

HOUSE COMMITTEE ON JUDICIARY FAMILY JUSTICE

March 25, 1991 Hearing Room 357 3:00 p.m. Tapes 68 - 69 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 - Controlled Substances and Pregnant Women
(WS)

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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 68, SIDE A

004 CHAIR CLARK: Opens Subcommittee on Family Justice at 3:06 p.m.

HB 2388 - SUBSTANCE ABUSE AND PREGNANT WOMEN - WORK SESSION

Witnesses:

Dr. Grant Higgenson, Oregon Health Sciences University

023 ROBINSON: EXHIBIT A Summarizes amendments to HB 2388. Details
history of the bill. HB 2388 came to the Committee at the request of the
governor's Task Force on Pregnancy and Substance Abuse. Section 1
includes a universal testing scheme. Sections 2 and 3 of HB 2388 are new
sections of the law which require that test results would be reported to
the Health Division that would then notify a local health department who
would perform a drug and alcohol assessment on the individual and refer
them to counseling services. There is also in Sections 2 and 3 a
provision that the test results would not be used for criminal
prosecution. Section 4 is also new language and would also establish
testing requirements for controlled substances at birth of both the
mother and child. Consent would be required unless the infant exhibited
symptoms of drug abuse. Section 5 gives the Department of Human
Resources the ability to issue grants that are set out in Sections 6, 7
and 8. Sections 9, 10 and 11 have appropriations to the Health Division.
-HB 2388-1 Amendments basically delete Sections 1 and 2 of HB 2388 and
only requires that the House Committee on Judiciary March 25, 1991 Page
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health care provider make the referrals based on the currently required
assessment to the Health Division and also provides a definition of
"health care provider." -HB 238-2 Amendments establish that any test
results would be confidential, but does allow health care providers to
report to CSD -HB 2388-3 Amendments adds the same definition of "health
care provider." -HB 2388-4 Amendments establish legislative policy
building on 1989 adopted policy regarding the information by providers
to pregnant women regarding the effects of alcohol tobacco and other
controlled substances. Requires that there be specific informed consent
for pre-natal testing and provides a consent form. -HB 2388-6 Amendments
provide that the testing provisions and the funding provisions have to
stay together and that the testing provisions do not become operative
unless the funding provisions become operative. -HB 2388-7 Amendments
talk about the development of a standardized risk assessment tool and

training in that tool. -HB 2388-8 Amendments establish immunity for health care providers who refer to the Health Division.

114 CHAIR CLARK: Begins discussion on HB 2388-1 Amendments. If comprehensive testing is taken out, what is left? 117 ROBINSON: If a health care provider were to become aware after a routine pregnancy that the patient uses or abuses drugs or alcohol, or uses a controlled substance other than at the direction of a physician, or that they acknowledge it, then the health care provider shall report that determination to the Health Division in the same manner as other reports of reportable diseases and at that point the Health Division would notify the local health department of the report who would then assign a health care provider to do a health assessment. 133 CHAIR CLARK: HB 2388-1 also include potential referral to CSD? 134 ROBINSON: Yes. HB 2388-1 amendments are silent on the issue of testing at birth. It does add the definition of "health care provider." 145 REP. EDMUNSON: Does not appear that the doctor or physician exercises any judgement or discretion if any indication of drug or alcohol use triggers an automatic assessment or referral. 156 REP. MANNIX: Suggests inserting "or abuses" before alcohol on line 9, page 1 of HB 2388-1 Amendments. 159 REP. EDMUNSON: The health care provider is going to do the assessment. Is that correct? 162 ROBINSON: Yes. The health care provider is the one providing the prenatal care. 166 REP. EDMUNSON: Looking at the HB 2388-1 Amendments it appears that some of these health care providers may not be professionals. 171 ROBINSON: There needs to be a new definition for "health care provider." 172 REP. SUNSERI: Page 2, line 24 of printed bill it says that the agency "may" or "shall" refer

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the patient to Is concerned that some doctors that are inclined to refer and some that are not.

188 REP. MANNIX: The distinction here is between a public agency which may be a welfare office and a professional physician. The referral is not mandatory.

203 REP. BELL: If we are doing away with the universal testing what about the assessment that has to be done in 10 days under the HB 2338-7 Amendments? Can a referral under these circumstances be used later on in another proceeding?

240 REP. BAUMAN: ORS 433.004 discusses the Health Division's capacity to disclose the person's name and address to persons other than a fairly narrow stated list if clear and convincing evidence in a particular instance requires disclosure to avoid apparent or immediate danger to other individuals. Wants to mark that. 261 ROBINSON: Summarizes HB 2388-2 Amendments. 279 REP. MANNIX: You can add on the protective requirements of HB 2388-2 Amendments to HB 2388-1 Amendments. 287 REP. EDMUNSON: Are there administrative proceedings that might be relevant such as for welfare programs or unemployment claims. 305 ROBINSON: Sumarizes HB 238-3 Amendments. HB 2388 came to the Committee without a definition of a "health care provider." 313 REP. EDMUNSON: The health care provider should be the one who is providing direct services. 321 ROBINSON: Might want to leave in

"administrators" in that definition.

327 REP. MANNIX: Agrees with Rep. Edmunson.

339 ROBINSON: Summarizes HB 2388-4 Amendments. Leaves the informed consent provisions in.

348 CHAIR CLARK: The concept of informed consent could be used in the HB 238 8-2 Amendments or any amendments where the testing stays in.

397 REP. PARKS: HB 2388-4 requires informed consent. Is that right?

403 ROBINSON: It requires testing as long as informed consent is given.

406 CHAIR CLARK: This would pull the drug testing out into a more specific kind of consent embodied in a separate document that a person would have to read.

TAPE 69, SIDE A

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007 REP. BELL: Do the HB 2388-4 Amendments address when referral would be made if they are doing a series of testing? 009ROBINSON: The referral for the subsequent assessment would be done as soon as the test results were made. Whenever testing is done. 016 REP. BELL: So this requires more testing rather than the initial test.

017 ROBINSON: Yes. If it was agreed to. 024 REP. BAUMAN: There is no real commitment to the legislative purpose language. It strikes her as odd that in the legislative purpose for testing language with respect to testimony surrounding the testing is left out. 034 REP. BAUMAN: We need to establish the epidemiological survey information so that we have data concerning the prevalence of these health problems.

042 ROBINSON: Summarizes HB 2388-6 Amendments. Non-severability Amendment. If the funding Sections are not approved then the testing sections cannot go into effect. 051 CHAIR CLARK: Is the HB 2388-6 amendment going to provide an incentive for lobbying the Ways and Means Committee against funding? 057 REP. BAUMAN: We need to make our own policy statement that says if there is no funding for additional treatment we would not recommend funding for additional testing.

064 CHAIR CLARK: Is concerned that funds for existing treatment without HB 238 8 would be made harder to get if HB 2388 were enacted.

069 REP. BAUMAN: What we want to be careful not to interpret is that any money for treatment is going to cost additional money for testing. Perhaps what the Committee should do is include some language to make it clear. 074 CHAIR CLARK: Every member of this Subcommittee would be happy to put money into treatment if there is a choice. 082 ROBINSON: Summarizes HB 2388-7 Amendments. Pertains to risk assessment tool.

098 CHAIR CLARK: It leaves the recording requirements in.

102 ROBINSON: Correct. It enhances the assessment tools.

113 REP. PARKS: You mandate the provider to perform the test no matter what. 118ROBINSON: That is currently required in ORS 439.920.

121 CHAIR CLARK: What is a "risk assessment?"

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127 DR. GRANT HIGGENSON, OREGON HEALTH SCIENCES: The language is mostly his own. The reason for this is that there was a place for a middle ground to not have universal screening, but still have much better identif cation during routine prenatal care.

137 CHAIR CLARK: How would this be different than the testing in the original HB 2388? 138 HIGGENSON: The testing in the original HB 2388 states that a drug screening is going to be performed. The assessment in HB 2388-7 is not referring to that. This assessment would provide a tool like a questionnaire that would be developed for the physician to use. 143 ROBINSON: Refers to page 2, lines 13 and 14 of printed HB 2388 it refers to a drug and alcohol assessment. Assumes that that assessment is the same assessment that you are talking about. 150 HIGGENSON: No. That assessment is after a woman has been identified. The original assessment talked about in HB 2388-7 is the original assessment to determine whether a woman has been using drugs or abusing alcohol. 163 REP. BELL: When we talk about risk assessment are talking about risk assessment concerning all diseases or specifically drug and alcohol? 172 HIGGENSON: In the HB 2388-7 Amendments we are talking about Drug and alcohol. In ORS 439.920 we are also talking about drug and alcohol. 180REP. PARKS: HB 2388-7 would clearly give more teeth to the health profession that this kind of assessment was done. Are you willing to trade that for the potential of losing the support of HB 2388 as a whole? 196 HIGGENSON: Thinks it is important to get more identification. Does not agree that there should be universal testing, but thinks that more should be done. HB 2388-7 is a reasonable compromise. 202 CHAIR CLARK: Included in the proposal is the notion that something be done with the assessments. Does the risk assessment stand or fall with a referral to the Health Division? Is there anything viable that could be done with risk assessment? 209 HIGGENSON: Any woman who would be identified as a user or abuser from the risk assessment would then be referred to the Health Division just like currently under HB 2388 a positive test would be referred to the Health Division. 228 REP. MANNIX: Once we get past the testing question it seems that we should focus our attention on building a bridge composed of several of the amendments. 242 REP. BAUMAN: Convinced at this point that this subcommittee is light years ahead in understanding the problem by virtue of witnesses coming before us. 314 CHAIR CLARK: Paraphrases Rep. Bauman. Should hold off until more information is gathered.

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328 REP. BAUMAN: HB 2388 had a treatment portion and a testing portion. By informal poll the Committee has registered its dissatisfaction with the testing portion of HB 238 8. The consensus now is that the Committee is an advocate of treatment. In order to be successful advocates of treatment thinks that the Committee should identify other advocates of treatment and need to go down to Ways and Means with them in a way that is going to pull the maximum dollars for

treatment. 339 REP. MANNIX: Suggest rather moving ahead and asking other advocates to come on board. 345 REP. BELL: Understands that the Committee's reluctance to testing is that it is not protective enough. Suggests creating a working model and then include three testing alternatives. Does not want to see the Committee walk away from testing because the way the original HB 2388 was written. 362 CHAIR CLARK: There is a viable middle ground. There are other things that can be done besides the comprehensive treatment. For example, using the risk assessment for data collection to understand the scope of the problem. 378 REP. EDMUNSON: If we lose control of HB 2388 then everyone is going to be opposed to any substantive changes. 396 REP. MANNIX: Would like to propose a conceptual package amendment. The motion will be that we adopt all of these elements (proposed amendments) as a conceptual amendment, but that this subcommittee reconvene to review the printed version of the interlocking provisions. -HB 2388-1: -1) Would add "abuses alcohol" in line 9. -2) Delete "administrator, superintendent and managers of health care facilities." -3) Adopt HB 2388-1 amendments which call for a risk assessment and a report of that determination. -4) You would then have the remaining follow up where the Health Department does a drug and alcohol assessment which is not just a risk assessment, but addresses the actual problem. All of the protections that are already in there in terms of that assessment process should remain in there. -5) The requirement of testing should be deleted. -HB 2388-2: -1) Include the provision that requires any results of any test will not be used for criminal proceedings and add administrative proceedings.

TAPE 68, SIDE B

028 CHAIR CLARK: Summarizes Rep. Mannix.

035 ROBINSON: Suggests deleting Section 3 of HB 2388.

037 REP. MANNIX: If there are any tests done they will be protected under the confidentiality part of HB 2388.

049 REP. EDMUNSON: Would it be correct to say that under the HB 2388-2 amendments the

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Health Division or the Children's Services Division could not disclose these test results either? Does not want the CSD to be contacting the police.

057 REP. MANNIX: Intends that CSD be subject to the confidentiality requirements.

059 ROBINSON: Understands the same.

065 REP. MANNIX: We are keeping in the risk assessment of the health care provider. The health care provider may then refer the assessment over to the Health Division. Then we are requiring the Health Division to do the drug and alcohol and risk assessment on that referral. We are deleting any mandatory testing whatsoever in the process. In case there are any tests, strict confidentiality provisions will apply.

079 REP. MANNIX: Once there has been a referral the person is at risk. The Health Division does a drug and alcohol assessment which is different than the original assessment by the health care provider. All of this would be confidential.

088 REP. PARKS: It is at that point that the woman should be informed what the purpose of the assessments and testing are.

093 ROBINSON: Understands that on the HB 2388-2 lines 13 - 18, page 2 are not needed.

097 REP. BAUMAN: Concerned about existing law with regard to reportable diseases. Wants to make sure that there is no circumstance that the Committee is referring to where ORS 433.008(2) would ever apply.

110 REP. MANNIX: All that HB 2388 would require is that the report be made in the same manner as disease reports under ORS 433.004 and will not in anyway allow for the violation of confidentiality under ORS 433.008(2). 114 ROBINSON: Suggests deleting line 12, page 2 of HB 2388. 120 REP. BAUMAN: There was a requirement made in 1989 in ORS 430.920(2) on reporting. It states that the local administrator shall use forms prescribed by the Health Division and shall send any copies of the forms and any compilation. Perhaps those are the forms that should be used. 126 REP. MANNIX: This is why he suggests that we come back to this in another work session. 145 REP. MANNIX: Would include HB 2388-4 Amendments lines 16-19. 153 CHAIR CLARK: Would keep the HB 23,8-6 Amendments 163 REP. MANNIX: Yes. On the HB 2388-7 we would adopt part of it. Drop out lines 13 and 14 and adopt the first part which talks about developing a standardized risk assessment. 168 CHAIR CLARK: Is there some way to compile this information in data form?

176 REP. BAUMAN: Suggests that the Committee request that the legislature compile its own report _ 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 March 25, 1991 Page 8

based upon communication from the Health Division.

192 REP. MANNIX: Until there is a program with confidentiality assured to the patient he is nervous about any kind of data collection for the first couple of years.

202 REP. EDMUNSON: Does not support mandatory report back to the legislature. We don't know who the next legislature will be. Is there anything in HB 2388 which would prevent any future legislative committee from asking for extra data.

214 REP. MANNIX: We can insert a provision.

215 REP. EDMUNSON: We can't stop another legislature from investigating this.

221 REP. MANNIX: HB 2388-8 Amendments. Suggests participation in any judicial or administrative proceeding.

238 REP. BELL: Concerning the HB 2388-4 amendments, would like to know why the Committee should not include the informed consent provision

and the portion about public services not being denied if someone refused to have the testing done. 240 REP. MANNIX: Because we are not requiring testing. We are going to let the traditional patient/physician relationship take place. 250 REP. BELL: What about the part about denying services? 251 REP. MANNIX: We are not mandating the test so what should we do to anyone refusing the test. That part was in HB 2388 only if the Committee was going to mandate the test. 256 REP. BAUMAN: Concerning HB 2388-8 lines 4 and 5. Why does the Committee want to give immunity with respect to participating in a judicial proceeding resulting from a report which we have established is not to be used in any additional or administrative proceeding? On the other hand the liability would be the same liability that any professional would encounter when they have breached a confidence. 263 REP. MANNIX: Should take that whole sentence out. 269 REP. EDMUNSON: Concerning HB 2388-7 amendments, the alcohol and drug risk assessment is to be conducted within 10 days of first seeing the patient. Is that time line current law? 279 ROBINSON: Yes. 280 MOTION, REP. MANNIX: Motions his proposal as conceptual amendment. 280 VOTE: No objection. Motion passes. 287 CHAIR CLARK: Adjourns Subcommittee on Family Justice at 4:25 p.m.

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

EXHIBIT LOG:

A Testimony on HB 2388 - Holly Robinson - 26 pages B Written Material on HB 2388 - Rep. Judy Bauman - 1 page

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