

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE

February 25, 1991 Hearing Room 357 3:00 p.m. Tapes 42 - 43 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 MEASURES HEARD: HB 2388 - Pregnancy and
Substance Abuse

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TAPE 42, SIDE A

004 CHAIR CLARK: Opens meeting at 3:15 p.m.

INFORMATIONAL HEARING - TASK FORCE ON PREGNANCY AND SUBSTANCE ABUSE

Witnesses:

Representative Tony Van Vliet, District 35 Betty Roberts, Chair of the Task Force on Pregnancy and Substance Abuse Judge Ann Aiken, Member of the Task Force Dr. Richard Lowensohn, Oregon Health Sciences University Member of the Task Force Dr. Jan Bays, Emanuel Hospital, Portland, Member of the Task Force Linda Meng, Member of the Task Force Representative Margaret Carter, District 18

018 REPRESENTATIVE TONY VAN VLIET, DISTRICT 35: Discusses purpose and history of the Task Force.

037 BETTY ROBERTS, CHAIR OF TASK FORCE ON PREGNANCY AND SUBSTANCE ABUSE: EXHIBITS A and B Discusses the study done by the Task Force. What the Task Force looked for was a way to get as many women who were pregnant and using drugs into House Committee on Judiciary February 25, 1991 - Page 2

treatment as soon as possible. The identification is not nearly as important as the treatment provisions of HB 2388.

103 CHAIR CLARK: If you take the identification portion and set it aside HB 238 8 becomes a treatment and funding bill only?

108 ROBERTS: Yes. 109 CHAIR CLARK: Is it anything more than a Ways and Means bill at that point? Do you think you have any clout in the Ways and Means Committee? 111 REP. VAN VLIET: Absolutely. If this progresses down to Ways and Means it would be judged at the same time we are looking at the agencies that deal with this and we would look at all the possibilities of reorganizing and handling crisis problems, preventative in nature, and it would have a top priority.

125 ROBERTS: There certainly would be an identification at first through testing that is ordinarily done or through observation of the infant and the mother. 129 JUDGE ANN AIKEN: The Department of Human Resources has made this a priority issue. Had to look at what models we have in the state and what to draw on. Looked at the drunk driving treatment program as a model. Looked at how to broaden existing programs. What is important is identifying the most likely candidate for voluntary treatment. There is a need for identification. The reason for

the testing is because there is an over representation of poor and minority women and the Task Force wanted to obtain a less discriminatory method for identifying women. Once a woman is identified as needing treatment the referral is to the public health agencies, not the Children's Services Division. The public health system then contracts out for services. The woman would then be referred out to an intensive out-patient program or a more intensive residential treatment program. In 1988, Oregon had only 8 residential treatment beds at public expense for women. There is no infrastructure for treating women in this state.

179 CHAIR CLARK: Only 8 beds?

181 JUDGE AIKEN: There may have been treatment beds in private settings, but those don't count. The Department of Human Resources has put together a project management team in order to make these women a top priority. The way the funding would work is to release funds from the Department of Human Resources. Each county would then request funds for services.

204 REP. MANNIX: Before you get further into how proposals will be packaged, have you looked at the legislation that Citizens For A Drug Free Oregon has proposed which provides for an increase in beer and wine taxes. That money would be used for alcohol and drug rehabilitation programs. It might also be used for this. This way you would get around the Measure 5 crunch.

221 CHAIR CLARK: Is it appropriate to seek a specific designation for funds out of that beer and wine tax increase.

228 JUDGE AIKEN: The bill itself provides that there will be a priority for women and children.

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234 REP. BAUMAN: Given the lack of bed space the problem does not appear one of identification, but service. Did you receive some information concerning the level of identification which goes without treatment?

248 DR. RICHARD LOWENSOHN, OREGON HEALTH SCIENCES UNIVERSITY: The data gained from birth certificates identified roughly 2% of all births as being alcohol or other affected. There was a survey done in November of 1989 that indicated that 4% to 5% of all births were affected. Studies around the country indicate 10% to 15%. -The 8 beds by this summer will be more like 100. 271 REP. BAUMAN: If 4% to 5% of all patients self-identify and then the birth certificate data picks up about 2% we are not picking up everybody who is affected at birth and second there is a tremendous number of identified women already.

285 JUDGE AIKEN: The treatment needs are great. When women use drugs they are selfdestructive and lose out on programs traditionally established for men who often act out their drug problems in a criminal fashion.

302 REP. BAUMAN: 5% of 41,000 births is a little over 2,000. Even 2% of the births constitutes a tremendous tragedy. 319 JUDGE AIKEN: Emphasizes the potential for tapping into existing treatment systems.

This would also build up existing programs. 333 REP. BAUMAN: If 2,000 women have been identified and 88 beds is the optimistic number of beds that are going to be available why is there the need for more identification in the system? 345 DR. JAN BAYS, EMANUEL HOSPITAL: Originally saw one drug affected infant every few months. Now the hospital sees a couple every week. Sees this as a disease. Therefore you have to determine how many have the disease. There is mandatory testing for all new born babies for diseases like PKU which can cause retardation if it is not picked up early and the infants diet is not changed. There are a number of other tests as well. By testing early you avoid costs that will build up over time. The data across the Country is that 1 in 10 pregnant women are abusing drugs and that does not take into account alcohol. 1/3 of the infants suffering from drug abuse engaged in by the mother are severally damaged. That is a great number of children. After identification comes treatment and the Task Force is looking into all kinds of treatment programs. The success rate of drug and alcohol addiction is not good. The earlier you can get people into treatment the better the success rate. The social costs for treating these kids after birth are astronomical especially if they are going to participate in society.

TAPE 43, SIDE A

028 BAYS: The cost to deal with this is great. In Los Angeles, the educational costs will run an estimated \$10,000 per year per child. In Florida they are looking at \$7,000,000 just to get one years crop of cocaine affected babies ready for kindergarten. CSD did a study of drug affected children in their system and they estimated the cost to be about \$40,000 per child to raise them to age 4 to be adopted. Long term costs are unknown. It is hard to raise and discipline these kids.

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-Travels around the country giving lectures. In the armed services they do not have this problem because of their random testing.

067 REP. SUNSERI: Is it possible to get some of this information?

070 BAYS: Yes.

074 CHAIR CLARK: Understands that the voluntary portion of the bill applies during pregnancy and at birth there is required testing. Is that correct?

... 076 BAYS: The plan is to do testing in the same way as all pregnant women have done during prenatal care. During pregnancy it is voluntary.

087 CHAIR CLARK: What testing in HB 2388 is required? 093 BAYS: HB 2388 would require a urine test after informed consent. 095 CHAIR CLARK: That is still a voluntary test? 097 BAYS: Physicians are required to perform certain tests for malpractice purposes. HB 2388 would require a health worker to perform drug tests on pregnant women who consent to the care of the physician. The woman can always refuse.

100 CHAIR CLARK: What new testing does HB 2388 contemplate at birth?

102 BAYS: Urine drug screen on the infant.

107 LINDA MENG: In section 4(3) of HB 2388 (line 36), it requires a test of the infant with consent, but if there are symptoms of exposure to drugs then no consent is required. That was put in so a doctor could perform needed medical tests if there was an indication of exposure to drugs and a doctor would not be prohibited from taking further tests by virtue of this legislation if they felt that it was necessary.

116 REP. MASON: In Section 1(3), line 20, page 1 says that "In all cases under subsections (1) and (2) of this section, the physician or other health care provider shall request consent of the patient to take a blood sample. No sample shall be taken without such consent." If the patient does not give consent what happens? 125 CHAIR CLARK:

Theoretically, there could be no testing from that time until the time of birth. 131 MENG: Under Section 3(1), line 6, page 2 a woman can be referred for other reasons other than a positive test and a doctor can refer a woman for assessment if the doctor determines that the woman had a problem from some other indications. A positive test is not an exclusive basis for referral. 142 ROBINSON: Summarizes HB 2388. Currently, law mandates that all women have to be tested for syphilis, the reports have to go to the Health Division, a doctor has to test and a woman has to consent. HB 2388 is based on similar principles and attempts to balance the need to report

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and the need to give consent. Does not know what happens if the woman refuses. Sections 2, 3, and 4 are new. They address the issue of what happens when the test results appear. HB 2388 states that the results of these tests shall not be used in criminal prosecution (See Section 1(4), line 23, page 1). HB 2388 is silent on juvenile court proceedings. Sections 3 and 4 talk about what happens after the results are known. The reports go to the Health Division during the time of pregnancy at which point a local assessment is performed. In Section 4 informed consent is necessary to test under the provisions of HB 2388 unless the baby is exhibiting adverse symptoms at which point the baby can be tested.

191 BAYS: One provision that the Task Force thought was important was not only would universal testing avoid socio-economic prejudice, but also mandatory reporting by the health care provider would provide crucial information. 215 JUDGE AIKEN: What the Task Force tried to do: was get as many women involved in the treatment programs as early on as possible. There will be those who will turn down this testing but this is a balancing act. 237 REP. BAUMAN: Looking at the numbers again. Sees the situation as if there are 40,000 women lined up at the door and 2,000 of them need beds. We have 88 beds. How do we come up with more beds? Another problem that the Task Force raises is how to identify more women to fill the already inadequate bed space.

257 ROBERTS: Just because there are 2,000 women that need treatment does not mean that all 2,000 women will accept treatment. There is nothing in HB 2388 that mandates treatment. 267 CHAIR CLARK: Not all treatment requires beds.

269 MENG: The 88 beds are residential beds. There are new programs coming on the line with more bed space. Also, there are intensive

outpatient treatment slots available. Also, there is a constant rotation of women.

286 REP. BAUMAN: The other concern is with the system design of the doctor/patient relationship. There may be women on the fringes that do not want to be identified and in order to protect this anonymity they will avoid seeing a doctor.

317 LOWENSOHN: This is a whole different approach to the testing program. Has found that doctors and health workers have not been trained well to elicit this information from patients. It goes against the grain of doctors and health care providers to trick the information out of patients. This situation should be seen as a health issue and not a moral issue.

348 CHAIR CLARK: A woman comes to you for prenatal care and you say to her "You look terrible. Are you taking care of yourself?" and the woman says, "yes." This appears to be a difficult situation.

359 LOWENSOHN: A typical situation is that a woman will say that she has stopped drinking or taking drugs after she has found out that she is pregnant. The problem is that she may be 4 months pregnant before she realizes that she is pregnant. By that time much damage could already have been done. Also, some of these women live in denial and it is often hard to get

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information out of them.

370 CHAIR CLARK: At that point the conversation becomes a health care conversation.

372 LOWENSOHN: A more typical way for a health care worker to ask the question is "you don't drink or do drugs do you?" There is a lot of implied judgement in the question. Suggests a model used in California which requires the Division of Licensing to include continuing education for physicians in early detection of drug use in pregnant women and a course directed at special care needs of drug addicted infants. The health care profession needs more help in identifying women with this problem.

TAPE 42, SIDE B

012 REP. SUNSERI: Is concerned about the referral process that might occur when a physician is suspicious about the condition of a woman. There may be serious constitutional questions concerning infringement of personal freedom. Agrees with the goals, but perhaps the methodology might need some reworking.

020 BAYS: Sees drug abuse as a disease. Right now when any woman comes in it is mandated that they be tested for syphilis and other factors.

046 REP. BELL: There are women of economic levels if tested and this were brought to their attention by the physician they would probably take care of it privately. Just having the doctor bring it to their attention is great.

059 JUDGE AIKEN: Sentenced an 18 year old on a second DUII. Discovered later that his mother and brother were killed in a car accident and had never recovered. We got him into a treatment program. Another woman came in on a second DUII who it was later discovered had been sexually abused and was now using drugs to deal with it. She was put into a program as well. This is a difficult issue for doctors and judges to deal with and what the Task Force is trying to do is make it more of a health care issue where proper treatment can be obtained. Pregnant women do not become addicts. Addicts become pregnant.

089 MENG: The other aspect of that is the current legislation that was passed last session on pregnant women and substance abuse requires doctors to do an assessment of pregnant women to determine whether she abuses drugs or alcohol. Doctors do not know how to determine this very well. Right now there is no incentive for a doctor to do that. HB 2388 provides for a means to guide the doctor and health care worker.

110 CHAIR CLARK: One assumes that there are a number of people who would test positive who would be able to seek treatment through some sort of private funds.

114 BAYS: The Health Division has already done some kind of analysis of the number of women that they anticipate would test positive who would be able to be treated by other means who would be able to be treated on an outpatient basis. The total number of beds needed would be about 270.

127 JUDGE AIKEN: One of the reasons for making sure that the information would not be used --

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for prosecution is to encourage women to come forward with this information. Right now the only treatment programs available are for those that have been prosecuted. HB 2388 provides that a woman can safely disclose this information, not be prosecuted and still obtain the treatment required to help her.

156 CHAIR CLARK: Most of the concern seems to center on the identification portion of HB 2388 If we take the identification portion out of HB 2388 then what you have is a treatment and funding bill. That does not change existing practice. 173 ROBERTS: We wanted to present HB 2388 in this form taking into account the legislative process. There still has to be a way to identify these women. We don't want the whole bill to be lost simply because there is too much opposition.

188 CHAIR CLARK: Wants HB 2388 to pass.

195 REP. MANN=: The key element is the identification process. The rehabilitation can be accomplished if there is the will and funding without statutory authorization. This is a public health measure. If you lose the identification portion then you might as well do away with the law that requires testing for syphilis or anything else.

211 CHAIR CLARK: The Committee has heard a lot of testimony on substance abuse. Wants to make a more intelligent decision based on this information.

219 BAYS: It is criminal not to identify a child who is being subjected to drug abuse by the mother.

221 MENG: The Task Force struggled with the identification portion of HB 238 8 for almost a year. The best compromise was to set up identification as the Task Force did. Identification without treatment doesn't make any sense. 240 REP. BAUMAN: What percentage of the parents of the 2% of the births could afford their own drug and alcohol treatment? 251 ROBERTS: The Task Force relied on figures from the Health Division.

254 LOWENSOHN: Regarding the 2% figure. The Health Division performed a health survey and found that there really was not a strong financial distribution to that 2%.

268 REP. BAUMAN: 1 out of 10 have the problem and 2% are identified. Wants to know how much information the system is able to generate currently. -Why don't physicians carry on this inquiry right now? Why do they need an incentive? 280 JUDGE AIKEN: The patient is a client and the relationship established is a professional relationship. Without this legislation a woman who did not like to be asked those questions could go to somebody else. Doctors do not want to play police. 298 REP. BELL: It is good that we have attorneys, judges and doctors all agreeing on this issue. 309 REPRESENTATIVE MARGARET CARTER, DISTRICT 18: These issues have been looked -_ ~

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329 REP. BAUMAN: Is concerned that the test results not be used for criminal prosecution. Uncomfortable with the use of this information in court against these women who come forward. What if we come along in a future legislative session where we consider the criminality of drug abuse? Have we innocently created a door into the criminal justice system that we do not want?

371 BAYS: That is why HB 2388 specifically states that this information would not be used in a criminal prosecution. If there are other reasons for criminal prosecution then that will occur. However, has seen hundreds of drug affected infants and there has never been a discussion of criminal prosecution. 383 REP. MANNIX: Considers this the demilitarized zone. Thinks that you need to have this neutral zone in order to protect the innocent third parties. The exception that we are dealing with is a baby. It is not an issue of "intent." This might serve long term interests. We are trying to be pro-active for the interests of the baby. TAPE 43, SIDE B

009 ROBERTS: Would oppose any bill that would make ingestion a crime. Prefers to treat the issue as an illness. It defeats the purpose of what the Task Force has proposed.

022 MENG: This is really a balancing process. On the one hand you want to bring people into the system and on the other you want not to scare these people away.

029 JUDGE AIKEN: Those people who are traditionally opposed to

mandatory testing came forth during hearings and said that if this information was not going to be used for criminal prosecution but was for medical purposes only then they would support it. 053 CHAIR CLARK: Assumes that since the Task Force has treated the problem as a health related problem that the Task Force did not spend a lot of time and energy on how to get the fathers involved in treatment of both the mother and the child. Did you hear testimony and consider that at all.

063 ROBERTS: Any kind of relational problem would be dealt with at the treatment stage. If a woman is involved with a man who is in fact the problem, then at the treatment stage that has to be dealt with.

071 CHAIR CLARK: Adjourns Subcommittee on Family Justice at 4:44 p.m.

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

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EXHIBIT LOG:

A Written Material on HB 2388 - Betty Roberts - 1 page B Written Material on HB 2388 - Task Force on Pregnancy and Substance Abuse - 28 pages

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