

**HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW**

**March 31, 1999 Hearing Room 357**

**8:30 a.m. Tapes 113 - 114**

**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 2857 Public Hearing and Work Session**

**HB 2464 Public Hearing and Work Session**

**HB 2307 Work Session**

**HB 2275 Work Session**

**HB 2432 Work Session**

**HJR 7 Work Session**

**HB 2352 Work Session**

**HB 2353 Work Session**

**HB 2354 Work Session**

TAPE/#	Speaker	Comments
<b>TAPE 113, A</b>		
006	Chair Mannix	Calls meeting to order at 8:37 a.m.
<b><u>HB 2857 PUBLIC HEARING</u></b>		
016	Counsel Horton	HB 2857 creates the crime of mail harassment as a Class B misdemeanor.
026	Rep. Prozanski	HB 2857 is presented as legislation because a former Florence police officer was being signed up for services through the mail that he did not request.
046	Chair Mannix	Is this the mail version of phone harassment?
049	Rep. Prozanski	Yes.
050	Chair Mannix	Is there a fiscal impact?
050	Counsel Horton	There may be because we are creating a new crime, but we have not received a fiscal impact yet.
053	Chair Mannix	This could possibly be blended with other legislation on mail theft. Closes public hearing on HB 2857.
<b><u>HB 2857 WORK SESSION</u></b>		
065	Rep. Hansen	I can understand the seriousness of someone ordering services for someone else repetitively, but what about the practical jokers that sign people up as a joke. Three of my friends signed me up for AARP on my 50 <sup>th</sup> birthday.
095	Rep. Gianella	Is there a limit or amount to the harassment like 3 or 6 mailings before harassment would apply?
097	Chair Mannix	There has to be intentional harassment or intentional annoyance. This type of harassment probably won't come to the attention of the authorities unless it is hugely repetitive.
111	Rep. Sunseri	How big is the problem of mail harassment?

113	Rep. Prozanski	I don't know, but an officer came to me and said this was an issue that law enforcement has not been able to address.
124	Chair Mannix	We will ask the Oregon Association of Chiefs of Police and the Sheriff's Association to give us feedback on what they see occurring regarding mail harassment. Closes the work session on HB 2857.
<b><u>HB 2464 PUBLIC HEARING</u></b>		
138	Counsel Horton	HB 2464 requires Oregon Criminal Justice Commission to evaluate crime statistics to determine victimization based on disability. Discusses the amendments ( <b>EXHIBIT A</b> ). Gives definitions of a disabled person.
166	Chair Mannix	Discusses that a narrow or a broader definition of disabled could be used in HB 2464.
205	<b>Ruth McEwan</b>	<b>Disability Advocate</b>  Testifies and submits written testimony in support of HB 2464 ( <b>EXHIBIT B</b> ). Discusses why a stronger law needs to be drawn up when the victim of a crime was a person with a disability. Describes the problem of the disabled not being protected with the omission of (D) on page 1, line 22, of the amendments.
232	Chair Mannix	Do you want a broader range of "disabled person" included in the amendments?
239	McEwan	Yes.
240	<b>Walt Beglau</b>	<b>Oregon District Attorney's Association</b>  Testifies in support of HB 2464. We would not be opposed to including (D) in the amendments to encompass a broader range of disabled persons being included in HB 2464.
261	Chair Mannix	Are you comfortable with the broader definition of "disabled person" in regards to the criminalization and sanction of abuse to a disabled person?
266	Beglau	Yes. HB 2464 requires the petitioner to come before a judge to see if they fulfill the requirements of a disabled person. This abuse comes under the contempt statute with a maximum penalty of 180 days. We are adding abuse of the disabled to the contempt statutes so that same punishment would be allowed.
284	Chair Mannix	Does all of this enforcement have to be through the contempt process rather than a separate crime?
288	Beglau	Yes.

289	Chair Mannix	Could we change line 22 on page 1 of the ñ1 amendments to (4)(b)(A) to (D) to trigger the potential contempt process through the restraining order?
294	Beglau	Yes. Discusses Section 3 on page 3 of the ñ1 amendments stating that a judge has to determine if the petitioner has been a victim of abuse.
348	Chair Mannix	Closes the public hearing on HB 2464.
<b><u>HB 2464 WORK SESSION</u></b>		
352	Rep. Bowman	<b>MOTION: Moves to ADOPT HB 2464-1 amendments dated 03/05/99 and that the amendment be FURTHER AMENDED on page 1, line 22, by changing "(C) to (D)".</b>
		<b>VOTE: 4-0-3</b> <b>EXCUSED: 3 - Rep. Gianella, Rep. Hansen and Rep. Sunseri</b>
		<b>Chair Mannix</b> <b>Hearing no objection, declares the motion CARRIED.</b>
364	Rep. Bowman	<b>MOTION: Moves HB 2464 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 4-0-3</b> <b>EXCUSED: 3 - Rep. Gianella, Rep. Hansen and Rep. Sunseri</b>
		<b>Chair</b> <b>Hearing no objection, declares the motion CARRIED.</b>  <b>REP. BOWMAN will lead discussion on the floor.</b>
373	Chair Mannix	Closes the work session on HB 2464.
<b><u>HB 2307 WORK SESSION</u></b>		
378	Counsel Horton	HB 2307 creates two degrees of infant assault when the victim is less than two

		years of age. Describes the 7 amendments ( <b>EXHIBIT C</b> ) that replace all other amendments.
420	<b>Walt Beglau</b>	<b>Oregon District Attorney's Association</b>  Testifies in support of HB 2307 and the 7 amendments. Suggests changing "substantial" pain on page 1, Section 3, line 19 to "minor" would keep the wording consistent. Discusses his concern with using this definition of "physical injury" to pertain only to this statute.
<b>TAPE 114, A</b>		
016	Chair Mannix	Since it is an exclusionary statement, using "only" in this section would be fine.
023	Rep. Bowman	When we first heard HB 2307 age 2 was used, but now it is age 3. How did we decide on age 3?
026	Counsel Horton	The comments I understood from the committee were to include age 3.
029	Chair Mannix	Because there is continued development in a child up until the age of 3, this captures the children that are most susceptible to head injuries.
035	Rep. Prozanski	My notes say we were going to classify these assaults as Class B and C felonies, not Class A and B felonies. Discusses assault going up to a Class A felony.
052	Beglau	Discusses the maximum sentence for a Class B felony as proposed on the sentencing guidelines.
057	Counsel Horton	Infant assault in the second degree would be a Class C felony, but you couldn't double depart up to 90 months.
060	Beglau	That would exceed the maximum indeterminate sentence of 5 years on a Class C felony.
064	<b>Ingrid Swenson</b>	<b>Oregon Criminal Defense Lawyer's Association</b>  Testifies in opposition to HB 2307 stating that the current law does provide adequate sanctions. We would have a problem if the only definition for "physical injury" were "substantial pain". Gives examples of what could constitute "substantial pain".
076	Chair Mannix	We are excluding from "physical injury" the phrase minor cuts, minor bruising or minor pain.
079	Swenson	Except "substantial pain" remains part of the definition of "physical injury".

087	Rep. Bowman	If a child burns their hand on a hot stove, is the supervising adult going to go to jail for 70 months?
089	Chair Mannix	No, unless that burn on the stove was intentionally caused.
092	Rep. Bowman	I'm reading HB 2307 to be "recklessly" causing physical injury.
095	Chair Mannix	"Recklessly causing" means I have to be reckless in my actions.
098	Beglau	Defines "recklessly" as someone who consciously disregards a substantial and unjustifiable risk. An adult would exhibit "reckless" behavior by forcing a child to place his/her hand on the hot stove.
107	Swenson	I would disagree that the adult would have to place the child's hand on the stove to "recklessly" cause injury. Leaving a child's chair in front of a stove and then turning the burner on could be interpreted as "reckless".
119	Beglau	The individual has to "consciously" put the child in a dangerous situation.
123	Chair Mannix	Should we make a conceptual amendment on page 1, line 19, of the 7 amendments, to change the word "substantial" to "minor"?
128	Rep. Prozanski	There may be other changes, but what basis are we using for the lengths of sentences being 70 months and 90 months?
139	Chair Mannix	Do we want to change the Class A and B felonies to Class B and C felonies?
146	Rep. Prozanski	I have not seen any assaults in statute classified as Class A felonies. Class A felonies are murders. Assault of an infant in the first degree should be a Class B felony and second degree assault should be a Class C felony.
160	Chair Mannix	I thought assault in the first degree was a Class A felony.
162	Counsel Horton	That is committed intentionally with no reckless intent, and HB 2307 speaks to "recklessly" causing injury.
173	Rep. Bowman	I am still wondering why we stopped at 3 years old?
180	Chair Mannix	It was based on the testimony about the development of a child's brain.
203	Rep. Prozanski	<b>MOTION: Moves to ADOPT conceptual amendments</b>

		changing assault in the first degree on line 9 of page 1 of the ñ7 amendments to a Class B felony, change assault in the second degree on line 15 of page 1 to a Class C felony and the sentence on line 22 of page 1 should fit within the sentencing guidelines.
283	Rep. Bowman	I support HB 2307 and I want these people who brutalize babies to be held accountable, but my concern today is with the term "reckless". If someone throws a baby against a wall you have to expect an injury so that is intentionally injuring a child.
297	Chair Mannix	Reads the definition of "recklessly" in ORS 161.085. I am convinced that if someone is reckless to a child under the age of 3 and causes serious physical injury, that person should be held accountable.
337	Chair Mannix	<b>VOTE: 3-4</b>  <b>AYE: 3 - Bowman, Hansen, Prozanski</b>  <b>NAY: 4 - Gianella, Simmons, Sunseri, Mannix</b>
	Chair Mannix	<b>The motion FAILS.</b>
345	Rep. Prozanski	<b>MOTION: Moves to AMEND the ñ7 amendments to HB 2307 on page 1, line 7, to change "recklessly" to "knowingly".</b>
364	Rep. Gianella	Would using the word "knowingly" cover shaken babies? Do they realize the damage that they are doing?
372	Rep. Prozanski	I believe it would cover that area, but it is hard for me to say if someone else realizes the damage that they might be causing.
386	Chair Mannix	Reads the definition of "knowingly" in statute. If we use the word "knowingly", the state would have to prove that the perpetrator knew that shaking a baby in this way would cause serious physical injury, and that is extremely difficult to prove.
420	Rep. Hansen	I hate seeing the 15-year old mom who is slightly retarded being at risk for this crime. She could be acting out of ignorance and I don't think that is a Class A felony. Parenting classes would help educate people about Shaken Baby Syndrome and the damage shaking can cause.

<b>TAPE 113, B</b>		
<b>045</b>		<b>VOTE: 3-4</b>  <b>AYE: 3 - Bowman, Hansen, Prozanski</b>  <b>NAY: 4 - Gianella, Simmons, Sunseri, Mannix</b>
	<b>Chair Mannix</b>	<b>The motion FAILS.</b>
<b>050</b>	<b>Rep. Mannix</b>	<b>MOTION: Moves to SUSPEND the rules for the purpose of changing the word "substantial" on page 1, line 19, of the -7 amendments of HB 2307 to "minor".</b>
		<b>VOTE: 7-0</b>
	<b>Chair Mannix</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>058</b>	<b>Rep. Sunseri</b>	<b>MOTION: Moves to ADOPT HB 2307-7 amendments as amended dated 03/19/99.</b>
		<b>VOTE: 4-3</b>  <b>AYE: 4 - Gianella, Simmons, Sunseri, Mannix</b>  <b>NAY: 3 - Bowman, Hansen, Prozanski</b>
	<b>Chair Mannix</b>	<b>The motion CARRIES.</b>
<b>070</b>	<b>Rep. Prozanski</b>	As a point of procedure, because a change is being to the amendment to HB 2307, the committee needs to see that change prior to the bill going to the floor.
<b>078</b>	<b>Chair Mannix</b>	Closes the work session on HB 2307.



**HB 2275 WORK SESSION**

084	Counsel Horton	HB 2275 creates the crime of mail theft. Discusses the ñ2 and ñ3 amendments ( <b>EXHIBITS D &amp; E</b> ) that insert the contents of HB 2002 into HB 2275. The ñ3 amendments provide an exception for the Department of Corrections because corrections officers do occasionally open the mail of inmates.
110	<b>Dave Cook</b>	<b>Director, Department of Corrections (DOC)</b>  Testifies in support of HB 2275 and the ñ3 amendments. This legislation also has the support of the Oregon Youth Authority, the Juvenile Directors and the Sheriff's Association who realized the potential problems correctionis officers might have when handling inmate mail. HB 2275 does not impact the U. S. Constitutional provisions on delivery of certain kinds of mail.
126	Rep. Bowman	My interpretation of page 1, Section 3 of the ñ3 amendments states that if I am blocking a mail truck, I am guilty of a Class B misdemeanor.
131	Chair Mannix	Because the word "knowingly" is on line 5 of page 1, you would have to "knowingly" obstruct a mail truck.
134	Rep. Bowman	Section 3 might be too broad an interpretation and could impact people who are driving too slow in front of a mail truck.
142	Counsel Horton	A person would "knowingly" have to delay a mail truck, but that would be a judgement call of the jury if the case was prosecuted.
146	Chair Mannix	Would you rather see "intentionally" instead of "knowingly" on line 5 of page 1?
147	Rep. Bowman	Yes.
158	Rep. Prozanski	References Section 4 on page 1 of the ñ3 amendments stating he would have a problem charging someone with a Class C felony for hitting a mailbox with a baseball bat.
171	Rep. Sunseri	I agree with that.
174	Rep. Prozanski	If someone is destroying mailboxes they should be held accountable to a Class B misdemeanor.
177	Counsel Horton	There is an existing criminal mischief statute that would encompass destruction of property.
186	Rep. Prozanski	We do not need a felony in the statute if we have the existing laws on criminal mischief.

190	Rep. Simmons	What is the current penalty for criminal mischief?
191	Counsel Horton	The usual sentence time would be 30-90 days.
197	Rep. Simmons	Is that a misdemeanor or a felony conviction?
197	Counsel Horton	That is for a Class C felony. The Class A misdemeanor conviction could get probation or possibly 30 days in jail.
211	Chair Mannix	We could change line 5 from "knowingly" to "intentionally", and eliminate the destruction of letterboxes or mail because that is already covered by criminal mischief.
216	Rep. Bowman	We didn't have any testimony regarding people who were inhibiting mail trucks from making their deliveries.
277	Chair Mannix	Closes the work session on HB 2275.
<b><u>HB 2432 WORK SESSION</u></b>		
289	<b>Dave Cook</b>	<b>Director, Department of Corrections (DOC)</b>  Testifies in support of HB 2432. Discusses the difficulties in trying to bring everyone together regarding the budget issue.
311	<b>Scott Taylor</b>	<b>Assistant Director, Department of Corrections (DOC)</b>  Testifies in support of HB 2432. Demonstrates how HB 2432 addresses the funding of 1700 people who are under local custody. If we build the base budget to reflect the cost of services to the 1700, we will achieve the purpose of funding the counties for the cost of these services. Rather than a specific amount per day, we believe there is an amount in the Governor's budget of \$7.7 million set aside which could now be brought into the base budget.
394	Cook	Discusses how the DOC is trying to determine the actual costs to the counties for services provided to a fluctuating caseload of people who are lodged in county facilities for violating parole or post-prison supervision.
<b>TAPE 114, B</b>		
002	Taylor	Tape inaudible.
011	Rep. Sunseri	Do you have to refigure the cost per inmate (CPI) annually?

013	Cook	Under current law, the legislature sets that inflationary factor through their funding of budgets.
016	Rep. Sunseri	Is that figure based upon the county CPI that the inmate is going to or is it based upon the state's CPI?
018	Cook	That figure is based upon the state's CPI and most of that is wage inflation rather than the cost of doing business for materials and services. Salaries are 85% of the budget.
024	Rep. Bowman	Would your preference be to have the \$65 per day, or a figure based on the actual costs?
027	Cook	In lieu of doing a cost per day per bed, we could take the base budget and establish that as the base and in the future biennium increase or decrease that base budget by the increase or decrease in inflation and the caseload.
038	Rep. Bowman	We are hearing from the counties that the current base of funding is not adequate so adjusting around an inadequate base still won't give the counties the funds they need to provide services.
044	Cook	That is correct for July 1, 1999, but beginning in 2001 the base would be at actual cost. The debate between the counties and the DOC is over how much money can be spent to get us to the actual cost, and how early can it happen.
056	<b>Paul Snider</b>	<p><b>Association of Oregon Counties</b></p> <p>Testifies in support of HB 2432. Discusses that the \$7.7 million proposed in the Governor's budget would not be enough for the counties because it doesn't cover 24 months in the biennium, it covers something less than that depending upon population projections. States a concern with when the DOC would go to actual county costs? We would prefer setting an actual county cost for the next biennium. I would change page 1, line 5 and make that date after 1999, and change line 9 from \$65 to the actual cost of \$63.44, and add the phrase, "as adjusted" after "per day" to cover costs going up or down.</p>
173	Cook	I disagree with the notion of a per-day cost because it doesn't speak to the base budget but to a funding formula.
195	Rep. Sunseri	Do you have language to insert in HB 2432 for what you are proposing?
197	Cook	No. We will be drafting language that reflects our proposal.
205	Rep. Sunseri	I would like to see your proposed language and the new population figures that are coming out today.
212	Chair Mannix	Would getting the concepts into statute be the right direction from the county's

		standpoint?
213	Snider	Yes. We would like to be able to apply the current service level definition. Mr. Cook's approach isn't bad, but it funds the current service level for less than a full biennium and there would need to be specific language that would show that.
241	Rep. Sunseri	What is the difference between the counties and the DOC cost per day?
249	Snider	We're at the same cost, but are we covering a full biennium or less than a full biennium?
251	Cook	We are at the same cost, but the question is, "in which biennium will we get there?"
270	Chair Mannix	Closes the work session on HB 2432.
<b><u>HJR 7, HB 2352, HB 2353, HB 2354 COMBINED WORK SESSION</u></b>		
281	<b>Ingrid Swenson</b>	<b>Oregon Criminal Defense Lawyer's Association</b>  I'm not aware of comments Mr. Rice wanted to make regarding language changes to this legislation.
290	<b>David Fidanque</b>	<b>Executive Director, American Civil Liberties Union of Oregon</b>  Updates the committee on what the work group has been doing regarding this legislation. The Department of Justice (DOJ) is working on proposed language changes that should be coming out this week.
347	Chair Mannix	Closes work session on HJR 7, HB 2352, HB 2353, and HB 2354. Adjourns the meeting at 10:25 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

## **EXHIBIT SUMMARY**

**A ñ HB 2464, -1 amendments (LC 2237), dated 3/5/99, staff, 37 pgs.**

**B ñ HB 2464, written testimony submitted by Ruth McEwan, dated 3/31/99, 1 pg.**

**C ñ HB 2307, -7 amendments (LC 1876), dated 3/19/99, staff, 2 pgs.**

**D ñ HB 2275, -2 amendments (LC 1541), dated 3/17/99, staff, 1 pg.**

**E ñ HB 2275, -3 amendments (LC 1541), dated 3/24/99, staff, 2 pgs.**