

**HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW**

**March 23, 1999 Hearing Room 357**

**8:30 a.m. Tapes 100 - 102**

**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:**

**\*\* Continuation of Monday, March 22, 1999 Meeting \*\***

**HB 2423 Public Hearing**

**HB 2677 Public Hearing**

**HB 2396 Public Hearing**

**HB 2983 Public Hearing**

**HB 2913 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
<b>TAPE 100, A</b>		
005	Chair Mannix	Calls meeting to order at 8:35 a.m.
<b><u>HB 2423 PUBLIC HEARING</u></b>		
022	Chair Mannix	Opens and closes public hearing on HB 2423.
<b><u>HB 2677 PUBLIC HEARING</u></b>		
029	<b>Kevin Starrett</b>	<b>Executive Director, Oregon Firearms Federation</b>  Testifies in opposition to HB 2677. Refutes some of the testimony heard on Monday, March 22, regarding statistics and Crime Victims United's support of HB 2677. In Oregon 40,000 households have firearms, but firearms caused only 26 accidental deaths among juveniles. People should be held accountable for their actions, but we have laws concerning negligence.
090	Chair Mannix	Should we define levels of negligence as to having loaded firearms around children of certain ages? We as legislators can establish different levels of negligence in the statutes and define certain conduct as being negligent. Then all you have to prove is that the conduct occurred and the jury infers that negligence occurred.
104	Starrett	That should be handled in the judicial system. Discusses a juvenile getting possession of a firearm to defend himself in the home, and the owner of that gun being liable for prosecution under HB 2677.
121	Rep. Prozanski	Regarding the information you were refuting from yesterday that a gun in the home is 43% more likely to be used against a family member than to stop a crime, what information do you have as to the number of firearms used against unintended victims such as family members?
126	Starrett	I don't have that information.
127	Rep. Prozanski	Even though you take issue with the 43% number that has been presented to us, do you have any knowledge of what that number might be?
129	Starrett	I heard that a firearm in the home was 43 <u>times</u> more likely to be used against a family member than to stop a crime, not 43%. I have searched for any documentation that that is true.
133	Rep. Prozanski	And you found none?

133	Starrett	That is correct. I found documentation that between 2-6 million times a year a firearm is used in a self-defense situation, more often than not, without being fired.
136	Rep. Prozanski	That was 2-6 million times?
137	Starrett	Yes. In the United States, not in Oregon.
139	Rep. Prozanski	Could you define responsible gun ownership?
145	Starrett	When I was single, I kept a loaded gun next to my bed. When I had an infant, I kept the gun out of his reach. If a child has the maturity to handle a gun responsibly, I won't have to keep it locked up. Discusses issues about the "smart gun", a gun that can only be fired by the owner wearing a certain ring. To define responsible gun ownership requires a definition of the individual's circumstances.
179	Rep. Prozanski	Do you believe that someone who is not a responsible gun owner should be held accountable for that lack of responsibility?
182	Starrett	Yes, and we have negligence laws that address that.
183	Rep. Prozanski	Beyond any civil liabilities, do you believe an individual should be held accountable in a criminal setting for negligence?
186	Starrett	Yes, a person should be held accountable for criminal liability, but not by requiring everyone to follow a particular set of rules that may not apply to them. I think education addresses the problem, some people are educated in gun safety and some are not. I would like to see this approached like we approach drunk driving where we encourage education rather than finding new ways to prosecute people.
212	Rep. Prozanski	Drunken drivers who fail to heed education are held accountable civilly and criminally for driving under the influences of intoxicants (DUI). Is it your opinion a minor does not have the ability to defend themselves?
225	Starrett	People are held criminally liable for drunk driving. If I drive drunk and injure you, you can criminally prosecute me, but you don't have the right to prosecute my wife whose car I was driving.
238	Rep. Prozanski	Under some of our statutes, your wife's car could be forfeited because you were driving it under the influence of intoxicants.
241	Starrett	I was unaware of that. Regarding the minor defending himself, I do not know of any statute that states "a child may possess a firearm to defend himself". My

		interpretation of HB 2677 indicates that the possession of a firearm by a juvenile would make the owner of the firearm liable for prosecution.
249	Rep. Prozanski	In the previous example of the DUII, if the driver was a minor and the alcohol they consumed could be attributed to someone else, the person contributing the alcohol could be held accountable both civilly and criminally.
256	Starrett	If I provide a firearm to a minor, the existing laws say I would be held criminally liable. However, that is not what HB 2677 says. It says I must lock up my firearm.
262	Chair Mannix	What if we said you would be immune from liability in a civil action if you have trigger locks on all accessible firearms or store all firearms in a lock box?
271	Starrett	I would like to see the legislation first, but there is a fundamental reality that stored firearms are more difficult to physically access.
293	Rep. Bowman	You sound like a responsible and educated gun owner, but not everyone who owns a gun is. How many more senseless, unnecessary deaths should we accept as reasonable to keep irresponsible gun owners from having to be held responsible for their actions?
310	Starrett	There are no acceptable deaths, but the concept of saving one life goes both ways. A person who dies because of their inability to access a firearm is no less dead than the juvenile who had possession of a gun that should not have been accessible to them.
320	Rep. Bowman	Could you cite one case of a gun owner who was killed because they used a locked gun box?
325	Starrett	I could not, but I will research that information.
328	Rep. Hansen	We have had a lot of discussion about the inaccessibility of a lock box, but I don't see anywhere in HB 2677 that requires someone to use a lock box. If someone wants to keep a gun on a nightstand they could as long as their kids don't have access to it.
356	Starrett	Reasonable precautions, such as a lock box, are described in HB 2677.
367	Rep. Hansen	HB 2677 gives affirmative defense if a firearm is stored in a place where an unsupervised minor would not have access. If you are in the room supervising the minor, the gun shouldn't have to be locked up.
374	Starrett	You may be right, but I don't know what interpretation a court might make. My concern is not making someone lock up a gun when they do not want to, and creating a situation that applies to everyone when individual circumstances differ.

389	Rep. Hansen	HB 2677 is aimed at individuals who allow a minor to obtain unsupervised access to a firearm.
402	Starrett	Cites example given by Sen. Burdick's daughter and that although unintended, it would be a situation of a minor in possession of a gun in an unsupervised situation.
430	Rep. Simmons	My family goes hiking and camping in the woods a lot and I take a 44 magnum with me. If I were to leave the gun in the tent and go fishing, leaving my teenage daughters behind, would I be negligent under this law?
<b>TAPE 101, A</b>		
007	Starrett	Yes.
012	Rep. Bowman	Mr. Starrett stated he is not capable of giving a legal opinion as to liability, this is only his personal opinion.
015	Chair Mannix	But a person under 18 is a minor and Rep. Simmons has knowingly allowed a minor to possess or discharge the firearm.
034	<b>John Hellen</b>	<b>Oregon Gun Owners</b>  Testifies and submits written testimony in opposition to HB 2677 ( <b>EXHIBITS A &amp; B</b> ). Discusses statistical firearms information on fatal accidents in the United States. References a study done by Gary Kleck who determined that there are 2 ½ million successful, protective defenses with firearms annually in the United States.
059	Rep. Prozanski	What parameters were used in making that determination?
065	Hellen	I would be happy to provide you with a copy of Gary Kleck's study. Existing criminal negligence and reckless endangerment statutes should be enforced rather than creating more laws to enforce gun ownership. Discusses studies done in Florida to see if "CAP" (Child Access Prevention) laws are working. HB 2677 is unclear if it pertains to loaded or unloaded firearms. "Reasonable precautions" in Section 2, (4) of page 1, need to be carefully defined. Discusses problems that can occur with trigger locks.
171	Chair Mannix	What if we said in households where a firearm is not kept out of reach of children under age 12 and a discharge of the firearm occurs, there is strict liability for the results of that discharge? But in households where firearms are kept secure, there is immunity from liability?
189	Hellen	Gun owners support allowing law-abiding gun owners to protect themselves

		when they possess firearms, and criminal immunity liability could be one part of that protection.
195	Chair Mannix	HB 2677 talks about access and possession of a firearm and there is no liability for mere possession. Wouldn't offering this immunity from liability encourage safer gun handling by gun owners?
205	Hellen	Yes, but we are forcing gun owners to use safe storage to be immune from liability.
215	Rep. Prozanski	Your statistics were compiled from three different sources. Could you supply us with that statistics came from which source?
218	Hellen	Yes.
220	Rep. Prozanski	In your research, did you find any resources that contradicted your data?
223	Hellen	No. Discusses the two main sources: the National Center for Health Statistics and the National Safety Council.
236	Rep. Bowman	What would you consider to be a safely stored gun?
247	Hellen	I think it would be: recognizing that firearms can be dangerous and taking appropriate precautions to address that dangerous component.
268	<b>Luis Martinez</b>	<b>Private Citizen</b>  Testifies and submits written testimony in opposition to HB 2677 ( <b>EXHIBITS C</b> ). Discusses statistics of unintentional injury deaths occurring in Oregon for ages 5 or younger and ages 5-14. I fail to see how locking up a gun is means of defense to saves lives?
397	Rep. Prozanski	When you were doing your research, were there any statistics on injuries caused by firearms?
402	Martinez	No.
403	Rep. Prozanski	Were there any statistics on intentional injury/deaths v. unintentional injury/deaths?
405	Martinez	By intentional deaths, do you mean suicides?
406	Rep. Prozanski	A child shooting another child with the intent to kill that individual.

415	Martinez	The statistics I have on the unintentional deaths come from the Oregon Health Department, but the statistics do not tell who inflicted the injury.
426	Rep. Prozanski	Does the data you have given us reflects deaths where one individual intended to cause the death of another individual? Also, does the data reflect injuries, not actual deaths?
<b>TAPE 100, B</b>		
009	Martinez	The data I have just addresses deaths.
031	Rep. Gianella	Do you think the numbers you provided were affected by the media?
033	Martinez	Yes. These types of deaths make news.
048	Rep. Bowman	If the media is making this an issue, your numbers say there were 2 deaths in 1996 by firearms for the 5-14 year olds and a study I have shows 26 were killed in 1997. That shows a substantial increase in firearm deaths in just one year.
057	Martinez	These are statistics provided by the Oregon Health Department.
061	Rep. Bowman	Isn't that a significant increase from 2 to 26 deaths?
063	Martinez	Yes.
067	Rep. Bowman	If we have had such a significant increase in unintentional deaths, isn't it appropriate for us to address this issue through legislation?
069	Martinez	No. Discusses the fact that guns have been around for over 200 years and wonders if the increase in firearm-related deaths is a problem with the guns or a problem with society?
082	Chair Mannix	Closes the public hearing on HB 2677.
<b><u>HB 2423 &amp; HB 2913 &amp; HB 2983 COMBINED PUBLIC HEARING</u></b>		
091	Steve Carmichael	<b>Oregon Juvenile Department Director's Association</b>  Testifies and submits written testimony in support of HB 2423, HB 2983 and HB 2913 ( <b>EXHIBIT D</b> ). We support the idea that juveniles who have guns in schools or other public buildings should be taken to detention for an evaluation. Where detention is not available in counties, there would be a cost for holding

		those juveniles. Discusses the need for some type of evaluation by the court whether mental, psychological or neurological.
161	Counsel Horton	HB 2423 requires employees of schools to report any person who unlawfully possesses a firearm in school. HB 2913 applies to the reporting of any person in school possessing a firearm when they are younger than 18 years of age. HB 2913 sets a 48-hour minimum detention period for psychological evaluation whereas HB 2423 sets a 24-hour minimum detention period for evaluation.
179	<b>Wilma Wells</b>	<b>Confederation of Oregon School Administrators</b>  Testifies as neutral on HB 2423 and HB 2913. The county should be contacted by law enforcement, not the school employees. There is confusion on where the person carrying the gun would be held in the school.
218	<b>Tricia Smith</b>	<b>Oregon School Employees Association</b>  Testifies as neutral to HB 2423 and HB 2913. Our concern is how this legislation will work within the schools. If an employee believes that a child is carrying a firearm in school, that child is reported to law enforcement as provided in current school policy. We need liability language to protect school employees from civil action when they are acting in good faith.
265	Chair Mannix	Should we be talking about empowerment rather than prohibitions and mandates? Empowerment might say any person who notifies authorities regarding a firearm is immune from liability.
274	Smith	We would like to see that immunity within the legislation. The additional reporting requirement to call county juvenile authorities is a difficult step for a janitor or a bus driver to remember.
313	Rep. Prozanski	HB 2913 is limited to reporting a person 18 years and under in unlawful possession of a firearm. Would it be easier for employees to report "anyone" in possession of a firearm?
324	Smith	That would be helpful because it is often difficult to tell a person's age or if someone has the authority to carry a weapon.
337	Rep. Bowman	What does the current law say about gun possession at school? I thought guns were prohibited.
345	Wells	There is a federal law saying a student may not have a gun at school.
356	Chair Mannix	Discusses ORS 166.370, the state statute regarding possession of a firearm or dangerous weapon while in school, and the exceptions to this rule.
366	Smith	The intent of HB 2913 is trying to detain the youth who carries a gun in school.



384	Chair Mannix	We will incorporate by reference, yesterday's testimony by Rep. Morrisette on HB 2423.
397	<b>Rep. William Morrisette</b>	<b>State Representative, House District 42</b>  Testifies and submits written testimony in support of HB 2983 ( <b>EXHIBITS E &amp; F</b> ) which prohibits juvenile offenders on probation from having access to guns. Discusses the fact that Kip Kinkel had gotten in trouble with the law in Bend and HB 2983 could have been a deterrent to the Thurston High School shooting if Kinkel would not have been allowed to be in possession of a firearm.
<b>TAPE 101, B</b>		
016	Rep. Sunseri	If Kip Kinkel violated 11 laws in that shooting incident, what effect would one more law like this have on his conduct?
026	Rep. Morrisette	I'm talking about the deterrent that parents should have enforced.
	Chair Mannix	Discusses previous laws broken by Kip Kinkel as a juvenile who was on probation and should not have had access to firearms while on probation.
027	Rep. Morrisette	I am talking about the parents not allowing their son to have a weapon if Kip was on probation.
039	Chair Mannix	Discusses an earlier incident where Kip Kinkel dropped a stone(s) from an overpass that brought him to the attention of the juvenile authorities in Deschutes County where a civil compromise was reached. It is unknown if Kip's records from Deschutes County transferred to Lane County, but the parents should not have allowed Kip to be around guns.
062	Rep. Morrisette	Juveniles who have committed crimes in the past should be prohibited from having access to guns.
070	<b>Rep. Ryan Deckert</b>	<b>State Representative, House District 8</b>  Testifies and submits written testimony in support of HB 2913 ( <b>EXHIBIT G</b> ). When a student brings a firearm or dangerous weapon to school he/she needs to be detained for evaluation and school officials need to notify law enforcement.
085	Rep. Prozanski	Based on the testimony given by the association of school employees, would you have a problem with broadening HB 2913 to include reporting anyone at school in possession of a firearm?
090	Rep. Deckert	That sounds reasonable to me.
096	Rep. Bowman	Because baseball bats could be interpreted as a weapon, should there be the same 48-hour hold regardless of what the weapon is?

105	Rep. Deckert	Violence in schools is so serious and escalating that I think any student showing violence should be held for 48 hours for evaluation.
111	Rep. Bowman	The bill doesn't require any violence on the student's part, only the requirement that the student is in possession of a weapon. I am suggesting we define weapons.
124	Chair Mannix	Closes combined public hearing on HB 2423, HB 2913 and HB 2983.
<b><u>HB 2983 PUBLIC HEARING</u></b>		
136	<b>John Hellen</b>	<b>Oregon Gun Owners</b>  Testifies and submits written testimony in opposition to HB 2983 ( <b>EXHIBIT H</b> ). In current law there is the ability to have restrictions imposed on a youth as stated on lines 13 and 14 of page 1. Reiterates his concerns with mandating trigger locks and lock boxes on guns.
174	Rep. Prozanski	Would your organization have opposition to school employees reporting a gun in school as stated in HB 2913?
180	Hellen	Federal law was amended to allow certain weapons to be possessed on school property.
184	Rep. Prozanski	If a school employee sees someone with a gun, should they report it?
188	Hellen	As long as the requirement for reporting does not delete the language that allows exemptions for certain weapons on school property.
212	<b>Kevin Starrett</b>	<b>Gun Owners of America</b>  Testifies in opposition to HB 2983. There are children on probation for crimes that should not require that their parents lock up their firearms.
221	Chair Mannix	If a juvenile has been convicted of a crime that would be a felony for an adult or if the child has a propensity towards violence, shouldn't the court impose restrictions on weapons?
234	Starrett	Are you saying that the court should be paying attention to charges against a juvenile and address the situation individually?
236	Chair Mannix	Yes.

237	Starrett	That makes sense, but when we were kids no one got arrested for fighting and my folks shouldn't have to lock up their firearms because you and I got into a fight on the school grounds.
250	Anne Kelly Feeney	<b>Oregonians Against Gun Violence</b>  Testifies and submits written testimony in support of HB 2983 ( <b>EXHIBIT I</b> ). The same laws that apply to adults regarding firearms should apply to youth.
266	Chair Mannix	Closes the public hearing on HB 2983.
<b><u>HB 2913 PUBLIC HEARING</u></b>		
270	Kathie Osborn	<b>Juvenile Rights Project</b>  Testifies in opposition to HB 2913. We support taking "dangerous weapon" out of HB 2913.
298	Chair Mannix	Closes the public hearing on HB 2913.
<b><u>HB 2983 PUBLIC HEARING</u></b>		
301	Kathie Osborn	<b>Juvenile Rights Project</b>  Testifies in opposition to HB 2983. A standard condition of probation for any youth is that they not be in possession of a weapon. A youth could be granted an exception to possess a gun to complete a gun safety course to be able to go hunting with his/her family. You cannot revoke a child's probation because of a parent's violation to follow a court order.
391	Rep. Prozanski	Is it your position that we should not hold the youth accountable for an act on the part of the parent?
394	Osborn	Yes. Discusses ways in which a parent could be held accountable for failing to follow a court order regarding their child's probation.
412	Chair Mannix	Closes public hearing on HB 2913.
<b><u>HB 2396 PUBLIC HEARING</u></b>		
418	Counsel Horton	HB 2396 expands the list of crimes for which a youth 15 years of age or older may be waived to adult court to include any crime in which a youth used or threatened to use a firearm.
<b>TAPE 102, A</b>		

012	<b>Al French</b>	<b>Oregon State Bar</b>  Testifies and submits written testimony in support of HB 2396 ( <b>EXHIBIT J</b> ). This legislation would provide an additional tool for dealing with gang members who use firearms and face very few consequences in juvenile court.
035	<b>John Hellen</b>	<b>Oregon Gun Owners</b>  Testifies and submits written testimony in support of HB 2396 ( <b>EXHIBIT K</b> ). Just as the penalties are increasing for adults who use firearms as weapons in criminal activities, so should the penalties for children be increasing. A massive advertising campaign to educate the public about the stiffer sentences could help reduce gun violence.
044	<b>Kathie Osborn</b>	<b>Juvenile Rights Projects</b>  Testifies in opposition to HB 2396. Discusses the case of <i>State Juvenile Department of Klamath County v. Brad Reynolds</i> . This was the last jury trial case decided by the Supreme Court to see if juveniles have a right to a jury trial. Discusses misdemeanor cases that would be waived to adult court. Discusses gang-related drive-by shootings stating that they are now being prosecuted as attempted murder charges.
156	Chair Mannix	Closes the public hearing on HB 2396. Adjourns meeting at 10:37 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

## EXHIBIT SUMMARY

- A - HB 2677, written testimony submitted by John Hellen, Oregon Gun owners, dated 3/23/99, 2 pgs.**
- B - HB 2677, Statistical Firearm Information (1996) submitted by John Hellen, Oregon Gun Owners, 1 pg.**
- C - HB 2677, testimony and statistics submitted by Luis Martinez, 1 pg.**
- D - HB 2423, written testimony submitted by Steve Carmichael, Oregon Juvenile Dept. Directors' Association, dated 3/23/99, 2 pgs.**
- E - HB 2983, written testimony submitted by State Rep. Bill Morrisette, District 42, dated 3/22/99, 1 pg.**
- F - HB 2983, written testimony submitted by State Rep. Bill Morrisette, District 42, on behalf of Dr. Daniel Close, Community Action Forum, Eugene/Springfield, Oregon, dated 3/22/99, 5 pgs.**
- G - HB 2913, written testimony submitted by State Rep. Ryan Deckert, District 8, dated 3/23/99, 1 pg.**
- H - HB 2983, written testimony submitted by John Hellen, Oregon Gun owners, dated 3/22/99, 1 pg.**
- I - HB 2983, written testimony submitted by Anne Kelly Feeney, Oregonians Against Gun Violence, dated 3/23-24/99, 1 pg.**
- J - HB 2396, written testimony submitted by Al French, Law Enforcement Leg. Committee, 1 pg.**
- K - HB 2396, written testimony submitted by John Hellen, Oregon Gun owners, dated 3/22/99, 1 pg.**
- L - HB 2913, written testimony submitted by Harold Burke-Sivers, Salem Keizer Schools, dated 3/18/99, 1 pg.**