

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

January 27, 1999 Hearing Room 357

8:30 a.m. Tapes 13 & 14

MEMBERS PRESENT: Rep. Mannix, Chair

Rep. Bowman

Rep. Gianella

Rep. Hansen

Rep. Simmons

Rep. Sunseri

MEMBER EXCUSED: Rep. Prozanski, Vice-Chair

STAFF PRESENT: John Horton, Counsel

Patsy Wood, Administrative Support

MEASURE/ISSUES HEARD:

HB 2294 Public Hearing and Possible Work Session

HB 2275 Public Hearing and Possible 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 13, A		
004	Chair Mannix	Calls meeting to order at 8:31 a.m.
<u>HB 2275 PUBLIC HEARING</u>		

005	Chair Mannix	States Rep. Prozanski is still ill and has asked that action on HB 2275 be deferred until he is able to attend. The Governor vetoed a bill last session relating to mail theft.
023	Rep. Sunseri	Asks for a copy of the Governor's veto order.
024	Chair Mannix	We will also get a copy of the bill that was vetoed last session. Asks Counsel to contact the Governor's office and invite them to send a representative when the bill is again presented.
032	Chair Mannix	Closes public hearing on HB 2275.
<u>HB 2294 PUBLIC HEARING</u>		
038	Counsel Horton	Explains HB 2294 increasing the minimum hourly rate of compensation for attorneys appointed to represent indigent persons from \$30 to \$75.
043	Kip Leonard	Lane County Circuit Court Judge Testifies in support of HB 2294. Explains the cost of some attorneys to run their office is almost as much as they are being compensated. Lawyers are asking to be removed from the court-appointed attorney's list, and the rate structure is the deciding factor. To provide competent lawyers, the state needs to compensate them adequately. States there are also contract providers to provide indigent services and that compensation is inadequate also. Cites an attorney in 1999 making less in real dollars than in 1988.
155	Chair Mannix	Discusses enticement options to provide to attorneys to take on indigent defense cases.
184	Leonard	The first option would have an impact on the State Court Administrator's office and I don't want that budget to suffer. It could cost \$2500-\$3000 a year, and I'm not sure how it would divide out for the lawyers. The tax deduction is a novel idea that bears looking at. Lawyers need money to keep their practice going, and even though these suggested deductions/credits might be an option, they might not keep the practice operating.
219	Chair Mannix	States these would be supplemental techniques to keep experienced lawyers working on these indigent cases.
230	Leonard	Explains they rely on a certain number of attorneys with skill to handle these cases, and now many of these lawyers are withdrawing from court-appointed cases.
268	Chair Mannix	Talks about the 2-tier system for judges, and allowing retired public employees who are on the PERS system, who pay their own health insurance premium, to work a certain number of hours per month in exchange for having their health insurance paid. Perhaps retired assistant Attorney General's, retired prosecutors,

		retired public defenders or retired attorneys might be enticed into working with the indigent cases if their health insurance premium was paid.
300	Ann Christian	<p>Director of Indigent Defense Services in the State Court Administrator's Office</p> <p>Discusses "looking outside the box" for new ways to approach ongoing issues. Testifies on HB 2294 discussing what is presently happening with indigent defense and who is qualified to use court-appointed attorneys. Explains current hourly rate since 1983 when the state took over indigent defense from the counties. June 1, 1991 the Judicial Department's budget was provided sufficient monies to pay counsel \$40 per hour except in death penalty cases that receive \$55 per hour.</p>
423	Christian	States that 15% of our indigent defense caseload is provided representation at an hourly rate which means a lower fiscal impact.
TAPE 14, A		
005	Christian	Discusses the problem Judge Leonard is having in Lane County keeping competent court-appointed attorneys on the list for indigent cases. States it is not just a problem in Lane County. Talks about the Judicial Department's budget regarding the Indigent Defense Account, and the resources to run the State courts, the judges, the staff, etc. Talks about the Judicial Conference of all state judges being neutral on this issue, and doesn't want to give the impression that increasing the hourly rate is the Judicial Department's highest priority.
072	Chair Mannix	States he is aware of SB 66 that would create an oversight commission within the judicial branch to provide a buffer between judges and indigent defense.
083	Rep. Sunseri	Asks how \$75 rate was arrived at.
085	Christian	HB 2294 was not pre-session filed by the Judicial Department, but by the Oregon State Bar. It was a resolution adopted by the Oregon State Bar House of Delegates. States she doesn't know how they chose \$75/hour.
105	Rep. Sunseri	States he has to justify this increase to his constituents.
109	Christian	Explains there are other variations.
120	Chair Mannix	States bill has subsequent referral to the Ways & Means Committee.
123	Christian	The 1999-2000 Chief Justice's budget has some money for an increased hourly rate. PLF and Oregon State Bar dues being absorbed for all attorneys providing

		indigent services is an idea she's had before. Discusses the idea of student loans being deferred or forgiven.
176	Chair Mannix	Discusses different scenarios of paying attorneys for doing indigent criminal defense work in these cases.
203	Christian	Summarizes the Judicial Department is neutral on this matter, and the State Court Administrator's office is not opposing the bill.
213	Chair Mannix	Talks about a retired attorney who pays \$1600/yr for PLF could trade off time defending indigent criminal cases in lieu of dues. States he wants to make sure that the indigent defense figures are not seen as a trade-off for the rest of the Judicial branch dollars.
237	Rep. Hansen	Asks what is the relative cost-effectiveness of private attorney vs. public defender ñ do you have an average hourly figure?
255	Christian	Discusses why the public defenders would be at a higher hourly rate than \$40/hr.
283	Rep. Hansen	Asks how the decision is made whether to use public defender or a private attorney?
286	Christian	States judges appoint public defenders and contracted attorneys before going to private attorneys. Only about 15% of the caseload is on a private-bar basis.
318	Rep. Hansen	Is the 15% to supplement the pool of lawyers taking on the indigent cases?
320	Christian	Yes.
322	Rep. Bowman	Why wasn't a tier system developed depending on the severity of the case?
342	Christian	States her approach has been on a tiered basis -- \$40/hr and \$55/hr for death penalty, and there are any number of hourly combinations that could be looked at, but this bill was drafted by the Oregon State Bar.
373	Rep. Simmons	Asks what is the total for indigent defense within the Governor's current budget proposal?
379	Christian	The amount we put forward was \$139 million.
388	Rep. Simmons	States this would increase that budget to \$150 million?
391	Christian	This, plus about \$3.2 million for public defender prosecution salary parity would

		bring us to that level.
395	Rep. Simmons	States Oregon has made decisions to offer indigent defense services to significant numbers who are not required to be offered those services by our constitution. Asks if there is a breakout of the percentage of these folks in comparison to the total indigent defense budget?
405	Christian	Gives a breakdown of figures based on 133,000 cases in 1997.
TAPE 13, B		
006	Christian	States there is some difficulty with overlapping between the U. S. Constitution and Oregon Constitution, as well as the Oregon statutory laws.
022	Rep. Simmons	Asks for breakout in dollars.
025	Chair Mannix	What if we provided by statute, that Class B & C misdemeanors could have the prosecutor enter a waiver saying no jail time so they wouldn't need a defender?
042	Christian	If the District Attorney and the judge could agree at arraignment that Class B & C misdemeanors would not have jail time, then there would be no federal, constitutional right to counsel. States she did some assumptions that if the Oregon Constitution was amended to say no jail for those misdemeanors, and therefore no counsel need be appointed, there would be a cost avoidance of \$5.4 to 9.4 million per biennium.
075	Chair Mannix	Questions whether or not it is politically viable for a district attorney to say "no jail" at the outset.
076	Rep. Bowman	Doesn't the defendant have to have a counsel be part of the conversation to waive jail time?
079	Chair Mannix	Not at the initial arraignment.
082	Christian	However, the Oregon Constitution says I do have a right to an attorney if I don't have the financial ability to hire counsel.
090	Rep. Bowman	States concern that a judge and district attorney could make a deal about a defendant and that defendant was not represented.
092	Chair Mannix	Under the current system they can't.
099	Bob Oleson	Oregon State Bar

		Testifies in support of HB 2294. Over the years, providing adequate funding for indigent defense has been a priority of the Oregon State Bar.
124	John Tyner	Lawyer from Hillsboro on Board of Governors, Oregon State Bar Testifies and submits written testimony in support of HB 2294. (Exhibit A) Shows model of mean average wage profile of Oregon lawyer. (<i>the tape was inaudible</i>).
228	Rep. Sunseri	States the \$40/hr is not all the work an attorney would be doing. You can take as much court-appointed work as you want.
240	Tyner	Correct, most attorneys do not just depend upon the \$40/hr.
263	Rep. Bowman	Asks for the average number of years of experience of attorneys handling indigent cases in his second example.
266	Tyner	Most of those attorneys have 1-2 years of experience. Gives examples.
289	Rep. Sunseri	Discusses that someone might work 7-8 weeks on a case at \$40/hr, but the rest of the year was at a higher rate.
293	Tyner	Relates court-appointed attorney work to that of a real estate agent.
297	Rep. Sunseri	States there are many things in real estate that he doesn't get paid for.
306	Chair Mannix	Asks Mr. Tyner to finish his presentation within 5 minutes.
309	Tyner	States his diagram is to show the type of lawyer that is leaving the system. In summary, states federal mandates and principles.
356	Ross Shepard	Oregon State Bar House of Delegates Testifies and submits written testimony in support of HB 2294. (Exhibit B) Discusses how HB 2294 came about. States at a meeting in Eugene, a resolution was unanimously passed, save 1 vote, that 1) public defender attorneys and their staff be compensated at a rate equal to their counterparts in District Attorney offices, and 2) the hourly rate for court-appointed counsel be statutorily increased to \$75 per hour.
TAPE 14, B		
006	Shepard	States how much less an attorney makes than the district attorney's office. They are looking for parity. Gives an example of salaries and how they're set. Suggests asking for a fiscal impact on the public defender's salary parity also.

037	Chair Mannix	Asks if a figure shows what percentage of criminal defendants privately engage counsel ñ those not considered indigent, and if the figure is broken down by county.
052	James Rice	Oregon Criminal Defense Lawyerís Association Gives example of car mechanic billing \$65 an hour and attorneys having much more expense. Gives testimony on how efficient it is to have an experienced, professional attorney on a case.
121	Rice	Currently the \$75 per hour is being paid to federal public defenders in Oregon which is a fair amount. Law is about service, not about making money.
135	Rep. Gianella	Asks Mr. Rice how he feels about retired attorneys and their experience.
139	Rice	Discusses an attorney in his office being "of counsel". However, at 65-70 years of age, older people may not be capable of working the long hours and may have lost some mental quickness.
164	Chair Mannix	Asks if Mr. Rice is saying the senior judges shouldnít be serving the 30 or 35 hours a month that theyíre serving?
166	Rice	No. States a judge doesnít prepare a case the way an attorney does and gives specific responsibilities attorneys perform.
176	Chair Mannix	Earlier suggestion of using retired attorneys was just to supplement the system.
197	Rep. Bowman	Asks if indigent defense lawyers being paid significantly less is a national problem?
204	Rice	Yes.
221	Rep. Bowman	Asks if this is a public relations problem.
226	Rice	We need to have minimum levels of funding and that is what this bill addresses.
236	Tyner	Explains there could be places for older individuals in this indigent defense system, especially in mentoring young lawyers or as counsel to small firm contractors.
260	Chair Mannix	Closes public hearing on HB 2294. Adjourns meeting at 10:13 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A ñ HB 2294, written testimony of John J. Tyner III, 1 pg

B -- HB 2294, Resolution of Oregon State Bar, Ross Shepard, 1 pg