

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

May 9, 1997 Hearing Room 357

1:00 P.M. Tapes 80 - 81

MEMBERS PRESENT:

Rep. Lane Shetterly, Chair

Rep. Judy Uherbelau, Vice-Chair

Rep. Roger Beyer

Rep. Jo Ann Bowman

Rep. George Eighmey

Rep. Floyd Prozanski

Rep. Charles Starr

Rep. Larry Wells

MEMBER EXCUSED:

STAFF PRESENT:

Bill Taylor, Counsel

Gina Cross, Administrative Support

MEASURE/ISSUES HEARD:

HB 2835 Work Session HB 3491 Work Session

HB 2944 Work Session HB 3407 Work Session

HB 3366 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 80, A		
	Chair	

004	Shetterly	Opens the subcommittee on Civil Law at 1:18 p.m.
HB 2835 - WORK SESSION		
008	Chair Shetterly	Opens the work session on HB 2835. >We have the -4 amendments which are an addition to the bill. We can move one, the other, or both.
020	Larry Oglesby	Oregon Juvenile Department Directors Association >Submits and reads testimony on HB 2835 (EXHIBIT A). >discusses after hours circumstances >consistent with youth authority practices >refers to -4 amendments
052	Rep. Prozanski	Can you address what type of limitations the individuals which are not certified have?
060	Oglesby	The nurse on shift prepares the medications and puts them in containers. At the appropriate time, the staff gives the medications to the youth.
075	Rep. Uherbelau	I am concerned about psychotropic drugs and that there doesn't have to be a medically trained person on the site.
085	Oglesby	If there would be a reaction, a nurse would be there. There is medical staff available. There is also 9-1-1.
098	Rep. Bowman	My questions have to do with page 2 of the -4 amendments.
103	Rep. Uherbelau	What are the rules of the Federal Department of Agriculture (FDA) and controlled substances?
109	Oglesby	The only controlled substances we give are those prescribed by a doctor.
116	Rep. Uherbelau	Under federal regulations, the controlled substances have to be under lock and key and taken out only when they are to be used.
122	Chair Shetterly	This apparently is the practice in the youth authority.
123	Oglesby	There is a specific administrative rule which allows this practice.
128	Rep. Uherbelau	It allows the practice of staff giving these controlled substances and being accountable for them?
131	Oglesby	That is my belief. Refers to his testimony to answer the question.
135	Chair Shetterly	For the record it is on page 3 of the handout. It is OAR 851-45-011 2A.
138	Oglesby	The procedure is in the Board of Nursing.
146	Chair Shetterly	In the current statute, non-medical staff receives training.

152	Rep. Wells	What do you think about this amendment?
156	Oglesby	It would be an addition. I support them.
158	Chair Shetterly	Let's talk about the -4 amendments.
160	Rep. Bowman	My question is regarding page 2, sections 4-5 of the amendments. I would like to know how we see the implementation on a local level occurring.
166	Oglesby	There is a list of youth on probation which is provided to schools, probation officers, and counselors. This allows for them to be more aware of what is going on.
182	Rep. Bowman	My concern is that the language is so broad in this amendment. How do we limit this knowledge from going all over the school.
188	Oglesby	We have, through dialogue with the school, discussed the sensitivity of the information. All the information is public record.
200	Chair Shetterly	So, we aren't disclosing confidential information to anyone through this?
201	Oglesby	Yes.
202	Chair Shetterly	I have spoke with Ozzie Rose on this issue. The school boards are supportive. He suggested changing "shall" to "may" in section 4.
220	Rep. Prozanski	The school district has the ability to get the information. The proposed language limits their ability to get this. I thought there was a tighter grip on juvenile records.
232	Rep. Bowman	Referring to section 6, states that this gives immunity to people giving wrong information. People should be held accountable.
249	Chair Shetterly	What if we said that the mere disclosure would not be wrong. It is public record.
264	Rep. Bowman	I think we're talking about something different.
276	Rep. Prozanski	I agree with Rep. Bowman. The language protects the individual who received this information in the wrong manner.
284	Rep. Uherbelau	I don't see why section 6 should be here. You can't give public records to the wrong person. If they aren't public, you need to be careful in what you do with them.
303	Chair Shetterly	I could take it out.
304	Rep. Eighmey	I could do without the bill. If these are public records we have access to this information whenever we want it.
320	Oglesby	This bill was broader in the original language when it came to information. When it comes to that information which we usually think is confidential, it is. We can't disclose that information.
346	Chair Shetterly	This creates a systematic way to provide districts with records. There is no practical way for districts to get this without spending a lot of time on the phone.

360	Rep. Prozanski	Is this not an unfunded mandate for each county to use their resources to put this together? We may be putting a burden on the youth authority.
372	Rep. Wells	Aren't we talking about sending a broad list of offenders to all the schools?
374	Rep. Prozanski	I'm not sure. I thought it would be for the district's particular students.
377	Rep. Wells	I was thinking there would be one list sent out to all the schools for the districts to see if they had any students on it.
381	Rep. Uherbelau	It is narrower than that. You wouldn't send out the whole state's offenders. You do have to break it down.
389	Rep. Beyer	Someone on this committee requested that "any district" be added.
392	Oglesby	I requested that to be added. We can sort computer lists by school. The name of the youth, probation officer, counselor, and phone number is on the list.
411	Chair Shetterly	The two issues which have come up are: if this is public information, why do we need the bill, and does this amount to an unfunded mandate on the juvenile system?
420	Rep. Bob Repine	State Representative, House District 49 >The cost is worth the ability to track the offenders. >This information is public record, but other methodology is used to track the youth.
TAPE 81, A		
001	Repine	Continues testimony >School needs to be a safe environment for our children.
003	Rep. Bowman	From the -4 amendments, we don't give school districts the ability to decide whether or not they do something with this information.
007	Chair Shetterly	The suggested amendment is to change "shall" to "may."
008	Repine	That is what I was led to believe.
010	Rep. Bowman	We talked about deleting sections 5-6, how do you feel about that? Both deal with the liability issue.
014	Chair Shetterly	I think section 5 could stay in, but I think section 6 could come out.
019	Repine	It will require some governmental relationship.
023	Rep. Uherbelau	Are we creating a legal duty that the school would have to notify parents that there is a violent student enrolled? I think we may be setting up the school district for not notifying.
034	Chair Shetterly	That was my concern.

039	Ogilsbie	This is a two-edged sword. If you have a sex offender in school who is allowed to be around young children, that will be bad. It is a case by case thing. This requires good faith on the juvenile department and the schools.
058	Repine	I think that whether or not this document is in place, the school district would be just as guilty for not notifying parents.
066	Rep. Uherbelau	It is public information. My concern is with receiving the information and passing that on to parents and other students.
074	Chair Shetterly	This would be under the issue of disclosure.
079	Rep. Beyer	Why are we excluding July?
083	Ogilsbie	That is the month kids are out of school.
087	Rep. Beyer	What about year round schools?
090	Ogilsbie	It wouldn't be anymore difficult to do an additional month.
092	Repine	You could say "relative to the terms of the district."
096	Rep. Eighmey	>I think that we can narrow page 2, section 4 by saying "may disclose the information only to those school employees it determines...." >Regarding the time line, how long are the records kept by the juvenile department? Are these only for students or are they also for adults who may have a youth offender record?
122	Chair Shetterly	It only applies to youth offenders enrolled in a school.
124	Rep. Eighmey	Do they have to be present youth offenders?
125	Chair Shetterly	Youth offenders who are on probation.
127	Rep. Eighmey	Why controlled substance? Why are we red-lettering this?
138	Ogilsbie	Schools are interested in knowing about specific offenses.
150	Rep. Eighmey	Why not any dangerous weapons?
155	Ogilsbie	The list can be as small or as big as you want to make it. The way this is set up, a danger to the school setting is used.
169	Rep. Eighmey	That is today. This bill will be on the books for a while. Instead of making it narrow, why not just use "a risk to other students or school staff?"
183	Repine	My issue was with sexual abuse. The other items generically cover what education wants today. These are the three most identifiable.
206	Rep. Prozanski	Do you feel comfortable with the sex offender language?
218	Repine	My advocacy is for page 1, lines 22-24. If I had my preference, I would have "shall" instead of "may."
		We requested "may" as it refers to sex offenders. There are many types of

235	Ogilsbie	sex offenses. We don't want to see the information impeding the youth.
251	Repine	I have an issue. I didn't want to create a new line of debate.
259	Chair Shetterly	I would entertain a motion to adopt the -4 amendments with our conceptual amendments. >line 5 delete "except for July" >page 2, line 4 replace "shall" with "may" >delete subsection 6 in its entirety
274	Rep. Eighmey	Also, on page 2, line 4: >after "information" insert "only" >delete "any" and insert "those" >make "employee" "employees."
281	Chair Shetterly	Reads subsection 4 with the conceptualls.
284	Rep. Prozanski	MOTION: Moves to ADOPT HB 2835-4 amendments dated 5/7/97 and that the measure be FURTHER AMENDED on page 1, line 5, by deleting "except for July" and on page 2, line 14, by changing "shall" to "may" and on page 2, by deleting "subsection 6" and on page 2, line 4, by inserting ""only" after "information" and on page 2, line 4, by changing "those" to "any" and on page 2, line 4, by changing "employee" to "employees".
286		VOTE: 8-0
288	Chair Shetterly	Hearing no objection, declares the motion CARRIED.
291	Rep. Beyer	MOTION: Moves HB 2835 to the full committee with a DO PASS AS AMENDED recommendation.
296	Rep. Uherbelau	I will vote to send this to committee, but I still have some reservations about the medication.
298		VOTE: 8-0
299	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. REPINE will lead discussion on the floor.
304	Chair Shetterly	Closes the work session on HB 2835.
<u>HB 3491 - WORK SESSION</u>		

305	Chair Shetterly	Opens the work session on HB 3491.
306	Bill Taylor	Committee Counsel >summarizes HB 3491
322	Lydia Taylor	Deputy Director, Department of Environmental Quality (DEQ), submits and reads testimony on HB 3491 (EXHIBIT B). >The letter from the Environmental Protection Agency (EPA) states that DEQ would need a statutory amendment to allow DEQ's permits appeal under representational standing. >provides amendments
359	Rep. Eighmey	What is wrong with HB 3491 as it pertains to DEQ?
363	Taylor	We aren't opposed to this, but we could offer an alternative.
368	Rep. Eighmey	Section C of the proposed amendment offers some problems. >If an individual member is the plaintiff, the organization would not be allowed to enter a claim.
382	Taylor	This language is federal. I think it means that they could represent people as an organization.
390	Rep. Beyer	Isn't DEQ a state agency?
393	Taylor	Yes.
396	Rep. Beyer	Why do you need additional language?
403	Taylor	It would allow other groups to take standing as well as individuals.
419	Rep. Uherbelau	Do sections B-C make a difference? Do you think after your conversation with the EPA, is it a problem that HB 3491 only satisfies one of your proposals?
438	Taylor	I don't know if that is a problem. It would be cleaner to have concise language.
450	Tim Martinez	Oregon Medical Association >We can't support the amendments.
TAPE 80, B		
001	Jim Conley	North Santiam Watershed Council, testifies and submits testimony on HB 3491 (EXHIBIT C). >Why shouldn't this refer to an unincorporated organization? >There must be a substantial financial stake in order to sue.
050	Conley	Continues testimony

057	Rep. Eighmey	Is your position that you support the original bill?
059	Conley	I believe it goes halfway.
060	Rep. Eighmey	Referring to page 2, line 17 there is no way you can't say individual and it not be an individual.
077	Conley	The language that poses a problem is in ORS 183.480. We need to substitute some other language for "adversely affected or aggrieved."
085	Rep. Prozanski	We are mixing things up. The individual did have standing but did not have nexus to the issue. There is a body of law we work with which requires some sort of standing.
095	Conley	That is what the affidavit's are about.
098	Vice-Chair Uherbelau	The amendment brings up foundation. I don't know how we can change the individual or that we would want to.
105	Conley	Referring to his written testimony, the last paragraph on the back tracks federal case law.
119	Vice-Chair Uherbelau	What you're really saying is that his economic interest wasn't affected. The federal case was broad.
134	Bart Brush	Attorney, Waterwatch >The cleanest way to fix the problems is to say that there is representation in Oregon. >All organizations need to be covered. >I don't think you need a financial stake in order to be affected.
170	Richard Koesan	Water for Life >I would appreciate having more time to look at what all is in entailed in the bill. >The specifications in the DEQ letter refer to the Clean Air Act. >The regional administrator indicates that litigation is better than other forms of problem solving. >The Administrative Procedures Act (APA) would be broadened too much.
206	Rep. Bowman	Did I hear you say that HB 3491 is too broad?
209	Koesan	Yes. Legislation was needed to meet the DEQ's implementation of the Clean Air Act.
217	Rep. Bowman	Current law gives an individual standing. Are we adding organizational standing?
223	Koesan	Yes.

234	Rep. Prozanski	Your organization would not want standing if a member could show they had impact?
239	Kosesan	Yes and no. For the most part, you reach a point where the process is slowed down by the number of participants.
252	Rep. Prozanski	Your interpretation of the current law is that by adding "any organization" is going to give standing without meeting the other test?
260	Kosesan	That is one way to read that.
263	Rep. Prozanski	Can you give us some authority as to how that is going to take effect.
271	Kosesan	I'm not following your question.
272	Rep. Eighmey	Are you wanting a delay?
275	Kosesan	That would be very much appreciated.
282	Doug Meyers	Waterwatch >The bill gives organizations standing in lawsuits. >It doesn't transfer water rights.
297	Rep. Prozanski	We have had several days of testimony on this already.
310	Rep. Bowman	I appreciate the concerns that were raised, but they are ungrounded when it comes to this bill.
321	Chair Shetterly	Closes the work session on HB 3491.
HB 2944 - WORK SESSION		
323	Chair Shetterly	Opens the work session on HB 2944.
331	Bill Taylor	Committee Counsel, reads from the agenda what HB 2944 does.
346	Justin Burns	Oregon Gun Owners >discusses the -3 amendments which would gut and stuff HB 2944
356	Chair Shetterly	Asks for information on the bill.
358	David Amesbury	Committee Counsel >Goes through the bill.
371	Chair Shetterly	Somebody give us a fact situation.
374	Rep. Prozanski	Gives example of what could happen without this bill.

387	Craig Campbell	Oregon Litigation Reform Coalition >I'm not sure that would be considered a substantial factor contributing to the injury.
389	Rep. Prozanski	If you're driving a vehicle while your license is suspended?
391	Campbell	It is not the suspension, but the driving that would be the substantial factor.
398	Chair Shetterly	The issue is whether the driving or the suspension is the substantial factor.
404	John DiLorenzo	Attorney >Driving while suspended would not be a substantial factor. >If someone burglarizes property and trips, he can't sue the homeowner.
440	Rep. Uherbelau	We are saying this person is guilty and taking away their right to sue. What justification can you give for that?
458	DiLorenzo	It would be a lower standard.
TAPE 81,B		
001	Rep. Eighmey	This is the most bizarre thing I have ever heard.
012	DiLorenzo	The accused would not have been found innocent. We are trying to have the same standard of proof.
022	Chair Shetterly	We are amending an existing statute. What do the amendments say?
026	DiLorenzo	All we are doing is adding property damage and changing reasonable doubt to a preponderance of evidence. We are also adding a "spring gun" defense.
040	Rep. Uherbelau	Why are you trying to make it less?
044	DiLorenzo	The standard of proof is preponderance. We are adding another criminal defense.
051	Rep. Uherbelau	There are other affirmative defenses.
053	DiLorenzo	If you can prove that the claimant was trying to rob the establishment, you should also be able to use the same standard.
062	Rep. Prozanski	Gives another example of how this bill would work.
070	DiLorenzo	I question whether that felony would be the substantial factor in contributing to the injury.
076	Rep. Prozanski	If they weren't involved in the conduct, they wouldn't be there.
078	Craig	If the youth had taken the car without their parents' permission, that would

	Campbell	fall under the juvenile code.
084	Rep. Prozanski	What if I just turned 18?
085	Campbell	Then you would have to figure out if taking the car or driving it was the substantial factor.
089	Chair Shetterly	Did you want to go through the rest of the bill?
094	DiLorenzo	Refers to subsection 3
096	Chair Shetterly	Closes the work session on HB 2944.
<u>HB 3407 - WORK SESSION</u>		
104	Chair Shetterly	Opens the work session on HB 3407.
105	Bill Taylor	Committee Counsel >goes over -1 amendments >discusses letter from Rep. Oakley (EXHIBIT E)
121	Chair Shetterly	Closes the work session on HB 3407.
<u>HB 3366 - WORK SESSION</u>		
126	Chair Shetterly	Opens the work session on HB 3366.
131	Charles Stern	Association of County Clerks >We can return with the -1 amendments.
136	Rep. Bowman	What is the difference between someone renewing their registration and reregistering?
138	Stern	If you move or change your address, that is viewed as a reregistration.
142	Rep. Uherbelau	Employees in an attorney's office do serve papers. It isn't always directly a fee. It can be for time or mileage.
155	Amanda Williams	Oregon Association of Process Servers >The language of the bill should be read to not cover those who do not make serving their business.
165	Rep. Uherbelau	That would be important to do.
166	Stern	Attorneys will have a fee whether or not it's itemized.

171	Rep. Bowman	Do you have a suggestion for the number of days that you need for the registration renewal card?
174	Williams	We agreed on 60 days.
177	Rep. Wells	Why are we doing this?
179	Williams	We are doing this on the request of the process servers. There has never been real accountability. Other states have registering or liscencing requirements.
194	Rep. Wells	I get nervous when one group wants to professionalize something.
206	Williams	We are lucky to have a group who are in consensus.
210	Rep. Wells	Any guarantees?
211	Williams	We are in agreement.
216	Rep. Beyer	What percentage of process servers do you represent?
221	Williams	I don't know how many we represent. It is probably 80%.
229	Rep. Beyer	I would like to see some documentation on this.
239	Vice-Chair Uherbelau	Chair Shetterly did want to see the bill moved.
242	Vice-Chair Uherbelau	Would you have a problem with an amendment which would make it clearer?
249	Vice-Chair Uherbelau	Closes the work session on HB 3366.
259	Vice-Chair Uherbelau	Closes the subcommittee at 3:07 p.m.

Submitted By, Reviewed By,

Gina Cross, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2835, written materials, Larry Ogilvie, 5 pp.

B - HB 3491, written materials, Lydia Taylor, 4 pp.

C - HB 3491, written testimony, Jim Conley, 2 pp.

D - HB 2944, -3 amendments (dated 5/9/97), staff, 2 pp.

E - HB 3407, written materials, Rep. Carolyn Oakley, 2 pp.

F - HB 3366, -1 amendments (dated 5/6/97), staff, 1 p.