

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

March 18, 1999 Hearing Room 357

8:30 a.m. Tapes 93 - 94

MEMBERS PRESENT: Rep. Mannix, Chair

Rep. Prozanski, Vice-Chair

Rep. Bowman

Rep. Hansen

Rep. Simmons

Rep. Sunseri

MEMBER EXCUSED: Rep. Gianella

STAFF PRESENT: John Horton, Counsel

Patsy Wood, Administrative Support

MEASURE/ISSUES HEARD:

HB 2349 Public Hearing

HB 2350 Public Hearing

HB 2351 Public Hearing

HB 2562 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 93, A		

004	Chair Mannix	Calls meeting to order at 8:35 a.m.
HB 2349, HB 2350, HB 2351 & HB 2562 COMBINED PUBLIC HEARING		
023	Counsel Horton	HB 2350 refers the subject matter to the voters. HB 2349, HB 2350 and HB 2562 are similar in nature and were formerly Ballot Measure 61. Discusses additional sentencing for certain felonies established by these bills.
055	Paul Levy	Oregon Criminal Defense Lawyerís Association (OCDLA) Testifies in opposition to HB 2349, HB 2350, HB 2351 & HB 2562. Discusses the origin of Ballot Measure 61 as a frustration with sentencing guidelines and the legislative process in enacting SB 1145 from the 1995 Session. Because changes to those laws could not be accomplished, a widespread sweeping change was sought through the initiative process. Including all Measure 11 offenses in the definition of major crimes doesnít make sense when just a few changes need to be made in the current law. Ím surprised to see this kind of legislation come out of the Legislature.
095	Levy	The community groups condemning Measure 61 felt the tremendous expense of this measure without demonstrable benefit was unjustified. This was seen to be another attack on judges to hand out measured inappropriate sentences. Discusses why HB 2349, HB 2350 and HB 2562 are not necessary in relation to how they treat first-time offenders and repeat offenders. Explains that the 14-month presumptive sentence for all major crimes is not enough for some crimes and is too much for others. Discusses that the sentencing guidelines are more than adequate in treating repeat offenses against people. Discusses the high cost of Ballot Measure 61 and how the proposed legislation is very similar. Discusses changes that could be made to prevent crime.
317	James Rice	Oregon Criminals Defense Lawyerís Association (OCDLA) Testifies in opposition to HB 2349, HB 2350, HB 2351 & HB 2562. Discusses the main reason that kids get into trouble is because of the other kids they hang out with. Sending kids to prison for a first-time property offense is putting them in with the wrong kind of people and can be expensive. Restitution can be a positive tool for changing behavior. Discusses that people with drug problems need to go to drug treatment, not to prison. I like the idea that a juvenile who does something wrong goes to juvenile court and that they are dealt with by a judge.
TAPE 94, A		
029	Chair Mannix	None of these bills relate to juveniles except that their juvenile history follows them as an adult.
032	Rice	My concern is that if someone does something silly as a juvenile, it will come back to haunt them as an adult. I think the Measure 11 sentences address many of the problems, but these bills are unnecessary.

064	Dale Penn	<p>Oregon District Attorney's Association</p> <p>Testifies in support of HB 2349, HB 2350, HB 2351 & HB 2562. It is important to keep in mind that sentencing guidelines right now count juvenile felony adjudications. Discusses the large number of offenders committing property crimes that are not covered under Measure 11 and property crime is a major issue in Oregon. When we targeted violent person crimes we saw a dip in the violent person crimes so now targeting property crimes should see a reduction in property crimes. HB 2349 allows for the Legislature to put this policy into play; HB 2350 sends it to the people; and HB 2562 adopts it as a statute, but does not include the 14-month sentence for the first-time offender. This ultimately comes down to a money choice, but this legislation is an appropriate way to deal with property crime. My preference is HB 2562 because there are significantly increased sentences for repeat offenders that should deter some crime.</p>
140	Rep. Bowman	Have you seen a difference in property crimes and sentencing for unauthorized use of motor vehicles since HB 3488 went into effect in July of 1996?
145	Penn	We have been able to take repeat property offenders in those two categories and sentence them to prison which we were not able to do in the past. This sentencing has taken some very chronic offenders out of the community. We haven't had the law long enough to rate the impact on the crime rate.
160	Rep. Bowman	Since the law has been in effect for such a short time, how will we know if the first law made an impact, or if this proposed legislation, if passed, had an impact?
170	Penn	It is very difficult to know what totally causes and prevents crime.
177	Rep. Hansen	One of your assistants testified that you don't prosecute Class C misdemeanors in mail theft cases. Should we be increasing the local jail sanctions and prosecuting these first-time misdemeanor offenders to prevent them from becoming the repeat offenders in adult court?
192	Penn	In order to protect society, I believe we should be focusing on the career repeat offender and getting them off the streets. Explains that HB 2562 is preferred because it doesn't mandate a person to prison on the first offense.
227	Rep. Prozanski	What data or facts do you have to support violent crime diminishing based on our current sentencing structure?
232	Penn	We have seen person crimes go down and at the same time we have seen an increased incarceration rate, but I can't say for sure what is the cause and effect.
240	Rep. Prozanski	Would it surprise you to learn that the actual decrease in violent crime was starting prior to the passage of Measure 11?
244	Penn	I wouldn't debate that at all.

259	Dave Cook	<p>Director, Department of Corrections (DOC)</p> <p>Testifies and submits written testimony in opposition to HB 2349, HB 2350, HB 2351 & HB 2562 (EXHIBIT A). States that these bills significantly alter the current balance in the corrections system achieved through the passage of SB 1145. Offenders with 14-month presumptive sentences and mandatory minimum sentences are sent to state correctionis institutions. Discusses that this legislation reduces the number of inmates eligible to receive earned time credit. Another concern is targeting the right people with regards to repeat property offenders to see if there is an impact on crimes like car theft. We donít want to put a lot of people in prison hoping that sooner or later we get the right people. This legislation would require additional prison beds at a rate we are not equipped to handle. I get concerned about huge increases in sentencing capacity when we donit have a system in place that can respond to it.</p>
387	Chair Mannix	In terms of repeat offenders and focusing on burglary, should there be a distinction between "joy riding" and auto thefts like other states have?
406	Cook	I would agree with you. We have to make distinctions between different types of offenders and the appropriate response to those offenses. You have to look at the facts of each case individually, which is why I am concerned about these "one size fits all" sentences.
TAPE 93, B		
012	Chair Mannix	In looking at the sentencing scheme, you mentioned the need for earned time by inmates. Do you feel there is a need for earned time for Measure 11 offenders?
019	Cook	Yes.
020	Chair Mannix	We have heard about the need to deal with the serious repeat property offender, particularly dealing with auto theft, burglary and felons who possess firearms. If we focused on that narrower category of repeat offenders, do you see some tradeoffs between establishing earned time for some of the Measure 11 offenders, and putting in tough time, with earned time credits, for serious repeat property felons?
027	Cook	I do agree with that. Being able to use bed space, saved from Measure 11 offenders earning good time, for repeat property offenders makes sense and can keep us within the budget.
039	David Fidanque	<p>Executive Director, American Civil Liberties Union of Oregon (ACLU)</p> <p>Testifies in opposition to HB 2349, HB 2350, HB 2351 & HB 2562. The ACLU has a long-standing policy of opposing mandatory minimum penalties. Judges need to have discretion when sentencing defendants.</p>
050	Chair Mannix	Should we get rid of sentencing guidelines entirely?

051	Fidanque	No. The sentencing guidelines have provided consistency of sentencing from one jurisdiction to another.
055	Rep. Prozanski	Why would we want to do away with sentencing guidelines? Discusses how well the sentencing guidelines are working.
064	Fidanque	The ACLU opposed Ballot Measure 61 on its merits. Discusses the process used by the Secretary of State to determine if an initiative petition has enough signatures to be put on the ballot, and the fact that it is still unknown if there were enough valid signatures for Ballot Measure 61. We believe Measure 61 could have been certified to the ballot provisionally at the first deadline and then have a check of all signatures. Checking the signatures would show valid signatures as well as duplicate signatures.
124	Chair Mannix	Your idea of a provisional certification would move the initiative along in the ballot process. Then the Secretary of State could check the signatures for their validity and withdraw the certification if necessary.
129	Fidanque	As long as this check happens before the deadline for printing the ballots which is the next big deadline in early September.
142	Chair Mannix	We could pass a bill that directs the Secretary of State to count those signatures to see how many were valid. Right now the Secretary of State says he has no authority to count the signatures.
147	Rep. Prozanski	Are we talking about counting Measure 61 ballots?
148	Chair Mannix	No, not the ballots, the signatures.
151	Fidanque	The ballots shouldn't be counted because the election was irretrievably tainted.
153	Chair Mannix	It would be an interesting study to see how many signatures there were.
157	Fidanque	If we counted the signatures now, there might be technical issues presented by the Secretary of State. Discusses the procedure for validating signatures on an initiative petition. Discusses HB 2351 and the procedure for establishing ballot titles for referral. ORS 250.085 provides a procedure for any elector who is dissatisfied with the ballot title to petition the Supreme Court for changes. If the ballot title complies with the statutes relating to ballot titles, the Supreme Court would uphold it. HB 2351 would cut out that ability to challenge the sufficiency and accuracy of a ballot title. Similar provisions, in the last few legislative sessions, have lead the Governor to veto ballot titles.
209	Chair Mannix	Would you prefer that HB 2351 did not cut out the judicial review?
213	Fidanque	Yes.

224	Phil Lemman	Executive Director, Oregon Criminal Justice Commission The Oregon Criminal Justice Commission was charged by statute to provide an objective and impartial forum for public safety policy development that culminated in the submitted report (EXHIBIT B). The major issues discussed in the forum were: the severity and frequency of major crimes; the anticipated fiscal impact on state and local governments; how much discretion Ballot Measure 61 gives to district attorneys, and how that discretion will be used; and the adequacy of existing law to punish and/or deter property offenders.
351	Rep. Bowman	When you surveyed the various counties you mentioned the statewide range for offenders getting the presumptive sentence was between 15%-90% of the cases. Could you please elaborate on this, was there a significant difference in smaller communities than large urban communities?
361	Lemman	We did hear from Multnomah County and they had some of the lowest uses of the presumptive sentence and were more likely to use downward departure than the 14-month sentence. A couple other larger counties anticipated using the presumptive sentence between 40%-60%. Some of the smaller counties is where we got up to the 90%.
383	Chair Mannix	Closes public hearing on HB 2349, HB 2350, HB 2351 & HB 2562. Meeting adjourned at 9:55 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HBis 2349, 2350, 2351, 2562, written testimony submitted by Dave Cook, DOC, dated 3/18/99, 2 pgs.

B - HBis 2349, 2350, 2351, 2562, written testimony submitted by Phillip Lemman, dated 3/11/99, 7 pgs.