

**HOUSE JUDICIARY SUBCOMMITTEE**  
**ON CRIMINAL LAW**

**June 14, 2005 Hearing Room 357**

**8:30 A.M. Tapes 76 - 77**

**Corrected 10/12/05**

**MEMBERS PRESENT:           Rep. Jeff Barker, Chair**

**Rep. Greg Macpherson**

**Rep. Andy Olson**

**Rep. Kim Thatcher**

**STAFF PRESENT:           Heidi Moawad, Counsel**

**Joe O’Leary, Counsel**

**Elizabeth Howe, Committee Assistant**

**MEASURES/ISSUES HEARD:**

**HB 3491 – Public Hearing**

**SB 548 – Work Session**

**SB 198A – Public Hearing and Work Session**

**SB 243A – 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 76, A**

003 Chair Barker Calls the meeting to order at 8:50 a.m. Announces that SB 568 A will not be heard today. Opens a public hearing on HB 3491.

### **HB 3491 – PUBLIC HEARING**

009 Heidi Moawad Counsel. Provides background on HB 3491, which creates a crime of disorderly conduct in first degree.

021 Ron Neso Superintendent, North Clackamas School District. Testifies in support of HB 3491. Discusses the emotional, economic, and attendance impact of bomb threats.

086 Joe Johnson President, Clackamas Community College. Testifies in support of HB 3491. Describes the chaos and disorganization of dealing with a bomb threat on campus.

109 Rep. Dave Hunt House District 40. Testifies in support of HB 3491. Submits written testimony on behalf of Lt. Kevin Poppen, Clackamas County Sheriff's Office (**EXHIBIT A**) and Summer R. Gleason, Clackamas County Senior Deputy District Attorney (**EXHIBIT B**).

170 Chair Barker Inquires if the offender had a reason to threaten the school.

173 Neso Responds that the offender had no specific reason for threatening the school.

186 Rep. Thatcher Questions why the intent is necessary.

196 Moawad Explains why the mental state is necessary in a criminal statute.

208 Rep. Hunt Notes that the existing statute has the same intent.

212 Rep. Thatcher Inquires if the school can pursue civil action. Questions whether the person would have refrained if it had been a felony at the time.

214 Neso Responds that the judge could invoke some monetary punishments as well as the school being able to pursue civil actions.

228	Johnson	Believes the offender at the community college probably would not have committed the act if they had known it was a felony.
229	Rep. Hunt	Declares that this same question was posed to the District Attorney and the Sheriff at the time: replied that this type of tool is beneficial for detention as well as prosecution.
238	Neso	Explains that HB 3491 is not a knee jerk reaction to a single incident, but is a threat that occurs every couple years.
248	Rep. Macpherson	Comments on how to affect youthful and inappropriate conduct, and wonders if a third degree felony is the most effective method.
267	Rep. Hunt	Addresses the prevention aspect of a high penalty, with a detention aspect, when the crime has a serious impact on a school's community.
295	Neso	Expresses his conflict between helping young people develop and make intelligent decisions, and his responsibility to his community.
335	Kelly Skye	Oregon Criminal Defense Lawyers Association (OCDLA). Expresses her concerns for branding young people with a felony. Suggests immediately detaining the youth offenders.
370	Skye	Advocates dealing with the youths with a maximum charge of a class A misdemeanor.
392	Chair Barker	Addresses post-911, or post-Columbine issues.
401	Skye	Comments on adding youth with a firearm to the detention statute.
405	Chair Barker	Inquires if the preference of the OCDLA is to amend the detention statute.
413	Skye	Believes that amending the detention statute to include threatening with a bomb is more effective.
423	Chair Barker	Closes the public hearing on HB 3491 and opens a work session on SB 548.

### **SB 548 – WORK SESSION**

## TAPE 77, A

- 012 Joe O’Leary Counsel. Provides background on SB 548, which modifies the crime of interfering with a peace officer. Mentions the subsequent referral to State and Federal Affairs.
- 026 Heidi Moawad Counsel. Explains that the bill should be passed to the full committee without recommendation.
- 033 Rep. Olson **MOTION: Moves SB 548 to the full committee without RECOMMENDATION to passage.**
- VOTE: 4-0-0**
- 037 Chair Barker **Hearing no objection, declares the motion CARRIED.**  
**REP. OLSON will lead discussion on the floor.**
- 039 Chair Barker Closes work session on SB 548. Opens a public hearing on SB 198 A.

## **SB 198 A – PUBLIC HEARING**

- 040 Joe O’Leary Counsel. Provides background on SB 198, which allows a person who is a victim of a personal crime to have a personal representative accompany the person to all phases of the investigation and prosecution of the crime, except for grand jury proceedings and certain child abuse assessments, unless the health care provider, law enforcement agency, protective service worker, or the court believes the personal representative would compromise the process.
- 067 Ronelle Shankle Legislative Liaison, Attorney General, Oregon Department of Justice. Submits written testimony (**EXHIBIT C**) and testifies in support of SB 198.
- 089 Phyllis Barkhurst Executive Director, Sexual Assault Task Force. Testifies in support of SB 198 A.
- 119 Rep. Olson Expresses his concern that investigators would not allow these victims the support they might need.
- 127 Barkhurst Responds that there is too much inconsistency in the current system.

131	Chair Barker	Inquires if the intent is to offer consistent support.
132	Barkhurst	Responds affirmatively.
135	Joe O’Leary	Mentions testimony from Sybil Hebb from the Oregon Law Center ( <b>EXHIBIT D</b> ).
147	Chair Barker	Opens a work session on SB 198 A.

**SB 198 A – WORK SESSION**

148	Rep. Olson	<b>MOTION: Moves SB 198A to the full committee with a DO PASS recommendation.</b>
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**VOTE: 4-0-0**

150	Chair Barker	<b>Hearing no objection, declares the motion CARRIED.</b> <b>REP. BARKER will lead discussion on the floor.</b>
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152	Chair Barker	Closes the work session on SB 198 A and opens a work session on SB 243 A.
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**SB 243 A – WORK SESSION**

153	Joe O’Leary	Counsel. Describes SB 243 A relating to modifying the conditions of post-prison supervision or parole for persons convicted of a sex crime. Introduces the –A5 amendment to SB 243 A ( <b>EXHIBIT E</b> ) to address concern about definition of “near.” Comments on the places that are intended exclusively for children.
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202	Rep. Macpherson	Inquires if that particular issue was resolved.
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208	Rep. Olson	Questions whether Legislative Counsel agreed with the language.
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211	O’Leary	Relates Legislative Counsel’s concerns about the term “adjacent to.”
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228	Rep. Macpherson	Recalls the concerns about constitutionality of the vagueness in the term “near.” Believes it is not an issue of constitutionality.
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245	Rep. Olson	Agrees that the term “near” is too broad in the drafting language.
252	Rep. Thatcher	Inquires if “property adjacent to” includes sidewalks and roads.
255	O’Leary	Responds that the definition of property could mean public and/or private. Discusses the benefits and negatives of the options.
284	Chair Barker	Relates that the parole officer can give written permission to be anywhere.
287	O’Leary	Confirms that the parole officer can give written permission.
292	Rep. Thatcher	Expresses concern about the term “property adjacent to.”
303	O’Leary	States that the drafting language “near” may be subject to constitutional challenges, but “near” offers more discretion to the parole officer.
311	Chair Barker	Comments on the officer’s discretion concerning the term “property adjacent to.”
314	O’Leary	Believes that “adjacent to” could mean the property across the street.
332	Rep. Olson	Addresses the possibility of a parole officer assigning a specific distance for offenders.
341	Michael Washington	Chair, Board of Parole and Post Prison supervision. Relates that special conditions with specific distances are placed on certain offenders, though not currently with sex offenders.
353	Rep. Macpherson	States that “property adjacent to” is more likely to pass the full committee, though the subcommittee prefers “near.”
363	Rep. Olson	Suggests new language.
368	Rep. Olson	<b>MOTION: Moves to ADOPT SB 243A-A5 amendments dated 6/13/05.</b>

**VOTE: 4-0-0**

371	Chair Barker	Hearing no objection, declares the motion <b>CARRIED</b> .
273	Rep. Macpherson	<b>MOTION: Moves SB 243A to the full committee with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 4-0-0</b>
279	Chair Barker	Hearing no objection, declares the motion <b>CARRIED</b> .
		<b>REP. MACPHERSON will lead discussion on the floor.</b>
381	Chair Barker	Closes work session on SB 243. Adjourns the meeting at 9:25 a.m.

#### **EXHIBIT SUMMARY**

- A. HB 3491, written testimony, Rep. Hunt, 1 p
- B. HB 3491, written testimony, Rep. Hunt, 1 p
- C. SB 198A, written testimony, Ronelle Shankle, 2 pp
- D. SB 198A, written testimony, Phyllis Barkhurst, 1 p
- E. SB 243A, -A5 amendment, staff, 1 p