

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

January 30, 2001  
8:30 a.m.

Hearing Room 357  
Tapes 7 - 8

**MEMBERS PRESENT:**      **Rep. Max Williams, Chair**  
                                 **Rep. Robert Ackerman**  
                                 **Rep. Jo Ann Bowman**  
                                 **Rep. Wayne Krieger**  
                                 **Rep. Lane Shetterly**  
                                 **Rep. Vicki Walker**  
                                 **Rep. Carl Wilson**

**STAFF PRESENT:**        **Bill Taylor, Counsel**  
                                 **Shannon Reed, Assistant**

**MEASURE/ISSUES HEARD:**      **HB 2388 Public Hearing and Work Session**  
                                 **HB 2355 Public Hearing**  
                                 **HB 2392 Public Hearing and Work Session**  
                                 **HB 2403 Public Hearing**  
                                 **HB 2379 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> 005	Rep. Bowman	Opens the meeting at 8:32 a.m. and opens a public hearing on HB 2392 which concerns mandatory income withholding for child support, HB 2388 which relates to appeals procedure in juvenile cases and HB 2355 which allows a juvenile to seek post-adjudication relief.
<b><u>HB 2392, HB 2355 AND HB 2388 PUBLIC HEARING</u></b>		
012	<b>Senator Kate Brown</b>	<b>District 7</b> Thanks those who have helped draft the bills.
055	<b>Ronelle Shankle</b>	<b>Department of Justice, Division of Child Support</b> Submits testimony and testifies in support of HB 2392 relating to creation of additional exemption from mandatory income withholding for child support. States that families need more flexibility in order to collect funds owed and it targets certain situations when withholding is a barrier to rehabilitating and reuniting the family ( <b>EXHIBIT A</b> ).
171	<b>Michael Livingston</b>	<b>Senior Assistant Attorney General, Appellate Division Department of Justice.</b> Submits testimony and testifies in support of HB 2355 which

relates to juvenile post-adjudication relief and HB 2388 which relates to juvenile appeals procedure. States that as a matter of due process and equal protection, juveniles should have the same appeal process to set aside juvenile adjudication on appeal, because adjudication can be used in sentencing in a later crime **(EXHIBIT B)**.

281 Chair Williams Asks Sen. Brown if shortening and simplifying the bill as recommended would be agreeable to all those who worked on it.

285 Sen. Brown Replies that the committee has not reviewed every issue, but sees no reason that it would be a concern.

297 Rep. Lowe Supports Sen. Brown and thanks her for hard work on the bill.

303 Chair Williams Asks if Sen. Brown would like the bill to be brought back amended.

309 Sen. Brown Responds yes.

311 **Kathie Osborn** **Attorney, Juvenile Rights Project.**  
 Testifies in support of HB 2355 and states that the bill clarifies the need for youth to receive quality representation. Says that this bill gives petitioners a path to follow in cases of inadequate representation.

384 Rep. Walker Asks if juvenile offenses that are not expungible go against their record when determining Measure 11 sentences.

389 Osborn Responds yes, under sentencing guidelines, on Measure 11 or any offense where they are subject to adult jurisdiction.

394 Rep. Walker Comments that inadequate counsel is doubly troublesome under Measure 11 or future juvenile adjudication.

406 Chair Williams Asks about other non-expungible offenses.

411 Osborn Responds that she believes all Measure 11 offenses are non-expungible offenses as well as some burglary charges.

436 Walker Asks why there isn't better representation for juveniles.

442 Osborn Replies that it varies across the state, that some attorneys don't know the difference between an adult and child when dealing with intent and psychology and the law.

481 Rep. Bowman Asks if it is a different process when a juvenile is tried as an adult versus the same crime tried as a juvenile.

492 Osborn Replies that it again depends on the area of the state. States that some areas have special contracts with juvenile and or Measure 11 practitioners, but most areas have attorneys who do both.

**TAPE 8, A**

033 Livingston Testifies that HB 2388 resolves the ambiguity about juvenile representation. Says that in juvenile dependency or termination of parental rights cases it is usually not the same attorney as a delinquency case. The delay in getting a court-appointed attorney for the appeal process could run past the 30-day appeal deadline resulting in the loss of the right of appeal. Says that this bill will require that the delinquency attorney initiate the appeal process.

075 Chair Williams Asks if he knows of specific cases.

077 Livingston Responds yes.

104 Chair Williams Wonders about recourse.

107 Livingston Speculates that the delay is because the attorney has a contract that does not make arrangements for appeals. Also states that the appeal deadline is not very long considering the amount of paperwork involved and that the fiscal impact is also a

		consideration.
136	Rep. Ackerman	Wonders about the citing of termination of parental rights as the main problem and asks if it is the only instance for this issue.
141	Livingston	Responds no, that it will apply to all juvenile cases, but termination of parental rights has been the most troublesome.
153	<b>Kathie Osborn</b>	<b>Juvenile Rights Project</b>
		Testifies in support of HB 2388 because it aids in the quality of representation, including the right to appeal.
200	<b>Bill Houser</b>	<b>Oregon Criminal Defense Lawyers Association</b>
		Testifies in opposition to HB 2388. Responds that it is a problem, but they feel it is the appellate attorney's responsibility.
238	Osborn	Clarifies that the State Public Defender contract has no provision for juvenile appeals and that there is no one place for juveniles to get help for appeals.
257	Rep. Bowman	Says that it makes sense to know who is responsible for the initial paperwork, but expresses confusion.
275	Houser	Responds that appellate lawyers should initiate the paperwork so that one attorney is following the entire case.
290	Livingston	States that there is nothing in this statute that requires a trial lawyer to follow-up with appeal and that a process is needed when a trial lawyer sends a juvenile away with no follow-up support.
329	Rep. Walker	Asks when does the trial lawyer obligation end.
348	Houser	Responds that currently the statute states that with the documents necessary to commence an appeal is the end of the trial lawyer's obligation.
352	Rep. Ackerman	Asks aren't we just codifying trial counsel's ethical responsibility to preserve the rights of his client.
367	Houser	Responds that the responsibility ends with the filing of appeal papers or the obtaining of appellate counsel.
386	<b>Dave Kenagy</b>	<b>Executive Director, Oregon Law Commission</b>
		Submits testimony and testifies in support of HB 2388 and the -1 amendments ( <b>EXHIBITS C and D</b> ).
399	<b>Jim Nass</b>	<b>Legal Counsel, Appellate Courts</b>
		Testifies in support of HB 2388-1 and that the failure to file timely may not be the persons fault. Often the process or trial counsel was at fault. Says that if trial counsel doesn't do it in timely fashion, somebody needs to follow-up and the court should grant a delayed appeal.
<b>TAPE 7, B</b>		
013	Rep. Lowe	Supports the measure and applauds the work group that compiled it.
018	Rep. Shetterly	Supports HB 2388 as it presents a sharing of professional and personal responsibility.
026	<b>Ann Christian</b>	<b>Director, Indigent Defense Services Division</b>
		Testifies in support of HB 2388. Clarifies that indigent contracts provide that trial counsel shall assist in appeal and that there will always be cracks in the system.
055	Chair Williams	Closes the public hearing on HB 2388, HB 2355, and HB 2392 and opens a work session on 2392.

**WORK SESSION HB 2392**

064 Rep. Bowman **MOTION: Moves HB 2392 to the full committee with a DO PASS recommendation.**  
**VOTE: 7-0**

064 Chair Williams **Hearing no objection, declares the motion CARRIED.**  
**BOWMAN will lead discussion in the full committee.**

064 Chair Williams Closes the work session on HB 2392 and opens a work session on HB 2388.

**WORK SESSION HB 2388**

069 Rep. Bowman **MOTION: Moves to ADOPT HB 2388-1 amendments dated 1/30/01.**  
**VOTE: 7-0**

070 Chair Williams **Hearing no objection, declares the motion CARRIED.**

071 Rep. Bowman **MOTION: Moves HB 2388-1 to the floor with a DO PASS AS AMENDED recommendation.**  
**VOTE: 7-0**

074 Chair Williams **Hearing no objection, declares the motion CARRIED.**  
**REP. LOWE will lead discussion on the full committee.**

079 Chair Williams Closes the work session on HB 2388 and announces that HB 2355 will be held over. Opens public hearing of HB 2379, relating to unauthorized use of a vehicle.

**HB 2379 PUBLIC HEARING**

099 Bill Houser **Oregon Criminal Defense Lawyers Association**  
Submits testimony and testifies in favor of HB 2379 (**EXHIBIT E**).  
Explains the difference between unauthorized use of a vehicle and theft. Believes that a Class C felony is too harsh when applied to mass transit.

144 Chair Williams Wonders if conviction means automatic exclusion as in the theft of a small item from a store.

151 Houser Answers yes.

162 Chair Williams Asks if Tri-Met can prohibit the offender if he has purchased a ticket.

165 Houser Answers yes.

173 Kathie Osborn **Juvenile Rights Project**  
Concurs with Mr. Houser. Says it is hard to fight a Tri-Met exclusion.

199 Rep. Lowe Wonders if the issuing person is a police officer and if they have specific training on charging methods.

207 Houser Responds that he does not know.

224 Osborn States that a Class C felony for unauthorized use such as riding a bus or train without purchasing a ticket is too harsh, but that it is stealing which is a misdemeanor. States that unauthorized use of mass transit systems doesn't have the same issues as private persons who are victims of vehicle theft.

312	<b>Sgt. David Golliday</b>	<b>Portland Police Bureau</b> Submits testimony and testifies in opposition to HB 2379 <b>(EXHIBIT F)</b> . Says that a Class C felony gives more teeth to enforcement.
<b>TAPE 8, B</b> 006	<b>Sgt. Curt A. Curtis</b>	<b>Oregon State Police</b> Submits testimony and testifies in neutrality to HB 2379 concerning unauthorized use of a vehicle. <b>(EXHIBIT G)</b> . Discusses loophole concerning unauthorized use.
036	Rep. Bowman	Asks about the length of a Tri-Met exclusion and wonders if there is an appeal.
038	Sgt. Golliday	Responds that exclusions are 30, 60 and 90 days with an appeal process to appeals officer. States that it happens as a warning, then exclusion.
058	Rep. Bowman	Asks what the law was two years ago when this was initially passed.
060	Sgt. Curtis	Responds that arrests were made for Trespass 2, and the offender is given a ticket.
064	Rep. Bowman	Wonders if the punishment of a Class C Felony is appropriate to the crime.
071	Sgt. Curtis	Answers that this is targeted for the chronic offenders and that there is some discretion in issuance.
087	Counsel Taylor	Clarifies that the court could prosecute for criminal trespass for the chronic offender but that local governments with jail overcrowding often prefer the ticketing.
099	Rep. Krieger	Wonders how big the chronic offender problem is.
106	Sgt. Curtis	Responds that there are many and frequent infractions and that the unauthorized use deterrent would be effective to most of those individuals.
126	Rep. Ackerman	Wonders about frequency of offenses.
134	Sgt. Curtis	Responds that exclusions are written daily. States that maybe a dozen exclusions per shift.
150	Rep. Wilson	Asks how many persons are currently serving time on Tri-Met unauthorized use violations?
154	Sgt. Curtis	Responds that currently three are serving exclusion and probation time and that two other cases are pending.
162	<b>Bernie Bottomly</b>	<b>Tri-Met Metro Transport Agency</b> Most chronic offenders are offensive, under the influence, and belligerent. Says that a Class C felony might not be the best fit, but it is the end game after all other plans are exhausted.
187	Chair Williams	Suggests that we work for something separate for mass transit chronic offenders. Asks for all to work toward something else.
201	Chair Williams	Closes the public hearing on HB 2379 and opens a public hearing on HB 2403.
<b>PUBLIC HEARING HB 2403</b> 229	<b>Bill Houser</b>	<b>Oregon Criminal Defense Lawyers Association</b> Testifies in support of HB 2403 relating to ATM card theft. Says that public policy needs clarification between taking money out

		of a person's wallet or one's banking account. Says they don't want a misdemeanor made into a felony for basically the same offense.
250	Chair Williams	Wonders about identity theft situation where an ATM card is part of the identity theft.
264	Houser	Responds that there is a problem with identity theft and that they want a narrowing with the ATM situation.
291	Rep. Bowman	Explains that last session the identity theft issues were defined as a combination of activities under another name and states that this issue of ATM was not the intent.
307	Chair Williams	Asks the difference between stealing from an ATM or from an open or unguarded purse and that one seems more a crime of opportunity versus higher degree of intent.
355	Rep. Wilson	Says he would be more alarmed by the stealing and using of an ATM and PIN than losing \$100.
364	Rep. Bowman	Expresses concerns about elevating this to a computer crime.
388	Chair Williams	Closes the public hearing on HB 2403 and adjourns the meeting at 10:25 a.m.

Submitted By,

Reviewed By,

Shannon Reed,  
Assistant

Bill Taylor,  
Counsel

**EXHIBIT SUMMARY**

- A – HB 2392, testimony submitted by Ronelle Shankle, Department of Justice, dated 1-30-01, 4 pgs.**
- B- HB 2355 and HB 2388 and –1 amendments, testimony submitted by Michael Livingston, Assistant Attorney General, dated 1-30-01, 7 pgs.**
- C- HB 2379, testimony submitted by Bill Houser, Oregon Criminal Lawyers Association, dated 01-30-01 2 pgs.**
- D- HB 2379, testimony submitted by Sgt. David Golliday, Tri-Met Portland Police Bureau, dated 01-30-01, 2 pgs.**
- E- HB 2379, testimony submitted by Curt A. Curtis, Sergeant, Oregon State Police, dated 01-30-01, 2 pgs.**
- F- HB 2403, testimony submitted by Alfred French III, Deputy District Attorney of Marion County, dated 01-30-01, 1 pg.**
- G- HB 2392, testimony submitted by Margie Lowe, Assistant Administrator, State Offices for Services to Children and Families, dated 01-30-01, 1pg.**