

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE

January 21, 1991Hearing Room 357 3:00 p.m. Tapes 3 - 4 MEMBERS
PRESENT:Rep. Kelly Clark, Chair Rep. Judy Bauman Rep. Marie Bell
Rep. Jim Edmunson Rep. Kevin Mannix Rep. Tom Mason Rep. Del Parks Rep.
Ron Sunseri STAFF PRESENT: Holly Robinson, Committee Counsel Jeff
Steve, Committee Assistant WITNESSES: Marilyn Harbur, Juvenile/Family
Court Project Clark C. Campbell, Systems Chief, Office of Alcohol and
Drug Abuse Programs (ADAP) (HB 2264) Jeff Kushner, Office of ADAP (HB
264)

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 3, SIDE A

004 REP. CLARK: Read a portion of legislative history concerning the
appropriation of funds to complete the State Capitol building.

019 REP. CLARK: Opens meeting at 1:15.

INFORMATIONAL MEETING

025 MARILYN HARBOR, JUVENILE/FAMILY COURT PROJECT, LAW IMPROVEMENT
-Briefly discusses the work of the Juvenile Family Justice Project which
was established to look at code revision in both the juvenile and family
law areas. There will be a work group called the Policy Visionary Group
which will focus on how the juvenile court system can interact with
House Committee on Judiciary January 21, 1991 - Page 2

the various committees. Another group will look at the existing statutes
to determine where modifications should be made to settle statutory
conflicts and clarify vagueness. These two group will meet every two
months over the next two years -Discusses LC 2185 which would legitimize
the appointment of this group as an advisory group to the Law
Improvement Committee. LC 2185 also requires the group to put together
proposed legislation for the next biennium. -There are 30 people on the
Juvenile Family Justice Project. We assembled these people to: 1) Come
up with a code revision for juvenile law 2) Determine if it was feasible
to introduce a unified family court system. We intend to study similar
family justice court structures in other states such as, Hawaii.

118 REP. CLARK: Could you summarize more specifically the problems of
our juvenile justice system?

125 HARBOR: As far as the court component of that system and how the
courts relate to the various legal services there is a great deal of
duplication and uncertainty as to how the various provisions apply. For
example, there is nothing in the code that says whether or not the
Oregon rules of civil procedure apply. This is something that the
Project could clarify.

142 RFP. CLARK: If the proposed community juvenile justice legislation which attends to "service" passes, will that cause you to reexamine the coordination of service delivery?

147 HARBOR: Because of the timing of our project I don't think that it will affect us at all. The project seeks to restructure the court system so that it can interact with any delivery service program to provide maximum flexibility for the courts to play their role in the juvenile justice system.

167 REP. EDMUNSON: Are you aware of any similar projects in juvenile code revision?

171 HARBOR: No one is currently working on juvenile code revision on the scale that this group IS.

177 REP. EDMUNSON: Representative Clark and I are on the Oregon Revised Statutes Revision Commission and we have been struggling with revising the entire code. The Juvenile Code has come up and I would be interested in hearing more about your work as the Commission proceeds.

187 REP. MANNIX: What kind of staffing support do you have for your project?

188 HARBOR: Right now the Project has no staff. We have been working with the Children Youth Services Commission for short term funding which will allow us to hire an executive director for 4 to 5 months. Also, we have applied to the State Justice Institute for additional funding. We anticipate that our two year project costs for a full time staff director and a half time clerical person plus mailing expenses would be about \$200,000.

205 REP. MANNIX: There is a new proposal this session to carry out a study on the juvenile code. You might be able to work with sponsors of that code for the next session in terms of seeking

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. new funding sources.

HB 2264: PUBLIC HEARING

222 REP. CLARK: Opens public hearing on HB 2264 230 ROBINSON: Explains HB 2264 and its history. -Introduced at the request of the Office of Drug and Alcohol, Department of Human Resources 302 CLARK CAMPBELL/DEPARTMENT OF HUMAN RESOURCES: EXHIBIT A HB 2264 seeks to amend HB 2479, passed in the 1989 session. The drafters of HB 2479 did not anticipate several things: Unless the bill was explicit in saying that it is limited to first offense possession of less than an ounce or delivery without consideration of less than an ounce it could be abused. A juvenile who has been arrested ten times for making methamphetamine, goes to juvenile court and goes through an education treatment program, can then have the charge dropped. Indeed, the court must drop it. HB 2279 created a loop hole for juveniles to abuse the system. Our bill has two changes: 1) To narrow and make express that HB 2479 is intended to

deal with "first offense possession or first offense delivery for no consideration" of less than an ounce of marijuana. That is express and limited for adults now, not for juveniles. 2) Extends these requirements to the County Juvenile Departments and law enforcement agencies so that whether or not a county juvenile department decides to take a juvenile before the court, the requirement for an early intervention will be in statute and theoretically carried through. 402 REP. EDMUNSON: I noticed on the education program that parents shall pay the cost of the child's participation in the program. I am for that. However, what happens in a situation where the parents cannot pay. Would you enforce a lien? 413 CAMPBELL: There are a number of things that can be done. 1) The county juvenile department can extend the payment schedule. 2) The parents can seek education through our program. 3) If the child is under the CSD Program, CSD has money.

TAPE 4, SIDE A

020 REP. EDMUNSON: My concern is where the bill says, "The parents shall pay." It doesn't say that anyone else will. Does that limit, in any way, the State of Oregon from paying for that program?

022 CAMPBELL: The intention was that the State of Oregon would not pay. The intention was to make it like the DUII statutes in that either the offender pays or, in the case of indigency, payment would come from a fund that is created from money paid in by adults who petition the court for diversion of their offense. No public tax revenues would be spent. 030 REP. CLARK: Have you done a study to see if the funds are going to match up with the cost?

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032 CAMPBELL: The math doesn't match the reality. There has been reluctance, confusion and resistance to using this bill. You will hear a bill at a later date that proposes to recriminalize first offense possession. One of the primary reasons is that some law enforcement agencies argue that they are too busy with serious crimes to be concerned with something that is not even considered a crime.

048 REP. BELL: I feel reluctant to consider this bill without a fiscal impact statement.

054 CAMPBELL: There will be no fiscal impact on any county. The intention is that either the offender will pay, or the indigency fund pays.

057 REP. MANNIX: On page 5, line 14 it says that the parent of the child shall pay the cost of the child's participation in the program. In order to avoid fiscal impact on local communities we need to add something.

064 CAMPBELL: How about adding, in the case of indigency, the cost would be paid out of the indigency fund.

072 ROBINSON: Discusses the indigency fund. There are situations where the court, using general fund dollars from the State Court Administrator's office, will pay for psychological testing for

indigents. The indigency defense fund would operate like this.

087 JEFF KUSHNER, OFFICE OF ALCOHOL AND DRUG ABUSE -HB 2479 set up a separate fund for paying for indigents, not unlike the DUII fund, and adult petitioners for diversion pay into this fund. The intent was that the revenue collected would be used to pay for indigents who could not pay for these programs. 096 REP. CLARK: The question we are.

struggling with is A) the parent can't pay and B) the indigency fund is dry then C) is the statute just ignored? 099 KUSHNER: We have not run into that situation? 102REP. MANNIX: I assume that as with the case of any government program if the fund is dry the operation stops going. In terms of the indigency defense fund, I want to make sure that we are talking about a "term of art" set up for these diversion programs so that if these funds run dry there will not be any fiscal impact.

110 CAMPBELL: There was a specific name for this fund. I think it was the Marijuana Diversion Fund, or close to that. There is a name for the fund. We could add to the bill the provision that "the parents would pay, but if they are indigent, payment would be made from this named fund. " 117 REP. BELL: It does not settle the question of fiscal impact. It all comes out of the same pocket: the citizen's. You give us no indication of how much money might be used out of this fund.

123 CAMPBELL: I assumed that the Legislative Fiscal Office usually does a fiscal impact statement.

127 REP. CLARK: We do not have that analysis in our packet. The point that Mr. Campbell is

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making is that these will not be general fund dollars.

128 CAMPBELL: These are not tax payers dollars in any shape or form and there is no county or city duty to pick up the slack.

131 REP. PARKS: What does a single evaluation in the program cost?

132 CAMPBELL: It is identified as \$90.

133 REP. PARKS: Are we shooting a cannon to kill a fly? Are we testing a lot of people that are kids that are experimenting? To me it does not make any difference whether we use general fund money as opposed to other money because I presume that the money could be used for part of the program.

139 CAMPBELL: We don't know. This is new. With regard to DUII, we were surprised to find that 2/3 of DUIIs were found to have a problem that was sufficiently advanced as to warrant a clinical diagnosis. Our concern is that if you let a child go too far the physiological, intellectual and social development gets arrested so fast that they become major rehabilitation problems.

157 REP. MANNIX: A fund has been set up which is self-sufficient. All we are going to say if we add this amendment is, "We want to modify the law so that we are in a situation that where a juvenile comes before the juvenile authorities on a true first offense, involving possession of marijuana, they must divert that child, but if it is a subsequent

offense involving drugs that they may divert, but are not obligated to divert the child." Is that a good summary?

170 CAMPBELL: If the statutes were changed as this bill proposes, then nothing in the statutes would speak to the second offense. The courts would be free to do whatever they chose with respect to second offenses.

177 REP. MANNIX: Right now, for every subsequent offense they are obligated, but the bill as proposed would eliminate that obligation. It could actually have a lower fiscal impact if this law were implemented right now. Right now you could have kids going through rehabilitation ten times over and they can't stop it legally.

183 ROBINSON: The fund that was set up last session for the diversion program can be found at ORS 135.921. I don't think it is as specific as it could be in terms of funneling the money back to fund the juvenile assessment programs.

193 REP. SUNSERI: Do you have any idea where the money comes from if it doesn't come from the general fund?

195 ROBINSON: These funds are for indigency evaluations generally. For non-diversion, non-drug cases, I understand they come out of the general fund. They are funds that are set aside to provide funds for indigent defense counsel, but also to give counsel money to pay for evaluations they need for their clients. If a juvenile needed another type of assessment and that juvenile were indigent there would be funds available.

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210 REP. CLARK: The 1989 legislation creates a special diversion program.

212 ROBINSON: Right. This would create an additional fund that would hopefully be self-supported based on the adult diversion program.

213 REP. CLARK: What the Department wants to do is take money from the adult diversion program to pay for the juvenile diversion program when the parents can't pay.

216 REP. SUNSERI: Where does that money come from?

217 REP. CLARK: The adults that go through the diversion program are required to pay the cost for that program plus a fine. The fine is what is used.

225 CAMPBELL: The bet is that there are enough adults that would opt for diversion that the fund would have enough money to pay for those people who cannot pay whether they be adults or juveniles.

243 REP. BAUMAN: I am concerned about the effectiveness of the program that we are able to purchase with money that we get from parents or an indigency fund. How good is our treatment and are we keeping track of that treatment? How much does it cost per child?

259 KUSHNER: We do keep track as far as we can. The Client Process Monitoring System tracks every client from admission through treatment and discharge. We look at a variety of indicators such as grade point average, tardiness, behavior disruption, alcohol and drug usage, etc. We do not track adolescents 12 -18 months after discharge which we would like to do, but it is expensive. -The cost depends on the level of service whether it is outpatient or residential service. We are successful in getting children and adults alcohol and drug free, but now we need to concentrate on reintroducing the individuals back into the community.

298 REP. BAUMAN: This bill does not contemplate residential treatment does it?

299 KUSHNER: If we determined that an adolescent needed residential treatment then we would try to get them into residential treatment.

302 REP. BELL: What is a ball park figure of what it would cost a family if their child fell into this program?

309 KUSHNER: The assessment runs \$90. Outpatient treatment runs about \$5,000 a slot, but generally 4 people fill a slot so that is about \$1,200 a year per person. Our residential program is about \$70 a day and is a 30-60 day program. All of these programs are based on an ability to pay. A program would only charge a family their ability to pay whatever the amount was that they owed. 324 REP. BELL: I think that we should include that provision of a family's ability to pay. 335CAMPBELL: In order to contract with us you have to have an agreement not to refuse service

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348 REP. MASON: This language of a family's ability to pay looks good, but you could leave that language out and it would not make any difference in the real world, because by definition these families that have children in this situation do not have money. They are probably living at poverty level anyway. This notion that, in the criminal law world, we should make the people in the system pay is not always realistic. It won't work in this situation. We might think about using money from the DUII fund because people there can pay for the system.

379 REP. CLARK: What do we do with children and alcohol in relation to what you are proposing here?

384 KUSHNER: It is the same treatment. There is money in the DUII fund that may be used for this program.

TAPE 3, SIDE B

004 CAMPBELL: We have introduced legislation in prior sessions that would call for kids picked up for Minor In Possession, for example, to go through the same evaluation program. Now, law requires the courts to notify the DMV and the kid gets his license suspended or deferred if the child is not old enough to have a license. There was great lobbying against the evaluation proposal for fear that it would take teeth out of the licensing requirement. Our theory is that by going through this

treatment program the child could regain the license sooner.

019 ROBINSON: In another section of the bill which discusses mandatory referrals, was there any discussion on including school police within the definition of local law enforcement? . 023 CAMPBELL: They should tee included.

030 REP. CLARK: We need more discussion on this bill and we will reschedule the bill for Wednesday, January 23, 1991. -Adjourns Subcommittee on Family Justice.

Submitted by: Assistant David Harrell, Office Manager Reviewed by: J. Kennedy Steve,

EXHIBIT LOG:

A - Testimony on HB 2264 - Clark C. Campbell - 3 pages

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