

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

April 3, 1997 Hearing Room 357

1:00 pm Tapes 72 - 73

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 Hearing and Work Session - HB 2176

Public Hearing - HB 2197

Work Session - HB 2311, HB 2312, HB 2313

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 72, A		
003	Chair Minnis	Calls subcommittee to order at 1:10 pm

HB 2176 - PUBLIC HEARING		
005	Chair Minnis	Opens public hearing on HB 2176
011	John Heilman	Personnel Director, Department of Human Resources >submits and summarizes written testimony and proposed amendments, (EXHIBIT A)
061	Heilman	Continues testimony
116	Rep. Prozanski	Asks for clarification on the intent of sharing criminal history with the applicant
120	Heilman	In reviewing the information with the employees, without the authority to do that, we are left with explaining to the person that their criminal history is inappropriate for their position. >It's simply to be able to share the information.
135	Rep. Prozanski	What do you mean by sharing? Are you talking about giving them a copy?
139	Heilman	It would not be giving them a hard copy; rather, it would allow them to inspect and review. It would allow the document to be permitted as an exhibit in the contested case hearing.
143	Rep. Prozanski	My understanding is that only law enforcement officers have access to the NCIC records. I don't believe that the rules allow individuals to have access to these records.
153	Heilman	The national information cannot be shared, under federal statute, but this would allow the LEDS information to be reviewed.
158	Larry Young	Department of Justice >We have had specific conversations with the State Police and have been advised that as long as there is a state statute that allows sharing of LEDS information, there is no problem with that. >Copies of the FBI information cannot be released. >What is contemplated here is being able to tell them the FBI shows them being convicted of such and such a crime and if they believe it is incorrect then they need to go to the FBI.
180	Chair Minnis	I know it is a bit confusing, but I know there are some suggested amendments.
		Oregon Health Care Association (OHCA)

191	Jim Carlson	>introduces Margaret Carley, Legal Counsel, OHCA >submits and summarizes written testimony and proposed amendments, (EXHIBIT B)
241		Continues testimony
291		Continues testimony
341		Continues testimony
391		Continues testimony
403	Rep. Wells	We had a bill dealing with the registry brought forth by the Child Care Division, so how would this impact that bill?
406	Carlson	Responds that this bill is much more broad and would impact child care providers, long-term care providers, developmentally disabled group home providers and others
423	Rep. Wells	As I understand it, the person being hired would be paying the fees, so does this also affect the people already employed?
429	Carlson	Responds that it would effect everyone currently employed
435	Rep. Wells	Does this get us into the same type of issue as with the school employees where the costs were passed on long-term employees?
TAPE 73, A		
008	Carlson	Responds that there will be substantial costs >Employers will often pick up these fees. >As I mentioned, some folks are doing this on a voluntary basis.
023	Rep. Shetterly	You mentioned that this is more comprehensive than the one Rep. Wells asked about. Would this subsume that bill?
026	Carlson	You could incorporate provisions of that bill into this one if you were to choose.
031	Rep. Prozanski	Asks for an example of who is a qualified vendor regarding record checks
033	Carlson	Responds that Consumer Information Services is a private company that does a lot of this work >They have access to OJIN records which do not include arrest records, like LEDS does, and has only been computerized since 1986. >The language we have recommended is permissive.
052	Rep. Bowman	How much does that check cost locally?
		Legal Counsel, Oregon Health Care Association

054	Margaret Carley	>Currently the state does LEDS for free, but what costs the money is the FBI check.
063	Rep. Bowman	Earlier testimony said that the expectation is that 300,000 people will need to go through this process, is that correct?
065	Carlson	I've heard 200,000 people, but I think it is somewhere in between there.
069	Rep. Bowman	Asks about Massachusetts model where Medicaid funds are set aside to defray the costs of these tests
073	Carlson	If the state were to choose that they are going to cover the additional costs of the new regulation, the state could allocate some funding and these funds would be eligible for federal matching funds under the state's Medicaid matching rate.
082	Rep. Bowman	In regards to people waiting for the FBI check to come back, I didn't get the impression, that this would include those people who don't come into direct contact with the patients.
088	Carlson	We saw some draft rules which were extremely detailed and would have covered any employee or volunteer in a long-term care setting which had us nervous. We want to make sure nothing happens in the rules process that is unintended.
101	Chair Minnis	Could you give me some clarity as far as the intent of the bill?
106	Heilman	We're not asking for more authority, but we're trying to achieve some consistency between the three statutes governing the process.
121	Chair Minnis	So, the purpose is to provide protection to these people in your agency.
123	Heilman	It will not screen out all of those with a criminal history but only the relevant criminal convictions.
126	Chair Minnis	So you are not asking for more authority?
128	Heilman	That's correct.
129	Chair Minnis	So, if that's true, there would be no fiscal impact.
131	Heilman	Correct. Explains.
141	Chair Minnis	With respect to the subject individual, are the proposed amendments going to change that at all?
143	Heilman	I don't think the definition of subject individual is changed.
144	Chair Minnis	I'm very uncomfortable with the language allowing the agency the authority under administrative rule to determine who the subject individuals are. >I think it would be appropriate as to who those targeted individuals might be.
	Rep.	If this bill is passed, would you go back and request this background

150	Bowman	check of all employees as well as new hires?
154	Heilman	Directs the committee to page 7, section 15 of the amendments
157	Young	The answer is yes. Section 15 of the proposed bill would allow DHR to set up a timetable so that not everyone has to be checked on the date the bill becomes effective.
164	Rep. Bowman	And so would the Department of Human Resources pay that cost?
166	Heilman	As an employer of the DHR staff, we would pay for the employees, but it would be up to the individual provider to make that determination.
177	Rep. Shetterly	I voted no on the school employees bill because of the impact of imposing the fees on employees, especially on a low-income group of people.
197	Terry Kraemer	Oregon Alliance of Senior and Health Services >supports OHCA amendments and concept of bill >We believe there should be another amendment to exclude nurses, CNA's or other individuals who are licensed by professional bodies.
216	Heilman	That would be a good example of why the statute suggests the rule would define subject individuals.
225	David Fidanque	Executive Director, ACLU - Oregon >gives history of development of criminal history and fingerprint checks >comments that FBI and state LEDS systems are being overtaxed by expansion of responsibilities which are not law enforcement related
275		>There must be a nexus between the crime and type of job applied for. >I understand that providers want access to all of the records, but there are a lot of implications with that. >This is a complex area which has far-reaching implications beyond just this bill.
332	Charles Shockatoff	Attorney, Oregon Law Center >involved with seniors, people with disabilities and their families >member of State Commission for Child Care >generally supportive of bill >gives perspective on impact on smaller homes that are different than nursing homes >Suggestions for amendment: on page 5 of DHR draft amendments,

		paragraph J, at end of paragraph 15, add "at all times they are in contact with the children, the elderly and persons with disabilities during such periods of training or orientation."
382		<p>>Suggestion for amendment: On top of page 6, "efficient" should be deleted and before "consistent," insert "as appropriate."</p> <p>>Large YMCA child care facilities are different than family providers.</p> <p>>Suggestion for amendment: On top of page 6, at end of previous sentence, it should say, "While maximizing the protection for children, elderly and persons with disabilities."</p> <p>>Suggestion for changes to OHCA amendments: In section 10h, the cost-benefit analysis part should be deleted because of the inability to quantify the value of a child, disabled or elderly person harmed in a day-care facility.</p> <p>>Suggestion for changes to OHCA amendments: On second page, paragraph 15, an Oregon criminal check is going to come up clean if they live in Washington.</p>
TAPE 72, B		
011	Young	<p>For the purposes of FBI criminal records checks, Congress has passed a statute which specifically relates to records checks for children, elderly, and those with disabilities.</p> <p>>In 42 U.S.C. Sec. 5119a, paragraph sub A, sub 1 it says: "a state shall in effect procedures which require qualified entities designated by the state to allow an authorized agency such as the state police to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly and disabled individuals."</p>
023	Chair Minnis	It's interesting that the federal law has identified where the conviction has a bearing on the fitness for work.
026	Young	<p>It is silent in the sense that it doesn't contain the exact language of the federal statute, but page 3 of DHR amendments, subsection b lists the relevant conditions.</p> <p>>The DHR has tried to provide that a lot of people have been convicted of some crime in their life and it should not bar them from employment in this industry forever.</p>
041	Chair Minnis	Where is that again in the amendments?
042	Young	Responds that it is on page 3, Section 7b of the DHR amendments

045	Heilman	Comments on delays in employment caused by the checks
053	Chair Minnis	In my own work as an investigator, I can go to my LEDS terminal and go into NCIC and run a CCH which will query all states to get all of the information.
066	Patricia Whitfield	Oregon State Police >DHR is the designated criminal justice agency for the purposes of fulfilling state laws. >They only have access to LEDS and not NCIC.
073	Chair Minnis	But the bill talks about getting this information through the Department of State Police.
075	Whitfield	Once the fingerprints are taken, yes.
076	Chair Minnis	You don't need fingerprints to do an initial CCH inquiry.
077	Whitfield	Not on the Oregon portion of it, no, but on the national part of it, you do.
078	Young	Congress has required it because NCIC information has been shown in congressional hearings to be unreliable.
084	Chair Minnis	Given that information, I don't have any sympathy for the federal government and their backlog.
085	Whitfield	It's public law 92-544 which covers this.
086	Chair Minnis	It is possible, under this bill, to ask for an initial CCH query.
093	Whitfield	My agency can also do that without having the fingerprints in place, but for DHR, they would have to submit the fingerprints through our office.
095	Chair Minnis	The fingerprints could be taken and classified and, oftentimes, the fingerprints already appear in the CCH.
100	Whitfield	When we get a fingerprint card submitted to us and we make a positive identification on an Oregon record, we will charge our \$12 and not pass the information on to the FBI.
107	Chair Minnis	The bill seems to set up two separate systems.
111	Heilman	The process intended is that the Department would access the LEDS system through us.
117	Chair Minnis	You're going to have a LEDS terminal somewhere in DHR, correct?
121	Heilman	Correct.
122	Chair Minnis	And from that point on you do what?
123	Heilman	The LEDS system gives us a display of information that is within the OJIN system indicating whether there has been a criminal conviction in another jurisdiction and it may tell us where that occurred and what the

		crime was.
132	Chair Minnis	So, I'm reading the bill wrong, it's not intended to be two separate systems.
138	Jeff Watkins	<p>Representing Department of Human Resources Contractors</p> <p>>addresses the cost issue to employees</p> <p>>On page 3, section d, of the DHR amendments where it deals with civil immunity, the general intent is good, which is we don't want people suing someone for following the law.</p> <p>>The last sentence of the top paragraph on page 4 needs an "acting in good faith" clause.</p>
171	Chair Minnis	The words "good faith" appear earlier in that paragraph.
173	Watkins	That's right. The first part deals with liability and the second part deals with the dissemination of information.
178	Rep. Shetterly	The last line of that section, says: "in the connection with the lawful dissemination of information, lawfully obtained under this statute." So, after all of that you would add a qualifier of "good faith?"
182	Watkins	I'd like to.
188	Chair Minnis	Closes public hearing on HB 2176
		<u>HB 2176 - WORK SESSION</u>
190	Chair Minnis	Opens work session on HB 2176
197	Rep. Prozanski	MOTION: Moves to ADOPT the amendments offered by the Department of Human Resources dated March 21, 1997 to HB 2176.
200		VOTE: 7-0-0
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
202	Chair Minnis	Closes work session on HB 2176
		<u>HB 2197 - PUBLIC HEARING</u>

203	Chair Minnis	Opens public hearing on HB 2197
212	Rep. Bowman	How many state agencies get to do background checks? We need to find out, because I'm getting nervous about this.
216	Chair Minnis	We will have to do some research on that.
226	Mary Amdall-Thompson	Program Executive, Oregon State Board of Nursing >submits and summarizes written testimony and proposed amendments, (EXHIBIT C)
292	Rep. Bowman	Why do you even need to go to the next step if the person has convictions in multiple states?
296	Amdall-Thompson	Responds that it depends on what their convictions are
303	Chair Minnis	It sounds like you're trying to take a cautious approach.
307	Amdall-Thompson	Continues testimony, addressing the proposed amendments
313	Rep. Bowman	Under what circumstances would you request an FBI background check for a renewal of a license?
315	Amdall-Thompson	Someone may show up as a multi-state offender and we may want to know what that offense is.
317	Rep. Bowman	But if they are renewing, you've already done some prior checking.
322	Amdall-Thompson	It's possible that the person is currently living out of state and has something out-of-state that shows up on LEDS at the time of renewal.
325	Chair Minnis	It could be someone who has left the state, let their license expire and then comes back and tries to renew it.
328	Amdall-Thompson	I don't think there would be very many of these people, but we want that option.
329	Rep. Bowman	It's written so broadly that it looks like anyone trying to renew their license is subject to an FBI check.
338	Amdall-Thompson	We purposely had it written broadly so that we have that authority; however, the practical reality is that we do not have the personnel, nor the budget, to be able to do everyone.
345	Chair Minnis	Currently you do some background checks, right?
347	Amdall-Thompson	We do LEDS checks for every applicant for licensure.
349	Chair Minnis	So what you're asking for here is for those instances where they show up as a multi-state offender and you need to go further than the initial check.

352	Amdall-Thompson	Resumes addressing amendments
403	Chair Minnis	We have copies of the LC amendments, (EXHIBIT D) .
406	Rep. Prozanski	At whose request are the -1 amendments? >It appears that they are different than what they are testifying to.
415	Chair Minnis	I think the memorandum was given to LC and what we have is their form, style and suggestions.
425	Jim Carlson	Oregon Health Care Association >introduces Margaret Carley, Legal Counsel
427	Chair Minnis	Have you seen the -1 amendments?
428	Carley	I have just the draft. Continues.
TAPE 73, B		
011	Chair Minnis	If there was a disqualification based on a particular crime, is there a due process system available?
014	Carley	Yes, you would be entitled to a hearing under the Board of Nursing system.
024	Chair Minnis	I'm not thrilled with the inconsistencies in regards to different crime groupings unless there is some extraordinary justification for it.
031	Carley	That's another reason we suggested the creation of a rules coordinator.
033	Chair Minnis	I think we may want to figure out real fast what the core crimes are.
034	Carley	We do have a draft amendment for this bill which requires a training and orientation program before someone can work as a certified nursing assistant in a facility, (EXHIBIT E) . >This is to address the issue of potentially different crime lists.
050	Carlson	We expend a lot of money training people and so we are concerned about investing these dollars only to have these people getting to the training program and being disqualified.
059	Bradd Swankk	State Court Administrator's Office >Comments on the State Board of Nursing amendments which they were not made aware of >I believe these are disposition reports they would receive through LEDS anyway.
071	Chair Minnis	Apparently, Kingsley Click was notified last week of these amendments.

073	Swankk	Our concern is specifically about Section 4 and its budget implications for the courts.
081	Chair Minnis	How does the Board of Nursing currently get these disposition reports?
082	Swankk	My understanding is that the disposition reports are received through their LEDS access.
086	Amdall-Thompson	We do have access to that information in LEDS, we need to know to make an inquiry on that person.
094	Chair Minnis	It doesn't sound unreasonable or expensive to me.
099	Swankk	It's not something we have run by any of the courts to get comment on.
102	Chair Minnis	If I am a prosecutor, and I know this is a requirement of law, big deal.
104	Swankk	As you are developing the case, you may have reason to know that the person is a registered nurse. Clerks don't always know what happens in the trial room.
111	Chair Minnis	If they don't know, then it doesn't apply, if I read the amendment correctly.
114	Rep. Shetterly	This is new and I don't think we've seen anything like this before and so if we do this for nursing, do we have to do this for everybody else? >If we do this here, we will be setting a precedent for every other group that wants access.
121	Chair Minnis	I think that is a good point, because it is that broader question of going down that road farther.
123	Rep. Bowman	A disposition is taking prior to conviction of a crime?
126	Rep. Shetterly	It follows a conviction.
128	Rep. Prozanski	We should look at, as a policy decision, to see whether this is an unfunded mandate even though creation of a crime was excluded from that provision.
132	Chair Minnis	An unfunded mandate on who?
133	Rep. Prozanski	On the courts and district attorneys offices
134	Chair Minnis	Courts are state agencies.
135	Rep. Prozanski	District attorneys are state employees, the office itself is county.
140	Swankk	Not all courts are state courts.

141	Chair Minnis	So for those justice courts, then it could be.
146	Rep. Shetterly	Another curious part of this bill is on line 21 of the original bill and also in the Board of Nursing Memorandum amendments on page 2, line 23 where it refers to, "the Federal Bureau of Investigations shall."
154	Amdall-Thompson	The Board of Nursing's mandate is to decide on eligibility for licensure certification and not the qualifications of that person. >Some of the roles of a certified nurse do not even involve direct patient care. >It appears the DHR's mandate is geared towards the qualifications, so it is reasonable that those crime lists may be different.
163	Chair Minnis	The question is why are they different and what is the basis.
164	Amdall-Thompson	Vulnerable people are not the issue.
168	Chair Minnis	Vulnerable people are not the issue in nursing?
169	Amdall-Thompson	There are a lot of roles in nursing that do not involve direct care.
170	Chair Minnis	Wouldn't that come under the exception of the APA?
175	Amdall-Thompson	Nurse Consultants, Nurse Educators and Nurse Administrators are all examples of those who don't have direct care responsibilities.
179	Brian De Lashmitt	Oregon Nurses Association >We support the bill and just wanted to address the fact that there are various roles which do not involve direct care.
187	Rep. Bowman	The example from DHR was someone who was a gardener and they said they would do an FBI background check on them and they are not working with any patients.
193	DeLashmitt	The assumption could be made that if the gardener is on-site, he has access to vulnerable populations.
202	Chair Minnis	Closes public hearing on HB 2197
<u>HB 2311 - WORK SESSION</u>		
209	Chair Minnis	Opens work session on HB 2311

215	Rep. Shetterly	MOTION: Moves HB 2311 to the full committee with a DO PASS recommendation.
219	Rep. Prozanski	There are two bill here which deal with the Crime Victims Assistance Fund and I have two bills in our committee which deal with this topic and I am wondering if you could tell me whether those will be coming up for hearings?
225	Chair Minnis	What are the bill numbers? Are they different concepts?
229	Rep. Prozanski	One deals with funeral expenses, and the other is to allow child victims in cases of assault and violence to have access to the program.
234	Chair Minnis	I do not have any immediate objection to them.
238		VOTE: 6-0-1 ABSENT: 1 - Courtney
	Chair Minnis	Hearing no objection, declares the motion CARRIED. REP. BOWMAN will lead discussion on the floor.
242	Chair Minnis	Closes work session on HB 2311
<u>HB 2313 - WORK SESSION</u>		
244	Chair Minnis	Opens work session on HB 2313
245	Rep. Prozanski	MOTION: Moves HB 2313 to the full committee with a DO PASS recommendation.
256		VOTE: 6-0-1 ABSENT: 1 - Courtney
	Chair Minnis	Hearing no objection, declares the motion CARRIED. REP. SHETTERLY will lead discussion on the floor.
263	Chair Minnis	Closes work session on HB 2313
<u>HB 2312 - WORK SESSION</u>		

264	Chair Minnis	Opens work session on HB 2312
267	Scott Lumsden	Committee Counsel >Reads provisions of bill and -1 amendments, (EXHIBIT F)
285	Rep. Shetterly	The concern was about the breadth of the agencies from which the Department was authorized to obtain confidential information.
293	Rep. Shetterly	MOTION: Moves to ADOPT HB 2312-1 amendments dated 04/03/97.
296		VOTE: 6-0-1 ABSENT: 1 - Courtney
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
300	Rep. Bowman	MOTION: Moves HB 2312 to the full committee with a DO PASS AS AMENDED recommendation.
303		VOTE: 6-0-1 ABSENT: 1 - Courtney
	Chair Minnis	Hearing no objection, declares the motion CARRIED. REP. BOWMAN will lead discussion on the floor.
312	Chair Minnis	Closes work session on HB 2312 >Declares subcommittee adjourned at 2:55 pm

Submitted by, Reviewed by,

Brian Higgins, Scott Lumsden,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2176, Written testimony and conceptual amendments, John Heilman, Oregon Department of Human Resources, 9 pp.

B - HB 2176, Written testimony, Jim Carlson, Oregon Health Care Association, 6 pp.

C - HB 2197, Written testimony and conceptual amendments, Mary Amdall-Thompson, Oregon State Board of Nursing, 6 pp.

D - HB 2197, Proposed amendments (-1 dated 4/3/97), Staff, 3 pp.

E - HB 2197, Conceptual amendments, Margaret Carley, State Board of Nursing, 1 p.

F - HB 3212, Proposed amendments (-1 dated 4/3/97), Staff, 1 p.