

**HOUSE JUDICIARY SUBCOMMITTEE**

**ON CRIMINAL LAW**

**February 17, 2005 Hearing Room 357**

**8:30 A.M. Tapes 16 - 17**

**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 HEARD:           HB 2311 – Public Hearing and Work Session**

**HB 2335 – Public Hearing**

**HB 2322 – Public Hearing**

**HB 2312 – Public Hearing**

**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 16, A

003 Chair Barker Calls the meeting to order at 8:37 a.m. Opens a public hearing on HB 2311.

### HB 2311 – PUBLIC HEARING

010 Rick Walker Wild Bill's Interactive Events. Submits written testimony from himself and other supporters of HB 2311 (**EXHIBIT A**). Testifies in support of HB 2311.

041 Walker Discusses Texas Hold 'Em, and adding this poker game to the list of Monte Carlo event games.

055 Stan West Lions Club, Oregon Lions Sight and Hearing Foundation. Offers background of Lions International.

098 West Discusses the benefit to non-profit organizations by adding Texas Hold 'Em to the definition of a Monte Carlo event.

120 Ross Laybourn Assistant Attorney General, Charitable Activities. Discusses the effects of adding Texas Hold 'Em to the list of Monte Carlo events.

139 Rep. Macpherson Asks why the statute restricts certain games from Monte Carlo events.

142 Laybourn Describes games as "games against the house."

151 Chair Barker Explains -1 amendment (**EXHIBIT B**).

154 Chair Barker Closes public hearing and opens a work session on HB 2311.

### HB 2311 – WORK SESSION

156 Rep. Macpherson **MOTION: Moves HB 2311 to the full committee with a DO PASS AS AMENDED recommendation.**

**VOTE: 4-0-0**

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

- 165            **Chair Barker**            **The motion CARRIES.**  
**REP. BARKER will lead discussion in the full committee.**
- 179            Chair Barker            Closes work session on HB 2311. Opens public hearing on HB 2335.

**HB 2335 – PUBLIC HEARING**

- 182            Dawn Phillips            Chief of Staff, Rep. Krummel, HD 26. Offers background for HB 2335. Introduces Keith and Kathy Stotts from Klamath Falls.
- 210            Kathy Stotts            Klamath Falls. Testifies in support of HB 2335. Offers her personal story explaining the need for HB 2335.
- 249            Ms. Stotts            Continues her story that illustrates problems with delayed investigation.
- 299            Ms. Stotts            Continues her story about complications with the Department of Human Services (DHS) and child visitation.
- 336            Ms. Stotts            Stresses that investigations need to be conducted with timeliness.
- 360            Rep. Olson            Asks for the date the allegation was made.
- 364            Ms. Stotts            Confirms the date of allegation was April 14, 2004.
- 368            Rep. Olson            Inquires which agency handled the investigation.
- 370            Ms. Stotts            Names the Klamath County Sheriff's Department.
- 371            Rep. Olson            Asks whether the Stotts had an opportunity to share their feelings with the Sheriff's Department so they would be moved to act on the case.
- 376            Ms. Stotts            Relates that she did not feel the Sheriffs department was interested.
- 377            Keith Stotts            Citizen, Klamath Falls. Husband of Kathy Stotts. Asserts that the Police did not want to be helpful or concerned.
- 381            Ms. Stotts            Relays an upsetting comment made to her by investigators.

385 Rep. Olson Clarifies that once DHS was involved the sheriff's department was not.

388 Mr. Stotts Explains that DHS and the sheriff's department worked together.

**TAPE 17, A**

006 Rep. Thatcher Asks if certain investigative procedures could be given time limits, rather than the entire investigation.

010 Mr. Stotts Explains that initial investigative procedures were dealt with in a timely manner, but then the process was delayed. Discusses time delays with DHS.

027 Phillips States that HB 2335 is one of three bills drafted by Rep. Krummel. Explains that HB 2335 deals with the law enforcement component.

032 Chair Barker Explains that DHS is often caught between complaints that they are taking too long, and between conducting thorough evaluations.

038 Mr. Stotts Asserts that DHS was delayed in calling for the psychosexual exam.

049 Chair Barker Asks if any DNA was found.

051 Rep. Thatcher Asks who was requesting the psychosexual exam.

053 Mr. Stotts Explains that the Attorney General's office requested it, but DHS did not give results to them in a timely manner.

062 Rep. Thatcher Asks about the timeframe of the investigation.

065 Mr. Stotts States that it took five months for DHS to tell the Attorney General's office about the psychosexual exam.

068 Rep. Krieger Contacted Ramona Foley, DHS, about negligence within the department.

079 Rep. Krieger Asks Mr. Foley, Rep. Krummel, and staff consider other bills to make agency processes more efficient.

092	Chair Barker	Mentions bills in other committees relating to agency efficiencies.
094	Mr. Stotts	Expresses frustration with the way DHS handled their case.
115	Chuck Sparks	Citizen, Multnomah County. Testifies in opposition to HB 2335. Explains the difficulties in investigating child sexual abuse cases.
175	Sparks	Illustrates the many investigative processes that are required in child sexual abuse cases that would make the 45-day timeline very difficult.
218	Chair Barker	States that a 45-day limit would be unworkable for law enforcement.
221	Sparks	Agrees with Rep. Barker. Discusses options for indigent defense.
237	Sergeant Steve Duvall	Oregon State Police (OSP). Submits written testimony and testifies in opposition to HB 2335 ( <b>EXHIBIT C</b> ). Expresses belief that a 45-day timeline would compromise the quality of investigations.
272	Duvall	Discusses procedures that would delay investigations.
304	Duvall	Expresses willingness to discuss options that address concerns set forth in HB 2335.
312	Rep. Macpherson	Asks Sergeant Duvall if it is common for children to be removed from the home if the perpetrator lives in the home.
323	Duvall	Asks if the father was the perpetrator.
326	Rep. Macpherson	Clarifies his question about removing children from the home.
334	Duvall	Explains the process of determining if a child should be removed.
354	Sparks	Discusses procedures if a parent is the perpetrator.
395	Rep. Krieger	Notes State Police experience on the committee, and expresses that certain timelines for some procedures might be workable.
416	Sparks	Explains family law that deals with timelines for returning children.

- 422 Duvall Points to his written testimony (**EXHIBIT C**).
- 431 Mr. Stotts Expresses his understanding that their case is unusual, but believes that something should be done to expedite the process.

**TAPE 16, B**

- 002 Chair Barker Closes public hearing on HB 2335.
- 007 Chair Barker Opens public hearing on HB 2322.

**HB 2322 – PUBLIC HEARING**

- 010 Chuck Sparks Oregon District Attorneys Association (ODAA), Multnomah County Deputy District Attorney. Submits written testimony and testifies in support of HB 2322 (**EXHIBIT D**).
- 025 Sparks Illustrates need for HB 2322, pointing to “Baby G” on page one (**EXHIBIT D**).
- 046 Sparks Discusses why assaulting a child warrants a higher penalty than assaulting an adult.
- 076 Sparks Lists other crimes under assault in the first degree.
- 086 Rep. Macpherson Discusses the need to make allowances for stressed corrections resources.
- 101 Sparks Discusses how many cases the state will deal with. Explains judgments for assault in the first degree.
- 134 Rep. Macpherson Urges the ODAA to relieve pressure when they increase pressure on corrections resources.
- 148 Sparks Offers to contact ODAA to get information for Rep. Macpherson.
- 161 John Hummel Oregon Criminal Defense Lawyers Association (OCDLA). Testifies in opposition to HB 2322. Shares OCDLA’s opposition to expanding Measure 11 sentencing.

194	Hummel	Discusses inconsistencies that HB 2322 would cause.
235	Chair Barker	Comments on innocent people in prison, and Measure 11's popularity.
247	Hummel	Explains the OCDLA's position on Measure 11.
260	Andrea Meyer	American Civil Liberties Union. Testifies in opposition to HB 2322.
292	Robert Reynolds	Citizen in Portland. Member of the Board of Better People. Testifies in opposition to HB 2322.
330	Chair Barker	Closes public hearing on HB 2322. Asks counsel to look at amendments.
337	Sparks	Responds and corrects testimony on description of assault in the third degree. Stresses that HB 2322 addresses serious physical injury. Comments on Measure 11 crimes.

**TAPE 17, B**

005	Rep. Macpherson	Asks about a fiscal impact statement.
007	Moawad	Explains that the proposed amendments also need a fiscal statement, which will likely be available at the next hearing on HB 2322.
022	Chair Barker	Calls a recess at 10:00 a.m.
023	Chair Barker	Reconvenes the meeting at 10:13 a.m. Opens a public hearing on HB 2312.

**HB 2312 – PUBLIC HEARING**

024	Bill Taylor	Counsel. Introduces HB 2312, which eliminates requirement that motion requesting performance of DNA testing be filed by certain date.
055	Andrea Meyer	American Civil Liberties Union. Testifies in support of HB 2312 with amendments. Explains the background of HB 2312.

108	Meyer	Continues discussion of why amendments are needed to include those who plead guilty.
135	Meyer	Illustrates innocent people pleading guilty to avoid a greater penalty.
163	John Hummel	Oregon Criminal Defense Lawyers Association (OCDLA). Submits written testimony and testifies in support of HB 2312 ( <b>EXHIBIT E</b> ).
181	Hummel	Discusses plea bargaining.
195	Hummel	Urges removal of the sunset provision and an amendment to include those who plead guilty.
199	Rep. Thatcher	Asks if filing the affidavit would require a new trial.
203	Hummel	Explains how HB 2312 will work in the rare case it is needed.
223	Meyer	Explains requirements to determine whether an offender could request DNA testing in order to be exonerated.
247	Hummel	Discusses built in checks so the provision will not be abused.
257	Meyer	Illustrates how DNA evidence could help exonerate a perpetrator.
283	Rep. Macpherson	Asks what proportion of inmates plead guilty, rather than being found guilty by a jury.
286	Hummel	States 90 to 95 percent.
290	Rep. Macpherson	Asks for clarification.
295	Hummel	Explains how rare it is that someone would plead guilty and then assert their innocence.
310	Chair Barker	Closes public hearing on HB 2312. Asks that proponents work with counsel on the bill.
315	Chair Barker	Adjourns the meeting at 10:20 a.m.



## **EXHIBIT SUMMARY**

- A. **HB 2311, written testimony, Rick Walker, 13 pp**
- B. **HB 2311, -1 amendment, staff, 1 p**
- C. **HB 2335, written testimony, Sergeant Steve Duvall, 3 pp**
- D. **HB 2322, written testimony, Charles Sparks, 2 pp**
- E. **HB 2312, written testimony, John Hummel, 1 p**