

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

March 9, 1999 Hearing Room 357

8:30 a.m. Tapes 76 - 79

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 2319 Public Hearing

SB 400 Public Hearing and Work Session

SB 343 Public Hearing and Work Session

SB 395A Public Hearing and Work Session

HB 2494 Work Session

HB 2596 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.

TAPE/#	Speaker	Comments

TAPE 76, A

005

Chair Mannix

Calls meeting to order at 8:35 a.m.

HB 2319 PUBLIC HEARING

011

Counsel Horton

HB 2319 creates crimes of laundering monetary instrument and engaging in monetary transaction in property derived from unlawful activity. Discusses the ñ1 amendments (**EXHIBIT A**) and the ñ2 amendments (**EXHIBIT B**).

040

John Minnis**City of Portland Detective**

Testifies in support of HB 2319. Discusses the investigation of a Portland police officer following the trail of drug dealers that lead to the introduction of HB 2319.

060

Karen Immergut**Multnomah County Deputy District Attorney**

Testifies in support of HB 2319. Discusses her background investigating major fraud cases in Multnomah County and her experience in Los Angeles, California, dealing with narcotics and money laundering. Describes money laundering as spending, hiding or re-investing money gained unlawfully. Discusses different ways money can be "hidden" to avoid prosecution. Discusses HB 2319 as the "Crime Doesn't Pay" statute that is modeled after the federal money laundering statute. Discusses section 1 of HB 2319 dealing with concealing dirty money and section 2 that makes the dirty money worthless in the marketplace. Discusses the need for the state to have this legislation because half of the states in the nation have or are in the process of enacting money-laundering legislation. The federal government targets higher-level criminals so the state should be targeting these individuals also. Discusses the fiscal impact of HB 2319. We expect only 1 or 2 cases a year, but very important cases targeting high-level people committing serious offenses.

348

Rep. Sunseri

What triggers money laundering? Is it a certain amount of money or a particular activity?

354

Immergut

We have not set a guideline in terms of the amount of money and what operations we would prosecute. We are looking at the sophistication of the operation or the behavior these people exhibit relating to drug or property offenses. There is no triggering point.

378

Minnis

The triggering event is the knowledge that the money is derived from some felony and the existence of an actual financial transaction. These are not people possessing or selling drugs on the streets. These are business people who have chosen to invest their money in an illegal operation to make money. The threshold for the federal government is closer to \$1-3 million before they will prosecute these cases.

TAPE 77, A

006	Rep. Sunseri	Would this law stand on its own or could it be like the Rico statutes where several crimes can be overlaid on other citations to a person?
010	Immergut	Money-laundering cases charged under Rico had been dismissed so the federal statute is now a predicate to the state Rico statute. Discusses the need for a separate statute because to prove Rico you have to show a pattern of racketeering as well as money-laundering organization.
021	Rep. Sunseri	If a person is laundering money but buys an automobile with cash from his legitimate businesses, will he have to prove that the money was not laundered money?
030	Immergut	Discusses case laws addressing the issue of co-mingling legitimate funds with dirty money.
044	Rep. Sunseri	What will an institution have to comply with so they won't have any inconvenience?
053	Immergut	If someone within a bank is responsible for helping someone hide money, but the top-level officials do not know about it, the officials would not be prosecuted because they are making a good-faith effort.
072	Rep. Bowman	Discusses establishments that could be defined as financial institutions under HB 2319 and that under these amendments, they would be free from prosecution.
081	Immergut	I agree with you. We want the amendment to be clear that if we can prove beyond a reasonable doubt that there was knowledge of money laundering, the establishment would be liable for prosecution.
093	Minnis	The §2 amendment is so narrow dealing only with financial institutions that you should just throw it away. Discusses working with a group of bankers who did not want to be prosecuted because they are complying with federal law. Discusses the FDIC law called "Know Your Customer" law so bankers could know where money was coming from. Hopefully the §3 amendments will be broader and deal with corporations and businesses beyond financial institutions.
119	Rep. Bowman	Could you please describe the punishments recommended by HB 2319?
123	Minnis	Discusses how the punishments in HB 2319 were derived to deter money laundering.
137	Rep. Bowman	Discusses asset forfeiture and wonders why it is missing from HB 2319.
142	Minnis	I support asset forfeiture, but we didn't want to cloud money laundering with forfeiture.

150	Chair Mannix	Could HB 2319 be implemented for a couple years and then come back and add the asset forfeiture?
153	Minnis	Yes.
158	Chair Mannix	If we wanted to approach asset forfeiture, we would ask Rep. Prozanski as chair of the Oversight Advisory Committee to look at HB 2319.
163	Rep. Prozanski	The state law for asset forfeiture is exclusively drug money and the majority of laundered monies come from drugs.
182	Rep. Hansen	I support the premise of HB 2319, but my one concern is with the person, girlfriend, or spouse that might knowingly assist in making small cash deposits of dirty money, and receive a 20-year sentence. Discusses client/attorney confidentiality and whether an attorney could be prosecuted for receiving payment in laundered money.
208	Immergut	Section 2, 3 (b) addresses the issue of paying someone's lawyer with laundered money.
230	Rep. Prozanski	Section 2 has a threshold of \$10,000 minimum, section 1 does not, is that correct?
233	Immergut	Yes.
233	Rep. Prozanski	A person depositing a check of laundered money of any amount is liable for prosecution?
241	Immergut	It depends if it is under Section 1 or Section 2.
242	Rep. Prozanski	Section 1.
242	Immergut	Under Section 1, if a person is knowingly helping someone hide money that person could be prosecuted. Under Section 2, that person would have to be dealing in amounts of cash over \$10,000.
269	Rep. Prozanski	Under Section 1, anyone who fits the definitions despite the amount could be prosecuted?
271	Immergut	Yes. With Section 2 the state does not have to prove the intent to conceal the source of the proceeds. It is simply a money-spending deterrent statute making their money worthless in the marketplace.

283	Rep. Prozanski	Both new crimes would be Class A felonies. I would be more in favor of a Class B felony like theft in the first degree.
299	Immergut	We do feel it should be at least a Class B felony or an unclassified felony which would allow the state and the defense to negotiate a sanction.
316	Rep. Prozanski	We already have the ability of using "crime doesn't pay" through the forfeiture laws on the books.
324	Immergut	We do expect that white-collar cases like fraud or embezzlement will result in money laundering offenses. Forfeiture does put additional "bite" into any statute like this.
335	Rep. Prozanski	Why should we think that district attorneys are willing to put the time and energy into prosecuting these lengthy cases?
356	Immergut	If law enforcement feels that a person is important enough to investigate for money laundering, we will look at prosecution.
371	Rep. Prozanski	Discusses the resource base to prosecute that Multnomah County has to draw upon compared to other smaller counties.
377	Minnis	Acceptance of a case by the district attorney's office would be predicated by good documentation of a crime from the law enforcement people. Discusses the resources of Eastern and Southern Oregon counties.
401	Rep. Prozanski	But the Department of Justice would have to bring in their prosecutors because many offices east of the Cascades are very small.
408	Minnis	Some counties already do this in some murder cases.
415	Chair Mannix	I suggest drafting amendments that use the Class B felony category with a specific provision in the law allowing a judge to go beyond the monetary limitation for Class B felonies in imposing a fine.
TAPE 76, B		
013	Minnis	Submits a letter from Captain James Ferraris from the Portland Police Drugs and Vice Division (EXHIBIT C).
015	Rep. Prozanski	I would ask former Rep. Minnis to consider looking at the sentencing guidelines for property crimes and see if money laundering can be placed in there.
034	Brenda Rocklin	Department of Justice (DOJ)

		Testifies that the DOJ is in support of HB 2319.
039	Chair Mannix	Perhaps you could work with Mr. Minnis and Ms. Immergut to develop any necessary amendments.
042	Rocklin	I would be happy to do so.
044	Dale Penn	Oregon District Attorney's Association Testifies in support of HB 2319. Discusses how federal case law is guiding Oregon's law. Discusses there are offices that will not be able to support a prosecution of a money laundering case, but HB 2319 would at least give them the option to prosecute. The number of prosecutors to handle all federal crimes is not large, but if the case can be proved beyond a reasonable doubt, we will prosecute.
086	Darrell Fuller	Oregon Auto Dealers Association (OADA) Testifies as neither in support of or in opposition to HB 2319. Until we see the final amendments, I won't spend time making suggestions to HB 2319.
094	Chair Mannix	One of your legitimate concerns should be if a person wants to buy a car and pays for it with a substantial amount of cash. Are you then laundering dirty money?
100	Fuller	My concern is ramifications against the dealer if the dealer suggests the money might be "dirty" when it is not. Could that dealer be sued? Regarding asset forfeiture, asks if a dealer would be out the money and the car because an employee accepted dirty money for an automobile transaction?
138	Chair Mannix	Those are legitimate concerns that should be taken into account when working on amendments.
145	Fuller	I would like to be able to provide the final amendments to my counsel and give him an opportunity to review them.
150	Rep. Bowman	What is the current policy if someone walks in with cash to buy a car?
153	Fuller	I don't know the answer to that, but it sounds like if the cash is over a certain amount, there are federal reporting requirements.
157	Chair Mannix	The amount is \$10,000.
158	Rep. Bowman	That is for banking. Is that also true for any other cash transactions?

159	Chair Mannix	Yes.
163	Monty King	Executive Director, Oregon Independent Automobile Dealerís Association Discusses the \$10,000 reporting figure in cash transactions. We have seen salespeople move quickly through dealerships and some could have the intent of laundering dirty money without our knowledge.
189	Chair Mannix	You have legitimate concerns that we will try and address through amendments.
216	James Rice	Oregon Criminal Defense Lawyerís Association Testifies in opposition to HB 2319. The federal government addresses almost all our concerns with regards to money laundering, so why does the state have to spend resources to do the same thing?
248	Chair Mannix	The federal government is not taking care of mail theft and money laundering so we need a statute to handle this.
263	Rice	It is unfortunate that the Attorney General doesnít set a policy focusing more on the kinds of crimes that should be prosecuted. It may be easier to pass new laws than enact existing laws. I think money laundering should be a Class B felony as opposed to a Class A felony. Discusses the fact that not only "Mr. Big" gets caught up in this type of legislation. An unclassified felony makes more sense because it gives a judge some discretion when dealing with both ends of the spectrum in money laundering.
315	Tim Martinez	Oregon Bankerís Association Testifies and submits written testimony neither in support of or opposed to HB 2319 (EXHIBIT D). Describes the requirements for banks under the "Know Your Customer" regulations. Discusses that the "Know Your Customer" regulations have been "pulled" by the federal government because they are too onerous. Testifies in opposition to the ñ2 amendments (EXHIBIT B).
408	Chair Mannix	Closes public hearing on HB 2319.
<u>SB 400 PUBLIC HEARING</u>		
422	Counsel Horton	SB 400 amends crime of telephonic harassment. Discusses the <u>State v. Lopez</u> case that was the precursor for SB 400.
TAPE 77, B		
015	Christine Chute	Department of Justice

		Testifies and submits written testimony in support of SB 400 (EXHIBIT E). Discusses an additional Court of Appeals case subsequent to Lopez, <u>State v. Norgard</u> , regarding a message being left on an answering machine.
023	James Rice	Oregon Criminal Defense Lawyerís Association Testifies as neither in support of or opposed to SB 400. Discusses his concern that an insult to a person could possibly lead to a court case.
039	Chair Mannix	Closes the public hearing on SB 400.
<u>SB 400 WORK SESSION</u>		
041	Rep. Sunseri	Would this be connected to a restraining order?
042	Chair Mannix	There is a statute relating to telephonic harassment as a Class B misdemeanor. Discusses that prosecution will likely occur only when a person has been calling repeatedly for weeks and the harassment has been documented.
058	Rep. Sunseri	If a boyfriend breaks up with a girlfriend and she asks to never be called again, is that within the purview of SB 400?
061	Chair Mannix	It could happen, but the government has to decide to prosecute or not.
066	Rep. Hansen	MOTION: Moves SB 400 to the floor with a DO PASS recommendation.
075	Rep. Prozanski	Describes instances when a person could be prosecuted for telephone harassment.
085	Rep. Hansen	Discusses the situation of friends receiving harassing phone calls and they quit counting after 100 calls. This was a terrible annoyance and a situation where this legislation would have helped.
102	Rep. Prozanski	With SB 400 someone would be able to tell a person not to call and threaten prosecution.
120		VOTE: 6-0 EXCUSED: 1 - Rep. Bowman
	Chair Mannix	Hearing no objection, declares the motion CARRIED.

		REP. HANSEN will lead discussion on the floor.
<u>SB 343 PUBLIC HEARING</u>		
125	Counsel Horton	SB 343 allows a county to expunge juvenile records by sealing or destroying the records. SB 343 does not apply to certain serious Class A and Class B felonies.
141	Karen Brazeau	Oregon Youth Authority (OYA) Testifies and submits testimony in support of SB 343 (EXHIBIT F). Current law requires the state to seal expunged records while the county is allowed to destroy such records. We need a common form of expungement and OYA and the counties have agreed upon sealing those records.
154	Rep. Gianella	How are records sealed?
156	Brazeau	Paper records are literally sealed and put into storage according to specific public records laws. Describes the process for sealing electronic records.
167	Rep. Hansen	Under what circumstances could records be unsealed?
171	Chair Mannix	If a juvenile has been subjected to abuse and later wants to file a civil lawsuit, the juvenile may want the records unsealed to use part of it as evidence. Discusses situations when the state may want to unseal records.
184	Brazeau	Discusses that protected documents may need to be used in court and that is why the state requirement is to seal rather than destroy records.
190	Chair Mannix	Closes the public hearing on SB 343.
<u>SB 343 WORK SESSION</u>		
194	Rep. Hansen	MOTION: Moves SB 343 to the floor with a DO PASS recommendation.
		VOTE: 4-0-3 EXCUSED: 3 - Rep. Bowman, Rep. Prozanski, Rep. Sunseri
	Chair Mannix	Hearing no objection, declares the motion CARRIED.

		REP. HANSEN will lead discussion on the floor.
<u>SB 395A PUBLIC HEARING</u>		
204	Counsel Horton	SB 395A requires the court to transfer habeas corpus case proceedings to the judicial district where the plaintiff has been moved or to dismiss the case.
228	Thomas Castle	Department of Justice (DOJ) Testifies and submits written testimony in support of SB 395A (EXHIBIT G). Discusses the habeas corpus cases reviewed by the DOJ and the fact that judges are inconsistent in transferring the jurisdiction or dismissing the case.
377	Chair Mannix	Closes the public hearing on SB 395A.
<u>SB 395A WORK SESSION</u>		
283	Rep. Sunseri	MOTION: Moves SB 395A to the floor with a DO PASS recommendation.
		VOTE: 4-1-2 AYE: 4 - Hansen, Simmons, Sunseri, Mannix NAY: 1 - Bowman EXCUSED: 2 - Gianella, Prozanski
	Chair Mannix	The motion CARRIES. REP. MANNIX will lead discussion on the floor.
<u>HB 2494 & HB 2596 COMBINED WORK SESSION</u>		
339	Counsel Horton	Discusses the ñ2 amendments to HB 2494 (EXHIBIT H) eliminating the

		affirmative defense.
345	Rep. Prozanski	The question before us is how we hold these individuals accountable for their conduct, and at what level will we hold them accountable? Discusses 3 of 4 statutes already in law which deal with the death of an individual and these are Measure 11 sentences. I believe we have to distinguish between the two cases of someone intentionally killing an individual and someone whose religious beliefs tell them they are doing the best for their child. Discusses making Measure 11 a presumptive sentence where departure can occur after looking at the circumstances.
TAPE 78, A		
011	Rep. Prozanski	Although 70%-80% of departures are going upward, not down, a judge would have the discretion to decide if departure is appropriate. We should look at a sunset clause after 4 years to see how the change in sentencing is working.
083	Rep. Sunseri	MOTION: Moves to ADOPT HB 2494-2 amendments dated 03/03/99.
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
091	Rep. Sunseri	MOTION: Moves to ADOPT an emergency clause to HB 2494.
095	Rep. Bowman	Is there a pressing need for an emergency clause?
096	Chair Mannix	Emergency clauses are added when you want the law to go into effect sooner rather than later and there may be a pending situation in need of this legislation.
101	Rep. Prozanski	A pending case would not be affected by the passage of HB 2494.
103	Chair Mannix	I realize HB 2494 cannot affect existing cases, but there may be circumstances pending that would be helped by HB 2494.
107		VOTE: 7-0

	Chair Mannix	Hearing no objection, declares the motion to adopt an emergency clause CARRIED.
108	Chair Mannix	Discusses that there is no mandatory minimum sentence established for criminally negligent homicide under Measure 11. One option is to revisit Measure 11 or have a specific defense adopted with specific sentencing for spiritual treatment.
151	Rep. Prozanski	Discusses combining HB 2494 and HB 2596 and the idea of a separate offense and sentencing. Discusses the truth in charging with the judge having the discretion in sentencing.
192	Rep. Sunseri	I am uncomfortable with the thought that we are treading on religious liberty. A death occurring due to the lack of medical treatment based on religious beliefs is negligence or gross negligence, but nothing beyond that. I want to lower the threshold so someone can't be charged with murder.
221	Rep. Gianella	I wish we could incorporate lesser charges into HB 2494 without changing Measure 11.
231	Rep. Bowman	I support HB 2494 as it is now. I am opposed to creating a class of law for certain individuals (people who believe in spiritual healing); it should be the same for everyone. I believe we have systems in place to look at any evidence and present a case to the grand jury.
281	Chair Mannix	Discusses ORS 137.712 that lists specific exemptions to Measure 11.
299	Rep. Sunseri	I don't believe what we're suggesting here creates separate class of law for people who believe in spiritual healing, it acknowledges separate classes of crime. Discusses that letting an individual die without medical treatment is wrong, but does not constitute murder or manslaughter.
326	Rep. Simmons	I am not ready to alter Measure 11, but I am concerned with the sanction in HB 2494 and would like to find a lesser charge.
341	Rep. Hansen	My main concern is having something be a deterrent to these unnecessary deaths. Discusses Measure 11's inflexibility in sentencing.
386	Rep. Prozanski	Making Measure 11 presumptive sentences is setting a guideline for the judges. Discusses that consistency is needed in holding people accountable for their actions if someone dies.
432	Rep. Gianella	There always was an exception for murder based upon religious beliefs. I think we can build into HB 2494 some kind of sentence that will protect the children, but also protect religious rights and freedoms.
TAPE 79, A		

013	Chair Mannix	According to Measure 11 sentencing guidelines, "the crime defines the time". Today we are talking about redefining the crime so it is appropriate to redefine the time.
019	Rep. Sunseri	I was looking for someone to come forward and say they would live and die for their religious beliefs, but no one did that. What they did say was that "if you pass a law saying we must seek medical help, then we will feel free to seek medical treatment".
038	Rep. Bowman	We are replacing an affirmative defense with affirmative sentencing and I don't understand why we don't trust the process that is in place to work for everyone.
049	Rep. Gianella	Were people who used the defense of spiritual hearing exempt from prosecution?
050	Chair Mannix	Yes. Adjourns the meeting at 10:57 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2319, -1 amendments (LC 359), dated 3/5/99, staff 1 pg.

B - HB 2319, -2 amendments (LC 359), dated 3/8/99, staff 1 pg.

C - HB 2319, written testimony of Capt. James Ferraris, presented by John Minnis, dated 3/5/99, 1 pg.

D - HB 2319, written testimony submitted by Tim Martinez, dated February 1999, 15 pg.

E - SB 400, written testimony submitted by Christine Chute, dated 3/9/99, 2 pgs.

F - SB 343, written testimony submitted by Karen Brazeau, OYA, dated 3/9/99, 1 pg.

G - SB 395, written testimony submitted by Thomas Castle, DOJ, dated 3/9/99, 1 pg.

H - HB 2494, -2 amendments (LC 1938), dated 3/3/99, staff, 2 pgs.