

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

March 27, 1991Hearing Room 357 3:00 p.m.Tapes 70 - 71

MEMBERS PRESENT:Rep. Kelly Clark, Chair Rep. Judy Bauman Rep. Marie Bell Rep. Jim Edmunson Rep. Kevin Mannix Rep. Del Parks Rep. Ron Sunseri

MEMBER EXCUSED: Rep. Tom Mason

STAFF PRESENT: Holly Robinson, Committee Counsel Kathy Neely, Committee Assistant MEASURES CONSIDERED: HB 3189 PH (Victim's Compensation) HB 3521 PH (Victim's Compensation) HB 3522 PH (Victim's Compensation) HB 3524 PH (Victim's Compensation) INFORMATIONAL MEETING - VICTIM'S COMPENSATION

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 70, SIDE A

003 REPRESENTATIVE CLARK, CHAIR: Calls the meeting to order at 3:25 p.m.

INFORMATIONAL MEETING ON VICTIMS' COMPENSATION Witnesses: Attorney General Dave Frohnmeier Gary Delanie, Dpt. Justice Gerri Fitzgerald, Crime Victims Assist. Program

007 ATTORNEY GENERAL DAVE FROHNMEYER: (EXHIBIT A and B) *Brief history of crime victim compensation program. *Discusses funding sources. *Explanation of growth in claims under program. *Discussion of interim activities taken over by Dpt of Justice to deal with this growth. *Exploration of legislative options to deal with this matter. *Discusses eligibility of victim for compensation.

079 CHAIR CLARK: Why would it go to the Worker's Comp. Board.?

080 FROHNMEYER: This program was originally assigned, in 1977, to the Workers' Compensation Board. Assigned there because this is a benefit program. *Satisfied with their handling the appeals process.

091 REP. EDMUNSON: Is that the number of appeals filed or cases decided by the Board?

097 FROHNMEYER: That is the number of appeals filed. *Discusses the number of open claims by category of offense. *Comments on the victim's assistance component of the program. *Funding is divided into: State allotment = 22.6%; federal fund component = 21%; and other funds, restitution = 5% and penalty assessment clause on offenders = 50%.

169 CHAIR CLARK: What is the budget?

172 GARY DELANIE, ADMINISTRATIVE SERVICES, DEPARTMENT OF JUSTICE: The budget for 1991-93 is about \$4 million in total funding, a combination of federal, general and other funds as previously stated.

*Administrative portion is approximately \$1 million for staff.

180 HOLLY ROBINSON: Are federal VOCA pass through funds part of the \$4 million or is that on top of it?

DELANIE: In addition. The pass through funds are transfer funds not expenditure items.

200 REP. MANNIX: Asks about the surcharge on penalties and fines. What is that amount and what kinds of fines and penalties this is applied to?

FROHNMEYER: Basically an assessment in addition to other fines, penalties, and costs to criminal offenders of every category. There is a uniform statute that distributes the funds according to a formula.

REP. MANNIX: The statute is 147.259. What about increasing the assessment or changing the formula?

FROHNMEYER: The formula was recently changed and revised. Encourages discussion with Court Personnel, such as Bill Linden, if want to change or revise that.

208 REP. MANNIX: Leave current formula alone and charge a surcharge on the assessment of, for example, \$5 that goes to this fund?

FROHNMEYER: That is a way of dealing with the financial shortfall experiencing.

REP. MANNIX: Comments on a beer and wine tax and the county portion of the formula.

222 CHAIR CLARK: Budget discussion is included in outline.

FROHNMEYER: Penalty assessment formula is only as good as ability to collect. This is a good source for the variety of purposes

234 REP. PARKS: How much is currently received?

FROHNMEYER: About 50% of the total funds comes from offenders. *There is an overwhelming increase in case load. Monthly averages has gone from 64 cases to over 100 and currently over 180 claims per month. *Due to adding battered spouses, victims of family violence or child abuse. *Discusses fiscal implications. Liability for existing open claims is \$2.6 million, for pending claims \$3.9 and revenue available for 1991-93 will be about \$2.8 million.

288 CHAIR CLARK: If someone is in line for compensation and there is no money, will they receive any compensation, and should those eligible even try?

FROHNMEYER: Will be facing serious questions about allocation and how to serve the people with less money. *Recommended legislative options: punitive damages award percentage; prohibiting convicted felons from receiving funds.

405 REP. EDMUNSON: Regarding convicted felons - do convicted felons

receive any counseling benefits?

GERRI FITZGERALD, DIRECTOR OF CRIME VICTIMS PROGRAM: Not aware of any counseling for their own victimization.

TAPE 71, SIDE A

019 FROHNMEYER: Other recommended options are prohibit granting benefits to person who has outstanding financial obligation like unpaid criminal fine; allowing medical and hospital expenses paid according to worker's compensation fee schedule; and permit pro-rated claims payments.

058 REP. MANNIX: What about combining bills into one?

FROHNMEYER: If it would pass the committee.

063 REP. PARKS: The Dept of Justice is subrogated to compensation the victim receives.

069 FITZGERALD: Yes, would be payor of last resort and when the victim signs agreement they are signing the subrogation agreement. Would look for repayment.

REP. PARKS: Up to victim to notify voluntarily.

FITZGERALD: Yes. Unable to track every case in the program.

FROHNMEYER: As the legislation was passed in 1977 it was clear this was the last resort, not an insurance policy.

087 REP. PARKS: Would like to explore a settlement where this program is on the judgment.

096 FITZGERALD: Try to thoroughly look into financial resources the victim or offender may have. By statute have right to initiate a suit.

101 REP. PARKS: Comments on secondary victim. If there is not enough money to take care of victims already eligible, how would these be treated?

110 FITZGERALD: Would look at it very cautiously. It would be a financial impact to the agency.

REP. PARKS: Does the agency want to make the choice or should the committee?

121 FITZGERALD: It is a policy decision. More damaging to a victim and a family to imply that there is compensation for them and then not have the funds to pay for the services.

126 REP. BELL: Given the limited amount of funding, asks about allowing a family some discretion with victims assistance money if a claim is granted?

138 FITZGERALD: Interesting idea. Would give the family a lot more control. Still see financial liability increase.

146 REP. MANNIX: Comments on discretion. Would have money spent on the claim that would not have been spent.

156 FITZGERALD: Cost would still be there.

REP. MANNIX: Per claim cost is rising because other resources are being taken out and they are under the limit.

165 REP. BELL: Applies concept of discretion to another situation.

REP. MANNIX: Follows up as an item that can be considered when the fund is fluid. Could set up another set of benefits for family counseling.

185 CHAIR CLARK: Regarding punitive damages. There was a challenge to the state's being automatically entitled to 1/3.

FITZGERALD: Not familiar with that.

FROHNMEYER: Not familiar with it either.

195 REP. EDMUNSON: The insurer of last resort concept means this does not "kick" in until all other avenues are exhausted. But if application has to be made within 6 months of crime, wouldn't health insurance still be covering? Please explain this portion.

210 FITZGERALD: Often the victims will apply within short period after the crime as result of victims' office around the state. *Discusses the lifetime of the claim.

221 REP. MANNIX: On the funding mechanism, all assessments go the Attorney General after going through the Treasurer's office. Then have to give 1/2 back to the DA's for their victim assistance programs.

FITZGERALD: Yes with those jurisdictions that have a certified assistance program.

REP. MANNIX: What is the annual amount the agency gets out of the assessments?

FITZGERALD: Averaging about \$172,000 per month and retain about 52 or 53%.

239 FROHNMEYER: Comments on case the Chair previously cited: Eulrich v. Snap on Tools.

248 CHAIR CLARK: Opens public hearing on HB 3189.

(Tape 71, Side A) PUBLIC HEARING ON HB 3189 Witnesses: Rep. Tom Novack
Marla Raye, Dept. of Justice

258 HOLLY ROBINSON: HB 3189 proposes to: increase application time and prohibits, during pendency of a claim, any wages or property be garnished or attached for the purposes of satisfying the debt.

278 REPRESENTATIVE TOM NOVACK, DISTRICT 16: Deals with two small areas in victims compensation. Concerned with those who have not been helped for missing the deadline. *This will extend the deadline from 6 months to 2 years to apply for compensation. *Discusses the trauma of a violent crime. *Discusses criminal justice system regarding apprehending the offender. *Can take as long as 16 months to process a claim. This bill would protect victim's wages or property from attachment when a claim is pending when there are outstanding debts directly related to the offense. It turned down the protection is not there.

392 REP. BELL: Does the victims' compensation plan hinge of the conviction on the offender? What about offenses like rape where offender is not found, do they not qualify for compensation?

401 REP. NOVACK: They still qualify.

402 REP. BELL: They qualify while waiting on the court date?

REP. NOVACK: Yes.

TAPE 70, SIDE B

003 CHAIR CLARK: If the committee decided to take a caution approach regarding broadening the scope, would it be preferable to pull out section 2 and put into another bill or pull out section 1?

011 REP. NOVACK: Prefers both. Section 1 would have more fiscal impact than Section 2.

018 CHAIR CLARK: If Section 1 stays, it will need to go to Ways and Means.

023 REP. MANNIX: Understands the law to have good cause extension not limited to 6 months. Is there a rule that puts a cap of 6 month extension? It is probably based on financial limitations and they were not there the rules would change and get more generous on the time line.

032 REP. NOVACK: Understands the Dept. is looking at what good cause was for extensions but put it on hold because of the financial problems.

035 REP. MANNIX: If used pro-rata reductions rather than other schemes to reduce the financial liability of the funds.

042 MARLA RAYE, DEPARTMENT OF JUSTICE: Have a proposed administrative rule to amend the present rule of extension but it is on hold because of the budget.

053 HOLLY ROBINSON: Is there any correlation between more claims and fewer people having insurance?

RAYE: Not aware of any research to show that.

CHAIR CLARK: Recesses the hearing at 4:25. Convenes at 4:30 p.m.

(Tape 71, Side B) WORK SESSION ON HB 3189

076 MOTION:REP. EDMUNSON: Moves to delete Section 1 from HB 3189.

CHAIR CLARK: Rep. Edmunson moves to delete Section 1.

REP. EDMUNSON: Believes the extension is an excellent idea but given the fiscal consequences, wants Section 2 to proceed.

CHAIR CLARK: Hearing no objection, so adopted.

086 MOTION:REP. EDMUNSON: On line 25 of bill the first "for" add "or efforts to collect".

CHAIR CLARK: Rep. Edmunson moves the insertion of the words "or efforts

to collect".

092 REP. EDMUNSON: The efforts to collect bills are often more traumatic than the actual collection. It can be very upsetting. Need to be protected from harassment.

REP. PARKS: Proposes a friendly amendment that would make this a violation of the debt collection practices.

102 REP. EDMUNSON: Accepts the friendly amendment.

CHAIR CLARK: Rep. Edmunson accepts a friendly amendment to create a new Subsection 3 in Section 2 to clarify that violation of Subsection 1 of Section 2 would constitute a violation of the fair collection debt practices act. Hearing no objections, so adopted.

122 HOLLY ROBINSON: Asks for clarification on line 25, assumes the intent is that any thing that would be a compensable expense would be

MOTION:REP. MANNIX: Moves to add at the end, "and which debts reflect expenditures which are recoverable as compensation."

135 CHAIR CLARK: Rep. Mannix moves to add language at the end to read "which debts reflect expenditures which are recoverable as compensation."

REP. MANNIX: 147.035 discusses what is compensable, can the committee just make reference to that list?

REP. MANNIX: Could say "and which debts reflect expenditures which are recoverable as compensation under 147.035".

144 CHAIR CLARK: Rep. Mannix moves linking Section 2 to ORS 147.035.

147 REP. MANNIX: Restates the motion.

153 CHAIR CLARK: Hearing no objections, so adopted.

153 MOTION:REP. MANNIX: Moves to correct the spelling of the "pendency" on line 23.

157 CHAIR CLARK: Rep. Mannix moves a spelling correction. Hearing no objection, so adopted.

162 MOTION: REP. EDMUNSON: Moves HB 3189 as amended to the full committee with a do pass recommendation.

CHAIR CLARK: Rep. Edmunson moves HB 3189 as amended to the full committee with a do pass recommendation.

VOTE: 7-0 AYE: Bauman, Bell, Edmunson, Mannix, Parks, Sunseri, Clark NO: 0 EXCUSED: Mason

CHAIR CLARK: HB 3189 as amended is passed to the full committee. Rep. Edmunson and Rep. Novack will carry.

(Tape 70, Side B) PUBLIC HEARING ON HB s 3521, 3522, and 3524
Witnesses: Gerri Fitzgerald, Director, Crime Victim's Program

CHAIR CLARK: The overview presented at the beginning of the hearing by Attorney General Frohnmeyer covered HB s 3521, 3522, and 3524.

202 GERRI FITZGERALD: (EXHIBIT C) Speaking to HB 3521 and HB 3522.
*Bills submitted to narrow the focus of the program to allow staff to focus on claims from the most innocent of victims. *Would give the authority to stop processing claims of individuals who currently have a financial obligation owing as a result of a previous criminal conviction. 10% of claims paying out on were to these people. *Allow the program to stop processing claims from those currently serving a sentence for felony conviction and prohibition and exclude their application until 2 years after completion of sentence. Estimate 25 to 30% are these.

223 REP. EDMUNSON: 30% seems awfully high figure.

228 FITZGERALD: The population of applicants dealing with are involved in the criminal world in some fashion.

237 REP. EDMUNSON: Of all new claims received, 25 to 30%, come from people with felony convictions. Is that a percentage of victims of crimes who have felony convictions or are most victims innocent.

242 CHAIR CLARK: Because this is an insurer of last resort it might be a disproportionate number of people who fall into this fund are individuals who are not carrying insurance. Is that what is happening?

251 FITZGERALD: That is part of what is happening.

255 REP. MANNIX: Should be more precise about the "shall not process" the application. Suggests language stating the application is basically no good.

FITZGERALD: That the program would deny the application.

REP. MANNIX: Talking about limited resources. Suggests: "if such information or materials are not received within one year after the Department notifies the application of the need to fulfil this requirement, the application shall become void".

275 FITZGERALD: That would be acceptable.

277 REP. PARKS: Are there any inmates collecting benefits?

FITZGERALD: Would hope not. Can stop payments to those incarcerated.

(Tape 70, Side B) WORK SESSION ON HB 3521

288 MOTION, REP. MANNIX: Moves to amend HB 3521 to add at the end of the bill, on page 2 after line 11: "if such information or materials are not received by the Department within 1 year after Dept. notifies the application of the need to fulfil this requirement, the application shall become void".

CHAIR CLARK: Hearing no objection, so adopted.

295 REP. MANNIX: Suggest putting bills together.

299 MOTION: CHAIR CLARK: Moves the insertion of HB 3522 into HB 3521. Can do in one bill what is suggested for two bills. Hearing no

objection, so adopted.

312 REP. MANNIX: Conceptually amends HB 3521's language from HB 3522: state that the applicant is not eligible to apply within 2 years after release and discharge from custody as a result of a conviction. Or would prefer to set a time limit from conviction of a felony.

324 FITZGERALD: The Dept. would have no problem with that.

CHAIR CLARK: Asks for clarification of proposal.

REP. MANNIX: Clarifies the set timeline. Now suggests within 1 year of conviction.

373 HOLLY ROBINSON: Discusses worse case scenario of a battered wife murdering huSB and and cannot recovery for injuries.

387 REP. MANNIX: Questions witness. Trying to get at someone who is applying for compensation but will be incarcerated and receive all treatment in prison. Was the Program trying to delay the processing of an application or curtail benefits?

392 FITZGERALD: A little of both. Limit focus of the program but not excluding those convicted of a felony.

408 REP. MANNIX: Should there be a provision saying "instead of not processing the application, that the Program will return the application, that they are eligible for re-applying within 2 years". How would the Program know to process this application. Need a trigger mechanism.

TAPE 71, SIDE B

005 FITZGERALD: Would make more sense that they would not be eligible to apply until they had completed their sentence and would return it and then they could re-apply.

013 REP. MANNIX: The exemption provision passed previously would not apply and have a tolling of the application until such time as released from custody.

026 REP. EDMUNSON: Principles for justice have to be reformation. Concern the elapsed time will be punishment for having been punished. Would not want any additional time added, should be treated like any other citizen.

REP. MANNIX: Responds "if at the time you make your application you are in custody or supervision as a result of conviction of any crime that the application shall be returned and you are not eligible to file the application until you are out of custody or supervision" and then have the 6 months apply, from the date of release can file it.

044 REP. BELL: Putting the bills together will make it harder for first one to pass. Concern about a person released from prison will be treated like any other person.

051 FITZGERALD: The intent was to deny benefits to individuals who were currently serving a sentence of a felony conviction. Would not be eligible to file for compensation during that time but if they became victim after served sentence, would be eligible. Could eliminate the 2

year requirement.

071 REP. PARKS: There are a lot of people on supervision. Cannot justify it with regards to supervision. Should take the supervision out altogether.

087 MOTION, REP. MANNIX: Moves to conceptually amend the portion of HB 3521 that was HB 3522 to read "if at the time of the application, the applicant is in custody of corrections or local jail as a result of the conviction of a crime, not a felony, the application shall be refused and returned to the applicant. The applicant shall be eligible to refile the application after the applicant's release from custody within the 6 months after release from custody or for good cause shown."

094 CHAIR CLARK: Rep. Mannix moves the conceptual amendment to HB 3521 to those portions that were HB 3522.

101 REP. BELL: Why should they refile at all, why not just deny it and after they go through the system and have an injury,....

REP. MANNIX: Used "refused" as a term of art because a denial can be appealed. Not a denial on the merits just not eligible to apply. *The agency will not have the obligation to monitor it. *Give applicant reasons and right to refile and if they don't, it is their choice.

112 REP. BELL: Why give any assistance money after conviction?

REP. MANNIX: Don't know exact circumstances of any given application. Don't want to limit the circumstances.

121 REP. EDMUNSON: Calls for the question.

CHAIR CLARK: Hearing no objection, the amendment is adopted.

127 MOTION, REP. MANNIX: Moves HB 3521 as amended to the full committee with a do pass recommendation.

CHAIR CLARK: Rep. Mannix moves HB 3521 as amended to the full committee.

VOTE: 7-0 Motion passes. AYE: Bauman, Bell, Edmunson, Mannix, Parks, Sunseri, Clark NO: 0 EXCUSED: Mason

CHAIR CLARK: HB 3521 as amended is passed to full committee.

(Tape 71, Side B) PUBLIC HEARING ON HB 3524 Witnesses: Marla Raye, Dept. of Justice

MARLA RAYE: HB 3524 needs work suggest getting together and work out some ideas. On behalf of State Court Administrator, offer amendments to the bill which support (EXHIBIT D).

154 REP. PARKS: Wants to give a subrogation right.

CHAIR CLARK: There is another bill regarding criminal injury compensation account that will not go anywhere but has a good relating clause. Will schedule that bill along with these bills and use it to incorporate other ideas. Closes public hearing and adjourns the committee at 5:05 p.m.

Submitted by: Reviewed by:

Kathy Neely, Assistant David Harrell, Office Manager

EXHIBIT LOG:

A - Overview of Crime Victims' Assistance Program - David
Frohnmeier - 6 pages B - Summary of Assistant Program - David
Frohnmeier - 12 pages C - Testimony on HB s 3521 and 3522 - Gerri
Fitzgerald - 1 page D - Amendments to HB 3524 - Judicial Dept. - 2
pages E - Testimony on HB 3524 - Gerri Fitzgerald - 1 page