

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

April 7, 1999 Hearing Room 357

8:30 a.m. Tapes 123 - 124

MEMBERS PRESENT: Rep. Prozanski, Vice-Chair

Rep. Bowman

Rep. Gianella

Rep. Hansen

Rep. Simmons

Rep. Sunseri

MEMBER EXCUSED: Rep. Mannix, Chair

STAFF PRESENT: John Horton, Counsel

Patsy Wood, Administrative Support

MEASURE/ISSUES HEARD:

HB 3052 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 123, A		
003	Chair Mannix	Calls meeting to order at 8:35 a.m.

HB 3052 PUBLIC HEARING

013	Counsel Horton	HB 3052 defines person with primary custody relating to the Oregon Medical Marijuana Act. Removes affirmative defense from the Medical Marijuana Act and removes the return of seized marijuana.
048	Rep. Prozanski	A work group has been formed for the purpose of working on amendments to HB 3052.
064	Leland Berger	Voter Power Testifies in opposition to HB 3052. The federal government needs to schedule medical marijuana above a schedule 1 controlled substance acknowledging that marijuana has medical uses. Discusses a report published by the Institute of Medicine establishing that marijuana has a medically accepted use. Voter power has requested HJM 10 that tells Congress that marijuana needs to be scheduled beyond schedule 1.
122	Rep. Bowman	Are you part of the work group looking at amendments?
123	Berger	No, but I am in touch with members of the group and I am aware of their work. They have asked for my input and I told them how I feel.
132	Dr. Grant Higginson	Oregon Health Division Testifies and submits written testimony as neutral to HB 3052 (EXHIBIT A). The responsibility for the registration of qualified users of medical marijuana is mandated to the Health Division. Discusses the Advisory Committee that structured proposed administrative rules (EXHIBIT B) to implement the registration system by May 1, 1999. Discusses a number of issues that could not be addressed in administrative rules, but would need to be modified in statute. One issue is the custodial parent who gives consent for a minor to use marijuana and another issue is the actual number of patients that a primary caregiver can attend at one time. Neither amendment would hinder our ability to administer and implement the registration system.
184	Rep. Bowman	Why was the decision made that a primary caregiver could provide medical marijuana to only one person?
192	Dr. Higginson	A primary caregiver has significant responsibility that means more than simply providing marijuana to a person. In our administrative rules we do not state anything about the number of patients a primary caregiver can manage.
207	Rep. Bowman	What is the health department's definition of "primary caregiver"?
208	Dr. Higginson	On page 3 of the rules I handed out (EXHIBIT B) it defines a primary caregiver as responsible for assisting the person with nutrition, hygiene, financial affairs, home maintenance, or medical care.

217	Rep. Bowman	Terminally ill people often have many people in and out of their house providing care, so how do you determine the definition for a primary caregiver?
226	Dr. Higginson	The definition of a primary caregiver under the Medical Marijuana Act states that the person has to be 18 years or older and maintains "significant responsibility" for a person diagnosed with a debilitating medical condition which means more than just providing the marijuana.
249	Rep. Bowman	Will the registration system be operating by May 1, 1999?
250	Dr. Higginson	Yes.
251	Rep. Bowman	What is the process for a person to receive their registration card?
253	Dr. Higginson	Describes what is necessary to get the registration card.
262	Rep. Bowman	What is the cost of the registration fee?
265	Dr. Higginson	We are planning on setting that fee at \$150 per patient, per year.
267	Rep. Bowman	This Act is to benefit people suffering from debilitating diseases so they are probably not employed or able to move around easily. Why is the cost so high?
279	Dr. Higginson	There is no money to subsidize the registration process since the Medical Marijuana Act (Act) was passed by ballot initiative with no budget considerations. We would need \$150 per patient to cover our costs for registration.
295	Rep. Gianella	If you had six smokers in a room in a nursing or group home smoking marijuana, would the secondary smoke affect other people in the room?
300	Dr. Higginson	If tobacco second-hand smoke affects others, this probably would also.
306	Rep. Hansen	Could you name a situation where a person would be a primary caregiver for more than one person?
311	Dr. Higginson	I don't see anywhere in the Medical Marijuana Act where you would be limited to caring for just one person, but taking care of ten or twenty patients is unreasonable.
337	Dale Penn	<p>Oregon District Attorney's Association</p> <p>Testifies as neutral on HB 3052. Describes the work group that has met to talk about this legislation. The group wanted to make the statute simple so it could be</p>

		administered and enforced without harassment from law enforcement and to ensure that this law would not be misused to conceal commercial operations of growing and selling marijuana. We have a proposal concerning the custodial parent, but no proposal limiting the number of patients that a caregiver could provide care for. The work group would recommend going forward with the proposed amendments we are working on and not HB 3052.
392	Counsel Horton	When will you be done with the amendments so we could reschedule HB 3052?
395	Penn	I don't know.
402	Rep. Bowman	Did you say your proposed amendments do not limit the number of patients that a primary caregiver could care for?
408	Penn	Yes.
416	David Fidanque	<p>Executive Director, American Civil Liberties Union of Oregon</p> <p>Testifies in support of the amendments a work group is compiling for HB 3052. Gives some background as to the implementation of the Medical Marijuana Act and some of the subsequent problems that have occurred. The whole idea of the Medical Marijuana Act was to carve out an exception and a process for patients with debilitating medical conditions and their primary caregiver to register with the Oregon Health Division. The \$150 fee might be a major problem because the original draft rules said that the fee would be \$50. Discusses the need to have as many patients as possible registered in the system to keep track of those who are authorized to grow marijuana and perhaps additional funding for the registration could come from Way & Means.</p>
TAPE 124, A		
072	Rep. Hansen	Do you know how many people might register for this program?
081	Dr. Higginson	As of today's date, we have received 70 applications. Proponents of the measure believe around 500 patients per year will register for the program.
095	Amy Klare	<p>Oregonians for Medical Rights</p> <p>Testifies and submits written testimony in opposition to HB 3052 (EXHIBIT C). We have had over 400 calls for registrants, but I don't know if all those people who called would qualify to register for the program.</p>
105	Rep. Bowman	Discusses the high registration fee and a concern that it may keep people from being able to register for the program.
115	Fidanque	Today was the first time that I heard the fee would be \$150, I thought it was going to be \$50. Discusses the benefits of a patient and caregiver being registered including being excepted from the criminal statutes. Some subsidy

		from the General Fund would be helpful to get patients registered with the Health Division.
150	Rep. Bowman	Can health insurance companies be required to pay the registration fees?
153	Fidanque	I don't know.
155	Rep. Bowman	Doesn't the doctor have to give the patient something to take to the Health Department to register to use medical marijuana?
156	Fidanque	Discusses a schedule 1 substance (like marijuana) cannot be written as a prescription, but a schedule 2 drug could. Physicians run the risk of violating federal law if they assist a patient in obtaining medical marijuana. For that reason, physicians are hesitant to add to a patient's chart that marijuana may mitigate the effects of their illness.
227	Rep. Bowman	What will the process be for law enforcement to determine if someone is entitled to possess medical marijuana?
231	Penn	If a person were registered, their address and the address of their caregiver would be given. Describes how law enforcement officers could check an address to see if it belonged to a registered medical marijuana user.
259	Rep. Gianella	What does it cost a patient for one month to smoke marijuana?
262	Fidanque	Under the Medical Marijuana Act it shouldn't cost the patient anything. The Act would allow the patient or primary caregiver, if they are registered with the Health Department, to grow up to seven marijuana plants to provide the medical marijuana they need. Patients could share marijuana with another registered patient, but there are strict limits on the amount of useable marijuana that can be in one place at one time.
300	Rep. Gianella	What is the process for getting the marijuana plants?
302	Fidanque	There is no legal mechanism for getting the plants, but most of the patients already have access to marijuana.
314	Rep. Gianella	What is the process to get the plants, Mr. Penn?
317	Penn	There isn't any process in the statutes now, but once the legislation gets established, there will probably be the exchange of starter plants between patients.
337	Rep. Gianella	What is the Cannabis Buyer's Club?

348	Berger	The Cannabis Buyeris Club was a national collective of AIDS patients who would distribute marijuana among themselves to alleviate the affects of their illness.
355	Fidanque	A number of the clubs of this type in California were charging membership fees.
359	Berger	The Act provides for the smoking of medical marijuana to be done in private so there wouldnt be public smoking resulting in second-hand smoke.
370	Rep. Gianella	I was talking about a group home or a nursing home.
380	Berger	The care facility should provide a private, designated smoking area so the smoke wouldnt bother other patients. Discusses the problems that could occur in VA hospitals and Section 8 housing if growing medical marijuana was considered a violation of federal law.
399	Rep. Gianella	Are separate smoking rooms required as part of the Medical Marijuana Act?
403	Berger	The requirements of the Act are that the use, cultivation and possession of medicinal marijuana be done in private, not in public view.
409	Fidanque	There is nothing in the Act that would require a group home to permit the use of medical marijuana by any of its patients.
TAPE 123, B		
004	Rep. Gianella	Could you address the issue of a caregiver being responsible for more than one person?
008	Penn	You could have a caregiver for a number of people in one home, but you would have the same issues as with tobacco smoke so that an area would need to be designated for the purpose of smoking.
030	Rep. Gianella	If a caregiver has more than one marijuana smoker in their home, should an amendment be proposed that provides for a smoking room?
034	Penn	That is something we could discuss, but we are more concerned with not restricting the capability of patients who qualify under the Act to register.
045	Berger	Marijuana has been used for 5,000 years and there is no documentation of someone dying from smoking it or from the second-hand smoke. Discusses his representation of medicinal patients and states that not one of these patients ever lived in a group home.

068	Rep. Gianella	Is there any documentation to back up the fact that second-hand smoke from marijuana would not affect other people?
080	Berger	I can provide a bibliography of medical marijuana research, but based on my evidence, there isn't any evidence that second-hand smoke from marijuana has an adverse affect on people.
085	Fidanque	We do not foresee medical marijuana patients in group homes, but in a residence under the supervision of a caregiver.
112	Klare	We have a number of patients in wheelchairs who would like to testify, but we need at least two-weeks notice of any further hearings on HB 3052.
127	Counsel Horton	I would be glad to add you to my list of people who receive the committee agenda by e-mail.
138	Rep. Prozanski	Was there any discussion through the Health Department work group or the proponents of HB 3052 to have the Board of Pharmacy revisit the issue of marijuana being rescheduled in Oregon?
150	Fidanque	Everyone's assumption is that the State of Oregon is not going to "go out on a limb", but will wait for the federal government to reschedule marijuana to schedule 2.
165	Dr. Higginson	It is a federal government responsibility to reschedule controlled substances.
168	Rep. Prozanski	I thought there were two schedules, the federal schedule and a schedule in Oregon statutes that mirrors the federal system.
177	Penn	Even if Oregon made medical marijuana a schedule 2 drug for the purposes of being able to prescribe it, that wouldn't mean the federal government would reschedule medical marijuana.
187	Klare	The Criminal Justice Commission put on a public hearing and at that time the Board of Pharmacy said they had a machine that made marijuana cigarettes, but the federal government shut it down.
197	Dr. Higginson	To write prescriptions for scheduled drugs, a physician needs a number from the Drug Enforcement Agency (DEA) and threatening to revoke a physician's DEA number is the leverage that the federal government is holding over physicians to not participate in the medical marijuana program.
224	Sandee Burbank	<p>Wasco County Resident</p> <p>Testifies in opposition to HB 3052. I have been helping patients get marijuana for the last decade from the federal government. Discusses the Institute of Medicine report saying marijuana does have medicinal uses. I do not have a</p>

		problem with the clarification of "custodial" parent. However, I am opposed to the limit on the number of plants that can be legally grown because there are some conditions where legal patients would need more than 7 plants. Explains her concerns with patients in Veterans Administration hospitals who will not be able to grow marijuana in the hospital, when the marijuana is the only thing that could alleviate affects of their illness. The number of patients a caregiver could attend needs to be decided by the courts.
334	Rep. Gianella	Why are you opposed to more than 7 plants?
336	Burbank	There are situations where patients may need to grow more than 7 plants to fulfill their medicinal needs. Requests adequate notice of another hearing on HB 3052 so patients could appear as witnesses.
356	Rep. Prozanski	Discusses that 36 hours notice has to be given for any public hearing.
410	John English	Director, For Our Children's Children Testifies and submits written testimony in opposition to HB 3052 (EXHIBIT D). Marijuana is a gateway drug and using it for medicinal purposes will bring about an acceptance of this psychotropic drug within Oregon's culture. Discusses an Institute of Medicine report that condemns marijuana smoking as a delivery system and states it should be used only as a last resort for terminal patients. Discusses the side effects of smoking marijuana.
TAPE 124, B		
040	Rep. Prozanski	Closes the public hearing on HB 3052.
041	Rep. Prozanski	Adjourns the meeting at 10:00 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ HB 3052, written testimony submitted by Dr. Grant Higginson, Oregon Health Division, dated 4/7/99, 2 pgs.

B ñ HB 3052, draft of Medical Marijuana OARís submitted by Dr. Grant Higginson, Oregon Health Division, 16 pgs.

C ñ HB 3052, written testimony submitted by Amy Klare, Oregonians for Medical Rights, dated 4/7/99, 1 pg.

D ñ HB 3052, written testimony submitted by John English, For Our Childrenís Children, 6 pgs.-