Londahl	Yes, all the state tort actions have to be brought against the state and this is to discourage pointless litigation.
152	Paul Lipscomb	Circuit Court Judge, Marion County Testifies in support of HB 2256. Relates the different kinds of frivolous cases that falls within the parameters of the bill. Discusses language in the bill that would place a burden with the judicial system in Marion County.
336	Chair Shetterly	Closes public hearing. Introduces LC Committee bills: LC 1266, LC 1263, LC 3088, LC 2195, LC 1454, LC 3353, and LC 3381.
365	Rep. Uherbelau	Expresses her objection to LC 1266 and LC 2195.
387	Rep. Wells	MOTION: Moves LC's: 1266, 2195 BE INTRODUCED as committee bills.
413	Chair Shetterly	VOTE: 7-2 AYE: 7 - Backlund, Edwards, Walker, Wells, Williams, Witt, Shetterly NAY: 2 - Lowe, Uherbelau
	Chair Shetterly	The motion CARRIES.
406	Rep. Wells	MOTION: Moves LC's: 1263, 3088, 1454, 3353, 3381 BE INTRODUCED as committee bills.
		VOTE: 9-0

	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
416	Chair Shetterly	Closes meeting at 3:00 p.m..

Submitted By, Reviewed By,

Nancy Richards, Aaron Felton,
Administrative Support Counsel

EXHIBIT SUMMARY

- A - HB 2204, Written testimony, Karen Brazeau, p. 1**
- B - HB 2223, Written testimony, David Schuman, p. 1**
- C - HB 2256, Written testimony, David Schuman, p. 2**