

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.

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE

February 20, 1991Hearing Room 357 3:00 p.m.Tapes 37 - 38

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 Kathy Neely, Committee Assistant MEASURES CONSIDERED: HB 2193 PH (Inmate Medical Records) HB 2492 PH (Compensation for Secondary Victims) HB 2407 WS (Sex Offenders Registration)

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TAPE 37, SIDE A

003 REPRESENTATIVE CLARK, CHAIR: Calls the meeting to order at 3:05 p.m.

PUBLIC HEARING ON HB 2492 Witnesses: Rep. Courtney, Bobbi Shelton, Dean Renfrow, Gerri Fitzgerald

032 BOBBY SHELTON: Continues testimony from previous hearing on this bill. Discusses personal sexual abuse experience. Comments on experience with police and reaction of daughter to the knowledge of her mother's abuse. Explains experience with victim's compensation. Needed for daughter's counseling but could not obtain because of understaffing and under funding. Victim's compensation would not provide counseling for daughter and huSB and.

130 CHAIR CLARK: Appreciates hearing real stories.

135 REP. COURTNEY: Thanks the committee for allowing a return visit.

139 CHAIR CLARK: Recesses at 3:20 p.m. Reconvenes at 3:25 p.m. Asks questions on the crime victim's compensation fund.

152 GERRI FITZGERALD, PROGRAM DIRECTOR OF THE CRIME VICTIMS PROGRAM, DPT OF JUSTICE: This program has been around since 1977 but has grown tremendously in the last few years because of changes in 1987 legislature where benefits were expanded to victims of family violence. The program increased case load by 100% since then but no increase in staff at the same time. There is currently a huge backlog of claims pending, about 2,200. The benefits are limited to the primary victim. Receiving about 200 claims a month and with existing staff decisions are issued on about 120 claims per month.

174 CHAIR CLARK: The sources of the funding are?

GERRI FITZGERALD: Three different sources: 1) general fund allocation; 2) federal funds from federal tax on offenders; and 3) state penalty assessment funds of people convicted of state crimes. Discusses the amounts receiving from these sources.

184 CHAIR CLARK: What will the fund go through in Ways and Means?

GERRI FITZGERALD: Completed presentation to Ways & Means. Not sure of complete picture but would be looking at substantial financial obligation for claims in system today. Asking for increase in funds and staffing.

192 CHAIR CLARK: Asks how program will do. Asks counsel if there are other bills coming before the committee regarding compensation fund.

198 HOLLY ROBINSON: Discusses motion of the last hearing on this bill and amendment that came out of the hearing. No other bills currently relate to victim's compensation. Not aware of any in the pending bills just filed.

224 CHAIR CLARK: Asks witness if she knows of any other.

GERRI FITZGERALD: Yes, several submitted that would address future claims and one for punitive damages.

CHAIR CLARK: This bill has a referral to Ways and Means.

HOLLY ROBINSON: No it does not.

CHAIR CLARK: Why?

HOLLY ROBINSON: No fiscal on bill because committee has not completed its work. Comments on fiscal impact on HB 2406 as negligible. Not seen as having a significant fiscal impact to expanding it to secondary victims.

CHAIR CLARK: Asks witnesses as to opinion on fiscal impact possibility.

250 GERRI FITZGERALD: Substantial. Have estimated limiting it to children witnesses only would make it \$270,000 over the 1991-93 budget.

257 CHAIR CLARK: Any sense on what fiscal impact will be of other bills?

GERRI FITZGERALD: Have not run all figures on it. Estimates them to be a positive impact.

262 REP. PARKS: What is the budget now, without any additions?

GERRI FITZGERALD: Would have to get the budget figures. Estimates about \$180,000 a month in claim payments.

270 REP. PARKS: How many claims? What would be the average claim cost?

GERRI FITZGERALD: About \$3,000. Statute has cap of \$23,000 per victimization.

278 REP. PARKS: What percentage is for treatment and for lost wages?

GERRI FITZGERALD: Guess is majority is for treatment counseling and medical costs. A minor portion would be for wage losses.

REP. PARKS: This is a limited bill that would only cover out of pocket costs. That is \$270,000?

GERRI FITZGERALD: Correct.

287 CHAIR CLARK: Wants to see the charts, pictures and graphs.

GERRI FITZGERALD: Would be willing to come back and make a comprehensive discussion on fund.

CHAIR CLARK: This bill may have to go to Ways and Means. Would like to send all of the bills involving the crime victim funds together, might be able to save this proposal.

303 REP. PARKS: If there are so many people in the program that there is not enough money to fund it according to statute, how will the Program decide who gets what?

309 GERRI FITZGERALD: Would be a policy question.

REP. EDMUNSON: Wants comment on dealing with actual victims who are not limited to children, but includes spouses, parents, siblings, etc. There are others who can be just as impacted by this. Also include those who maybe find the victim, traumatized by aftermath.

334 GERRI FITZGERALD: The family members are serious traumatized by crime whether a witness or living with victim who is trying to survive.

339 REP. MANNIX: Concerned about the broader issue of the backlog of claims. Is there a budget proposal to allow catching up of those?

GERRI FITZGERALD: Have submitted a proposal asking for additional staff positions to address the rising claims and backlog.

REP. MANNIX: Does that include funding for temporary positions to catch up?

GERRI FITZGERALD: Did not request temporary positions.

357 REP. MANNIX: Just concerned about claims sitting out there.

GERRI FITZGERALD: Valid concern.

362 CHAIR CLARK: Discusses direction of the committee regarding ways and means. Talking about holding this until other related bills come before committee to send whole packet down.

378 REP. MANNIX: Half of punitive damage awards go into fund?

GERRI FITZGERALD: The statute allows for one third. After attorneys cut, then half of award comes to program.

REP. MANNIX: If change punitive formula to increase share would be increasing funding?

GERRI FITZGERALD: Correct.

REP. MANNIX: Is there a bill on that?

HOLLY ROBINSON: It is coming.

389 REP. EDMUNSON: Does fund have a lien against civil recovery that may result because of the crime?

393 GERRI FITZGERALD: Have segregation rights if victim is successful in civil suit. Program would be paid for costs.

397 REP. EDMUNSON: Do you bring civil actions?

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GERRI FITZGERALD: Do not routinely initiate. Needs to check the statute to see if can.

007 REP. MANNIX: Would like punitive damages.

008 CHAIR CLARK: It is on its way. Ask Gerri Fitzgerald to come back to testify.

009 REP. BELL: Comments on Mrs Shelton's testimony, wondering about allowing the family to make decision on where victim's compensation money goes as far as counseling and guidance. Giving the family discretionary powers.

022 REP. MANNIX: Is real curious, because of the bills' relating clauses, if temporary staffing provisions can be added to allow the Program to catch up and remain current.

032 REP. CLARK: Asks witness to come back with financial information. Closes hearing on HB 249 2.

(Tape 38, Side A) PUBLIC HEARING ON HB 2193 Witnesses: Jef VanValkenburg, Pamela Abernathy, Ella Johnson, Leslie Kay, Lelia Wrathall

040 HOLLY ROBINSON: ORS 179.505(9) specifically requires no written accounts referred to deal with health care and medical records of the Department of Corrections and the Mental Health and Developmental Disabilities Services Division may be used in legal or other proceedings unless the patient voluntarily produces as evidence. Comments on items in packet.

055 PAMELA ABERNATHY, SPECIAL COUNSEL TO ATTORNEY GENERAL: (EXHIBIT D) Testifies in support of the bill. Discusses why the Dept. of Justice supports the bill with the proposed amendments.

068 REP. MANNIX: The committee has a 2193-1 set of amendments and an outline of witness' testimony. Is the witness supporting the 2193-1 amendments?

HOLLY ROBINSON: HB 2193-1 are the amendments forwarded by Mr. VanValkenburg

(EXHIBIT C).

073 PAMELA ABERNATHY: Discusses history of the current written bill. The

219 3-1 amendments expands the bill to include access by the Dept. of Justice and Risk Management to patient medical records maintained by the Mental Health and Developmental Disabilities Services Division. Lists the facilities included. The bill is needed because there is no current access to records without consent to defend the Departments and the Division in litigation or potential litigation initiated by inmates or facility patients. There is also no access to look at records to support personnel actions taken against employees for patient abuse. Risk Managers have no access to records to evaluate and settle claims. *Describes the fundamental policy underlying bill and proposed amendments to place state's attorneys on equal footing with private attorneys and health care providers. Comments on actions in the private sector. *Comments on the two parts of the bill. ORS 179.495 relating to corrections which prohibits access except by court order or by patient consent. In order to defend inmate cases, have to obtain a court order. Need this as a partner for HB 2391, the habeas corpus bill. Gives reason.

128 REP. MANNIX: Hearing opposition to the amendments except for the inmate part of it.

138 CHAIR CLARK: Unclear of connection with habeas corpus bill.

PAMELA ABERNATHY: Asks Mr. VanValkenburg to speak to that.

140 JEF VANVALKENBURG, DEPARTMENT OF JUSTICE: Section 6 of HB 2391 amends ORS 34.680 in the habeas statutes to provide expressly that supporting evidence may be used in the defense by the state to establish the plaintiff has failed to state and establish a claim. Without access to those records, cannot provide the motion.

147 CHAIR CLARK: Did that bill pass out?

HOLLY ROBINSON: Goes to full committee.

CHAIR CLARK: Did it come out of the Criminal Subcommittee unanimously?

REP. PARKS: It is done.

154 PAMELA ABERNATHY: Directs remarks to access of patient records. Discusses why they are needed. Current statute requires voluntary and informed consent of client or patient. There is no provision for access for attorneys by a court order. Trial attorneys for clients are not allowed to see records until patient puts them at issue and in evidence at trial. Trial by ambush. This bill would allow access by attorneys.

171 CHAIR CLARK: Are these plaintiffs not normally deposed?

PAMELA ABERNATHY: Even if there is the ability to depose, the rule of civil procedure for a subpoena duce tecum is superseded by this specific prohibition. Comments on provisions in ORCP with regard to access of hospital records.

191 REP. EDMUNSON: The records law does not deal with records relevant to the action brought by patient or client, it basically deals with records generally.

PAMELA ABERNATHY: No specific restriction for relevance in language of proposed amendments.

REP. EDMUNSON: The existing statute deals with records generally. Does it specifically address records relevant in a civil action?

208 CHAIR CLARK: No.

PAMELA ABERNATHY: It refers directly to records even where the care has been put at issue in a civil proceeding.

JEF VANVALKENBURG: Subsection 9 of 179.505 refers to records which are relevant in civil or other proceeding. Is that one restricting the Dept. of Justice from defending the lawsuits. It is restrictive and overrides the general provisions in the ORCP.

220 REP. EDMUNSON: Is it then litigated? Any court decision stating it means that?

228 PAMELA ABERNATHY: Yes, the issue has been litigated. Offers an example of being sued for violation of this statute. Discusses the case.

251 REP. CLARK: Tell how the Dept. has been defending these?

PAMELA ABERNATHY: With some difficulty. Discusses instances.

284 CHAIR CLARK: The bill proposes with regard to mental health, these will only be available when a patient/client has sued the state.

PAMELA ABERNATHY: There are 3 instances where bill would allow access by attorneys or claims adjustors from Risk Management: defend state where the care received has been put at issue; look at records to investigate a claim.

CHAIR CLARK: Don't understand.

PAMELA ABERNATHY: The bill allows investigation. Comments on current practice regarding investigation.

CHAIR CLARK: What is the third?

PAMELA ABERNATHY: To support personnel action taken against employee or staff member of Division on basis of patient abuse.

312 CHAIR CLARK: Gives example to clarify this point of abuse. Why should the records be subject to this action?

320 REP. MANNIX: If understands situation, some one discloses a potential claim or brings litigation. The people within Division or Dept. may look at own records but have to be defended by Dept. of Justice which is a separate agency. Those people cannot look at the records.

PAMELA ABERNATHY: Yes.

REP. MANNIX: That is where it is different from private person sued. Problem is this unique statutory scheme. Just asking to be similarly situated as private attorney helping client.

PAMELA ABERNATHY: Correct.

349 REP. MANNIX: Questions Dept. of Justice's amendments on page 1 line

3. Is there need for it all to become part of a 2A, can we make it a subsection?

356 PAMELA ABERNATHY: No problem.

REP. MANNIX: Discusses amendment and length of it and concepts of amendments. Questions line 16 of Dept.'s as to double negative concepts. Want to say authorizing inspection and release of written accounts?

PAMELA ABERNATHY: Believes that is the intent.

376 REP. MANNIX: Can say "the Department of General Services Risk Management Division may upon request"

PAMELA ABERNATHY: That is better. Addresses the Chair's concern. Briefly gives reason why records may become important in labor arbitration. Discusses true instance where employee said injury came from somewhere else. Consent was given to use records which were used to establish the nature of the injury treated and show timing of the injury. Used also to show no report had been made on injury. *Suggests further restricting subsection to make it clear release for personnel action is limited to relevant records to the action by staff.

TAPE 37, SIDE B

012 PAMELA ABERNATHY: Final point is this does not change, expand, or alter access by third parties. Just giving state lawyers access. Discusses third party access.

023 REP. PARKS: Gives example of patient being hit by car on streets of Salem and sued the driver. Would the defendant's lawyer have access to the records.

028 PAMELA ABERNATHY: Defendant's lawyer could access those records pursuant to current provision of ORCP.

031 REP. PARKS: The driver's lawyer can get access but if patient falls out of bed and sues state, the state's lawyers cannot get access?

PAMELA ABERNATHY: That is Department's reading of statute.

035 HOLLY ROBINSON: Questions whether or not there was any discussion regarding use of the words "any written account" in line 7 and then the subsequent actions defending? Discusses words of the statutes regarding patient files.

047 PAMELA ABERNATHY: Nothing in the bill that limits access to relevant portions of the record. There are other statutes which would limit access to relevant portion of the record in court. Such as ORCP 44.

053 HOLLY ROBINSON: Would have access to entire record initially?

PAMELA ABERNATHY: Correct. Lawyer could review the file but could not publicly release the whole file, only relevant portions.

062 CHAIR CLARK: What are sanctions on that?

PAMELA ABERNATHY: In judicial forum, the lawyer would be dealt with by the judge, like any use of irrelevant evidence.

069 CHAIR CLARK: Not in the same shoes as a private lawyer.

HOLLY ROBINSON: Follows up. Gives example of suing local hospitals and having records at another hospital also.

076 PAMELA ABERNATHY: In that situation, if the physician being sued at relied on other hospital's records believe they would be incorporated in to current records and would be able to get them that way.

HOLLY ROBINSON: Saying there is no knowledge of the other hospital's records. The lawyer defending would not have access to other hospital's records in that situation.

PAMELA ABERNATHY: Correct. When applied to the state, it is a who is the client problem.

090 REP. MANNIX: Discusses a more correct analogy, two units of the same entity. This bill does not put state in better position than private attorney. Technical question on page 2 of amendments.

098 CHAIR CLARK: Have to move on.

REP. MANNIX: On line 12, need to say "or" with the consent.

JEF VANVALKENBURG: Drafted it and had a comma after sub 2.

REP. MANNIX: Should have a comma after sub 2.

109 LEILA WRATHALL: Adds that Fairview does support this being passed in order to insure giving due process rights to employees. Discusses abuse cases and use of record in defending agency's action.

CHAIR CLARK: Discusses Chair's intent for the meeting.

146 ELLA JOHNSON, MENTAL HEALTH ASSOCIATION OF OREGON: (EXHIBIT E) Offers testimony against the bill. Gives Association's understanding of original bill. The bill was then amended to include part on personnel problems. Shocked with this amendment. Responds to Ms. Abernathy's comment on putting Dept. attorneys on equal footing. That argument does not wash because actions of government are more limited than those of private parties. Believes checks and balances are in order for the State. *The bill is too broad. Concerned this unlimited and unchecked access will lead to abuse of the records. Records of mentally ill patients contain unsupported statements and hearsay evidence that are irrelevant to claims. Gives examples of what may be in the records.

212 REP. MANNIX: Isn't that really putting the records context with totality of mental state?

ELLA JOHNSON: Can be explained but the amendments that allow access to all records don't have limiting language.

REP. MANNIX: Wasn't the language chosen carefully. In terms of actions on mental condition. Discusses private practice regarding records. Balance to review of records may be achieved by looking at all records in totality context. Allows better perception of what is really going on with individual. To use the records in the proceeding, however, they are limited to relevant material.

ELLA JOHNSON: Thinks relevance is in the eye of the beholder. Untrained attorneys may pick the wrong things out of the records. Believes mental health records are whole life history. In fairness to patient, believes access should be limited as much as possible. *Concerned under the amendments, competent patients will not be given the opportunity to decide whether or not they want that to happen if able to give consent to release. Should be able to decide who has access to records.

268 REP. MANNIX: Urge to find some common ground with proponents of bill.

274 LESLIE KAY, OREGON ADVOCACY CENTER: (EXHIBIT F) Offers testimony against the bill. Concerned about scope of disclosure of information. Objections to language. It does not limit release of information to litigants or parties filing tort claim notices. Appears Dept. of Justice would have access to any record of any patient who may be some what involved with an incident giving rise to a claim or suit. Uncomfortable with comparisons between private and public world. Trying to weigh the confidentiality right of patients against need of Dept. of Justice to get information at a stage in litigation to make system work more efficiently for them. Compromised by the extent of information disclosed unnecessarily.

330 CHAIR CLARK: Close hearing on HB 2193.

(Tape 37, Side B) WORK SESSION ON HB 2407 Witnesses: Major Dean Renfrow, Vern Faatz

347 HOLLY ROBINSON: Discusses amendments adopted at last hearing on the bill. Comments on information provided by Vern Faatz regarding number of victims wanting to be notified. (EXHIBIT G)

TAPE 38, SIDE B

010 CHAIR CLARK: Last time the committee was waiting for the proposal for victim notification. Comments on Counsel's memo to Virginia Vanderbilt (EXHIBIT H).

012 HOLLY ROBINSON: Comments.

CHAIR CLARK: Don't need to revisit those issues. Need to decide on victim notification and polls the committee on readiness to go with the bill.

020 REP. BELL: Discusses amendments to Section 7 (EXHIBIT I). Believes it is a realistic approach. This approach puts responsibility to find information on the victim themselves rather than the state. Establishes a toll free number for the victim to obtain information. Victim would receive an ID number to obtain access and would be informed that misuse would revoke the number. Believes fiscal impact would be little. Major Renfrow supports these.

042 HOLLY ROBINSON: Clarifies amendments. Sections don't match up on amendment. Discusses line 8 of Section, the post prison supervision notification requirements. Registration bill does apply to parolee.

052 MAJOR DEAN RENFROW: Comfortable with the proposals. Relatively inexpensive to maintain the 800 number. Have to assign victim's ID number early on.

068 REP. MANNIX: Wouldn't it be best to assign the ID number when the LEDs entry is first being initiated and then to advise them of rights under provision.

MAJOR RENFROW: Correct. Initial entry would be made by Corrections.

077 REP. MANNIX: Corrections may not be communicating with victim whereas other may. Thinking when ever there is a required communication to the victim initially.

081 VERN FAATZ, DEPARTMENT OF CORRECTIONS, CHAIR OF BOARD OF PAROLE: The Board has responsibility to communicate with victims with respect to offender.

089 REP. BELL: Wondering on ID number.

REP. MANNIX: Conceptually assign ID number to victim when LEDs entry is first made. When notice is given to victims that they be advised of rights under this provision.

MOTION:REP. BELL: Moves the adoption of the proposed amendments to Section 7 of the bill.

095 CHAIR CLARK: Rep. Bell moves the proposed amendments marked Section 7 and Rep. Mannix has a proposed friendly amendment. Correct?

REP. MANNIX: The friendly amendment would be in subsection 3 to assign the ID number when LEDs entry is first made and advise victim of rights under this section when first receiving formal notice of rights or action in regard to the inmate.

102 CHAIR CLARK: Does Rep. Bell consider that a friendly amendment?

REP. BELL: Yes.

HOLLY ROBINSON: Rep. Mannix, with all due respect, upon conviction and entry into registry, the defendant will be given an ID number which shall be released to the victim. There is already a point Needs to be clarification on who is getting the number.

REP. MANNIX: Both are.

CHAIR CLARK: The defendant is given a number which the victim is entitled to have access to.

HOLLY ROBINSON: Happening, intent in lines 1 and 2.

113 REP. MANNIX: Did not write it down.

CHAIR CLARK: Not victim number, just giving the victim access to defendant's number.

HOLLY ROBINSON: The defendant is given an ID number that is released to the victim.

REP. MANNIX: The defendant gets a number and victim has a number to access toll free line.

120 REP. MASON: Can't get defendant's name unless have ID number.

CHAIR CLARK: The only way to get into the system is to have defendant's number. No one but the victim will have that number.

HOLLY ROBINSON: It is the registration ID number.

REP. MANNIX: Assumed there were going to be 2 numbers. Comments on revocation of access number.

131 CHAIR CLARK: Asks Major Renfrow for comments.

MAJOR RENFROW: Prefer number assigned to victim and defendant.

138 HOLLY ROBINSON: How does this work?

REP. EDMUNSON: Expands on how it will work.

MAJOR RENFROW: Right.

HOLLY ROBINSON: Understands conceptually.

140 REP. BELL: Discusses initial input on computer.

144 CHAIR CLARK: Further discussion on the proposed amendment and friendly amendment? Any opposition to friendly amendment? Hearing none it is added to Rep. Bell's amendment. Further discussion about Rep. Bell's amendment. Is there opposition? Hearing none, it is so ordered.

MOTION:REP. MANNIX: Moves conceptual amendments to HB 2407 as discussed.

CHAIR CLARK: Rep. Mannix moves the conceptual amendments on the Memo to Virginia Vanderbuilt in to the bill. Is there objection? Hearing none, it is so ordered.

MOTION:REP. MANNIX: Moves HB 2407 as amended to full committee with a do pass recommendation.

CHAIR CLARK: Rep. Mannix moves HB 2407 as amended to full committee with do pass recommendation. Calls for the vote.

VOTE: On HB 2407 as amended: Aye: Bauman, Bell, Edmunson, Mannix, Mason, Parks, Sunseri, Chair Clark. Nay: 0 Ex.: 0

CHAIR CLARK: HB 2407 as amended is passed to the full committee with do pass recommendation. Rep. Bell will carry the bill. Adjourned meeting at 4:50 p.m.

Submitted by: Reviewed by:

Kathy Neely David Harrell Assistant Office Manager

EXHIBIT LOG:

A	-	Amendments to HB 2492 - 2 pages	B	-	Testimony on HB 2492
- Paul Drews	-	1 page	C	-	Amendments to HB 2193 - 2 pages
D	-	Testimony on HB 2193 - Pamela Abernathy	-	3 pages	
E	-	Testimony on HB 2193 - Ella Johnson	-	2 pages	
F	-	Testimony on HB 2193 - Leslie Kay	-	2 pages	
G	-	Testimony on HB 2407 - Vern Faatz	-	1 page	

H - Memorandum on HB 2407 - Holly Robinson - 2 pages
I - Amendments to HB 2407 - Rep. Bell - 1 page