

**HOUSE JUDICIARY SUBCOMMITTEE**

**ON CRIMINAL LAW**

**April 21, 2005 Hearing Room 357**

**8:30 A.M. Tapes 45 - 46**

**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:**

**HB 2569 – Public Hearing and Work Session**

**HB 3370 – Public Hearing and Work Session**

**HB 2224 – Work Session**

**HB 2233 – Work Session**

**HB 2360 – Work Session**

**HB 2361 – 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.**

<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
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**TAPE 45, A**

003	Chair Barker	Calls the meeting to order at 8:35 a.m. Opens a public hearing on HB 2569, which exempts law enforcement officials acting in course of official duty from motor vehicle accident reporting requirements.
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**HB 2569 – PUBLIC HEARING**

008	Pete Shepherd	Deputy Attorney General. Introduces -1 amendments ( <b>EXHIBIT A</b> ). Provides background on the HB 2569.
072	Brian DeLashmutt	Oregon Councils of Police Associations (OCPA). Testifies in support of HB 2569, and the -1 amendments.
088	Daniel Swift	Oregon State Police Officers Association (OSPOA). Testifies in support of HB 2569.
096	Rep. Olson	Inquires about District Attorneys (D.A.) offices who employ peace officers.
103	Shepherd	Responds regarding D.A.s.
117	Heidi Moawad	Counsel. Confirms that the Multnomah County D.A.'s Office has employed peace officers.

**The following materials submitted for the record without public testimony:**

	Steve Swenson	City of Eugene. Written testimony in support ( <b>EXHIBIT J</b> ).
135	Chair Barker	Closes public hearing and opens a work session on HB 2569.

**HB 2569 – WORK SESSION**

137            Rep. Macpherson    **MOTION: Moves to ADOPT HB 2569-1 amendments dated 4/13/05.**

**VOTE: 4-0-0**

139            Chair Barker            **Hearing no objection, declares the motion CARRIED.**

140            Rep. Macpherson    **MOTION: Moves HB 2569 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.**

145            Chair Barker            **The motion CARRIES.**

**REP. OLSON will lead discussion in the full committee.**

146            Chair Barker            Closes work session on HB 2569. Opens a public hearing on HB 3370, which provides that person commits offense if person refuses to submit to blood test or to take urine test if requested to do so under implied consent law.

### **HB 3370 – PUBLIC HEARING**

170            Bruce Pratt            Crime Victims United (CVU). Submits written testimony (**EXHIBIT B**) and testifies in support of HB 3370.

246            Anne Pratt            CVU/Mothers Against Drunk Driving (MADD)/Governor's Advisory Committee on Driving Under the Influence of Intoxicants (DUII). Submits written testimony (**EXHIBIT C**) and testimony on behalf of Lloyd Clodfelter, MADD Oregon Public Policy Liaison (**EXHIBIT D**). Testifies in support of HB 3370.

303            Chris Piekarski        Oregon District Attorneys Association (ODAA). Testifies in support of HB 3370. Expresses concern that HB 3370 may interfere with someone's rights.

### **TAPE 46, A**

003            Piekarski                Continues testimony on the benefits of HB 3370.

030	Sgt. Tim Plummer	Sergeant, Oregon State Police (OSP). Submits written testimony <b>(EXHIBIT E)</b> and testifies in support of HB 3370.
069	Rep. Olson	Questions statistic about offenders using a combination of drugs.
073	Plummer	Describes a study done that found most DUI offenders used other drugs in addition to alcohol.
081	Rep. Olson	Inquires about a situation where an individual is not able to urinate.
088	Plummer	Responds that OSP gives the offender time to provide a urine sample.
096	Rep. Olson	Questions how long a police officer might wait.
098	Plummer	Relates that he has waited up to three and a half hours.
101	Heidi Moawad	Counsel. Introduces the -1 amendments <b>(EXHIBIT F)</b> .
109	B. Pratt	Explains why the -1 amendments are necessary.
120	John Hummel	Oregon Criminal Defense Lawyers Association (OCDLA). Testifies in opposition to HB 3370.
174	Hummel	Testifies in opposition to HB 3370 -1 amendments.
198	Rep. Macpherson	Questions whether the fact of refusal is admissible in criminal proceedings.
202	Hummel	Responds affirmatively. Relates that the District Attorney may also use the refusal as fact that the defendant may have had something to hide.
210	Moawad	Asks if officers' observations are corroborated by urine. Questions testimony of a drug recognition expert. Inquires if anything would prevent an officer from getting a warrant with this law.
218	Hummel	

Responds negatively. Confirms that a drug recognition expert cannot provide testimony as an expert without a test. Relates that nothing in the law prevents an officer from seeking a warrant.

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| 236 | David Fidanque | American Civil Liberties Union (ACLU). Provides background on warrants for searches. Testifies in opposition to HB 3370.                 |
| 332 | Moawad         | Addresses exclusion of urine and blood tests in the original bill. Suggests that it could have been an oversight.                        |
| 339 | Fidanque       | Admits that he cannot remember if it was in the original bill. Believes it was a conscience decision to leave blood and urine tests out. |
| 354 | Moawad         | Asks for clarification whether the implied consent law currently requires a warrant if the officer has probable cause.                   |
| 360 | Fidanque       | Responds affirmatively. Adds that the ACLU testified that it was unconstitutional in regard to urine and blood tests.                    |
| 370 | Chair Barker   | Closes public hearing and opens work session on HB 3370.   |

#### **HB 3370 – WORK SESSION**

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| 372 | Rep. Olson      | <b>MOTION: Moves to ADOPT HB 3370-1 amendments dated 4/5/05.</b>                         |
| 375 | Rep. Macpherson | Objects to -1 amendments. Believes judge should have discretion in fining the defendant. |

**VOTE: 3-1-0**

**AYE: 3 - Olson, Thatcher, Barker**

**NAY: 1 - Macpherson**

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| 390 | Chair Barker | <b>The motion CARRIES.</b>   |
| 393 | Rep. Olson   | <b>MOTION: Moves HB 3370 to the full committee with a DO PASS AS AMENDED recommendation.</b> |

**VOTE: 3-1-0**

**AYE: 3 - Olson, Thatcher, Barker**

**NAY: 1 - Macpherson**

**400 Chair Barker The motion CARRIES.**

**REP. BARKER will lead discussion in the full committee.**

**401 Chair Barker Closes work session on HB 3370. Opens a work session on HB 2224.**

**HB 2224 – WORK SESSION**

**414 Heidi Moawad Counsel. Provides background on 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.**

**421 Rep. Olson MOTION: Moves to ADOPT HB 2224-1 amendments dated 3/24/05.**

**VOTE: 4-0-0**

**425 Chair Barker Hearing no objection, declares the motion CARRIED.**

**TAPE 45, B**

**005 Rep. Olson MOTION: Moves HB 2224 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.**

**009 Chair Barker The motion CARRIES.**

**REP. THATCHER will lead discussion in the full committee.**

**010 Chair Barker Closes work session on HB 2224. Opens work session on HB 2233.**

**HB 2233 – WORK SESSION**

- 012 Heidi Moawad Counsel. Provides background on HB 2233, which provides that judgment in criminal action containing award of restitution does not expire until 50 years after entry of judgment. Introduces -2 amendments (**EXHIBIT H**).
- 020 Chair Barker Explains encouraging payment for debt.
- 023 Rep. Macpherson Comments on the difference in interest under the -2 amendments.
- 035 Rep. Macpherson **MOTION: Moves to ADOPT HB 2233-2 amendments dated 3/30/05.**
- VOTE: 4-0-0**
- 036 Chair Barker **Hearing no objection, declares the motion CARRIED.**
- 037 Rep. Macpherson **MOTION: Moves HB 2233 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.**
- 040 Chair Barker **The motion CARRIES.**
- REP. MACPHERSON will lead discussion in the full committee.**
- 041 Chair Barker Closes work session on HB 2233. Opens a work session on HB 2360.

#### **HB 2360 – WORK SESSION**

- 044 Heidi Moawad Counsel. Provides background on HB 2360, which imposes fine and mandatory imprisonment for person convicted of driving while under influence of intoxicants if person had 0.20 percent or more by weight of alcohol in blood of person at time of offense.
- 062 Rep. Macpherson Inquires whether the court currently could impose a mandatory minimum at the judge's discretion.
- 070 Moawad Responds affirmatively.

- 075      Rep. Thatcher      **MOTION: Moves HB 2360 to the full committee with a DO PASS AS AMENDED recommendation.**
- VOTE: 3-1-0**
- AYE:            3 - Olson, Thatcher, Barker**
- NAY:            1 - Macpherson**
- 078      Chair Barker      **The motion CARRIES.**
- REP. THATCHER will lead discussion in the full committee.**
- 079      Chair Barker      Closes work session on HB 2360. Opens a work session on HB 2361.

**HB 2361 – WORK SESSION**

- 080      Heidi Moawad      Counsel. Provides background on HB 2361. Introduces the -1 amendments (**EXHIBIT I**).
- 101      Rep. Thatcher      **MOTION: Moves to ADOPT HB 2361-1 amendments dated 3/22/05.**

**VOTE: 4-0-0**

- 103      Chair Barker      **Hearing no objection, declares the motion CARRIED.**
- 104      Rep. Thatcher      **MOTION: Moves HB 2361 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.**

- 106      Chair Barker      Comments on the result of the bill last session.

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



**EXHIBIT SUMMARY**

- A. HB 2569, -1 amendments, staff, 2 pp
- B. HB 3370, written testimony, Bruce Pratt, 2 pp
- C. HB 3370, written testimony, Anne Pratt, 4 pp
- D. HB 3370, written testimony of Lloyd N. Clodfelter, Anne Pratt, 1 p
- E. HB 3370, written testimony, Tim Plummer, 3 pp
- F. HB 3370, -1 amendments, staff, 1 p
- G. HB 2224, -1 amendments, staff, 1 p
- H. HB 2233, -2 amendments, staff, 1 p
- I. HB 2361, -1 amendments, staff, 1 p

The following materials submitted for the record without public testimony:

- J. HB 2569, written testimony of Steve Swenson, staff, 1 p