

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

February 17, 1999 Hearing Room 357

8:30 a.m. Tapes 47 & 48

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 & 16, 1999 Meeting *****

Discussion of DUI 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
TAPE 47, A		
007	Chair Mannix	Calls meeting to order at 8:35 a.m.
<u>HB 2398 PUBLIC HEARING</u>		
026	Ed Patterson	Oregon Association of Hospitals and Health Systems Testifies and submits written testimony in opposition to HB 2398 (EXHIBIT A) which establishes that implied consent law does not prohibit introduction of evidence of blood alcohol content. We cannot condone legislation that would violate patient confidentiality by releasing the results of blood tests performed during the course of treatment. Discusses current statutes relating to the confidentiality of patient medical information.
070	Chair Mannix	It was never the proponent's intent for HB 2398 to remove the civil or criminal subpoena requirements to access hospital records. HB 2398 refers to how you use the records once they are in court.
086	Patterson	I spoke with the sponsors of HB 2398 yesterday and I did not get the same interpretation as you.
090	Chair Mannix	Because more than one interpretation exists, it may be necessary to look at clarifying language for HB 2398. Closes public hearing on HB 2398.
<u>HB 2534 PUBLIC HEARING</u>		
115	Counsel Horton	HB 2534 adds specified crimes that constitute murder if death occurs during commission of those crimes. Discusses HB 2394 that is similar to HB 2534.
146	Keith Meisenheimer	Multnomah County District Attorney's Office Testifies and submits written testimony in support of HB 2534 (EXHIBIT B). Discusses a felony murder statute already in place. Discusses how dangerous attempt-to-allude conduct can be and gives examples. Discusses vehicular homicides involving drivers repeatedly driving under the influence. Discusses three areas that need amending in HB 2534.
370	Rep. Bowman	What is your view on the shared responsibility between the police and the fleeing victim if an accident occurs?
393	Meisenheimer	In the incident I discussed, the police tried to safely box-in the fleeing driver, but he alluded them and several blocks later caused a fatal accident. It is my understanding that the Portland Police do not pursue if an offender attempts to allude using dangerous behavior.

429	Rep. Prozanski	Would someone going through the system now be charged with Manslaughter 1 or 2 in the instance you cited?
433	Meisenheimer	The offender was charged with felony murder and manslaughter in the first degree.
TAPE 48, A		
005	Rep. Prozanski	Why wouldn't he be charged with UUV (unlawful use of a vehicle)?
006	Meisenheimer	UUV is not one of the listed felonies.
008	Rep. Prozanski	So the offender got 10 years for manslaughter 1 conviction?
009	Meisenheimer	He got more than 10 years (consecutive sentences) because the passenger in the fatal accident was seriously injured.
015	Rep. Prozanski	If we prosecute these offenders for murder, then the sentence would go up to a mandatory 300 months?
017	Meisenheimer	Yes.
037	Rep. Prozanski	Do they have to want to be charged with FTA (failure to appear) for this to apply?
041	Meisenheimer	We would want them to be charged with the FTA and the driving-under-the-influence case be pending.
046	Rep. Prozanski	One of the concerns I hear in a failure-to-appear trial is that the defendant didn't receive notice.
049	Meisenheimer	When you have been charged with driving under the influence, you have a problem that cannot be avoided by failing to show up in court.
061	Chair Mannix	Do we want to broaden the law when it applies to only a few?
071	Kenneth Moore	<p>Oregon State Police</p> <p>Testifies in support of HB 2534. Discusses the incident of a driver in a stolen vehicle and his attempts to allude the police resulting in a fatal accident. The victims of the crash were his mother, stepfather and a family friend. Discusses the injuries to the occupants of the vehicle. Felony murder charges are much more appropriate in these cases when the fleeing driver has no consideration for anyone else.</p>

203	Steve Doell	Crime Victims United Testifies in support of HB 2534. I received word that Mothers Against Drunk Drivers (MADD) also supports HB 2534. States they would like to merge HB 2534 into HB 2394.
250	Chair Mannix	Asks that the record for HB 2534 be referenced for the work session on HB 2394.
270	Rep. Prozanski	Was there any attempt by your office to have aggravating circumstances included into raising the minimum mandatory sentence on the manslaughter 1 case you cited?
276	Meisenheimer	Discusses a case where he was able to get a defendant labeled as a dangerous offender. There have been cases when the district attorney's office has asked for upward departure, but every case varies depending upon the circumstances.
294	Rep. Prozanski	If the base for sentencing is Measure 11, can only upward departure be considered in HB 2534?
300	Meisenheimer	Yes, Measure 11 is the base. The cases where people engage in dangerous criminal conduct by vehicular homicide should be considered felony murder.
323	Rep. Prozanski	Discusses minimum mandatory sentencing and the use of discretion in sentencing.
328	Meisenheimer	Gives examples of when discretion might be given in sentencing.
342	Rep. Prozanski	My concern is mandating a sentence so that the judicial branch can't have discretion in unique cases. The court should be held accountable for applying the appropriate sentence. What we're attempting to do is raise the base instead of holding the court accountable for the appropriate sentence.
366	Meisenheimer	One of my goals is proportionality. Inexcusable behavior, like fleeing or alluding a police officer, that causes the death of others, should be treated as other forms of felony murder. It is difficult to hold courts accountable because sentencing is so discretionary. District attorney's offices do use discretion in their charging and plea negotiations.
411	Rep. Prozanski	Do you support truth in sentencing?
412	Meisenheimer	Yes.
413	Rep. Prozanski	Do you also believe in truth in charging?

414	Meisenheimer	Yes. If the person commits a crime, he should be charged with it.
422	Rep. Prozanski	What is your opinion on the minimum mandatory sentences under Measure 11? What was the process used to determine the length of sentence for the crime committed?
TAPE 47, B		
023	Meisenheimer	Discusses ORS 161.025 that sets forth the purposes of the criminal code. Discusses proportionate as a more serious crime receives a more severe sanction.
060	Chair Mannix	Closes public hearing on HB 2534.
<u>HB 2365 WORK SESSION</u>		
098	Chair Mannix	MOTION: Moves to SUSPEND the rules for the purpose of ADOPTING THE CONCEPTUAL AMENDMENT.
102	Rep. Sunseri	Moves to adopt the conceptual amendment (EXHIBIT C).
103	Rep. Bowman	Will the conceptual amendment replace the entire bill or only Section 2 (1)?
106	Counsel Horton	It would only replace Section 2 (1).
109	Rep. Sunseri	MOTION: Moves to ADOPT the conceptual amendment (EXHIBIT C) replacing Section 2 (1) of HB 2365.
		VOTE: 6-0 AYE: 6 - Bowman, Gianella, Hansen, Simmons, Sunseri, Mannix EXCUSED: 1 - Prozanski
Chair		The motion CARRIES.
Chair Mannix		Hearing no objection, declares the motion CARRIED.
112	Rep. Sunseri	MOTION: Moves HB 2365 to the floor with a DO PASS AS AMENDED recommendation.

		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
		REP. PROZANSKI will lead discussion on the floor.
120	Chair Mannix	Closes work session on HB 2365.
<u>HB 2168 PULIC HEARING</u>		
132	Counsel Horton	HB 2168 requires all persons convicted of driving while under the influence of intoxicants to pay for screening interview and undergo treatment program for alcohol or drug problems.
145	Chair Mannix	Closes public hearing.
<u>HB 2168 WORK SESSION</u>		
153	Rep. Bowman	What happens in the cases when people cannot afford to pay for the education or treatment program?
158	Bob Miller	Department of Human Resources Discusses the Intoxicated Driver Program Fund used for indigent offenders to reimburse for services (EXHIBIT D).
170	Rep. Bowman	Is someone prohibited from entering this program due to lack of resources to pay for it?
173	Miller	No one would be prohibited.
179	Rep. Simmons	MOTION: Moves HB 2168 to the floor with a DO PASS recommendation.
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.

		REP. SIMMONS will lead discussion on the floor.
187	Chair Mannix	Closes work session on HB 2168.
<u>HB 2365 WORK SESSION</u>		
202	Rep. Simmons	MOTION: Moves to SUSPEND the rules for the purpose of allowing Rep. Prozanski to vote on HB 2365.
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
208	Chair Mannix	Closes work session on HB 2365.
<u>HB 2392 WORK SESSION</u>		
217	Counsel Horton	HB 2392 prohibits diversion if defendant caused damage to property of another person while driving under the influence of intoxicants.
230	Rep. Prozanski	Discusses limiting the language of HB 2392 to where we have another motor vehicle involved in an accident and there is damage to the vehicle that was occupied by another person. We might want to have some level of damage required.
260	Chair Mannix	Would you say enough damage that a motor vehicle accident report is required?
261	Rep. Prozanski	That would seem appropriate.
272	Chair Mannix	States concept as: limit damage to a motor vehicle to the extent an accident report was required, and a person occupied the motor vehicle.
282	Rep. Bowman	Discusses the impact of a monetary limit on the damage incurred.
297	Chair Mannix	In the concept discussed, there has to be a person in the car.

298	Rep. Bowman	If the limit on damage was placed at \$1,000, no one who hit a new car would be able to go into diversion because the damage would be greater than \$1,000.
303	Chair Mannix	Rep. Prozanski tied both concepts together: you had to cause at least \$1,000 in damage, but there also has to be a person in the car.
306	Rep. Bowman	If you tie both of those together and I'm drinking and hit a car, it would be to my advantage to hit the oldest car possible if I want diversion.
324	Rep. Prozanski	Discusses how he came up with his concept for amending HB 2392. I'm not sure I want to undo the current law for diversions.
352	Rep. Sunseri	I don't want to see more individuals cut out of the diversion program, even if it is a small number of people that it helps.
367	Counsel Horton	One idea might be having the victim of the accident appear at the hearing where the judge would be deciding on diversion.
384	Rep. Prozanski	Diversion is set at the discretion of the court, but I like giving victims the opportunity to be heard at this hearing. However, if a victim was allowed to be at the diversion hearing, this could cause a new requirement for the court to give notification to victims.
TAPE 48, B		
017	Rep. Hansen	I like the approach, but I do not like delaying the process to get an individual on diversion because of this notification process to the victim.
039	Chair Mannix	What if we took the three concepts together: damage to an occupied vehicle requiring an accident report, and at the diversion hearing the victim has an opportunity to appear.
058	Rep. Prozanski	The only problem I see is if a victim did not respond. A notice could be given to the victim at the time the driver has applied for diversion.
071	Chair Mannix	Asks Counsel Horton to have LC prepare an amendment along those lines.
085	Rep. Bowman	It would be good to know if there is a cost to do victim notification.
089	Chair Mannix	Notice consists of sending something first class mail to the address given by the victim on the accident report.
101	Rep. Prozanski	Perhaps a copy of the diversion form could be forwarded to the victim.

106	Counsel Horton	There could be a policy concern with providing the victim with the defendant's personal information.
110	Rep. Sunseri	The accident report is where the victim's address should be.
115	Rep. Prozanski	So if no accident report is filed, there is no duty to follow through with notification to a victim?
117	Counsel Horton	If the police officer didn't take an accident report, then there would be no victim.
121	Rep. Prozanski	If the prosecuting attorney does not receive notification through an accident report or police report that there was a victim, then there is no one to notify for a hearing.
127	Rep. Sunseri	If there is significant damage, an accident report has to be filed.
130	Chair Mannix	Victim means the person in the car not the owner of the car. Closes work session on HB 2392.
141	Rep. Bowman	Asks for clarification of the statistics received from staff entitled "Court Denials Of Juvenile Driving Privileges By County" (EXHIBIT E).
152	Chair Mannix	The numbers may be a reflection of enforcement of driving regulations in different counties. Adjourns the meeting at 10:15 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2398, written testimony submitted by Ed Patterson, Oregon Association of Hospitals and Health Systems, dated 2/17/99, 2 pgs.

B - HB 2534, written testimony submitted by Keith Meisenheimer, Multnomah County District Attorney's Office, 2 pgs.

C - HB 2365 amendments submitted by staff, 1 pg.

D - HB 2168, written testimony submitted by Bob Miller, Department of Human Resources, dated 2/16/99, 2 pgs.

E - Statistics on "Court Denials of Juvenile Driving Privileges by County, submitted by staff, 8 pgs.