

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CIVIL LAW

April 21, 1997 Hearing Room 357

1: 00 p.m. Tapes 64 - 65

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:

William E. Taylor, Counsel

Lauri A. Smith, Administrative Support

MEASURE/ISSUES HEARD:

HB 3082 - Public Hearing HB 2944 - Public Hearing

HB 2835 - Public Hearing HB 2949 - Public Hearing

HB 3366 - 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		
	Chair	

003	Shetterly	Calls the meeting to order at 1:22 p.m.
HB 2835 - PUBLIC HEARING		
017	Chair Shetterly	Opens a public hearing on HB 2835.
021	Rep. Bob Jenson	District # 57. Testifies in support on the HB 2835. >currently requires a doctor and a nurse to administer already prescribed medication within a small institution, like in Umatilla County >imposes a considerable financial hardship to hire persons to commute for administering the prescribed medication.
057	Rep. Bob Repine	District # 49. Testifies in support of the HB 2835 -1 amendments dated 04/10/97 (EXHIBIT A) . >provides scenario behind -1 amendments >will allow information regarding youth offenders to be passed to the principal, who in turn can relay the information >should the student leave the state, the information can be forwarded, where possible
103	Chair Shetterly	Regarding the -1 amendments, have you talked with the schools about the proposed language?
106	Rep. Repine	Not outside the school in question.
113	Chair Shetterly	Was there any response from juvenile courts as to the workload involved in notifying schools?
115	Rep. Repine	Restates example which prompted the measure.
119	Chair Shetterly	Rep. Repine, what about juvenile courts and the workload involved in sending out notification?
120	Rep. Repine	No parties involved with this case received notification of the offender's prior offenses.
122	Rep. Wells	What about a situation where the offender has served his/her debt to society?
	Rep.	Restates intent of the measure. >not designed to be a punitive document to follow offender

126	Repine	>knowledge of prior offense does not thwart the threat, for instance, of what a predator poses to the campus
141	Rep. Wells	Responds by example.
154	Rep. Repine	The offender in my scenario was only on probation. States an additional example.
168	Rep. Eighmey	Are the -1 amendments directed only towards a convicted youth, but also to offenders who come within the jurisdiction of juvenile courts? Is it your intent to sweep in anyone who comes within the juvenile courts system? Because the -1 amendments are placed within ORS 419A, which defines a youth offender's record as anyone under the jurisdiction of the juvenile courts.
182	Rep. Repine	I do not know what would cause a youth offender's records to be distributed by the juvenile courts. I would leave that direction to the subcommittee to decide. However, I don't believe my example is an isolated situation. I believe, the types of crimes, like in my example, are becoming more common at a younger age.
193	Rep. Eighmey	On page 1, lines 13 through 18 of the -1 amendments, it outlines when the juvenile courts may disclose a youth offender's records. These offenses would generate an overwhelming load of information for principals to disseminate. Gives example.
204	Chair Shetterly	I would believe, narrowing the language of the -1 amendments should be encouraged in light of Rep. Eighmey's concerns.
207	Rep. Repine	My concern is violence against another person, when the school is unaware of the offender's past record.
213	Rep. Bowman	Why include the regular driver of a school bus and every teacher to be informed, when the records are to be treated confidential?
224	Rep. Repine	The inclusion of the school bus driver was from legislative counsel. Perhaps something more discretionary could be drafted to maintain the confidentiality of the offender's records.
252	Rep. Bowman	Rep. Jenson, in regards to the original measure, who would be actually administering the medication to the juvenile offender?
257	Rep. Jenson	The staff at the facility, who are trained to administer medication.
264	Rep. Uherbelau	Rep. Repine, your example referred to a high school student?
266	Rep. Repine	Correct.
267	Rep. Uherbelau	Shares concern over disclosing court records of elementary students.
	Rep.	Responds by giving examples. >there are more level of crimes in our schools, even in the elementary

279	Repine	level >-1 amendments appears to broaden my original intent
303	Rep. Uherbelau	My concern was over the elementary students in levels one through five, not the middle school students.
305	William E. Taylor	Counsel >-1 amendments were based on a state statute from West Virginia.
334	Chair Shetterly	Recesses the public hearing on HB 2835.
<u>HB 3082 - PUBLIC HEARING</u>		
341	Chair Shetterly	Opens a public hearing on HB 3082.
351	Jeff Carter	President of Oregon State Bar (OSB), Attorney, Marion County Testifies in opposition of HB 3082 and presents a memorandum providing highlights of Model Legislation from the Legal Technician Task Force Report (EXHIBIT B). >committed to finding different ways to provide legal services to those who can't afford >programs started by OSB - Modest Means Panel and Pro Se Clients
400	Chair Shetterly	By pro se clients, you mean non-lawyers representing themselves?
401	Carter	Continues testimony. >Marion County borrowed from Arizona, a model for a pro se clients >pro se clients funded in county budgets rather than state budgets
433	Dan Ritter	Attorney, Marion County served on the Board of Governors. Testifies in opposition to HB 3082. >concern over the separation of power >no outline stating the requirements for a paralegal to perform lawyer services, other than over 18 years of age and never disbarred >rules too broad by delegating to the Department of Consumer and Business Services, to determine qualification of applicants and to cause examinations

		>gives example of parties injured by non-lawyers >my associated firm received pro bono award
Tape 65, A		
030	Chair Shetterly	Asks witness to define the term "pro bono".
033	Ritter	Legal work is done without fees to those who could not otherwise afford.
040	Rep. Uherbelau	With regards to the Legal Technician Task Force Report, has anything happened since 1992?
044	Bob Oleson	Oregon State Bar The report was developed at the request of the Interim Judiciary Committee.
050	Rep. Bowman	Shares concern that not enough pro bono work is being done.
056	Ritter	I spoke from my experiences seen in Marion County.
057	Rep. Uherbelau	Shares concern that more than the poor can not afford legal services.
062	Chair Shetterly	Was the task force report submitted to the interim committee this session or in a prior session?
065	Carter	The task force report was submitted at a prior session.
066	Chair Shetterly	Could you leave a full copy of the task force report with Counsel?
067	Rep. Eighmey	Shares concerns regarding amount of pro bono work. The task force report appears to provide the tight control, I believe, this measure needs.
095	Oleson	The subcommittee might want to pursue with the advocates of the measure and OSB would be willing to work with them.
101	Carter	Provides reasons behind his presidency goals for the Oregon State Bar. One goal was to review the legal services to the poor and raise it to a higher level.
124	Rep. Charles Starr	District # 3. Testifies in support of HB 3082.
155	Robin Smith	Independent Paralegal Business, Washington County Testifies in support and provides written testimony on HB 3082 (EXHIBIT C).
205	Smith	Continues testimony.
255	Smith	Continues testimony.
		Since the cost of legal services appears to be the bottom line, why are

267	Rep. Wells	paralegals willing to work for less when providing legal services, how could you keep your rates down?
280	Smith	States her qualifications for running her paralegal business. I charged a flat fee for performing routine standard paperwork.
307	Rep. Wells	Why doesn't the legal profession charge less when they turn work over to a legal secretary? I believe, more often times the attorney doesn't look at the work handled by legal secretaries. Why then are legal costs so high?
320	Smith	Gives examples.
330	Chair Shetterly	Responds as to what happens in his practice procedurally. All documents are reviewed by myself prior to being forwarded to clients.
336	Rep. Eighmey	<p>The attorney is ultimately responsible for action of their non-licensed employees. Provides reasons behind the fees charged by attorneys.</p> <p>I believe, the reasons attorneys do not wholeheartedly endorse an independent paralegal is that there is no limitations on what a paralegal can do. Complexities exist that many paralegals do not have the knowledge or training to perform. A paralegal maybe doesn't know when and where to go to meet the needs of the client. Sometimes the client's needs are not as easy as they appear.</p> <p>Why didn't you, Robin Smith, take the Bar's proposal and draft the measure accordingly?</p>
397	Smith	I am not entirely opposed to the Bar's suggestions. However, if the Bar wasn't going to embrace the task force report, I didn't see it as a base to work from. Instead, I reviewed California's recent proposal and looked at previous legislation proposed when proposing this measure.
417	Rep. Uherbelau	I don't see any parameters in this measure. For instance, where the measure defines "independent paralegal", is that the type of thing you envision an independent paralegal performing?
426	Smith	<p>Yes. I want to see independent paralegals be allowed to perform those task outlined in the measure. This measure, however, appears to go beyond my intentions and misses other items I thought would be included.</p> <p>>needs to be able to perform routine standard legal work without be subject to practicing without a license</p> <p>>Florida has standard forms for use by a paralegal, however, in Oregon, a paralegal can't select a document for a client without practicing law</p> <p>>the Unauthorized Practice of Law statute needs to allow room to assist people</p>
Tape 64, B		
036	Rep.	Shares concerns over creating standard forms.

	Uherbelau	
		Do you, as an independent paralegal, have the training or background, to know when you are going outside the area of practice?
052	Smith	Gives examples.
061	Rep. Uherbelau	There is a vast difference in programs offered in schools for paralegals. Would you envision a standardized requirement as to education levels?
070	Smith	Responds by stating examples of training and education levels needed.
079	Rep. Prozanski	Could you provide what the requirements are of liability insurance for a paralegal?
080	Smith	Identifies the liability insurance coverage and costs in her circumstances.
089	Rep. Prozanski	Is this the amount of coverage encouraged for paralegals at minimum?
090	Smith	No. Liability insurance is only one method of consumer protection, another would be bonding. There needs to be recognition that there is less risk associated with typing the client's instructions versus an attorney handling the checkbook in a probate matter.
102	Rep. Prozanski	If a client has concern over the handling of their request, would that party have to hire an attorney for recovery?
105	Smith	I would recommend a mediation process to settlement of grievances.
109	Rep. Prozanski	Is there a fiscal impact statement which reflects the costs to the state of setting up this board, staffing needs, etc.?
113	Smith	The idea was to create as little fiscal impact as possible by stating within the statute the specific requirements of overseeing the practice of an independent paralegal. The measure was intended to make this as self regulatory as possible.
124	Rep. Uherbelau	Would a paralegal accept fees to cover costs to the Independent Paralegal Advisory Board? As members of the Bar, attorneys pay substantial fees to cover the costs of regulating members.
133	Smith	Eventually covering the costs of the regulating members would be possible. However, there are a lot of independent paralegals concerned with possibly practicing law, in light of the suit brought against myself.
143	Chair Shetterly	In terms of the scope of work involved, for instance, filling out forms according to the client's instruction, the client may need more than the typing of a form, but need legal guidance over whether one section's answer may effect how to answer another section. Also, the customer's own uninformed decisions may have consequences on how they instruct the paralegal to complete the form. Gives example.
157	Smith	I completed the client's request by using one model as guidance and my case testimony will reflect this. I have helped nine thousand people without a consumer complaint.
160	Chair Shetterly	Recesses the public hearing on HB 3082.

<u>HB 3366 - PUBLIC HEARING</u>		
173	Chair Shetterly	Opens a public hearing on HB 3366.
183	Jason Crowe	Legislative Chairman for the Oregon Association of Process Servers, Multnomah County, Owner of Nationwide Process Servers in Portland, Oregon. Testifies in support of HB 3366. >HB 3366 enhances the professionalism, character integrity and accountability of process servers >Oregon members encourage licensing of process servers in the future, first step would be registration of process servers
214	Amanda Williams	Oregon Association of Process Servicers Testifies in support of HB 3366. HB 3366 will create a list of people who serve process for a fee in each county by location of business. Describes procedures.
239	Charles Stern	Oregon County Clerks Association, Yamhill County Testifies in support of HB 3366, if changes were enacted. Will there be statewide fees for registering or will the county's governing body set the fees? This measure is silent in this regards.
252	Williams	Responds by stating that legislative counsel had concern whether this measure may violate a ballot measure regarding unfunded mandates. The Oregon Association of Process Servers will be proposing an amendment which would allow counties to collect fees necessary to cover the costs of service as this was overlook in the drafting of the measure.
267	Chair Shetterly	Closes the public hearing on HB 3366.
<u>HB 2835 - REOPENS PUBLIC HEARING</u>		
271	Chair Shetterly	Reopens the public hearing on HB 2835.
274	Andrew	Administrator, Law Student at Willamette University

	Huff	Provides background history and intent behind HB 2835 and -1 amendments.
324	Chair Shetterly	Does this increase the legal liability to the school districts, if they have knowledge of an previous offender? Does this create an obligation on the part of the school district, that is a greater liability than otherwise would be the case? Is there a legal liability for failing to disclose a previous offender's violations.
327	Huff	There is no provision regarding the failure of sending information to the school districts. The only provision regarding liability is that a person would not be liable, civilly or criminally, for accidentally or negligently attributing certain youth offender's information to a wrong person.
340	Chair Shetterly	Nor are there sanctions against the principal who learns of a youth offense and takes no action.
342	Rep. Wells	How does the school know to contact the juvenile court for information? Would the juvenile court know to which school the offender is attending?
352	Huff	The -1 amendments are silent on how the juvenile court will monitor where the youth offender is attending school. It will be the duty of who is appointed to disclose the offender's records. There is no mandatory provision to disclose information when the offender is adjudicated for a crime, it is only at the discretion of the court. The court may and is given authority to release the records.
370	Rep. Bowman	I believe, the -1 amendments are also silent as to the principal's responsibility once the records are received. The principal has to determine to whom receives the information and that is a lot of responsibility without the background to make these determinations over a young person.
391	Huff	I can't speculate as to the direction of the language in the measure, however, it could be suggested to provide more discretion to the principal to disclose the information rather than require disclosure.
407	Rep. Eighmey	I have concerns with creating in the statute a presumption that there is a duty to inform on the part of the principal. Gives example.
429	Huff	Yes, according to the -1 amendments, there is a "duty to inform" that is being created.
433	Chair Shetterly	Closes the public hearing on HB 2835.
<u>HB 2944 - PUBLIC HEARING</u>		
445	Chair Shetterly	Opens the public hearing on HB 2944.
		Oregon Gun Owners Association Testifies in support of HB 2944 and presents a chronology of articles

446	Justin Burns	<p>from The Oregonian (EXHIBIT D).</p> <p>>HB 2944 seeks to create a complete defense in a civil action for personal injury or wrongful death</p> <p>>usage of force justifiable against a person engaged in conduct of aggravated murder, murder or a Class A or a Class B felony</p>
Tape 65, B		
035	Chair Shetterly	<p>Identifies that -1 amendments dated 04/18/97 exist (EXHIBIT E).</p> <p>Closes the public hearing on HB 2944.</p>
<u>HB 2949 - PUBLIC HEARING</u>		
040	Chair Shetterly	Opens the public hearing on HB 2949
046	Greg Mowe	<p>Oregon State Bar, Procedure and Practice Committee</p> <p>Testifies in opposition to HB 2949.</p> <p>>HB 2949 revisits some court reform compromises negotiated in 1995</p> <p>>have concern with reopening the area of attorney fees</p>
057	Kristen Granger	<p>Department of Justice (DOJ)</p> <p>The DOJ would be testifying in opposition to HB 2949, however, Deputy Attorney General, David Schuman had a prior commitment and could not stay to testify. He would like to testify when the measure is before the subcommittee again.</p>
059	Chair Shetterly	Closes the hearing on HB 2949.
<u>HB 3082 - REOPENS THE PUBLIC HEARING</u>		
062	Chair Shetterly	Reopens the public hearing on HB 3082.
064	Christy Matson	<p>President of Pacific Northwest Legal Assistants</p> <p>Testifies in opposition on HB 3082 and presents written testimony (EXHIBIT F).</p>
114	Matson	Continues testimony.
164	Matson	Continues testimony.
202	Rep.	Would a paralegal know when they needed to refer someone to a

	Bowman	lawyer?
211	Matson	No, not necessarily. Gives example.
213	Rep. Bowman	Are there times while doing your job, that you have asked a lawyer to handle a particular client's request?
215	Matson	Absolutely.
216	Rep. Bowman	So, from your twenty two years of experience, you knew when a client's request needed an attorney.
220	Matson	Yes. Gives example.
228	Rep. Eighmey	Shares comments regarding supervised paralegals and regarding fee charges.
247	Rep. Prozanski	Shares comments regarding fees charged.
255	Rep. Uherbelau	Ms. Matson, you work in a supervised position.
257	Matson	Yes.
259	Rep. Uherbelau	Your work product is always reviewed by an attorney?
260	Matson	Yes, because the attorney has the ultimate responsibility.
261	Chair Shetterly	Closes the public hearing on HB 3082. Adjourns the meeting at 3:05 p.m.
		[HB 3082 - Written testimony, Laurel A. Bielec, Region I Director, NFPA] (EXHIBIT G)

Submitted by, Reviewed by,

Lauri A. Smith, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2835, -1 amendments dated 04-10-97, Rep. Bob Repine, 6 pages.

B - HB 3082, memorandum, Jeff Carter, 1 page.

C - HB 3082, written testimony and support documents, Robin Smith, 81 pages.

D - HB 2944, chronology of newspaper articles, Justin Burns, 7 pages.

E - HB 2944, -1 amendments dated 04/18/97, Staff, 1 page.

F - HB 3082, written testimony and support documents, Christy Matson, 12 pages.

G - HB 3082, written testimony and support documents, Laurel A. Bielec, 14 pages.