

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

February 2, 1999 Hearing Room 357

8:30 a.m. Tapes 22 & 23

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 2329 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 22, A		
004	Chair Mannix	Calls meeting to order at 8:32 a.m.
<u>HB 2329 PUBLIC HEARING</u>		

024	Robert Castagna	General Counsel and Executive Director, Oregon Catholic Conference Identifies the three other witnesses and gives their credentials.
043	Father Michael Maslowsky	Director of Pastoral Services, Archdiocese of Portland Testifies in support of HB 2329. Discusses the Holy Sacrament of Reconciliation and why any violation of this sacrament is so heinous an offense to the church. Discusses the statutory origins of the priest-penitent privilege in the New York case known as People v. Phillips. The state could not compel the testimony of a Catholic priest who had been the recipient of information regarding the commission of a crime within the confessional. Discusses the Lane County case of Father Mockaitis. Asking for insurance of religious freedom and liberty and the expression of faith on the part of all the people of this state.
171	Linda Weigel	Director of the Tribunal, Archdiocese of Portland Testifies in support of HB 2329. Gives background to the Code of Canon Law citing changes in 1917 and 1983. Explains the code contains seven books, covering all areas of Church life.
271	Father Bertram Griffin	Pastor, St. Michael the Archangel Catholic Church, Portland and Past President, Canon Law Society of America Testifies in support of HB 2329. States the obligations of the confessor according to the canon law of the Catholic Church. Also the obligations of interpreters and others who are aware of confessional matter under the seal. Discusses law enacted since the promulgation of the New Code of Canon Law.
351	Robert Castagna	General Counsel and Executive Director, Oregon Catholic Conference Speaks in support of HB 2329. Where attorney or physician confidentiality could be waived, a member of the clergy cannot disclose a confession given in confidentiality. Cites the case of Father Mockaitis and the violation of his privacy. States the issue of wire taping as well as priest-penitent privilege was discussed during the interim session. States the ñ1 amendment (EXHIBIT B) is included in his testimony.
TAPE 23, A		
005	Castagna	Reads the expression of the Ninth Circuit Court on the issue of inviolability of religious confession. Asks for favorable consideration of HB 2329.
036	Hardy Myers	Attorney General, State of Oregon Testifies in support of HB 2329. States that in Oregon there has never been a member of the clergy forced to testify against the sanctity of their religious faith. States his belief that the District Attorney's Association is neutral on this bill. States no objection to the ñ1 amendment. Has asked for an internal review of the bill by the Department of Justice to determine any problems with

		constitutionality. Summarizes that this bill seeks to confirm what is already part of our justice system.
086	Bruce Fitzwater	<p>Christian Science Practitioner representing the Christian Science Church in Oregon</p> <p>Testifies in support of HB 2329. States the practice of his church is holding in sacred confidence all private communications made to them by their patients. Failure to do this subjects the offender to Church discipline even though our Church discipline is not specific.</p>
106	Rep. Prozanski	Asks how the Christian Science Church would differ from the Catholic Church if a patient asked that you relate whatever confidence they gave to you. Would that be against church rules?
112	Fitzwater	States the Christian Science Church doctrine is not developed to the same degree that it is in the Catholic Church. The Christian Science Church follows the laws of the land.
137	Chair Mannix	Discusses the ñ1 amendment with respect to the tension between the obligations of religious faith and those laws of the land and uses examples. Asks if this amendment respects the practices of the Christian Science Church.
173	Fitzwater	The thought about this is not as clearly codified as in the Catholic tradition. I have learned to put aside information given to me in confidence. If a patient wished information to be revealed, we could say we worked together on a topic, but the content is never discussed.
199	Chair Mannix	Discusses "absolute duty" in the ñ1 amendment.
209	Fitzwater	That is my understanding of the law.
210	Chair Mannix	If courts assert the absolute duty, it should be accepted.
218	Fitzwater	Yes.
224	James Rice	<p>Oregon Criminal Defense Lawyerís Association (OCDLA)</p> <p>Testifies on HB 2329 saying the bill doesnít favor either the prosecution or the defense. Speaks to rules of evidence. We are searching for the truth so only reliable evidence is admitted. Discusses the privileges in the judicial system with regard to confidentiality. OCDLA supports the bill and urges passage.</p>
260	Chair Mannix	Discusses Canon Law v. civil law. Are we doing anything unusual here in recognizing this kind of privilege?
268	Rice	No, we are continuing what has been recognized for a very long period of time.

285	Chair Mannix	Asks if another parallel would be the protection against unreasonable searches and seizures and our use of the exclusionary rule.
289	Rice	We are just reaffirming a principle on privileged information.
302	Rep. Simmons	What is the position of your organization on the ñ1 amendment?
303	Rice	The OCDLA supports the ñ1 amendment.
308	Chair Mannix	Discusses lines 6 and 7 of the ñ1 amendment with respect to absolute duty.
320	Maslowsky	States instances where absolute privilege or absolute confidentiality would not be claimed. The Sacrament of Confession is covered with a sacramental seal and is considered strictly confidential.
354	Chair Mannix	States the rules of absoluteness are determined by the Church not by any individual.
367	Maslowsky	Yes. Points out other Christian communities that do have an experience of reconciliation comparable to the Catholic Church.
372	Rep. Sunseri	Speaks of other churches that do not have a higher authority like the Catholic Church. How would this bill apply to that?
383	Chair Mannix	That congregation may be asked to present what their tenet/discipline is, and if this communication was absolutely confidential, there is no further inquiry.
394	Rep. Sunseri	Asks for further clarification.
401	Chair Mannix	Standard would be "does the congregation have a standard to keep confidentiality". Speaks to the legitimacy of some "churches".
424	Rep. Sunseri	HB 2329 tells us that civil government is not omnipotent; that there are limitations to civil government and we are acknowledging that.
TAPE 22, B		
005	Maslowsky	States there is a very profound societal value in protecting the relationships and the communications that pass between clergy and penitent. Explains the sacrament of confession helps facilitate rehabilitation and change of some individuals. States there are relationships that are of extreme value to society and that we protect at all costs. Explains he would align the priest/penitent privilege

		with the spousal privilege of confidentiality. That privilege belongs to both parties and cannot be waived by just one of them.
029	Rep. Prozanski	We are not just talking about any confidential communication, we're talking about the absolute duty of keeping a communication private and sacred. Asks if there are other places in church tenet where you would need to or be required to claim this absolute right.
037	Maslowsky	States the only absolute claim by a priest for confidentiality would occur within the sacrament of reconciliation or the sacrament of confession.
044	Rep. Prozanski	This is going to be an objective test that the trier of fact is the individual that will actually make that decision based upon the evidence that would come forward. It would not be an absolute right of the claimant to make that statement and not be tested or challenged.
048	Chair Mannix	I would agree with that interpretation and it is a matter of record unless someone challenges it.
049	Rep. Prozanski	It should be noted that we are taking a minority position within the states.
055	Maslowsky	It is a minority opinion, but over half the states are ambiguous on the point of who holds the privilege.
061	Castagna	Oregon would join the state of California and 11 other states that allow that member of the clergy to independently claim the privilege on his or her own behalf.
064	Chair Mannix	Closes the public hearing on HB 2329.
<u>HB 2329 WORK SESSION</u>		
069	Rep. Simmons	MOTION: Moves to ADOPT -1 amendments dated 01/28/99.
		VOTE: 7-0
		Chair Mannix
		Hearing no objection, declares the motion CARRIED.
072	Rep. Prozanski	MOTION: Moves HB 2329 to the floor with a DO PASS AS AMENDED recommendation.

077	Chair Mannix	Discusses other issues he would like to see discussed in the future with relation to the issues raised in HB 2329. Notes bill is retroactive.
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED. REP. PROZANSKI will lead discussion on the floor.
103	Chair Mannix	Adjourns meeting at 10:10 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2329, combined written testimony of Father Michael Maslowsky, Ms. Linda Weigel, Father Bertram Griffin and Robert J. Castagna, dated 2/2/99, 23 pgs

B - HB 2329, -1 amendments (LC 1816), dated 1/28/99, staff, 1 pg