

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

February 8, 1999 Hearing Room 357

8:30 a.m. Tapes 32 - 35

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 2206 Public Hearing and Possible Work Session

HB 2303 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.

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TAPE/#	Speaker	Comments
TAPE 32, A		
004	Chair Mannix	Calls meeting to order at 8:34 a.m.
<u>HB 2303 PUBLIC HEARING</u>		
025	Counsel Horton	HB 2303 relates to the crimes of escape and unauthorized departure.
040	Al French	Oregon District Attorney's Association (ODAA) Testifies in support of HB 2303. Discusses using the word "custody" instead of "escaping" from a correctional facility. Custody would have to include being in a correctional facility in HB 2303.
054	Dave Cook	Department of Corrections Testifies and submits written testimony in support of HB 2303. (EXHIBIT A)
062	Chair Mannix	Asks witnesses if they are pleased with the original bill.
063	French	Yes.
068	Ingrid Swenson	Oregon Criminal Defense Lawyer's Association (OCDLA) Testifies in opposition to HB 2303. Discusses and gives examples of OCDLA's difficulty with the word "escape".
103	Chair Mannix	It says "after" any form of temporary release or transitional leave that would seem to be a finite time.
107	Swenson	But if the person fails to return, that status continues indefinitely.
122	Cook	According to the Department of Corrections, we have no inmates on temporary leave, 68 are on transitional leave. With HB 2303 we want to show how serious it would be if an inmate failed to return while on leave.
132	Chair Mannix	What if we said that anyone on temporary release or transitional leave is still in custody?
133	Cook	That becomes an issue for the district attorney on what "custody" is.

135	Chair Mannix	Would that solve the problem, Mr. French?
136	French	We need to use the word "correctional facility" not the word "custody" which means being in control of a peace officer.
143	Chair Mannix	Discusses proposed amendments from ODAA establishing unauthorized departure in the second degree.
162	Chair Mannix	Closes public hearing on HB 2303.
<u>HB 2206 PUBLIC HEARING</u>		
165	Counsel Horton	HB 2206 reviews the sentence of youthful offenders after half their sentence has been served.
199	Rick Hill	Director, Oregon Youth Authority (OYA) Testifies and submits written testimony in support of HB 2206 regarding "second look" for youthful offenders. (EXHIBIT B) Discusses why OYA supports HB 2206. Tells what is currently happening with youth under Measure 11. Describes dangerous crimes that would not be given a "second look" under HB 2206. Offenders have to prove they have been reformed and abide by the release conditions.
311	Jose Gonzales	Previous Youthful Offender Testifies in support of HB 2206. Gives history of crimes he committed beginning at age 8. At age 15, I was involved in a drive-by shooting and sent to McLaren for orientation into the juvenile system, eventually going to Hillcrest. I spent two years at Hillcrest. Many of the kids there seemed ready for release, but their mandatory sentence didn't allow for that. I am now at Portland State studying psychology on a scholarship. Discusses why "second look" would help other youths incarcerated.
TAPE 33, A		
001	Rep. Sunseri	What actually made you change your behavior?
003	Gonzales	Discusses what happened in the treatment groups he attended at Hillcrest to make him change his behavior.
030	Rep. Sunseri	You used guns in some of the crimes. Where did the guns come from?
032	Gonzales	Guns are easy to obtain. You can buy them from anyone on the corner for \$20 or have someone lend you a gun.

036	Rep. Bowman	Did you complete your high school education while in Hillcrest?
039	Gonzales	Yes.
039	Rep. Bowman	Did that make you think about college?
040	Gonzales	Yes. I never thought about finishing high school, but after I did, I felt like I could accomplish more. You need something to look forward to.
046	Rep. Bowman	Would you please describe a typical day at Hillcrest?
050	Gonzales	Describes a typical day at Hillcrest.
070	Chief Charles Moose	Speaking unofficially as Portland Police Chief. Testifies in support of HB 2206. Describes HB 2206 as having merit with adequate checks and balances. Discusses why "second look" should be for only those offenders after the bill is signed. I would have a problem supporting HB 2206 if it was retroactive.
122	Rep. Prozanski	Asks why HB 2206 should not be retroactive.
134	Moose	We need to change from this day forward, not go back and change the rules. The victims of those previous crimes were not told about "second look".
150	Chair Mannix	If we passed a "second look" measure for the future, couldn't the Governor take that into consideration when exercising his clemency power as to previous convictions?
153	Moose	I do not know.
154	Chair Mannix	The Governor does have clemency power to look at past convictions if this legislation is passed.
161	Rep. Prozanski	If we passed a law that gave victims and their families an opportunity to have input into the "second look" hearing, would that alleviate some of your concerns?
180	Moose	If the committee cannot approve HB 2206 without it being retroactive, I would not be in support of HB 2206.
198	Chair Mannix	Explains why people are not aware of the clemency power.
203	Rep. Bowman	Asks Chief Moose if he feels Mr. Gonzales has turned his life around.

205	Moose	Yes.
208	Rep. Bowman	If not for the District Attorney and the way he sentenced Mr. Gonzales, Mr. Gonzales would be spending a long time in the prison system. Do you believe that if HB 2206 is retroactive, justice will not be served?
220	Moose	Discusses the impact of Measure 11 on reducing crime in Oregon. I would prefer only to go forward, not retroactive, because "second look" was not in previous legislation.
246	Chair Mannix	Is your concern with retroactivity based upon the concern that the public will get the idea that the law didn't mean what we said it did at the time of the crime?
256	Moose	Yes. Discusses the rules that existed at the time of the crime and concern for the victim.
281	Josh Marquis	Clatsop County District Attorney Testifies in opposition to HB 2206. Discusses his opposition to Measure 11. States reasons why he is opposed to HB 2206. Discusses SB 1049 and the crimes that apply. With HB 2206 you wouldn't know what your sentence was going to be. Describes the circumstances involved in lesser Measure 11 crimes.
TAPE 32, B		
024	Rep. Bowman	What County do you represent?
025	Marquis	Clatsop County.
026	Rep. Bowman	You said there was no need for this bill?
027	Marquis	Yes.
027	Rep. Bowman	Your belief is that current law addresses situations like Mr. Gonzales?
029	Marquis	Yes.
030	Rep. Bowman	If Mr. Gonzales was in Clatsop County, would he have been charged with Measure 11?
031	Marquis	I don't know anything about his crimes.
032	Rep. Bowman	Based upon what you heard in testimony today, would Mr. Gonzales have been

		charged under Measure 11?
033	Marquis	If he did multiple, drive-by shootings in Clatsop County, he probably would get Measure 11 treatment.
036	Rep. Hansen	How many Measure 11 youths have been prosecuted in your office?
039	Marquis	Less than 10.
045	Rep. Prozanski	Your position is not that of the Oregon District Attorney's Association (ODAA)?
049	Marquis	I cannot say it is the ODAA's position because we have not had a chance to meet.
052	Rep. Prozanski	Do you believe in truth in charging?
053	Marquis	Yes.
054	Rep. Prozanski	Don't you think we're doing a disservice to either the victim or to the system by not charging the appropriate crime at the appropriate level?
061	Marquis	No. The same crime has different meanings and different consequences from county to county.
070	Rep. Prozanski	It sounds like the prosecutor in Clatsop County would have charged Mr. Gonzales under Measure 11.
074	Marquis	Rep. Bowman asked me an impossible situation. I don't know the specifics of Mr. Gonzales' case, but there can be variances in charging from prosecutor to prosecutor and county to county.
080	Rep. Prozanski	Were sentencing guidelines put in place not only to give the truth in sentencing, but to make sure there was equity in sentencing from county to county?
084	Marquis	Yes and no. We didn't want a situation where someone's prominence in the community or connections would get them a non-prison sentence, and in other cases someone would get one. Sentencing guidelines are set so we don't put more people in prison than we have beds.
097	Rep. Prozanski	Are you familiar with the Rand Corporation and their studies regarding "three strikes and you're out" or our system of one strike and you're out?
100	Marquis	I am familiar with the Rand Corporation. I spoke on Town Hall saying the first

		time you murder someone you're out or commit a manslaughter and you're out for 10 years.
104	Rep. Prozanski	How about any other of the Measure 11 offenses?
105	Marquis	Three strikes in most states means life sentences without parole for three convictions of robbery. We do not have anything approaching that in Oregon and no one is suggesting that.
114	Rep. Prozanski	Is Clatsop County more likely to follow Measure 11 offenses being charged as Measure 11 as compared to using some other charge?
121	Marquis	We follow truth in charging that means if the facts merit Measure 11 it is charged that way.
124	Rep. Bowman	What percentage of convictions in your county pleaded less than Measure 11?
127	Marquis	20%-30% of Measure 11 charges are pled out to a lesser charge.
164	Rep. Bowman	Mr. Gonzales, are you still in counseling?
165	Gonzales	No.
166	Rep. Bowman	Are you on parole?
167	Gonzales	No.
170	Rep. Hansen	Would the Oregon Youth Authority keep offenders during their entire period of incarceration?
182	Hill	We can keep offenders until age 25 or until their sentence expires. We have a sorting-out process and move 1 out of 3 Measure 11 offenders on to prison within the first 3-4 months of their conviction.
201	Rep. Hansen	Would sex offenders be treated to longer post supervision under "second look"?
210	Hill	Yes. We do not expunge the records of juveniles who have committed sex offenses or release them from community corrections supervision.
225	Rep. Prozanski	Could you provide some insight into the Texas model that allows a second look after two years of a sentence has been served?

239	Hill	Discusses the maximum security, juvenile institution in Giddings, Texas. Each resident goes back to court on their 18 th birthday and the judge determines if the offender needs to go on to prison, stay at Giddings, or be released. 75%-80% got relief on their sentence when they went back to court. Giddings was the model Oregon used for "second look", but Oregonians were not comfortable with "second look" at 18 years of age and chose "second look" halfway through the juvenile's sentence.
298	Rep. Hansen	Are there any studies showing recidivism rates for offenders released early v. those who haven't been released early?
302	Hill	Of the 83 cases heard, 48 were released and 4 were brought back into custody.
317	Rep. Hansen	Are there any national studies in this area?
321	Hill	I don't know, but I could find out.
324	Rep. Prozanski	How many states have second look or review of sentence procedure for juveniles?
327	Hill	I don't know that number, but the trend is to "blended" sentencing. A long-term sentence is given in adult court, but the youth begins serving their sentence in juvenile court. If the youth improves as a juvenile, the adult sentence would not apply.
358	Rep. Gianella	What was your therapy group called, Mr. Gonzales?
361	Gonzales	Discusses the 19 groups available at Hillcrest and names the various groups he attended.
373	Rep. Gianella	In your group, did you have some violent offenders charged with rape or kidnapping?
378	Gonzales	Rape, yes, but none with kidnapping.
380	Rep. Gianella	What was their attitude?
382	Gonzales	He came in with a real tough attitude, but was beginning to trust more people.
404	Rep. Gianella	Were there violent 15-17 year old offenders for prostitution?
408	Hill	I don't know.

416	Rep. Gianella	Did you see a change in attitude with rape or kidnapping offenders?
424	Hill	Discusses sex offender treatment for juveniles.
TAPE 33, B		
008	Rep. Gianella	We are making a serious error in judgement if we include Kidnapping 1 and Rape 1 in HB 2206.
013	Chair Mannix	When did you first come to the attention of the juvenile authorities?
014	Gonzales	At 13 years old.
015	Chair Mannix	Were you placed in detention or kept in a juvenile facility?
017	Gonzales	No.
018	Chair Mannix	Do you think it would have made a difference if the juvenile authorities had been tougher when your were 13?
022	Gonzales	No.
037	Counsel Horton	Asks Mr. Hill questions concerning page 5, lines 4 & 5 of HB 2206.
056	Hill	I will look into an answer.
063	Dave Cook	Director, Department of Corrections Testifies in support of HB 2206. Feels that "second look" is for those individuals showing a desire to reform. Discusses the impact of incentives in dealing with juveniles. Significant safeguards are in place for those not eligible for "second look" release. Discusses Measure 11 with respect to HB 2206.
117	Rep. Simmons	Chief Moose expressed a concern if HB 2206 should become retroactive. What is your opinion on retroactivity?
121	Cook	I do not share his concern that retroactivity would let down any victims.
138	Rep. Simmons	For people already incarcerated, what if we provided a "second look" one year after the effective date of the bill?

144	Cook	That is a possibility to look at.
151	Rep. Bowman	Mr. Hill said 1 out of 3 juvenile offenders go to the Department of Corrections within the first 3-4 months. Are those 15, 16, and 17 year olds separated from the general prison population?
157	Cook	No.
159	Rep. Bowman	Has that presented unforeseen problems in the adult correctional facilities?
162	Cook	Yes.
163	Rep. Bowman	Would you elaborate on those problems?
164	Cook	The problems are primarily intimidation and sexual assaults.
179	Rep. Bowman	What is the Department of Corrections doing to protect young people who come into the adult system?
188	Cook	We look at ways to protect all the inmates. The new prison construction has more ways of segregating various types of population including youthful offenders.
207	Kathie Osborn	Juvenile Rights Project Testifies and submits written testimony in support of HB 2206 (EXHIBIT C). Discusses the waiver process for a juvenile offender in Oregon prior to Measure 11. Discusses the three classes of juveniles that came into effect when Measure 11 came into effect. HB 2206 would not change the discretion by the District Attorney or judge to determine if the offender will be eligible for "second look" at sentencing. Discusses "blended sentences" being used in other states. Discusses treatment programs at McLaren and Hillcrest.
395	Rep. Gianella	How many juvenile offenders who have been through Measure 11 have kidnapping 1 convictions?
402	Osborn	I do not know at this time, but I could get you that information.
412	Rep. Gianella	Do you have that same information on rape 1?
413	Osborn	I can get you that information also.
TAPE 34, A		

017	Jonnie Thomas	Resident of Beaverton Testifies in support of HB 2206. Discusses how their 17-year old son committed a crime and was sentenced under Measure 11. States his son, Jason, has made great strides in rehabilitation and needs the hope of release.
070	Sherry Thomas	Resident of Beaverton Testifies in support of HB 2206. Discusses her son's incarceration in an adult facility and the treatment by other inmates he encountered. States her experience with the system prior to Jason's arrest on the Measure 11 crime. I tried to get help for Jason, but was told by the police that they couldn't do anything until Jason committed a crime. Jason has reformed and now wants to go to college, and a "second look" would give him hope for a college education.
150	Chair Mannix	Discusses immediate intervention after a juvenile has committed a first or second offense. What if a secondary Oregon Youth Authority program was developed where juveniles were allowed to go out to school or get a job, but still be within modified custody of the Oregon Youth Authority?
174	J. Thomas	All these kids get out eventually, but will they be ready to integrate into society?
186	Rep. Bowman	Discusses the lack of community help for early intervention of juvenile offenders.
192	S. Thomas	Discusses what happened when they looked for help for Jason through community agencies. When we first turned Jason in for using drugs, the police should have put him in jail for 2-3 weeks to deter future behavior.
222	Rep. Bowman	Discusses what might have happened if Jason had had early community intervention.
246	Kathryn Riley	Oregon Public Health Association Testifies and submits written testimony in support of HB 2206. (EXHIBIT D) Discusses the Oregon Public Health Association <u>Policy Task Force Report on Adolescent Risky Behavior</u> . Adolescents develop morally and cognitively at a different pace. Many of the youth incarcerated have learning disabilities. Morally, ties to social groups have greater importance to adolescents than their responsibility to society. Discusses the decline in the involvement in serious crime for males after the age of 20.
323	Chair Mannix	Discusses his understanding of the criminal behavior pattern. Have those studies changed in the last several years?
334	Riley	I'm not sure what studies you are referring to. I am talking about the whole range of criminal activity, not just Measure 11 crimes. Discusses intervention programs. It is important for youth to be involved with their own behavior change, and "second look" would provide an incentive for behavior changes.

391	Chair Mannix	In the case of Jason Thomas, would it have been more appropriate for police to have early sanctions to prevent further problems?
397	Riley	Yes.
404	Rep. Prozanski	Could the intervention have occurred before the police had to be called in?
411	Riley	Yes. Having available treatment programs in the community would be a better form of intervention.
417	Rep. Sunseri	Mr. Gonzales stated he would not have listened to intervention at age 13.
423	Chair Mannix	By age 13, Mr. Gonzales had been engaged in crime for 5 years so he would have needed more than just a few days of intervention.
429	Riley	States certain ages when adolescents are not developmentally ready to accept intervention.
TAPE 35, A		
005	Chair Mannix	Discusses early intervention as a key to reducing crime.
014	Riley	States the importance of having the incentive of "second look".
024	Mary Fuller	Discusses her son, Jonathan, and his incarceration at McLaren on a Measure 11 charge from 1995. Prior to Measure 11 the judge would have given him probation. Discusses background of Jonathan's social development prior to arrest. Discusses Jonathan's accomplishments at McLaren. Jonathan has done everything he can do and the staff believes they have given him all they can, but nothing he has accomplished matters because of Measure 11 and the mandatory sentence. Will Jonathan's positive attitude continue to sustain him for the next 2 ½ years of his sentence? HB 2206 should be made retroactive so that youths sentenced after Jonathan are not released before him.
150	Chair Mannix	Have you filed a petition for clemency with the Governor?
151	Fuller	Jonathan has been through the appeal process.
152	Chair Mannix	It would not be the criminal justice appeal process, but the process for applying to the Governor for clemency.
156	Fuller	We are preparing a petition for re-hearing Jonathan's case based upon SB 1049 from the 1997 session.

171	Chair Mannix	You are not prevented from going through the clemency process through the Governor's office. What were the circumstances of the 1995 robbery committed by Jonathan?
180	Fuller	Describes the robbery of a Plaid Pantry by Jonathan and his friends.
194	Chair Mannix	Was there an attendant present in the store?
195	Fuller	The attendant stated he did not feel threatened in any way.
198	Chair Mannix	Did the attendant think the weapon was a gun or did he think it was a toy?
198	Fuller	He didn't know. He probably thought it was a gun.
210	Sharon Morales	Testifies in support of HB 2206. Discusses the case of her son, Damon Rodriguez. I looked for early intervention, but was also told Damon had to commit a crime before anything could be done.
257	Chair Mannix	What was the actual charge?
258	Morales	It was robbery 2. He pleaded to the lesser charge so he would be sentenced to 5 years, 10 months instead of 7 years. Discusses Damon's accomplishments while in McLaren. He has 2 ½ years of his sentence left and a "second look" would give him hope for an early release.
298	Steve Doell	President, Crime Victims United Testifies in opposition to HB 2206. Discusses several cases of crimes committed and the offenders getting very lenient sentences. HB 2206 would delay what the real sentence is going to be for years after the crime is committed. It takes away the truth in sentencing.
TAPE 34, B		
008	Doell	Discusses SB 1049 from the 1997 session that took several hundred offenders out of Measure 11 sentences and put them under the discretion of the court. States there are only about three crimes that would be subject to "second look".
018	Rep. Prozanski	Is Crime Victims United opposed to blended sentencing?
023	Doell	Crime Victims United is opposed to "second look" or blended sentences.
024	Rep. Prozanski	What data was used to establish the length of sentences for Measure 11?

033	Doell	I was not involved in the drafting of the specific number of years and months for each crime.
037	Chair Mannix	Closes public hearing on HB 2206. Adjourns meeting at 11:25 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2303, written testimony submitted by David Cook, Director of Department of Corrections, dated 2/8/99, 1 pg.

B ñ HB 2206, written testimony submitted by Rick Hill, Director of Oregon Youth Authority, dated 2/8/99, 3 pgs.

C ñ HB 2206, written testimony submitted by Kathie Osborn, Juvenile Rights Project, 30 pgs.

D ñ HB 2206, written testimony submitted by Katherine Riley, Oregon Public Health Association, 26 pgs.