

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

January 20, 1999 Hearing Room 357

8:30 a.m. Tapes 3-4

MEMBERS PRESENT: Rep. Mannix, Chair

Rep. Prozanski, Vice-Chair

Rep. Bowman

Rep. Gianella

Rep. Hansen

Rep. Simmons

Rep. Sunseri

STAFF PRESENT: John Horton, Counsel

Patsy Wood, Administrative Support

MEASURE/ISSUES HEARD:

Possible Measure Introduction

HB 2303 Public Hearing and Possible Work Session

HB 2420 Public Hearing and Possible Work Session

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.

TAPE/#	Speaker	Comments
TAPE 3, A		
004	Chair Mannix	Calls meeting to order at 8:31 a.m.
<u>HB 2303 PUBLIC HEARING</u>		

012	Counsel Horton	Explains HB 2303 changing definition of escape to include failure to return to custody after temporary release or transitional leave.
033	Alfred French	Oregon District Attorney's Association (ODAA) States the Oregon District Attorney's Association is in support of HB 2303. Explains SB 1145 (adopted in 1985) which differentiates where a criminal will be housed depending upon the length of incarceration. Explains under ORS 144.500 a person, under the care of the Department of Corrections, on temporary release who doesn't return is considered escape in the second degree rather than unauthorized departure.
067	Chair Mannix	If a convicted felon with the Department of Corrections doesn't return from a drug treatment program, it is considered an escape? But if a felon with the County doesn't return, it is unauthorized departure?
074	French	That's correct.
077	Rep. Prozanski	Asks for distinction because ORS 144.502 doesn't talk about release to a drug treatment program, just work release.
084	French	States Rep. Prozanski is correct. Work release is handled differently than temporary release for alcohol treatment.
088	Chair Mannix	Asks why there are distinctions/gradations as to the reason for the release.
093	French	Gives his explanation citing that the statute in the Corrections code was not part of the legislation that created unauthorized departure.
095	Rep. Prozanski	Gives further explanation regarding the work release program within the Corrections Department Explains why this is a good law to pass.
123	French	Gives ODAA's position that convicted felons on temporary leave should be held to the higher standard.
137	Chair Mannix	Asks if officials at lower levels are unwilling to allow temporary release because sanctions for not returning are less severe.
143	French	States he can't speak for Corrections, but he wouldn't think it would make that much difference.
146	Rep. Hansen	States it's a fine line between whether a felon is asking to go to treatment or treatment is part of their probation for release. Asks Counsel to explain the differences between classes of an escape felony.

165	Horton	Gives definitions of "escape" and "unauthorized departure".
200	French	Gives clarification of "custody" as excluding a correctional facility.
207	Chair Mannix	Asks if Mr. French is the Deputy District Attorney who handles these issues in Marion County.
208	French	States he's one of them.
209	Chair Mannix	Asks Mr. French how desirable this type of legislative change will be.
213	French	States that the District Attorney's Association supports it, and he personally supports it.
221	Chair Mannix	Asks if a significant shift has occurred from felons serving in correctional facilities that are now serving in county facilities where the lesser charge is applied.
225	French	Yes.
226	Rep. Bowman	Asks if a lot of people in Marion County are going for alcohol and drug treatment and not returning. States she's in favor of the law and asks what is the problem we're trying to correct.
239	French	Explains it's a philosophical problem rather than a practical problem. Clarifies some forms of leaving a correctional facility that constitute escape.
261	Rep. Gianella	Asks what an A & D and ODAA are.
263	Chair Mannix	Explains A & D is alcohol and drug treatment and ODAA is the Oregon District Attorney's Association.
268	Rep. Prozanski	Clarifies distinction of someone being on probation vs. someone being in custody.
288	Rep. Hansen	Explains what is happening in Clackamas County with regards to SB 1145 (electronic monitoring) and changes in different types of sanctions. Asks if the committee should consider somebody aiding someone in leaving an electronically monitored situation.
301	Chair Mannix	States it would be legitimate to evaluate that type of situation, but doesn't overlap with this particular situation.

309	Rep. Hansen	Asks if the committee should take a more comprehensive look in terms of how escape relates to all of the changes that are occurring in SB 1145.
313	Chair Mannix	Asks Mr. French if issues are arising from violation of the use of the electronic monitoring device according to him or the ODAA.
317	French	States he can only speak from personal experience and Marion County does not have an extensive electronic bracelet program. Clackamas County has an extensive program and there were problems with violations of the program.
333	Chair Mannix	Are there any bills coming through with electronic monitoring in them?
335	Horton	No.
336	Chair Mannix	States he and Rep. Prozanski try to anticipate other bills so that related issues are consistent with actions that may have been previously taken. States Rep. Hansen is welcome to talk with people in Clackamas County about additional legislation regarding electronic monitoring.
358	Rep. Bowman	Asks Counsel what sentencing range is for unauthorized departure and escape 1-3.
362	Horton	Explains sentence for unauthorized departure and escape 3. Asks Mr. French is he has the grid block to explain escape 1 and 2.
374	French	Explains sentences for escape 1 and 2.
395	Chair Mannix	Further explains sentencing time.
410	Ingrid Swenson	<p>Oregon Criminal Defense Lawyers Association</p> <p>Gives testimony against HB 2303 explaining these statutes need to be viewed in terms of risk to public safety. She further explains some of the difficulties with HB 2303 regarding the term escape. States OCDLA's main concern is affecting statutory provisions already in place and sites specific statutes</p>
TAPE 4, A		
053	Swenson	Suggests making a second class of unauthorized departure crimes Class C felonies.
066	Rep. Prozanski	Asks witness for clarification if the OCDLA would prefer to elevate the potential sentence of unauthorized departure rather than change existing statutes.

077	Swenson	If the concern is that unauthorized departure is not being adequately punished compared to similar behavior, then the proposal to make it a Class C felony would resolve the issue and not involve these other statutes.
082	Chair Mannix	Asks if there is a specific proposal for how to deal with the issue.
083	Swenson	States if a person is a sentenced felon, unauthorized departure could be a Class C felony instead of a misdemeanor.
087	Rep. Prozanski	States there could be two types of unauthorized departure: a first degree and a second degree. Suggests further discussion before the bill is moved out.
<u>HB 2303 WORK SESSION</u>		
099	Chair Mannix	Asks Mr. French for his reaction to breaking unauthorized departure into two categories.
106	French	Suggests this is something that is workable and he would be happy to work with the committee on this.
107	Chair Mannix	Asks Rep. Hansen if this approach is workable for him.
108	Rep. Hansen	Yes.
109	Chair Mannix	Suggests a conceptual amendment with formal LC amendment coming back to committee to handle in further work session.
122	Rep. Prozanski	MOTION: Moves to ADOPT the conceptual amendment to establish two degrees of unauthorized departure offered by the committee to HB 2303.
133	Rep. Simmons	States he'd rather see all escape and unauthorized departure under one heading of felony.
138	Chair Mannix	States reasons for gradation of penalties.
157	Swenson	States the intention of the people who drafted the 171 criminal code. The level of punishment was supposed to be a deterrent to certain behavior.
166	Rep. Gianella	Asks if there are more escapes with the convicts that need or want drugs than in other areas.
171	Swenson	States she doesn't know, but says there are a number of people who just don't

		return from treatment.
180	French	States his focus is on the shift into the SB 1145 program. Explains it is a different sort of criminal, many who don't care about sanctions and are more likely not to return when allowed to go out.
206	Rep. Simmons	States he is not in favor of the amendment.
216	Chair Mannix	States the conceptual amendment has two levels of unauthorized departure: first degree a Class C felony if it is an unauthorized departure when under conviction of a felony; and second degree Class A misdemeanor when the unauthorized departure occurs when convicted of a misdemeanor.
228	Rep. Prozanski	Clarifies not only under conviction for first degree, but also in custody of a correctional facility.
		VOTE: 5-1 AYE: 5 - Rep. Bowman, Gianella, Hansen, Sunseri, Chair Mannix NAY: 1 - Rep. Rep. Simmons
	Chair Mannix	The motion Carries.
232	Chair Mannix	MOTION: Moves HB 2303 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
232	Chair Mannix	States there will be a further work session to formally adopt the LC amendment and have a fiscal at that time.
<u>HB 2420 PUBLIC HEARING</u>		
246	Counsel Horton	Summarizes HB 2420 authorizing the court in certain criminal or juvenile proceedings to order taking of buccal samples.

284	Rep. Gianella	Asks for clarification of burglary in the first degree.
286	Horton	Explains different incidences of burglary.
305	Lt. Clifford Daimler	Director, Forensic Biology Section, Oregon State Police Gives testimony in support of HB 2420. Also proposes amendment to HB 2420 to include section 7 of LC 735.
371	Rep. Bowman	Asks why samples of body fluids would have to be taken for burglary charges.
376	Cecilia von Beroldingen	Forensic DNA Specialist, Oregon State Police States this is based upon trends in other states that have similar convicted-offender database legislation to Oregon. Explains a number of convictions on more serious charges were made because the offender had originally entered the database on burglary charges.
402	Chair Mannix	Asks if the offender could have entered premises to commit a sexual assault, but lack of a victim left the offender with just a burglary charge.
412	von Beroldingen	States that is what the supposition is. Explains there is data from Florida that burglary is a precursor crime to sexual assault and more violent crimes.
424	Rep. Prozanski	States adding Section 7 shouldn't be a problem. Asks for more information about how DNA can identify an unknown suspect for a sexual assault.
434	von Beroldingen	States sexual assault cases often have biological evidence, and a genetic profile can be developed based upon DNA typing to search a database of convicted offenders.
447	Rep. Prozanski	States it is important to have that connection and nexus for someone coming into the system strictly on burglary charges.
456	Chair Mannix	Asks if the bill only applies to people convicted of a crime being subjected to a buccal sample.
461	Daimler	States that is correct, but also includes the recording of a thumbprint.
468	Rep. Bowman	How long are these records kept on file?
470	von Beroldingen	States they are kept permanently, unless court has asked that they be expunged.

476	Rep. Bowman	If a sampling was taken from a juvenile today, would it be in the file forever.
477	von Beroldingen	Yes.
478	Rep. Bowman	"That scares me".
480	Chair Mannix	States instances of when a sample is taken.
487	Rep. Prozanski	States that this sampling would be retroactive for individuals currently serving time.
491	von Beroldingen	States yes; that is the basis of Section 7.
TAPE 3, B		
036	Rep. Prozanski	States that fingerprints which are currently taken, stay in the database into perpetuity unless they are expunged.
041	Daimler	Asks if other portions of HB 2420 could be addressed. Pg 2, line 8 requests bold type [the court or] be removed and word thumbprints changed from plural to singular.
059	Chair Mannix	Asks reasons for that.
060	Daimler	States the court does not need to be involved in the collection of buccal samples.
062	Chair Mannix	Asks if those are the suggested changes as well as the addition of Section 7 of LC 735, and thumbprints made singular everywhere it comes up.
065	Daimler	Yes.
069	Ingrid Swenson	Oregon Criminal Defense Lawyers Association (OCDLA) States OCDLA both favors and opposes this bill. States OCDLA favors the saliva clause, but not the extension of charges requiring sampling.
107	Swenson	States she works with juveniles, many of whom break into their own homes (after being asked to leave the residence) to get personal property and subsequently get charged with burglary. States these youth would have permanent records for this crime because there is no provision for expungement. Asks what this database will be used for in the future.
142	Rep. Gianella	Asks how long thumbprints stay with juveniles.

145	Swenson	Explains when juveniles can have their records expunged.
161	Rep. Bowman	Asks Counsel for clarification of burglary on line 10, page 1, of HB 2420.
169	Horton	Explains when a buccal or blood sampling could be taken for burglary. Asks Ms. Swenson if that is her understanding also.
181	Swenson	Yes. States current law includes " <i>attempts</i> " on listed offenses among those subject to sampling.
189	Chair Mannix	Asks if attempts are covered here.
191	Swenson	Explains it is in subsection (f) of Section 1.
194	Chair Mannix	Closes public hearing on HB 2420.
<u>HB 2420 WORK SESSION</u>		
205	Rep. Sunseri	MOTION: Moves to ADOPT conceptual amendments to HB 2420 deleting [the court or] and changing thumbprints to singular.
		VOTE: 7-0
		Chair Mannix
		Hearing no objection, declares the motion CARRIED.
211	Rep. Simmons	MOTION: Moves to ADOPT conceptual amendments to HB 2420 by adding Section 7 of LC 735.
		VOTE: 7-0
		Chair Mannix
		Hearing no objection, declares the motion CARRIED.
220	Rep. Simmons	Asks if there is a willingness to discuss adding other offenses that are not currently covered.

225	Chair Mannix	Yes.
229	Rep. Simmons	Suggests any kind of burglary conviction be included in the bill.
236	Chair Mannix	States Rep. Simmons makes conceptual amendment to HB 2420 to include any conviction of any degree of burglary require samples be taken.
240	Rep. Prozanski	Discusses the financial impact.
242	Rep. Sunseri	States this could now impact counties as well as the State.
244	Chair Mannix	Makes suggestion to Rep. Simmons that the Department of Corrections take samples from those already in their custody.
250	Rep. Simmons	Asks if Section 7 of LC 735 addresses that.
251	Chair Mannix	States what Section 7 says.
254	Rep. Simmons	Asks if adding burglary convictions to the list as a conceptual amendment would mean the Department of Corrections would go back and take samples from those currently in custody.
258	Chair Mannix	Yes. States this would also have a smaller fiscal impact.
259	Rep. Simmons	States he would like to make that conceptual amendment.
268	Rep. Hansen	States a concern that collecting too much information would create a database that is not really helpful.
285	Chair Mannix	States the committee could start with this class of offenders and see how it works.
298	Rep. Gianella	Asks Lt. Daimler how he feels about Rep. Hansen's concerns.
303	Daimler	States information developed through DNA sampling is computerized and that too much information can't be collected if the point is to get criminals off the streets.
322	Rep. Bowman	Are there differences between databases for blood and buccal samples?
335	von Beroldingen	States saliva is a more convenient way to collect a sample than blood.

347	Rep. Simmons	MOTION: Moves to ADOPT conceptual amendment to HB 2420 expanding the database to those individuals in custody of the Department of Corrections who are convicted of any degree of burglary.
	Chair Mannix	VOTE: 3-4 AYE: 3 - Gianella, Simmons, Sunseri NAY: 4 - Bowman, Hansen, Prozanski, Mannix
	Chair	The motion FAILS.
369	Chair Mannix	Asks if there are objections to the bill. It is noted Rep. Bowman objects to the bill as amended.
372	Chair Mannix	Closes work session on HB 2420.
402	Chair Mannix	Meeting adjourned at 9:52 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A ñ Testimony regarding HB 2420, buccal samples being taken, Lt. Cliff Daimler ñ 17 pgs