

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON FAMILY LAW

April 9, 1997 Hearing Room 357

3:15 PM Tapes 66 - 67

MEMBERS PRESENT:

Rep. Ron Sunseri, Chair

Rep. George Eighmey, Vice-Chair

Rep. Roger Beyer

Rep. Peter Courtney

Rep. Charles Starr

Rep. Judy Uherbelau

MEMBER EXCUSED:

STAFF PRESENT:

William E. Taylor, Counsel

Brian Higgins, Administrative Support

MEASURE/ISSUES HEARD:

HB 3343 - Public Hearing

HB 2697 - Work Session

HB 2404 - 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 66, A		
004	Chair Sunseri	Calls the meeting to order at 3:20 PM
<u>HB 2697 - WORK SESSION</u>		

006	Chair Sunseri	Opens work session on HB 2404
009	Jeff Kruse	State Representative, District 45 >testifies in support of bill with submitted -1 amendments dated 4/9/97, (EXHIBIT A) >amendment brings bill in line with federal statutes while still addressing needs of judges >gives judges more direction as to what they are supposed to be doing >will compel both parties to sit down and settle the differences
045	Chair Sunseri	The agencies are thrilled to death with this?
046	Rep. Kruse	Responds that they weren't entirely happy
049	Rep. Eighmey	I know I looked at this language before, but by inserting the new language it says that the court determines that the placement is not the most appropriate. One could argue that not the most appropriate could mean that it will never be the most appropriate.
059	Rep. Kruse	This language will clarify the judge's intent.
069	Rep. Eighmey	I would like to hear from some of the agencies on their interpretations.
077	Nancy Miller	Citizen Review Board Director, State Court Administrator's Office >Public Law 96-272 is a federal law that has a set of protections set up for children in foster care which must be met by the state child welfare agency. >The wording was chosen because it is what is used in the federal law.
102	Rep. Eighmey	I agree with the terminology, but you prefaced it with "not" the most appropriate.
106	Miller	Within the context of this bill, you are correct, but what we are saying is that the court can intervene and tell SCF where not to place a child. >This speaks as to when the court can order SCF to move a child. >I would reiterate that lines 11-12 are important because they are current law.
122	Rep. Eighmey	I follow what you're saying, it's just the syntax of the language.
126	Miller	"Most appropriate and least restrictive" go together.
128	Rep. Eighmey	So, it's just an explanatory term.
		Services to Children and Families

131	Diane Lancaster	<p>>This is a very troubling bill and is deceptively simple.</p> <p>>We are not funded for best interests, but rather to do the best we can within our fiscal constraints.</p> <p>>We can't meet the standards of "most" or "least" every time.</p>
159	Chair Sunseri	I don't want to open this up for more testimony.
160	Lancaster	That was our comment.
163	Rep. Beyer	MOTION: Moves to ADOPT HB 2697-1 amendments dated 04/09/97.
157		VOTE: 6-1-0 Rep. Uherbelau objects.
	Chair Sunseri	Hearing no objection, declares the motion CARRIED.
168	Rep. Uherbelau	<p>I have seen the language in the amendment and I have some concerns.</p> <p>>I know this is the federal language, but it appears the "best interests" language is what our courts are familiar with.</p> <p>>I would suggest removing the "best interests" language but to use the terminology "available."</p>
207	Chair Sunseri	Would you be able to deal with this on the Senate side?
208	Rep. Uherbelau	It's possible.
210	Chair Sunseri	My concern is that if we hold this up, our upcoming workload is such that we will not be able to bring it back and deal with it.
214	Rep. Uherbelau	That would be fine, but I will still object to the new language in the -1 amendments.
218	Rep. Eighmey	I support the -1 amendments because I believe the terminology is subjective and the courts could subsume into it the bests interests of the child.
235	Rep. Courtney	MOTION: Moves HB 2697 to the full committee with a DO PASS AS AMENDED recommendation.
240	Rep. Courtney	<p>Comments on Lancaster's statement</p> <p>>She talked about the resources and we must provide those resources.</p> <p>>This deals with children at a critical point and is a very good bill.</p>
275		VOTE: 6-0-0 AYE: In a roll call vote, all members present vote Aye.
	Chair	The motion CARRIES.

	Sunseri	REP. KRUSE will lead discussion on the floor.
283	Chair Sunseri	Closes work session on HB 2697
<u>HB 2404 - WORK SESSION</u>		
285	Chair Sunseri	Opens work session on HB 2404 >directs committee to the -3 amendments dated 4/8/97, (EXHIBIT B)
321	Fred Avera	Polk County District Attorney, Oregon District Attorneys Association >I wrote the -3 amendments, which came out of a workgroup with Jim Arneson, Ingrid Swensen, Bill Taylor, Rep. Prozanski and Rep. Sunseri, so I am very happy with them. >This makes it clear to trial courts to allow this type of evidence.
347	Jim Arneson	Oregon Criminal Defense Lawyers Association >We agree with Mr. Avera that the -3 amendments appear to accurately codify the law.
371	Rep. Courtney	MOTION: Moves to ADOPT HB 2404-3 amendments dated 04/08/97.
		VOTE: 6-0-0
	Chair Sunseri	Hearing no objection, declares the motion CARRIED
373	Rep. Courtney	MOTION: Moves HB 2404 to the full committee with a DO PASS AS AMENDED recommendation.
379		VOTE: 6-0-0
	Chair Sunseri	Hearing no objection, declares the motion CARRIED. REP. SUNSERI and REP. COURTNEY will lead discussion on the floor.
390	Chair Sunseri	Closes work session on HB 2404
<u>HB 3343 - PUBLIC HEARING</u>		
399	Chair Sunseri	Opens public hearing on HB 3343
	Thomas	Wallowa Valley Mental Health Center

403	Uchison	>submits and reads written testimony, (EXHIBIT C)
453		Continues testimony
TAPE 67, A		
028	Rep. Beyer	The way I read this on line 28, I'm assuming you mean ages 18-20 because at age 21 you can legally drink.
034	Uchison	That's correct.
035	Rep. Beyer	So, it seems to me that would need to be changed to " not more than 20 years of age."
038	Uchison	The intent is to include people up until their 21st birthday.
039	Rep. Beyer	It doesn't appear the language is accurate.
041	Rep. Eighmey	As I read Page 6, line 31, is it your intent to have the person pay for the assessment even if they don't need it?
049	Uchison	As the DUII program works, the assessment comes before the treatment, so it is paid for in advance.
054	Rep. Eighmey	The bill says when one goes under assessment and treatment. It then says the assessment will be paid for even if it is determined that the person does not need treatment. >I understand your objective, but I don't think the drafting of the bill achieves your objective.
066	Uchison	The intent is to get the young person into a qualified alcohol and drug assessor or evaluator which will incur costs.
076	Rep. Uherbelau	I just received a fax from the Juvenile Law Legislative Review Committee from the Jackson County courts and they have several concerns. >What if the youths do not have the ability to pay?
087	Uchison	Responds that there is a provision to allow funds to go into an indigent fund similar to the DUII indigent fund program
098	Rep. Uherbelau	Comments on concerns from fax >This could end up being an unfunded mandate for local jurisdictions. >Have we surveyed the number of people we're talking about?
111	Uchison	I think your point is well taken and we should be sure that the fee from convicted individuals goes to the indigent fund. >estimate of 7000 individuals per year fall into the category of 18-21 year olds who get MIP's
122	Rep.	We have the numbers and the costs, but the treatment programs can be expensive, so do you have an idea as to what the amount would be

	Uherbelau	that would have to be paid?
128	Uchison	Those under the Oregon Health Plan and those under private health plans would have most of the treatment paid for because this is considered treatment. >The cost varies and depends on the needs of the individual, but a ballpark figure, from our program, is \$600.
147	Fred Avera	Polk County District Attorney, Oregon District Attorneys Association >in support of the bill recognizing the language of the bill may need to be revised >The DUII program of Oregon is a model for the nation and has been very successful.
169	Chair Sunseri	Would you be available to work on some changes with counsel?
171	Avera	Absolutely.
173	Rep. Uherbelau	Do you have any concerns that this could be an unfunded mandate?
176	Avera	We're always concerned about unfunded mandates, but it appears to be modeled after the DUII diversion statute which hasn't burdened counties.
187	Bill Taylor	Committee Counsel >My understanding as it relates to DUII and the diversion program is that if you can't pay, the State will pay for you, because it is an equal protection issue. >I don't see any penalty in this bill if someone is unable to pay.
197	Avera	I'm assuming you're referring to the fact that if someone doesn't pay and doesn't complete the program, then there is no sanction on the other end as in DUII. >I suppose there's a potential for contempt to court.
203	Taylor	But inability to pay can't be contempt of court.
204	Avera	If it's an absolute failure to pay, then it could be contempt, but if it is a true indigency, there is probably nothing that could be done.
208	Taylor	In that case, the state would not be required to pay.
212	Avera	I follow the argument, but I would have to think about it some more.
214	Rep. Uherbelau	If there are no ramifications for not participating in the program, I'm wondering how many are going to go through?
222	Taylor	If you have the ability to pay and don't, it's contempt; if you're indigent, then the problem arises.
		State Representative, District 58

232	Mark Simmons	<p>>HB 3343 was introduced at the request of some constituents from Wallowa County about minors.</p> <p>>I see this as a starting place to provide those getting involved with alcohol at a young age with some awareness about the dangers of alcohol.</p>
252	Chair Sunseri	I believe there is support for the concept, but there appears to be some due process or equal protection questions.
259	Taylor	<p>Actually, I don't see any equal protection problem when there is no penalty imposed.</p> <p>>Section 3 charges everyone a penalty and pays for those who are truly indigent, meaning they are eligible for food stamps.</p>
277	Chair. Sunseri	So, you don't see an equal protection problem?
278	Taylor	Off the top of my head, I don't see it because no penalty is being imposed.
282	Chair Sunseri	What about the unfunded mandate question?
283	Taylor	I guess it is an interesting question, but I guess you just wouldn't run them through the program.
286	Chair. Sunseri	Doesn't that create discrimination?
287	Taylor	If you label it as a benefit, then it potentially would.
289	Chair Sunseri	Fred, is it a benefit?
291	Avera	I would certainly hope it would be.
292	Chair Sunseri	I was thinking it was.
294	Rep. Eighmey	Do you mean benefit in the Constitutional sense? There is a lack of a stick to go along with the carrot.
305	Chair Sunseri	I see that as a concern.
308	Rep.Eighmey	<p>What we did is that there are two groups of individuals here, those who can pay and those who cannot.</p> <p>>We need to have an incentive for someone to go through the program?</p> <p>>Diversion programs currently have a penalty for failure to complete.</p>
333	Rep. Starr	<p>Line 20, page 1 of the bill has a provision of losing driving privileges for a year.</p> <p>>Couldn't we use a penalty of that nature in order to urge compliance with the diversion program?</p>
345	Chair Sunseri	Would this give discretion to the judge as to levying a fine or suspending driving privileges?

352	Taylor	If he has the ability to pay, you can always hold him in contempt which is an equitable power. He could levy a fine, but I don't know if he could suspend the license?
358	Nancy Miller	State Court Administrator's Office >We don't have any solutions nor a position on the bill, but my understanding is that with an MIP conviction, the license is suspended?
367	Avera	Under certain circumstances, yes.
369	Miller	Perhaps one of the incentives in having 18-21 year olds go through this program could be like the DUII where you don't get the suspension if you complete the program. >How many 18-21 year olds will we see before the court for contempt and what will the fiscal impact of this be? >Maybe we could put an incentive into it.
398	Chair Sunseri	If we have the potential for the \$250 fine and the judge has the ability to suspend, maybe we could give the discretion to the judge thus avoiding an unfunded mandate.
410	Miller	Rep. Simmons and I were just talking about that.
412	Chair Sunseri	Are you okay with that?
413	Rep. Simmons	Yes, I'm not wedded to this language.
421	Miller	We were also looking at the "shall" on line 27 and changing that to a "may."
428	Taylor	That would also change current law as it relates to DUII diversion programs.
434	Miller	Directs counsel to page 1
445	Chair Sunseri	I think we can make some amendments so this will fly.
TAPE 66, B		
019	Clark Campbell	Department of Human Resources, Office of Alcohol and Drug Abuse Programs >submits and summarizes written testimony, (EXHIBIT D) >We are working on the fiscal impact statement.
046	Chair Sunseri	If we make this just a tool in the judge's arsenal, would it still be an unfunded mandate if the judge decided not to levy the fine?
		I'm taking the unfunded mandate to be that the local jurisdiction would become responsible for the cost of the assessment and

056	Campbell	treatment. >We would expect less people in this age group to be able to pay, so there would be less people paying into the fund.
077	Chair Sunseri	How many kids are we talking about?
078	Campbell	Responds that the numbers of 7000 were wrong because that was the entire MIP, not just the 18-21 year olds, but we don't know what exactly the numbers are >MIP is a sort of predictor of DUII. >I would urge you not to proceed on the bill as it is currently written, because, financially, it just won't work.
091	Taylor	Do you have any suggestions as to how the financing would work?
093	Campbell	You could raise the amount of the fine of those than can pay to cover the indigent fund. >Some communities have gotten fed up and require the parents to pay, but this could be onerous given the age group. >I don't have a problem with the model, only the finances.
114	Chair Sunseri	What would happen if we required parents to pay up until the age of 18?
116	Campbell	Whether that would be effective, it is hard to know.
121	Rep. Eighmey	Are 18-21 year olds classified as minors in possession or under age in possession?
127	Campbell	Apparently the Law Enforcement Data System groups them as minors although they may not technically be such.
130	Chair Sunseri	Closes public hearing on HB 3343
		Declares subcommittee adjourned at 4:25 PM

Submitted by, Reviewed by,

Brian Higgins, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2697, Proposed amendments (-1 dated 4/9/97), Staff, 1 p.

B - HB 2404, Proposed amendments (-3 dated 4/8/97), Staff, 1 p.

C - HB 3343, Written testimony, Thomas Uchison, Wallowa Valley Mental Health Center, 3 pp.

D - HB 3343, Written testimony, Clark Campbell, Department of Human Resources, 1 p.