

SENATE COMMITTEE ON JUDICIARY

June 16, 2005
1:00 P.M.

Hearing Room 343
Tapes 171 - 173

Corrected 10/26/05

MEMBERS PRESENT: **Sen. Ginny Burdick, Chair**
 Sen. Roger Beyer
 Sen. Floyd Prozanski
 Sen. Charlie Ringo
 Sen. Vicki Walker
 Sen. Doug Whitsett

MEMBER EXCUSED: **Sen. Charles Starr, Vice-Chair**

STAFF PRESENT: **Joe O'Leary, Counsel**
 Heidi Moawad, Counsel
 Sam Sears, Counsel
 Dale Penn, Committee Assistant

MEASURES/ISSUES HEARD:
 HB 2156 – Work Session
 HB 2224A – Work Session
 HB 3352A – Work Session
 HB 2599A – Work Session
 HB 2322A – Work Session
 HB 2227 – Work Session
 HB 2050A – Work Session
 HB 2742A – Work Session
 HB 2667 – Work Session
 SB 591 – Work Session
 HB 2230A – Work Session
 SB 304 – Work Session
 SB 1041 – Work Session
 HB 3159A – 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 171, A		
003	Chair Burdick	Calls the meeting to order at 1:09 p.m. and opens a work session on HB 2156.
<u>HB 2156 – WORK SESSION</u>		
007	Heidi Moawad	Counsel. Describes HB 2156 relating to ratifying the National Crime Prevention and Privacy Compact.
014	Chair Burdick	Talks about a national fingerprint compact use in Oregon.
024	Sen. Walker	MOTION: Moves HB 2156 to the floor with a DO PASS recommendation.
		VOTE: 6-0-1
		EXCUSED: 1 - Starr
027	Chair Burdick	Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor.
029	Chair Burdick	Closes the work session on HB 2156 and opens a work session on

HB 2224A.

HB 2224A – WORK SESSION

- 033 Heidi Moawad Counsel. Describes HB 2224A relating to requiring the appellate court, after reversing any count but not all counts on appeal, to remand the case to the trial court for resentencing on the remaining count or counts. Describes the –A2 amendment (**EXHIBIT A**).
- 047 Sen. Prozanski Wonders what the scenario would be if a person who was sentenced with four counts and the most major was overturned; asks what would occur if one of the minor counts were overturned.
- 053 Jonathan Fussner Department of Justice. Addresses the scenario raised by Sen. Prozanski relating to four consecutive sentences where one count was dropped on appeal.
- 072 Sen. Prozanski Asks about subsequent sentencing that was arising out of the same criminal incidence: would there be four separate sentences.
- 080 Fussner Talks about the scenario raised by Sen. Prozanski dealing with four charges resulting from a single criminal occurrence.
- 096 Sen. Walker** **MOTION: Moves to ADOPT HB 2224A-A2 amendments dated 6/9/05.**
VOTE: 6-0-1
EXCUSED: 1 - Starr
- 099 Chair Burdick**
101 Sen. Walker **Hearing no objection, declares the motion CARRIED.**
MOTION: Moves HB 2224A to the floor with a DO PASS AS AMENDED recommendation.
VOTE: 6-0-1
EXCUSED: 1 - Starr
- 103 Chair Burdick** **Hearing no objection, declares the motion CARRIED.**
SEN. PROZANSKI will lead discussion on the floor.
- 106 Chair Burdick Closes the work session on HB 2224A and opens work session on HB 3352A.

HB 3352A – WORK SESSION

- 109 Sam Sears Counsel. Describes HB 3352A relating to providing that the surviving parent of a decedent, or the heirs or devisees of a parent, does not inherit by intestacy if the decedent lacked the capacity to make a will for at least five years before the death and the parent failed to provide support for the decedent for a period of 10 years or more before the decedent attained 18 years of age, or if the decedent died before attaining 18 years of age and the parent provided no support for the decedent during the life of the decedent. Describes the –A5 amendment (**EXHIBIT B**). Gives a legal background on the bill.
- 144 Sen. Prozanski Agrees with the summary given by counsel and clarifies the effects of the bill.
- 151 Rep. Tom Butler House District 60. Testifies in support of HB 3352A.
- 162 Sen. Starr** **MOTION: Moves to ADOPT HB 3352A-A5 amendments dated 6/13/05.**
VOTE: 6-0-1
EXCUSED: 1 - Starr
- 164 Chair Burdick**
165 Sen. Walker **Hearing no objection, declares the motion CARRIED.**
MOTION: Moves HB 3352A to the floor with a DO PASS AS AMENDED recommendation.
VOTE: 6-0-1
EXCUSED: 1 - Starr

168	Chair Burdick	Hearing no objection, declares the motion CARRIED. SEN. RINGO will lead discussion on the floor.
171	Chair Burdick	Closes the work session on HB 3352A and opens a work session on HB 2599A.
<u>HB 2599A – WORK SESSION</u>		
178	Heidi Moawad	Counsel. Describes HB 2599A relating to exempting from public disclosure personal information about the customers or the public body providing water, sewer, or storm drain services. Introduces and describes the –A6, -A7, and –A8 amendments (EXHIBITS C – E).
202	Chair Burdick	Talks about wanting to further address this concern in an interim committee.
218	Moawad	Discusses the information that would be kept on file.
228	Sen. Beyer	Stresses that water services require a driver’s license number as well.
231	Chair Burdick	Recommends moving the bill.
242	Sen. Prozanski	Inquires about a non-concurrence added into the bill.
271	Sen. Beyer	Declares his opposition to the –A7 amendment; believes that none of this information should be given out.
278	Sen. Prozanski	Retracts his earlier statement and supports the original bill.
304	Sen. Whitsett	Talks about his support for the original bill.
316	Moawad	Discusses the –A8 amendment dealing with the Oregon Department of Corrections.
336	Sen. Walker	Comments on the –A6 amendment she sponsored that addressed an issue of mandatory reporting.
389	Chair Burdick	Talks about the action she wishes to take on this bill: non-concurrence add-on later.
400	Sen. Beyer	Stresses his opposition to the –A7 amendment.
407	Sen. Walker	MOTION: Moves to ADOPT HB 2599A-A7 amendments dated 6/16/05. VOTE: 4-2-1 AYE: 4 - Prozanski, Ringo, Walker, Burdick NAY: 2 - Beyer, Whitsett EXCUSED: 1 - Starr C.
424	Chair Burdick	The motion CARRIES.
433	Sen. Walker	MOTION: Moves to ADOPT HB 2599A-A6 amendments dated 6/16/05. VOTE: 6-0-1 EXCUSED: 1 - Starr
438	Chair Burdick	Hearing no objection, declares the motion CARRIED.
445	Sen. Walker	MOTION: Moves to ADOPT HB 2599A-A8 amendments dated 6/16/05.
TAPE 172, A		
009	Sen. Beyer	Inquires about who sponsored this amendment.
014	Moawad	States that the “Supervising Network of Sex Offenders within the state of Oregon” sponsored the bill: umbrella corporation representing many different groups. VOTE: 6-0-1 EXCUSED: 1 - Starr
022	Chair Burdick	Hearing no objection, declares the motion CARRIED.
023	Sen. Walker	MOTION: Moves HB 2599A to the floor with a DO PASS AS AMENDED recommendation.
027	Sen. Beyer	Declares his opposition to the current incarnation of the bill with the –A7 amendment.

031	Sen. Prozanski	States that he is giving a courtesy vote currently until he can better research the issue to protect the consumers' information. VOTE: 4-2-1 AYE: 4 - Prozanski, Ringo, Walker, Burdick NAY: 2 - Beyer, Whitsett EXCUSED: 1 - Starr C.
058	Chair Burdick	The motion CARRIES. SEN. BURDICK will lead discussion on the floor.
062	Chair Burdick	Closes the work session on HB 2599A and opens a work session on HB 2322A.
<u>HB 2322A – WORK SESSION</u>		
065	Heidi Moawad	Counsel. Describes HB 2322A relating to expanding assault in the first degree in include intentionally or knowingly causing serious physical injury to a child under 13 years of age. Introduces and describes the –A2 amendment (EXHIBIT F).
078	Chair Burdick	Talks about her support of the bill and the need for the –A2 amendment.
090	Sen. Whitsett	Inquires about the age limit of the perpetrator.
093	Moawad	Discusses the age limit of the perpetrator; comments on children/youth offenders.
107	Sen. Whitsett	Asks about assault in the first degree.
110	Moawad	Replies that a child would only be charged in the juvenile courts: Measure 11 does not apply.
114	Sen. Prozanski	States that the courts can waive a child into an adult court.
118	Joe O'Leary	Counsel. Talks about the movement of juveniles into adult courts to face harsher Measure 11 standards.
136	Sen. Walker	MOTION: Moves to ADOPT HB 2322A-A2 amendments dated 6/15/05. VOTE: 5-0-2 EXCUSED: 2 - Beyer, Starr
140	Chair Burdick	Hearing no objection, declares the motion CARRIED.
141	Sen. Walker	MOTION: Moves HB 2323A to the floor with a DO PASS AS AMENDED recommendation.
144	Sen. Ringo	Addresses earlier testimony that talked about passing this bill to prevent this type of abuse. Discusses the effects of Measure 11. Declares his opposition to the bill.
168	Sen. Whitsett	Asks for a definition of "protracted impairment of health."
171	Moawad	Clarifies the definition of "protracted impairment of health."
193	Sen. Whitsett	Wonders if emotional health could be included in the definition.
196	Moawad	Replies that she does not believe mental or emotional distress fall under the definition.
206	Walt Beglau	Marion County District Attorney. States that emotional or mental injury would not fall under this statute. Stresses that this bill applies mainly to young children who have been abused seriously. Declares that there is no set time period for injuries.
240	Chair Burdick	Asks about case law on this issue.
242	Beglau	Talks about the case law that address serious physical injury.
258	Gina Skinner	Washington County District Attorney's Office. Addresses the term "protracted" and how there is little to no true definition.
267	Sen. Ringo	Asks if "protracted" applies to more than a month.
269	Skinner	Responds that it would be up to a prosecutor/judge/grand jury to determine that criteria.
283	Sen. Ringo	Contends that a serious injury may result in a shorter amount of time that would be considered "protracted impairment."

287	Beglau	Details the different testimony (medical, etc.) that would be needed to prove the injury was “protracted.”
310	Sen. Ringo	States he is even less comfortable with no solid definition of the term.
317	Beglau	Argues that such a loose definition is needed.
326	Sen. Beyer	Asks for the opinion of the witnesses on the –A2 amendment.
332	Beglau	Talks about his ideas for the amendment: child neglect 1 and 2, consistencies in child abuse laws, etc.
349	Sen. Prozanski	Declares his comfort level with the bill and the –A2 amendment.
379	Sen. Ringo	Stresses that leaving the ambiguity of the term open will lead to litigation.
380	Chair Burdick	VOTE: 5-1-1 AYE: 5 - Beyer, Prozanski, Walker, Whitsett, Burdick NAY: 1 - Ringo EXCUSED: 1 - Starr C.
419	Chair Burdick	The motion CARRIES. SEN. PROZANSKI will lead discussion on the floor.
426	Chair Burdick	Closes the work session on HB 2322A and opens a work session on HB 2227.
<u>HB 2227 - WORK SESSION</u>		
431	Heidi Moawad	Counsel. Describes HB 2227 relating to authorizing an introduction of victim impact evidence in non-death penalty aggravated murder sentencing proceedings. Introduces and describes the -1 amendment (EXHIBIT G).
TAPE 171, B		
018	Chair Burdick	Talks about the need for the amendment she proposed, but does not like the drafting of this particular -1 amendment.
035	Sen. Walker	MOTION: Moves HB 2227 to the floor with a DO PASS recommendation. VOTE: 6-0-1 EXCUSED: 1 - Starr
038	Chair Burdick	Hearing no objection, declares the motion CARRIED. SEN. WALKER will lead discussion on the floor.
040	Chair Burdick	Closes the work session on HB 2227 and opens a work session on HB 2050A.
<u>HB 2050A – WORK SESSION</u>		
043	Heidi Moawad	Counsel. Describes HB 2050A relating to requiring as a condition of probation, parole, or post-prison supervision that certain persons not reside within three miles of the victim of the crime if the victim requests the imposition of the condition. Introduces and describes the –A3 amendment (EXHIBIT H).
072	Moawad	Addresses the earlier concern of the victim moving within three miles of the offender.
119	Moawad	Talks about the confidentiality of the victim’s address.
149	Sen. Ringo	Discusses the concerns with the victim moving within three miles of the perpetrator in an amendment.
162	Sen. Walker	Appreciates the efforts made by Sen. Ringo to address her concerns with forcing an offender to continually move out of range of a victim if that victim moved within the three miles of the offender.
170	Sen. Beyer	Appreciates the attempt for the amendment to address his hesitance to force the offender to move if the victim moved within the three miles.

191	Sen. Ringo	<p>MOTION: Moves HB 2050A to the floor WITHOUT RECOMMENDATION as to passage and BE REFERRED to the committee on SENATE RULES.</p> <p>VOTE: 6-0-1</p> <p>EXCUSED: 1 - Ringo</p>
206 210	Chair Burdick Chair Burdick	<p>Hearing no objection, declares the motion CARRIED.</p> <p>Closes the work session on HB 2050A and opens a work session on HB 2742A.</p>
<u>HB 2742A – WORK SESSION</u>		
217	Joe O’Leary	Counsel. Describes HB 2742A relating to establishing the Safe Routes to Schools Fund. Introduces and describes the –A2 amendment (EXHIBIT I).
237 247	Rep. Chuck Hurley Sen. Walker	House District 54. Testifies in support of HB 2742A. MOTION: Moves HB 2742A to the floor with a DO PASS recommendation.
252	Sen. Beyer	Talks about the fiscal analysis of the bill. VOTE: 6-0-1
269	Chair Burdick	EXCUSED: 1 - Starr Hearing no objection, declares the motion CARRIED. SEN. DEVLIN will lead discussion on the floor.
273	Chair Burdick	Closes the work session on HB 2742A and opens a work session on HB 2667.
<u>HB 2667 – WORK SESSION</u>		
276	Heidi Moawad	Counsel. Describes HB 2667 relating to expanding the definition of “sex crime” to include public or private indecency, if the person convicted has a prior conviction for public or private indecency.
298	Sen. Walker	MOTION: Moves HB 2667 to the floor with a DO PASS recommendation. VOTE: 6-0-1
303	Chair Burdick	EXCUSED: 1 - Starr Hearing no objection, declares the motion CARRIED. SEN. BEYER will lead discussion on the floor.
278	Chair Burdick	Closes the work session on HB 2667 and opens a work session on SB 591.
<u>SB 591 – WORK SESSION</u>		
318	Joe O’Leary	Counsel. Describes SB 591 relating to clarifying which parts of a roadway are considered adjacent to a lane in which the driver’s vehicle is traveling for purposes of the offense of failure to stop and remain stopped for a pedestrian in a crosswalk.
332	Sen. Prozanski	Clarifies the effects of SB 591.
358	Sen. Beyer	Declares his opposition to the bill.
369	Sen. Walker	MOTION: Moves SB 591 to the floor with a DO PASS recommendation. VOTE: 5-1-1 AYE: 5 - Prozanski, Ringo, Walker, Whitsett, Burdick NAY: 1 - Beyer EXCUSED: 1 - Starr C.
381	Chair Burdick	The motion CARRIES. SEN. PROZANSKI will lead discussion on the floor.
395	Chair Burdick	Closes the work session on SB 591 and opens a work session on HB 2230A.

HB 2230A – WORK SESSION

399	Joe O’Leary	Counsel. Describes HB 2230A relating to defining the term “economic damages” for the purposes of restitution. Introduces and describes the –A2 amendment (EXHIBIT J).
451	Sen. Whitsett	Asks about the constitutionality of this expansion.
TAPE 173, A		
003	O’Leary	Talks about restitution not being a civil action in nature; it has a punitive, rehabilitative, etc. element to it.
041	Sen. Walker	MOTION: Moves to ADOPT HB 2230A-A2 amendments dated 6/10/05.
		VOTE: 6-0-1
		EXCUSED: 1 - Starr
044	Chair Burdick	Hearing no objection, declares the motion CARRIED.
045	Sen. Walker	MOTION: Moves HB 2230A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0-1
		EXCUSED: 1 - Starr
047	Chair Burdick	Hearing no objection, declares the motion CARRIED. SEN. WHITSETT will lead discussion on the floor.
051	Chair Burdick	Closes the work session on HB 2230A.
063	Chair Burdick	Opens a work session on SB 304.
<u>SB 304 – WORK SESSION</u>		
064	Sen. Walker	MOTION: Moves SB 304 to the floor WITHOUT RECOMMENDATION as to passage and BE REFERRED to the committee on SENATE RULES.
		VOTE: 6-0-1
		EXCUSED: 1 - Starr
069	Chair Burdick	Hearing no objection, declares the motion CARRIED.
070	Char Burdick	Closes the work session on SB 304 and opens a work session on SB 1041.
<u>SB 1041 – WORK SESSION</u>		
072	Sen. Walker	MOTION: Moves SB 1041 to the floor WITHOUT RECOMMENDATION as to passage and BE REFERRED to the committee on SENATE RULES.
		VOTE: 6-0-1
		EXCUSED: 1 - Starr
076	Chair Burdick	Hearing no objection, declares the motion CARRIED.
078	Chair Burdick	Closes the work session on SB 1041 and opens a work session on HB 3159A.
<u>HB 3159A – WORK SESSION</u>		
080	Sen. Walker	MOTION: Moves HB 3159A to the floor WITHOUT RECOMMENDATION as to passage and BE REFERRED to the committee on SENATE RULES.
		VOTE: 6-0-1
		EXCUSED: 1 - Starr
085	Chair Burdick	Hearing no objection, declares the motion CARRIED.
088	Chair Burdick	Closes the work session on HB 3159A.

EXHIBIT SUMMARY

- A. **HB 2224A, -A2 amendment, staff, 3 pp**
- B. **HB 3352A, -A5 amendment, staff, 7 pp**
- C. **HB 2599A, -A6 amendment, staff, 4 pp**
- D. **HB 2599A, -A7 amendment, staff, 1 p**
- E. **HB 2599A, -A8 amendment, staff, 4 pp**
- F. **HB 2322A, -A2 amendment, staff, 1 p**
- G. **HB 2227, -1 amendment, staff, 1 p**
- H. **HB 2050A, -A3 amendment, staff, 2 pp**
- I. **HB 2742A, -A2 amendment, Sen. Devlin, 2 pp**
- J. **HB 2230A, -A2 amendment, staff, 1 p**