

## **HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW**

**February 9, 1999 Hearing Room 357**

**8:30 a.m. Tapes 36 & 37**

**MEMBERS PRESENT: Rep. Mannix, Chair**

**Rep. Prozanski, Vice-Chair**

**Rep. Bowman**

**Rep. Gianella**

**Rep. Hansen**

**Rep. Sunseri**

**MEMBER EXCUSED: Rep. Simmons**

**STAFF PRESENT: John Horton, Counsel**

**Rachel Short, Administrative Support**

### **MEASURE/ISSUES HEARD:**

**Possible Measure Introduction**

**HB 2214 Public Hearing and Possible Work Session**

**HB 2215 Public Hearing and Possible Work Session**

**SB 77 Public Hearing and Possible Work Session**

**SB 72 Public Hearing and Possible Work Session**

**SB 63 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
<b>TAPE 36, A</b>		
005	Chair Mannix	Calls meeting to order at 8:30 a.m.
<b><u>PUBLIC HEARING ON HB 2214</u></b>		
008	Counsel Horton	HB 2214 allows Department of Corrections to make loans to inmates on transitional leave from alternative incarceration program for certain expenses.
023	<b>Dave Cook</b>	<b>Department of Corrections (DOC)</b>  Testifies and submits written testimony in support of HB 2214 ( <b>EXHIBIT A</b> ). Explains that this bill would allow the DOC to make loans to inmates on transitional leave. Refers to ORS 144.410.525 and explains that this bill would modify this law. Explains the purpose of a transitional leave and for what purposes a loan would be necessary.
053	Rep. Sunseri	Asks about the interest rate the DOC would presently charge.
054	Cook	I don't know, but that is an agreement we would work out with Department of Administrative Services.
057	Rep. Sunseri	DOC has the right to write these off as uncollectable, how much would you write off per year?
058	Cook	I don't know.
060	Chair Mannix	Asks about the Inmate Welfare Fund and if that is separate from the General Fund.
064	Cook	The Inmate Welfare Fund is another fund category.
066	Chair Mannix	Clarifies where the funding for the loan program will come from. Asks if there will be tax dollars at stake?
067	Cook	There are no tax dollars invested in this.
068	Rep. Bowman	If an inmate who is released under this program didn't show up, would they be considered an escapee?
070	Cook	That is still being debated.

075	Rep. Gianella	What does DOC and DAS stand for?
077	Cook	Department of Corrections and Department of Administrative Services.
084	Rep. Prozanski	Refers to a story in the Statesman Journal about an inmate donating a kidney to a sister. Asks Mr. Cook to brief him at a separate time about what issues that DOC might have with a situation like this.
094	Cook	I will be happy to give you more information.
<b><u>HB 2214 n WORK SESSION</u></b>		
103	Rep. Prozanski	<b>MOTION: Moves HB 2214 to the floor with a DO PASS recommendation.</b>
105		<b>VOTE: 6-0</b> <b>EXCUSED: 1 - Simmons</b>
	Chair Mannix	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>REP. HANSEN will lead discussion on the floor.</b>
<b><u>HB 2215 n PUBLIC HEARING</u></b>		
119	Dave Cook	<b>Director, Department of Corrections</b>  Testifies and submits written testimony in support of HB 2215 which gives power limitations of guardian appointed for person committed to custody of Department of Corrections ( <b>EXHIBIT B</b> ).
143	Rep. Prozanski	Could you give us some background as to why we would need this bill?
145	Cook	Discusses that several events in the department have encouraged this bill. There have also been national examples that lead us to believe that this bill is necessary in order to guard against potential problems. Discusses guardians of inmates that interfered in the decision making of health care issues.
161	Rep. Bowman	My concern is that you have a lot of juveniles in your facilities that have guardians that need to have control over their health care. I don't understand why we need to pass this if we haven't had any problems.

171	Cook	This is an attempt on the part of the DOC to be ahead of this issue.
173	Chair Mannix	Do you have anyone in your facility under the age of 18?
174	Cook	Yes.
174	Chair Mannix	Are they from Oregon Youth Authority (OYA)?
175	Cook	Yes.
175	Chair Mannix	About how many?
176	Cook	Less than 300 total.
178	Chair Mannix	Is the custody transferred from OYA to DOC?
178	Cook	All inmates under the age of 18 are in the custody of DOC. They reside at OYA.
181	Chair Mannix	The only inmates that you have, that would be classified as juveniles, are Measure 11 offenders, right?
182	Cook	They are remanded and they are still juveniles by age.
185	Rep. Gianella	What does "more authority" over health decisions mean?
189	Cook	Discusses different type of health care practices that the state practices versus the guardian.
202	Rep. Gianella	Asks for a specific example.
206	Cook	I don't have a specific example. Discusses the credentials of their health staff. Ensures the members that the health needs of the inmates are met.
226	Rep. Gianella	If there is no example, I don't understand what the problem is.
226	Chair Mannix	He is anticipating a problem because of research he has done.
236	Rep. Hansen	Asks about the appointment of a guardian.
240	Cook	Explains that juveniles are not the only ones that are appointed a guardian.

243	Rep. Hansen	Does there need to be a reason for guardianship?
244	Cook	Yes.
245	Rep. Hansen	Can an inmate that doesn't have a guardian question medical practices?
249	Cook	Yes, and they question those practices often. On the whole the DOC has practiced appropriate medical response.
254	Rep. Hansen	I've always been impressed with health care from the DOC. Shouldn't all inmates have the same rights to question health practices?
260	Chair Mannix	The guardian on behalf of the inmate can make decisions regarding health care. Can the guardian request a higher level of health care than what is given?
267	Cook	No.
268	Chair Mannix	Discusses what kind of authority the guardian has.
280	Cook	Discusses cases in where the guardian does not feel that the inmate was treated properly.
297	Rep. Prozanski	As a guardian, you are limited to what the inmate can bring or do.
304	Cook	Discusses rights of an inmate with a guardian versus an inmate without a guardian.
323	Chair Mannix	Gives an arbitrary example of why this bill would be necessary and what might happen if this bill was not in affect.
393	Rep. Prozanski	Discusses how an inmate can bring a lawsuit against the DOC. The court might say that their powers are limited because they are in the custody of DOC.
408	Rep. Gianella	Gives some examples of those inmates who are on prescription drugs that only the guardian is aware of.
429	Cook	The health care professionals from the DOC would be in contact with the guardian and their previous medical provider. It is in the best interest of the inmate and the DOC that they stay in good physical and mental condition. There is no reason for us to change to a medication that would be non-effective.
<b>Tape 37, Side A</b>		

**HB 2215 n WORK SESSION**

011436	Rep. Sunseri	<b>MOTION: Moves HB 2215 to the floor with a DO PASS recommendation.</b>
014		<b>VOTE: 5-1-1</b> <b>AYE: 5 - Gianella, Hansen, Prozanski, Sunseri, Mannix</b> <b>NAY: 1 - Bowman</b> <b>EXCUSED: 1 - Simmons</b>
	Chair Mannix	<b>The motion CARRIES.</b>  <b>REP. PROZANSKI will lead discussion on the floor.</b>

**SB 77 n PUBLIC HEARING**

018	Counsel Horton	SB 77 requires person requesting return of property seized to serve district attorney or city attorney with a copy of the motion.
037	Bradd Swank	<b>State Court Administrator's Office</b>  Testifies and submits testimony in support of SB 77 ( <b>EXHIBIT C</b> ). Discusses situations where someone makes a motion to return property and the court doesn't know if the district attorney has a position on the return of a property or whether they need it for a future criminal prosecution. Discusses a filing fee, which they feel is unnecessary.
052	Chair Mannix	Gives possible examples of how a court may charge a fee from someone seeking to obtain return of their property.
065	Rep. Prozanski	What is the time frame for the government to request that the property be returned?
071	Swank	I don't know.
073	Rep. Prozanski	Do you even know if there is a time limit?
074	Swank	No.

077	Rep. Prozanski	Is there going to be some type of delay or notice to individuals that they have to go through these steps? Discusses possible delays in the system.
098	Chair Mannix	The statute presently requires the motion to be filed so we are not adding a motion requirement. We are saying that you don't have to pay a filing fee.
098	Counsel Horton	There is some variance with how the filing fee is handled from county to county. Discusses his experience with the thirty-day rule. Explains that in most cases, a judge usually does not get involved.
109	Chair Mannix	Asks about the procedure of returning property.
112	Rep. Prozanski	I see this bill as cost savings to the judicial department. I also see it as a shifting of a notice that may be going on currently through the prosecutor's office that will now be a burden of the individual. I want to make sure that we have the proper safeguards in place as to requiring a notice.
127	Rep. Bowman	If someone has not been charged with anything and the property was just seized, then they shouldn't have any interaction with the district attorney's office. There should not be a burden on the citizen.
139	Chair Mannix	Discusses other statutes relating to SB 77. Asks about the filing fee.
164	Swank	The filing fee is dependent on what the local county charges for the law library fee.
160	Chair Mannix	Gives an example of what a possible filing fee would be.
171	Rep. Sunseri	You can already serve the district attorney to get your property back. The only thing that we have done here is get rid of the filing fee.
176	Chair Mannix	Explains the filing fee process as it exists presently.
187	Swank	Discusses the process of filing a motion.
<b><u>SB 77 in WORK SESSION</u></b>		
204	Rep. Bowman	<b>MOTION: Moves SB 77 to the floor with a DO PASS recommendation.</b>

		<b>VOTE: 6-0</b> <b>EXCUSED: 1 - Simmons</b>
	Chair Mannix	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>REP. BOWMAN will lead discussion on the floor.</b>
<b><u>SB 72 ñ PUBLIC HEARING</u></b>		
211	Counsel Horton	SB 72 allows court to issue search warrant upon application made by facsimile transmission.
220	Rep. Sunseri	Didnt we deal with this bill last session?
225	Ann Christian	<b>State Court Administratorís Office</b>  Testifies and submits written testimony in support of SB 72. To my knowledge, it was not a bill last session ( <b>EXHIBIT D</b> ).
228	Counsel Horton	Due to time constraints it died in committee.
229	Rep. Prozanski	Reviews the action that was taken on the same bill last session.
<b><u>SB 72 ñ WORK SESSION</u></b>		
245	Rep. Prozanski	<b>MOTION: Moves SB 72 to the floor with a DO PASS recommendation.</b>
249		<b>VOTE: 6-0</b> <b>EXCUSED: 1 - Simmons</b>
	Chair Mannix	<b>Hearing no objection, declares the motion CARRIED.</b>



**REP. GIANELLA will lead discussion on the floor.**

**SB 63 n PUBLIC HEARING**

256	Counsel Horton	SB 63 modifies law relating to fees imposed for collection of monetary obligations in criminal actions.
269	<b>Bradd Swank</b>	<b>State Court Administrator's Office</b>  Testifies and submits written testimony in support of SB 63 ( <b>EXHIBIT E</b> ). Explains the amendments that SB 63 would make to existing law.
299	Rep. Prozanski	These fees are not incurred by the individual until they've had an opportunity to make the payments that have been ordered by the court. They have been found as not being able to make those payments. IS this going to be a fee that will be added at the time of sentencing?
307	Swank	That is one of the corrections that this bill makes. Discusses the costs that are currently added and to whom.
314	Rep. Prozanski	Discusses the collections made on behalf of the courts.
322	Swank	The court would have the fee and then they could collect.
324	Rep. Bowman	Didn't we pass a bill last session that allowed collection agencies to collect court costs that people were sentenced to pay and didn't?
330	Swank	I can't remember which session, but yes, that was passed.
333	Rep. Bowman	Does this add an additional fee on top of that fee that went into statute last session? When we allowed collection agencies to collect these court costs we put a limit on what the fee would be. Is this increasing that in any way?
337	Swank	No. The distinction is that currently the way the bill was passed last session if these costs are going to be added they have to be added at the time of sentencing.
347	Rep. Hansen	Discusses concerns that he has regarding the fee.
373	Counsel Horton	Explains that in his experience the fee has never been a problem.

389	Rep. Prozanski	Discusses the possibilities of issuing another fee if a person is brought in on a probation violation.
404	Rep. Sunseri	That fee is an existing law. When they reviewed this they probably didn't think it was a problem they just wanted to be able to add a fee if necessary.
<b><u>SB 63 n WORK SESSION</u></b>		
416	Rep. Prozanski	<b>MOTION: Moves SB 63 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 6-0</b> <b>EXCUSED: 1 - Simmons</b>
	Chair Mannix	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>REP. SUNSERI will lead discussion on the floor.</b>
454	Chair Mannix	Adjourns the meeting at 9:30 a.m.

Submitted By, Reviewed By,

Rachel Short, Sarah Watson,

Administrative Support Administrative Support Coordinator

### **EXHIBIT SUMMARY**

**A n Testimony on House Bill 2214, David Cook n 1 pg.**

**B n Testimony on House Bill 2215, David Cook n 2 pgs.**

**C ñ Testimony on Senate Bill 77, Bradd Swank ñ 2 pgs.**

**D ñ Testimony on Senate Bill 72, Ann Christian ñ 1 pg.**

**E ñ Testimony on Senate Bill 63, Bradd Swank ñ 2 pgs.**