

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

May 17, 2001  
8:30 a.m.

Hearing Room 357  
Tapes 88 - 89

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

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

**MEASURE/ISSUES HEARD:**     **HB 3857 Public Hearing and Work Session**  
                                  **SB 230A Public Hearing**  
                                  **HB 3642 Work Session**  
                                  **SB 667A Public Hearing and Work Session**  
                                  **SB 126A Work Session**  
                                  **SB 167A Public Hearing**  
                                  **HB 2503 Work Session**

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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 88, A</b>		
003	Chair Williams	Calls the meeting to order at 8:43 a.m. and opens the public hearing on HB 3857.
<b><u>HB 3857 PUBLIC HEARING</u></b>		
018	<b>Josh Marquis</b>	<b>Oregon District Attorney's Association</b> Testifies in support of HB 3857 and the -3 amendments relating to prohibiting governing body and adverse interests and separation of powers.
047	<b>Jim Sutherland</b>	<b>U. S. Attorney</b> Testifies in support of HB 3857. Discusses the Gatty decision and notes that they support the -3 amendments.
100	Rep. Shetterly	Asks if the legislation raises separation of powers issue.
104	Sutherland	Answers that it does raise the issue if it is an attempt to amend the disciplinary rules.
120	Marquis	Notes that there is not an issue with the bill, only if the disciplinary rules are to be amended.
126	Rep. Shetterly	Asks how conduct can be authorized by statute that is in violation of the disciplinary rules.
136	Marquis	Answers that HB 3857 is a partial fix to be combined with a change in the disciplinary rules.
148	Chair Williams	Discusses the -2 and the -3 amendments and asks about differences between the two.

154	Marquis	States that the prosecutors and government attorneys concur that the –3 amendments are preferable.
160	Sutherland	Concurs with Mr. Marquis’s statement. Discusses the court’s reaction to the Gatty issue.
168	Chair Williams	Inquires further about the difference between the –2 and –3 amendments.
177	Marquis	Explains the difference between the two.
187	Rep. Shetterly	Asks for clarification about the potential effect of HB 3857.
207	Sutherland	Explains the process relating to the issue.
246	Chair Williams	Reads from the Supreme Court’s decision on Gatty.
259	Counsel Prins	Discusses the separation of powers issue between the legislature and the court.
284	Rep. Shetterly	Expresses concern about the “double standard” of HB 3857 to be enforced for government enforcement and investigative actions, but not for any other investigative purposes.
308	Sutherland	States that public officials have additional statutory provisions that they must follow.
346	<b>Kevin Mannix</b>	<b>Private Attorney</b> Testifies in support of HB 3857 and the –3 amendments.
<b>TAPE 89, A</b>		
009	Rep. Shetterly	Asks about future use of this statute and that a broad approach may be this best approach.
023	Mannix	Says that agencies will be under the interpretation of the rules by the Supreme Court. Urges action to be taken this session.
053	<b>Mark McDonnell</b>	<b>Multnomah County District Attorney’s Office</b> Testifies in opposition to HB 3857.
061	<b>Eric Wasmann</b>	<b>Attorney General’s Office</b> Testifies in support of HB 3857 and the –2 amendments. Clarifies the separation of powers issue in the Gatty decision.
132	Rep. Ackerman	Asks about covert activity in response to the Gatty decision.
138	Mannix	Answers that federally, all covert activities that involve attorneys are shut down.
142	McDonnell	Answers that local police agencies continue to conduct undercover activities, but they do it without the consultation of district attorneys.
147	Wasmann	Answers that the Department of Justice has halted all undercover activities by criminal investigators and financial fraud investigators.
153	<b>Ed Harnden</b>	<b>Oregon State Bar</b> Testifies in support of HB 3857 if it directed only at the Gatty issues.
192	<b>Charles Williamson</b>	<b>Private Attorney</b> Testifies in support of HB 3857 and lawful covert activity.
241	<b>Bill Houser</b>	<b>Oregon Criminal Defense Attorney’s Association</b> Testifies in opposition to HB 3857 and –3 amendments and expresses concern about participation of attorneys in covert action.
298	Chair Williams	Asks about the insertion of “lawful” before covert and the limitation to the provision referenced in the Gatty decision.
304	Marquis	Responds that not all covert activities are lawful. It is the intent and government and private lawyers are not subject to.
342	Rep. Shetterly	Discusses differences between governmental and private

372	Sutherland	attorneys and their restrictions.
431	Marquis	Says the intent of HB 3857 is only to affect the Gatty issues.
<b>TAPE 88, B</b>		
014	Mannix	Expresses urgency for legislative action to be taken.
023	Chair Williams	Argues that “lawful” should not be in the legislation. Discusses the intent of the limiting phrase is for the purpose of enforcing laws.
		Closes the public hearing on HB 3857 and opens the work session on HB 3857.
<b><u>HB 3857 WORK SESSION</u></b>		
028	Rep. Williams	<b>MOTION: Moves HB 3857 to the full committee without RECOMMENDATION to passage.</b>
		<b>VOTE: 7-0</b>
030	Chair Williams	<b>Hearing no objection, declares the motion CARRIED.</b>
<b><u>SB 230A PUBLIC HEARING</u></b>		
050	Sharon Harmon	<b>Oregon Humane Society</b>
		Submits and summarizes prepared testimony in support of SB 230A (EXHIBIT A).
086	Sen. Ryan Deckert	<b>Senate District 4</b>
		Submits and summarizes prepared testimony in support of SB 230A (EXHIBIT B).
125	Sen. Peter Courtney	<b>Senate District 17</b>
		Testifies in support of SB 230A.
157	Rep. Shetterly	Asks why the abuse of the elephant Rose-Tu is equated to failure of a pet owner to provide adequate bedding.
164	Sen. Deckert	Answers that current statute is unclear about what constitutes abuse and neglect.
192	Sen. Courtney	Notes that the issue is much broader than Rose-Tu and it was reinforced by the testimony of judges and prosecutors who deal with animal abuse on a regular basis.
216	Rep. Krieger	Asks about SB 230A relating to animal husbandry.
222	Sen. Deckert	Answers that it is not the intention of SB 230A to affect good animal husbandry.
242	Rep. Lowe	Speaks in favor of SB 320A.
275	Connie Haws	<b>Oregon Humane Society</b>
		Submits and summarizes prepared testimony in support of SB 230A (EXHIBIT C).
393	Stephan Otto	<b>Animal Legal Defense Fund</b>
		Submits and summarizes prepared testimony in support of SB230A (EXHIBIT D).
424	Rep. Shetterly	Asks about “adequate” issue for food and water.
448	Otto	Answers that it is already in statute as minimum standards.
<b>TAPE 89, B</b>		
010	Haws	Responds that the statute does address animal losses in times of drought or other emergency situations.
021	Nancy Miller	<b>State Court Administrator’s Office</b>
		Expresses concern about language regarding discretion of the courts on psychiatric evaluations.
037	Kathie Osborn	<b>Juvenile Rights Project</b>
		Agrees with Ms. Miller on the discretion of court in psychiatric evaluation and that the fiscal impact should be taken into

086	<b>Bill Houser</b>	account. <b>Oregon Criminal Defense Lawyer's Association</b>
132	<b>Glen Stonebrink</b>	Concerns about "cruelty" language in a situation. <b>Oregon Cattlemen's Association</b>
144	Otto	Submits and summarizes prepared testimony regarding SB 230A <b>(EXHIBIT E)</b> . Responds to Rep. Shetterly's concerns and addresses that "choice of evil" that would protect someone who takes an action that would normally be illegal if they are doing it to avoid a greater danger.
Written testimony submitted in support of SB 230A by Metro <b>(EXHIBIT F)</b> .		
Written testimony submitted in support of SB 230A by Oregon Veterinary Medical Association (OVMA) <b>(EXHIBIT G)</b> .		
Written testimony submitted in support of SB 230A by The Humane Society of the United States <b>(EXHIBIT H)</b> .		
163	Chair Williams	Closes the public hearing on SB 230A and opens a work session on HB 3642.
<b><u>HB 3642 WORK SESSION</u></b>		
172	<b>Rep. Williams</b>	<b>MOTION: Moves HB 3642 to the full committee without RECOMMENDATION to passage.</b>
		<b>VOTE: 7-0</b>
177	<b>Chair Williams</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
180	Chair Williams	Closes the work session on HB 3642 and opens a public hearing on SB 667A.
<b><u>SB 667 A PUBLIC HEARING</u></b>		
195	<b>Josh Marquis</b>	<b>Oregon District Attorney's Association</b>
		Testifies in support of SB 667A relating to DNA testing.
220	<b>Bill Winner</b>	<b>Oregon State University</b>
		Testifies in support of and explains intentions for SB 667A.
254	<b>Andrea Meyer</b>	<b>American Civil Liberties Union</b>
		Testifies in support of SB 667A. Explains -3 <b>(EXHIBIT I)</b> and -4 amendments <b>(EXHIBIT J)</b> .
290	<b>Anne Christian</b>	<b>Judicial Department</b>
		Discusses the fiscal impact of SB 667A.
371	<b>Bill Houser</b>	<b>Oregon Criminal Defense Lawyer's Association</b>
		Testifies in support of SB 667A.
376	Chair Williams	Closes the public hearing on SB 667A and opens a work session on SB 667A.
<b><u>SB 667A WORK SESSION</u></b>		
378	<b>Chair Williams</b>	<b>MOTION: Moves to ADOPT SB 667-A3 amendments dated 5/14/01.</b>
		<b>VOTE: 7-0</b>
385	<b>Chair Williams</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
387	<b>Chair Williams</b>	<b>MOTION: Moves to ADOPT SB 667-4 amendments dated 5/16/01.</b>
		<b>VOTE: 7-0</b>
389	<b>Chair Williams</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
390	<b>Chair Williams</b>	<b>MOTION: Moves SB 667A to the full committee with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 7-0</b>
402	<b>Chair Williams</b>	<b>Hearing no objection, declares the motion CARRIED.</b>

403	Chair Williams	<b>REP. SHETTERLY will lead discussion on the floor.</b> Closes the work session on SB 667A and opens a work session on SB 126A.
<b><u>SB 126A WORK SESSION</u></b>		
405	Counsel Taylor	Explains SB 126A and –3 ( <b>EXHIBIT K</b> ) and –4 amendments.
426	<b>Karl Meyer</b>	<b>Oregon Juvenile Department Director’s Association</b> Speaks to problems that have been addressed with the amendments.
473	<b>Chair Williams</b>	<b>MOTION: Moves to ADOPT SB 126-A3 amendments dated 5/7/01.</b> <b>VOTE: 7-0</b>
479	<b>Chair Williams</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
480	<b>Chair Williams</b>	<b>MOTION: Moves SB 126A to the full committee with a DO PASS AS AMENDED recommendation.</b> <b>VOTE: 7-0</b>
484	<b>Chair Williams</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
506	Chair Williams	<b>REP. ACKERMAN will lead discussion on the floor.</b> Closes work session on SB 126A and opens a public hearing on SB 654. Closes the public hearing on SB 654. Opens a work session on SB 167A.
<b><u>TAPE 90, A</u></b>		
<b><u>SB 167A PUBLIC HEARING</u></b>		
043	Counsel Taylor	Explains SB 167A.
052	<b>Timothy Travis</b>	<b>Oregon Judicial Department</b> Explains the –A2 amendments for 167A ( <b>EXHIBIT L</b> ).
077	Rep. Shetterly	Explains the work done on the issue by the work group during the interim.
118	<b>Rep. Shetterly</b>	<b>MOTION: Moves to ADOPT SB 167-A2 amendments dated 5/16/01.</b> <b>VOTE: 7-0</b>
121	<b>Chair Williams</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
122	<b>Rep. Shetterly</b>	<b>MOTION: Moves SB 167A to the full committee with a DO PASS AS AMENDED recommendation.</b>
126	Rep. V. Walker	Notes discussions with Sen. Clarno’s staff regarding certain issues relating to SB 167A. Speaks in favor of SB 167A. <b>VOTE: 7-0</b>
143	<b>Chair Williams</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
143	Chair Williams	Closes the work session on SB 167A and opens a work session on HB 2503.
<b><u>HB 2503 WORK SESSION</u></b>		
158	<b>Diane Rea</b>	<b>Board of Parole</b> Testifies in support of HB 2503 and urges passage of –3 amendments ( <b>EXHIBIT M</b> ).
181	<b>Kathie Osborn</b>	<b>Juvenile Rights Project</b> Expresses concerns about youth involvement and waiver to adult court.
230	Chair Williams	Asks about juvenile concerns and wonders if there should be amendments to cover juveniles.
233	Rea	Answers that if changes need to be made to amendments, the Board of Parole would be amenable to it. Addresses concerns raised by Ms. Osborn.
270	<b>Chair Williams</b>	<b>MOTION: Moves to ADOPT HB 2503-3 amendments dated</b>

5/15/01.

VOTE: 7-0

276 Chair Williams  
278 Chair Williams

Hearing no objection, declares the motion CARRIED.  
MOTION: Moves HB 2503 to the full committee with a DO  
PASS AS AMENDED recommendation.

VOTE: 7-0

282 Chair Williams  
297 Chair Williams

Hearing no objection, declares the motion CARRIED.  
Closes the work session on HB 2503 and adjourns the meeting at  
10:52 a.m.

Submitted By,

Reviewed By,

Shannon Reed,  
Committee Assistant

Bill Taylor,  
Counsel

**EXHIBIT SUMMARY**

- A – SB 230A, written testimony, Sharon Harmon, 1 pg.
- B – SB 230A, written testimony, Sen. Ryan Deckert, 2 pgs.
- C – SB 230A, written testimony and information, Connie Hawes, 62 pgs.
- D – SB 230A, written testimony and information, Stephan Otto, 11 pgs.
- E – SB 230A, written testimony, Glen Stonebrink, 1 pg.
- F – SB 230A, written testimony, Metro, 2 pgs.
- G – SB 230A, written testimony, Oregon Veterinary Medical Association, 1 pg.
- H – SB 230A, written testimony, The Humane Society of the United States, 1 pg.
- I – SB 667, -A3 amendments, staff, 1 pg.
- J – SB 667, -A4 amendments, staff, 1 pg.
- K – SB 126, -A3 amendments, staff, 1 pg.
- L – SB 167, -A2 amendments, staff, 15 pg.
- M – HB 2503, -3 amendments, staff, 5 pgs.