

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE

March 4, 1991

Hearing Room 357 1:00 p.m.

Tapes 46

- 47 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 - Testing For Substance Abuse In Pregnant Women

- 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 46, SIDE A

004 CHAIR CLARK: Opens Subcommittee on Family Justice at 1:20 p.m.

HB 2388 - TESTING FOR CONTROLLED SUBSTANCES FOR PREGNANT WOMEN - PUBLIC HEARING

014 HOLLY ROBINSON: Summarizes HB 2388. 032 SENATOR JANETTE HAMBY, DISTRICT 5: HB 2388 goes to far and will encourage those who use drugs to not seek aid and will likely choose drugs that are more severe yet leave the system sooner to get around the testing. There are other ways of dealing with the problem. Most health workers can get the necessary information by simple interviews. Urges Committee to put money into treatment rather than identification. 077 CHAIR CLARK: Are you opposed to both major purposes of HB 2388: testing and treatment. 079 HAMBY: Is opposed to the testing aspect of HB 2388.

089 MARY ANN CURRY, HEALTHY MOTHERS/HEALTHY BABIES: EXHIBIT A. Reads from Exhibit A. Member of the Governor's Transition Team on Health.

171 REP. BAUMAN: Looking at HB 2388 on its face is there a way that you can think to structure the test that would not scare women away from prenatal care? 181 CURRY: Does not think there is any way from preventing scaring women away from prenatal care if it is known that they are going to be tested and that that information is going to be reported. Anonymous testing to determine the nature of the problem would be another viable option. 190 REP. MANNIX: Why couldn't we run the same blood test for drugs as we do for diseases such as syphilis if the blood testing is consented to? If a mother is going to consent to this testing is it seeking too much to do further testing? 207 CURRY: There is the concern among women that maybe the information would be used. It is better to educate the health care providers how to ask the questions and interview the patients. 217 REP. MANNIX: There is a law now that encourages medical providers to identify, counsel and if appropriate refer people potentially having a drug problem. 220 CURRY: That is the curriculum that is currently being put in place, but the majority of health care providers have not had the benefit of that. Strongly supports more education. 225 REP. BELL: It is not the intention of the Committee or the Task Force to harass or scare people away. Reliance on information provided by the medical profession alone will result in more subjectivity and the likelihood of economic bias than if there was universal testing. 245 CURRY: Sensitive questioning is the best way over the course of the pregnancy to determine whether or not there is a problem with substance abuse. It also increases the likelihood that the woman some point later in her life will seek treatment. 253 REP. BELL: Would you agree that at the

present time individuals in the medical profession are not adequately questioning? 258CURRY: Yes.

260 REP. PARKS: How much would the cost of the test be and how many tests should each mother have? Is it feasible to do the test as Rep. Mannix suggested?

267 CURRY: Yes, but it would not give you the information that you want because you cannot determine drug addiction on the basis of one test. ; 268 REP. PARKS: You are speaking on behalf of Healthy Mothers and Healthy Babies Coalition? 274 CURRY: Yes. 283 JOHN BRADLY, DEPUTY DISTRICT ATTORNEY IN MULTNOMAH COUNTY AND MEMBER OF THE TASK FORCE ON PREGNANCY AND SUBSTANCE ABUSE: The Task Force spent many hours listening to testimony trying to decide which way to go. What was obvious to the Task Force was that currently there are no adequate resources for women who are House Committee on Judiciary March 4, 1991
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pregnant and women who have children and have drug problems. Resources are needed. HB 2388 is a compromise. There were suggestions that we criminalize this kind of activity, but this was rejected overwhelmingly. The testing is a compromise of the Committee. The question came up whether there should be testing only where the doctor has a reasonable suspicion or reasonable cause that the particular mother is under the influence of drugs. The conclusion was that this kind of testing could become discriminatory. Rather the Task Force adopted a universal testing program. Where everybody has their blood drawn it is not so intrusive. -The Committee discussed the issue of mandatory consent, specific consent as opposed to general consent. The final position was that it was more a general consent.

349 REP. CLARK: Unclear on general consent/specific consent.

354 BRADLY: What happens when a person comes into the hospital they sign a "general consent form." Most people never read them. Specific consent relates to those situations where there is specific testing of substances such as drugs. -HB 2388 provides help where there was none and it is the best vehicle that the Task Force could come up with.

379 REP. MANNIX: Have you considered the potential irony of the situation? Normally, law enforcement is viewed as getting tough on drugs. Yet, when the debate ensues over the endangerment of a third person, i.e. an unborn child, and there is an attempt to decriminalize the use of information pertaining to drug abuse there is a human cry about us selecting out people for discriminatory treatment.

399 BRADLY: This is a difficult task. Nobody is going to be completely satisfied with what our group did or with what this Committee does.

TAPE 47, SIDE A

006 REP. MANNIX: Trying to do the right thing means that everyone wants to identify pregnant women in these situations and to get them into treatment.

009 BRADLY: Yes. The question addressed by the Task Force was how to get these women in to treatment by the least onerous method.

013 REP. EDMUNSON: Are these tests confidential as a matter of law?

018 BRADLY: Because they are medical reports they would be confidential in the aspect of a patientdoctor privilege.

022 REP. EDMUNSON: As a prosecutor would you be able to subpoena those records?

027 BRADLY: No. The results will not be used for criminal prosecution.

030 REP. EDMUNSON: Could the test results be used for the prosecution of another person such as the huSB and?

033 BRADLY: It could be used in a juvenile proceeding if you were talking about establishing the

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wardship of a child. If the child was born drug addictive or the mother has been using drugs then the court needs to determine the wardship of the particular child. The Task Force did not believe that the wardship issue would be covered under criminal prosecution. 040 REP. EDMUNSON: Is it true that any evidence that would be developed as a result of the knowledge and positive tests would be excluded as fruit of the poisonous tree?

046 BRADLY: Normally, that is the case in Oregon. 048 CHAIR CLARK: You would have no objection if the Committee were to include such language into HB 2388? 050 BRADLY: No.

052 ROBINSON: Assumes that since this is limited to criminal prosecutions and since the issue of juvenile court proceedings have been raised that the test results as HB 2388 is currently written could be used in a dependency or jurisdictional hearing for any child, not just the child that suffered through the drug abuse. Is that correct? 063 BRADLY: If a woman is identified as having a drug problem and she was uncooperative and the child was born addicted the Task Force wanted to have the information available for establishing wardship. 068 REP. BELL: Could any of this evidence be used in civil proceedings? Wouldn't that scare away women as well? Why can't the court use test results after the baby is born and leave prebirth testing alone. 073 BRADLY: The court would use the testing of the baby at the time of birth, but there are some drugs such as cocaine that will only stay in the system for a very short amount of time, such as 72 hours. The court would want information about prior drug use to establish a history. 090 REP. BELL: Is concerned that unless there is a blanket immunity a lot of women are going to be scared to consent to the testing or divulge any information. 093 BRADLY: No matter what you do you are going to scare some people away. If you want to establish wardship does not believe that one would want to limit that evidence. 099 REP. BELL: Aren't there other indicators that a child is or is not a drug addicted baby? 103 REP. BAUMAN: Impressed with your endorsement that this is a health problem. Could you discuss your experience with prosecuting women with drug possession when they are not pregnant and your experience with finding adequate treatment for them. 112 BRADLY: Currently, there are no adequate facilities. 116 REP. BAUMAN: Would you consider drug abuse among women who are not pregnant as a health problem? ,

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120 BRADLY: Yes and it is a criminal problem. What the Task Force discovered was that most of the treatment facilities established to deal with drug abuse were for men. Once you have a woman and especially a woman with child it is almost impossible to find any facility.

128 REP. BAUMAN: There are really two advantages at looking at this as a health problem. The first is that it addresses reality and second that it in light encourage the development of chug treatment facilities.

132 CHAIR CLARK: From the testimony you received is it true that in an ideal treatment program that 10% to 30% of the people with a problem will participate?

139 BRADLY: The Task Force heard different numbers. But essentially that is what we heard. 180 DR. RICHARD LOWENSOHN, OREGON HEALTH SCIENCES UNIVERSITY: EXHIBITS B and C Reads from Exhibit B. 252 REP. BAUMAN: Is concerned by the testimony that testing may discourage women from prenatal care. Do you have an idea of what the incident of injury is that is caused by lack of prenatal care? 269 LOWENSOHN: Women who don't show up for prenatal care and who don't have prenatal care have a higher rate of low birth weight infants, a much higher rate of premature births and a far higher rate of physiological complications. 280 REP. BAUMAN: Could we be getting out of one area and creating another problem? Some women might avoid seeking prenatal care due to the testing and the results could be very damaging. 292 REP. BELL: When you have a person in a nurturing roll and a person being cared for such as a parent/child relationship, if the child is found to be lying and the parent continues to be loving and caring in a way that is not punitive then that relationship gets even closer because the child learns that they don't have to lie because their mistakes are taken into account. This should apply as well to this situation. 312 LOWENSOHN: That may be true for a parent/child relationship. but when a person walks into the office having never met the doctor before there is little time to build a healing nurturing relationship if the patient were to lie. There is no history established.

329 MICHAEL McCracken, OREGON MEDICAL ASSOCIATION: When HB 2388 speaks on lines 20-22, page 1 requiring the "physician or other health care providers to request informed consent prior to taking blood care sample" and the further provision that "no sample should be taken without such consent" that we mean specifically "informed consent" as defined in ORS 677.970. 370 REP. PARKS: Does this include giving information to the patient that this information could be used in other proceedings? 377 McCracken: The woman who submits herself to testing should understand that the

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consequence of being tested would include a possible reporting to Children's Services Division and possible court action that would lead to separation of the mother and child.

380 REP. PARKS: You estimated \$1.7 million would be needed for universal testing for the next biennium. See Exhibit C What is that predicated on?

388 McCracken: Those figures came from the Oregon Health Division calculated at about \$12.50 per test times 2 (per woman) for a biennium.

007 KATHERINE BROWN, WOMEN'S RIGHTS COALITION: EXHIBIT D 011GERRY FEDERICO, NATIONAL ORGANIZATION FOR WOMAN: EXHIBIT E Decades of public health studies have documented that complex health behavior changes cannot be mandated. Only voluntary participation in treatment programs result in long lasting behavioral changes. Strongly opposed to mandatory drug testing of pregnant women. Such testing would not result in healthier women or healthier babies. 037LAURIE WINMER, WOMEN'S RIGHTS COALITION: EXHIBIT F Applauds the efforts of the Task Force, but this is not the way to deal with the problem. The test results may be used to split up families. Also, there are ways to beat the test. Treatment is most effective when voluntarily sought. -An alternative to the recommendations of the Task Force is to have anonymous testing of mothers or babies. If you universally test all pregnant women without reporting them to the Health Division or any other body you still preserve the doctor-patient relationship and you also get the data you need. 075 BROWN: The Women's Rights Coalition is against mandatory testing as set forth in HB 2388. There are alternatives to identifying women. The Coalition is very much in favor of the treatment programs discussed in HB 2388. There needs to be more treatment facilities open however. Attempting to identify more women when there are only 200 beds is an exercise in futility. There needs to be more attention on funding for programs. -Refers to Exhibit F. The reason why the Coalition is strongly opposed to mandatory testing as set forth in HB 2388 in addition to the constitutional reasons set forth in Exhibit D is that when rights are spoken of here there is automatically a conflict of interest between the fetus and the mother. The only way we are going to have a healthy mother and healthy fetus is to work toward a means of identifying the problem that does not divide these two interests. 099 REP. MANNIX: Understands that the purpose of H B 2388 is not just to refer the baby after it is born for potential treatment, but to identify women in need of treatment. 103BROWN: The mandatory testing is under inclusive and over-inclusive. First, you are testing all pregnant women when approximately only 8% of them are using drugs and alcohol. 115 REP. MANNIX: Does not see that HB 2388 pits the woman against the fetus at all. Aren't you creating a conflict that does not exist. What is your position of blood testing for syphilis?

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117 BROWN: By using testing to identify women who see using drugs you create a conflict. There is a very important distinction. Using drugs is illegal and having syphilis is not. The fact that a person has syphilis cannot be used against them in a court of law, can't be used to take their baby away, can't be used by the father in a custody case, can't be used by insurance coverage providers.

120 REP. MANNIX: If we identify a syphilitic mother and she refuses treatment for the syphilis assumes that the Department of Health is going to come in and require here to go undergo treatment for the syphilis. There are other groups singled out a well.

129 BROWN: It is an important distinction that having syphilis is not illegal whereas using drugs is. We do not test all drivers for DUII. Yet, in this case we would test all women and essentially say that they are guilty before they have a choice to prove otherwise. In doing that we create barriers in health care.

144 CHAIR CLARK: You used the phrase "mandatory testing." HB 2388 says that no samples shall be taking without consent. Could you use your meaning of the phrase? 151 BROWN: Understands that most health care providers do not provide any sort of health care until the consent has been signed. In the sense that they won't get treatment if they don't consent then yes it is mandatory testing. 160 REP. BELL: If we could write HB 2388 that would protect the woman from any type of prosecution or civil penalty and it was based upon a voluntary system would you still be opposed to universal testing? 168 FEDERICO: When you include men in the testing then it would be all right, because men also contribute to drug affected babies. 171 REP. BELL: Is concerned about getting to the babies as soon as possible to treat them. In regards to identifying women before there are sufficient beds, don't you think that if there were a system of identification that we could get more beds? 181 BROWN: If we have statistics showing that there are 4,000 to 5,000 women in need of substance abuse treatment then yes the public outcry would be greater. However, thinks that 2,000 women is more than sufficient. 205 CELIA CAPUZZI, OREGON NURSES ASSOCIATION: EXHIBIT G Reads from Exhibit H. 271 REP. BAUMAN: What about the women that you a re working with who are substance users? Have some of these women had experience with the criminal justice system? 276CAPUZZI: Yes, some have. 281 REP. BAUMAN: Are we looking at a population that is more prone to have dealings with the criminal justice system?

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286 CAPUZZI: A percentage have been through the criminal justice system either for buying drugs or for other illegal activities in order to make money to pay for drugs.

295 REP. BAUMAN: Do your interviews or screening pick up any reliable information concerning whether the woman is living in an abusive situation?

299 CAPUZZI: Well over 50% of the women come from abusive situations.

306 REP. BAUMAN: Concerned about the woman getting beneficial help from a treatment program and then going home to the abusive situation.

316 CAPUZZI: Her experience is that the significant other is also using drugs. Attention needs to be put on the entire family situation.

330 CHAIR CLARK: Why was there no focus on the work of the Task Force on the partner? The Task Force answered that it was assumed that the partner would get involved at the treatment phase. 339 CAPUZZI: With our current programs it is very unlikely that the partner will get involved. Most of the programs were not set up for substance abusing pregnant women. 353 REP. SUNSERI: In your testimony you ask the question whether this is the best use of state funds. Do you have a feel for the amount of pregnant women using drugs? 359 CAPUZZI: It's about 8% to 11%. 379 GRANT HIGGINSON, OREGON HEALTH DIVISION: EXHIBIT H Reads from Exhibit I. Not here representing the administration of Governor Barbara Roberts.

TAPE 47, SIDE B

012 REP. BAUMAN: Are you referring to a study that would study the prevalence of substance abuse or a study that would look at the prevalence of substance abuse in pregnant women?

015 HIGGINSON: For pregnant women.

018 REP. BAUMAN: One of the best pieces of testimony that the Task Force brought is that in their pursuit of a solution to the problem is that pregnant women don't become addicts, addicts become pregnant. Is frustrated that none of the testing survey recommendations target addicts. All of the testing survey recommendations target pregnant women. Is there any kind of model to test the prevalence of addiction.

033 HIGGINSON: The reason why people talk about prevalence during pregnant prenatal care or time of delivery is because that is the time when you have woman as an audience and women are using the services. Another possible would be to focus around the family planning. That would give a broader cross section of the population, i.e. those women who are sexually active.

052 REP. BAU1\IAN: This Committee will be sitting here tomorrow further intensifying the criminal

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treatment of drug use. Thinks a pregnant woman coming in for testing would consider the talk of immunity in drug testing foolish. The might be a better place to gather the information that the Task Force wants.

076 REP. BELL: You stated that using a selected sample might be a better way. It may be better as far as statistics, but how is that going to help us to intervene to help babies.

079 HIGGINSON: If what we want to do is get better information then it is better. What the Health Division wants to do is see better training of health care professionals on how you do a routine standardized drug and alcohol assessment not just in prenatal visits but also a time of delivery. That would cost a lot less than this one time drug testing approach of HB 238 8.

120 LINDA HARRINGTON, OREGON RIGHT TO LIFE: HB 2388 is a positive approach to the problem. Supports the efforts of the Commission and HB 2388 is a positive approach. Concerned that the identification program not be used to destroy the unborn child but to get the mother into treatment. 138 CHAIR CLARK: Asks the question whether mandatory testing would drive women to make choices that they would not otherwise have made. 146 HARRINGTON: Concerned how the referral agencies would handle the information. 149 GAIL NELSON, OREGON RIGHT TO LIFE: Concerned that in the Task Force Report it mentions that abortion is a means of preventing drug addicted infants. Is concerned that abortion, as outlined in HB 2388 is a viable option to deal with drug addicted babies. IN section 1, line 7 it refers to "Other health care provider." Who is this "other health care provider?" In Section 1, line 13 it says "Dangerous." What does that mean? Suggests that the word "dangerous" be amended to read "drug related or drug induced condition." 189 REP. BELL: What is your opinion about intervening to help the babies given the threat you feel about the abortions? 192 HARRINGTON: Is very much in support of the idea of trying to identify and treat both the unborn child and the mother. 202 JEAN ATKINS, OREGON PLANNED PARENTHOOD: EXHIBITS I and J

296 MARGARET ZEBROSKI, OREGON PLANNED PARENTHOOD: As health care providers we do nothing without a basis of trust. You cannot do drug testing and keep it secret. Women who use drugs tend to come from family situations that lack a sense of nurturing and trust. Fears that automatic drug screening would keep those women from seeking further help.

353 REP. MANNIX: Let's assume for the moment that we eliminate the testing component. Current law provides Under ORS 430.915 that "if during routine pregnancy care the health provider determines that the patient uses or abuses drugs or alcohol . . . it is a policy of the state that the health care provider encourage and provide counseling...." What if we said, following these lines that the physician report his determination to the Health Division and then there would be a mandatory followup? Are you comfortable with that approach?

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377 ATKINS: Stopping drug addiction cannot be mandated. If a woman lies, the referral system and treatment program is not going to help at all. Our dollars are better spent with the woman who has the problem.

392 REP. MANNIX: The physician makes a determination that the person is abusing drugs or alcohol. A referral is then made to the Health Division. The Health Division notifies the local health department and they send someone out to do drug and alcohol assessment. They can then "recommend" treatment. They cannot mandate. Understands that is what the rest of HB 238 8 says.

407 HARRINGTON: The process itself may not have an internal problem, but the presumption is built into this that in fact the resources are available far the adequate they and that we are not just talking about turning over our name to somebody and having them come and pay a visit, but not have the resources to offer and to back up. If the resources are in fact in place then maybe we are getting somewhere.

420 REP. MANNIX: We do not have the authority to fund the programs. All we can do is say that the programs should be there. Wouldn't that tie in to your support of the referral and treatment part of HB 2388?

427 HARRINGTON: One of the points that Margaret was making is that we would ourselves be willing to do referral where we have appropriate available places to make that referral.

436 REP. MANNIX: One way we can raise the pressure to get the programs is to have people out there who need the programs to be identified and wouldn't this be a way of doing just that?

443 CHAIR CLARK: Closes Subcommittee on Family Justice at 3:15 p.m.

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

EXHIBIT LOG:

A Testimony on HB 2388 - Mary Ann Curry - 2 pages B Testimony on
HB 2388 - Dr. Richard Lowensohn - 2 pages C Testimony on HB 2388 -
Dr. Richard Lowensohn - 3 pages D Testimony on HB 2388 - Katherine
Brown - 4 pages E Testimony on HB 2388 - Gerry Federico - 2 pages

F Testimony on HB 2388 - Laurie Winmer - 2 pages GTestimony on HB
2388 - Celia Capuzzi - 1 p age HTestimony on HB 2388 - Grant
Higginson - ' ' pages I Testimony on HB 2388 - Jeanne Atkins - 2 p
ages J Written Material on HB 2388 - Jeanne Atkin i - 2 pages

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K Written Material on HB 2388 - Amy Klare - 2 pages L Written
Material on HB 2388 - Counsel For Prostitution Alternatives - 2 pages
M Written Material on HB 2388 - Harrvey Bond- 1 page N Written
Material on HB 2388 - Mary Carpenter - 4 pages OWritten Material on
HB 2388 - Win Calkins - 1 page

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