

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

February 26, 1997 Hearing Room 357

1:00 P.M. Tapes 30 - 31

MEMBERS PRESENT:

Rep. Lane Shetterly, Chair

Rep. Judith Uherbelau, Vice-Chair

Rep. Roger Beyer

Rep. Jo Ann Bowman

Rep. George Eighmey

Rep. Floyd Prozanski

Rep. Charles Starr

Rep. Larry Wells

STAFF PRESENT:

Bill Taylor, Counsel

Lisa Fritz, Administrative Support

MEASURE/ISSUES HEARD:

HB 2428 - Public Hearing

HB 2267 - Public Hearing

HB 2445 - Public Hearing

HB 2318 - Work Session

HB 2419 - 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 30, A		
005	Chair Shetterly	Calls the meeting to order at 1:05 p.m.
<u>OPENS PUBLIC HEARING ON HB 2428</u>		
027	Fred Avera	President of Oregon District Attorneys' Association (ODAA) and District Attorney of Polk County Testifies in favor of HB 2428. Explains what typically happens in a criminal case at the time of sentencing, if there has been some sort of damage to the victim (e.g. medical bills, property damage, etc.). Continues to explain legal processes involving restitution. Gives examples to illustrate his position on the bill.
077	Avera	Continues testimony. I believe there needs to be a safeguard, so that only people, willfully refusing to pay, are punishment. We are not trying to make a debtors' prison here.
093	Rep. Wells	How does someone get out from underneath a restitution that they are never able to pay?
095	Avera	If it's a condition of probation, that will expire with probation. It can also be made a judgment of the court which, under certain circumstances, allows us to try to collect through contempt power, after expiration of probation. Both instances require us to prove that they willfully did not pay. I believe that after a period of time, like all judgments, the sentence will expire.
106	Chair Shetterly	That was my question: what's the effect of a restitution judgment in a criminal case?
112	Avera	I believe it's the same process as civil law (expires after 10 years).
114	Rep. Eighmey	I don't believe it's the same as civil law; this is punishment. Explains why. Are you not placing a greater punishment on the indigent than on the person that has money?
131	Dale Penn	Marion County District Attorney Submits written testimony (EXHIBIT A). Cites testimony in saying that it is against the law to punish an indigent that is not capable of payment.
	Rep.	Rehabilitation is no longer a goal in the Oregon State Constitution. People are being punished now. You're saying that willful refusal to pay is the first threshold that we bring in the person that has the ability to pay and does not. I'm saying that if you live your life and never have the ability to pay, then you are under a longer punitive provision than the person who has the ability to pay. You are imposing on the indigent

174	Eighmey	a fine or punishment greater than you would on any other person. We cannot do that under <i>State v. Anderson</i> , Supreme Court decision, and that concerns me. You also stated that the judge will take into consideration, under our present statutes, that is reverted back, exactly, to the existing statute. If we presently take into considerations one's ability to pay, then why do you need this statute?
206	Penn	The goal is to protect the public. Explains the change. The constitutional changes are not affecting this. This bill, as amended, would simply have the court consider what the damages are and whether there will be a rehabilitative effect to order one to pay those damages.. I think we're forgetting that this person, we are talking about, has committed a crime against another citizen in our society, and they have done damage to them. I believe that with the <i>Anderson</i> case, as well as the constitutional and contempt standards, prevents any punitive action against indigents.
260	Rep. Uherbelau	Where is the statutory authority that says this judgment is the same as a civil judgment and will last for 10 years?
266	Penn	ORS 137.450 states that a criminal judgment may be enforced in the same manner as a civil judgment.
270	Rep. Uherbelau	So you equate the word "enforce" with how long a judgment will last?
277	Penn	Yes.
280	Rep. Uherbelau	Where do you get the "willful" standard? What statute does that come from?
285	Penn	ORS 33.015 is the contempt statute and it defines contempt of court in subsection two as "the following acts done willfully:" "Willfully" being "disobedience of a court order." Regardless of statute, the constitutional standard says we must show that they have the capability of paying the debt and are choosing not to, in disobedience of the court before we can sanction them.
298	Rep. Uherbelau	Well, I don't know if that gets you to "willful," one could negligently forget to pay, and it may not be that someone just can't afford to pay.
301	Penn	I agree with you that indigent people should not be punished for being indigent, the willful term comes on the contempt side, and that's specified in statute.
307	Rep. Uherbelau	You have talked about these "might" situations: might win the lottery, might get an inheritance, etc. Have you done any type of survey to find out how many times that has happened? How many people have slipped through the cracks, and somewhere in the future, they got this big wind-fall?
319	Avera	No, we have not done any surveys. However, I know, from experience, we've gotten calls from the victims who have found out that the defendant is making money, and it's very frustrating for the victim at that point.
		I have a sense that a person who is indigent and has an opportunity to pay, in direct reference, without money, but through effort, has a much

349	Rep. Starr	greater value for redeeming or rehabilitating an individual. I don't see any part of that in this proposal.
367	Avera	Are you talking about community service?
372	Rep. Starr	No, to the victim, the offender restores through effort, not his/her pocketbook.
378	Avera	The problem with that is a lot of our victims don't want to have any kind of contact with the offender. We do like to see community service ordered whenever possible, but not when it is directly tied to the victim.
392	Chair Shetterly	Comments on a similar, previous bill. I think this is definitely the cleaner of the two, as it keeps the civil and criminal aspects more clearly cut.
TAPE 31, A		
008	Andy Simrin	Oregon Criminal Defense Lawyers' Association Testifies against HB 2428. There are four reasons why this bill should be rejected: (1) <i>State v. Edson</i> , currently pending in the Supreme Court, could render any action here moot, (2) federal constitutional concerns, (3) we have choice of violating equal protection laws or we can require a jury trial on the issue of restitution, (4) an administrative morass that would render the bill ineffective.
058	Simrin	Continues testimony.
108	Simrin	Continues testimony.
158	Simrin	Continues testimony.
170	Rep. Beyer	On page one, you are taking out the requirement that the defendant has the ability to pay, but then on pages two, three, five, six, and seven, we are taking out a block of language, and each one of these are almost identical. In each of those, it says that the court need not make determination, so if we're taking that out it seems like we're putting it back in.
182	Avera	The reason for that is there is a general requirement in the main statute that says you have to take into account ability to pay, and there are a number of situations that are exceptions to that. If you eliminate the requirement of taking into account the offender's ability to pay, in the main statute, then you don't need any of these exceptions to the statute. All of those blocks of language are exceptions to the rule, so if we are changing the main part, we no longer need the exceptions.
202	Chair Shetterly	Closes Pubic Hearing on HB 2428.
<u>OPENS PUBLIC HEARINGS</u>		

ON HB 2267 AND HB 2445		
235	Rep. Markham	District 46 Testifies in favor of HB 2445. I believe we are taking advantage of the people we ask to come and serve to make our system work. I realize that even if we double the amount, we are asking the Ways and Means Committee to find another \$5 million, but we can't continue to treat people this way.
256	Rep. Uherbelau	We still have one situation in your bill that we pay eight cents a mile and then another where there is 30 cents a mile, and that depends on whether you are appearing in a district or circuit court. You go the same distance, so why is the differentiation still there?
268	Chair Shetterly	Does that raise an unfunded mandate issue if we require our jurisdictions to raise court fees?
274	Chief Justice Wallace Carson	Chief Justice of the State of Oregon Introduces Kingsley Click.
281	Kingsley Click	State Court Administrator Testifies in favor of HB 2267. Submits written testimony (EXHIBIT B) .
331	Click	Continues testimony.
362	Justice Carson	We don't pay our jurors enough, and the jury system is so fundamental. I agree whole-heartedly with Rep. Markham. Comments on recommendations and previous attempts regarding jury payment.
TAPE 31, B		
023	Rep. Uherbelau	I think this is an excellent idea, but has this been considered in the budget or is this in addition to the budget?
028	Justice Carson	It's in addition to.
030	Rep. Prozanski	Is there any definition for dependent care expenses?
035	Click	It is not identified, by definition, in our bill. It says we will provide policies and procedures to carry it out, and we would have a definition in there. We use the term "dependent care" because more and more people are facing elderly care, as well as child care, so this would allow us that flexibility to deal with the limited money we would have.
048	Rep. Prozanski	Are we getting discrepancies between counties on what reasons they are allowing people not to serve on juries?
058	Click	There's a statutory definition that calls for some judicial discretion and talks about "undue hardship," so depending on the situation and the nature of the excuse, the individual judge can review the initial request

		and repeal it up to a judge. It probably does vary from county to county, but we do have some general guidelines. Some judges may be more strict than others.
071	Rep. Prozanski	If this bill does move forward, if we somehow had a limitation on these other expenses, you could have a smaller pool of jurors based on the need for expensive coverage.
089	Click	I agree, and I think we have to couple that with trying to reduce the length of service. Sometimes it's not just the money issue.
093	Rep. Eighmey	Is there evidence that we do not have a broad enough jury pool because of the low pay?
104	Justice Carson	I just think we're taking advantage of people that are called. We don't keep figures on who bailed out due to fiscal matters or parking, etc. We are considering doing a study on the "one day one trial," and I believe the results will be that the jury pool is broader.
130	Click	The Multnomah Bar Study is the most detailed statistical base.
140	Rep. Eighmey	We totally underpay our jurors for a responsibility that we all have, but at the same time it shouldn't be a punishment. If your employer pays you, you don't get the jury pay. I would like to make sure that if the person makes less than the jury pay, they should not be eliminated from jury pay. They should at least get the difference. Did you look into the possibility of employer pays a civic obligation? I would not say that government should not participate in this because this is a partnership. Maybe would could come up with some combination.
172	Rep. Markham	I certainly didn't give that a thought, but I think the employer does more than his share through taxes.
180	Justice Carson	This came up 20 months ago. One of concerns was: how far we could push employers. We left it voluntary, and I believe that is how I'd prefer it to be now.
196	Chair Shetterly	Can we think of some type of amendment that would allow for people, who do not make as much as this bill would pay them for jury duty, to be raised to the same level of pay?
197	Justice Carson	We have no problem with that.
203	Rep. Eighmey	Have you thought about dedicative funds to pay for this (e.g. increase in filing fees), so we do have a funding source?
210	Click	Yes.
220	Rep. Uherbelau	There are many professions in which if one employee leaves for jury duty, a substitute must be obtained, so the employer would end up paying two people for one job.
238	Rep. Eighmey	I would not want to put a burden on anyone, but I suggested combinations. I believe it is possible to work something out here.
250	Justice Carson	We will prepare amendments to address this issue. It was brought to our attention that some collective bargaining agreements may have already settled the issue. We also don't want to interfere with contracts.

268	Rep. Markham	Whichever of these bills we can get through is fine with me.
275	Chair Shetterly	Do you have a dollar amount that you would like to plug into HB 2267?
282	Click	\$40 is the federal rate, and the ideal would be able to pay the federal rate, which breaks down to around minimum wage.
296	Justice Carson	I would like to start at \$40 because it is the federal level, but I know the chances of getting \$40 aren't good.
314	Chair Shetterly	The federal courts only pays lodging if a juror has to travel more than 50 miles? Would it help your case if we drew a line for mileage as well?
331	Click	We have internal policies for reimbursement that put limits on proximity and being within a certain mileage area. It may not be so much a concern about mileage but alternate transportation because people will have an extra expense if they have to take the bus or some other mode of transportation.
347	Rep. Bowman	How does jury selection occur presently?
358	Justice Carson	It is supposed to be very random.
375	Rep. Eighmey	We may consider putting in here minimum wage. We do that for our workers, why not for our jurors?
399	Rep. Prozanski	It may be better just to have the judicial branch present some different options for flexibility.
412	Chair Shetterly	Closes Public Hearings on HB 2267 and 2445.
TAPE 31, B		
<u>OPENS WORK SESSION ON HB 2318</u>		
036	Bill Taylor	Discusses HB 2318-3 amendments (EXHIBIT C).
044	Rep. Prozanski	MOTION: Moves to ADOPT HB 2318-3 amendments dated 2/26/97.
		VOTE: 8-0
045	Chair Shetterly	Hearing no objection, declares the motion CARRIED.

048	Rep. Beyer	MOTION: Moves HB 2318 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 8-0
050	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. PROZANSKI will lead discussion on the floor.
054	Chair Shetterly	Closes Work Session on HB 2318.
<u>OPENS WORK SESSION ON HB 2419</u>		
059	Bill Taylor	Committee Counsel Discusses HB 2419.
068	Rep. Prozanski	MOTION: Moves HB 2419 to the full committee with a DO PASS recommendation.
072	Rep. Wells	This bill does not cover stopped payments, correct?
074	Chair Shetterly	No, that is not involved with this bill. This involves nonsufficient funds and closed accounts.
		VOTE: 8-0
078	Chair Shetterly	Hearing no objection, declares the motion CARRIED. REP. STARR will lead discussion on the floor.
084	Chair Shetterly	Closes Work Session on HB 2419. Adjourns at approximately 3:00 p.m.

Submitted by, Reviewed by,

Lisa Fritz, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2428, written testimony, Dale Penn, Marion County District Attorney, 1 page.

B - HB 2267, written testimony, Kingsley Click, State Court Administrator, 2 pages.

C - HB 2318, proposed amendments, Legislative Counsel, 8 pages.