

HOUSE JUDICIARY
SUBCOMMITTEE ON CRIME AND CORRECTIONS

Hearing Room
Tapes - 40

MEMBERS PRESENT:

Rep. Veral Tarno, Chair
Rep. Floyd Prozanski, Vice-Chair
Rep. Peter Courtney
Rep. Jerry Grisham
Rep. Leslie Lewis

STAFF PRESENT:

Holly Robinson, Committee Counsel
Janet Ellingsworth, Committee Assistant

MEASURES HEARD:

Public Hearing on HB 2003
Public Hearing on HB 2579
Public Hearing on HJR 33
Public Hearing on HB 2678
Public Hearing on HB 2801
Work Session on HB 2427
Work Session on HB 2573
Work Session on 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 2003

006 ROBINSON: Brief overview of HB 2003.

020 REPRESENTATIVE BEV CLARNO, SPEAKER OF THE HOUSE, DISTRICT 55: Testimony on HB 2003.

051 ERNEST J. MAZOROL, TRIAL COURT ADMINISTRATOR: Testimony on HB 2003. Submits [EXHIBIT A].

088 PAUL SNIDER, LEGAL COUNSEL, ASSOCIATION of OREGON COUNTIES: Testimony in opposition to HB 2003. Submits [EXHIBIT B].

152 CHAIR TARNO: We are dealing primarily with the issue of indigent defense and the cost to our state in doing so.

170 INGRED SWENSON, OREGON CRIMINAL DEFENSE LAWYER'S ASSOCIATION: Testimony in opposition to HB 2003.

220 KINGLSEY CLICK, STATE COURT ADMINISTRATOR: Testimony on HB 2003.

290 CLICK: I thought if there was a legislative reporting component added to they're work, where they report before each legislative session on what their budget and case trends have been, what projects they have taken on, that may give people the extra incentive to work together.

317 REP. COURTNEY: The Oregon constitution is a factor in this, is it not?

320 CLICK: Yes, it is.

330 REP. COURTNEY: The misdemeanor issue is where we differ, is that correct?

333 CLICK: Yes, to the extent that petty misdemeanors at the federal level that do not carry the promise of incarceration do not require appointment of counsel.

343 CHAIR TARNO: Your budget for 1993-95 is around \$87 million dollars?

347 CLICK: No, it is \$89 million.

350 CHAIR TARNO: What is the proposed budget for 1995-97?

352 CLICK: The proposed budget is \$95.5 million.

356 DALE PENN, DISTRICT ATTORNEY for MARION COUNTY, DISTRICT ATTORNEY'S ASSOCIATION: Testimony in opposition to HB 2003.

TAPE 40, A

030 PENN: Discusses costs of indigent defense.

048 CHAIR TARNO: Have you ever asked a for a creation of a small committee of district attorney's around the state to look at this as a sole issue?

053 PENN: We have not initiated one ourselves but we have worked in a study group with both chairs of judiciary committees.

062 FRED AVERA, DISTRICT ATTORNEY for POLK COUNTY, DISTRICT ATTORNEY'S ASSOCIATION: Testimony in opposition of HB 2003.

CLOSE the PUBLIC HEARING on HB 2003
OPENS the PUBLIC HEARING on HB 2579 & HJR 33

110 ROBINSON: Gives overview of HJR 33 and HB 2579.

120 INGRID SWENSON, OREGON CRIMINAL DEFENSE LAWYER'S ASSOCIATION:
Testimony in opposition to HB 2579 and HJR 33.

184 CHAIR TARNO: Could there be some savings in qualifying only 6 jurors?

193 SWENSON: Discusses costs.

202 JENNIFER MARTIN, ASSISTANT ATTORNEY GENERAL, OREGON DEPARTMENT OF
JUSTICE: Testimony in opposition of HJR 33 and HB 2579. Submits [EXHIBIT
C].

230 CHAIR TARNO: The primary concern is about the 5 to 1 vote?

231 MARTIN: Yes it is. Both HB 2579 and HJR 33 are inconsistent with
interpretations of the federal constitution.

237 REP. LEWIS: What if we made it an 8 person jury with a 6 to 2 vote?

240 MARTIN: That would be permissible under both the state and federal
constitutions.

242 REP. PROZANSKI: How many states now have jury panels that are between
8 and 12?

246 MARTIN: I have not researched that issue.

249 REP. PROZANSKI: Referring to [EXHIBIT C], which case would you refer
us to that says a minimum of 8 would be required?

252 MARTIN: Ballew v. Georgia is the last case cited in second paragraph.

259 REP. PROZANSKI: That is a 1978 decision?

261 MARTIN: Yes it is.

263 REP. PROZANSKI: Has anything come out from the U.S. Supreme court
since that time?

265 MARTIN: There are no cases that come to a different conclusion.

CLOSES the PUBLIC HEARING on HB 2579 and HJR 33
OPENS the PUBLIC HEARING on HB 2678

271 ROBINSON: Gives brief overview of HB 2678.

292 KINGSLEY CLICK, STATE COURT ADMINISTRATOR: Testimony on HB 2678.

377 CHAIR TARNO: Is there any way of knowing whether the courts are
following your guidelines?

393 CLICK: There are variances for two reasons. One is there are not
verification specialists in every county. While they are bound by the

guidelines there is judicial discretion involved in whether to take the recommendations.

410 ANN CHRISTIAN, DIRECTOR OF INDIGENT DEFENSE, STATE COURT ADMINISTRATORS OFFICE: Testimony on HB 2678. Submits [EXHIBIT D].

TAPE 39, B

030 CHRISTIAN: Explains the verification program.

103 REP. PROZANSKI: What type of on going verification, if any, is being done once someone has been appointed council?

116 CHRISTIAN: Gives examples.

123 REP. PROZANSKI: If we're looking at trying to reduce the cost to the state, if we are in mid stream of a case, I'd hate to say from the victims perspective, "we are going to have to reschedule this because there is a new attorney on the case".

131 CHRISTIAN: The experience has been with most judges that if an individual has come in to some money, and the case is close to trial, the court as a practical matter will continue court appointed council.

178 CHAIR TARNO: Is there a time frame in which you cease to recover funds?

181 CHRISTIAN: The Oregon Judicial Departments policy as far as collection efforts, yes, there is a cut off date.

195 CHAIR TARNO: If a person is convicted of a major felony and is indigent, and goes into one of our institutions and obtains employment, is there anything currently that would require him to repay those indigent defense costs?

200 CHRISTIAN: Only if the court had ordered that at the time of sentencing.

217 REP. GRISHAM: You mentioned an example of discovering a satellite or other types of assets, how often does that occur?

221 CHRISTIAN: It happens very seldom. In the five and one half years that verification has been in existence there are probably five or six notorious situations.

258 REP. LEWIS: What percent of these indigent defense costs are paid back eventually?

268 CHRISTIAN: The percentage is currently running at about five percent.

287 REP. LEWIS: You said if we were to look strictly at criminal cases the percentage would be much higher, does that mean that we don't try to recoup funds on cases that are not criminal?

300 CHRISTIAN: That is correct. Last session the judicial department introduced a bill that would have allowed the courts to order recoupment in

some juvenile cases.

335 CLICK: Or the parent is the perpetrator or the alleged perpetrator.

340 CHRISTIAN: Another area where indigent defense provides counsel that is not criminal is in civil commitment cases.

344 CHAIR TARNO: Could you supply us with a copy of the guidelines?

355 CHRISTIAN: My office is trying to put together as many ideas as we can.

391 CHAIR TARNO: The committee would be very interested in any support you can offer us, especially in the area of recovery.

398 INGRED SWENSON, CRIMINAL DEFENSE LAWYERS ASSOCIATION: Testimony on HB 2678.

TAPE 40, B

016 CHAIR TARNO: The words "shall terminate" as opposed to "may terminate", primarily is addressing the indigent defense costs?

020 SWENSON: I would read it that way, to terminate the appointed counsel as opposed to the retained counsel.

023 CHAIR TARNO: Can you draft the some language that will take care of that problem?

025 SWENSON: I would like to talk with the committee council about other concerns that the committee may want to address with this language.

028 REP. GRISHAM: There are a number of representatives trying to address this issue, and I wonder if it would be productive to appoint a work group.

042 SWENSON: There is a work group that has been convened by the two chairs of the judiciary committees on both sides. Discusses analyzed data.

053 CHAIR TARNO: You will have that information within a couple of weeks?

055 SWENSON: We hope to have a meeting early next week.

057 REP. PROZANSKI: I think this might have been the report Ms. Click referred to as to having the data to us within a week as to some of the cost savings.

063 DAVID FIDANQUE, EXECUTIVE DIRECTOR of the AMERICAN CIVIL LIBERTIES UNION of OREGON (ACLU): Testimony on HJR 33. I would urge you to move cautiously in this area.

104 FIDANQUE: There has been legislation introduced in previous sessions that were supported by both ACLU and Crime Victims United.

CLOSES the PUBLIC HEARING on HB 2678

OPENS the PUBLIC HEARING on HB 2801

143 ROBINSON: Gives brief overview of HB 2801.

150 ANN CHRISTIAN, INDIGENT DEFENSE SERVICES DIVISION, STATE COURT
ADMINISTRATOR: Testimony on HB 2801. There is a potential that this bill
will have a small fiscal impact based on Marion county's current practices.

188 REP. COURTNEY: Is the only issue here this morning indigent defense?

191 CHAIR TARNO: In this bill I see something more.

193 REP. COURTNEY: As I understand it, if an inmate at Snake River wants
some post conviction relief the department of justice attorney's must go
over there to do that?

198 CHRISTIAN: That is correct.

200 REP. COURTNEY: We discussed this issue in the public safety
subcommittee. There could be some cost savings on the other side of the
issue.

207 CHRISTIAN: I would be interested in the Attorney General's office
assessment of the fiscal impact on this issue.

210 CHAIR TARNO: Did you just volunteer to make that inquiry?

212 CHRISTIAN: I will do that.

214 REP. GRISHAM: Do we know how many trips per year or length of miles
we're transporting
prisoners?

220 CHAIR TARNO: That would be an issue that state corrections could
provide information on, they keep a log.

CLOSES the PUBLIC HEARING on HB 2801

234 ROBINSON: The committee has scheduled all of the bills this committee
has heard to date regarding indigent defense.

250 CHAIR TARNO: Has this working group that has been put together by both
sides, privy to all of the information that we have been given so far?

256 ROBINSON: Yes.

259 REP. PROZANSKI: Do we know who is in this work group so we know how
broad a group it is?

265 INGRED SWENSON: I don't have an attendance list, but it included
representatives of the District Attorney's Association, the Defense Lawyers
Association and there were other people invited to join.

271 REP. PROZANSKI: Which members of the legislative body are in this
group?

273 SWENSON: The two chairs of the judiciary committee.

272 CHRISTIAN: The state public defender was there as well as the Oregon State Bar and counsel for the senate judiciary.

279 ROBINSON: I think this committee was meeting at the same time.

281 CHAIR TARNO: You are a working committee currently and you will be coming back to us in the near future with more information?

283 SWENSON: It was the intention that once the data had been analyzed, that some consideration would be given to all of the proposals that have been made legislatively as well as some informal proposals.

289 REP. PROZANSKI: Can we be notified of the next meeting?

293 ROBINSON: I'd be happy to take care of that.

295 CHAIR TARNO: With nothing further from the committee the meeting is adjourned.

Submitted by, Reviewed by,

Janet Ellingsworth	Debra Johnson
Committee Assistant	Committee Coordinator

EXHIBIT SUMMARY:

A - Deschutes county indigent defense costs HB 2003 - Mazorol - 2 pages

B - Testimony on HB 2003 - Snider - 2 pages

C - Testimony on HB 2579 and HJR 33 - Martin - 1 page

D - Forms on indigent defense - Christian - 11 pages