

## HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

March 4, 1999 Hearing Room 357

8:30 a.m. Tapes 64 - 68

**MEMBERS PRESENT:** Rep. Mannix, Chair

Rep. Prozanski, Vice-Chair

Rep. Bowman

Rep. Gianella

Rep. Hansen

Rep. Simmons

Rep. Sunseri

**STAFF PRESENT:** John Horton, Counsel

Patsy Wood, Administrative Support

**MEASURE/ISSUES HEARD:** HB 2494 Public Hearing

HB 2596 Public Hearing

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 64, A		
004	Chair Mannix	Calls meeting to order at 8:35 a.m.
<u>HB 2494 &amp; HB 2596 PUBLIC HEARING</u>		

044	Counsel Horton	Explains the difference between an affirmative defense, which requires a preponderance of evidence, and the usual defense that must establish a reasonable doubt in order to acquit. In the case of murder or manslaughter, a possible affirmative defense is the "spiritual treatment defense". HB 2494 would eliminate the spiritual treatment defense for murder, manslaughter, criminal mistreatment and criminal nonsupport. HB 2596 restricts the spiritual treatment defense to crimes in which the victim is at least 18 years old and knowingly and voluntarily elects to be treated solely by spiritual means. It also modifies the definition of child abuse for purposes of child abuse reporting. It eliminates the spiritual treatment defense for criminal non-support. Discusses the ñ2 amendments to HB 2494 ( <b>EXHIBIT A</b> ).
098	<b>Rep. Bruce Starr</b>	<b>State Representative, House District 3</b>  Testifies in support of HB 2494. Discusses the rights of children and the intervention that might be needed to save the life of a child. HB 2494 re-balances the state's compelling interest in preserving life with religious and parental rights. Supports the ñ2 amendments ( <b>EXHIBIT A</b> ). Thanks Rep. Lowe for her effort in drafting the amendments.
150	<b>Russell Briggs</b>	<b>Citizen of Oregon</b>  Testifies and submits written testimony in support of HB 2494 and HB 2596 ( <b>EXHIBIT B</b> ). Discusses his background of being raised in a family that practiced faith healing. Discusses lack of medical attention during childbirth and immediately thereafter. Encourages a change in the law so no children would have to die due to the misguided beliefs of their parents.
266	Rep. Prozanski	Since HB 2494 and HB 2596 are similar now with the ñ2 amendments, are you going to have Rep. Lowe as a co-sponsor to emphasize the bi-partisan character of this issue?
281	Rep. Starr	This is not a partisan issue. I would have no objection in adding Rep. Lowe.
292	Rep. Bowman	Are the two bills identical if the ñ2 amendments are adopted?
294	Rep. Starr	I believe so.
312	<b>Rep. Kathy Lowe</b>	<b>State Representative, House District 26</b>  Testifies and submits written testimony in support of HB 2494 and HB 2596 ( <b>EXHIBIT C</b> ).
387	<b>Larry Lewman, M.D.</b>	<b>Oregon State Medical Examiner</b>  Testifies and submits written testimony in support of HB 2494 and HB 2596 ( <b>EXHIBIT D</b> ). Discusses ORS 146, the statute that directs the investigation of unexplained deaths in Oregon. Discusses the history of the "religious exemption" in the United States. Discusses the Oregon City deaths of three children over a 7-month period in the Followers of Christ religious group. There have been 18 deaths in the last 10 years in this spiritual group. Discusses how these deaths

		<p>occurred, indicating most or all could have been prevented with medical care. Indicates the repeal of the religious exemption has the support of a wide variety of interested parties including law enforcement, religious and professional groups.</p>
<b>TAPE 65, A</b>		
139	<b>Arthur LaFrance</b>	<p><b>Professor, Lewis &amp; Clark Law School</b></p> <p>Testifies in support of HB 2494. Discusses spiritual treatment defense as a matter of criminal law. Indicates that the definition of spiritual treatment is so broad that it raises problems rather than settles them. Because the definition is over broad, it tends to establish religion, only certain religions, as a defense for a crime. This conflicts with part of the First Amendment to the Constitution. In the Oregon Criminal Code the mental state of the defendant can be considered as part of the circumstances. Establishing spiritual treatment as a defense is redundant. Discusses constitutional law aspect of HB 2494. The state has a legitimate interest in the health, welfare and lives of all its citizens. HB 2494 removes the spiritual treatment defense for children but it preserves the First Amendment interests of the parents. Discusses case law as it relates to parental interest in the health and well being of their child.</p>
295	Rep. Sunseri	<p>We have a long history of people who live out their convictions. If we pass this law and make lawbreakers out of otherwise good citizens, how will we stop them from acting on these convictions? How will we solve this problem?</p>
320	LaFrance	<p>This is an important question. When I teach, I call this the problem of conscience. Discusses the various options open in the law to defend someone acting unlawfully but obeying the dictates of their conscience. Discusses the sentencing of people who acted according to the dictates of conscience. If someone is powerfully religiously motivated, we have an obligation to respect their conscience while asserting our interest.</p>
352	Chair Mannix	<p>Indicates that without the opportunity for a spiritual treatment defense, intervention in these cases may be easier to do.</p>
357	Lewman	<p>These bills will work. These people follow the existing law, they are not lawbreakers.</p>
367	Rep. Prozanski	<p>Asks about deaths that were cited due to birth and pregnancy. Asks if the legislature should reconsider midwifery?</p>
383	Lewman	<p>No, I believe I said that the still births during pregnancy were probably beyond the ability of the legislature to do anything. I'm concerned about the living children.</p>
396	Chair Mannix	<p>Explains that midwifery requires training.</p>
398	Rep. Prozanski	<p>Discusses statute of murder by abuse. Do you believe individuals should be</p>

		treated on a case by case basis, taking into account their mental state?
423	LaFrance	Yes. Our existing laws can accommodate whatever religious conviction people have as revealed in the facts developed in the courtroom. Discusses the "reckless indifference" language that appears in the penal code. Someone acting out of a religious belief may have performed recklessly, but could hardly be thought to be indifferent.
<b>TAPE 64, B</b>		
010	Rep. Prozanski	If a mother, based on religious beliefs, denies her child medical care, should she be accountable to the same level as someone commits murder?
017	LaFrance	No. Discusses levels of accountability.
018	Rep. Prozanski	We should recognize the mental state of the person involved and, taking this into account, sentence appropriately?
021	LaFrance	All criminal law is a two step process. First, we find the degree of culpability and then we decide what the sanction should be.
027	Rep. Lowe	Discusses the task of prosecuting one of these cases. It's likely that a district attorney would probably charge it as manslaughter rather than murder. Ample opportunity is given under the law to defend on the basis of conscience.
043	Rep. Prozanski	But a person could be charged with murder.
047	Rep. Gianella	Discusses how these bills treat adults. Asks what "solely" as used in the statute means. If a doctor is consulted at all, does that invalidate their choice?
058	Rep. Lowe	If they are knowingly and thoughtfully applying their options, then the defense applies.
064	Rep. Gianella	Would it be better to strike the word "solely"?
067	Rep. Lowe	If someone dies, whatever treatment has been given, based on that person's wishes, is okay. Relying on many treatments doesn't invalidate the defense.
095	Rep. Gianella	At what point are adults considered competent? An elderly person has decided to rely on prayer, is there some point when they wouldn't be considered competent anymore?

098	Chair Mannix	Discusses the law as it relates to competence.
113	Rep. Prozanski	Discusses inserting the word competent in several places in HB 2596.
122	LaFrance	Discusses the phrases "knowingly and voluntarily" as they relate to religion. Believes that adding the word "competently" would bring in new meanings.
141	Rep. Bowman	Are the whole host of people who are supposed to report child abuse under current law not required to report it if religious treatment is being given?
150	LaFrance	I don't know.
154	Chair Mannix	I don't know if it would fit into the relating clause of this bill.
157	Rep. Lowe	It does. This bill removes that defense. Anytime that child comes into contact with the people on the list required to report suspected abuse, they have a responsibility to report.
175	Rep. Bowman	When you spoke of the prosecution process you indicated that the district attorney probably wouldn't seek a murder indictment. Is that correct?
185	LaFrance	Discusses the process of prosecution as it relates to child abuse.
197	Rep. Bowman	Under current Oregon law there are mandatory minimum sentences and the jury and judge will have no opportunity to determine an appropriate sentence.
204	LaFrance	The defendant could be acquitted of the higher offense.
221	<b>Deputy Jeff Green</b>	<b>Clackamas County Sheriff's Office</b>  Testifies and submits written testimony in support of HB 2494 and HB 2596 <b>(EXHIBIT E)</b> . Discusses the case of Bo Phillips who died because medical treatment was not given for religious reasons. Asks for support of HB 2494 and HB 2596.
332	<b>Robert Walliker</b>	<b>Detective, Multnomah County Child Abuse Team</b>  Testifies and submits written testimony in support of HB 2494 and HB 2596 <b>(EXHIBIT F)</b> .
400	<b>John Stratford</b>	<b>Washington County Sheriff's Office</b>  Testifies and submits written testimony in support of HB 2494 and HB 2596 <b>(EXHIBIT G)</b> . Discusses the balancing of a child's right to life against the religious and parental rights of their parents.

**TAPE 65, B**

005	Rep. Sunseri	How does the belief that parents in these religious groups will obey the law of the land fit with the parents who give their children peyote as a part of a religious ceremony? They are defying the law presumably based on their strongly held convictions.
018	Stratford	Discusses respecting the secular laws in relationship to religious beliefs.
024	Chair Mannix	Discusses the legislative history of peyote use in religious ceremonies. Indicates the Supreme Court has held there is no religious right to use peyote.
036	Stratford	If someone under the influence of peyote were to cause harm, there would not be a statutory exception allowing them to do this based on their religious beliefs. They would be held accountable.
043	Rep. Sunseri	We're talking about parents who give their children peyote in a religious ceremony and may cause harm to them.
048	Rep. Hansen	Are there similar problems in Washington County as well as Clackamas County?
051	Stratford	Yes, we have similar problems. Discusses automobile accidents where children weren't restrained.
064	Walliker	We hope the passage of this legislation will result in the saving of lives.
077	<b>Pat Mahon</b>	<b>Citizen of Oregon</b>  Testifies in support of HB 2494 and HB 2596. Discusses her father being a Christian Scientist. Discusses having rheumatic fever from the age of 6-11 years of age and the damage this caused to her heart. She was told being sick was her own fault.
143	Chair Mannix	If you had received medical treatment as a young girl you wouldn't have the physical disabilities which you have today.
145	Mahon	Yes.
150	<b>James Lace</b>	<b>Oregon Medical Association</b>  Testifies and submits written testimony in support of HB 2494 ( <b>EXHIBITS H, I &amp; J</b> ). Discusses the numbers of children in Oregon involved in suspected neglect or abuse. Discusses accountability for medical care and his belief that religious treatment should bear the same scrutiny.

211	<b>Susan King</b>	<b>Oregon Nurse Association</b>  Testifies in support of HB 2494 and HB 2596. Discusses her experience as an emergency care nurse.
246	<b>Rep. Kitty Piercy</b>	<b>State Representative, House District 39</b>  Testifies and submits written testimony in support of HB 2596 ( <b>EXHIBIT K</b> ). Discusses the need to protect children's rights while not infringing upon an adult's right to religious freedom.
300	Chair Mannix	We will probably use HB 2494 as the vehicle on this issue and I'm sure Rep. Starr would be happy to add your name to its support.
323	<b>Dan McCulloch</b>	<b>Seventh Day Adventist Church, Northwest Religious Liberty Association</b>  Testifies in opposition to HB 2494 and HB 2596. The Seventh Day Adventist Church believes in using all methods, medical and prayer, for healing. We are not able to measure the efficacy of prayer. For this discussion that measurement would be very useful. How many children have lost their lives simply because they received medical treatment? That figure is not available.
<b>TAPE 66, A</b>		
002	Chair Mannix	Discusses the interrelationship between spiritual and physical needs and how the balance is made.
019	McCulloch	Discusses trying to deal with perceived abuse of religious freedom. Where is the line going to be drawn between religious freedom and personal rights? The drawing of this line is the difficulty.
050	Rep. Sunseri	How do we decide where to draw that delicate line between religious freedom and personal rights? Do you believe this legislation crosses that line?
058	McCulloch	I believe less law is better when it comes to religious freedom. When the state believes it has a compelling interest to protect children it is difficult to override that.
079	Rep. Bowman	You said doctors are not held accountable if someone dies, but that isn't true. That is why doctors carry malpractice insurance. Are you familiar with that?
085	McCulloch	Yes. Explains that a doctor is presumed to be working for the best interests of the patient.
110	<b>Boulden Griffith</b>	<b>C.H.I.L.D., Inc.</b>

		Testifies and submits written testimony in support of HB 2494 and HB 2596 <b>(EXHIBIT L)</b> . Discusses personal background as a child in a Christian Scientist home. Believes many people of religious sects have been deprived of basic medical knowledge, so they may not be in a good position to judge where the "line" should be drawn for medical treatment.
239	Chair Mannix	Your concerns will be addressed by these bills, won't they?
242	Griffith	Yes. Discusses the current contradictions in the law. All exemptions should be eliminated.
317	Chair Mannix	We're focusing on protecting children by these bills and eliminating any religious treatment defense in regard to them.
326	Griffith	We will be delighted with either bill. HB 2494 is preferable.
342	<b>Donna Kelly</b>	<b>Wasco County Deputy District Attorney</b>  Testifies and submits written testimony in support of HB 2494 and HB 2596 <b>(EXHIBIT M)</b> . This legislation will set the standard for preventing child abuse. Oregon has one of the highest child abuse fatality rates in the nation. People will respond to this legislation and seek medical care for their children. It may be a comfort to take that decision out of their hands.
443	Chair Mannix	You mention in your written testimony members of a church who would gratefully seek medical attention if the law required it.
453	Kelly	Yes, I believe that is true. There can be no possible negative consequences when there is no choice but to seek medical treatment.
478	Chair Mannix	There are other beliefs that cannot be practiced in Oregon. We don't forbid the belief, just the practice of that belief.
490	Kelly	We need to curtail religious practices when children's lives are at stake.
<b>Tape 67, A</b>		
035	Rep. Sunseri	There is a history of trying to accommodate people's beliefs in this country. I don't believe we will provide comfort to people who have genuine religious convictions with these bills. I believe there will be negative consequences from passing these bills. We will be requiring people to violate their conscience.
053	Chair Mannix	It is all a matter of balancing competing interests.
063	Rep. Sunseri	Is it accurate that a child of 15 years can refuse medical treatment?



065	Chair Mannix	Some kinds of treatment.
068	Rep. Sunseri	If a child of 15 years old can refuse medical treatment, then we may have to adjust the age in this bill.
074	Counsel Horton	It is true that 15 year olds may refuse medical treatment.
075	Rep. Sunseri	This bill would supersede age 15 if we use age 18.
077	Chair Mannix	We'll look into that.
078	Rep. Gianella	You mentioned that Oregon has the highest child abuse fatality statistics in the nation?
080	Kelly	A few years ago, Oregon was the second or third in the nation for child abuse fatalities.
096	<b>Rita Swan</b>	<b>President, C.H.I.L.D., Inc.</b>  Testifies and submits written testimony in support of HB 2494 and HB 2596 ( <b>EXHIBIT N</b> ). Discusses her son's death. Discusses the Christian Science belief that illness is due to sin. Discusses national statistics on deaths due to lack of medical care for religious reasons. Believes the statistics are only a small portion of the deaths that are actually occurring.
204	Chair Mannix	We have seen medical science make impressive changes in their ability to treat many illnesses since the Constitution was written. We need to make changes in our laws to recognize this ability to treat and cure many previously incurable diseases.
217	Swan	I think parents should do everything in their power to save the life of a child. The state does not have a way to impose accountability on faith healers so you shouldn't recognize it as medical care. We do hold secular medicine highly accountable.
238	Rep. Sunseri	How do the churches who practice faith healing establish the primacy of the law in the face of their convictions?
252	Swan	Discusses the Christian Scientist Church. The church teaches a strong respect for the law. We relied on the church to tell us what the law was. The church has been the subject of expensive civil suits and now interprets the laws relating to medical treatment more rigorously. The deaths that have occurred are reported because it is the law. If medical treatment must be sought, church members will obey these laws.
297	Rep. Sunseri	If a person is truly convinced in their heart that what they're doing is right, then a law can be legal or illegal, but it won't effect the dictates of their conscience. I'm

		not sensing an absolute conviction of conscience that needs to be protected.
318	Swan	Indicates her conviction as a Christian Scientist was mixed with a lot of fear. Permission to go to a doctor would have been accepted. But as long as the church said no medical care, they were too afraid. If it didn't work, there was no way to go back to the church.
341	Chair Mannix	Discusses the different types of convictions in the Catholic Church.
361	Rep. Bowman	The issue isn't the exemption, it is the issue of what that exemption means. If we take the exemption out of the law, then it means you have to make your case to the district attorney rather than just claim that exemption.
396	Swan	Good intentions are not all it takes to be a good parent. The criminal code should have a range of penalties, so we also may penalize reckless behavior even if done with good intentions.
422	<b>Wendy Bourg</b>	<b>Oregon Professional Society on the Abuse of Children</b>  Testifies and submits written testimony in support of HB 2494 and HB 2596 ( <b>EXHIBIT O</b> ). Indicates the members of their organization are aware of the difficulty of achieving an appropriate balance between religious freedom and parental and personal rights.
<b>TAPE 66, B</b>		
046	<b>Bruce Spilde</b>	<b>Oregon Professional Society on the Abuse of Children</b>  Testifies in support of HB 2494 and HB 2596.
055	<b>Robert Moulton</b>	<b>Attorney, Eugene, Oregon</b>  Testifies and submits written testimony in opposition to HB 2494 and HB 2596 ( <b>EXHIBIT P</b> ). Believes the laws are adequate, but haven't been enforced. Discusses his Christian Science background and beliefs.
234	Chair Mannix	The essence of your argument is that it is possible to protect our juveniles because the court can make a determination under the statutes you have referenced.
245	Moulton	We have adequate criminal statutes and we should use them.
313	Rep. Bowman	The current statutes specify that the mandatory reporting requirements exempt reporting on people who are using spiritual treatment.
321	Moulton	Disagrees with that interpretation. Discusses the procedure for reporting and investigating child abuse.

441	Chair Mannix	We are familiar with the process used to investigate child abuse.
<b>TAPE 67, B</b>		
008	Moulton	How can we practice our religion freely when the machinery of the child abuse establishment is out there? What do we tell our children when they are relying on prayer to heal them? We urge you to leave the law as it is.
032	<b>Bruce Fitzwater</b>	Christian Science Practitioner  Testifies and submits written testimony in opposition to HB 2494 and HB 2596 <b>(EXHIBIT Q)</b> . The Christian Scientists in Oregon are living under the assumption that if a child should die in a situation relying on spiritual healing, they would most likely be prosecuted under the criminally negligent homicide. We are concerned about the presumption that medical care is the only way to treat physical illness. There are many ways to treat illness. Responsible and knowledgeable parents should be caring for their children and the District Attorney's Office should prosecute if they fail to do so.
325	<b>Jason Carlile</b>	<b>Oregon District Attorney's Association</b>  Testifies in support of HB 2494 and HB 2596. The confusion that presently exists in the statute is full of risk for the children. I am also here as the prosecutor in many of these cases. These cases are very difficult to prosecute. These are often very good people who are grieved at their loss.
378	Chair Mannix	Did you find any technical problems with HB 2596?
381	Carlile	No.
385	Chair Mannix	Religious freedom can still be used a constitutional defense, even if we don't have it in the statute.
389	Carlile	That's correct.
400	<b>Lisa Millet</b>	<b>Oregon Health Division</b>  Testifies and submits written testimony in support of HB 2494 and HB 2596 <b>(EXHIBIT R)</b> . Discusses the state multidiscipline group that investigates the deaths from child abuse in Oregon. The ambiguity around court decisions and the district attorney's choice to prosecute has caused uncertainty among parents. Our recommendation was to eliminate that ambiguity. There was not a single doctor who was against spiritual healing, if used to augment other types of health care.
<b>TAPE 68, A</b>		
036	Chair Mannix	You may always have access to spiritual treatment and be encouraged to seek

		that treatment. We must insist that medical care be provided also, for children who are sick.
048	Millet	We would encourage people to use all treatments that are available.
055	<b>Ann Durrant</b>	<b>Oregon Doctors of Chiropractic</b>  Testifies and submits written testimony in support of HB 2494 and HB 2596 <b>(EXHIBIT S)</b> . We agree that no child should die due to failure to provide medical care. We are concerned that medical care in the statutes needs to include other types of health care in the definition of licensed medical care and would suggest a change in language to effectuate this. Weid like to change "medical care" to "health care", or "health care provided by a licensed health care practitioner."
126	Chair Mannix	Closes public hearing on HB 2494 and HB 2596. Adjourns meeting at 12:25 p.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Office Manager

#### **EXHIBIT SUMMARY**

**A ñ HB 2494, -2 amendments (LC 1938), dated 3/3/99, staff, 2 pgs.**

**B ñ HB 2494, Written testimony, Russell Briggs, 6 pp**

**C ñ HB 2596, Written testimony dated March 4, 1999, Kathy Lowe, 4 pp**

**D ñ HB 2494 & HB 2596, Written testimony dated March 4, 1999, Larry Lewman, MD, 7 pp**

**E ñ HB 2494, Written testimony, Jeff Green, 3 pp**

**F ñ HB 2494, Written testimony dated March 4, 1999, Robert Walliker, 1 pp**

**G ñ HB 2494, Written testimony dated March 1, 1999, John Stratford, 2 pp**

**H ñ HB 2494, Written testimony dated March 4, 1999, James K Lace, MD, 2 pp**

**I ñ HB 2494, Written testimony, Mark Merkens, 2 pp**

**J ñ HB 2494, Excerpt from Pediatrics, Volume 99, No. 2, February 2, 1997, pages 279-280, 2 pp**

**K ñ HB 2596, Written testimony dated March 4, 1999, Kitty Piercy, 2 pp**

**L ñ HB 2494, Written testimony, Boulden Griffith, 2 pp**

**M ñ HB 2494, Written testimony dated March 4, 1999, Donna Kelly, 3 pp**

**N ñ HB 2494, Written testimony, Rita Swan, 2 pp**

**O ñ HB 2494 & HB 2596, Written testimony dated March 4, 1999, Wendy Bourg, 1 pp**

**P ñ HB 2596, Written testimony dated March 4, 1999, Robert Moulton, 8 pp**

**Q ñ HB 2494 & HB 2596, Written testimony dated March 4, 1999. Bruce Fitzwater, 10 pp**

**R ñ HB 2494 & HB 2596 Written testimony dated March 4, 1999, Lisa Millet, 3 pp**

**S ñ HB 2494, Written testimony dated March 4, 1999, Ann Durrant, 8 pp**