

HOUSE JUDICIARY SUBCOMMITTEE

ON CRIMINAL LAW

March 10, 2005 Hearing Room 357

8:30 A.M. Tapes 27 - 28

Corrected 3/22/05

MEMBERS PRESENT: Rep. Jeff Barker, Chair

Rep. Andy Olson

Rep. Kim Thatcher

MEMBER EXCUSED: Rep. Greg Macpherson

GUEST MEMBER: Rep. Wayne Krieger

STAFF PRESENT: Heidi Moawad, Counsel

Elizabeth Howe, Committee Assistant

MEASURES/ISSUES HEARD:

HB 2312 – Public Hearing

HB 2654 – Public Hearing and Work Session

HB 2317 – Work Session

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 27, A

003 Chair Barker Calls the meeting to order at 8:40 a.m. Opens a public hearing on HB 2312, which eliminates requirement that motion requesting performance of DNA testing be filed by certain date.

HB 2312 – PUBLIC HEARING

012 Mike Dugan Oregon District Attorneys Association (ODAA). Testifies in support of HB 2312.

050 Mark McDonnell Senior Deputy District Attorney, Multnomah County. Submits written testimony (**EXHIBIT A**) and testifies in support of HB 2312. Proposes amendments.

060 Dugan Further explains proposed amendments.

067 Rep. Olson Questions how many cases have been filed using the current statute.

069 Dugan Recalls only one case, which was filed in Yamhill County.

075 Rep. Krieger Inquires how many inmates could potentially file an affidavit.

079 McDonnell Remarks that hundreds of inmates could file, and emphasizes the importance of not allowing those who plead guilty or no contest to file.

096 Heidi Moawad Counsel. Questions whether an inmate would have legal cause of action against a police agency if their evidence were destroyed.

102 Dugan Discusses evidence retention periods.

118 McDonnell Adds that an affidavit of innocence does not guarantee exoneration.

126 Rep. Krieger Inquires about a defendant who pleads guilty or no contest in order to plea bargain for a lesser sentence.

133 McDonnell Maintains that the court verifies evidence to support a guilty plea.

142	Chair Barker	Questions whether the State Police crime labs have sufficient resources.
144	Dugan	Responds that crime labs' resources may be strained due to the potential increase of expensive DNA testing.
156	Andrea Meyer	Legislative Coordinator, American Civil Liberties Union (ACLU). Testifies in opposition to HB 2312.
217	Chair Barker	Inquires if defendant plead guilty or no contest in her illustration.
219	Meyer	Admits that she does not know.
238	John Hummel	Oregon Criminal Defense Lawyers Association (OCDLA). Testifies in opposition to HB 2312. Expresses belief that innocent people who plead guilty for a plea bargain deserve a way to prove their innocence.
293	Rep. Thatcher	Comments on testimony by ODAA that if evidence is not available an inmate cannot file an affidavit.
299	Hummel	Explains that the applicant must file an affidavit, and the DNA test cannot be performed if evidence is not available. Discusses importance of retention rules.
313	Meyer	Explains that the state has no statute governing evidence retention.
346	Rep. Thatcher	Comments that she foresees litigation from inmates whose evidence was not retained.
353	Meyer	Relates that there has been no such litigation since the statute was enacted four years ago. Believes it would be a frivolous lawsuit.
383	Rep. Olson	Questions evidence retention and the need for such an avenue if it has not been used in the four years it has been a statute.

TAPE 28, A

018	Meyer	Discusses evidence retention, particularly for biological matter. Emphasizes that this statute is a safeguard for potential cases.
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052 Chair Barker Discusses compromise for amendments. Closes public hearing on HB 2312. Opens public hearing on HB 2654.

HB 2654 – PUBLIC HEARING

060 Mike Dugan Oregon District Attorneys Association (ODAA). Testifies in support of HB 2654. Describes background of the bill.

090 Rep. Thatcher Asks if diversion completion would be considered a conviction.

093 Dugan Explains current law and how HB 2654 would include diversions.

119 Heidi Moawad Counsel. Asks about current law regarding diversions, and how the time period in HB 2654 can be consistent with current law.

130 Dugan Explains why it would be difficult to be consistent.

144 Rep. Olson Agrees that establishing an appropriate date is important.

154 John Hummel Oregon Criminal Defense Lawyers Association (OCDLA). Testifies in opposition to HB 2654. Discusses OCDLA's concerns with unintended consequences due to HB 2654.

173 Hummel Describes a scenario where "participated" on page one, line 29 of the bill causes a problem. Suggests amendment to change "participated" to "began."

218 Hummel Explains second concern on page one, line 30 "similar alcohol or drug rehabilitation program" and suggests an amendment.

262 Moawad Questions timing for diversion eligibility for a second DUII incident

272 Hummel Asserts that the timing is not clear, and the Court of Appeals has not addressed the issue.

283 Chair Barker Closes public hearing and opens a work session on HB 2654.

HB 2654 – WORK SESSION

288 Chair Barker Purports that HB 2654 needs amendments, which will be presented at the full committee.

294 Rep. Olson **MOTION: Moves HB 2654 to the full committee with a DO PASS PENDING AMENDMENTS recommendation.**

VOTE: 3-0-1

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

EXCUSED: 1 - Macpherson

300 Chair Barker **The motion CARRIES.**
REP. BARKER will lead discussion in the full committee.

303 Chair Barker Closes work session on HB 2654. Opens work session on HB 2317.

HB 2317 – WORK SESSION

305 Heidi Moawad Counsel. Explains fiscal impact statement for HB 2317.

315 Chair Barker Describes background of HB 2317.

322 Rep. Thatcher **MOTION: Moves HB 2317 to the floor with a DO PASS recommendation.**

VOTE: 3-0-1

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

EXCUSED: 1 - Macpherson

330 Chair Barker **The motion CARRIES.**
REP. THATCHER will lead discussion in the full committee.

331 Chair Barker Closes work session on HB 2317. Adjourns the meeting at 9:30 a.m.

EXHIBIT SUMMARY

A. HB 2312, written testimony, Mark McDonnell, 2 pp