

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL
ADMINISTRATION

January 21, 1993 Hearing Room 357 1:00 p.m. Tapes 5 - 6

MEMBERS PRESENT: Rep. Tom Brian, Chair Rep. Ken Baker Rep. Jim Edmunson
Rep. Tom Mason

STAFF PRESENT: Holly Robinson, Committee Counsel Carole
Souvenir, Committee Counsel Julie Dow, Committee Clerk

MEASURES CONSIDERED: HB 2216 - Relating to HIV testing HB 2352
- Relating to post-conviction relief

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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. [--- Unable To Translate
Graphic ---]

TAPE 5, SIDE A

005 CHAIR BRIAN: Calls the meeting to order.

HB 2216 - PUBLIC HEARING

Witnesses: Jane Edwards, Criminal Justice Services Div. Lloyd
Athern, Health Division Gerry Fitzgerald, Dept. of Justice

009 JANE EDWARDS, GRANTS MANAGER, CRIMINAL JUSTICE SERVICES DIVISION:
Testifies and submits amendments to HB 2216. (EXHIBIT A and B)

050 REP. EDMUNSON: HIV can be transmitted through means other than
sexual contact.

054 EDWARDS: Federal law would not restrict expanding the
definition. Current law does not cover stabbings, etc.

REP. EDMUNSON: Intravenous drug use is a form of transmission. I'm
trying to find the policy.

EDWARDS: Health Division felt all kinds of transmission would be
covered by this language.

REP. EDMUNSON: What is fiscal impact of expanding the definition?

EDWARDS: Crime Victims Program already provides counseling so that wouldn't be an additional cost.

082 REP. EDMUNSON: Expanding the definition would not have much of a fiscal impact?

EDWARDS: They provide services to victims of all crimes already so expanding the category would not bring in a lot of new people.

101 REP. EDMUNSON: Criminal contact may also transmit the HIV virus. What is the policy distinction and what is the fiscal impact in expanding the scope to any contact capable of transmitting the virus?

112 LLOYD ATHERN, LEGISLATIVE LIAISON, HEALTH DIVISION: Does not know the fiscal impact on their agency.

113 GERRY FITZGERALD, DIRECTOR, CRIMES VICTIMS PROGRAM, DEPT. OF JUSTICE:

Broadening the language to include juveniles would have some impact on our program. Describes what their agency pays for and number of requests they received in 1992. Average cost of AIDS test and minimum counseling is \$65. Wants to see numbers on assault crimes and definition of counseling before picking up the costs on all testing.

REP. EDMUNSON: Asks witnesses if they see any valid policy distinction between sexually transmitted HIV and that transmitted by other means.

133 EDWARDS: No.

ATHERN: Don't believe we do.

137 REP. BAKER: Why limit to just HIV?

142 FITZGERALD: It is current law and federal mandate. Part of the purpose of the bill is public health and part is victim's ease of mind.

152 REP. BAKER: Refers to other sexually transmitted diseases and questions the limitation to HIV.

EDWARDS: Also questions the limitation to HIV.

FITZGERALD: HIV testing of a sexual assault victim is a normal part of their testing when entering the crime victim's program. The difference here is that we would be paying for the defendant to be tested.

EDWARDS: Current laws states Crime Victims Program has to pay for the test and some counseling for the perpetrator also. HB 2375 shifts the cost requiring the offender to pay his own cost or the Department of Corrections to pay if the defendant were indigent.

173 CHAIR BRIAN: Can add language regarding other forms of criminal behavior for HIV testing to the bill.

HB 2352 - PUBLIC HEARING

Witnesses: Rep. Kevin Mannix, District 32 Anne Christian, State Court Administrator's Office

183 REP. KEVIN MANNIX, DISTRICT 32: Testifies and gives overview of HB 2352.

226 ANNE CHRISTIAN, DIRECTOR, INDIGENT DEFENSE SERVICES, STATE COURT ADMINISTRATOR'S OFFICE: Testifies in support of HB 2352.

260 REP. MANNIX: Agrees on the need of emergency clause. There is a proposed amendment that will suggest that any of the old petitions shall be filed within 120 days of the effective date of the act. Don't need to give 120 days, give 30 days.

273 REP. EDMUNSON: You wouldn't have objections to maintaining 120 days?

REP. MANNIX: No.

REP. BAKER: How will prison inmates be notified of the 30 days?

REP. MANNIX: They have had three years to respond.

283 KATHLEEN CEGLA, ATTORNEY GENERAL'S OFFICE: Testifies and submits proposed amendment to HB 2352. (EXHIBIT C)

307 REP. MANNIX: Should consider saying it was intent to make retroactive. Maybe that is too aggressive.

REP. MASON: Do those filing a claim for post-conviction relief from fifteen years ago have a realistic expectation of obtaining that relief?

330 CEGLA: "Latches" does not apply. Recently lost an appeal on that issue.

HB 2352 - WORK SESSION

352 MOTION: REP. EDMUNSON: Moves to ADOPT Department of Justice amendments to paragraph 3 of HB 2352.

VOTE: Hearing no objection the amendments are ADOPTED. All members are present.

365 MOTION: REP. EDMUNSON: Moves to add emergency clause to HB 2352.

VOTE: Hearing no objection the motion is ADOPTED. All members are present.

370 MOTION: REP. EDMUNSON: Moves HB 2352 AS AMENDED to full

committee with a DO PASS recommendation.

VOTE: 4-0 Motion carries AYE: Baker, Edmunson, Mason, Brian NO:
None

HB 2216 - PUBLIC HEARING

Witnesses: Thomas Hart, Marion County District Attorney's Office

383 THOMAS HART, MARION COUNTY DISTRICT ATTORNEY'S OFFICE: Testifies in support of Criminal Justice Services Division (CJSD) amendments to HB 2216.

452 REP. EDMUNSON: Asks if the bill as presented would cover any act that could transmit HIV.

HART: No. Current language requires an act to be sexual in nature and that is not the way it should be. Discusses (CJSD) amendments.

TAPE 6, SIDE A

028 HART: Continues discussion on CJSD proposed amendments to HB 2216.

045 HOLLY ROBINSON, COMMITTEE COUNSEL: Is it possible to create in another section a presumption that in the general language of transmission of bodily fluids that it would include sexual acts? Take it out of the body of the bill but there's a presumption that in certain cases you will in fact test?

053 HART: If that's what's necessary. Could add "or."

054 HOLLY ROBINSON, COMMITTEE COUNSEL: Specific language is needed in order to satisfy certain federal requirements. Discusses creation of a presumption that in certain cases testing would occur.

059 HART: Agrees. Page 1, lines 8 and 14 of CJSD amendments could be included but do not want to restrict only to those acts. Is important

that juveniles be included in these amendments. Continues line by line discussion of CJSD amendments.

147 CHAIR BRIAN: Clarifies witness' recommendations for page 1, lines 8 and 14.

154 REP. BAKER: Currently the juvenile court has jurisdiction to order any kind of testing except for HIV?

HART: Correct.

REP. BAKER: Can it order that any other test be taken?

HART: If it is related to the crime, yes.

REP. BAKER: What if it is a dependency case and related to treatment?

HART: Doesn't know.

HB 2216 - WORK SESSION

175 CHAIR BRIAN: Asks Rep. Edmunson if he needs more information.

176 REP. EDMUNSON: Statute is broad enough to address my concern.

178 CHAIR BRIAN: With the use of the word "or" it includes sexual contact for the purposes of federal compliance and still allows room for the other offenses based upon facts seen by the court.

181 REP. EDMUNSON: Doesn't know if this presents a problem for simple assault cases.

193 REP. MASON: Asks for explanation on how this relates to possible future prosecution regarding these transmissions. This information should be

available to the prosecutor for possible prosecution. 202 HART: The list regarding to whom this information may be disclosed does not include a court or law enforcement agency. Goes to victim and physician.

207 CHAIR BRIAN: Are the Health Division records confidential or protected from subpoena?

HART: Not from a criminal grand jury subpoena.

MASON: Information should be available to the prosecutor. Doesn't want a criminal to be able to hide behind confidentiality.

226 REP. BROWN: Working on a bill to make it a crime, a Class A felony.

231 REP. MASON: Suggests the committee amend the list to include the district attorneys. Asks the witness why the police should have that information.

248 HART: When we have the information, we don't investigate.

261 REP. MASON: Seems it would be more convenient to have the information go to the district attorney.

CHAIR BRIAN: Doesn't know how they could investigate without passing the information to law enforcement who is doing the street work. Asks legal counsel if there are any self-incrimination issues.

274 REP. EDMUNSON: If the information is provided for the purpose of subsequent criminal investigation there isn't a problem with it. You are not recommending that this become a part of public record.

286 HOLLY ROBINSON, COMMITTEE COUNSEL: Explains conviction language in the bill.

318 MOTION: REP. MASON: Moves to ADOPT a conceptual amendment to HB 221 6 to make the information available to law enforcement agencies and that it remain confidential until some future

prosecution, to be placed as subsection (f) on line 30.

VOTE: Hearing no objection the amendment is ADOPTED. All members are present.

MOTION: REP. MASON: Moves to ADOPT amendment to HB 2216 to delete "contact involving the penis occurs upon penetration, however slight;" from CJSD amendments to page 2, line 25 dated 1/21/93.

VOTE: Hearing no objection the amendment is ADOPTED. All members are present.

MOTION: REP. MASON: Moves to ADOPT amendment to HB 2216 to insert "from the facts" on page 7, line 16 after the word "appears."

VOTE: Hearing no objection the amendment is ADOPTED. All members are present.

376 CHAIR BRIAN: Refers to page 7, lines 20 and 21 of CJSD amendments. Do we want to add language where the court may also order the adult, in addition to juveniles, to reimburse the appropriate agency for the cost of the test?

REP. BAKER: The parent or guardian?

CHAIR BRIAN: We now have two issues. Is there a need to broaden the language or clarify that we are going beyond the child to his legal guardians?

400 REP. BAKER: You can't order the child anyway, can you?

405 CHAIR BRIAN: So it would read "the child or parent or guardian of the child?"

MOTION: REP. BAKER: Moves to AMEND HB 2216 by inserting "or parent or guardian of the child" on page 7, line 20 after "child"

VOTE: Hearing no objection the amendment is ADOPTED. All members are present.

413 CHAIR BRIAN: Do we want the convicted adult offender subject to the same provision that the court may order reimbursement to the appropriate agency for the cost of the test? Asks Counsel where the language would be inserted.

421 HOLLY ROBINSON, COMMITTEE COUNSEL: There may need to be a new section as section 2 refers to the juvenile.

MOTION: REP. EDMUNSON: Moves to ADOPT a conceptual amendment to HB 2216 that the court may order any person ordered to take the test to reimburse the appropriate agency for the cost of the test.

436 ROBINSON: Will the word "agency" in that situation include the Attorney General's office or the Crime Victim's Program if they have paid for the test?

450 REP. MASON: Do we need that in the form of a motion?

ROBINSON: Refers to p. 2, lines 6 to 9. Language could be inserted there in regard to this addition.

CHAIR BRIAN: Doesn't existing language cover it?

REP. EDMUNSON: Withdraws previous motion.

483 MOTION: REP. EDMUNSON: Moves HB 2216 AS AMENDED to the full committee with a DO PASS recommendation.

VOTE: 4-0 Motion carries AYE: Baker, Edmunson, Mason, Brian NO: None

TAPE 5, SIDE B

051 CHAIR BRIAN: Adjourns meeting at 2:03 p.m.

Submitted by:

Reviewed by:

Julie Nolta
Committee Assistant

Anne May Committee Clerk

EXHIBIT LOG:

A - Testimony on HB 2216 - Criminal Justice Services Division - 1 page
B - Amendments to HB 2216 - Criminal Justice Services Division - 6 pages
C - Amendments to HB 2352 - Oregon Department of Justice - 1 page