

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

February 08, 2001  
8:30 a.m.

Hearing Room 357  
Tapes 13-15

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

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

**MEASURE/ISSUES HEARD:**      **HB 2391 Public Hearing and Work Session**  
                                 **HB 2337 Public Hearing and Work Session**  
                                 **HB 2340 Public Hearing and Work Session**  
                                 **HB 2343 Public Hearing**  
                                 **HB 2351 Public Hearing and Work Session**  
                                 **HB 2391 Public Hearing**  
                                 **HB 2353 Work Session**  
                                 **HB 2424 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 13, A</b>		
004	Chair Williams	Calls the meeting to order at 8:32 a.m. and opens a public hearing on HB 2391 which relates to current contact information for parents in juvenile dependency cases.
<b><u>HB 2391 PUBLIC HEARING</u></b>		
008	<b>Sen. Kate Brown</b>	<b>Senate District 7</b>
066	<b>Pat Melius</b>	Testifies about -1 amendments ( <b>EXHIBIT A</b> ). <b>State Office for Services to Children and Families</b> Submits testimony and testifies in support of HB 2391 ( <b>EXHIBIT B</b> ).
081	Chair Williams	Requests some real life examples of this problem.
089	Melius	Relates that they must work with families to secure resolution and the amendments enable this process.
119	Rep Ackerman	Asks if we already have this authority through good case management.
123	Melius	Answers that this bill makes it a requirement to comply.
153	Chair Williams	Closes the public hearing on HB 2391 and opens a work session

on HB 2391.

**HB 2391 WORK SESSION**

- 170 Rep. Shetterly **MOTION: Moves to ADOPT HB 2391-1 amendments dated 1/26/01.**  
**VOTE: 7-0**
- 171 Chair Williams **Hearing no objection, declares the motion CARRIED.**
- 199 Rep. Shetterly **MOTION: Moves HB 2391 to the Full Committee with a DO PASS AS AMENDED recommendation.**  
**VOTE: 7-0**
- 200 Chair Williams **Hearing no objection, declares the motion CARRIED.**
- 206 Chair Williams Closes the work session on HB 2391 and opens a public hearing on HB 2337 relating to waiver of counsel.

**PUBLIC HEARING HB 2337**

217 James Nass

**Appellate Courts**

Testifies in support of HB 2337. States that in a death sentence case the defendant should not be allowed to waive right of counsel.

409 Rep. Ackerman  
429 Nass  
449 Rep. Ackerman

Asks whether the measure is constitutionally inconsistent.  
Replies that it is not clear if it would be unconstitutional.  
Asks how anyone can knowingly waive counsel in such a critical and laborious proceeding.

470 Nass

Responds that many inmates study law and they often do understand law and that was enough to go forward.

**TAPE 14, A**

039 Rep. Bowman

Asks if it is the intent to include juvenile delinquents as well as those juveniles tried in adult courts.

045 Nass

Answers yes.

049 Rep. Bowman

Responds that she will not support if juvenile actions are included.

054 Nass

Replies that maybe this would happen if a juvenile is in adult criminal process.

063 Rep. Bowman

Asks if this could, in Oregon, apply to a 15-year-old and how can you protect that person.

087 Nass

Responds that the bill would allow a judge in a death sentence case to deny the right to waive counsel.

119 Chair Williams

Wonders about the amendments and if better language is available through them.

133 Rep. Krieger

Asks if a juvenile understands the charges, etc., versus an adult.

147 Nass

Replies that it is the trial judge and his process to determine understanding.

153 Chair Williams

Comments that they will hold the bill for amendments and closes the work session on HB 2337 and opens a public hearing on HB 2340 which relates to sentencing.

**HB 2340 PUBLIC HEARING**

191 Ann Christian

**State Court Administrator's Office**

Submits testimony and testifies against HB 2340 (EXHIBIT C).

249	<b>Bill Houser</b>	<b>Oregon Criminal Defense Lawyers Association</b> Testifies in support of HB 2340 because trial courts should have clarity in non-death penalty sentencing for jury instruction.
278	Chair Williams	Explains that he is struggling with the death sentencing and asks if the language is unclear about the jury instruction.
305	Houser	Responds that there are currently no guidelines for jury instruction.
307	Chair Williams	Asks about mitigating factors and isn't it up to the both attorneys to determine mitigating factors as well as 10 of 12 jurors have to agree that there are mitigating factors.
310	Houser	Responds yes.
336	Rep. Bowman	Asks if there is any direction to the jury in aggravated murder case.
342	Houser	Responds that in a death penalty case the instructions are relatively clear but it is not clear on non-death penalty seeking procedure.
350	Rep. Bowman	Asks if there is any other time a jury is not instructed about sentencing.
352	Houser	Answers no.
358	Rep. Ackerman	Asks if there is a presumption of a true-life sentence in a non-death penalty aggravated murder.
356	Houser	Responds that sentencing procedures don't allow for presumptions in criminal law.
403	Rep. Ackerman	Asks what is standard for jury directions with mitigating circumstances, and who has the burden of proof of mitigating circumstances.
421	Houser	Replies that it is the defendant's responsibility.
428	Christian	Responds that the U.S. Supreme Court positions require that mitigating circumstances be taken into consideration and that it is the defendant's responsibility.
450	Chair Williams	Closes the public hearing on HB 2340 and opens a work session on HB 2340.

**HB 2340 WORK SESSION**

472 **Rep. Wilson** **MOTION: Moves HB 2340 to the full committee with a DO PASS recommendation.**

473 **VOTE: 7-0**

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

**TAPE 13, B**

482 Chair Williams Opens a public hearing on HB 2343 which relates to child abuse reporting.

**HB 2343 PUBLIC HEARING**

015 Counsel Taylor Explains the bill and amendments and as it relates to third party liability with child abuse reporting.

047 **Nancy Miller** **State Court Administrator**

054 **Bill Houser** Testifies in neutrality to HB 2343.

**Oregon Criminal Defense Lawyers Association**

Testifies in neutrality to HB 2343 and submits amendments **(EXHIBIT D).**

065 **Pat Melius** **State Office for Services to Children and Families**

089	Rep. Bowman	Submits testimony and testifies in opposition to HB 2343
099	Counsel Taylor	<b>(EXHIBIT E)</b> . Says that the fiscal impact of training requirements are not in the governor’s budget.
138	<b>Timothy Travis</b>	Asks if we had this last session. Explains the history of the measure last session. <b>State Court Administrator’s Office</b> Testifies in support of HB 2343 and states that the -1 amendments are prepared by Mr. Travis as a private citizen and the -2 amendments are Judicial Department amendments <b>(EXHIBIT F)</b> . States that client attorney privilege is excepted but that “secrets” that the attorney has learned otherwise are not protected. States that after reporting a “secret” about child abuse learned third-hand, he must report it, and then must resign as his client’s attorney and that it could affect the 6 <sup>th</sup> amendment right to counsel.
281	Chair Williams	Clarifies reporting and the complications of real life situations
294	Rep. Lowe	Comments and asks about –2 amendments fiscal impact and did they consider that reporting can fiscally overburden Children’s Services.
334	Melius	Responds that they have not tried to determine cost analysis as they are bound to investigate accounts of abuse.
368	Chair Williams	Asks about current training for mandatory reporting and if this will expand the training.
369	Melius	Responds yes.
371	Chair Williams	Asks about reporting in the -2 amendments and if “reasonably believes” is a standard we can easily define.
384	<b>Nancy Miller</b>	<b>State Court Administrator’s Office</b> States that they wanted the clarity of current statute.
<b>TAPE 14, B</b>		
005	Chair Williams	Expresses concern about wording “reasonably believes”.
010	Travis	States that his amendment uses the word “knows” but LC suggested “reasonably believes”.
016	Chair Williams	States support for bill and that we ought to be more conservative in reporting.
044	Rep. Lowe	Asks about third party liability and wonders if the reporter is liable if the information is incorrect.
060	Melius	Answers that they are protected.
078	Chair Williams	Closes the public hearing on HB 2343 and opens a public hearing on HB 2351.
<b><u>HB 2351 PUBLIC HEARING</u></b>		
080	<b>James Nass</b>	<b>Appellate Courts</b> Submits testimony and testifies in support of HB 2351 relating to appellate review <b>(EXHIBIT G)</b> . States that the bill would require that the defendant has “colorable” claim of error.
168	<b>Jessie Barton</b>	<b>Public Defenders Office</b> Testifies in opposition to HB 2351. Explains appeal statistics.
191	<b>Jonathon Fusner</b>	<b>Department of Justice</b> Testifies in support of HB 2351.
189	Rep. Ackerman	Asks if there are adequate procedural rules for this.
218	Barton	Explains that the system is basically in place now and potential issues for appeal are being addressed.

248	Rep. Bowman	Asks what are the percentages of convictions that are appealed.
235	Nass	Responds that he is not sure and that all offenders have the option to appeal.
255	Rep. Bowman	Asks why we should eliminate the ability to appeal.
	Nass	Responds that this would show that there are some grounds for appeal.
289	Chair Williams	Closes the public hearing on HB 2351 and opens the work session on HB 2351.

**HB 2351 WORK SESSION**

292	Counsel Taylor	Explains HB 2351 relating to appellate review.
341	Rep. Ackerman	Says that the bill has too many legal problems.
359	Chair Williams	Closes the work session on HB 2351 and opens the work session on HB 2353.

**HB 2353 WORK SESSION**

361	<b>Tom Lininger</b>	<b>Oregon Criminal Justice Commission</b> Testifies in support of HB 2353 relating to pre-cursor substances and proposed amendments and makes more clear definition of medical dispensation and broaden list of substances under the law as well as broadening to include non-sexual crimes.
482	<b>Jim Gardner</b>	<b>Roche Pharmaceuticals</b> Testifies in support of HB 2353 and clarifies the use of substances that are used medically.
460	<b>Claudia Webber</b>	<b>Oregon Legislative Alliance</b> Testifies in support of HB 2353. Says that survivors of date rape have flashbacks and re-traumatization.

**TAPE 15, A**

010	Rep. Ackerman	Expresses concerns about second-hand marijuana smoke inhalation and doesn't want the net cast too broadly.
028	Lininger	Agrees and suggests exemption of second-hand marijuana smoke.
045	Chair Williams	Closes the work session on HB 2353 and opens a public hearing on HB 2424, which concerns uniform citation forms.

**PUBLIC HEARING HB 2424**

064	<b>Bradd Swank</b>	<b>State Court Administrators Office</b> Submits testimony and testifies in support of HB which relates to uniform citations and proposes amendments ( <b>EXHIBIT H</b> ).
160	<b>Sgt. Glen Chastain</b>	<b>Oregon State Police</b> Testifies as neutral to HB 2424 and suggests no change in the system.
169	<b>Steven Johnston</b>	<b>Oregon Department of Transportation</b> Testifies in opposition to HB 2424 and expresses concern about type, size, paper, fonts and copying.
237	Swank	Disagrees about font size. Expresses concern about why the police are not supportive of bill. Says that compliance may be difficult.
307	Chair Williams	Closes the public hearing on HB 2424 and adjourns the meeting at 10:49 a.m.

Submitted By,

Reviewed By,

Shannon Reed,  
Committee Assistant

Bill Taylor,  
Counsel

**EXHIBIT SUMMARY**

**A – HB 2391-1 amendment, submitted by staff, dated 1-26-2001, 1 pg.**

**B - HB 2391, testimony submitted by Pat Melius, State Office for Services to Children and Families, dated 2-08-01, 2 pgs.**

**C – HB 2340, testimony submitted by Ann Christian, Office of State Court Administrator, dated 2-08-01, 2 pgs.**

**D – HB 2343, amendments, submitted by Bill Houser, Oregon Criminal Defense Lawyers Association, dated 2-08-01, 1 pg.**

**E – HB 2343, testimony submitted by Pat Melius, State Office for Services to Children and Families, dated 2-08-01, 3 pgs.**

**F – HB 2343, -1, -2 amendments, submitted by Timothy Travis and Staff, date 2-07-01, 2 pgs.**

**G - HB 2351, testimony submitted by James Nass, Court of Appeals, dated 2-08-01, 7 pgs.**

**H – HB 2424, testimony submitted by Bradd Swank, Office of the State Court Administrator, dated 2-08-01, 3 pgs.**

**I – HB 2424, testimony submitted by Robert Smit, Oregon State Police, dated 2-08-01, 1 pg.**

**J – HB 2343, testimony submitted by Verlina Crosly, Oregon Employment Department, dated 2-08-01, 2 pgs.**

**K- HB 2391, testimony submitted by Dave Kenagy, Oregon Law Commission, dated 2-08-01, 4 pgs.**