

**HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW**

**February 16, 1999 Hearing Room 357**

**8:30 a.m. Tapes 45 & 46**

**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:**

**\*\*\* Continuation of February 15, 1999 Meeting \*\*\***

**Discussion of DUII Related Topics**

**HB 2365 Public Hearing and Possible Work Session**

**HB 2392 Public Hearing and Possible Work Session**

**HB 2398 Public Hearing and Possible Work Session**

**HB 2534 Public Hearing and Possible Work Session**

**HB 2515 Public Hearing and Possible Work Session**

**HJR 9 Public Hearing and Possible Work Session**

**HB 2168 Public Hearing and Possible Work Session**

TAPE/#	Speaker	Comments
<b>TAPE 45, A</b>		
007	Chair Mannix	Calls meeting to order at 8:32 a.m.
<b><u>HB 2365, 2392, 2398, 2534, 2515, HJR 9 CONSOLIDATED PUBLIC HEARING</u></b>		
032	<b>Alan Hageman</b>	<b>Oregon State Police</b>  Testifies and submits written testimony in support of HB 2534 ( <b>EXHIBIT A</b> ). States HB 2534 is primarily a post-arrest/judicial matter and will not have a direct impact on law enforcement field operations. The State Police are in support of this bill because HB 2534 increases the consequences for certain motor vehicle crimes that result in death.
040	Rep. Hansen	If someone is alluding a police officer and causes a fatal accident, how are they prosecuted?
042	Hageman	That's up to the District Attorney, but they could be prosecuted for manslaughter or negligent homicide.
060	Chair Mannix	Discusses the need for a work group to come up with sentencing guidelines for DUII convictions.
074	Counsel Horton	Discusses concept of sentencing for DUII. Most offenders would fit the same criminal history so we need a different sentencing grid that looks at prior traffic convictions.
091	Rep. Sunseri	What happens currently when a person is caught DUII for the first time, second time, third time, etc.?
094	Counsel Horton	Discusses what happens for the first DUII conviction in Multnomah County. A second conviction would be the same as a first conviction, but it would increase the jail time. The third conviction would increase the jail time even more. After the 6 <sup>th</sup> DUII, the prosecutor would be seeking between six months and one year in jail time.
110	Rep. Bowman	Because of diversion, is a first conviction really the second time they've been caught for a DUII offense?
114	Counsel Horton	No. About half the people with a first time DUII conviction have been through diversion.

119	Chair Mannix	If they have successfully completed diversion, is the next DUII conviction treated as their first conviction?
123	Counsel Horton	Yes.
125	Rep. Hansen	Does a license suspension go along with the jail time for a DUII conviction?
129	Counsel Horton	Yes. Discusses the general rule of license suspension for DUII convictions.
139	Rep. Hansen	If someone is serving a two-year bench probation with a one-year suspension of their license, isn't there a way to get them into court on the bench probation and put them in jail at that point?
147	Counsel Horton	Discusses what happens in court when a probation violation occurs while driving on a suspended license.
160	Chair Mannix	Can the prosecutor waive the charge of driving on a suspended license and ask for probation revocation?
163	Counsel Horton	Yes.
165	Rep. Prozanski	Prosecution would vary from county to county. Discusses treatment of DUII cases in Lane County.
178	Counsel Horton	Discusses the grid block for a felony driving-while-suspended conviction. How do we make DUII a felony with a sentence that is neither too harsh nor too light?
197	Chair Mannix	We have guidelines for felony sentencing, but not for misdemeanor sentencing. Discusses sentencing guidelines.
230	Rep. Prozanski	Discusses sentencing for misdemeanors.
246	<b>David Fidanque</b>	<b>American Civil Liberties Union (ACLU) of Oregon</b>  Testifies in opposition to HJR 9. Discusses sobriety checkpoints in Oregon as being unconstitutional. Discusses that unreasonable search and seizure in colonial times lead to the 4 <sup>th</sup> Amendment of the U. S. Constitution. The courts have carved out an exception for people stopped in sobriety checkpoints to be searched if there is reasonable cause. Discusses the case of <u>Nelson v. Lane County</u> that challenged the constitutionality of sobriety checkpoints.
<b>TAPE 46, A</b>		
032	Fidanque	Discusses statistics from New Hampshire and Arizona on the number of drunk

		driving arrests from roadblocks v. arrests from routine patrol.
066	Rep. Gianella	What is the procedure at a sobriety checkpoint?
067	Fidanque	Discusses the checkpoint procedure when Oregon last had this procedure in 1982.
085	Rep. Gianella	What takes place? Why was Linda Nelson offended?
087	Fidanque	She had answered the trooper's questions truthfully and still had to go through a field sobriety test.
097	Rep. Gianella	What is a field sobriety test?
099	Fidanque	Describes the battery of tests that Ms. Nelson had to perform for the field sobriety test.
132	<b>Ingrid Swenson</b>	<b>Oregon Criminal Defense Lawyers Association (OCDLA)</b>  Testifies and submits written testimony in opposition to HB 2392. <b>(EXHIBIT B)</b> Discusses the factors a court has to consider when deciding to grant diversion under ORS 813.220.
164	Chair Mannix	Shouldn't a person asking for diversion be required to have insurance and a valid driver's license?
176	Swenson	Failure to abide by those laws already has a penalty for the driver.
184	Swenson	Testifies and submits written testimony in opposition to HB 2534 <b>(EXHIBIT C)</b> . Discusses the statutes for assault and the homicide law. Discusses the three factors that are considered in determining what degree an assault would be. Discusses the distinctions between one category of homicide and another.
301	Chair Mannix	Is burglary inherently dangerous to life?
302	Swenson	It could be under some circumstances.
307	Chair Mannix	Don't you think there is inherent danger in fleeing or attempting to elude a police officer?
310	Swenson	I do, and the felony murder statute includes that behavior.
341	Chair Mannix	Discusses the inherent dangers of particular crimes.

362	Swenson	Discusses that the crimes included in the felony murder statute involve a risk to human life.
367	Chair Mannix	The police say that anytime there is a chase it is inherently dangerous.
377	Swenson	I agree that fleeing can be dangerous to life, but the crime includes a misdemeanor murder statute.
413	Chair Mannix	Some states say if someone is committing a felony and during that felony somebody gets killed, that homicide becomes murder for a limited list of crimes.
<b>TAPE 45, B</b>		
001	Swenson	Discusses using the fact that a person has been arrested and charged as a predicate. Driving a vehicle into a crowded intersection while fleeing is treated exactly the same as firing a bullet into a crowded room and is a major crime carrying a major sentence if someone is killed. Current Oregon law punishes these offenses severely so it is not necessary to further amend the law.
043	Rep. Hansen	How many times over the last few years have people been prosecuted for felony manslaughter for alluding an officer?
048	Swenson	Numbers would be more than a few. The courts should have good statistics because many cases have been widely publicized.
067	Rep. Hansen	The total number over the last five years would be helpful to see.
071	Chair Mannix	Would the state police have that information, Sgt. Hageman?
072	Hageman	Probably not directly, but I could get that information.
078	Swenson	I will check with the Criminal Justice Commission. They may have statistics on the numbers and on the sentences which have been imposed.
084	Counsel Horton	Discusses language on page 2, lines 13 and 14, subsection (C) regarding someone who had been charged with DUII.
091	Swenson	Discusses the people impacted by the referenced section.
094	Chair Mannix	Discusses adding "and has been convicted for failure" instead of "has failed to" on line 14 of page 2 of HB 2534.
098	Swenson	If you want the predicate offense to be failure to appear rather than DUII, that

		would serve your purpose. However, if you want to target people who have previous behavior of driving under the influence, then it would have to be a conviction for DUII.
105	Chair Mannix	Your main objections are (B) & (C), lines 10-14 on page 2?
108	Swenson	Yes. We have concerns about using as predicates conduct that does not amount to a conviction or conduct that doesn't amount to driving under the influence.
111	Chair Mannix	Restates his question emphasizing "and you previously have been convicted of driving under the influence" within the last 5-10 years.
116	Swenson	That would deal with the constitutional issues.
118	Chair Mannix	Discusses the group working on a separate grid for driving under the influence.
126	Swenson	I am concerned about adding yet another grid for a particular offense and taking it outside of sentencing guidelines.
142	Chair Mannix	Under the current grid system DUII is low and doesn't move up and you could be at your 11 <sup>th</sup> DUII and the sanctions would be less than if treated as a misdemeanor.
149	Swenson	That is correct and perhaps the reason why the legislature has not created a felony of repeat DUII.
155	Chair Mannix	Discusses what the new grid might look like.
166	Rep. Bowman	Asks for clarification of Level 1 and Level 2 on the DUII chart. Do we have the ability to permanently suspend a driver's license because they are habitually DUII?
175	Counsel Horton	There are provisions in the vehicle code for suspending a license for a very long time, but I do not believe there is permanent revocation.
184	Rep. Prozanski	States that the appendix in the back of the chart defines Level 1 and 2.
194	Rep. Bowman	So the level increases depending upon the number of convictions?
196	Rep. Prozanski	Discusses the factors involved in a risk assessment to see where an individual should be placed in the program.

209	Counsel Horton	Further information has been requested beyond the third DUII. The real question is "what works and how do we get there"?
222	Rep. Bowman	I would be interested in the number of DUII convictions for drivers under the legal age to drink. Asks about the success rate if intervention is done early.
232	Counsel Horton	I can ask for that information.
245	Chair Mannix	Discusses the proposed bills on the agenda. We started to work on HB 2365 and found the need for an LC draft or agreed upon language. Discusses possible language for explaining "damage to property". Do we want to add some restrictions to diversion, and what level on those restrictions?
292	Rep. Hansen	Property damage is an irrelevant measurement for diversion. Discusses better measurements for diversion.
321	Chair Mannix	I don't know about any amendments for HB 2398. HB 2534 may have amendments. HB 2515 will probably be deferred while we see what a work group can do about stair-step sanctions with a specific sentencing grid that applies to DUII.
363	Counsel Horton	The work group is scheduled for tomorrow at 1:30 p.m. in the Republican Caucus Room.
371	Rep. Simmons	We need to think seriously about getting repeat offenders off the road.
386	Rep. Hansen	My concern is about the 10 <sup>th</sup> , 11 <sup>th</sup> or 12 <sup>th</sup> conviction. What is going wrong previously? I like the concept of graduated sentences where consequences earlier might avoid more serious consequences later on.
415	Chair Mannix	We are sitting on HJR 9. HB 2168 was heard separately. Rep. Sunseri had asked for information that we are waiting to come back to us.
427	Rep. Bowman	Yesterday's testimony said it was already current law that people were paying for the screenings, so why are we doing this?
433	Chair Mannix	HB 2168 comports with current practice, but this would tie the practice to a statutory reference.
<b>TAPE 46, B</b>		
006	Rep. Prozanski	Discusses HB 2515 and the present sentencing. I would like to see graduated sentences without over-impacting the counties. Then we need the numbers and impact on the State system if we go to a felony level for DUII convictions.

042	Chair Mannix	Where do you reach the point with a habitual DUII offender to get them off the road?
048	Rep. Prozanski	We know that the county can sentence up to one year for a Class A misdemeanor, but not everyone gets this sentence based upon the county's discretion.
057	Chair Mannix	Before we take any action on HB 2515, the counties will have a chance to look at this.
059	Rep. Bowman	At some point you take their driver's license and they don't get it back.
064	Chair Mannix	Discusses the incorrigible DUII offender.
071	Counsel Horton	A common charge we see is driving under the influence and driving while suspended.
075	Rep. Prozanski	Discusses other "tools" being used to keep drunk drivers off the road.
094	Rep. Sunseri	I support making a separate grid for drunk driving offenses. I think the reason we have habitual offenders is because we don't do enough when an individual is first convicted of DUII.
102	Chair Mannix	Adjourns meeting at 10:02 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

#### **EXHIBIT SUMMARY**

**A - HB 2534, written testimony submitted by Sgt. Alan Hageman, Oregon State Police, dated 2/16/99, 1 pg.**

**B - HB 2392, written testimony submitted by Ingrid Swenson, Oregon Criminal Defense Lawyers Association, dated**



**2/15/99, 2 pgs.**

**C - HB 2534, written testimony submitted by Ingrid Swenson, Oregon Criminal Defense Lawyers Association, dated 2/15/99, 6 pgs.**