

**HOUSE JUDICIARY SUBCOMMITTEE**

**ON CRIMINAL LAW**

**March 03, 2005 Hearing Room 357**

**8:30 A.M. Tapes 23 - 24**

**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 2457 – Public Hearing**

**HB 2510 – 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 23, A**

**004 Chair Barker**

Calls the meeting to order at 8:33 a.m. Opens a public hearing on HB 2457.

### **HB 2457 – PUBLIC HEARING**

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|-----|--------------|---|
| 012 | Rep. Dallum  | House District 59. Testifies in support of HB 2457, which increases punishment for crime of invasion of personal privacy to maximum of five years' imprisonment, \$125,000 fine, or both.                       |
| 022 | Eric Nisley  | Wasco County District Attorney. Submits a picture ( <b>EXHIBIT A</b> ) illustrating the size of technology, and testifies in support of HB 2457.  |
| 047 | Nisley       | Uses the camera in his hand ( <b>photo in EXHIBIT A</b> ) to illustrate how easy it is to invade privacy with this modern day "peep-hole."  |
| 076 | Jean Beckley | Citizen from The Dalles. Testifies in support of HB 2457. Offers her personal story of the invasion of her and her children's privacy.  |
| 116 | Beckley      | Continues her story as a victim of invasion of personal privacy. Relates that she and her children were not eligible for victim's assistance as the invasion of personal privacy is not considered a sex crime. |
| 173 | Rep. Krieger | Inquires what the crime and the penalty were for the offender.  |
| 178 | Nisley       | States that the case is currently pending. Reports that the charge was invasion of privacy, a misdemeanor.  |
| 186 | Rep. Olson   | Questions why there is a restriction on the age of offenders.   |
| 193 | Beckley      | Expresses her belief that there should not be an age restriction.   |
| 206 | Rep. Dallum  | States that the age of 18 is somewhat arbitrary.  |
| 209 | Nisley       | Maintains that minors should be afforded a higher protection, and states that lowering the age could attract higher scrutiny.   |
| 236 | Rep. Dallum  | Details that they looked at the number of cases, incarceration rates, and focused on protecting children.   |

244	Beckley	Adds that the offender controlled the video from his computer.
256	Rep. Macpherson	Inquires about the fiscal impact to Corrections.
276	Rep. Dallum	Believes that there were only three cases in the last five years where the offender was incarcerated.
291	Chair Barker	Asks staff to discuss her experience with a similar case.
295	Heidi Moawad	Counsel. Describes an invasion of privacy case in Multnomah County. Suggests adding an amendment to add looking under clothing as an invasion of privacy.
330	Rep. Dallum	Asks who should draft the amendment.
331	Chair Barker	Asks staff to handle the amendment.
339	Judge Laura Pryor	Gilliam County Judge, Great Aunt of Beckley children. Testifies in support of HB 2457. Discusses the need for families without funds and family support to have a support system available.

**TAPE 24, A**

008	Pryor	Thanks the committee for the suggested amendment.
010	Henry Loebe	Oregon District Attorneys Association. Testifies in support of HB 2457. Discusses repeat offenders, and the lack of ability to incarcerate.
024	Rep. Krieger	Inquires about the cost of the small camera.
027	Loebe	Recalls that small cameras are becoming relatively inexpensive, and there is a range of quality and prices.
031	Rep. Krieger	States that this technology has just developed in the last five years.
033	Rep. Macpherson	Discusses sex offender registration. Questions level of incarceration and asks about the significance between one and five years in prison.

043	Loebe	Agrees with necessity to register sex offenders, and states that higher sentencing will allow further prosecution for repeat offenders.
051	Moawad	States that only predatory sex offenders require community notification. Suggests amendments to specify sentencing requirements.
066	Rep. Macpherson	Expresses desire to accomplish goals with minimal fiscal impact.
076	John Hummel	Oregon Criminal Defense Lawyers Association (OCDLA). Testifies in opposition to HB 2457. Discusses the two ways to commit invasion of personal privacy, and suggests different sentencing for the crimes.
127	Hummel	Continues sentencing suggestions.
135	Chair Barker	Asks if the offender could request to be released from sex offender reporting requirements.
137	Hummel	Uncertainly offers that the offender could after 15 years.
139	Moawad	Clarifies that the offender could after ten years.
140	Hummel	States that the judge could decline the request.
142	Chair Barker	Mentions the Senate bill addressing the camera filter that can see through clothing available on the internet for only \$70.
151	Hummel	Discusses Counsel's suggestion for amendments specifying that looking under clothing is an invasion of personal privacy.
157	Chair Barker	States the need for specificity.
161	Rep. Thatcher	Asks for OCDLA's opinion on premeditated viewing of nudity.
166	Hummel	Discusses premeditated viewing and how to draft the statute to encompass those instances.

180	Rep. Macpherson	Discusses distinction between video-taping and viewing, and the severity of the offense when there is a record of the nudity and the possibility of internet distribution.
193	Hummel	Agrees with such a distinction for classifying the crime as a felony or misdemeanor. States purpose of sex offender registration to protect society, which should apply to premeditated viewing.
207	Chair Barker	Closes public hearing on HB 2457.

### **HB 2510 – PUBLIC HEARING**

234	Chair Barker	Opens a public hearing on HB 2510, which expands types of written instruments to which crime of forgery in first degree applies and types of forged instruments to which crime of criminal possession of forged instrument in first degree applies to include retail sales receipts, Universal Product Code (UPC) labels and EAN-8 and EAN-13 labels.
240	Henry Loebe	Oregon District Attorneys Association (ODAA). Testifies in support of HB 2510. Suggests that the bill go further to prosecute forgery.
269	Julie Brandis	Associated Oregon Industries Retail Council. Submits written testimony ( <b>EXHIBIT B</b> ) and testifies in support of HB 2510. Discusses crimes committed with UPC labels and other labels.
326	Moawad	Asks for clarification on a statistic.
328	Brandis	Clarifies the timeline for the statistic.
330	Rep. Macpherson	Uses an illustration to question the classification of the crime.
341	Loebe	Discusses theft in the second degree and theft in the first degree.
346	Rep. Macpherson	Questions prosecution of the crimes in current law.
350	Loebe	Describes in detail the crimes committed for theft and forgery.
357	Rep. Macpherson	Recites question for clarification.
365	Loebe	

Clarifies the difference between theft as a class A misdemeanor, and theft in the second degree.

- 375 Rep. Macpherson Reiterates his question regarding current law.
- 380 Loebe Clarifies that currently theft by deception and theft are prosecuted similarly.
- 384 Rep. Macpherson Asks for further clarification regarding sentencing in the proposed statute.
- 387 Loebe Explains the higher classification due to the organization and premeditation of the deception, and the difficulty in discovering the offense.
- 395 Rep. Macpherson Discusses level of organization and scale of theft in a theft ring operation.
- 407 Loebe States that HB 2510 addresses offenders who make new barcodes and attach them to products in stores.
- 420 Rep. Olson Inquires about burglary in the second degree.

#### **TAPE 23, B**

- 005 Loebe Discusses classification of burglary in the second degree, and trespassing in the first degree, a class A misdemeanor.
- 014 Brandis Explains two typical crimes in retail stores. Emphasizes the crime HB 2510 is addressing.
- 033 Loebe Mentions that switching UPC codes is deception, a misdemeanor, not forgery, a felony. Clarifies that HB 2510 is addressing the forged labels, which the ODAA believes should be a felony.
- 046 Rep. Thatcher Questions the current classification for forgery.
- 048 Loebe States that forgery is a class C felony, depending on the face value of the forged documents.

055	Rep. Thatcher	Clarifies that the different sentences depend upon the face value of the forged documents. Inquires about sentencing.
059	Loebe	Describes sentences of presumptive probation, 18 months, or 24 months if the face value of the forged documents is greater than \$1000.
065	Rep. Thatcher	Asks if Mr. Loebe has seen forgery offenders serve prison sentences.
068	Loebe	Explains that it depends on the level of the crime and the offenders' previous record. Notes after four convictions there is usually a prison sentence.
079	Rep. Macpherson	Notes in current convictions that \$750 is the minimum face value of the forged documents in order for it to be classified as a felony.
084	Loebe	Confirms the statement.
086	Rep. Macpherson	Questions why forging barcodes should not have a minimum requirement for the face value of the forged documents as in the case of a check or credit card receipt.
088	Loebe	Emphasizes that the crime HB 2510 addresses is the level of organization not the face value of the forged documents.
096	Rep. Macpherson	States that HB 2510 does not require a high level of organization.
104	Loebe	Describes analogous statutes that address identity theft.
115	John Hummel	Oregon Criminal Defense Lawyers Association (OCDLA). Testifies in opposition to HB 2510. Suggests that the sentencing for forgery of barcodes should be similar to forgery of a check or credit card receipt.
165	Hummel	Explains the significant fiscal impact because of the significant number of offenses.
181	Rep. Olson	Points to ORS 164.055 defining theft in the first degree. Asks about sales receipts above \$750.
188	Hummel	Believes that sales receipts should be treated similarly.

193	Moawad	Questions why there is no aggravated forgery in the first degree when there is an aggravated theft in the first degree.
198	Hummel	Suggests that when theft reaches a certain level it should be considered aggravated and treated the same, despite the means used.
205	Brandis	Voices concerns about the \$750 minimum face value requirement.
228	Chair Barker	Closes the public hearing on HB 2510. Asks counsel to work on the amendments to the bill. Adjourns the meeting at 9:45 a.m.

### **EXHIBIT SUMMARY**

- A. **HB 2457, picture, Eric Nisley, 1 p**
- B. **HB 2510, written testimony, Julie Brandis, 1 p**