

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

February 27, 1997 Hearing Room 357

1:00 PM Tapes 35 - 36

MEMBERS PRESENT:

Rep. JOHN MINNIS, Chair

Rep. JO ANN BOWMAN, Vice-Chair

Rep. PETER COURTNEY

Rep. FLOYD PROZANSKI

Rep. LANE SHETTERLY

Rep. RON SUNSERI

Rep. LARRY WELLS

MEMBER EXCUSED:

STAFF PRESENT:

SCOTT LUMSDEN, Counsel

BRIAN HIGGINS, Administrative Support

MEASURE/ISSUES HEARD:

Public Hearings and Work Sessions on HJR 2 and HB 2206

Public Hearings on SB 257, HB 2538, HB 2227

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 35, A		
003	Chair Minnis	Calls subcommittee to order at 1:10 PM >announces HB 2434 has been pulled off of the agenda

<p><u>HJR 2 - PUBLIC HEARING AND WORK SESSION</u></p>		
<p>006</p>	<p>Chair Minnis</p>	<p>Opens public hearing on HJR 2 >proposed amendments, (EXHIBIT A)</p>
<p>008</p>	<p>Kevin Mannix</p>	<p>Criminal Justice Lobbyist >supports provision of amendment on page 2, lines 1-5 >expresses concern about page 3, lines 14-17 on basis of Judge Lipscomb's decision in regards to Measure 17 being in compliance with federal law >no problem exists with Measure 17 conflicting with state law >gives license to future legislatures to change the concepts involved in regards to compensation >problem with Attorney General's interpretation which says inmates are not allowed to keep any money on basis that rewards are means of rehabilitation</p>
<p>055</p>		<p>>can be solved by removing "reimbursement" phrase from line 16 >suggestion is to delete words "or state" on line 15 of amendments and "reimbursement" phrase from original measure >Prison Industries Board approach is good compromise giving the Governor ultimate authority. >problem with "provided by law" language >means future legislatures can gut Measure 17 by eliminating 40 hours per week element</p>
<p>105</p>		<p>>really only working 20 hours with allowances for education >Language upholds administrative convenience, but not the voters' intent. >problem with "implementation" date on page 5, lines 6-8 as being contrary to effective date</p>

		<p>>effective date allows time to implement</p> <p>>if implementation necessary, then need to challenge ourselves with strict, early deadline not loose deadline that leaves out accountability</p> <p>>Nine years is an escape clause and not a deadline.</p>
152	Chair Minnis	On page 3, deleting "or state law" included with thought that future governments would have flexibility.
		<p>>Deleting "reimbursement" phrase allows the flexibility needed so they are not restricted to only one remuneration program.</p> <p>>It is a compromise amendment.</p> <p>>On page 4, lines 27-30, "or provided by law" means legislature would have some stewardship over success of program.</p>
		>Governor's concern was in regards to the inflexibility of the 40 hours due to security involved in transporting prisoners.
		>original implementation 2001, and additional time not considered onerous
189	Mannix	<p>Responds about ability for inmates to keep funds as means of rehabilitation</p> <p>>Voters rejected notion of receipt of cash, but not rehabilitation.</p>
213	Chair Minnis	<p>It is in the legislature's interest to have some control over the program.</p> <p>>stewardship responsibility to make sure DOC is dealing with inmates effectively inside the institution</p> <p>>requires legislature to appropriate funds necessary which gives some direction</p>
229	Mannix	<p>Comments he takes cautious approach to legislative oversight in regards to this issue</p> <p>>initiative process used because lobbyists don't advocate for new programs only restrictions on existing ones</p>
246	Chair Minnis	<p>It's not a priority unless you fund it.</p> <p>>Governor has ability to choose what to fund as in the Oregon Health Plan.</p> <p>>Legislature should look at what we do with people once they are incarcerated.</p>

		>doesn't make a difference what we write if the Governor and legislature do not compel it into existence
269	Mannix	Reminds committee of SAIF controversy of a few years ago >Create a pot of gold and the legislature will reach into that pot of gold. >history of diversion of funds >money intended to be redirected back into the program and not for general use by government
289	Chair Minnis	Work group's intent is not that the pot of gold could be robbed if program is successful
293	Rep. Prozanski	I read the "otherwise provided by" language to mean that if compensation earned equals \$50 million dollars into the program, this does not equal \$50 million dollars of compensation. >Surplus is not compensation. >doesn't agree that this opens the door to take money out of program
313	Mannix	I can envision that money being brought in can be viewed as compensation to be distributed and that this will be taxed. >Theoretically this can be done.
327	Chair Minnis	In subsection 9, it says that all income generated from prison work programs shall be kept in a separate account and shall only be used for the program. >Legislature can change the compensation but can not raid the monies of that program.
352	Mannix	That is a good point and I yield.
367	Steve Marks	Senior Policy Advisor, Governor's Office >Governor supports the -2 amendments
384	Benjamin De Haan	Deputy Directory, Oregon Department of Corrections >currently not compensating inmates with reason being that we need to keep 100% of what they earn >need to allow legislature to have discretion as to how compensation is used
408	Chair Minnis	Any comments regarding to the 40 hours as provided by law?

411	De Haan	We want the flexibility primarily for security reasons.
422	Chair Minnis	Do you have an idea what a reasonable assumption is with respect to that time?
425	De Haan	Internally, we talk about 35 hours or so.
431	Chair Minnis	Opens work session on HJR 2
434	Rep. Prozanski	MOTION: Moves to ADOPT HJR 2-2 amendments dated 02/26/97 as modified to include election date of May 20, 1997 on line 12 of page 5.
TAPE 36, A		
020	Chair Minnis	The current language has May 20, 1997 but election date can be set differently in the Senate. >not opposed to current date in the bill
037	Chair Minnis	Hearing no objection, declares the motion CARRIED.
038	Rep. Shetterly	MOTION: Moves HJR 2 to the full committee with a BE ADOPTED AS AMENDED recommendation.
040		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Rep. Sunseri
	Chair Minnis	The motion CARRIES. REP. PROZANSKI will lead discussion on the floor.
045	Chair Minnis	Closes public hearing and work session on HJR 2.
<u>SB 257A - PUBLIC HEARING</u>		
047	Chair Minnis	Opens public hearing on HB 257A
050	Russ Lipetzky	Chair, Juvenile and Family Law Section, Oregon State Bar >submits and summarizes written testimony, (EXHIBIT B) >comments he discussed this bill with Kevin Mannix and indicated he is supportive of it

068	Rep. Prozanski	This is a good amendment because while they may know of order this would give them a hard copy of notice.
073	Chair Minnis	Closes public hearing on SB 257A
<u>HB 2227 - PUBLIC HEARING</u>		
083	Chair Minnis	Opens public hearing on HB 2227
088	Ingrid Swensen	<p>Oregon Criminal Defense Lawyers Association</p> <ul style="list-style-type: none"> > rises out of saving money in indigent defense area > proposal based on Washington statute > in seeking death penalty in aggravated murder can wait up to 60 days to file notice to seek death penalty > period of time to allow for submission of mitigating evidence > refers to two investigators whose specialty it is to investigate mitigating circumstances in death penalty cases > In WA they work hard for 30 days, whereas in OR it could take up to two years as there is no incentive to produce information.
145		> literally requires state to file notice within 60 days of an aggravated murder charge of whether or not death penalty will be sought
156	Rep. Prozanski	Asks about 60 days versus 30 days and whether she would be opposed to 120 days
161	Swensen	I don't believe I'd oppose that. The investigators suggested that 90 days would be better.
167	Rep. Prozanski	Once the DA has filed, there is nothing in here that would stop them from being able to retract their decision.
171	Swensen	No. There is nothing that would prevent that.
173	Rep. Prozanski	I was hesitant until I saw that the defendant would not be allowed to plea out without consent of DA's office which is a good compromise.
		<p>President, Oregon District Attorney's Association, District Attorney, Polk County</p> <ul style="list-style-type: none"> > concept shopped around last session

181	Fred Avera	<p>>bill will not save money or decrease work per reaction from DA's around the state</p> <p>>don't feel 60 days is sufficient time to know whether or not to seek the death penalty</p> <p>>aggravation investigations rarely completed within 60 days</p> <p>>policy probably end up being that we'll file right away</p> <p>>among DA's, split of authority on ability to waive death penalty</p> <p>>may be a DOJ bill coming along to address the authority issue</p>
240		>not opposed to saving money, but don't feel this bill is the vehicle for this
245	Chair Minnis	Asks for clarification on confusion among DA's
246	Avera	Responds that some DA's think penalty for aggravated murder is death unless jury says otherwise, but he doesn't feel the same way
253	Rep. Prozanski	Would 120 more days make it more palatable?
267	Avera	<p>It would make the notice requirement more workable, but the longer the period the less savings will occur.</p> <p>>The shorter the period, the less likely things will get done in that period.</p>
296	Rep. Prozanski	Since we are a notice-pleading state it seems appropriate that notice is given, so what is the deadline?
300	Avera	When aggravated murder cases are filed, the defendant is considered on notice that death penalty is an option.
310	Chair Minnis	Asks for clarification of the cost-savings issue and relation to indigent defense fund
320	Swensen	<p>Assuming this bill works the way it does in Washington, it shortens the process considerably.</p> <p>>significant indigent defense costs</p> <p>>instead of working at hourly wage for up to two years, would be restricted to the timeframe designated by bill</p>
334	Chair Minnis	What would you not investigate?
339	Swensen	Realistically, when defense has presented all of the mitigation evidence and the DA decides to not seek the death penalty it

		will coincide with an agreement to the outcome.
345	Rep. Shetterly	Is it not the practice in WA and other states to have a pro forma notice?
352	Swensen	I have not heard that it is a problem, but I am not intimately aware of what happens there. >DA's do not file notice immediately because they are expecting information. >would be happy to make contact with WA DA's office to get their position and CA as well
381	Avera	Costs involved can go down if DA notifies of no intent to seek the death penalty. >argument is only persuasive if DA's are waiting 18 months into the process a month before trial before revealing intent to seek death penalty >generally decision made early on
413	Chair Minnis	To what extent is threat of death penalty an impetus for a plea?
418	Avera	That is a good point. Cites recent case he was involved in.
426	Swensen	Based on anecdotal evidence from WA, pleas are inevitably part of the discussion.
434	Chair Minnis	We'll wait to hear from parties then before we reschedule. >closes public hearing on HB 2227
TAPE 35, B		
<u>HB 2538 - PUBLIC HEARING</u>		
019	Chair Minnis	Opens public hearing on HB 2538
022	Willie Smith	Legislative Assistant, Rep. Jim Hill, District 5 >submits and summarizes written testimony, (EXHIBIT C)
075		Continues testimony
095	Rep. Prozanski	I also would like a thorough discussion on this, but Rep. Hill should be here.
098	Chair Minnis	Asks about resources of information available

		>comments on "for-profit" motive of some clinics
105	Smith	Responds that he doesn't know but that he will ask Rep. Hill to get something together
108	Chair Minnis	I have a strange suspicion you will hear from some people today.
110	Smith	And we have asked for a videotape of today's hearing so that the Representative can answer those.
111	Rep. Wells	I am wondering about the closing of clinics mentioned and also the cost for methadone treatment.
117	Smith	There are 3 methadone clinics run by Western Health Sciences, Inc. which are closing due to violations of state and federal regulations. >I don't have information with me on the cost.
129	Vice Chair Bowman	I am curious as to the public health clinics and which ones distribute this drug and their success rate.
131	Smith	The list on the back has all of the clinics in the state of Oregon of which some are non-profit.
140	Vice Chair Bowman	I was pretty sure Multnomah County had this activity available through their health clinic as well, but I see people in the audience shaking their heads no, so I'll wait.
144	Rep. Prozanski	I've skimmed over the paper presented to the committee and would like to ask when it was prepared.
146	Smith	It was prepared this morning.
147	Rep. Prozanski	I question as to why your name shows on the cover as the presenter at this stage. >I have a problem of you being in the position to answer questions to which you don't have the answers.
152	Chair Minnis	There was some confusion as to whether the bill was on or off, and so I at least wanted this presented in concept. It's my fault basically.
163	Amelia Endorf	Salem, OR >Gives testimony about her blood disorder for which she uses methadone to control her pain >alternative to methadone is 16-18 Vicadin tablets per day >cause of discrimination in attempts to get a job >brain, nerve system damaged
221	Chair Minnis	Allows Steven Endorf to come to witness table

225	Amelia Endorf	Continues testimony >mentions Dr. Reinkin's clinic in Auburn, CA >doctors control amount of drugs she gets >non-narcotic drugs coming on market
263	Vice Chair Bowman	Asks about how she acquires the methadone
269	Endorf	Responds that she must go to doctor to get prescription monthly >prescription of methadone mixed with phenegrin and Tylenol >methadone must be hand-given and papers signed
308	Steven Endorf	Salem, OR >wife does not like medication, but went through 15-20 different antidepressants of which none were effective
		>mentions program called Beyond 2000 on Discovery channel about new drug called ibocain going under FDA tests >new drug makes point of bill moot >ibocain informational materials will be submitted to committee
		>line 5 of bill is pretty broad and asks committee to consider other wording to exclude people who use methadone as pain-killer
361	Rep. Sunseri	What is the cost of methadone prescription as opposed to Vicadin or Demarol?
363	A. Endorf	Responds she pays \$130 per month for use 2-3 times per week
366	S. Endorf	Vicadin cost us \$300 per month before we changed.
371	Chair Minnis	What types of other patients use methadone?
375	A. Endorf	Cancer and fibromyalgia patients use it as well.
398	Chair Minnis	What about arthritis patients?
399	A. Endorf	There are some, but we're talking maybe 200-300 people across the country who stay on methadone permanently.
403	Chair Minnis	Asks about her statement earlier about wanting to die
		Clarifies that when the pain is out of control and have nothing to look forward to other than a wheel chair, there is no reason to live

406	A. Endorf	>Those feelings are gone and I would have a job if I could just get an employer to hire me.
423	Chair Minnis	Asks if she is required to disclose she is on methadone
425	A. Endorf	Because rehab has given me a disability thing, I do have to disclose it. >This is considered a handicap.
435	Chair Minnis	I would assume that questions regarding your handicap are constrained to those that are applicable to the functions of the job you are applying for.
TAPE 36, B		
010	A. Endorf	It manages to come out, especially in those places which require drug-testing. >I'm automatically positive because we're talking about synthetic heroin.
013	Rep. Wells	What about the addictive qualities of methadone?
016	A. Endorf	At the levels I am taking, methadone is not addictive. >There are studies showing narcotics tend not to be addictive when there is a lot of pain.
024	S. Endorf	For those people who are in pain, the body does not develop the addictive response to narcotics.
032	Karen Augustine	Chemical Dependency Counselor, Allied Health Services, Inc., Portland >submits and reads testimony on behalf of employer, (EXHIBIT D)
080	Chair Minnis	Is this a for-profit clinic?
081	Augustine	Yes, we are for-profit.
082	Rep. Sunseri	Asks about the return on the dollar for a methadone clinic
086	Augustine	I do not feel qualified to answer that question. >addresses issue of for-profit clinics keeping heroin addicts >Heroin addiction is growing and we will not be without patients in the coming years.
092	Rep. Sunseri	Does the clinic treat others than heroin addicts?

093	Augustine	We do have clients who are there for chronic pain management also.
095	Rep. Sunseri	What is the percentage of your patients that require methadone for drugs?
096	Augustine	In my particular caseload 90% are opiate-dependent; 10 % chronic pain management. >Length of stay is a matter of brain chemistry and unlearning behaviors. >Heroin on the streets costs approximately \$100/day and the cost of methadone is significantly less.
106	Chair Minnis	How about expectation of treatment? >Is there an average time of treatment?
108	Augustine	Again, that is a brain chemistry question which depends on length of addiction that I don't feel qualified to answer.
110	Chair Minnis	There's got to be some aggregate statistics relevant to whole number of patients that have been involved in this the last couple of years.
112	Augustine	I have some short-term patients who have been there less than two years and those that will be in for 2-5 years and some who will be there longer.
117	Rep. Wells	Most of the people coming to you are probably on some health plan or have been required to attend, so who pays the bill?
122	Augustine	Some come under health plans and some come under private pay.
124	Rep. Wells	And they are coming of their own volition?
125	Augustine	Yes.
126	Rep. Wells	What do you mean about slots?
130	Augustine	Slots refer to patients, so one slot equals one patient.
141	Ann Uhler	Executive Director, CODA >CODA is a prevention and treatment center in the four-county area. >provide continuum of services: detox, outpatient services, residential centers >job to determine whether people are appropriate for particular services >non-profit which used to be a state agency

		<p>>been in addiction field for 23 years</p> <p>>methadone most effective and most studied treatment of opiate addictions</p>
187		<p>>methadone is an addictive synthetic opiate, but different pharmacologically than other opiates</p> <p>>Tolerance does not build up to methadone.</p> <p>>heroin does not have tolerance so people need to have more and more thus leading to expense of habit</p> <p>>no effects on ability to drive - many studies on this</p>
		>CODA is a knowledge-based clinic meaning we continually review research and revise our practice accordingly.
		<p>>LAAM is another synthetic opiate which lasts longer than methadone.</p> <p>>Legislature has previously been involved with a study on methadone.</p>
240		<p>>Treatment is effective in preventing crime.</p> <p>>Only about 30% of methadone clients are involved in the criminal justice system.</p> <p>>What happens is that addiction gets so bad that they seek treatment before they get involved in criminal behaviors.</p>
259	Chair Minnis	Do you have any current studies you could direct us to?
262	Uhler	<p>The two studies I mentioned that CODA participated in are the TOPP studies and the other one is the Legislative Study which is in the State Office of Alcohol.</p> <p>>Long-term heroin abusers experience biochemical changes so as to make them unable to produce necessary chemicals they need and so methadone works because it gives them that chemical.</p>
285	Rep. Sunseri	If methadone was taken away from heroin users, would those who have been on methadone treatment then turn to methadone illegally on the streets or heroin?
292	Uhler	Responds that they would seek heroine because it is much more readily available
298	Rep. Sunseri	So methadone is just a substitute.
299	Uhler	No, not just a substitute. There is a great difference between the

		two.
306	Rep. Prozanski	My understanding is that these programs put them on a regulated level where there isn't the high heroin gives.
311	Uhler	Now we have the answer as to why that is necessary from the recent research I just alluded to.
314	Rep. Wells	Did you say heroin is cheaper than methadone?
317	Uhler	Explains issue of cost and cheapness >costs clinics \$4 per day to dispense methadone which includes cost of medication, nurse and urinalysis >For those with no other ability to pay, it costs \$300 per month.
		>explains "slots"
358	Chair Minnis	We will not be getting to HB 2707 or HB 2228 today.
363	Chair Minnis	Adjourns subcommittee at 2:55 PM

Submitted by, Reviewed by,

BRIAN HIGGINS, SCOTT LUMSDEN,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HJR 2, Proposed amendments (-2 dated 2/26/97), Staff, 5 pp.

B - SB 257A, Written testimony, Russ Lipetzky, Oregon State Bar, 2 pp.

C - HB 2538, Written testimony, Willie Smith, Legislative Assistant to Rep. Hill, 4 pp.

D- HB 2538, Written testimony, Karen Augustine, 2 pp.