

## SENATE COMMITTEE ON JUDICIARY

April 30, 2001 Hearing Room 343

1:00 p.m. Tapes 114 - 117

**MEMBERS PRESENT:**        **Sen. John Minnis, Chair**  
                                  **Sen. Peter Courtney, Vice Chair**  
                                  **Sen. Verne Duncan**  
                                  **Sen. Steve Harper**  
                                  **Sen. Rick Metsger**

**MEMBER EXCUSED:**        **Sen. Ginny Burdick**  
                                  **Sen. Roger Beyer**

**STAFF PRESENT:**         **Craig Prins, Counsel**  
                                  **Annola DeJong, Committee Assistant**

**MEASURE HEARD:**         **HB 2611A Public Hearing**  
                                  **HB 2355A Public Hearing**  
                                  **HB 2388A Public Hearing**  
                                  **HB 2391A Public Hearing**  
                                  **SB 294            Work Session**  
                                  **HB 2352A Public Hearing**  
                                  **HB 2646   Public Hearing**  
                                  **SB 70    Public Hearing and 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 114, A</b>		
004	Chair Minnis	Calls the meeting to order at 1:10 p.m. and opens a public hearing on HB 2611A, HB 2355A, HB 2388A and HB 2391A.
<b><u>HB 2611A, HB 2355A, HB 2388A, HB 2391A PUBLIC HEARING</u></b>		
009	<b>Sen. Kate Brown</b>	<b>Senate District 7</b>  Testifies in support of HB 2611A which establishes and modifies provisions dealing with procedures to be followed in juvenile court dependency cases. Testifies in support of HB 2355A which allows a person within jurisdiction of juvenile court to seek post-adjudication relief in juvenile proceedings. Testifies in support of HB 2388A which provides that, if so requested, counsel in proceeding from which appeal is being taken is responsible for filing and serving all documents necessary to commence appeal in juvenile court cases. Testifies in support of HB 2391A which requires court or local citizen review board at juvenile dependency review hearings to ask for current contact information for parent.
125	Chair Minnis	Closes the public hearing on HB 2611A, HB 2355A, HB 2388A and HB 2391A and opens a work session on SB 294.
<b><u>SB 294 WORK SESSION</u></b>		
130	Counsel Taylor	Introduces SB 294 which ratifies the National Crime Prevention and Privacy Compact. Talks about the -1 and -2 amendments

**(EXHIBITS A & B).**

181 Chair Minnis Asks if the proposed changes in the -2 amendments depart from the compact.

183 Counsel Taylor Reports they do.

196 Chair Minnis Explains his understanding of what ratifying the compact would accomplish in comparison to what currently happens. Asks if adoption of the amendments will restrict the importation of information.

204 Counsel Taylor Distinguishes the difference between the -1 and -2 amendments.

211 Vice Chair Courtney Speculates that amending the compact could affect how other states respond when we solicit information.

220 Counsel Taylor Agrees.

232 Vice Chair Courtney Verifies the -1 amendments are within the limits of the compact.

235 Counsel Taylor Says the -1 amendments do not change the language of the compact, just add a new section.

243 Sen. Duncan Asks what the procedure is for changing the compact.

256 Counsel Taylor States the compact is based on Federal Law, so a person would have to start with Congress.

265 Sen. Duncan Says that arrest and indictment information should be protected.

295 Sen. Metsger Asks Ms. Swenson about the -1 amendments.

306 **Ingrid Swenson** **Oregon Criminal Defense Lawyers Association (OCDLA)**  
Discusses the changes the -1 amendments would make to SB 294.

321 Vice Chair Courtney Inquires how many other states have adopted the compact with arrest language included.

327 Counsel Taylor Replies he does not know.

334 Swenson Says that seven states have adopted it.

338 Sen. Metsger Asks what happens if the legislature adopts the compact only to find out they “did not do it right.”

344 Counsel Taylor Advises that legislature would have to renounce the compact.

353 Chair Minnis Talks about the potential fiscal impact of SB 294.

**416 Vice Chair** **MOTION: Moves to ADOPT SB 294-1 amendments dated**  
**Courtney** **03/07/01.**

**417 VOTE: 5-0-2**

**418 Chair Minnis** **EXCUSED: 2 - Sen. Beyer, Sen. Burdick**  
**Hearing no objection, declares the motion CARRIED.**

**424 Sen. Harper** **MOTION: Moves SB 294 to the floor with a DO PASS**  
**recommendation.**

**429 VOTE: 3-2-2**  
**AYE: 3 - Sen. Courtney, Sen. Duncan, Sen. Harper**  
**NAY: 2 - Sen. Metsger, Sen. Minnis**  
**EXCUSED: 2 - Sen. Beyer, Sen. Burdick**

**451 Chair Minnis** **The motion fails.**

457 Chair Minnis Closes the work session on SB 294 and opens a public hearing on HB 2352A.

**HB 2352A PUBLIC HEARING**

**TAPE 115, A**

**023 Jeff Carter**

**Oregon Law Commission**

Submits testimony and testifies in support of HB 2352A which revises laws relating to unlawful employment practices and other unlawful practices **(EXHIBIT C)**.

070	<b>Marsha Ohlemiller</b>	<b>Bureau of Labor and Industries (BOLI)</b>
		Testifies in support of HB 2352A.
108	Chair Minnis	Asks if HB 2352A will provide statutory authority to enforce areas where the bureau was not able to before.
130	Ohlemiller	Says that enforcement is consistent for any violation. Discusses situations in which the current law has been ambiguous regarding enforcement authority.
173	<b>Dave Heynderickx</b>	<b>Senior Deputy, Legislative Counsel</b>
		Testifies as neutral on HB 2352A.
245	Chair Minnis	Asks for an analysis of the changes.
248	Ohlemiller	Reports there is an outline available.
264	Heynderickx	Explains there is confusion in the law regarding certain unlawful practices.
291	Carter	Conveys what the commission would like to accomplish.
320	Chair Minnis	Closes the public hearing on HB 2352A and recesses the meeting at 2:00 p.m.
330	Chair Minnis	Reconvenes the meeting at 2:15 p.m. and opens a public hearing on HB 2646.

**HB 2646 PUBLIC HEARING**

337	<b>Brian DeLashmutt</b>	<b>Representing the Oregon Police Association</b>
		Testifies in support of HB 2646 which reclassifies the crime of assaulting public safety officer.
385	<b>Nick Armenakis</b>	<b>Oregon Department of Corrections (DOC)</b>
		Submits testimony and testifies in support of HB 2646 (EXHIBIT D).
413	<b>Jim Botwinis</b>	<b>President, Oregon State Police Officer's Association</b>
		Submits testimony and testifies in support of HB 2646 (EXHIBIT E).

**TAPE 114, B**

002	<b>Mike Van Patten</b>	<b>Association of Oregon Corrections Employees</b>
		Testifies in support of HB 2646.
026	DeLashmutt	Says the focus needs to be on deterring these assaults.
032	Sen. Harper	Questions the fiscal impact statement.
047	Counsel Prins	Asks if removing saliva from the definition of body fluids would change the fiscal statement.
056	Armenakis	Remarks the DOC has noticed a remarkable increase in assault with bodily fluids and would not like to see it removed.
062	Sen. Duncan	Proposes the committee consider offsets to the states cost.
069	DeLashmutt	Mentions the fiscal does not have offsets. Says this would be beneficial.
076	Sen. Duncan	Suggests this information be compiled for the committee to consider.
078	Sen. Harper	Asks if the fiscal includes the deterrence aspect.
081	Chair Minnis	Indicates that it probably does not.
090	<b>Ingrid Swenson</b>	<b>Oregon Criminal Defense Lawyers Association (OCDLA)</b>
		Submits testimony and testifies in opposition to HB 2646 (EXHIBIT F).
170	Sen. Metsger	Confirms that judges would still have discretion in determining sentencing.
177	Swenson	Agrees.

186	Chair Minnis	Refers to Oregon's misdemeanor law requiring 14 days in jail.
189	Swenson	Asks if this is an adequate penalty.
		Says in some circumstances this would be sufficient punishment, in others insufficient.
212	Chair Minnis	Inquires about persons with previous assault convictions.
213	Swenson	Remarks the legislature could provide courts with additional guidance on considering previous convictions.
216	Chair Minnis	Asks about assaulting an officer in uniform.
222	Swenson	Indicates stronger penalties might be appropriate.
254	<b>Don Loving</b>	<b>American Federation of State, County and Municipal Employees (AFSCME)</b>
		Submits testimony and testifies in support of HB 2646 <b>(EXHIBIT G)</b> .
281	<b>Tim Woolery</b>	<b>Oregon Department of Corrections (DOC)</b>
		Testifies in support of HB 2646.
294	Chair Minnis	Asks how an inmate would know which DOC personnel are exempt from HB 2646.
297	Woolery	Explains several possible scenarios that could include non-security staff.
311	Chair Minnis	Requests clarification about who these non-security staff are.
312	Woolery	Replies: contractors, members of the clergy, counselor's, etc.
328	Loving	Mentions that Rep. Dan Garder and AFSCME would like to be added as co-requestors if HB 2646 is reprinted.
332	Chair Minnis	Explains his intentions regarding HB 2646.
362	<b>Phil Lemman</b>	<b>Criminal Justice Commission</b>
		Explains how the Criminal Justice Commission formulates the impact statements.
458	Sen. Metsger	Asks if the commission has statistics for the number of assaults on non-security personnel.
464	Lemman	Replies they do not. Notes the majority of assaults in correction facilities are against uniformed officers.
<b>TAPE 115, B</b>		
061	Chair Minnis	Closes the public hearing on HB 2646 and re-opens a public hearing on HB 2611A.
<b><u>HB 2611A PUBLIC HEARING</u></b>		
072	<b>Kathie Osborn</b>	<b>Juvenile Rights Project</b>
		Testifies in support of HB 2611A which establishes and modifies provisions dealing with procedures to be followed in juvenile court dependency cases. Submits testimony from the Oregon Law Commission <b>(EXHIBITS H &amp; I)</b> .
165	Chair Minnis	Asks if HB 2611A addresses the issue of scheduling hearings.
172	Osborn	Refers to Section 31 on page(s) 16 and 17.
190	<b>Michael Livingston</b>	<b>Oregon Department of Justice (DOJ)</b>
		Explains current scheduling procedures. Discusses Section 33, on page 16.
270	<b>Timothy Travis</b>	<b>Juvenile Court Improvement Project</b>
		Testifies in support of HB 2611A.
294	<b>Chair Minnis</b>	Closes the public hearing on HB 2611A and recesses the meeting at 3:00 p.m.
295	<b>Chair Minnis</b>	Reconvenes the meeting at 6:15 p.m. and opens a public hearing on SB 70.

**SB 70 PUBLIC HEARING**

301	<b>Kevin Mannix</b>	<b>Attorney, Salem, OR</b> Testifies in support of SB 70 which will create new circuit court judge positions. Talks about the –4 amendments ( <b>EXHIBIT J</b> ).
382	Sen. Duncan	Asks how SB 70 would affect campaigns.
403	Mannix	Says the candidates should maintain their residence in the district they are running in.
417	Chair Minnis	Asks about current judicial salaries.
418	Mannix	Replies that Oregon needs to take steps to increase judges salaries. Talks about salary ranges.
<b>TAPE 116, A</b>		
026	Chair Minnis	Suggests the committee submit “some numbers” to Ways and Means.
033	Mannix	Suggests a tiered increase.
046	<b>Justice Michael Gillette</b>	<b>Oregon Supreme Court</b> Testifies in opposition to the –4 amendments.
195	Vice Chair Courtney	Explains the three branches of government. Discusses the role of the Legislative branch.
223	Justice Gillette	Replies that is an accurate portrayal.
274	Vice Chair Courtney	Discusses why he does not support the amendments.
<b>TAPE 116, B</b>		
026	Chair Minnis	Asks ( <i>unidentified man</i> ) what sort of salary increase is being considered.
027	<i>Unidentified Man</i>	Relates a 16 – 18 percent increase.
055	Vice Chair Courtney	Observes the original bill talks about the number of circuit court judges that are needed. States the salary issue should be separate.
099	Chair Minnis	Closes the public hearing on SB 70 and opens a work session on SB 70.

**SB 70 WORK SESSION**

<b>100</b>	<b>Vice Chair Courtney</b>	<b>MOTION: Moves to ADOPT SB 70-1 amendments dated 4/04/01 (EXHIBIT K).</b>
<b>101</b>		<b>VOTE: 5-0-2</b>
<b>102</b>	<b>Chair Minnis</b>	<b>EXCUSED: 2 - Sen. Beyer, Sen. Burdick</b> <b>Hearing no objection, declares the motion CARRIED.</b>
106	<i>Unidentified Man</i>	Talks about the –2 amendments ( <b>EXHIBIT L</b> ).
177	<b>Vice Chair Courtney</b>	<b>MOTION: Moves to ADOPT SB 70-2 amendments dated 4/04/01.</b>
<b>178</b>		<b>VOTE: 5-0-2</b>
<b>179</b>	<b>Chair Minnis</b>	<b>EXCUSED: 2 - Sen. Beyer, Sen. Burdick</b> <b>Hearing no objection, declares the motion CARRIED.</b>
<b>180</b>	<b>Vice Chair Courtney</b>	<b>MOTION: Moves SB 70 with a DO PASS AS AMENDED recommendation and BE REFERRED to the Committee on Way and Means.</b>
<b>182</b>		<b>VOTE: 5-0-2</b>
<b>183</b>	<b>Chair Minnis</b>	<b>EXCUSED: 2 - Sen. Beyer, Sen. Burdick</b> <b>Hearing no objection, declares the motion CARRIED.</b>
188	Chair Minnis	Closes the work session on SB 70 and re-opens a public hearing on HB 2611A.

**HB 2611A PUBLIC HEARING**

209	<b>Michael Livingston</b>	<b>Oregon Department of Justice (DOJ)</b> Continues his testimony in support of SB 2611A. ( <i>Mr. Livingston testified previously during the 1:00 p.m. public hearing.</i> )
242	Chair Minnis	Closes the public hearing on HB 2611A and re-opens a public hearing on HB 2388A.
<b>HB 2388A PUBLIC HEARING</b>		
262	<b>Michael Livingston</b>	<b>Oregon Department of Justice (DOJ)</b> Testifies in support of HB 2388A which provides that, if so requested, counsel in proceeding from which appeal is being taken is responsible for filing and serving all documents necessary to commence appeal in juvenile court cases.
319	<b>Jim Nass</b>	<b>Oregon Judicial Department</b> Submits testimony and testifies in support of HB 2388A ( <b>EXHIBIT M</b> ).
393	Chair Minnis	Talks about the language being deleted. Confirms that he understands the changes.
403	Nass	Agrees.
413	Chair Minnis	Refers to lines 4 – 6, on page 2, and verifies he understands the intent of the language.
429	Nass	Replies, yes.
439	Chair Minnis	Ask why the language on lines 12 – 18, on page 2, is necessary.
444	Livingston	Explains why the language is important.
487	Counsel Prins	Asks about the procedure for showing a colorable claim.
495	Livingston	Explains the procedure.
<b>TAPE 117, A</b>		
054	Nass	Offers additional explanation. Talks about the intent of HB 2388A.
099	Livingston	Explains how the Court of Appeals is deciding “late appeal motions.”
109	Chair Minnis	Suggests there should be statutory discipline for inadequate counsel.
114	Livingston	Mentions potential ramifications for disciplinary action.
132	Nass	Notes there are times when a new attorney is appointed. Says the Oregon Bar Association can take disciplinary action and these records are open to the public.
142	Livingston	Offers additional comments.
163	Sen. Metsger	Asks, when there is a failure due to inadequate counsel, is there civil action available against that counsel.
194	<b>Timothy Travis</b>	<b>Juvenile Court Improvement Project</b> Explains that the subject here is the child, and this makes it different than other civil cases.
232	Chair Minnis	Asks if the wording should be changed to reflect that a new attorney would be appointed.
242	Nass	Feels that this is not necessary in every case.
245	Chair Minnis	Says that lawyers should know what the law says and do their duty.
284	<b>Kathie Osborn</b>	<b>Juvenile Rights Project</b> Testifies in support of HB 2388A. Describes instances where it is not the attorney’s fault that the appeal was not filed in time.

Submitted By,

Reviewed By,

Annola DeJong,  
Committee AssistantCraig Prins,  
Counsel**EXHIBIT SUMMARY****A – SB 294, -1 amendments submitted by staff, dated 3/07/01, 1 p.****B – SB 294, -2 amendments submitted by staff, dated 4/30/01, 1 p.****C – HB 2352A, written testimony submitted by Jeff Carter, Oregon Law Commission, 6 pp.****D – HB 2646, written testimony from David Cook, submitted by Nick Armenakis, Oregon Department of Corrections, dated 4/30/01, 2 pp.****E – HB 2646, written testimony submitted by Jim Botwinis, Oregon State Police Officer's Association, dated 4/30/01, 1 p.****F – HB 2646, written testimony submitted by Ingrid Swenson, Oregon Criminal Defense Lawyers Association, dated 4/30/01, 1 p.****G – HB 2646, written testimony submitted by Don Loving, AFSCME, 2 pp.****H – HB 2611A, written testimony from David Kenagy, submitted by Kathie Osborn, Juvenile Rights Project, 7 pp.****I – HB 2611A, written testimony from David Kenagy, submitted by Kathie Osborn, Juvenile Rights Project, dated 4/24/01, 14 pp.****J – SB 70, -4 amendments submitted by Kevin Mannix, dated 4/26/01, 5 pp.****K – SB 70, -1 amendments submitted by staff, dated 4/4/01, 17 pp.****L – SB 70, -2 amendments submitted by staff, dated 4/4/01, 2 pp.****M – HB 2388A, written testimony submitted by Jim Nass, Oregon Judicial Department, dated 4/30/01, 1 p.****N – HB 2388A, written testimony from David Kenagy, Oregon Law Commission, 4 pp.**