

**HOUSE COMMITTEE ON JUDICIARY**

**April 18, 1997 Hearing Room 357**

**7:30 AM Tapes 23 - 24**

**MEMBERS PRESENT:**

**Rep. JOHN MINNIS, Chair**

**Rep. FLOYD PROZANSKI, Vice-Chair**

**Rep. ROGER BEYER**

**Rep. JO ANN BOWMAN**

**Rep. PETER COURTNEY**

**Rep. GEORGE EIGHMEY**

**Rep. LANE SHETTERLY**

**Rep. CHARLES STARR**

**Rep. RON SUNSERI**

**Rep. JUDY UHERBELAU**

**Rep. LARRY WELLS**

**MEMBER EXCUSED:**

**STAFF PRESENT:**

**BILL TAYLOR, Counsel**

**SCOTT LUMSDEN, Counsel**

**DAVID AMESBURY, Counsel**

**BRIAN HIGGINS, Administrative Support**

**MEASURE/ISSUES HEARD:**

**Work Session - SB 256, SB 241, HB 3643, HB 3123,**

**HB 2541, HB 2420, HB 2716, HB 2404, HB 2697**

**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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 23, A</b>		
003	Chair Minnis	Calls committee to order at 7:36 AM
<b>HB 2716 - WORK SESSION</b>		
005	Chair Minnis	Opens work session on HB 2716
006	Bill Taylor	Committee Counsel >reads provisions of bill and -3 amendments, <b>(EXHIBIT A)</b>
<b>011</b>	<b>Rep. Sunseri</b>	<b>MOTION: Moves HB 2716 to the floor with a DO PASS AS AMENDED recommendation.</b>
014	Rep. Prozanski	Counsel mentioned that this is limited to when parents are actually at the proceedings and I don't see that language in the bill.
017	Taylor	It is on line 5, page 2 of the -3 amendments.
020	Rep. Shetterly	What does "every stage" mean?
022	Taylor	That would be every time they appear in court.
029	Rep. Eighmey	"Every stage" could mean, unfortunately, more than every hearing because there could be pre-trial conferences, settlements and depositions which are all stages in the process.
038	Chair Minnis	The bill says "a judicial proceeding under ORS 419b," does that constrain it any?
040	Taylor	That is the dependency statute of the juvenile code.
042	Rep. Uherbelau	This was briefly discussed at the hearing and it is my understanding that it is the rights which are given.
052	Rep. Eighmey	If we make it clear for the record that this is only court proceedings, then I think it is acceptable.
056	Rep. Prozanski	The fiscal analysis, as pointed out by Rep. Wells, appears to show that a booklet would be produced. >My concern was, in the original bill, we may be mandating this procedure on the courts.
064	Rep.	Many times when the parents come to the first hearing, they are stressed and often forget their rights, so we wanted them to have something in

	Uherbelau	writing to take home.
069	Chair Minnis	Sometimes only one parent is present too.
073	Rep. Bowman	I wonder if the committee discussed the literacy level of some parents.
078	Rep. Uherbelau	We did talk about those who don't speak English and decided they would have ample time to consult someone who can speak English since they are taking them home.
085	Rep. Sunseri	At the bottom of fiscal statement, it does talk about being able to produce this into four different languages.
087	Chair Minnis	I believe most judges are pretty sensitive to making sure that people understand what's before them.
090	Rep. Eighmey	Does "every stage" mean they have to give it every time?
093	Chair Minnis	My assumption is that they would not, but I don't think this rises to the level of Miranda proceedings.
098	Rep. Sunseri	It does address a very real problem because people are very confused when they are involved with this system.
106	Rep. Uherbelau	So, we are voting on the -3 amendments?
109	Taylor	The -3 amendments replace the original bill.
111	Rep. Shetterly	I will vote for this, but I think it can be cleaned up on the Senate side.
113	Chair Minnis	I think it is clear for the record that we have shown that this is not intended to be onerous.
117	Rep. Bowman	There is legislation in the building that would limit the period of time for reunification of the family, so I am concerned as to how this fits into that legislation.
122	Chair Minnis	Responds that he has asked to have that bill in the Judiciary Committee so that the efforts can be coordinated
124		<b>VOTE: 10-1-0</b>  <b>AYE: 10 - Beyer, Bowman, Courtney, Eighmey, Prozanski, Shetterly, Starr, Sunseri, Uherbelau, Minnis</b>  <b>NAY: 1 - Wells</b>
	<b>Chair Minnis</b>	<b>The motion CARRIES.</b>  <b>REP. VAN LEEUWEN will lead discussion on the floor.</b>
130	Chair Minnis	Closes work session on HB 2716

<b>HB 2404 - WORK SESSION</b>		
132	Chair Minnis	Opens work session on HB 2404
133	Bill Taylor	Committee Counsel >Reads provision of bill and -3 amendments, <b>(EXHIBIT B)</b>
142	<b>Rep. Sunseri</b>	<b>MOTION: Moves HB 2404 to the floor with a DO PASS AS AMENDED recommendation.</b>
144	Rep. Sunseri	We really did change this in regards to the language and I think resolves any concerns that had surfaced.
152	Rep. Uherbelau	Both the defense lawyers and the prosecutors said there was general understanding that this is already being done.
159	Rep. Shetterly	I have no problem with this to the extent that says you can have expert testimony.
163	Rep. Bowman	Did the committee define what the term "expert" meant?
166	Chair Minnis	It is generally a term of art in the legal arena.
167	Rep. Shetterly	That is already covered in the evidence code.
171	Rep. Sunseri	We did talk about experts and concluded that there is a lack of experts in this area.
174	Chair Minnis	It is much like child abuse in that respect.
180	Rep. Bowman	Does that mean that if I see someone with bruises, I am an expert?
181	Chair Minnis	No. This is generally a credentialed person.
182		<b>VOTE: 11-0-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b>
	<b>Chair Minnis</b>	<b>The motion CARRIES.</b> <b>REP. SUNSERI and REP. COURTNEY will lead discussion on the floor.</b>
197	Chair Minnis	Closes work session on HB 2404
<b>HB 2697 -</b>		

<u>WORK SESSION</u>		
202	Chair Minnis	Opens work session on HB 2697
203	Bill Taylor	Committee Counsel >reads provisions of bill and -1 amendments, <b>(EXHIBIT C)</b>
<b>209</b>	<b>Rep. Sunseri</b>	<b>MOTION: Moves HB 2697 to the floor with a DO PASS AS AMENDED recommendation.</b>
211	Rep. Eighmey	For clarification purposes, there was a lot of debate regarding the changing of the language, but it was concluded that it would protect the best interests of the child.
220	Rep. Uherbelau	I thought I had voted no on this.  >The problem is that this person has been placed and then, later, the court can order Services to Children and Families (SCF) to put the child in a specific placement, but they are only looking at one child.  >I'm worried about the children that get displaced because the court orders a child into a specific placement.
250	Chair Minnis	It looks to me like the language is "may," so that the court could make that decision.
255	Rep. Sunseri	My concern was that this may jeopardize federal funding, but it has been determined that it clearly would not.
266	Rep. Prozanski	Who was here to testify from the judicial area and was there any discussion about using this term or phrase instead of the "best interests" language?
276	Taylor	There were representatives from SCF and Nancy Miller from the Courts. This is not an issue relating to parental rights, rather it allows the courts to determine if the placement is correct.
295	Rep. Uherbelau	To answer Rep. Prozanski's question, we did have a conversation and the language we have comes exactly from the federal statute.
309	Chair Minnis	I'm trying to figure out why this is felt to be an inconsistency with the best interests of the child.
315	Rep. Uherbelau	You'd have to read the federal case law to see how the language has been interpreted.
318	Rep. Eighmey	I just spoke to Nancy Miller and she would like to comment on what might happen to this bill on the Senate side.
	Nancy	State Court Administrator's Office  > "Most appropriate, least restrictive" is the current standard and so the courts are familiar with the language.

325	Miller	>SCF has proposed to add a line that repeats what more strongly what it says on lines 11-12.  >We will be amending the bill on the Senate side to put back the "best interests" language.
343	Chair Minnis	Is that in consultation with Rep. Kruse?
347	Nancy Miller	I have consulted with Judge Poole and Rep. Kruse and they are okay with it.
353	Chair Minnis	My assumption is that SCF's role in this is to make this more consistent with current practices and not testifying either in opposition to or in favor of this bill.
357	Miller	I'm not sure about the subtle nuance of your question.
359	Chair Minnis	It was not subtle.
361	Miller	I think they are supportive of the new language.
362	Rep. Sunseri	I was not receptive to the amendments after the committee had already voted out the bill and my discussion with Rep. Kruse was that he wasn't very receptive to it either.
369	Chair Minnis	I'm saying this because I would like the Senate to give deference to the subcommittee chair and the sponsor of the bill.
375	Miller	We like it as it is and so we will give deference to the chair.
378	Chair Minnis	I am told we will be following this to the Senate.
382		<b>VOTE: 9-2-0</b>  <b>AYE: 9 - Beyer, Bowman, Courtney, Eighmey, Prozanski, Shetterly, Starr, Sunseri, Minnis</b>  <b>NAY: 2 - Uherbelau, Wells</b>
	<b>Chair Minnis</b>	<b>The motion CARRIES.</b>  <b>REP. KRUSE will lead discussion on the floor.</b>
393	Chair Minnis	Closes work session on HB 2697
<b>SB 256 - WORK SESSION</b>		
395	Chair Minnis	Opens work session on SB 256
		Counsel

399	Dave Amesbury	>reads provisions of the bill and -1 amendments, <b>(EXHIBIT D)</b>
407	Chair Minnis	Asks for explanation of in terrorem clauses
410	Dave Amesbury	Explains in terrorem clauses
427	Chair Minnis	And the guardian is merely the one standing in for a juvenile
429	Rep. Shetterly	Or an incapacitated person.
430	Amesbury	That's correct.
431	Rep. Shetterly	<b>MOTION: Moves SB 256 to the floor with a DO PASS AS AMENDED recommendation.</b>
437		<b>VOTE: 10-1-0</b>  <b>AYE: 10 - Bowman, Courtney, Eighmey, Prozanski, Shetterly, Starr, Sunseri, Uherbelau, Wells, Minnis</b>  <b>NAY: 1 - Beyer</b>
	Chair Minnis	<b>The motion CARRIES.</b>  <b>REP. EIGHMEY will lead discussion on the floor.</b>
450	Chair Minnis	Closes work session on SB 256
<b>TAPE 24, A</b>		
<b><u>SB 241 - WORK SESSION</u></b>		
012	Chair Minnis	Opens work session on SB 241
014	Dave Amesbury	Counsel  >reads provisions of bill  >corrects the SMS to show that a fiscal impact has been issued
025	Rep. Shetterly	<b>MOTION: Moves SB 241 to the floor with a DO PASS recommendation.</b>
		Current statutes provide that if an attorney is suspended for more than 60 days, the Supreme Court must review the suspension decision, this provision changes the time to six months.

029	Amesbury	>The problem has been that even though suspension review weren't desire, the Supreme Court had to do them due to statutory law.
037	Chair Minnis	It's not as hard on attorneys as I thought.
<b>044</b>		<b>VOTE: 11-0-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b>
	<b>Chair Minnis</b>	<b>The motion CARRIES.</b> <b>REP. SHETTERLY will lead discussion on the floor.</b>
049	Chair Minnis	Closes work session on SB 241
<b><u>HB 3643 - WORK SESSION</u></b>		
051	Chair Minnis	Opens work session on HB 3643
052	Scott Lumsden	Counsel >reads provisions of bill and -8 amendments, <b>(EXHIBIT E)</b>
<b>070</b>	<b>Rep. Sunseri</b>	<b>MOTION: Moves HB 3643 to the floor with a DO PASS AS AMENDED recommendation.</b>
075	Rep. Eighmey	I'm going to repeat my concerns that I gave during my testimony before the subcommittee as to whether it is the intent to not prosecute those who use cannabis for medicinal purposes.
085	Chair Minnis	The discussion of the subcommittee with respect to that issue was that the District Attorney's can make the decision to proceed or not, but the fact is that it applies to all individuals.
092	Rep. Eighmey	Under those circumstances, I could never support this, because I am sure that it is not the intent of all of the sponsors because to leave it at the discretion of the DA would leave it selective and arbitrary.
101	Rep. Shetterly	My strong preference on this bill would be that it provided that the first offense would be pursued as an infraction.  >In conversation with Fred Avera, he said this would not be feasible under the current criminal procedure code, so I am disappointed about that prospect.  >We need to understand that this is not a big step towards addressing the problem until we get serious with education and treatment.
	<b>Rep.</b>	<b>MOTION: Moves to AMEND the motion by substituting the -3</b>



123	Eighmey	amendments for the -8 amendments.
127	Chair Minnis	Clarifies the motion to substitute
129	Rep. Sunseri	I was under the impression we were not going to amend bills in the full committee.
132	Chair Minnis	That was the general direction, but this is an appropriate procedural motion.
134	Rep. Courtney	What exactly are we voting on?
135	Chair Minnis	We are voting on the substitute the motions.
137	Rep. Eighmey	The -3 amendments permit the medicinal use of cannabis within specific controls.
144		<b>VOTE: 4-7-0</b> <b>AYE: 4 - Bowman, Eighmey, Prozanski, Uherbelau</b> <b>NAY: 7 - Beyer, Courtney, Shetterly, Starr, Sunseri, Wells, Minnis</b>
	<b>Chair Minnis</b>	<b>The motion FAILS.</b>
160	Rep. Beyer	Does this bill have to go to Ways and Means?
161	Chair Minnis	I believe it will end up in Ways and Means and then, hopefully, on the Senate side.
163	Rep. Bowman	We were told in testimony that this bill is a way to send a message to our youth about the dangers of drug use, but we know the DARE program has not been effective in reducing drug, alcohol or tobacco use and I didn't hear any testimony that our law enforcement is going to be able to send a message without locking them up.
172	Rep. Uherbelau	The message we will be sending is not the one that I believe is with the best intentions of the sponsor; rather that we, as adults, are hypocrites. >We know there are not the spaces to put these people in jail. >In many states where this is already a crime statistics show that their rates are going up just as fast as ours.
190	Rep. Sunseri	I must take issue with Rep. Uherbelau's statement. >If you go out and drink and drive and kill someone, there is very little latitude for that in terms of going to jail. >I don't think we're presenting ourselves hypocritically; rather we are saying that we are not going to tolerate this.
202	Rep.	I stand corrected because there are consequences when you drink, drive and hit somebody, but we do not have any consequences for merely being

	Uherbelau	in possession of alcohol.
210	Chair Minnis	The opponents and proponents of the bill, to some extent, are largely saying the same thing and that this is a small component to a big problem. >A significant portion of this bill is the diversion element.
227	Rep. Prozanski	What I hear Rep. Uherbelau saying is that we are not treating this the same as alcohol which is also considered a gateway drug. >The current statutes already provide for diversion and suspensions, so much of what is in this bill is just repetition.
236	Chair Minnis	They are allowed, but this bill makes them mandatory instead of permissive.
240	Rep. Prozanski	Suspensions, now, are mandatory.
242	Chair Minnis	I believe the juvenile component was mandatory, but the adult was not.
246	Rep. Uherbelau	I think diversion is a good idea, but was there any discussion in committee about making diversions and suspensions mandatory instead of recriminalizing it.
256	Chair Minnis	That is actually part of this bill. >It is envisioned that everyone will be offered the diversion program, but if they fail to complete it, they would also be subject to a six-month suspension.
268	Rep. Uherbelau	Couldn't we have done that without recriminalizing it?
270	Chair Minnis	I think the message is sent with the criminalization.
284	Rep. Prozanski	One of the major intents was to allow law enforcement officers to arrest and take into custody and to give them the opportunity to actually search vehicles and their house. >We are opening a door that hasn't been opened in 12 years.
305	Chair Minnis	You are absolutely right that it does allow for the potential of search since it is a criminal offense and the subsequent introduction of that evidence.
317	Rep. Shetterly	The search aspect is not a big issue with me, rather it was the criminalization of a first offense, especially with juveniles. >The suggestion of Fred Avera was to apply the diversion to the first offense without a record of conviction one way or another.
		It should be noted that Dale Penn testified that Marion County does not have a diversion program at this point, so I am concerned that areas where there aren't diversion programs, it will automatically be criminalized because certain individuals will not have the benefit of having a diversion

		program available.
348	Rep. Prozanski	>would like to make available an article given by Sen. Hamby in the Ways and Means, Public Safety subcommittee  >This is likely to result in selective enforcement.
370	Chair Minnis	With respect to the custody issue, there is an agreement between the Sheriff and the Chief of Police that certain offenses are only issued citations in lieu of custody.
386		<b>VOTE: 7-4-0</b>  <b>AYE: 7 - Beyer, Courtney, Shetterly, Starr, Sunseri, Wells, Minnis</b>  <b>NAY: 4 - Bowman, Eighmey, Prozanski, Uherbelau</b>
	<b>Chair Minnis</b>	<b>The motion CARRIES.</b>  <b>REP. WESTLUND and REP. MINNIS will lead discussion on the floor.</b>
400	Rep. Eighmey	Serves notice of intent to file a minority report
405	Rep. Bowman	Serves notice of intent to file a minority report
409	Chair Minnis	Closes work session on HB 3643
<b><u>HB 3123 - WORK SESSION</u></b>		
412	Chair Minnis	Opens work session on HB 3123
413	Scott Lumsden	Counsel  >reads provision of bill and -1 amendments, <b>(EXHIBIT F)</b>
<b><u>TAPE 23, B</u></b>		
022	Rep. Prozanski	Asks for clarification of the vote shown on the SMS
028	Lumsden	The SMS reflects the vote on the measure as amended, not the vote to amend the statute.
033	Chair Minnis	This follows on the heels of the marijuana bill.

034	Rep. Sunseri	<b>MOTION: Moves HB 3123 to the floor with a DO PASS AS AMENDED recommendation.</b>
037	Rep. Bowman	I don't have a clue as to what this bill does.
044	Chair Minnis	This is not a support enforcement issue, it is a controlled substance issue; we did a gut and stuff on the bill.
047	Rep. Beyer	Does the SMS talk to the gut and stuff or the original bill?
048	Lumsden	It talks to the bill as amended.
049	Rep. Bowman	So, the original bill has disappeared and in its place we are doing what?
050	Lumsden	The bill has been replaced by the Department of Transportation amendments aimed at fixing problems in the suspension of driving privileges statutes that they had noted.
056	Rep. Uherbelau	Why did the committee, or Rep. Adams decide not to move forward on the previous bill?
061	Lumsden	When the Department of Transportation requested these amendments, we found a relating-to clause that was applicable so as to encompass these amendments.  >Rep. Adams was contacted and did not object to us using this bill as a vehicle for the amendments.
069	Rep. Uherbelau	Did he understand that his bill was going to disappear?
071	Chair Minnis	Yes, he did and he was not necessarily thrilled with the idea of proceeding with the original bill.
079		<b>VOTE: 10-1-0</b>  <b>AYE: 10 - Beyer, Bowman, Courtney, Prozanski, Shetterly, Starr, Sunseri, Uherbelau, Wells, Minnis</b>  <b>NAY: 1 - Eighmey</b>
	Chair Minnis	<b>The motion CARRIES.</b>  <b>REP. SHETTERLY will lead discussion on the floor.</b>
095	Chair Minnis	Closes work session on HB 3123
<b><u>HB 2541 - WORK SESSION</u></b>		
097	Chair Minnis	Opens work session on HB 2541

098	Scott Lumsden	Counsel >Reads provision of bill and -1 amendments, <b>(EXHIBIT G)</b>
117	<b>Rep. Shetterly</b>	<b>MOTION: Moves HB 2541 to the floor with a DO PASS AS AMENDED recommendation.</b>
121	Rep. Uherbelau	Asks about the value of services dollar amount shown while in jail
129	Rep. Shetterly	The language came from a Michigan statute from which the amount is derived from >This language provides them to charge whichever is less, \$60 or the daily amount.
146		<b>VOTE: 10-0-1</b> <b>AYE: In a roll call vote, all members present vote Aye.</b> <b>EXCUSED: 1 - Minnis</b>
	<b>Vice Chair Prozanski</b>	<b>The motion CARRIES.</b> <b>REP. SHETTERLY will lead discussion on the floor.</b>
153	Vice Chair Prozanski	Closes work session on HB 2541
<b><u>HB 2420 - WORK SESSION</u></b>		
157	Vice Chair Prozanski	Opens work session on HB 2420
158	Scott Lumsden	Counsel >reads provisions of bill and -3 amendments, <b>(EXHIBIT G)</b>
181	<b>Rep. Shetterly</b>	<b>MOTION: Moves HB 2420 to the floor with a DO PASS AS AMENDED recommendation.</b>
184	Rep. Eighmey	Asks counsel to read line 6
187	Lumsden	Reads paragraph 1
192	Rep. Beyer	Asks for explanation of the language
194	Lumsden	Explains that if a person is actually innocent, there is no basis upon which to free that person, so this measure allows that to happen.
213	Rep. Beyer	Couldn't the Governor just pardon the person?
214	Lumsden	The Governor could, but in this case, the Governor chose not to.

216	Rep. Beyer	There are very few people in prison who claim they are guilty.
219	Vice Chair Prozanski	It requires that the district attorney and the defense come together to present a joint motion and so this can not happen without the assistance of the defense bar. >The current statutes simply do not provide that the judge can make this determination.
235	Rep. Beyer	It seems to me that the Governor currently has pardon power and if the case is so compelling, the Governor would agree and pardon this person.
241	Rep. Uherbelau	Doesn't your conviction still stand even if you are pardoned whereas if it is set aside, the conviction will no longer show on your record?
246	Vice Chair Prozanski	I do not have a certainty to that answer.
250	Lumsden	If your question is if it automatically expunges the conviction, I would have to research that to find out if it is expunged by a pardon.
257	Chair Minnis	A pardon is like it never happened. >A commutation is a changing of the sentence, which is different.
262	Rep. Eighmey	A commutation has always simply been a change of the existing sentence.
267	Chair Minnis	It is a complete washing of the record and the conviction.
271	Rep. Bowman	Calls the question
273		<b>VOTE: 10-1-0</b> <b>AYE: 10 - Bowman, Courtney, Eighmey, Prozanski, Shetterly, Starr, Sunseri, Uherbelau, Wells, Minnis</b> <b>NAY: 1 - Beyer</b>
	<b>Chair Minnis</b>	<b>The motion CARRIES.</b> <b>REP. WELLS will lead discussion on the floor.</b>
283	Chair Minnis	Closes work session on HB 2420 >Declares committee adjourned at 8:51 AM

Submitted by, Reviewed by,

Brian Higgins, Sarah Watson,

Administrative Support Office Manager

**EXHIBIT SUMMARY**

- A - HB 2716, Proposed amendments (-3 dated 4/15/97), Staff, 1 p.**
- B - HB 2404, Proposed amendments (-3 dated 4/8/97), Staff, 1 p.**
- C - HB 2697, Proposed amendments (-1 dated 4/9/97), Staff, 1 p.**
- D - SB 256, Proposed amendments (-1 dated 4/17/97), Staff, 1 p.**
- E - HB 3643, Proposed amendments (-8 dated 4/14/97), Staff, 2 pp.**
- F - HB 3123, Proposed amendments (-1 dated 4/10/97), Staff, 9 pp.**
- G - HB 2541, Proposed amendments (-1 dated 4/2/97), Staff, 2 pp.**
- H - HB 2420, Proposed amendments (-3 dated 4/8/97), Staff, 2 pp.**