

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

February 10, 1999 Hearing Room 357

8:30 a.m. Tapes 38 - 40

MEMBERS PRESENT: Rep. Mannix, Chair

Rep. Prozanski, Vice-Chair

Rep. Bowman

Rep. Gianella

Rep. Hansen

Rep. Simmons

MEMBER EXCUSED: Rep. Sunseri

STAFF PRESENT: John Horton, Counsel

Patsy Wood, Administrative Support

MEASURE/ISSUES HEARD: HB 2302 Public Hearing and Possible Work Session

HB 2306 Public Hearing and Possible Work Session

HB 2327 Public Hearing and Possible Work Session

HB 2328 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 38, A		

006	Chair Mannix	Calls meeting to order at 8:30 a.m.
<u>HB 2302 PUBLIC HEARING</u>		
009	Diane Rea	Chair, Board of Parole & Post-Prison Supervision Submits written testimony and testifies in support of HB 2302 (EXHIBIT A). HB 2302 extends period of parole or post-prison supervision for persons convicted of rape in second degree, sodomy in second degree or attempt to commit one of those crimes. Modifies ORS 144.103 to include these crimes. Discusses the reasons for extending this period. Offers a conceptual amendment to ensure that some offenders would not actually serve less time under supervision should this bill pass. Discusses how this could happen.
056	Rep. Bowman	Will the post prison supervision allow for counseling or other treatment?
059	Rea	The Board of Parole always imposes a condition of sex offender treatment in the community for post-prison supervision of sex offenders. We also impose additional conditions, if appropriate.
068	Rep. Bowman	Do we provide sex offender treatment within the Department of Corrections?
071	Rea	Not to my understanding.
073	Rep. Bowman	Asks if statistical data is available which shows the result of delaying treatment for so long after the offense is committed.
079	Rea	From what I understand, sex offender treatment is more effective when the offender is treated in the community.
088	Chair Mannix	The Board of Parole has no authority over the Department of Corrections programs. Is that correct?
094	Rea	Yes, that is absolutely correct.
099	Dale Penn	Oregon District Attorney's Association Testifies in favor of HB 2302. It doesn't make sense to have Sex Abuse I and II susceptible to increased supervision and yet leave out Rape II and Sodomy II. We have no problem with the proposed amendments from the Board of Parole.
121	Rep. Prozanski	This appears to be a piece-meal process and may indicate we need to have some type of interim group to look at this whole area.
129	Penn	Yes. There have been a lot of amendments to the sex offender code and a

		comprehensive look would be a good idea.
140	Chair Mannix	We may want to request such an interim committee. Would Rep. Prozanski like to draft something requesting a committee?
151	Rep. Prozanski	I'll be glad to work on that.
154	Chair Mannix	A very comprehensive look ñ maybe an interim committee won't be enough time. Closes public hearing and opens work session on HB 2302.
<u>HB 2302 WORK SESSION</u>		
180	Rep. Prozanski	MOTION: Moves to ADOPT the conceptual amendments offered by the Board of Parole to HB 2302.
		VOTE: 6-0 EXCUSED: 1 ñ Sunseri
		Chair Mannix Hearing no objection, declares the motion CARRIED.
194	Rep. Prozanski	MOTION: Moves HB 2302 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0 EXCUSED: 1 - Sunseri
		Chair Mannix Hearing no objection, declares the motion CARRIED. REP. PROZANSKI will lead discussion on the floor.
202	Chair Mannix	Closes work session on HB 2302 and opens public hearing on HB 2327.
<u>HB 2327 PUBLIC HEARING</u>		

206	Diane Rea	Chair, Board of Parole & Post-Prison Supervision Submits written testimony and testifies in support of HB 2327 (EXHIBIT B). HB 2327 establishes enhanced sentence for person found to be "sexually violent dangerous offender." Discusses the effects of this bill and those offenders who would be affected by this bill. Indicates that the additional jail time available to the Board of Parole for sanctions during parole can total no more than 360 days.
284	Rep. Hansen	How often does it happen that an offender violates the conditions of his parole?
292	Rea	I don't have the statistical data, but one of the most common problems we have with sex offenders, other than absconding supervision, is not going to treatment and associating with minors.
312	Rep. Hansen	Can you think of instances where the 360 days available for sanctions have been used up?
315	Rea	Yes. Explains the administrative sanction process. These sanctions are usually served in a work release center or another community setting. We have no control over where the person serves the sanction. If the jail is full, they will serve the sanction in the community.
339	Rep. Hansen	These administrative sanctions could be in excess of 360 days?
341	Rea	Yes. But it is very frustrating for us because sanctions in the community don't have the impact of jail time.
352	Scott Taylor	Oregon Department of Corrections Submits written testimony and testifies in support of HB 2327 (EXHIBIT C). The Department of Corrections is in favor of the increased public safety that would result from the passage of this bill. Our belief is that ten to fifteen offenders each year would fall under the provisions of HB 2327. Over time, we guess this would increase to about 300, since the supervision could be for life.
420	Chair Mannix	The Department of Corrections supports this bill?
422	Taylor	Yes.
424	Chair Mannix	Do you see any disconnect between this and any of the other bills coming down the pike?
426	Taylor	Each of the other bills have different pieces to it that cover different areas.
437	Chair Mannix	Discusses the long term impact of keeping these offenders on the supervision

		rolls for life.
447	Taylor	Indicates their projections cover the next 30 years.
448	Rep. Bowman	The definition of a sexually violent dangerous offender that appears in HB 2327, seems to fit a broader category than you're suggesting. How did you determine only ten to fifteen offenders a year would fit this category?
467	Taylor	Indicates the assumptions and sources used to estimate the figure of ten to fifteen each year.
<u>HB 2327 & HB 2328 PUBLIC HEARING</u>		
044	Rep. Lane Shetterly	Oregon State Representative, District 34 Testifies in support of HB 2327. States that HB 2327 and HB 2328 are the result of work by the interim committee. In Washington State and Kansas, sex offenders can be detained under civil commitment past their release date if they are shown to be a danger to themselves or society. A review system must be in place, because you can't hold someone indefinitely. The constitutionality of this system is frequently tested through litigation. It is keeping offenders off the street, but it's very expensive and cumbersome. Due to these problems, our focus in Oregon shifted from civil commitment to post-prison supervision. Offers examples of what types of punishment would occur for particular violations of the conditions of parole under HB 2327.
129	Rep. Shetterly	Continues to testify in support of HB 2328. HB 2328 would add increased supervision for sex offenders already incarcerated in the Oregon system. HB 2327 covers those sexual offenders who are not yet in the system.
147	Rep. Bowman	Asks if offenders who are sanctioned go back into a state or county facility?
151	Rep. Shetterly	A county facility.
153	Chair Mannix	Should we specify that it be a state facility to relieve any pressure on county facilities?
154	Rep. Shetterly	That is a policy decision. We had county representatives on the interim work group and they seemed satisfied.
158	Chair Mannix	This parallels the sanction capability that is currently there. Discusses state versus local responsibilities.
162	Rep. Prozanski	This bill is in line with what we have. The focus is on what can be provided to a returning offender before a subsequent release.

175	Rep. Hansen	I'd hate to think of these offenders being sent to state prison for six months if there are better programs available at the county level. The issue of cost is always a concern.
190	Chair Mannix	A bill is coming to this committee to adjust the reimbursement rate to the counties for housing state sentenced offenders.
194	Rep. Gianella	I have heard that counties didn't want any additional burden and you're saying this plan seemed to be all right with them?
198	Rep. Shetterly	Yes. We seemed to satisfy the concerns the counties had.
208	Rep. Prozanski	They fall under the funding formula elucidated in SB 1145. Is it fair to say that this is a specific population, a unique, finite group of offenders?
225	Rep. Shetterly	Yes. We tried to identify the population that you would see the greatest number from, and to deal with them, without getting so broad that the fiscal impact would be unsupportable.
240	Rep. Bowman	Is this the same population we are required to do community notification on?
242	Rep. Shetterly	Yes, everyone in this population would also fit into the community notification population.
250	Chair Mannix	Closes the public hearing on HB 2328.
<u>HB 2327 PUBLIC HEARING</u>		
254	Jeff Collins	Sex Offender Supervision Network Testifies in favor of HB 2327. Profiles the type of offender this bill is aimed at. They are chronic predatory offenders and resist treatment and supervision. They are very dangerous individuals. Without community-based treatment and supervision, they will continue to cause problems.
320	Rep. Prozanski	Mr. Collins is from Lane County Parole and Probation and has been involved with this type of offender for a long time.
329	Rep. Hansen	The cost of lifetime supervision would not be as high as the potential cost of these people re-offending. The cost to the victims and society is very high. Are there any statistics on this?
350	Collins	I don't have any with me. But research from Canada shows the longer these men

		are out, the more dangerous they become when not under supervision. This person is the man we notify people about and we'll be talking about this man as long as he is alive.
362	Phil Lemman	Criminal Justice Commission Submits written testimony and testifies on HB 2327 (EXHIBIT D). Indicates that he would suggest the amendments contained in his letter, which don't change the intent of the bill but just make it clearer to administer and enforce.
435	Chair Mannix	Asks that a letter from John Patterson, Cottage Grove City Councilman, (EXHIBIT E) be placed in the record. Closes the public hearing on HB 2327.
<u>HB 2328 PUBLIC HEARING</u>		
TAPE 38, B		
013	Chair Mannix	For the record, please note that all the testimony on HB 2327 should be incorporated into the testimony for HB 2328 and is part of the legislative history of both bills.
018	Rep. Bowman	I have a question for Ms. Rea regarding the issue raised by the letter from John Patterson.
022	Chair Mannix	The letter is regarding the registration of sex offenders and really is outside the structure of these bills.
024	Bowman	It is an issue, however, if they move into Oregon, will they fall under these bills and will we supervise them?
028	Chair Mannix	We will give Ms. Rea an opportunity to read this letter and comment. My view is that this issue doesn't really fit into the bills we are currently discussing.
030	Diane Rea	Board of Parole & Post-Prison Supervision Submits written testimony and testifies in support of HB 2328. HB 2327 applies to the population who have not been convicted. HB 2328, using the same definition, provides for more intensive supervision for offenders who are already in our system. We believe that the number of offenders we would have in the next biennium would not exceed 25.
066	Chair Mannix	Asks for the dollar figure.
070	Rea	Twenty-five offenders over the next two years could qualify for a screening process by the Board of Parole. I'm not certain what the cost would be per offender should we screen them into intensive supervision. I will defer to Mr. Taylor.

094	Scott Taylor	Department of Corrections Submits written testimony and testifies in support of HB 2328 (EXHIBIT G). Discusses the way costs were estimated for intensive supervision of offenders. Indicates that a \$105,000 cost for the next biennium is a conservative estimate.
127	Taylor	Discusses the additional factors comprising the cost of high supervision.
144	Rep. Prozanski	Discusses the additional housing needs and the research on intensive supervision.
151	Rep. Hansen	Speaks to the issue of money for housing these individuals. The cheapest housing is often the most dangerous place for these offenders to be.
165	Collins	Gives an example of a program in Lane County where supervision is present.
174	Rep. Bowman	For the record, intensive supervision involves more cost and more community involvement with services ñ a broader range of support is necessary.
188	Rep. Gianella	Mr. Taylor, do you think the sentencing is too lenient for this group since these individuals don't recover?
195	Taylor	For this population, the appropriate question is, where is the right place to be in custody? How do we want to supervise them.?
204	Rep. Gianella	Is it more expensive to pay for the supervision than to pay for jail?
206	Taylor	Less expensive to keep them under supervision than it is to keep them in prison.
211	Rep. Gianella	What is the difference per day?
213	Taylor	We are working on those costs. It is probably \$13 to \$20 a day for intensive supervision, \$75 to 78 per day for jail, and approximately \$60 per day for state institutions.
225	Chair Mannix	Do we need to keep these offenders away from each other when they are in community supervision?
228	Collins	These men often network and if they move in together they have violated their Parole conditions.
237	Rep. Prozanski	Regarding the letter from Mr. Patterson, when an offender crosses our border registration as a sex offender is required.

252	Rea	That is my understanding of the registration law as well.
257	Rep. Bowman	Do we have any statistical data about people who fail to register when they come into the state?
261	Rea	I don't have them, but could try to find them from the Oregon State Police.
265	Rep. Hansen	What is the rate of absconding among offenders in this group?
270	Taylor	I don't have that number, but believe I could get it.
273	Collins	From experience, when parole officers put pressure on these kind of offenders, they abscond fairly regularly.
282	Chair Mannix	Under HB 2328 they can be sanctioned?
288	Collins	Yes. And this would allow me to keep them in custody and devise better methods of supervision, such as electronic supervision.
292	Rep. Simmons	What are the incarceration times currently being given for these crimes?
298	Rea	If committed today under Measure 11, they would have a minimum of a 100 month sentence.
303	Rep. Simmons	It seems irresponsible to allow them back into community if it is likely they will re-commit the crimes. How confident are you that under intense supervision they will not re-commit these crimes?
319	Collins	Discusses re-offense rates indicating they're quite low. We see very little re-offending because supervision tends to interrupt that pattern. Violations of parole are more likely to occur.
358	Rea	Discusses a bill which is to be introduced, HB 2083, that has the Board of Parole evaluating offenders at the end of their sentence as to their readiness to be effectively supervised in the community.
376	Collins	Because we don't always have a history of these men, we don't know who they are and how they respond to treatment. Getting information before they are released would be very helpful.
388	Rep. Bowman	Why did the Department of Correction decide not to provide treatment for sexual predators?

394	Taylor	Reviewed data and made decisions on where the funds would be spent. We decided our priority had to be on alcohol and drug treatment because there is a larger prison population with these types of problems.
420	Rep. Bowman	What is the percentage of sexually predatory offenders out of all sex offenders in prison?
427	Taylor	If we use the definition used by HB 2327, we have 2,000 sex offenders in supervision with 10 or 12 a year in this population -- about 1%.
TAPE 39, B		
006	Rep. Simmons	I think we have a real responsibility to heavily sanction some of these offenders.
012	Rep. Hansen	How well is the process coordinated when these individuals leave the system and move into community supervision?
018	Collins	I often get only a single piece of paper with the proposed date of release, his type of conviction and a proposed residence.
025	Taylor	I'm responsible for "transitional release" or "release services". We have recently been looking at all these types of services and have implemented an automated Incarceration Transition Plan and believe that this will assist us.
043	Rep. Hansen	Who creates that plan?
044	Taylor	Currently, the release counselors within the institution begin that plan. The other institutional staff and the Board of Parole are also involved. I think we would all agree that we have fallen short of having a tight transitional plan.
052	Rep. Gianella	Do you think a second-time sexual predatory offender should have life in prison? So you feel that is too harsh?
059	Taylor	We're always trying to assess who is the most dangerous and I think we have pretty effective community supervision for these predatory sexual offenders. I would have trouble mandating lifetime prison considering how many dangerous offenders we have.
073	Rea	I would advocate a case by case analysis. Certainly it is appropriate for some offenders but would have to be looked at on a case by case basis so that our resources are used appropriately.
087	Collins	Most sex offenders in Oregon are not pedophiles. They are incest sex offenders. There are a few men who have offended against hundreds of children. I would like to see them in prison for the rest of their lives. There are a small number of

		men who are so dangerous that it places the public at too much risk to let them out.
101	Chair Mannix	Perhaps, separately from this bill, you could come up with a chronic, dangerous pedophile category and upon a second conviction the judge might have the opportunity to impose a stiffer penalty.
110	Collins	I will ask a subcommittee of the Sex Offender Supervision Network to work on that.
112	Rep. Prozanski	I would like them to have the latitude to look at the best way to identify and describe this population.
118	Chair Mannix	I agree. Closes public hearing and opens work session on HB 2328.
<u>SB 2328 WORK SESSION</u>		
124	Rep. Prozanski	MOTION: Moves HB 2328 to the floor with a DO PASS recommendation and BE REFERRED to the committee on Ways and Means.
		VOTE: 6-0 EXCUSED: 1 - Sunseri
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
<u>HB 2327 WORK SESSION</u>		
132	Rep. Prozanski	MOTION: Moves HB 2327 to the floor with a DO PASS recommendation.
		VOTE: 6-0 EXCUSED: 1 - Sunseri
	Chair Mannix	Hearing no objection, declares the motion CARRIED.

		Rep. Gianella will lead discussion on the floor.
138	Chair Mannix	Opens public hearing on HB 2306.
<u>HB 2306 PUBLIC HEARING</u>		
144	Counsel Horton	Summarizes HB 2306. HB 2306 allows prior sexual offenses to be admitted into evidence by the prosecutor.
172	Russ West	District Attorney, Union County, Oregon District Attorney's Association Testifies in support of HB 2306. Currently in Oregon, it is very difficult to get prior bad acts into the record. HB 2306 covers only sex offenses. Discusses the reasons that this exception to the laws of evidence is needed. Cites 1984 case, State versus Wyland. Enters written testimony from Dr. Joel Rice (EXHIBIT H).
270	Chair Mannix	Inquires as to what prior behavior would be allowed into evidence under this bill.
286	West	You look at it in the context of a child abuse case. An offender was accused on other occasions of this behavior. This knowledge is important when you are trying to weigh evidence which consists of one person's word against another.
300	Rep. Bowman	HB 2306 covers any sex offense, not even necessarily convictions, just accusations. If you want to bring in evidence on child sex abuse cases, why is this so broad?
314	West	This is not a new concept. Federal Rules of Evidence 413 and 414 provide for such evidence. These rules have withstood constitutional challenges under the due process clause (EXHIBIT I).
329	Chair Mannix	The proposed statutory language says it is admissible, but a judge could still make a determination that the potential for prejudice outweighs the substantive value of the evidence.
337	West	We are hoping to offer amendments to the language of this bill. We want to ensure that the judge will make a determination as to relevance.
345	Chair Mannix	If relevant, won't the judge need to determine if the probative value outweighs the prejudicial effect?
351	West	No, we don't believe so. There is still the due process clause to protect the defense.
354	Chair Mannix	Asks Dale Penn if the probative value of evidence outweighs the prejudicial

		effect.
360	Dale Penn	Marion County District Attorney States that analysis of this issue indicates that there should be a due process balancing and a relevancy determination. Notes this is federal law and also the law in other states and gives examples. Discusses credibility issues and the assistance HB 2306 could give to juries trying to make difficult credibility determinations. States additional language will be given to Counsel Horton to be sure the appropriate safeguards are in the bill.
404	Rep. Bowman	How is this different from SB 936 last session? Why do we need this?
416	West	We're still having difficulties with this issue.
417	Chair Mannix	Because some rules are more specific to these cases and supercede this general rule?
425	West	Yes.
432	Rep. Bowman	The judge is making a decision on relevant evidence, is not allowing it in, and you still want it in but you're not getting it in?
Tape 40, A		
003	Penn	We don't have a final statement from the appellate court as to what the SB 936 relevancy test does mean. We do know that some judges are using the balancing test anyway. It may take us a while to get to the place where SB 936 accomplishes what we intended to accomplish. HB 2306 addresses sex crimes which impact communities so dramatically that we wanted to designate that this specific kind of crime doesn't get into all those other balancing tests, it should only have the relevancy and due process analysis.
012	Chair Mannix	Due process analysis means to me that the probative value outweighs the prejudicial effect. It has to do with inflammatory evidence.
018	Penn	I think the Federal courts have indicated that you don't need to go through that balancing. The balancing that needs to occur is on relevance. Is this important to the facts of this case? Discusses prejudicial evidence versus relevant evidence.
030	West	We've done quite a bit of research on this issue. It is constantly changing through court decisions. We think this is an important issue to address and we support this bill with the amendments.
069	Rep. Hansen	What is the percentage of convictions on these types of cases?

072	West	These cases are always difficult, you have the word of the victim against the perpetrator. About a 50-70% conviction rate. If we could present prior history to the jury, our rate would go up.
084	Penn	It is important for the judge and/or jury to get a full picture because it does come down to credibility. We think the unique characteristics of these cases do cry out for special rules of evidence.
093	Counsel Horton	Discusses the possibility that Rule 403 would apply in these cases.
108	Penn	I agree it would. I want to draw the distinct line that the Federal courts have said that Rule 404 is not part of this test.
119	Counsel Horton	Would a way to summarize this bill be to say that State versus Johns, and subsequent cases that have come out of that case, no longer apply?
123	West	Yes. Under Rule 404, balancing these issues requires that very difficult tests must be met. Discusses relevant cases and indicates that Rule 403 would apply.
140	James Rice	Oregon Criminal Defense Lawyeris Association Testifies in opposition to HB 2306. Indicates he believes that HB 2306 is unconstitutional. Feels juries give great deference to children testifying in a courtroom. Indicates that HB 2306 would let an allegation be given as evidence. Rumor and gossip will be brought into evidence. Talks about the 404 balancing test. Believes the rules of evidence are working very well.
262	Rep. Gianella	Would you be happy if we just allowed prior convictions but not charges?
268	Rice	Happier, but not happy. To allow the state to bring prior conviction into their case is unfairly shifting a burden. The government must prove their case beyond a reasonable doubt.
291	Rep. Bowman	Discusses sex offender treatment. Anything identified during treatment currently cannot be used. Will this bill change that?
307	Rice	I believe it will. Discusses the best way to handle sex offenders.
333	Chair Mannix	Closes public hearing on HB 2306. Adjourns meeting at 10:44 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,
Administrative Support Administrator

EXHIBIT SUMMARY

A ñ HB 2302, written testimony, Diane Rea, 3 pp

B ñ HB 2327, written testimony, Diane Rea, 2 pp

C ñ HB 2327, written testimony, Scott Taylor, 1 pp

D ñ HB 2327, letter and proposed amendments dated February 9, 1999,

Phillip Lemman, 2 pp

E ñ HB 2327, letter dated January 30, 1999, John R. Patterson, 1 pp

F ñ HB 2328, written testimony, Diane Rea, 1 pp

G ñ HB 2328, written testimony, Scott Taylor, 1 pp

H ñ HB 2306, letter dated February 9, 1999, Joel Rice, 2 pp

I ñ HB 2306, written testimony, Oregon District Attorney Association, 1 pp

J ñ Two letters written by Braheem K. Hazeem, Jr., 9 pp