

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

April 24, 1991 Hearing Room 357 3:45 p.m. Tapes 105 - 106

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 Holly Blanchard, Transcriber

MEASURES CONSIDERED: HB 3039 WS (Peyote) HB 3526 PH
(Statute of Limitations)

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TAPE 105, SIDE A

003 CHAIR CLARK: Calls the meeting to order at 3:45 p.m.

HB 3526 - PUBLIC HEARING

007 HOLLY ROBINSON, COMMITTEE COUNSEL (EXHIBIT A): Explains HB 3526 which would remove the prohibition of the civil statute for persons incarcerated on criminal charges.

012 JACK LANDAU, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE: Testifies in support of HB 3526 which is a house cleaning bill that would repeal an existing tolling of statute of limitations for prisoners who are incarcerated. It currently gives them up to five years--tolling that other people do not have. Discusses the tolling provision which originated to remedy a problem created by the old civil death statute that prohibited prisoners from suing while in prison. Problem arises because the legislature repealed the civil death statute but not the accompanying tolling provision. Want to now clean that up with this bill.

030 REP. MASON: Has this been a problem?

031 JAN PETER LONDAHL, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE (EXHIBIT B): Yes, occasionally. We don't get too many cases brought beyond the two-year statute of limitations but there are enough of them and the potential for them. We get about a half dozen of these cases a year.

039 REP. MASON: Are they excepted from the notice requirement against the state?

040 LONDAHL: Yes, they are in federal civil rights cases; they do not have to provide the 180-day tort claims notice.

042 REP. MASON: Feeling uncomfortable with discussion about federal civil rights legislation.

048 LONDAHL: The problem is this tolling provision on the books provides prisoners with an additional five years to bring their civil rights cases that people not in prison don't get.

052 REP. MANNIX: Your point is there was a linkage. Now one side of the equation is gone and you think the other side ought to go too.

057 LONDAHL: Precisely. The purpose of the tolling provision has disappeared from the books.

063 CHAIR CLARK: Closes public hearing on HB 3526.

HB 3526 - WORK SESSION

071 MOTION: RE. MANNIX moves HB 3526 to the Full Committee with a "do pass"

recommendation.

VOTE: 6-0 AYE: Bell, Edmunson, Mannix, Mason, Sunseri, Clark NO: None EXCUSED: Bauman, Parks

Motion passes, Rep. Bell to carry.

HB 3039 - WORK SESSION

082 HOLLY ROBINSON (EXHIBIT C): Explains HB 3039 that would create an affirmative defense concerning peyote used in a bona fide religious practice. Discusses EXHIBIT A which contains several documents including a letter dated April 23, 1991 from the U.S. Department of Justice, Drug Enforcement Administration.

113 REP. MASON: No one has been able to challenge the specific mention of a specific religion in federal statute as being unconstitutional?

115 HOLLY ROBINSON: From the information obtained, apparently not. Nor have other groups been able to broaden this.

124 REP. EDMUNSON: While the federal law apparently does mention religion, our bill does not. However, under the DEA regulations, the only church which is likely to enjoy this exemption will be the Native American Church.

140 CHAIR CLARK: Mentions concern about the phrase, "bona fide" on Page 2, line 15 which modifies "practice" and not "religious." Notes "bona fide" means "good faith."

162 REP. MANNIX: Gives analogy for exemptions in the statute for use of sacramental wine.

174 REP. BAUMAN: Maybe the terminology on line 15 should be replaced

with the words, "good faith."

186 ROBINSON: Continues discussion of EXHIBIT C. A video tape of the television show, "Inside Edition" is available for review that deals with the subject of peyote in relation to the Smith cases.

210 GEORGE GERDING, PHARMACIST, BOARD OF PHARMACY: The Board listened to the Native American Church concerning the use of peyote and was persuaded it was the correct thing to do. The Board was also persuaded by the Drug Enforcement Agency's exemption. We were persuaded to do a reversal from the Attorney General's Office which felt it was unconstitutional.

236 REP. EDMUNSON: Refers to written testimony of Dr. David Baines, Association of American Indian Physicians, Inc. (EXHIBIT D). Notes medical studies that indicate "there were no serious health problems associated with the ceremonial use of peyote." Please address the pharmacological use of peyote and any danger concerning use?

255 GERDING: I'm not an expert but peyote seems a fairly non-high risk drug. Refers to "Inside Edition" television show video tape that shows people of various ages using the drug in religious ceremonies. Can't speak to the unborn child. All medicines have a level of toxicity related to dosage. Peyote seems safe for the use specified in this bill.

283 REP. SUNSERI: What does the drug produce in the mind?

295 GERDING: It would fall into the mind-altering category and can produce hallucination which is dose-related.

347 REP. BELL: How did your Board base their decision--on social, constitutional or religious reasons? Obviously, it wasn't medical reasons.

368 GERDING: The Board of Pharmacy's position was that peyote has been used for centuries. Documentation indicates people aren't hurt by peyote for sacramental uses. More a decision from the heart than the scientific mind. A high dosage could probably affect a fetus.

375 REP. BELL: The decision was made the way the Board of Engineers might make their decision?

378 GERDING: Not all decisions are made on a scientific basis.

382 REP. EDMUNSON: Was there any medical evidence of any ill effects?

388 GERDING: Not aware of any. Again, peyote is generally dose-related.

403 REP. BELL: Concerned with dosage in relation to being used for babies.

414 GERDING: Will investigate more literature. Assume there's a church limitation concerning excessive amounts of peyote to children.

TAPE 106, SIDE A

014 REP. BELL: Have not been assured of that.

016 REP. EDMUNSON: Refers to Dr. Baines' letter which indicates no one has been harmed by peyote's use in the proper setting. That's the key which is consistent with HB 3039.

025 REP. SUNSERI: Is peyote measured in the ceremony?

030 GERDING: Don't know.

039 REP. BELL: Refers to Background Section of HB 3039 Staff Measure Summary that reads, "comply with all other requirements of the law." What are those requirements?

047 HOLLY ROBINSON: That came from the letter submitted by the DEA agent. Understood it to mean, for example, rules that govern transporting peyote for religious ceremonies.

060 JEROME LIDZ, DEPARTMENT OF JUSTICE: Haven't seen the DEA letter.

063 REP. BELL: Do the guidelines refer to minors?

067 REP. BAUMAN: Refers to HB 3039, lines 17 and 18 regarding language about the use of peyote which addresses concerns raised.

079 HOLLY ROBINSON: Discusses a Supreme Court case that described how peyote is used in the ceremony.

090 REP. BELL: Would like to hear from other states about use.

092 CHAIR CLARK: There are 26 or 27 states that either provide for the affirmative defense or outright legalize it.

093 REP. EDMUNSON: The DEA seemed satisfied that they'd exhausted questions concerning danger. The bill addresses proper use.

114 MOTION: REP. MANNIX moves to amend Page 2, line 15, to change "bona fide" to "good faith."

117 CHAIR CLARK: Wants to first hear Rep. Bell's concerns.

135 LIDZ: Think the proposed amendment makes no difference at all.

Motion is adopted.

138 MOTION: REP. EDMUNSON moves HB 3039 as amended to the Full Committee with a "do pass" recommendation.

140 REP. BELL: Can't the Supreme Court declare this unconstitutional even though the DEA allows it?

143 CHAIR CLARK: Yes.

144 REP. BELL: Then what comfort does that give us?

146 CHAIR CLARK: There are two issues raised--one of constitutionality--one of public policy. Affirmative defense issues are questions of public policy. Constitutional issues would concern crafting legislation that would address a specific exception for use of peyote.

159 CHAIR CLARK: Discussion follows concerning the use of peyote.

163 REP. EDMUNSON: Notes only DEA-registered road men would have access to peyote under their regulations.

176 REP. BAUMAN: Mr. Smith's testimony concerning alcohol was very effective. Alcohol is not illegal and designating a class of people to make it illegal is unthinkable. Yet, alcohol is a much greater health issue. Peyote is part of a good faith practice of a religious belief. It would be wrong not to do this.

214 DAVE FIDANQUE, ACLU: Discusses U.S. Supreme Court decision.

232 REP. MANNIX: Need to recognize there's always tension between government intrusion on religion and visa versa. Favors the bill.

280 REP. SUNSERI: Has concerns after talking with some Indian groups that have no support of peyote whatsoever and don't consider it a part of the Northwest Indian culture. Peyote is not indigenous to the preservation of Indian culture in the Northwest. Also concerned about setting a precedent and possible abuse.

333 REP. BAUMAN: Don't feel one's religious practice is the concern of the state or federal government. Our forefathers brought alcohol to this nation which has devastated the Indian people. Discusses fundamental liberty of letting people in this country practice their religion separate from government--that is the issue.

TAPE 105, SIDE B

032 REP. BELL: Wasn't questioning the right to practice one's religion. This is a difficult bill. Haven't heard any concrete evidence that peyote is safe for children nor any guidelines concerning its use. Testimony has been hearsay without studies to support it. Won't support HB 303 9 for concerns about health, safety, and children. Decision has nothing to do with values or morality; don't question that the intentions are good but do question the health and safety of children using peyote.

063 REP. PARKS: Will vote in favor of HB 3039. Lived in Klamath Falls for 25 years and had contact with many people in institutions where it would be obvious if there was a problem--never heard of any abuse of peyote.

080 CHAIR CLARK: Appreciates concern about affects of peyote on children--that's the reason for Section 5, Subsection C. Doesn't make any difference if it's a new or old religion. Believe HB 303 9 will help protect the religious practices of some Native Americans. "That's why I support the bill." Convinced this bill is constitutional because it's an accommodation of religious practice--not an endorsement. It's an issue of religious freedom.

112 VOTE: 5-2

AYE: Bauman, Edmunson, Mannix, Parks, Clark NO: Bell, Sunseri EXCUSED: Mason

Motion passes, Rep. Edmunson to carry.

CHAIR CLARK: Adjourns the meeting at 4:50 p.m.

Submitted by,

Reviewed by,

Holly Blanchard
Manager

David Harrell Transcriber

Office

EXHIBIT LOG:

A - Staff Measure Summary, HB 3526, Committee Counsel, 2 pages B -
Written testimony, Jan Londahl, Dept. of Justice, HB 3526, 4 pages C -
Staff Measure Summary, HB 3039, and Attachments, Committee Staff, 7
pages D - Written testimony, only, Dr. David Baines, HB 3039, 3 pages E
- Written testimony, Rep. Kevin Mannix, District 32, HB 3039, 2 pages