

HOUSE JUDICIARY SUBCOMMITTEE

ON CRIMINAL LAW

January 25, 2005 Hearing Room 357

8:30 A.M. Tapes 5 - 6

MEMBERS PRESENT: Rep. Jeff Barker, Chair

Rep. Greg Macpherson

Rep. Andy Olson

Rep. Kim Thatcher

GUEST MEMBER: Rep. Krieger

STAFF PRESENT: Heidi Moawad, Counsel

Elizabeth Howe, Committee Assistant

MEASURES/ISSUES HEARD & WITNESSES:

2183 – Public Hearing

Vinita Howard, Governor’s Advisory Committee on Driving

Under the Influence of Intoxicants (DUII)

Anne Pratt, Governor’s Advisory Committee on DUII

Jeff Rost, Oregon State Police Forensic Services Division

Paul Romain, Oregon Beer and Wine Distributors

Association

Kelly Skye, Oregon Criminal Defense Lawyers Association Bill Perry, Oregon Restaurant Association

2184 – Public Hearing

Chuck Hayes, Governor’s Advisory Committee on DUII

Sgt. Tim Weaver, Newburg Police Department

Stephanie Tuttle, Oregon District Attorney’s Association

Jeff Rost, Oregon State Police Forensic Services Division

Kelly Skye, Oregon Criminal Defense Lawyers Association

2185 – Public Hearing and Work Session

Vinita Howard, Governor’s Advisory Committee on DUII

Anne Pratt, Governor’s Advisory Committee on DUII

Kelly Skye, Oregon Criminal Defense Lawyers Association

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker’s exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 5, A		
005	Chair Barker	Calls meeting to order at 8:34 a.m. Opens a public hearing on HB 2183, which reduces blood alcohol content that constitutes being under influence of intoxicants to 0.05 percent for persons who, in 15 years prior to current offense, have participated in diversion program or have been convicted of driving while under influence of intoxicants (DUII).

HB 2183 – PUBLIC HEARING

013	Vinita Howard	Governor’s Advisory Committee on Driving Under the Influence of Intoxicants (DUII). Submits testimony and testifies in support of HB 2183 (EXHIBIT A).
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048	Howard	Describes dangers of driving under the influence.
066	Anne Pratt	Governor's Advisory Committee on DUII. Submits testimony and testifies in support of HB 2183 (EXHIBITS B & C).
102	Pratt	Shares her support of lowering the blood alcohol content (BAC) for DUII's.
115	Rep. Thatcher	Asks about the results of lowering the BAC in the past.
120	Pratt	Remarks that fewer fatalities occur.
129	Jeff Rost	Oregon State Police (OSP), Forensic Services Division. Submits and explains written testimony regarding OSP Forensic Services Division (EXHIBIT D).
163	Rost	Explains increase in cost and workload for Forensic Services, but notes OSP Forensic Services Division's position as neutral on HB 2183.
170	Rep. Macpherson	Asks about difficulty in determining BAC at 0.05 versus 0.08.
178	Rost	Clarifies that demand on services would be an increase in workload, not increased difficulty in testing.
188	Rep. Macpherson	Asks about other causes of the increase in workload.
194	Rost	Describes services OSP Forensic Services provide in DUII cases.
201	Chair Barker	Inquires about how many drinks someone must consume to achieve a 0.08 BAC.
204	Rost	Gives an approximation of 3-4 drinks in an hour for a 170 lb. man.
218	Paul Romain	Oregon Beer and Wine Distributors Association. Shares a story and testifies in opposition to HB 2183.
267	Romain	Describes the reason why he believes 0.05 BAC is too low.

290	Rep. Thatcher	Asks about possible amendments.
294	Romain	Explains his willingness to talk, but disagrees with the 0.05 BAC.
310	Chair Barker	Notes that BAC is disputable in court.
312	Romain	Acknowledges his understanding.
318	Kelly Skye	Oregon Criminal Defense Lawyers Association. Testifies in opposition to HB 2183.
348	Skye	Discusses increased litigation on DUII cases.
373	Rep. Macpherson	Asks about indigent defense.
379	Skye	Recalls formula and affidavit to determine eligibility.

TAPE 6, A

009	Skye	Continues discussion of eligibility for indigent defense.
011	Rep. Macpherson	Asks about incarceration verses economic penalty and what triggers indigent defense.
018	Skye	Describes which DUII convictions have court-appointed attorneys.
026	Bill Perry	Oregon Restaurant Association. Testifies in opposition to HB 2183, and explains his desire to keep intoxicated drivers out of vehicles.
055	Chair Barker	Expresses desire that groups work together on HB 2183 and come to an agreement.
062	Chair Barker	Closes public hearing on HB 2183. Opens public hearing on HB 2184, which expands offense of driving while under influence of intoxicants to include any substance that adversely affects person's physical or mental faculties to noticeable or perceptible degree.

HB 2184 – PUBLIC HEARING

080	Chuck Hayes	Government Advisory Committee on DUII. Submits testimony and testifies in support of HB 2184 (EXHIBIT E).
120	Hayes	Explains different drugs that impair vehicle drivers.
156	Hayes	Describes the changes and options that HB 2184 would allow.
170	Rep. Olson	Asks for Mr. Hayes' thoughts on prescription drugs that cause impairment, and a person's lack of intent for driving while impaired.
186	Hayes	Explains statutes in some states regarding unintentional drug impairments, and those that HB 2184 are targeting.
207	Chair Barker	Recalls similar bill from last session.
214	Hayes	Explains intentional verses unintentional, and the difficulty proving it.
219	Sergeant Tim Weaver	Police Officer in Newburg. Submits testimony and testifies in support of HB 2184, explaining a case in Newburg (EXHIBIT F).
272	Sgt. Weaver	Continues to relay case in which cough syrup caused intoxication.
307	Sgt. Weaver	Explains that the current DUII statute does not address non-controlled substances.
346	Rep. Thatcher	Notes that "perceptible" has a definition that could be manipulated.
363	Sgt. Weaver	Makes reference to Horizontal Gaze Nystagmus, and explains other actions used at road side when evaluating an intoxicated driver.
392	Chair Barker	Asks why reckless driving would not apply for drivers intoxicated by non-controlled substances.
397	Sgt. Weaver	Indicates that the definition of recklessness or carelessness is different for different judges, and hard to prove.
420	Rep. Olson	Recalls that driver relayed his intent to become intoxicated by drinking cough syrup. Inquires as to why that is not considered reckless driving.

432 Sgt. Weaver Relays that the District Attorney said reckless driving would not be wise to pursue.

TAPE 5, B

001 Rep. Thatcher Asks how many people escape charges in similar cases.

003 Sgt. Weaver Recalls approximately 10 percent.

010 Stephanie Tuttle Oregon District Attorney's Association. Testifies in support of HB 2184, relating an example of a woman impaired by a non-controlled substance.

043 Tuttle Explains difficulty in using reckless driving to charge those driving under the influence of non-controlled substances.

063 Rep. Krieger Asks how the degree of impairment is measured for drugs other than alcohol.

069 Tuttle Replies that the only tests are interacting with the person and noticing impairments.

085 Rep. Macpherson Notes broadness in the drafting and indirect implications of HB 2184, and explains desire to narrow and specify who can be convicted under HB 2184.

113 Tuttle Expresses aim to notice effect of drug and impairment of driver, not intent, or lack of intent, of driver.

145 Rep. Macpherson Notes the difference in this case that the focus is reducing the risk that impaired drivers present, not their intent to commit a criminal act.

162 Tuttle Explains that the crime committed in these cases is the potential for harm. Believes that "knowingly" may be a better word than "intentionally." Emphasizes that drivers have a responsibility to stay out of their car if they are impaired.

185 Sgt. Weaver Expresses desire to hold citizens accountable for their actions. States HB 2184 is a tool to make it clear that citizens have a responsibility not to drive under the influence.

- 221 Kelly Skye Oregon Criminal Defense Lawyers Association. Submits testimony and testifies in opposition to HB 2184 **(EXHIBIT G)**.
- 271 Skye Describes the types of people who should be prosecuted for driving under the influence, and the lack of specificity regarding non-controlled substances.
- 316 Skye Believes that we cannot legislate against “bad judgment.”
- 326 Heidi Moawad Committee Counsel. Notes submitted testimony by Tom Holt of the State Pharmacy Association **(EXHIBIT H)**.
- 343 Jeff Rost Oregon State Police, Forensic Services Division. Submits written testimony and describes the Forensic Services Division’s neutral position on HB 2184 **(EXHIBIT I)**.
- 403 Rost Reports that the Oregon State Police do not anticipate any extra arrests due to HB 2184.

TAPE 6, B

- 030 Rost Continues explanation of Forensic Division’s position, and notes the fiscal impact of HB 2184.
- 038 Chair Barker Expresses desire that parties get together to rework HB 2184.
- 045 Moawad Notes submitted testimony from Troy E. Costales from the Transportation Safety Division in support of HB 2183 and HB 2184 **(EXHIBITS J & K)**.
- 047 Chair Barker Closes public hearing on HB 2184. Opens public hearing on HB 2185, which increases period of time person is ineligible to receive hardship permit if person refused to take breath or blood test and person previously had been charged with offense of driving while under influence of intoxicants.

HB 2185 – PUBLIC HEARING

- 052 Vinita Howard Governor’s Advisory Committee on Driving Under the Influence of Intoxicants (DUII). Submits written testimony and testifies in support of HB 2185 (**EXHIBIT L**). Notes testimony submitted by Jerome “Jerry” S. Cooper, former Chairman of the Governor’s Advisory Committee on DUII (**EXHIBIT M**).
- 088 Anne Pratt Governor’s Advisory Committee on DUII. Submits written testimony and testifies in support of HB 2185 (**EXHIBIT N**).
- 118 Chair Barker Asks for clarification on penalties for refusing a breath test.
- 122 Pratt Answers regarding penalties.
- 124 Kelly Skye Oregon Criminal Defense Lawyers Association. Testifies in opposition to HB 2185.
- 151 Heidi Moawad Counsel. Notes testimony submitted by Troy Costales from the Transportation Safety Division in support of HB 2185 (**EXHIBIT O**).
- 153 Chair Barker Closes public hearing and opens a work session on HB 2185.

HB 2185 – WORK SESSION

- 155 Rep. Olson **MOTION: Moves HB 2185 to the full committee with a DO PASS recommendation.**

VOTE: 3-0-1

AYE: In a roll call vote, all members present vote Aye.

EXCUSED: 1 - Macpherson

- 162 Chair Barker **The motion CARRIES.**
CHAIR BARKER will lead discussion in the full committee.

- 165 Chair Barker Closes work session on HB 2185. Adjourns the meeting at 10:05 a.m.

EXHIBIT SUMMARY

- A. **HB 2183, written testimony, Vinita Howard, 3 pp**
- B. **HB 2183, written testimony, Anne Pratt, 1 p**
- C. **HB 2183, written testimony, Anne Pratt, 1 p**
- D. **HB 2183, written testimony, Jeff Rost, 2 pp**
- E. **HB 2184, written testimony, Chuck Hayes, 1 p**
- F. **HB 2184, written testimony, Tim Sgt. Weaver, 2 pp**
- G. **HB 2184, written testimony, Kelly Skye, 2 pp**
- H. **HB 2184, written testimony, Tom Holt, 1 p**
 - I. **HB 2184, written testimony, Jeff Rost, 2 pp**
- J. **HB 2183, written testimony, Troy E. Costales, 1 p**
- K. **HB 2184, written testimony, Troy E. Costales, 1 p**
- L. **HB 2185, written testimony, Vinita Howard, 1 p**
- M. **HB 2185, written testimony, Jerome, “Jerry” S. Cooper, 2 pp**
- N. **HB 2185, written testimony, Anne Pratt, 1 p**
- O. **HB 2185, written testimony, Troy E. Costales, 1 p**

The following material is submitted for the record without public testimony:

- P. HB 2183, report from Transportation Safety Division, Gretchen McKenzie, 56 pp**