

## HOUSE COMMITTEE ON JUDICIARY

January 20, 2003 Hearing Room 357

1:00 pm Tapes 7 - 8

**MEMBERS PRESENT:**        Rep. Max Williams, Chair  
                                 Rep. Robert Ackerman, Vice-Chair  
                                 Rep. Gordon Anderson, Vice-Chair  
                                 Rep. Jeff Barker  
                                 Rep. Bob Jenson  
                                 Rep. Jerry Krummel  
                                 Rep. Greg Macpherson  
                                 Rep. Floyd Prozanski  
                                 Rep. Lane Shetterly

**STAFF PRESENT:**        Bill Taylor, Counsel  
                                 Craig Prins, Counsel  
                                 Bill Joseph, Counsel  
                                 Ann Martin, Committee Assistant

**MEASURE/ISSUES HEARD:**        Measure Introduction: LC 363, 1770  
                                 HB 2177 Public Hearing  
                                 HB 2050 Public Hearing  
                                 HB 2057 Public Hearing  
                                 HB 2099 Public Hearing

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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.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 7, A</b>		
002	Chair Williams	Calls the meeting to order at 1:24 pm.
008	Bill Taylor	Committee Counsel. Introduces Legislative Counsel LC drafts 363 and 1770 ( <b>EXHIBITS A &amp; B</b> ).
<b>019</b>	<b>Chair Williams</b>	<b>MOTION: Moves LC 363 BE INTRODUCED as a committee bill.</b> <b>VOTE: 9-0</b>
<b>021</b>	<b>Chair Williams</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>026</b>	<b>Chair Williams</b>	<b>MOTION: Moves LC 1770 BE INTRODUCED as a committee bill.</b> <b>VOTE: 9-0</b>
<b>028</b>	<b>Chair Williams</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
038	Chair Williams	Opens a public hearing on HB 2177.
<b><u>HB 2177 PUBLIC HEARING</u></b>		
048	Craig Prins	Committee Counsel. Introduces HB 2177 which provides that inmates may not bring civil stalking action against officer, employee or agent of Department of Corrections for official conduct of officer, employee or agent. Submits definitions ( <b>EXHIBIT C</b> ).

061	Mitch Morrow	Assistant Director, Oregon Department of Corrections. Submits testimony ( <b>EXHIBIT D</b> ) and testifies in support of HB 2177.
091	Mary Botkin	American Federation of State, County and Municipal Employees (AFSCME). Testifies in support of HB 2177.
110	Jeff VanValkenburgh	Department of Justice. Testifies on HB 2177.
128	Chair Williams	Asks about the case in which the judge granted the order.
135	VanValkenburgh	Discusses the case and says that in most cases an inmate's safety is not at risk in an institution and there are other remedies available.
159	Rep. Shetterly	Asks what the other claims were in that case.
161	VanValkenburgh	Identifies the other claims of the inmate.
199	Rep. Ackerman	Asks how the order was issued.
205	Van Valkenburgh	Says that a temporary court stalking order was issued based on the allegations made.
218	Rep. Prozanski	Asks in which county the actual incident occurred and if an affidavit had to be filed.
227	Van Valkenburgh	Answers that it was issued in Marion County and does not believe there was an affidavit filed.
232	Chair Williams	Says that Judge Lipscomb was the judge that issued the order, but could not attend today. Adds that Judge Lipscomb said the wording of the statute mandated that he issue the order.
252	Rep. Shetterly	Remarks that this was not a situation they had in mind when they adopted the stalking order, and questions what other options inmates have.
269	Van Valkenburgh	Informs that prior to this remedy being available, inmates have had recourse in a variety of ways and explains.
297	Rep. Shetterly	Notes that there are state and federal remedies available for real cases of abuse to inmates.
312	Rep. Prozanski	Asks for comments from witnesses on whether there should be affidavits required to be filed to support the allegations, and if an emergency clause would be appropriate for this legislation.
332	Van Valkenburgh	Answers that the Department of Justice has no position on this bill, and adds that it is inappropriate to have this extraordinary remedy apply in a prison. Says that an emergency clause might be effective.
365	Chair Williams	Asks about the language on page1, line 14, and if it will cause problems.
382	Van Valkenburgh	Stresses that they do have some concerns and discusses them.
401	Chair Williams	Wonders if there is a way to write the language so it is not so broad.
419	Rep. Shetterly	Emphasizes that the question of this committee is: do we want to make stalking orders available as a remedy to inmates.

**TAPE 8, A**

002	Chair Williams	Questions if an inmate on parole is considered an inmate for purposes of the statute.
008	Van Valkenburgh	Adds that there are also criminal stalking protective statutes and that is another piece to look at.
013	Morrow	Believes that once these issues get loose throughout our institutions there will be a tumbling effect and there will be many more cases to follow.
021	Botkin	Stresses that the professional men and women that work for the Department of Corrections do not tolerate inappropriate behavior among their colleagues towards inmates and explains that she does not

080 Ingrid Swenson think this bill is necessary. Oregon Criminal Defense Lawyers Association (OCDLA). Testifies in support of HB 2177. Points out that the stalking bill is very broad. Says that there are ways of exempting corrections officers from inappropriate efforts by inmates to take this kind of action.

132 Rep. Krummel Wonders if this situation happens a lot and asks about corrections officers' scope of official duties.

143 Swenson Believes that getting rid of the right to a stalking order is not the appropriate remedy.

153 Rep. Jenson Asks if the implication here is that the inmate's family would not have recourse under this statute if this bill was enacted.

160 Swenson Answers that if the expansion that was discussed was added and the limitation on page 2 was removed, then the family member of the inmate might not have an appropriate remedy.

166 Rep. Barker Explains that if it's outside the scope of their official duties then the corrections officer would lose his job.

178 Swenson Says that's true as long as the language about "official duties" stays in the bill.

193 Brian DeLashmutt Association of Oregon Corrections Employees. Testifies in support of HB 2177. Addresses concerns of the committee.

196 Chair Williams Asks what happens if a corrections officer takes a romantic interest in an inmate.

231 DeLashmutt Defers question to the Department of Corrections.

241 Botkin States that in the past the inmates were not the ones with the complaints and that the Department of Corrections does not tolerate inappropriate behavior like that.

280 Van Valkenburgh Discusses bill and possible amendments.

282 Chair Williams Says that they will not go into a work session today on the bill and recommends discussion of amendments and emergency clause.

316 Bill Joseph Committee Counsel. Wonders if there is a way to eliminate the automatic issuance of a temporary stalking order.

332 Van Valkenburgh States that what this remedy does is expand remedies for inmates and they are continuing to defend this issue. Thinks they need to remove this remedy for inmates and curtail frivolous lawsuits.

361 Rep. Shetterly Comments on the Oregon Youth Authority and county jails being included in this issue.

371 Chair Williams Closes public hearing on HB 2177. Opens a public hearing on HB 2057.

**HB 2057 PUBLIC HEARING**

380 George Reimer Deputy Director, Oregon State Bar. Testifies in support of HB 2057 which provides that election not be held for position on Board of Governors of Oregon State Bar, or for position in house of delegates of Oregon State Bar, for which only single candidate has been nominated.

**TAPE 7, B**

003 Reimer Continues testimony in support of HB 2057.

010 Rep. Krummel Asks why they picked the 6-month time period.

020 Reimer Answers that the court might need that much time to have the case reviewed.

035 Chair Williams Questions that if both sides decide not to have a case reviewed, then would the Supreme Court publish the notice of the decision of the

041 Reimer Bar.  
Says that the decisions of the disciplinary board are published in the Oregon State Bar monthly.

055 Chair Williams Explains that if both sides were satisfied with the result then the Supreme Court would not have to review it. Closes the public hearing on HB 2057 and opens a public hearing on HB 2050.

### **HB 2050 PUBLIC HEARING**

090 Bill Taylor Committee Counsel. Introduces HB 2050 which expands definition of abuse for purposes of child abuse reporting.

100 Chair Williams Discusses bill.

145 Rep. Shetterly Wonders what level of knowledge is required for one to have to report the child abuse.

154 Chair Williams Answers that the language used is “endangering” and acts as a qualifier. Adds that the standard is “any private or public official having reasonable cause to believe” for requiring reporting of child abuse.

175 Rep. Barker Comments that in the summary it doesn’t mention manufactured, but just mentions methamphetamines present. Asks if the statute is more specific than that.

180 Chair Williams Answers that the bill is broader than they want it to be and needs some revision.

187 Rep. Ackerman Says that there may be a statutory definition for a precursor for methamphetamine.

191 Chair Williams States that nearly every session they redefine what constitutes a precursor for methamphetamine and that is another issue to look at.

213 Rep. Jenson Questions if the manufacturer is under 18 (a youth) would there need to be a law in the Juvenile Code regarding this issue.

224 Chair Williams Says that he doesn’t believe so.

234 Taylor Explains what “endangering the welfare of a minor” means.

258 Chair Williams Shares that they will not do anything more with the bill today. Closes the public hearing on HB 2050 and opens a public hearing on HB 2099.

### **HB 2099 PUBLIC HEARING**

271 Andrew Aubertine Assistant Attorney General, Department of Justice. Testifies in support of HB 2099 which requires attorneys for antitrust class of natural persons to notify Attorney General of filing and proposed settlement of claims under state antitrust laws.

416 Jim Gardner Attorney representing Microsoft. Testifies in support of HB 2099.

### **Tape 8, B**

004 Chair Williams Asks if the Attorney General has the authority to appear and intervene in a settlement case.

014 Aubertine Answers yes, the Attorney General already has the authority to intervene and adds that this bill is purely a notice bill.

024 Rep. Ackerman Asks if this is a notice requirement and not a jurisdictional requirement.

025 Aubertine Says yes, that is correct.

026 Rep. Ackerman Explains that he is concerned about the consequences of a class action counsel in failing to comply with these provisions.

029 Aubertine Says that that was an issue the committee members raised, but decided not to put that language in the bill.

046	Rep. Ackerman	Questions if the Attorney General's office does not intervene does one still have authority to participate in the settlement process.
050	Aubertine	Answers yes, they feel they do have authority to participate.
059	Rep. Macpherson	Asks him to explain the scope of antitrust class action laws in Oregon.
064	Aubertine	Explains and stresses that the Attorney General is very aware of lawsuits in Oregon, but points out that it will be more difficult to track lawsuits in other states.
091	Chair Williams	Points out that there is a draft report on "Amending the Oregon Antitrust Act" that will be finalized and will become available to the committee.
109	Rep. Shetterly	Wonders if the report addresses what the committee discussed.
120	Aubertine	Answers that that point is not covered in the report, but they will include it.
127	Chair Williams	Closes the public hearing on HB 2099 and adjourns the meeting at 2:53 p.m.

### **EXHIBIT SUMMARY**

**A – LC 363, submitted by staff, dated 1/17/03, 34 pgs.**

**B – LC 1770, submitted by staff, dated 1/20/03, 3 pgs.**

**C – HB 2177, definitions, submitted by Craig Prins, 1 pg.**

**D – HB 2177, memo from Benjamin de Haan, Interim Director, Oregon Department of Corrections, submitted by Mitch Morrow, 2 pgs.**