

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

January 29, 1999 Hearing Room 357

8:30 a.m. Tapes 18 & 19

MEMBERS PRESENT: Rep. Mannix, Chair

Rep. Prozanski, Vice-Chair

Rep. Gianella

Rep. Hansen

Rep. Simmons

Rep. Sunseri

MEMBER EXCUSED: Rep. Bowman

STAFF PRESENT: John Horton, Counsel

Patsy Wood, Administrative Support

MEASURE/ISSUES HEARD:

Possible Measure Introduction

HB 2258 Public Hearing and Possible Work Session

HB 2263 Public Hearing and Possible Work Session

HB 2307 Public Hearing and Possible Work Session

HB 2304 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 18, A		

006	Chair Mannix	Calls meeting to order at 8:35 a.m.
<u>HB 2258 WORK SESSION</u>		
020	Counsel Horton	Summarizes HB 2258 which extends the period of time in which victims of child abuse may receive crime victims' assistance and introduces amendments -1 and -2 (EXHIBITS A & B).
035	Chair Mannix	States the retroactivity clause (-2 amendments) will make the fiscal impact marginal, but extending the benefits from 18 to 21 (-1 amendments) would have a \$336,000 fiscal impact.
040	Peter Cogswell	Department of Justice Explains the fiscal impact incorporated the retroactivity provision. There would be about 25 additional cases, and the Crime Victims' Compensation Fund can handle that increase. Also, it doesn't change the staffing requirement.
054	Rep. Prozanski	Asks if these funds would be drawn off the existing account for crime victims?
055	Cogswell	Yes.
055	Rep. Prozanski	Since there is already a "surplus" in the fund, we won't need new revenue to come in?
058	Cogswell	Yes.
058	Chair Mannix	Does this setup a dedicated fund that is maintained separately?
060	Cogswell	Yes. Discusses how the fund gets its money.
064	Rep. Prozanski	Discusses monetary assessments the Department of Justice oversees and distributes with some of the money going back to counties and cities who have established programs for victims.
072	Chair Mannix	Asks if Legislative Fiscal has been contacted to see if a subsequent referral will need to be made to Ways & Means?
078	Cogswell	No.
079	Chair Mannix	Asks Mr. Cogswell to check with Legislative Fiscal to see if a subsequent referral to Ways & Means is needed. Closes work session on HB 2258.

HB 2263 WORK SESSION

099	Counsel Horton	Summarizes HB 2263 which allows the juvenile court to waive infractions, violations and certain misdemeanors to municipal court if municipal court agrees. Introduces the proposed amendments: ñ1 dated 1/28/99 (EXHIBIT C), -2 dated 1/28/99 (EXHIBIT D), -3 dated 1/28/99 (EXHIBIT E), and -4 dated 1/28/99 (EXHIBIT F).
139	Larry Oglesby	Oregon Juvenile Department Directorís Association Discusses the earlier question of expungement. Looked into the question of whether municipal court was an adult court
152	Chair Mannix	States the -4 amendment takes care of that problem.
153	Oglesby	Yes. Discusses concerns with the ñ4 amendments and infractions, and suggest limiting it to Section 1 (c).
159	Chair Mannix	Asks if limiting the language would be between the municipality and the juvenile court? Couldnit they limit what they are willing to waive by their order?
161	Oglesby	Yes. That would be part of the agreement in terms of what is waivable, but this is a question of what becomes expungable.
165	Kevin Campbell	Oregon Association of Chiefs of Police States he appreciated working with Counsel Horton and Mr. Oglesby to help devise and address the issues of concern.
171	Rep. Prozanski	Glad to see one city has adopted this. Asks if a sunset clause is needed in the ñ2 amendments ñ?
185	Rep. Hansen	States it was asked to be drafted as a fallback and explains why. With the amendments presented, the sunset clause isnít necessary.
194	Rep. Prozanski	MOTION: Moves to ADOPT -1 amendments dated 1/28/99.
		VOTE: 6-0 EXCUSED: 1 - Rep. Bowman
		Chair Mannix Hearing no objection, declares the motion CARRIED.

197	Chair Mannix	States the ñ2 amendments will be eliminated if not necessary.
200	Rep. Prozanski	MOTION: Moves to ADOPT -3 amendments dated 1/28/99.
		VOTE: 6-0 EXCUSED: 1 - Rep. Bowman
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
203	Rep. Prozanski	MOTION: Moves to ADOPT -4 amendments dated 1/28/99.
208	Oglesby	Asks if the ñ4 amendments refer to all infractions and violations or if it affects only misdemeanors?
214	Rep. Prozanski	Asks if the Juvenile Department is just trying to keep the paperwork down?
216	Oglesby	States thatís one part of it, but more specifically addresses the concern of having an adult criminal record by virtue of this waiver, and applying the juvenile expunction to that subsection allows those criminal offenses to be expunged.
220	Rep. Prozanski	Clarifies that violations as well as infractions, since theyíre not crimes, are not criminal records.
221	Oglesby	Yes, thatís correct.
222	Chair Mannix	And you donít want them subject to expunction?
222	Oglesby	Yes.
224	Chair Mannix	Asks why they would have to be waived ñ couldnít they be brought into municipal court directly, or do all juvenile infractions, go to juvenile court?
226	Oglesby	States juvenile court has exclusive jurisdiction on all juvenile matters subject to waiver to other courts.
228	Rep. Prozanski	With the exception of automatic remand on traffic offenses.

229	Oglesby	States this is still done by specific order from the juvenile court.
230	Chair Mannix	Asks what the problem would be with expunction on all cases?
231	Oglesby	States there would be no serious problem with that except for the courts increased workload.
235	Chair Mannix	How heavy a burden that would be?
236	Oglesby	I don't know, but it may not be significant.
238	Chair Mannix	Asks if it gives the Juvenile Department concern.
239	Oglesby	Not serious concern.
241	Rep. Prozanski	States a concern about expunction of certain records when someone becomes an adult. Asks if all records are expunged when a juvenile file is closed?
250	Oglesby	Yes. Everything in the juvenile file is expunged.
251	Chair Mannix	States he doesn't want to complicate matters by expunging some records but not others.
254	Rep. Sunseri	States concern about crafting the bill properly.
263	Chair Mannix	I agree.
272	Rep. Prozanski	States insurance companies might wonder why traffic records get expunged.
278	Rep. Prozanski	Withdraws 4 amendments dated 1/28/99. Seeing no objection the motion is withdrawn.
292	Rep. Prozanski	Clarifies some records could be expunged while others might need to stay on the record, and gives a driving record example.
311	Chair Mannix	Asks Mr. Oglesby and Mr. Campbell to work with Counsel Horton and Legislative Counsel and the motor vehicles people about some precise limitation.
316	Rep. Hansen	Would the amendment of juvenile cases waived to municipal court be the same section that covers the traffic waiving?

321	Oglesby	States this would be an amendment specifically for this purpose.
323	Rep. Hansen	How would this apply to traffic offenses?
324	Oglesby	Because it applies to the entire bill and traffic, fish & game, motor vehicles, and boating laws are covered in Section 1 of this bill.
329	Chair Mannix	Closes work session on HB 2263.
<u>HB 2307 WORK SESSION</u>		
339	Counsel Horton	Summarizes HB 2307 which increases penalty for assault when the victim is less than two years of age. Explains ñ1 amendments dated 1/28/99 (EXHIBIT G).
375	Dale Penn	District Attorney's Association Suggests that infant assault in the first degree be classified as a Class B Felony and gives reasoning.
411	Chair Mannix	Suggests making both of them Class B felonies. Asks about making assault of an infant in the second degree a Class C felony.
415	Penn	Explains why it would be better to leave both crimes as a Class B felony.
TAPE 19, A		
006	Chair Mannix	Explains why the current statutory scheme for assaults should be used rather than use the Measure 11 mandatory minimums.
017	Rep. Prozanski	Why we want to take a section of law that provides for assault 3 and move it to assault 1? Asks if we're seeing such a rise in assaults to infants, disabled or elderly who are medically fragile, that we have to create another exception to the general assault statutes.
050	Penn	Estimates that 40-50 cases a year dealing with infants are seen focusing on two issues: shaken baby syndrome, and skull fractures and burns happening to children under the age of two. Explains why shaken baby syndrome is seen mostly in children under 2. Discusses sentencing guidelines. Discusses deliberateness v. recklessness as evidence in seeking departure
114	Rep. Prozanski	Asks about Section 2, (1), (b) and if there is a doubling departure.
125	Penn	You could, in some circumstances, get double departure up to a maximum of 36 months. However, we have a tough time getting into single departure, much less

		do double departure.
140	Rep. Prozanski	Discusses a concern with recklessness v. deliberateness with regard to shaken baby syndrome. My concern is that reckless is less mental element than knowingly or intentionally and if we're going to elevate the sanctions for a reckless crime compared to a knowing or intentional crime, there could be a problem.
166	Chair Mannix	Discusses the age factor of the victim.
168	Rep. Sunseri	Concerned there are those people who shake babies out of anger, not out of immaturity and not intentionally. I don't see this fitting into those categories you described, and I want to see something like that addressed.
177	Chair Mannix	Asks what about the fragile, disabled person who is momentarily left unattended and is subjected to some physical injury.
188	Penn	That victim is particularly vulnerable so we would ask for departure.
194	Rep. Hansen	States concerns about the terms "reckless" and "serious physical injury". Also concerned about creating a new crime (shaken baby) for children under 2 years of age. Discusses other types of crimes to a small child that could impact their development. Summarizes concerns as: 1) give the courts the tools so they can prosecute crimes other than shaken baby and cause serious, long-term development problems for an infant and 2) the specific cut-off for 2 years of age. States the law should be protecting all children.
257	Penn	Your concerns are the reasons why we had a hard time bringing a bill forward. Gives examples why serious physical injury is hard to define. Picking 2 years of age was arbitrary.
288	Chair Mannix	Discusses sentencing guidelines saying we have narrowed the range for the judge and there is now a ceiling for departure. To break through that ceiling we sometimes look at creating new categories. Asks about moving the age from 2 up to 3?
318	Penn	We wouldn't have a problem with that. Three years of age should certainly capture all shaken baby situations.
327	Chair Mannix	States his understanding that the critical years of a child's development are 0-3 years of age.
337	James Rice	Oregon Criminal Defense Lawyers Association Discusses alternative approaches to the sentencing guidelines.

363	Chair Mannix	What would you specifically suggest?
364	Rice	Assault 3 is level 6 and we could move it up a notch or two for a child under 2 or 3 years of age. Speaks to upward departures. Speaks about the Rodney King case and State v. Wilson where judges found reasons to get the results they wanted. Discusses the physical impact of injury to children v. the psychological impact.
TAPE 18, B		
014	Chair Mannix	Suggests making assault of an infant in the first degree a Class B felony and assault of an infant in the second degree a Class C felony with sentencing guidelines not applying and the judge may determine the sentence up to the maximum allowed by law.
018	Rice	Explains judges are now locked into sentencing guidelines.
026	Chair Mannix	One option would be the B and C felony and a section that says sentencing guidelines do not apply and the judge may impose the sentence up to the maximum allowed by law for that category of crime subject to a 15% good-time provision.
040	Chair Mannix	Closes work session on HB 2307
<u>HB 2258 WORK SESSION</u>		
052	Peter Cogswell	Department of Justice Legislative Fiscal informed us the bill does need to go to Ways and Means because the position increase currently is not reflected in the Department's budget.
057	Rep. Sunseri	MOTION: Moves to ADOPT -1 amendments dated 01/28/99.
		VOTE: 6-0 EXCUSED: 1 - Rep. Bowman
Chair Mannix		Hearing no objection, declares the motion CARRIED.
060	Rep. Sunseri	MOTION: Moves to ADOPT -2 amendments dated 01/28/99.

		VOTE: 6-0 EXCUSED: 1 - Rep. Bowman
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
064	Rep. Sunseri	MOTION: Moves HB 2258 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means by prior reference.
		VOTE: 6-0 EXCUSED: 1 - Rep. Bowman
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
<u>HB 2304 WORK SESSION</u>		
072	Counsel Horton	Summarizes HB 2304 that allows a defendant to remain in custody pending trial for more than 60 days upon a showing of good cause. Explains the ñ1 and the ñ2 amendments. (EXHIBIT H & I)
095	Chair Mannix	Gives options that could be applied to HB 2304.
111	Rep. Hansen	MOTION: Moves to ADOPT -1 amendments dated 01/28/99.
120	Counsel Horton	Gives several illustrations of good cause.
140	Chair Mannix	States there was a concern from the Defense Bar about creating an open-ended opportunity for extension. Rep. Hansenís proposed amendment limits the opportunity for this extension and allows partial responsibility, not just insanity, to be considered.
		VOTE: 6-0 EXCUSED: 1 - Rep. Bowman

	Chair Mannix	Hearing no objection, declares the motion CARRIED.
156	Rep. Hansen	MOTION: Moves to ADOPT -2 amendments dated 01/28/99.
157	Rep. Hansen	Expresses concern about scientific evidence delaying a defendant's time in custody.
181	Rep. Prozanski	Asks for a clarification on the amendment regarding the court granting an extension based on good cause.
189	Rep. Hansen	The prosecutor would get an additional 30 days and at that point they would have to go to trial or release the defendant.
193	Rep. Prozanski	Asks for clarification if the original bill limits one extension or not.
198	Chair Mannix	States HB 2304 allows one extension and then a second extension.
204	Rep. Prozanski	With the ñ2 amendments that would drop from 180 days to 120 days maximum?
206	Chair Mannix	Yes. States he would rather the court had the leeway to set the extension.
231		VOTE: 1-5 AYE: 1 - Hansen NAY: 5 - Gianella, Prozanski, Simmons, Sunseri, Mannix EXCUSED: 1 - Bowman
	Chair Mannix	The motion FAILS.
234	Rep. Simmons	MOTION: Moves HB 2304 to the floor with a DO PASS AS AMENDED recommendation.
235	Rep. Hansen	States a concern about incarcerating people before they have been found guilty of a crime, and local government's ability to maintain their jail system with

		regard to bed space. Suggests holding HB 2304 until we deal with HJR 7.
293	Chair Mannix	This bill empowers the court to do the right thing, and while some counties may not have bed space, other counties will.
320	Rep. Gianella	Is there any estimation of how many cases would fall under the "good cause" category?
324	Chair Mannix	Not a large number of cases.
330	Rep. Sunseri	There are 35 other counties that would appreciate this bill.
338		VOTE: 5-1 AYE: 5 - Gianella, Prozanski, Simmons, Sunseri, Mannix NAY: 1 - Hansen EXCUSED: 1 - Bowman
	Chair Mannix	The motion CARRIES. REP. PROZANSKI will lead discussion on the floor.
353	Rep. Prozanski	Discusses whether the state should be obligated to pay the counties for the cost of maintaining additional prisoners pre-trial and working this into bills that will be coming from the counties.
372	Chair Mannix	States he would join Rep. Prozanski in that suggestion requiring the state to help pay the costs.
381	Rep. Prozanski	Discusses the issue of the counties having to pay for incarceration.
391	Rep. Sunseri	States the primary function of civil government is to protect its people, and we need to find a way to fund those things if they're the right thing to do.
402	Chair Mannix	Discusses a progressive statute that might be considered.
423	Rep. Hansen	Discusses Ballot Measure 47 and its impact on the local criminal justice system.

TAPE 19, B		
013	Chair Mannix	Adjourns meeting at 10:00 a.m

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ HB 2258, -1 amendments, (LC 560) dated 1/28/99, staff, 1 pg.

B ñ HB 2258, -2 amendments, (LC 560) dated 1/28/99, staff, 1 pg.

C ñ HB 2263, -1 amendments, (LC 578) dated 1/28/99, staff, 1 pg.

D ñ HB 2263, -2 amendments, (LC 578) dated 1/28/99, staff, 2 pgs.

E ñ HB 2263, -3 amendments, (LC 578) dated 1/28/99, staff, 1 pg.

FóHB 2263, -4 amendments, (LC 578) dated 1/28/99, staff, 1 pg.

G ñ HB 2307, -1 amendments, (LC 1876) dated 1/28/99, staff, 1 pg.

H ñ HB 2304, -1 amendments, (LC 1875) dated 1/28/99, staff 1 pg.

I ñ HB 2304, -2 amendments, (LC 1875) dated 1/28/99, staff, 1 pg.