

HOUSE JUDICIARY SUBCOMMITTEE

ON CRIMINAL LAW

February 01, 2005 Hearing Room 357

8:30 A.M. Tapes 8 - 9

MEMBERS PRESENT: Rep. Jeff Barker, Chair

Rep. Greg Macpherson

Rep. Andy Olson

Rep. Kim Thatcher

GUEST MEMBER: Rep. Wayne Krieger

STAFF PRESENT: Heidi Moawad, Counsel

Elizabeth Howe, Committee Assistant

MEASURES/ISSUES HEARD & WITNESSES:

HB 2225 – Public Hearing and Work Session

Jonathan Fussner, Oregon Department of Justice

HB 2224 – Public Hearing

Jonathan Fussner, Oregon Department of Justice

Kelly Skye, Oregon Criminal Defense Lawyers Association

HB 2226 – Public Hearing and Work Session

Jonathan Fussner, Oregon Department of Justice

Kelly Skye, Oregon Criminal Defense Lawyers Association

HB 2227 – Public Hearing and Work Session

Jonathan Fussner, Oregon Department of Justice

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 8, A

003 Chair Barker Calls the meeting to order at 8:35 a.m. Opens a public hearing on HB 2225, which establishes standard of review for appeals from judgment in violation proceeding.

HB 2225 – PUBLIC HEARING

011 Jonathan Fussner Assistant Attorney General, Oregon Department of Justice. Submits written testimony, explains HB 2225 and testifies in support of the bill (**EXHIBIT A**).

046 Fussner Continues discussion of why a standard of review is needed.

068 Fussner Explains the aspects of violation cases that HB 2225 does not change.

082 Rep. Macpherson Asks how violations got to the point of getting a *de novo* review.

086 Fussner Responds that a *de novo* review was previously the standard, but was changed, and there is currently no standard so *de novo* is often used.

104 Chair Barker Closes public hearing and opens a work session on HB 2225.

HB 2225 – WORK SESSION

106 Rep. Macpherson **MOTION: Moves HB 2225 to the full committee with a DO PASS recommendation.**

VOTE: 4-0-0

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

- 112 Chair Barker The motion **CARRIES**.
REP. MACPHERSON will lead discussion in the full committee.
- 114 Chair Barker Closes work session on HB 2225. Opens public hearing on HB 2224.

HB 2224 – PUBLIC HEARING

- 116 Heidi Moawad Committee Counsel. Explains HB 2224, which requires appellate court, after reversing some but not all counts on appeal, to remand case to trial court for resentencing on remaining counts.
- 128 Jonathan Fussner Assistant Attorney General, Oregon Department of Justice. Submits written testimony and testifies in support of HB 2224 (**EXHIBIT B**).
- 183 Fussner Discusses case law that may have the same effect as HB 2224.
- 203 Fussner Explains why HB 2224 is still necessary, even though it is generally standard practice.
- 226 Rep. Macpherson Asks for clarification on the current practice in the Court of Appeals.
- 233 Fussner Explains how HB 2224 will clarify what the courts must do in every case, not only as standard practice, but as statute.
- 248 Rep. Macpherson Asks about the bill and why it did not include retrial in reversals.
- 258 Fussner Explains why it is unnecessary to specify and include trial reversals.
- 286 Rep. Thatcher Asks for clarification on the amendment Mr. Fussner suggested.
- 297 Fussner Clarifies that he wanted to change “on some counts” to “on any count.”
- 314 Rep. Thatcher Notes an inconsistency in grammar, and suggests a second change.
- 320 Fussner Agrees the second change would be good.

328 Kelly Skye Oregon Criminal Defense Lawyers Association (OCDLA). Testifies in opposition to HB 2224.

TAPE 9, A

007 Skye Illustrates the reasons why OCDLA believes HB 2224 has flawed logic.

048 Skye Proposes tightening the language on HB 2224 so as not to include all cases, and add language referring to the same criminal episode.

070 Chair Barker Asks about judicial discretion.

077 Skye Suggests changing “shall” to “may” so the judges have more discretion.

088 Rep. Macpherson Notes examples were about single criminal episodes, but changing “shall” to “may” would render the bill useless, because judges already have authority to do what HB 2224 would require them to do.

100 Skye Believes that judges should not be required to remand in every case.

110 Chair Barker Suggests that Mr. Fussner and Ms. Skye work together on the bill.

114 Chair Barker Closes public hearing on HB 2224. Opens public hearing on HB 2226, which provides that defendant must be substantially prejudiced by delay before court may dismiss accusatory instrument due to violation of speedy trial requirement.

HB 2226 – PUBLIC HEARING

120 Jonathan Fussner Assistant Attorney General, Oregon Department of Justice (DOJ). Submits written testimony and testifies in support of HB 2226 **(EXHIBIT C)**.

166 Fussner Suggests that the current statute makes it too easy to dismiss cases.

215 Fussner Discusses difference between prejudice and substantial prejudice.

243	Fussner	Illustrates definitions of prejudice and substantial prejudice.
259	Rep. Macpherson	Notes reference to deficiencies in DOJ, and asks whether resources are best spent on old “stale” cases or responding promptly to new cases.
278	Fussner	Admits the problem that many cases cannot be brought to trial quickly, and addresses the problem that cases cannot be dismissed just because resources are stretched and cases put on hold.
310	Fussner	Explains that HB 2226 only makes it harder to dismiss cases, not impossible. Maintains the courts will still try to get serious cases to trial quickly, and dismiss trials that are very old and less serious.
332	Rep. Krieger	Asks about reasons for delays by defendants.
342	Fussner	Discusses how defendants “abuse the system” and cause delays.
364	Fussner	Explains how HB 2226 will not change current law.
391	Kelly Skye	Oregon Criminal Defense Lawyers Association. Testifies in opposition to HB 2226.

TAPE 8, B

005	Skye	Continues discussion on why HB 2226 is unnecessary because the current statute about dismissal is a “housekeeping” statute.
042	Skye	Suggests that the statute is to flush cases out of the system, and should not have a requirement for substantial prejudice.
072	Chair Barker	Remarks that victims feel cheated when there is no trial.
077	Skye	Discusses budget problems and need to direct resources toward greater crimes. Suggests that victims “get what they pay for” by not funding the criminal justice system.
102	Chair Barker	Reports that the public believes we are not prioritizing.
105	Chair Barker	Closes public hearing and opens a work session on HB 2226.

HB 2226 – WORK SESSION

- 107 Rep. Macpherson Believes that there are issues to be discussed, such as work flow and prioritizing, not piling up cases.
- 124 Rep. Olson Agrees that the process needs to move quickly, but cases have been dismissed that should not have been dismissed. Notes his favor for bill.
- 132 Rep. Olson **MOTION: Moves HB 2226 to the full committee with a DO PASS recommendation.**
- VOTE: 3-1-0**
- AYE: 3 - Olson, Thatcher, Barker**
- NAY: 1 - Macpherson**
- 139 Chair Barker **The motion CARRIES.**
- REP. OLSON will lead discussion in the full committee.**
- 140 Chair Barker Closes work session on HB 2226. Opens a public hearing on HB 2227.

HB 2227 – PUBLIC HEARING

- 141 Heidi Moawad Committee Counsel. Explains HB 2227, which authorizes introduction of victim impact evidence in nondeath penalty aggravated murder sentencing proceedings.
- 156 Jonathan Fussner Assistant Attorney General, Oregon Department of Justice. Submits written testimony and testifies in support of HB 2227 (**EXHIBIT D**).
- 205 Fussner Explains what HB 2227 will do to clarify the law, and “enact what is already law.”
- 242 Kelly Skye Oregon Criminal Defense Lawyers Association (OCDLA). Testifies in opposition to HB 2227, because OCDLA opposes the death penalty and admitting victim impact evidence.

- 259 Rep. Thatcher Asks for clarification as to what kind of litigation is involved.
- 264 Skye Answers that litigation is involved in how the victim impact evidence plays into the jury's final determination and whether it is relevant.
- 292 Chair Barker Notes that HB 2227 applies to nondeath cases.
- 296 Skye Understands the application and admits the OCDLA's opposition is an expansion of their opposition to the use of victim impact statement's as evidence.
- 304 Chair Barker Closes public hearing and opens a work session on HB 2227.

HB 2227 – WORK SESSION

- 306 Rep. Thatcher **MOTION: Moves HB 2227 to the full committee with a DO PASS recommendation.**
- VOTE: 4-0-0**
- AYE: In a roll call vote, all members present vote Aye.**
- 312 Chair Barker **The motion CARRIES.**
- REP. THATCHER will lead discussion in the full committee.**
- 314 Chair Barker Closes work session on HB 2227. Adjourns the meeting at 10:48 a.m.

EXHIBIT SUMMARY

- A. **HB 2225, written testimony, Jonathan H. Fussner, 2 pp**
- B. **HB 2224, written testimony, Jonathan H. Fussner, 1 p**
- C. **HB 2226, written testimony, Jonathan H. Fussner, 1 p**
- D. **HB 2227, written testimony, Jonathan H. Fussner, 1 p**