

HOUSE JUDICIARY  
SUBCOMMITTEE ON CRIME AND CORRECTIONS

Hearing Room  
Tapes - 24

MEMBERS PRESENT:

Rep. Veral Tarno, Chair  
Rep. Floyd Prozanski, Vice-Chair  
Rep. Peter Courtney  
Rep. Leslie Lewis  
Rep. Kate Brown

MEMBER EXCUSED: Rep. Jerry Grisham

STAFF PRESENT:

Aaron Felton, Committee Counsel  
Janet Ellingsworth, Committee Assistant

MEASURES HEARD:           Public Hearing HB 2164  
                                  Public Hearing HB 2427  
                                  Public Hearing HB 2573  
Public Hearing HJR 32

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , A

004     CHAIR TARNO:  Convenes meeting at 8:35 A.M.

OPENS the PUBLIC HEARING on HB 2164

Witnesses:  Fred Avera, Oregon District Attorney's Association  
                  Donald Houghton, Chairman of Pathology, State Medical Examiners Advisory  
Committee  
                  Jono Hildner, Administrator, Oregon State Health Division  
                  Dr. Larry Lewman, Oregon State Medical Examiner

016     FELTON:  Discusses HB 2164, separation of powers issue.

027     FRED AVERA, OREGON DISTRICT ATTORNEY'S ASSOCIATION, STATE MEDICAL  
EXAMINERS ADVISORY COMMITTEE:  Testimony in support of HB 2164.

072     DONALD C. HOUGHTON, CHAIRMAN OF PATHOLOGY, OREGON HEALTH SCIENCES  
UNIVERSITY, MEDICAL EXAMINERS ADVISORY BOARD:  Testimony in favor of HB  
2164.

089     JONO HILDNER, ADMINISTRATOR, OREGON STATE HEALTH DIVISION:  Testimony in  
support of HB 2164.  Submits [EXHIBIT A].  Discusses advisory group formed  
in 1993, Medical Examiner Program.

100     REP. COURTNEY:  How long has it been in the health division?

108     HILDNER:  I don't know.  It has to be at least 20 years.

112     REP. COURTNEY:  Has it worked there?

115     HILDNER:  It has worked extremely well.  The primary problem is when it  
comes to establishing prioritys within the health division for the  
expenditure of the general fund.  Since it is not truly a health priority,  
when cuts come along it is not well defended.

120     REP. COURTNEY:  Has it been under funded?

121     HILDNER:  I think it has been under funded.

122     AVERA:  There is intergovernmental agreement between the health  
division and the state police that currently have this program under the  
jurisdiction of the Intergovernmental Services Bureau.

126     CHAIR TARNO:  What is meant by "legal intervention" on page 5,  
subsection 7, of HB 2164?

135     AVERA:  It means the death penalty.  It's a hypothetical definition.

140 CHAIR TARNO: Could you explain section 19 of this bill also?

144 AVERA: I believe there are others here who can explain that. I don't see a connection.

146 CHAIR TARNO: I don't see any others signed up.

153 REP. COURTNEY: Is the State Medical Examiner here? Is he signed up to testify?

155 CHAIR TARNO: No, he is not signed up to testify.

156 REP. COURTNEY: What is the role of the medical examiner?

163 DR. LARRY LEWMAN, OREGON STATE MEDICAL EXAMINER: Testimony in favor of HB 2164. The purpose of the medical examiner's office is to provide an investigation of violent unexplained deaths.

176 REP. COURTNEY: Your saying your job is more related to criminal aspects?

183 DR. LEWMAN: We provide services to the defense bar, the criminal bar and to public health.

189 REP. COURTNEY: What do you do that is public health oriented verses the criminal aspects?

192 DR. LEWMAN: About 60 percent of the deaths are natural medical deaths. On the other side, the sudden infant death syndrome case may in fact turn out to be a child abuse case.

199 CHAIR TARNO: What percentage of your investigations are considered homicide?

201 DR. LEWMAN: About 5 percent actually end up being a homicide. There is another 25 percent where it is undetermined until we do our work.

203 CHAIR TARNO: You do a lot of sudden infant death syndrome (SIDS) work don't you?

206 DR. LEWMAN: I do.

208 CHAIR TARNO: Is there a percentage breakdown on that?

211 DR. LEWMAN: The incidences are 1 per 350 live births in this state. We have about 100 cases per year that are certified by the medical examiner as (SIDS).

212 CHAIR TARNO: In your capacity as a state medical examiner, you testify a lot in court on homicide investigations, do you not?

216 DR. LEWMAN: Yes, I do.

218 CHAIR TARNO: In your opinion, is there any bias or lack of bias on the fact that you are an independent agency not actually tied to law enforcement, but an independent investigative arm of the State Health Division?

222 DR. LEWMAN: That is true, our job is plain and simply defining the medical truth. It has been discussed with the advisory board and the task force.

226 REP. COURTNEY: I'm not sure you belong on either. I understand the health division problems, but then you have given me statistics that show me that I'm not sure you belong with state police either.

234 DR. LEWMAN: With the number of cases that come to our attention, we don't know what has happened until we do the work.

240 REP. COURTNEY: I'm trying to get a feel for your work and your relationship with the health division and/or the state police.

250 REP. PROZANSKI: In your opinion based on the work that you have done, and your position as the medical examiner, do you believe that you should have more separation from other state agencies?

252 DR. LEWMAN: No, I think this is the best place to go.

272 CHAIR TARNO: Dr. Lewman, do you expect any more funds for your operation?

275 DR. LEWMAN: I think down the road that is a potential.

283 CHAIR TARNO: In other states around the nation is the program you're proposing also being done? Are the medical examiners under law enforcement?

285 DR. LEWMAN: It varies. We have medical examiner programs in medical schools, health departments and police agencies.

293 AVERA: Locally each county has its own medical examiner program.

314 REP. COURTNEY: It would not make sense to put it in the Health Sciences Center?

318 DR. LEWMAN: I don't think so, although it is a possibility. That issue was surfaced by the task force.

322 REP. COURTNEY: It doesn't make sense?

323 DR. LEWMAN: I think theoretically, it could work there. I think it's better off where it is.

328 REP. LEWIS: Why are you expanding the advisory board from 7 to 11 members? Are there going to be costs?

333 DR. LEWMAN: The only costs would be an additional dinner at a meeting.

The city police agencies were not represented. The state health officer, who is a physician, should also be represented on that board, they were not.

348 CHAIR TARNO: Would you move your physical plant?

350 DR. LEWMAN: No, we would not.

356 CHAIR TARNO: You still have the ability to use the services of the hospital nearby for tests?

358 DR. LARRY: Yes, we do.

362 CHAIR TARNO: If you go under Oregon state police and no longer Department of Human Resources (DHR), would DHR then charge you for using those services?

365 DR. LEWMAN: I don't believe that they will.

367 CHAIR TARNO: You might hope that they wouldn't.

369 DR. LEWMAN: No, we've had a long working relationship with Emanuel Hospital in Portland.

376 CHAIR TARNO: I'm going to make this just a public hearing today. I have some concerns and I want to talk to some law enforcement agencies about that aspect of the bill.

380 REP. PROZANSKI: Discusses "separation of powers" issue on page 3, line 13.

395 REP. COURTNEY: I am going to inquire about the Health Sciences Center.

CLOSES the PUBLIC HEARING on HB 2164  
OPENS the PUBLIC HEARING on HB 2427

Witnesses: Timothy Travis, Attorney, Juvenile Rights Program  
Judge Ronald Poole, Circuit Court Judge, Douglas County (Teleconference)  
Elizabeth Gordon, Deputy District Attorney, Douglas County  
(Teleconference)  
Tom Bernier, Attorney, Douglas County (Teleconference)  
Bill Hordon, Director, Douglas County CASA Program (Teleconference)  
Nancy Miller, Administrator, Citizens Review Board  
Ann Christian, Director, Indigent Defense Services Division, State Court  
Administrators Office  
Ingred Swenson, Oregon Criminal Defense Association  
Diane Walton, Director, State Commission on Children and Families  
Steven H. Gorham, Attorney  
Kingsley Click, State Court Administrator

TAPE 22, A

020 TIMOTHY TRAVIS, ATTORNEY, JUVENILE RIGHTS PROGRAM, PORTLAND: Testimony against HB 2427. Submits [EXHIBIT B].

052 CHAIR TARNO: Is there anyway we can look at getting to your needs and our children's needs, in a different avenue, as opposed to lumping it in to part of the indigent defense costs for adults?

062 TRAVIS: Do you mean to create a separate budget?

065 CHAIR TARNO: Yes.

067 TRAVIS: The youth authority does not have much to do with abused and neglected kids, but I have not studied that idea.

070 REP. COURTNEY: Is there a better way to make sure a child's rights are represented other than having an attorney?

076 TRAVIS: Because it's a courtroom situation, I can't think of a better way.

077 REP. COURTNEY: Let's say it is a courtroom drama, the state has something to do with the child's rights or lack there of, how do you make sure at least those rights are well represented? What kind of rights are we talking about?

083 TRAVIS: We are talking about the right to be reunited with your family when you've been removed, the right to treatment for the damage that has been done to you.

092 REP. COURTNEY: What kind of damage?

093 TRAVIS: Like emotional and physiological damage from being sexually abused. Discusses other rights.

097 REP. PROZANSKI: I would assume one of the things an attorney appointed to represent the child should do is to determine whether or not the child should go back to the parents.

102 TRAVIS: That is correct.

103 REP. PROZANSKI: There are times where a Court Appointed Special Advocate (CASA) will not be able to advise the court or work with the child as to the legal ramifications that are made, is that correct?

106 TRAVIS: That is true. I am also a CASA, as well as an attorney for children and I am familiar with the limitations on CASAs.

119 CHAIR TARNO: Conference call from Judge Poole from Roseburg, Oregon.

121 FELTON: Explains conference call procedure.

125 JUDGE RONALD POOLE, CIRCUIT COURT JUDGE, DOUGLAS COUNTY: Testimony by teleconference in favor of HB 2427. Brief discussion of section 5 of HB 2427.

187 REP. BROWN: In your county is it typical that an attorney is appointed for every child in a dependency case as well as a CASA?

192 JUDGE POOLE: For the past six months the answer is yes

194 REP. BROWN: You talked about taking some time to establish a permanent plan. In your county how long does it take for a permanent plan to be established for a child?

196 JUDGE POOLE: We try to get a fact finding on the petition within 60 to 90 days after the petition is filed with the court.

204 REP. BROWN: How long is a child in foster care?

206 JUDGE POOLE: I have someone here in my group that can answer that question.

208 ELIZABETH GORDON, DEPUTY DISTRICT ATTORNEY, DOUGLAS COUNTY: Testimony by teleconference on HB 2427.

234 TOM BERNIER, ATTORNEY AT LAW, DOUGLAS COUNTY: Testimony by teleconference in favor of HB 2427.

263 REP. BROWN: I assume you work with CASAs on a regular basis in your practice?

269 BERNIER: I have weekly staffings with the CASA program about all of the cases.

271 REP. BROWN: Could you tell the distinction between your ability to represent the child verses the CASA's ability?

273 BERNIER: It's very simple. CASAs are lay people who while they may be

good at finding facts, are not good in terms of presenting those facts in the courtroom.

280 REP. BROWN: Would you see the child as being at a disadvantage with parents being represented?

284 BERNIER: If the child is not represented, of course the child is at a disadvantage.

289 REP. PROZANSKI: One of the concerns is to save costs. Do you see any way a CASA could step in and work independently of your office, then report back to you with their findings without jeopardizing your ability to fairly and accurately represent the child's legal needs?

297 BERNIER: I work cooperatively with the CASAs. If they did not exist, I would have to hire a private investigator working on the case which would be money from indigent defense.

304 CHAIR TARNO: As the local agent, what percentage of your time is spent with adult cases verses juvenile?

314 BERNIER: We are not the public defender, we are a private attorney's office that deals with conflicts, but we have specially agreed to represent children.

318 CHAIR TARNO: I have a special interest in trying to create a different avenue for dealing with our children as far as indigent defense or attorney needs.

330 BILL HORDON, DIRECTOR , DOUGLAS COUNTY CASA PROGRAM: Testimony by teleconference on HB 2427. I encourage you, do not pass this bill.

372 REP. BROWN: How long would a child typically stay in foster care in Douglas County?

375 HORDON: The statistics go down with different changes of policies. Typically six to eight months is my experience right now.

393 CHAIR TARNO: Discusses page 5 of HB 2427.

401 JUDGE POOLE: Your talking to four people who are advocating for the rights of children.

413 CHAIR TARNO: Teleconference call discontinued.

421 REP. PROZANSKI: In your perspective do you think there would be a way you could rely on CASA representation to bring information to you?

430 TRAVIS: I think you're on to something. Discusses pilot program in Multnomah County.

469 REP. BROWN: What is the regular appointment rate for children in dependency cases?

TAPE 21, B

038 TRAVIS: I don't have current statistics.

041 REP. BROWN: Were there sufficient CASAs to be appointed in every case in Multnomah County?

044 TRAVIS: No, there is a long waiting list for CASAs in Multnomah County.

046 REP. COURTNEY: What do you mean by CASA?

048 TRAVIS: A CASA is a Court Appointed Special Advocate. Submits [EXHIBIT C] for Susan Winegar.

060 NANCY MILLER, ADMINISTRATOR, CITIZENS REVIEW BOARD: Testimony on HB 2427. Submits [EXHIBIT D] for Ann Hubbard.

117 CHAIR TARNO: If we could find a different funding source to take care of our children's needs, would this bill be OK then?

123 MILLER: It depends on what you mean by taking care of our children's needs. My opinion is our children have to have legal representation and they have to have the advocacy representation.

130 CHAIR TARNO: I'm looking for a different avenue of funding to take

care of those advocacy  
needs.

134 ANN CHRISTIAN, DIRECTOR, INDIGENT DEFENSE SERVICES DIVISION, STATE  
COURT ADMINISTRATORS OFFICE: Testimony on HB 2427, HB 2573 and HJR 32.  
Submits [EXHIBIT E].

252 CHRISTIAN: Discusses sections of HB 2427.

319 REP. PROZANSKI: Are you saying the court administrator believes that  
the "shall be entitled to" should be retained verses giving the court the  
discretion to make that decision?

324 CHRISTIAN: The State Court Administrator's Office and the Judicial  
Department are taking no  
position with regard to the policy issues involved.

344 REP. PROZANSKI: In many of the cases there isn't a showing for the  
need of a court appointed attorney.

357 CHRISTIAN: As a department we're not taking a position. As the  
director of indigent defense,  
I am happy to provide information to you.

369 REP. LEWIS: How many cases are material witnesses provided with  
representation?

374 CHRISTIAN: Very few. Discusses material witnesses and post conviction  
relief.

437 REP. LEWIS: Section 4 talks about the defendant in a criminal action.  
Can you explain the  
difference between a defendant and a petitioner?

451 CHRISTIAN: Post conviction relief is a proceeding that occurs even  
after an appeal. Discusses  
procedure.

TAPE 22, B

034 CHRISTIAN: One of the most frequent challenges is based upon the  
ineffectiveness of that individuals trial level counsel.

038 REP. LEWIS: You said there are about 630 cases a year, but that number  
is going up, correct?

039 CHRISTIAN: That's correct.

040 REP. PROZANSKI: They do not have to have a factual basis or have to  
prove they have a good merit case for post conviction relief.

043 CHRISTIAN: Post conviction relief statutes were amended last  
legislative session.

058 REP. PROZANSKI: In most cases, would you say the judges are not making  
the decision as to whether or not a petition has merit?

060 CHRISTIAN: Many judges will appoint counsel and not dismiss a petition  
as meritless at the beginning.

067 REP. PROZANSKI: Do you have the figures as to how much post conviction  
relief is costing  
indigent defense?

070 CHRISTIAN: It's about \$750,000 per year. Discusses termination of  
parental rights cases.

133 CHAIR TARNO: Is it possible for you to do some kind of a cost analysis  
on HB 2427?

134 CHRISTIAN: Yes. We have been working on that with legislative fiscal.

136 CHAIR TARNO: What kind of a time frame can you give me?

138 CHRISTIAN: By the end of the week.

141 INGRED SWENSON, OREGON CRIMINAL DEFENSE ASSOCIATION: Testimony  
opposing HB 2427.

201 SWENSON: Continued testimony on HB 2427.

253 REP. PROZANSKI: Do you know what the success rate is on post  
convictions?

258 SWENSON: No, I do not.

260 REP. PROZANSKI: From my experience, most individuals who file appeals  
from their actual  
conviction have other representation besides the trial attorney that has

represented them, is that  
fair?

267 SWENSON: I believe that is the case.

268 REP. PROZANSKI: If that's the case, why couldn't those concerns  
routinely raised in post conviction relief be raised at that level?

271 SWENSON: That is not an appealable issue.

278 DIANE WALTON, DIRECTOR, STATE COMMISSION on CHILDREN AND FAMILIES:  
Testimony on HB 2427.

311 STEVEN H. GORHAM, ATTORNEY: Testimony on HB 2427.

376 GORHAM: Continued testimony on HB 2427. Discusses costs.

398 REP. PROZANSKI: What is the success rate for individuals who file post  
conviction petitions?

403 GORHAM: I think it's under ten percent.

407 REP. PROZANSKI: Do you know what the rate is for your office?

418 GORHAM: In Marion county, we just went to a new contract system. It's  
averaging in the \$700 range.

420 REP. PROZANSKI: Is that a set fee?

424 GORHAM: In Marion county, we are a pilot program for indigent defense.  
We still get paid at the hourly rate.

443 REP. PROZANSKI: I understand this is a pilot project to see if we can  
save costs. What are the  
average costs for habeas corpus cases?

451 GORHAM: In the range of \$300 per case.

TAPE 23, A

042 GORHAM: Discusses habeas corpus cases.

044 REP. PROZANSKI: What is the length of time an individual has to file a  
habeas corpus case?

047 GORHAM: Habeas corpus can be filed anytime, post convictions have a  
statute of limitation.

056 REP. PROZANSKI: Regarding that statute of limitation of two years, what  
time frame do you see in your practice?

060 GORHAM: Post conviction deals with things that are not on the record.

Appeals deal with  
things that are on the record.

076 KINGSLEY CLICK, STATE COURT ADMINISTRATOR: Testimony on HB 2427.  
Clarifies the judicial department's position on these bills.

097 CHAIR TARNO: Do you have a copy of this report in your office?

100 CLICK: Yes, I do.

101 CHAIR TARNO: Has it been summarized?

102 CLICK: I believe there is a summary description of it. Would you like  
copies?

103 CHAIR TARNO: I think it would be good to provide copies to the  
committee.

104 REP. PROZANSKI: Mr. Gorham, can you tell us what the success rate is  
for someone who files a post conviction relief petition early on verses  
something being done on the eleventh hour? I would also like your opinion  
on shortening the statute of limitations even further than what has  
already been done.

114 GORHAM: I would not shorten the statute of limitations, two years is a  
reasonable amount of time. I can provide the other information you've  
requested.

CLOSES the PUBLIC HEARING on HB 2427  
OPENS the PUBLIC HEARING on HB 2573

130 ANN CHRISTIAN, DIRECTOR of INDIGENT DEFENSE, STATE COURT ADMINISTRATORS

OFFICE: Testimony on HB 2573 and HJR 32.

250 CHRISTIAN: Discusses programs in Lane County. Gives examples.

282 REP. PROZANSKI: The deferred adjudication program is referred to as DAP, I actually developed the program.

309 CHRISTIAN: I am familiar with the concerns you have. I look at the criminal and juvenile justice systems as true systems. Any change that I make will impact the court, the juvenile department and the district attorney.

419 INGRED SWENSON, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Testimony opposing HB 2573.

TAPE 24, A

CLOSES the PUBLIC HEARING on HB 2573  
OPENS the PUBLIC HEARING on HJR 32

020 CHAIR TARNO: I will ask Ms. Christian and Ms. Swenson if their testimony would be any different, or if we should include part of their testimony given on HB 2573?

031 CHRISTIAN: I would ask that my testimony given on HB 2573 be incorporated regarding HJR 32. The two go hand in hand.

036 SWENSON: I would also ask the committee to consider my earlier testimony on HB 2573 in connection with HJR 32.

048 REP. PROZANSKI: Discusses language.

050 SWENSON: The existing language in section 11 preserves the right of a person to be heard by himself and counsel.

060 CHAIR TARNO: With nothing further the meeting is adjourned at 11:00 A.M.

Submitted by, Reviewed by,

Janet Ellingsworth      Debra Johnson  
Committee Assistant      Committee Coordinator

EXHIBIT SUMMARY:

A - Testimony on HB 2164 - Hildner - 1 page  
B - Testimony on HB 2427 - Travis - 4 pages  
C - Testimony on HB 2427 - Winegar - 2 pages  
D - Testimony on HB 2427 - Hubbard - 3 pages  
E - Report HB 2427 - Christian - 27 pages  
F - Testimony on HB 2427 - Staff - 4 pages  
G - Testimony on HB 2427 - Harris - 3 pages  
H - Testimony on HB 2427 - Mayer and Maney - 2 pages  
I - Testimony on HB 2427 - Craig - 1 page  
J - Testimony on HB 2427 - Nebel - 1 page