

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON FAMILY LAW**

**March 4, 1997 Hearing Room 357**

**3:15 P.M. Tapes 30 - 32**

**MEMBERS PRESENT:**

**Rep. Ron Sunseri, Chair**

**Rep. George Eighmey, Vice-Chair**

**Rep. Roger Beyer**

**Rep. Peter Courtney**

**Rep. Charles Starr**

**Rep. Judy Uherbelau**

**GUEST MEMBER: Rep. Floyd Prozanski**

**Rep. Lane Shetterly**

**STAFF PRESENT:**

**William E. Taylor, Counsel**

**Lauri A. Smith, Administrative Support**

**MEASURE/ISSUES HEARD:**

**HB 2404 - 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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 30, A</b>		
003	Chair Sunseri	Calls meeting to order at 3:20 P.M.
<b><u>OPENS PUBLIC HEARING ON HB 2404</u></b>		

004	Chair Sunseri	Opens a public hearing on HB 2404.
005	William E. Taylor	Counsel Reads a Preliminary Staff Measure Summary on HB 2404.
017	Chair Ron Sunseri	District #22  Testifies in support of HB 2404.  Provides an explanation regarding the differences between HB 3571 from the 1993 Legislative Session vs. HB 2404 now before the 1997 Legislative Session.  >must be evidence of a pattern, a practice, or a history of an abuse in order to raise a self defense claim  >the intent of HB 2404 is when a person has systematically over a long period of time been abused  >this measure would allow for manslaughter to be a defense  >gives examples of what needs to be provided to show a history of abuse
058	Rep. Uherbelau	In many states this is already allowed not under statute but as part of the law and I wonder if it has ever been allowed in Oregon?
063	Chair Sunseri	My investigation shows that plea bargaining happens if the investigators feel that a person's actions were in self defense. However, there are people in jail today because they didn't get their case plead down. Responds with an example.
075	Rep. Uherbelau	Raises a concern regarding that HB 2404 doesn't address the time frame necessary in regards to the abusive practice or history. The practice or history of abuse doesn't have to be contemporaneously or within a reasonable time period as the Measure is written now.
083	Chair Sunseri	Intended the Committee to discuss this issue in a work session and continues with an example.
088	Rep. Shetterly	What establishes a pattern of practice or history of abuse? Are these the same thing or different? Is a history of abuse a one time event? What kind of records would be needed to raise this defense? Is it your intent that a single event of abuse would not justify the use of this defense?
099	Chair Sunseri	Absolutely not a single event.
101	Rep. Shetterly	With regards to HB 2404 at <u>Section 1. (2)</u> this subsection addresses the defense of duress. Reads directly from the measure.  Within this subsection with regards to the defense of others, is there any concern that this would open the door for a person to look for avengers to

		deal with an abusive situation?
112	Chair Sunseri	That is not the intention here in HB 2404. Continues his testimony by presenting an example.
119	Rep. Prozanski	Thank you, I merely wanted to raise the issue.
120	Rep. Eighmey	So what your asking is that there must be a direct causal observance of the pattern or a relationship of some type, i.e. parental?
122	Chair Sunseri	Testimony from neighbors can't be exclusive. There must be something provided showing a historical pattern of abuse.
129	Rep. Eighmey	I question that a one time incident would not be sufficient to warrant using deadly force. What about an incident where a person was in a self defense situation and the use of deadly force would justify the homicide?  So I may need to ask if it is, therefore, not your intent in HB 2404 to prohibit and eliminate self defense when threatened with imminent harm or death?
139	Chair Sunseri	That's correct. It would not eliminate a self defense claim. Self defense arguments are covered under a different statute. However, those statutes do not appear to go far enough to allow the protection necessary for a person systematically abused.
165	Chair Sunseri	Explains to the inmates the reason for the hearing location
172	Belinda Ledbetter	Inmate of Oregon Women's Correctional Center  Testifies in support of HB 2404.  Shares her experiences and concerns before the Committee.
182	Rep. Uherbelau	How long did the conduct by the victim go on?
18	Ledbetter	Responds that the victim's conduct was over 3 years continuously.
189	Rep. Uherbelau	During that period of time, did you seek help from law enforcement or from anyone?
191	Ledbetter	Responds by stating her actions taken.
199	Rep. Uherbelau	What is your sentence?
201	Ledbetter	I have life with a possible parole in 20 years. (30 years to be looked at in 20 years)
203	Rep. Eighmey	How old was the victim, Bob?
204	Ledbetter	He was 37 years old at the time.
207	Rep. Eighmey	If you are comfortable, could you expand upon the pattern of conduct by Bob? Were there physical actions taken by Bob that were abusive?
210	Ledbetter	Responds by sharing her experiences.

221	Taylor	Did Bob ever hit you?
222	Ledbetter	No.
223	Taylor	He never struck you physically? He never threatened you with a weapon? Gun/Knife?
224	Ledbetter	No, but Bob took a razor blade and started to cut upon himself.
225	Taylor	Where did he cut?
226	Ledbetter	On himself. He never used a weapon or threatened me.
230	Chair Sunseri	What prevented you from separating yourself from this situation?
233	Ledbetter	Further expands on the situation of Bob cutting himself.
235	Chair Sunseri	So you were just unable to get Bob out of your life?
267	Ledbetter	Yes.
241	Teresa Irene Buob	Inmate of Oregon Women's Correctional Center  Testifies in support of HB 2404.  My crime was conspiracy to commit murder. My victim survived. I was one who plead out. I plead guilty because I thought that was what I needed to do.  Shares her experiences and concerns before the Committee.
291	Buob	Continues testimony.
341	Buob	Continues testimony.
356	Chair Sunseri	Were your children ever directly threatened?
358	Buob	Responds by stating her experience.
395	Chair Sunseri	From the last time you felt you were in an abusive situation with this man and to the time of the shooting, how long was that space of time?
401	Buob	I would say probably from within one month or up to six weeks between actions. Possibly a shorter length of time.
403	Chair Sunseri	Ms. Buob, do you have an additional comment you wish to share before the committee?
405	Buob	Continues testimony.
440	Carla Faye Gold	Inmate of Oregon Women's Correctional Center  Provides testimony in support of HB 2404.  Refused to plea bargain.  Shares her experiences and concerns before the Committee.
<b>Tape 31, A</b>		

030	Gold	Continues testimony.
078	Rep. Uherbelau	What act did you do against your husband?
082	Gold	Responds by explaining the situation of her defense.
087	Rep. Uherbelau	You testified there was a pattern of abuse. Was the abuse a consistent pattern? Was it always happening including up to the time of the last act?
090	Gold	Yes, the violence began during our dating and throughout the marriage.
092	Rep. Uherbelau	What is your sentence?
093	Gold	Seven and half years.
094	Rep. Uherbelau	You have served five years.
095	Gold	In May of 1997, it will be five years.
096	Rep. Eighmey	Was is it all physical abuse? Was there any other forms of abuse?
099	Gold	Responds by sharing her experiences of abuse.
102	Rep. Eighmey	This action of abuse occurred over what period of time?
104	Gold	The abuse occurred over a period of two years.
105	Rep. Eighmey	How old were you when you first met your husband?
106	Gold	I had just barely turned sixteen.
108	Rep. Eighmey	Do you have any children?
109	Gold	No.
110	Chair Sunseri	From the last time you remember an abusive situation until the time of the incident with the gun, what was the time frame?
111	Gold	Maybe five minutes.
112	Chair Sunseri	Before the shooting, what had been the previous abusive situation you remember? The day before? The week before?
113	Gold	The last abusive situation I remember was the day before the shooting occurred.
114	Chair Sunseri	So this was more of a continuing occurrence of abusive situations.
115	Taylor	Where did the trial take place? What county?
116	Gold	Deschutes County.
118	Rep. Eighmey	Adds comments with regards to the testimonies given.
		Private citizen formerly incarcerated for killing spouse (5 years for intentional manslaughter.)

140	Shelley Brimberry	Testifies in support of HB 2404 and presents written testimony. <b>(EXHIBIT A)</b>
190	Brimberry	Continues testimony.
240	Brimberry	Continues testimony.
290	Brimberry	Continues testimony.
295	Chair Sunseri	Governor Roberts commuted your sentence, is that correct?
297	Brimberry	Yes, she did.
298	Chair Sunseri	Did you feel there was sufficient and readily available evidence plus a history of that evidence that if you could have presented the evidence in court there would have been a difference in the outcome of the trial?
300	Brimberry	I feel that it would have made an absolute difference in the outcome of the trial. Responds by stating that if cases were researched further, more women would be going home.
323	Kathy Kiel	Oregon Coalition Against Domestic & Sexual Violence Testifies in support of HB 2404 and presents written testimony. <b>(EXHIBIT B)</b>
373	Kiel	Continues testimony.
423	Kiel	Continues testimony.
<b>Tape 30, B</b>		
035	Kiel	Continues testimony.  >not many individuals who have been deemed as "expert" in domestic violence issues in the State of Oregon  >only expert in Oregon on battered women who kill.  >suggests deleting the word "expert" and instead insert "present, allow presentations of people who know about domestic violence or who have observed the victim"
077	Rep. Uherbelau	What is your background? Why is there only one expert in the field on battered women who kill? How did you get designated as an expert?
086	Kiel	There has never been classes available to become an expert or to become educated in domestic violence. It has been difficult in the courts to be deemed an expert across the country.  >13/14 years working in the field of domestic violence  >advocated through the judicial system for battered women who have been

		<p>charged with a variety of crimes from assault to murder</p> <p>Due to my work out at the Women's prison I was deemed an expert in Lane County in 1995.</p>
103	Rep. Uherbelau	Do you have an academic background or is it mainly from your work in the field that deems you an expert?
109	Kiel	No, I do not have any degrees. I have a high school diploma. I was deemed an expert through my work experiences.
111	Rep. Uherbelau	So to be deemed an expert in the Oregon courts is more a function of someone's involvement in the system or working in the area, is that correct?
115	Kiel	At this point in time that is a true statement. There is nothing in any college courses that teach you about domestic violence. There are some psychology classes that can be taken on a variety of issues but there is nothing specific to domestic violence and the psychological effects of abuse.
121	Chair Sunseri	We are still trying to understand the issues about domestic violence let alone have any experts in the field.
122	Kiel	Correct.
123	Chair Sunseri	Would you be available during a work session to assist in drafting any changes to HB 2404?
124	Kiel	Yes.
134	Fred Avera	<p>District Attorney for Polk County and President of the District Attorneys Association</p> <p>Testifies in opposition of HB 2404.</p> <p>Presents his background to the Committee.</p> <p>&gt;danger to make decisions on compelling stories without time for reflections, investigation of facts, and looking to the direction we ought to be going</p> <p>&gt;were the earlier testimonies entirely factually correct or not</p> <p>&gt;what is happening to a person versus what they understand is happening to them is often two different things</p>
		<p>Continues testimony.</p> <p>If the testimonies are not factually correct then I submit they form no basis or reason to amend the evidence code of this State. If the testimonies are factually correct then we need to look at finding the cause.</p> <p>Three sources to the possible injustices of the inmates are: 1) they attempted to present certain evidence to the Judge and Jury and the court</p>

184	Avera	<p>could have erroneously ruled inadmissible [REMEDY - pursue through the appellate system], 2) they had insufficient representation by their attorney [REMEDY - pursue by obtaining another attorney or by a post conviction relief], and 3) that the law is bad and needs changing [REMEDY - I categorically disagree with the assertion that the kind of history of abuse that we heard testimony about and which HB 2404 is aimed at is inadmissible in the State].</p> <p>Provides examples of cases of battered women charged with murder.</p>
234	Avera	<p>Continues testimony.</p> <p>The evidence code states that you can act in self defense for what you reasonably see to be a threat of imminent serious physical injury and you may use that degree of force which you reasonable believe necessary.</p> <p>The thrust of the evidence code is the reasonable belief of the person. The entire focus is what was in their mind. If their belief was mistaken but was reasonable, they are entitled to an acquittal. Provides an example.</p> <p>Asks to review each of the inmates cases for the facts.</p> <p>&gt;references Oregon's Evidence Codes 402 &amp; 701</p> <p>I would disagree that there are not experts on domestic violence.</p> <p>The battered spouse's defense has been recognized in Oregon for a number of years. Lists applicable cases.</p>
284	Avera	<p>Continues testimony.</p> <p>It is the District Attorneys Association's position that all of this evidence is currently relevant, admissible, and it comes before the courts.</p> <p>Therefore, what is the effect of HB 2404? If it is not to make admissible relevant evidence, then the effect could be to make admissible evidence irrelevant.</p> <p>The only thing gained by HB 2404 would be to make it an open season on victims who are dead and who can not defend themselves, to blacken their character in order to urge a jury to determine a case based not on the act committed but upon their opinion of the worthiness of the victim to live.</p> <p>Also, the statute could serve to foster a false belief in an abused person that they have a new acceptable alternative. Advises current available options: police department, a prosecutor, leave the situation, seek a restraining order, etc. I understand the difficulty that some persons may have in exercising these options. The Association would look to any measure that would make the exercise of those options easier.</p>



		<p>This measure creates a new option - that is just to kill him.</p> <p>This statutes goes into the direction of avenger services.</p> <p>The inmates said they plead guilty, therefore, there was no judicial determination that their stories could not be told.</p>
335	Chair Sunseri	Is there any situation where evidence is not allowed to be entered into a trial? For instance, previous conduct of a person or any situation where a person is told you can't use the evidence in their defense?
342	Avera	Responds by providing an example. We have only talked today about domestic situations and women who kill abusing men. I should say HB 2404 is much broader than this and could apply to bar fights, for instance.
347	Chair Sunseri	You have heard the intent of the HB 2404 and if we need to change some of the language of the measure, we will do so.
349	Avera	I understand.
350	Chair Sunseri	Is there any other situation where evidence is not allowed to be presented? If you have a rape case, for instance, where someone's conduct prior to the event was abusive is that admissible in court?
357	Avera	I believe under pre-Measure 40 law likely the evidence is not admissible. Under post Measure 40 it is our belief that the evidence is admissible.
361	Chair Sunseri	Do you think its practical for any one of the inmates here today to prove constitutionally that their attorneys were inadequate or not competent?
365	Avera	Responds by giving an example of where an attorney would be seen as inadequate in representing his client.
377	Chair Sunseri	However, that is not the question I asked. Again restates question regarding whether the inmates could prove an attorney inadequate or is not competent to represent them? Probably not, I would think.
385	Avera	Responds by explaining the post conviction process.
401	Chair Sunseri	<p>You said that one of the remedies for the inmates was to show their attorney as incompetent constitutionally. I submit to you that it is not likely that the inmate could accomplish showing their attorney as inadequate.</p> <p>There seems to be a number of women who are stating that their history of evidence was not heard. If all these remedies are available and you are stating these women are protected by the evidence code, why are there so many of them in jail or suffering the consequences?</p>
424	Avera	<p>I can only address those cases where I know the facts.</p> <p>Presents cases where he was the prosecutor of women charged with murder of their abused spouse. One where the women made a mild claim of being abused which was quickly disproven and a second case where the women killed a third person not her abuser.</p>
444	Chair	This Measure doesn't seek to allow those kinds of abuses.

	Sunseri	
448	Avera	I understand that. I can only address individual cases where I have knowledge of the circumstances. I will review the cases of those who have testified earlier at the Committee's approval.
<b>Tape 31, B</b>		
030	Rep. Uherbelau	In regards to post conviction relief, do you know how many petitions were filed in 1996 based upon incompetent representation?
036	Avera	I imagine there was quite a few but most of post conviction claims are denied.
038	Rep. Uherbelau	How much of a remedy in real life is a post conviction claim that is not upheld? The Committee would like to know how many were filed and how many were successful?
041	Avera	Responds by giving examples of post conviction claims and identifies the level of success.
057	Rep. Uherbelau	There is a heavy burden to prove incompetent claims of an attorney. Would you agree with that?
060	Avera	Yes.
062	Rep. Uherbelau	When the battered women syndrome is accepted in the courts, is it equated with our self defense statute which requires a imminent fear of danger stance?
067	Avera	Provides in response an example - State of Oregon v. Moore Case. Explains battered women syndrome.
088	Rep. Uherbelau	Shares her research on battered women syndrome.  The reason why I equate it to the self defense statute which requires imminent danger is that it is not unknown that there can be this pattern or a history of abuse. This pattern or history can become too much and the battered person may respond later after brooding on the issue. I don't think our self defense statute will work under this scenario.  Are there any Oregon cases to date that address and have dealt with this type of situation?
100	Avera	I am not aware of any appellate cases. Responds by example.  >Oregon Evidence Code Rule 701 provides for expert witness  Why women don't leave abusive situations is not understood by most people and is an appropriate subject for expert testimony under current law.
	Rep.	Your response addresses why they do not leave.

118	Uherbelau	How appropriate is expert testimony and could you use it under the current evidence code as relevant to the issues as to why the person performed the way they did?
122	Avera	Yes, I believe it is appropriate to have expert testimony under current law which would explain why a person who was abused two weeks ago feels the need to go and commit an assault against that person.  The reason you do not see appellate cases is because there is no trial court denying the evidence.
133	Rep. Uherbelau	Responds by sharing an example.  I feel that there are no appellate cases because it has not been pursued by the defendant because they do not have anyone telling them that the evidence should have been allowed.
145	Avera	Responds by giving an explanation of how evidence is presented in the courts. I can't find a single appellate case in Oregon where a trial judge has excluded that type of evidence.
163	Rep. Uherbelau	Shares comments on available options for battered women.  If the system failed a battered person the first time would you not agree that they become rather passive about the whole system. That the person does not become assertive in trying to defend or protect themselves and would depend very strongly on their attorneys.
185	Avera	Responds by stating that I agree with everything you say, but I feel that the answer to that is to put the effort into educating the Judges, Juries and the populace at large to be aware of what the problem is, why it is there, and what the solutions are to abusive situations.
202	Norm Fox	From Springfield, Oregon.  Testifies in support of HB 2404.  Suggest changes to HB 2404: 1) HB 2404 needs to include language regarding the immediacy of the events leading up to the act of violence, 2) HB 2404 needs to address that a one time incident does not justify this kind of a defense. I would suggest adding the word "recurring" to Line 6 on the printed bill prior to the word "pattern",
252	Fox	Continues Testimony.  3) refers to the written testimony by Ingrid Swenson of the Oregon Criminal Defense Lawyers Association ( <b>EXHIBIT C</b> ) in regards to page 3, I commend her suggestions but shares his concerns under particular points.
296	Rep. Uherbelau	What is your background?
298	Fox	I am a school teacher and a principal.

300	Jim Arneson	Oregon Criminal Defense Lawyers Association Testifies in partial support to HB 2404. Presents written testimony and proposed amendments. <b>(EXHIBIT C)</b>
350	Arneson	Continues testimony.
400	Arneson	Continues testimony.
450	Arneson	Continues testimony.
<b>Tape 32, A</b>		
034	Arneson	Continues testimony.
043	Rep. Prozanski	Testifies in support of HB 2404 in concept.
088	Rep. Uherbelau	"Mr. Arneson, you mentioned that rather than a bad bill, so to speak, you would rather have no bill because the criminal defense bar thinks they can do this anyhow."  I feel that this contrasts with earlier testimony. We had two people that plead out because their attorneys told them they couldn't testify about the practice of abuse and two people who went to trial and could not use prior abusive history. So their testimony seems inconsistent with what you stated in your testimony and I would like your input?
097	Arneson	I would agree with Fred Avera in regards that there are available remedies to an abused person.  One being that the lawyer could have been inadequate is certainly a possibility. Another could be that the Judge may have been ignorant of the law because the lawyer presenting the proposition had either not made an adequate record or provided the law to the Judge which would have allowed the Judge to make the decision. The Judge still could have decided not to admit the evidence. A third reason could be that the facts are not as they recalled them or there is another side to the story.  Antidotal testimony is not always the best way to receive evidence during hearings.
122	Taylor	I understand that your organization has been running seminars on the issues of battered women's syndromes in an attempt to educate your members? Correct?
125	Arneson	Yes.
		Represents Dads Against Discrimination  Testifies in opposition to HB 2404.

135	Victor Smith	>encourages that victims testify as the Committee needs to hear from both sides >there is no definition of experts in the field of domestic violence >expert information on domestic violence is available and identifies possible source material >this Measure makes it somewhat of an open season on men and justifying the forethought of death to someone's partner with an excuse that they were abused - normally that is seen as murder
184	Chair Sunseri	Closes the public hearing on HB 2404 Adjourns meeting at 5:22 P.M.

Submitted by, Reviewed by,

Lauri A. Smith, Sarah Watson,

Administrative Support Office Manager

**EXHIBIT SUMMARY**

**A - HB 2404, written testimony, Shelley Brimberry, 3 pages.**

**B - HB 2404, written testimony, Kathy A. Kiel, 2 pages.**

**C - HB 2404, written testimony and proposed amendment, Jim Arneson, 4 pages.**