

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

March 17, 1999 Hearing Room 357

8:30 a.m. Tapes 91 - 92

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:

HB 2612 - Public Hearing

HB 2432 - Public Hearing

HB 2853 - Public Hearing

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 91, A		

004	Chair Mannix	Calls meeting to order at 8:35 a.m.
<u>HB 2612 PUBLIC HEARING</u>		
009	Counsel Horton	HB 2612 includes administration of specified substances by stealth, deception or force to cause incapacity to consent.
023	Janette Hamby	Former Legislator from Canby, Oregon Testifies in support of HB 2612. Discusses the history and explains the intent of HB 2612.
042	Walt Beglau	Oregon District Attorney's Association Testifies in opposition to HB 2612. Discusses the two key components of HB 2612 that makes the burden of proof harder for the victim.
077	Rep. Prozanski	Does HB 2612 not make it clear as to who the actual administrator of the intoxicant is?
086	Beglau	States that the argument could be made of who was the actual administrator of the substance because of the broad language in HB 2612.
088	Chair Mannix	Are there any assault statutes that would address the conduct of the administrator before giving the substance to the victim that resulted in no subsequent harm?
095	Beglau	States that the conduct of recklessly endangering or assaulting by physical injury would be two terms that HB 2612 would be referring to regarding the conduct of the person who administered the substance.
100	Chair Mannix	Do we need to address the preliminary conduct of the administrator of the substance where the victim has been rendered incapacitated, but there was no physical harm to the victim?
110	Beglau	Yes. States that language could be added to HB 2612 to address this issue of rendering a person incapacitated.
115	Chair Mannix	Discusses a situation where someone put a substance into the punch at a party ending in a lawsuit. Have you run into prosecution problems like this?
125	Beglau	No, I have not. States that someone from Deschutes County had a similar case and there should be a statute that addresses that kind of conduct.
130	Chair Mannix	What about the idea of making this type of conduct a heightened offense if you could prove that a "mickey" was given to render a person incapacitated? States

		that these cases would be aggravated assault.
146	Beglau	Discusses this conduct as being an aggravated circumstance. States that Ballot Measure 11 this type of aggravated conduct would be rape in the first degree.
151	Rep. Bowman	Does current law address this aggravation issue? Does HB 2612 make it harder to prosecute the administrator of the substance?
155	Beglau	Yes.
156	Chair Mannix	Is there a statute that addresses slipping someone any illicit drug?
162	Beglau	Yes.
164	Chair Mannix	Asks about the situation of slipping someone a drug, but not a taking advantage of that person.
165	Beglau	Explains how harm or endangerment is proved on the person that was administered the drug.
167	Hamby	Explains what medications HB 2612 refers to regarding causing a person to be incapacitated.
183	Rep. Prozanski	If we had other issues dealing with sex offenses, could we include them in this bill?
187	Hamby	Yes.
196	Chair Mannix	Closes the public hearing on HB 2612.
<u>HB 2432 PUBLIC HEARING</u>		
199	Counsel Horton	HB 2432 requires state to pay counties minimum of \$65 per day for persons incarcerated in county facilities upon conviction of felony.
220	Paul Snider	Association of Oregon Counties (AOC) Testifies and submits written testimony in neutrality on HB 2432 (EXHIBIT A). Discusses the key components of SB 1145 which resulted in creating HB 2432. Explains actual cost of supervision and actual county jail costs regarding appropriated funds by the state. Discusses the current county funding problem. Expresses AOC's concern with the needed full funding for county costs.

378	Chair Mannix	Would sending HB 2432 to Ways & Means make a statement that a change in the correction system regarding the appropriation of funds?
380	Snider	Yes.
383	Chair Mannix	States that the Ways & Means could decide on the need of funding.
385	Stan Robson	Oregon State Sheriffs Association Discusses why the \$7.5 million in the emergency fund was withheld this year from the state budget for county funding. Explains why \$7.7 million needs to be in the base budget for county funding.
412	Rep. Prozanski	In 1995, the only reason I supported SB 1145 was because it had full funding. States that the legislature should fulfill their obligation regarding county funding provided by SB 1145.
TAPE 92, A		
008	Rep. Bowman	Are any counties planning on opting out of the SB 1145 program?
011	Snider	States that counties confer with the Governor Office often regarding restoration of funding.
016	Rep. Bowman	Comments on the county taking aggressive action to get full funding.
018	Robson	States that counties are not considering opting out if the funding comes through.
027	Dave Cook	Director, Department of Corrections (DOC) Testifies and submits written testimony in opposition to HB 2432 (EXHIBIT B). Discusses why DOC is opposed to HB 2432. States that there is a need to insure that the budget is in agreement between the counties and the Governor's Office. Discusses how HB 2432 damages the DOC's budget because the statute is calculating money that is not there.
100	Rep. Prozanski	Discusses the concern of the partnership that was discussed in 1995 between the state and county regarding the jail population. If we're going to micromanage the counties in managing the jail population, why give them the responsibility in the first place?
114	Cook	I did not mean to give the impression that the counties were not doing their job. Discusses the county budget for managing inmate's incarceration. States that the counties are working out the incarceration problem.

138	Rep. Prozanski	Agrees to the accountability regarding the partnership between the county and the state. Discusses the of phasing-in process for the implementation of the county budget for incarcerating inmates.
166	Cook	Discusses how the phasing-in process will be implemented into the county budget.
170	Scott Taylor	Department of Corrections (DOC) Testifies in opposition to HB 2432. Discusses the funding projections for DOC regarding the incentive program. Explains the 25/75 formula that was a part of the 1997-1999 budget which provides incentive for effective management.
199	Chair Mannix	Is the standard funding projection for the cost of incarceration an average figure for the whole state?
202	Taylor	Yes.
202	Chair Mannix	Through negotiations between DOC and the Governor's Office was the current figure of \$7.2114 a day for an alternate sanction and \$66.963 per day for a jail bed correct?
206	Taylor	No. The actual numbers come out to \$75.82 for a jail bed day and \$18.69 for an alternative sanction day.
210	Chair Mannix	Those are the average figures statewide?
212	Taylor	Yes. Those figures reflect the 1998 estimates and there would be an inflation factor applied.
214	Rep. Prozanski	Asks about the timeline for the new system for the county funding problem that is proposed by HB 2432.
221	Cook	Discusses the timeline for the new system if everyone accepts the projected figures. States that the \$94.5 million was spent to construct jail beds and that needs to be calculated into the projected figures for county costs.
241	Chair Mannix	Is the average appropriated compensation for 1998 a cost of \$61.54 a day. Would they include the figures of \$75.82 a day for a jail bed and \$18.69 a day for an alternative sanction then these figures would be added to your 75/25 funding formula.
247	Taylor	You're figures are very close to the DOC's projected costs.
259	Chair Mannix	Would a compensated average of \$61.50 added to HB 2432 be damaging to your

		formula?
264	Taylor	Having an exact figure in the statute would lock in a specific amount that might not work because of change in growth.
270	Chair Mannix	States that the \$61.50 would be a minimum amount of compensation to the county's funding problem.
275	Cook	Explains why the actual costs and the supervision costs would not deal with the incentive issues of how the inmate population is to be managed.
286	Chair Mannix	Is the 75/25 formula in HB 2432 correct now?
289	Cook	No.
293	Robson	Discusses the incentives in using the compensation plan for inmates.
315	Chair Mannix	What about putting the \$61.50 in as a minimum for county funding so it can't be lowered in the future?
321	Robson	What then provides the incentive for the counties to manage more efficiently?
324	Chair Mannix	The incentive would be to use the extra cash for other things.
326	Robson	To continue escalating the average cost of incarceration would hurt the DOC's budget.
329	Chair Mannix	Are you satisfied with the current reimbursement rate for county funding?
330	Robson	Yes. States that 35 out of 36 counties are in agreement with implementing the funding formula.
335	Cook	The most expensive jail bed is in Benton County at over \$100/day.
341	Chair Mannix	What if the next legislative assembly doesn't like SB 1145 and they won't fund it?
344	Cook	Then the counties do not have to uphold their obligation according to HB 2432.
352	Chair Mannix	What is the harm of putting a \$61.50 a day as a baseline in the statute?

360	Cook	Explains the difference between managed dollars and supervision dollars spent out of the budget regarding the \$61.50 a day baseline.
382	Chair Mannix	Doesn't that encourage the county to come up with only 50% alternative sanctions which will make them come out ahead financially?
384	Cook	Explains how the counties would use the cash flow for improving the correction system.
391	Chair Mannix	Asks about the \$61.50 baseline having stability for budgeting.
398	Cook	Explains the unpredictability of future budgeting.
405	Chair Mannix	If the 1998 formula would create a \$61.50 baseline, why not put that minimum compensation in HB 2432?
411	Taylor	Discusses the concerns with counties managing below the \$61.50 baseline with no incentive for more effective management.
TAPE 91, B		
002	Rep. Hansen	Is Multnomah County the only county not in agreement with the funding formula?
005	Robson	Yes.
006	Rep. Hansen	Does Multnomah County have the highest operating cost out of the 36 counties?
009	Robson	Yes.
011	Rep. Hansen	Is the \$75.82 average without figures from Multnomah County?
012	Robson	No, Multnomah County was included in averaging the cost of incarceration. Discusses why Multnomah County is not pleased with the new funding formula.
025	Taylor	Multnomah County's concern is not the amount of money, but the distribution formula we use which stands separate from the building of the budget.
034	Rep. Sunseri	If 35 counties are happy with the funding formula then why do we need HB 2432 at all?
037	Cook	Explains why a single county cannot opt out of the new funding system.

040	Rep. Hansen	Discusses the opt-out provision for the counties in HB 2432.
063	Snider	Discusses the two issues of county allocation and statewide appropriation regarding the funding level. One of the difficulties in allocating the funding formula is how to create incentives for improved management. Explains how SB 1145 created sanctions for counties to deal with problems. Discusses the intent of HB 2432 regarding sanctions so counties could deal with parole revocation. Discusses allocation of funds not having incentive to control the inmate population effectively and reduce crime rate.
119	Chair Mannix	Discusses the 2-week time line to propose a long term funding formula. States that today HB 2432 could be sent to Ways & Means with a \$65 figure or a \$61.50 figure.
139	Rep. Sunseri	States that DOC should be involved in setting a minimum figure for Ways & Means to decide upon.
141	Chair Mannix	Suggests a work group that would decide upon an agreeable funding formula.
145	Cook	Discusses why the funding formula in HB 2432 cannot solve the funding problem.
161	Chair Mannix	How about a list of basic principles that could be applied to a funding formula?
161	Cook	That is better than having a specific dollar formula.
165	Chair Mannix	Asks about a statute that promotes a partnership between agencies to find a solution to the funding problem.
169	Snider	States that the partnership issue is in ORS 423.475.
175	Rep. Hansen	States that a list of basic principles for the funding formula would be good way to solve the funding problem.
177	Chair Mannix	We could always amend HB 2432 to authorize individual counties of being able to drop out of the funding program.
180	Taylor	HB 2432 states that each county has the choice of dropping out if the overall funding base drops.
190	Chair Mannix	Closes the public hearing on HB 2432.
<u>HB 2853 PUBLIC HEARING</u>		

193	Counsel Horton	HB 2853 authorizes peace officer who issues citation for violation or infraction to present evidence, examine and cross-examine witnesses and make certain legal arguments at trial if city attorney or district attorney does not appear in proceeding.
212	Walt Beglau	Oregon District Attorney's Association Testifies in support of HB 2853. States that Oregon District Attorney's Association supports the intent of HB 2853.
217	Rep. Prozanski	HB 2853 evolved because of a lawsuit concerning a police officer engaging in the practice of law. HB 2853 makes language clear that a police officer can present a case if there is no attorney present. Discusses the -1 amendments (EXHIBIT C) . States that HB 2853 uses the same model language as the Attorney General's office regarding individuals who represent agency hearings.
302	Chair Mannix	Do the -1 amendments address police officers engaging in the unlawful act of practicing law?
303	Rep. Prozanski	The -1 amendments address the concern of the Oregon State Bar concerning legal representation in court.
311	Chair Mannix	Asks about the admissibility of evidence as stated on line 10, page 1 of HB 2853.
314	Rep. Prozanski	Explains the limitations of HB 2853 of what the police officer can and cannot do in court regarding ordinances and statutes.
328	Rep. Hansen	States that the Oregon State Bar should be here for this hearing.
335	Rep. Sunseri	Recommends having some police officers here to discuss the impact of HB 2853 on them. Discusses the concern of the responsibility for a police officer to practice law.
358	Rep. Prozanski	Discusses the impact of HB 2853 regarding the use of police officers in court for noncriminal matters.
377	Chair Mannix	Discusses legal representation of accountants or bookkeepers in the Magistrate Division of tax court.
392	Rep. Sunseri	Explains that it is the judge's job to extract the truth in noncriminal matters.
404	Chair Mannix	Does a problem arise when an attorney is advising a person in court who does not have representation?
407	Counsel Horton	Discusses cases where a district attorney may be absent from a case and the

		defense attorney has free reign to handle the case.
432	Rep. Sunseri	Do we expect a police officer to know what is appropriate in court proceedings?
433	Counsel Horton	Police officers experienced in court proceedings know what to do.
TAPE 92, B		
003	Rep. Prozanski	States that the statutes say that the court needs to give notice to the state, county, or city if a defense attorney does represent an individual.
015	Rep. Sunseri	States that if HB 2853 passes, agencies will ask for money to train the police officers to properly practice law.
022	Rep. Prozanski	Explains that these officers are already practicing law in the courts with the training they already have. States that there needs to be a law that would make this procedure legal.
039	Chair Mannix	Is HB 2853 making it legal for police officers to do what they have been doing all along?
041	Rep. Prozanski	Yes. Describes a court case where a police officer is being charged with illegally practicing law.
045	Rep. Simmons	Under current law, can a police officer legally object to hearsay evidence in a violation trial?
048	Counsel Horton	No, unless the judge allows it.
065	Chair Mannix	Asks about having Salem police officers coming to testify regarding HB 2853..
076	Rep. Sunseri	States that there may be new officers who don't know how to practice law in court.
084	Rep. Prozanski	Under current statute, none of us can go into the court and represent the state or the city, so there needs to be a law that would allow the police officers to represent legal arguments at a violation trial.
089	Rep. Sunseri	Why are police officers allowed to argue violation offenses in court?
091	Rep. Prozanski	Discusses the cost effectiveness that is involved when police officers are allowed to make certain legal arguments at trial. States that there are very low fees involved in a violation trial.

100	Chair Mannix	Adjourns meeting at 10:05 a.m.
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Submitted By, Reviewed By,

Nancy Richards, Sarah Watson,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2432, Written testimony, Paul Snyder, p. 1

B - HB 2432, Written testimony, Dave Cook, p. 3

C - HB 2853, Proposed -1 amendments, Counsel, p. 1