

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON FAMILY LAW

May 1, 1997 Hearing Room 357

3:15 P.M. Tapes 83 - 84

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

Lauri A. Smith, Administrative Support

MEASURE/ISSUES HEARD:

HB 3343 - Work Session

HB 2700 - Work Session

HB 2945 - 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 83, A		
003	Chair Sunseri	Calls the meeting to order 3:13 p.m.
<u>HB 3343 - WORK</u>		

SESSION		
004	Chair Sunseri	Opens a work session on HB 3343.
005	William E. Taylor	Counsel Reads a Preliminary Staff Measure Summary on HB 3343. Refers to the -4 amendments dated 05/01/97 (EXHIBIT A).
024	Chair Sunseri	Can these infractions be expunged from a juvenile's record?
025	Taylor	I believe the juvenile's records could be expunged, because infractions are not crimes.
033	Rep. Beyer	The -4 amendments have addressed my concern on page 1 on line 28 of the printed measure. However, I note that the -4 amendments change on line 21 of the original measure from 1 year to 2 years for suspension of driving privileges.
038	Taylor	The -4 amendments will allow for suspension of driving privileges for up to 2 years.
041	Tom Uchison	Partnership for Safe Community for Wallowa County Testifies in support of HB 3343. >intent behind the change from 1 year to 2 years was to present a stronger sanction to prevent purchasing or acquiring alcoholic liquor by persons under 21 years of age >should the person complete a program based on their evaluation and treatment, they could have their driving privileges returned after petitioning the court
053	Rep. Beyer	I don't believe, I can support a 2 year loss of driving privileges. Gives example.
059	Taylor	Under current law, a juvenile is allowed a hardship permit to continue driving while going through this program as outlined on page 1, line 25 of the original measure.
064	Rep. Starr	The diversion and treatment should take less than 1 year. The 2 year suspension of driving privileges is a greater incentive to the person to become involved in the program.
081	Uchison	With regards to Driving Under the Influence of Intoxicants (DUII) violations, the courts are sympathetic to the hardship permits being allowed so the person can get to the treatment programs and for employment purposes.
094	Rep.	I am opposed to a two year suspension of privileges despite the argument that judges would not readily impose it. If the language is in the statutes, a

	Eighmey	judge will use it. I would not want unequal enforcement.
108	Rep. Starr	On page 1, lines 22 and 23 of the printed measure, this would allow the court to work with an individual in solving their problems. The court can remove the driving suspension order at anytime and to offer hardship permits. The two years is needed more for an incentive to take on the evaluation and treatment program offered in this measure.
127	Rep. Beyer	In subsection (5) with regards to the suspension of drivers licenses, does that only happen through misrepresentation of age? Giving a false age or upon any attempt to purchase an alcoholic liquor?
133	Taylor	Reads directly from subsection (5). I believe, misrepresentation of age is a qualifier. I believe, in practice, licenses are suspended for possession.
142	Uchison	Yes, licenses will be suspended for possession.
143	Taylor	I read, misrepresentation of age as a qualifier under this statute in subsection (5).
144	Rep. Beyer	Is the only way a person could have their license suspended is, if the person misrepresents their age? Is misrepresentation of age done by showing a false identification or by merely attempting to purchase an alcoholic liquor because the person is claiming to be old enough to purchase?
150	Taylor	The statute is not clear on what constitutes the action of misrepresentation of age.
157	Rep. Eighmey	I believe the qualifier is clear in the statutes as to what constitutes misrepresentation of age. A person is in violation by being under the age of 21 attempting to purchase alcohol and thus misrepresents their age.
175	Rep. Beyer	Does the statute define anywhere that misrepresentation of age is by an act of showing false identification? Is the act of attempting to purchase alcohol in effect a misrepresentation of their age, if under 21 years of age?
178	Chair Sunseri	<u>Section 1</u> subsection (1) states that an attempt to purchase, if under the age of 21, is a misrepresentation of age and subjects the person to sanctions.
181	Rep. Eighmey	Explains what is meant by "misrepresentation."
187	Taylor	If a minor is caught with alcohol, the person loses their license for one year. Having a drivers license is not a right but a privilege. <u>Section 1</u> subsection (1) is not clear on the "misrepresentation." The -4 amendments attempts to clarify by deleting, on page 1 on line 19 of the printed measure, "through misrepresentation of age".
195	Rep. Beyer	I could support a 2 year sanction of driving privileges for the act of showing false identification. Gives example.
201	Rep. Eighmey	However, if a person attempts to purchase alcohol and is under 21 years of age, they are misrepresenting their age.
204	Rep. Beyer	But you haven't taken the extra step to obtain false identification.
206	Taylor	This measure is directed towards the early identification of potential problem drinkers. If the subcommittee limits misrepresentation of age to purchasing

		with false identification versus possession of alcohol, this could miss a larger percentage of players this measure is directed toward assisting.
219	Uchison	The measure would be much clearer, if the words on line 19 of page 1 "through misrepresentation of age" were removed. Currently, only 1 to 3 percent of the individuals are cited for minor in possession or presenting false identification. Other individuals in violation of possession of alcohol would be from parties, offices, and picnics.
234	Rep. Eighmey	I understand there is a monetary fine for entering the program. How will the program be funded? Will the fines raise sufficient funds to cover the costs of the evaluation and treatment program?
241	Taylor	Per Clark Campbell of Alcohol and Drug Rehabilitation, the program would be similar to the DUII diversion program. The DUII diversion program must have indigent funding. However, this measure does not assess a criminal penalty, but only a violation. With regards to the fees involved, the \$90 fee, similar to the DUII program, will cover screening and the additional \$130 fee will cover the cost of the treatment program. This will allow the counties, mental health organizations, and other programs to use the additional funds for those who cannot otherwise afford the program.
255	Rep. Eighmey	Those that can afford the fees, will aide in covering the costs of those who are unable to afford the program.
259	Chair Sunseri	I believe, there is fewer than 2%, who will fall into this category of being unable to pay for treatment program.
262	Taylor	Per Clark Campbell, the fees collected would be sufficient to cover the costs of the program. With regards to indigency, there is no legal obligation to provide anyone with the program. However, every effort will be done to make the treatment program available to all.
276	Chair Sunseri	Rep. Uherbelau, how do you feel about the two year versus one year suspension of driving privileges? Knowing that the two year suspension of driving privileges is tempered by the fact the court can issue a hardship permit and restore privileges earlier.
282	Rep. Eighmey	I am still opposed to the change on line 21 of the original measure.
283	Rep. Uherbelau	Why is the subcommittee changing from one year to two years in regards to the suspension of driving privileges?
288	Rep. Starr	Discusses the intent behind changing the suspension of driving privilege from one year to 2 years.
300	Rep. Beyer	Once the person has completed the diversion program, is the court mandated to reinstate the driving privileges?
302	Taylor	Unlike current statute where restoring driving privileges is discretionary with the courts, the -4 amendments states that upon petitioning the courts after successfully completing the program, the court shall withdraw the order to

		suspend the driving privilege.
313	Rep. Eighmey	The -4 amendments states that the person must successfully complete the program not merely to complete the program. What is meant by "successfully completing the program?"
317	Uchison	Offers a definition for "successfully completing the program".
331	Rep. Uherbelau	With regards to subsection (5) as referenced in the proposed subsection (8) of the -4 amendments, subsection (5) doesn't address the treatment program. However, subsection (6) of the printed measure does identify the evaluation and treatment program. I believe, this needs to be addressed to alleviate confusion.
363	Rep. Beyer	Because of subsection (8), I could support the two year suspension of driving privileges.
369	Taylor	Subsection (8) mandates the court to restore the driving privileges. Subsection (5) is only discretionary for the courts to restore driving privileges.
376	Rep. Uherbelau	I believe, it would be clearer for practitioners, if subsection (6) was referenced instead in subsection (8). There is a mandatory attendance in a program, however, the measure doesn't address what happens should the person not complete the program. I understand that the person will not receive back their driving privileges per subsection (8), but what else will happen to the person who fails to complete the program?
400	Chair Sunseri	Couldn't they petition to restore their driver's license?
401	Rep. Uherbelau	Yes, the person could petition for restoration of their driving privileges, but there doesn't seem to be any penalty for not completing the mandatory program. In order to monitor the program to completion, there can be expected some fiscal impact, however, this is not addressed anywhere within the measure.
415	Uchison	Explains current procedures under DUII diversion program.
433	Rep. Uherbelau	The \$130 fee will not be received if the person doesn't enter the program. Who will monitor the persons in the mandatory program?
438	Uchison	Explains the procedures for the evaluation and treatment programs.
447	Rep. Uherbelau	What if the offender doesn't show up for the assessment?
449	Uchison	That does happen. Explains outcome should the offender not attend.
459	Rep. Uherbelau	There will be a fiscal impact on the courts to monitor compliance. I believe this was brought out in a hearing on this measure.
Tape 84, A		

032	Rep. Starr	I recall from testimony that sufficient funds will be available. Any remaining funds will be used to provide treatment for those found to be indigent.
040	Rep. Uherbelau	My concern is over the cost in monitoring the program. The subcommittee at least needs to be made aware of this fiscal impact.
046	Rep. Starr	A driving force for attendance in the program is the two year provision of suspending driving privileges. This should create a situation where most will comply in order to remove the penalty of having their drivers license suspended.
061	Uchison	Evaluators are appointed by the courts. The \$90 fee covers the evaluators portion.
067	Rep. Uherbelau	Who is monitoring compliance of the treatment program?
066	Uchison	The evaluator has this responsibility.
068	Rep. Uherbelau	How are you using the term "evaluator?"
070	Uchison	It will be the same person who evaluates and who monitors completion of the treatment program.
075	Rep. Uherbelau	Where does the court send the order requiring assessment and a treatment? Is there a department, agency, or some person that receives the order and follows through to determine compliance?
084	Uchison	The district attorney's office, who generally is the prosecutor on these cases, receives the order and monitors compliance. The evaluator will communicate with the district attorney's office the information necessary to determine attendance.
088	Taylor	Subsection (7) is discretionary for the courts to mandate attendance in an assessment and treatment program for offenders between 16 and 18 years of age. So, if you want your license back and want the ability to have driving privileges, you may apply for the assessment and treatment program. The subcommittee could consider instead, changing the language in subsection (7) to include up to 21 years of age. So there would be the opportunity to obtain your license back by asking to participate in the assessment and treatment program.
100	Rep. Uherbelau	Subsection (6) is mandatory between 18 and 21 years of age. Subsection (7) and (8) have a permissive program for ages 16 through 18 years of age.
104	Taylor	Perhaps in subsection (7) language could be to change to include up to age 21?
108	Rep. Uherbelau	That might be better. An offender has the incentive to ask for the assessment and treatment program or face the penalty of losing their driving privileges for two years.
112	Taylor	The costs of the program are covered per Clark Campbell and Rep. Mark Simmons. Originally, the statute had only \$25 payable to the alcohol program. That

		procedure has been bypassed by this measure and now the full \$130 goes towards the alcohol program.
122	Uchison	Correct. Currently, for adults cited under DUII laws, \$100 goes into the indigent fund. The additional \$30 received under this measure will also be going into the indigent fund.
127	Rep. Eighmey	What are the recommended changes on lines 8 through 11 of the printed measure?
135	Taylor	Proposes changes to subcommittee: On page 1, line 8 of the -4 amendments, delete "18" and insert "21" On page 1 of the original measure, delete lines 27 through 30
140	Rep. Uherbelau	I am amenable to these changes as stated by Counsel.
146	Rep. Starr	I am agreeable to the changes as suggested by Counsel.
150	Taylor	Gives reasons behind proposed changes.
161	Uchison	I am agreeable to these changes. This is similar to how the DUII diversion works. The DUII diversion program works to provide a course by which the offender can either go into the program or be assessed the criminal penalty.
171	Rep. Beyer	I would like to see Legislative Counsel's amendments prior to voting on this measure.
176	Rep. Eighmey	Refers to the -4 amendments page 1, line 14, I have concern over the wording "successfully completed." What constitutes a successful completion of either program. Nowhere is this defined within the measure. I would suggest inserting "if the person provides proof of successful completion" or "provides proof of completion". For instance, proof of completion shown by a certificate and that certificate is not obtained until program is successfully completed.
204	Rep. Starr	MOTION: Moves to ADOPT HB 3343-4 amendments dated 04/29/97 and that the measure be FURTHER AMENDED on page 1, line 7, by deleting "(7)" and inserting "(6)", on line 8, delete "18" and insert "21", on line 11, delete "(8)" and insert "(7)", and on line 15, delete "has successfully" and insert "presents proof". MOTION: Moves to AMEND HB 3343 on page 1 by deleting lines 27 through 30.
217	Taylor	I would suggest adding language to the motion giving latitude to Legislative Counsel's office because on line 8 of the -4 amendments, the subcommittee may accomplish the same thing by merely deleting the wording "at least 16 years of age". Gives example.
221	Rep. Starr	MOTION: Moves to AMEND HB 3343-4 amendments dated 04/29/97 and that the measure be FURTHER AMENDED on page 1, line 8, by deleting "at least 16 years of age" and by giving latitude to Legislative

		Counsel in drafting the conceptual amendments.
223		VOTE: 5-0-1 EXCUSED: 1 - Rep. Courtney
	Chair Sunseri	Hearing no objection, declares the motion CARRIED.
226	Rep. Starr	MOTION: Moves HB 3343 to the full committee with a DO PASS AS AMENDED recommendation.
240		VOTE: 5-0-1 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Rep. Courtney
	Chair Sunseri	The motion CARRIES. REP. SIMMONS will lead discussion on the floor.
242	Chair Sunseri	Closes the work session on HB 3343.
<u>HB 2945 - WORK SESSION</u>		
243	Chair Sunseri	Opens a work session on HB 2945
245	William E. Taylor	Counsel Reads a Preliminary Staff Measure Summary on HB 2945. Refers to the -2 amendments dated 04/25/97 and provides the subcommittee reasons for their creation (EXHIBIT B).
266	Rep. Uherbelau	The issue was never on liability, it was how the medical board treats doctors. After hearing testimony on bills related to Measure 16, the medical board is still threatening doctors with potential loss of license for treating patients with intractable pain even though the Legislature previously passed a measure to allow this form of treatment. I believe, as currently drafted the -2 amendments may not address the concern doctors have over losing their licenses when treating patients with intractable pain.
303	Rep. Starr	How do we allow a board that is a creation of state law, direct our activities?
313	Rep. Uherbelau	The -2 amendments don't address the issues that many doctors have brought up in regards to being able to treat patients with intractable pain without potential loss of license.
320	Chair Sunseri	Close the work session on HB 2945.
<u>HB 2700 -</u>		

WORK SESSION		
350	Chair Sunseri	Opens a work session on HB 2700. Subcommittee discusses concerns over the fiscal statement prepared on the -3 amendments.
354	William E. Taylor	Counsel Refers to the -3 amendments dated 04/29/97 and explains the reason behind drafting (EXHIBIT C) . Refers to fiscal analysis prepared by the Office of Medical Assistance Program (OMAP) (EXHIBIT D) .
384	Chair Sunseri	The intent behind the -3 amendments is to guarantee care to those without insurance. In order to provide pain control and hospice care, the cost would be about 20 million. Therefore, the legislature is unable to accomplish this at this time. To provide hospice care to those without insurance will cost about \$2.8 million. The subcommittee was told that the \$2.8 million was available. This measure will need to be referred to Ways & Means.
400	Rep. Uherbelau	Shares concern regarding the fiscal analyses.
414	Chair Sunseri	I had been advised that the cost would be 2.8 million, however, as noted the -3 amendments' fiscal is for 4.3 million.
416	Rep. Uherbelau	Why has the cost dropped from 7.5 million to 4.3 million?
418	Chair Sunseri	The drop in cost was due to the removal of the costs for prescription drugs of 3.2 million.
420	Rep. Uherbelau	Who will pay for the prescriptions?
421	Chair Sunseri	The cost of prescription drugs will not be covered.
422	Rep. Uherbelau	The cost of prescription drugs is covered in the -3 amendments on page 1, line 22.
425	Taylor	I believe the difference between the -2 and the -3 amendments is that the -2 amendments would have covered prescription costs regardless of whether you're in hospice care. The -3 amendments were intended to cover only when in hospice care.
440	Rep. Uherbelau	Continues to share concern over the -3 fiscal analysis.
442	Rep. Beyer	Discusses the difference in the -1, -2, and -3 amendments.
446	Rep. Uherbelau	So, the assumption is that a person won't be under hospice care for the full six months.

450	Taylor	The differences, in an amendments effect on fiscal statements, is that a person may not be under hospice care the full six months. HB 2700 borrows the definition from Measure 16 in that life is predicted to last six months. The patient may not be in hospice care during those six months but would be eligible for pain relief. Susan W. Tolle, M.D. intends that a person is to be eligible for pain medication while under hospice care.
461	Chair Sunseri	Pain medication is then only covered while under hospice care.
462	Taylor	Correct.
465	Rep. Eighmey	On page 2, <u>Section 3</u> , which prohibits any expenditure of funds from the Oregon Health Plan to cover expenses associated with an assisted suicide performed under Measure 16, this may have also contributed to the lower fiscal analysis.
470	Taylor	Correct.
Tape 83, B		
035	Rep. Uherbelau	Continues discussion on the -3 fiscal impact statement.
049	Chair Sunseri	I believe, the fiscal analysis needs reevaluated. I don't believe the 4.3 million can be obtained. However, I have been advised that the 2.8 million is obtainable.
057	Rep. Beyer	MOTION: Moves to ADOPT HB 2700-3 amendments dated 04/29/97.
060		VOTE: 5-0-1 EXCUSED: 1 - Rep. Courtney
	Chair Sunseri	Hearing no objection, declares the motion CARRIED.
061	Rep. Beyer	MOTION: Moves HB 2700 to the floor WITHOUT RECOMMENDATION as to passage to the full committee and BE REFERRED to the committee on WAYS AND MEANS.
065	Rep. Uherbelau	For the record: I have concern that the -3 amendments does not cover persons who are not under formal hospice care.
069	Chair Sunseri	For the record: My discussion with Oregon Health and Science University (OSHU) showed the cost to include both pain control and hospice care would be over 20 million.
073	Rep. Eighmey	For the record: I have the same concerns that the -3 amendments do not cover people who are not under hospice care. In addition, I believe <u>Section 3</u> should be removed as it has not been discussed by the subcommittee.
080		VOTE: 5-0-1 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Rep. Courtney

	Chair Sunseri	The motion CARRIES.
085	Chair Sunseri	Closes the work session on HB 2700. Adjourns the meeting at 4:20 p.m.

Submitted By, Reviewed by,

Lauri A. Smith, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 3343, -4 amendments dated 05/01/97, Staff, 3 pages.

B - HB 2945, -2 amendments dated 04/25/97, Staff, 1 page.

C - HB 2700, -3 amendments dated 04/29/97, Staff, 2 pages.

**D - HB 2700, fiscal impact statement prepared by Office of Medical Assistance Program,
3 pages.**