

HOUSE JUDICIARY SUBCOMMITTEE

ON CRIMINAL LAW

April 28, 2005 Hearing Room 357

8:30 A.M. Tapes 50 - 52

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

Bill Taylor, Counsel

Elizabeth Howe, Committee Assistant

MEASURES/ISSUES HEARD:

HB 3330 – Public Hearing

HB 2101 – Public Hearing

HB 2313 – Public Hearing and Work Session

HB 2390 – 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 50, A		
003	Chair Barker	Calls the meeting to order at 8:35 a.m. Opens a public hearing on HB 3330.

HB 3330 – PUBLIC HEARING

006	Bill Taylor	Counsel. Provides background on HB 3330, which directs Governor to create Office of Homeland Security.
015	Rep. Jeff Kropf	House District 17. Submits written testimony (EXHIBIT A) and testifies in support of HB 3330. Explains the funding HB 3330 will give to the Office of Homeland Security and scholarship funds.
086	Rep. Kropf	Continues testimony on the need to fund the Office of Homeland Security.
162	Rep. Kropf	Continues testimony on the need for an Office of Homeland Security.
231	Rep. Kropf	Emphasizes the importance of a trust fund for scholarships.
243	Chair Barker	Comments that the working class citizens whose sons and daughters are in the military should receive help to fund their education.
259	Rep. Kropf	Introduces the -1 amendments to HB 3330.
289	Chair Barker	Closes the public hearing on HB 3330. Opens a public hearing on HB 2101, which creates Oregon Homeland Security Department.

HB 2101 – PUBLIC HEARING

300	Jeffrey Johnson	Chief, Tualatin Valley Fire & Rescue. Submits written testimony (EXHIBIT B) and testifies in support of HB 2101. Introduces -1 amendments (EXHIBIT C).
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TAPE 51, A

006	Bill Taylor	Seeks clarification on comments regarding the council.
011	Craig Campbell	Governor's Senior Policy Advisor. Testifies in support of HB 2101.
065	Campbell	Describes the responsibilities of the Office of Homeland Security.
141	Rep. Krieger	Questions whether the Mayor of Portland is able to opt out of this program.
144	Campbell	Relates the purpose of the Department of Homeland Security, regardless of the response from the public.
150	Rep. Krieger	Inquires if an amendment requiring participation would be helpful.
155	Campbell	Suggests that receiving voluntary cooperation will be more effective.
163	Rep. Macpherson	Addresses the reorganization of the new department. Questions whether the federal grant program reducing violent crime and drug use is beyond the bounds of the program.
175	Campbell	Explains why certain grants came with certain responsibilities.
192	Beverlee Stillwell	Director, Oregon Office of Homeland Security. Submits written testimony (EXHIBIT D) and proposed amendments (EXHIBIT E) of the current state of the Office of Homeland Security.
228	Keith Kutler	Attorney in Charge, Government Services Section, Department of Justice (DOJ). Reviews -1 amendments (EXHIBIT C).
257	Taylor	Inquires about HB 3330 and if it must be made compatible with HB 2101.
265	Campbell	Responds affirmatively.
271	Taylor	Questions if the functions and duties are being transferred from the Office of Emergency Management (OEM).
276	Kutler	Responds that the OEM will remain intact and become an office of the Office of Homeland Security.

- 296 Robert Castagna Oregon Catholic Conference. Suggests an amendment to HB 2101 in Section 2, to ensure religious rights.
- 333 Rep. Macpherson Asks for an example of something occurring on religious property contrary to religious beliefs.
- 341 Castagna Provides an example of a religious community center being used as a medical center, and the potential occurrence of physician assistant suicide.
- 368 Greg Hamilton President, Northwest Religious Liberty Association. Expresses support for an amendment to maintain church autonomy.
- 385 Taylor Directs attention to page seven regarding emergency planning and suggests that current law may need to be brought into agreement.
- 406 Chair Barker Questions what should be done.
- 408 Taylor States that he will work on the amendments.

The following materials submitted for the record without public testimony:

- MAJ Lance Englet Deputy Director, Military, Oregon Office of Homeland Security. Graphs detailing aspects of Homeland Security (**EXHIBIT F**)
- Lana Butterfield Northwest Propane Gas Association. Testimony in support of the amendment (**EXHIBIT G**).
- 420 Chair Barker Closes the public hearing on HB 2101.

TAPE 50, B

- 030 Chair Barker Calls a recess at 9:30 a.m. Reconvenes the meeting at 9:35 a.m. Opens a public hearing on HB 2313, which allows imposition of longer sentence upon conviction of crime under certain circumstances if defendant is criminal street gang member.

HB 2313 – PUBLIC HEARING

- 035 Bruce Anderson

House Speakers Office. Testifies in support of HB 2313 and the -1 amendments (**EXHIBIT H**).

- 080 Charles French Deputy District Attorney (D.A.), Multnomah County D.A.'s Office. Testifies in support of HB 2313 and provides information about the gang problem. Describes the tool HB 2313 provides.
- 134 Chief Carla Piluso Gresham Police Department. Testifies in support of HB 2313, and provides background on youth gang prevention strategies.
- 190 Rep. Thatcher Inquires about statistics for California's sentence enhancement.
- 198 Piluso Responds that her own statements are anecdotal.
- 202 Anderson Recalls details of tour he took of gang neighborhoods.
- 217 Piluso Provides information on the dynamics of gang networks.
- 232 Tim Gerkman Lieutenant, Gresham Police Department. Testifies in support of HB 2313. Offers information on gang membership.
- 247 Anderson Recalls more details of the tour of gang gathering spots.
- 260 Gerkman States that gang members are becoming more involved in property crimes, while they have traditionally been involved in violent crimes.
- 266 Anderson Addresses gang problems at Reynolds High School.
- 269 Chair Barker Questions how HB 2313 will assist in prosecuting crimes.
- 274 French Responds that enhancing sentencing on any kind of crimes increases the ability of the state to target that certain activity.
- 311 Chair Barker Relates comments from Chief Foxworth in opposition to HB 2313.
- 323 French Responds that gang members have been over-classified in the past according to association with any known gang member.
- 361 Chair Barker

Inquires if HB 2313 would make a difference in the recent case where a gangster entered a court room to intimidate a witness.

375 French Responds that witness intimidation has been a common problem in the past, and believes that gang association would be admissible evidence.

TAPE 51, B

013 Rep. Macpherson Addresses provision in original bill regarding sentencing, and the specific changes that the -1 amendments would make to aggravated crimes.

022 French Describes the sentencing according to the sentencing guidelines.

039 Moawad Comments on the indeterminate fiscal and the broad range of sentencing possibilities that required specification in the bill.

054 French Clarifies sentencing according to the sentencing guidelines.

067 Rep. Macpherson Comments on the effects of enhancing sentence by two steps on the guidelines.

082 French Confirms that Measure 11 crimes would receive a substantially higher sentence.

095 Rep. Macpherson Comments that the lower levels of seriousness may be more effective for preventing gang activity, while higher level offenses may be tangential related to gang activity.

105 French Believes the tools are currently available through Measure 11 for high level violent crimes.

123 Piluso Agrees that there are already tools available and would not object to an amendment limiting the crimes that may receive enhanced sentences.

128 Moawad Inquires if there are ever witnesses that will not cooperate at all.

133 French Believes non-cooperation is common in Measure 11 cases.

135	Moawad	Questions if the flexibility for enhancing sentences would encourage admissions of guilt.
140	French	Responds affirmatively. Believes it would enhance the ability of the state to bargain before a trial, which avoids witness intimidation.
159	Anderson	Urges committee support of HB 2313 with amendments. Reiterates the serious gang problem in East Multnomah County.
176	John Hummel	Oregon Criminal Defense Lawyers Association (OCDLA). Submits written testimony (EXHIBIT I) and testifies in opposition to HB 2313. Addresses specific concerns within HB 2313 and amendments.
232	Chair Barker	Assumes that OCDLA is not asking that the whole scale be increased along with gang assaults.
238	Hummel	Responds affirmatively. Addresses the issue of similar crimes receiving heightened sentences due to gang involvement.
245	Moawad	Asks what suggestions OCDLA has for language regarding a witness who is called by prosecution to associate the defendant with a gang.
257	Hummel	Suggests that the language is unnecessary.
270	Andrea Meyer	American Civil Liberties Union (ACLU). Testifies in opposition to HB 2313.
277	Chair Barker	Closes public hearing and opens a work session on HB 2313.

HB 2313 – WORK SESSION

281	Rep. Macpherson	Expresses his discomfort with the -1 amendments.
292	Moawad	Suggests moving the bill to the full and working on -2 amendments for the full committee work session.
304	Rep. Macpherson	States that he will support the bill, pending amendments.
306	Rep. Olson	Expresses concerns.

310 Rep. Thatcher **MOTION: Moves to ADOPT HB 2313-1 amendments dated 4/27/05.**

VOTE: 4-0-0

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

313 Rep. Thatcher **MOTION: Moves HB 2313 to the full committee with a DO PASS AS AMENDED recommendation.**

320 Chair Barker States that work will be done on the amendments before the full committee work session.

VOTE: 4-0-0

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

324 Chair Barker **The motion CARRIES.**

REP. BARKER will lead discussion in the full committee.

328 Chair Barker Calls a recess at 10:24 a.m. Reconvenes at 10:28 a.m. Opens a public hearing on HB 2390.

HB 2390 – PUBLIC HEARING

328 Heidi Moawad Counsel. Introduces -1 amendments (**EXHIBIT J**) and -2 amendments (**EXHIBIT K**). Provides background on HB 2390, which creates crime of refusal to identify.

022 Kelly Brooks Legislative Analyst, City of Eugene. Introduces Lieutenant Williams.

027 Kel Williams Lieutenant, City of Eugene Police Department. Submits written testimony (**EXHIBIT L**) and testifies in support of HB 2390.

060 Rep. Macpherson Comments on the maximum punishment for the offense.

070 Moawad States that the -1 amendments would reduce the sentence to a fine.

080	John Hummel	Oregon Criminal Defense Lawyers Association (OCDLA). Submits written testimony (EXHIBIT M) and testifies in opposition to HB 2390. Suggests that HB 2390 is in conflict with the 4th amendment of the Unites States Constitution.
137	Hummel	Continues testimony, citing examples.
154	Andrea Meyer	American Civil Liberties Union (ACLU). Testifies in opposition to HB 2390. Suggests that HB 2390 may also be in conflict with the 5th amendment.
176	Chair Barker	Relates case in Portland that instigated HB 2390. States that the bill will not move today. Closes public hearing on HB 2390. Adjourns the meeting at 10:43 a.m.

EXHIBIT SUMMARY

- A. **HB 3330, written testimony, Rep. Jeff Kropf, 2 pp**
- B. **HB 2101, written testimony, Chief Jeffrey Johnson, 2 pp**
- C. **HB 2101, -1 amendments, Chief Jeffrey Johnson, 1 p**
- D. **HB 2101, written testimony, Beverlee Stillwell, 3 pp**
- E. **HB 2101, proposed amendments, Beverlee Stillwell, 40 pp**
- F. **HB 2101, graphs, Major Lance Englet, 6 pp**
- G. **HB 2101, testimony, Lana Butterfield, 1 p**
- H. **HB 2313, -1 amendments, Bruce Anderson, 2 pp**
 - I. **HB 2313, written testimony, John Hummel, 1 p**
 - J. **HB 2390, -1 amendments, staff, 1 p**
 - K. **HB 2390, -2 amendments, staff, 1 p**
 - L. **HB 2390, written testimony, Kel Williams, 1 p**
 - M. **HB 2390, written testimony, John Hummel, 3 pp**