

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

April 12, 1999 Hearing Room 357

8:30 a.m. Tapes 130 - 131

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 2934 Public Hearing

HB 3105 Public Hearing and Work Session

HB 3189 Public Hearing

HB 3265 Public Hearing

HB 3158 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 130, A

005

Chair Mannix

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

HB 2934 PUBLIC HEARING

018

Counsel Horton

HB 2934 allows the court to suspend the execution of mandatory minimum sentences imposed upon a person who was 15, 16 or 17 years of age at the time the person committed an offense.

051

Kathie Osborn**Juvenile Rights Project**

Testifies and submits written testimony in support of HB 2394 (**EXHIBIT A**). HB 2934 is blended sentencing for Measure 11 juvenile offenders. Discusses which juveniles are available to receive a "second look" or release from custody. Explains how blended sentencing differs from "second look". Discusses a recidivism study done in Florida that showed a higher rate of recidivism if juveniles were transferred into the adult system rather than kept in the juvenile system.

249

Josh Marquis**Oregon District Attorney's Association**

Testifies in opposition to HB 2934. We have attempted to adopt a certainty in sentencing with Measure 11 guidelines and HB 2934 opposes that philosophy. Discusses crimes that are omitted from HB 2934. A liaison with the Oregon Youth Authority (OYA) would have to be established to see if the treatment was going as planned and this could lead to a considerable fiscal impact.

361

Rep. Hansen

You mentioned someone personally using a weapon in your previous testimony, but page 1, lines 11 and 12 of HB 2934 states that the person eligible for this sentencing could not personally use or display a firearm. Can you clarify this?

372

Marquis

Explains who is eligible for this form of sentencing under HB 2934.

390

Rep. Bowman

How many people have been sentenced under Measure 11 and re-sentenced under SB 1049 in Clatsop County?

394

Marquis

I don't know, but would estimate 30 or 40 people under Measure 11 and no one has applied for treatment under SB 1049.

399

Rep. Bowman

Has anyone applied for re-sentencing under SB 1049?

399

Marquis

No, because an offender has to meet certain qualifications for SB 1049 sentencing.

407	Rep. Bowman	Do you think no offenders have applied for SB 1049 sentencing because they don't meet the criteria?
409	Marquis	I don't know.
414	Chair Mannix	Are you stating that if an offender had qualified for SB 1049 sentencing, they would not have been prosecuted under the Measure 11 process?
419	Marquis	Yes. We try very hard to make sure that those offenders selected for Measure 11 sentencing really deserve it.
TAPE 131, A		
002	Rep. Prozanski	How many Measure 11 sentences have you processed through Clatsop County vs. non-Measure 11 sentences?
004	Marquis	I have no statistics on that. There are two different philosophies in the prosecutor's office.
008	Rep. Prozanski	What is your philosophy?
008	Marquis	My philosophy is truth in charging. You have to make a decision within 36 hours and after you listen to the facts of the case, you might make a decision to back off on the sentencing.
018	Rep. Prozanski	If a juvenile is remanded, can they be held and serve time in the Department of Corrections?
020	Marquis	Yes.
021	Rep. Prozanski	Are there youth housed in the Department of Corrections (DOC) under age 18?
023	Marquis	I am not aware of any, but I am sure it is possible if the Oregon Youth Authority is trying to off-load people on the DOC.
027	Rep. Prozanski	Do you have proof that the OYA is trying to off-load their individuals?
030	Marquis	About one month ago Rick Hill from the Oregon Youth Authority (OYA) was proposing legislation to off-load people from the OYA to the Department of Corrections (DOC).
033	Rep. Prozanski	Don't you think it is better policy to leave a youth in OYA where there is less chance of recidivism than place that youth in the DOC?

043	Marquis	Any policy to rehabilitate people is better, but we are deluding ourselves if we think 16 or 17 year olds who commit Measure 11 offenses can be rehabilitated in either the OYA or the DOC.
048	Rep. Prozanski	What facts or documentation do you have to support that statement?
050	Marquis	My 20+ years of experience working in the criminal justice system dealing with hundreds and hundreds of cases.
056	Rep. Prozanski	You talk about this type of procedure not providing closure (a definite sentence), but wouldn't everyone in the courtroom at the time of sentencing know the expectations of a shortened sentence, and that the youth would be coming back in three years for re-evaluation of the sentence?
063	Marquis	The language is extremely complicated and wouldn't give closure, plus the fiscal impact is something that needs to be evaluated.
070	Rep. Prozanski	On what basis were the lengths of sentences under Measure 11 determined to be appropriate and one size fits all?
073	Marquis	The lengths of sentences were determined to be appropriate by the voters of this state. I did not support Measure 11, but it has turned out to be a good law. Discusses that Oregon's laws are mild compared to other states.
088	Steve Doell	President, Crime Victims United Testifies in opposition to HB 2934. This is just one more attempt to repeal Measure 11. Discusses one of the crimes omitted from HB 2934, assault in the first degree, and uses the example of someone using a baseball bat to inflict serious injuries.
110	Rep. Bowman	Is it appropriate for witnesses to come in and talk about someone who isn't here to defend themselves?
113	Chair Mannix	Mr. Doell is speaking of the crime of assault in the first degree and referring to someone who has been convicted of that crime.
117	Doell	Having someone commit a heinous crime and then have their sentence reduced is an affront to the people who voted for Measure 11 in Oregon. Discusses SB 1049 and the people involved in getting this legislation passed. The legislation for HB 2934 comes out of Minnesota, one of the three most lenient states as far as inmate count. There are some juveniles in the DOC as a result of assaultive behavior in the OYA facilities.
200	Rep. Prozanski	HB 2934 is out of Missouri, not Minnesota. Referring to the previous example of assault with a baseball bat, don't you agree there should be a difference in sentencing for the person swinging the bat and those watching?

215	Doell	SB 1049 took the abettor out of the equation for assault II and robbery II.
221	Rep. Prozanski	But in assault 1, the abettors receive the same sentence as the person swinging the bat. Do you think the swinger of the bat should be held accountable at a higher degree than those simply watching?
230	Doell	I believe that the district attorneys are properly using their discretion in those cases.
233	Rep. Prozanski	Don't you believe a judge or court should have the discretion in sentencing those watching a crime at a different level than the person committing the crime?
239	Doell	We have given that discretion to the district attorneys.
246	Rep. Prozanski	Wasn't the crime rate of Texas significantly higher than Oregon before Measure 11 was passed?
252	Doell	I don't know.
255	Rep. Bowman	Do you believe the prosecutors are using their discretion appropriately in all 36 counties of Oregon?
261	Doell	Yes.
263	Rep. Bowman	Were the judges prior to Measure 11 inappropriately using their discretion in all 36 counties?
266	Doell	Yes.
268	Rep. Prozanski	Should judges in Oregon have the discretion to determine an appropriate sentence for an individual, based on a case by case analysis, rather than leaving that decision exclusively in the hands of the district attorney?
273	Doell	Discusses several cases where the judge used bad judgement when the discretion of sentencing was left up to him or her.
341	Rep. Bowman	In all these cases you cite, were you in the courtroom during the hearing or do you have copies of the transcripts?
344	Doell	I was not in the courtroom, but I have read copies of the transcripts and I have had these cases reviewed.
347	Rep. Bowman	Someone has reviewed these cases and you are positive of your facts?

349	Doell	Yes.
353	Rep. Bowman	Unless you were in the courtroom, you have only one side of the story.
364	Rep. Prozanski	Do you believe discretion should be left solely up to the district attorney and not the judges?
376	Doell	I believe Measure 11 is a good law and is working properly.
383	Karen Brazeau	Deputy Director, Oregon Youth Authority (OYA) Testifies in support of HB 2934. Discusses recidivism of violent offenders at the OYA and that fewer than 85% have gone on to commit violent person-to-person crimes. Measure 11 allowed us to keep youth for longer periods of time. However, there is a relationship between policy and funding and as the OYA's beds become filled, offenders may go to the DOC.
TAPE 130, B		
008	Rep. Prozanski	Do you see HB 2934 as a sentencing bill?
014	Brazeau	It is another version of "second look" which allows some flexibility in sentencing.
022	James Rice	Oregon Criminal Defense Lawyers Association Testifies in support of HB 2934. There are people who do not believe in the concept of redemption, they think if you are bad, you are going to stay bad. I believe children lack experience and judgement and to put them in adult prisons is counterproductive to a safe society.
056	Chair Mannix	Closes the public hearing on HB 2934.
<u>HB 3105 PUBLIC HEARING</u>		
060	Counsel Horton	HB 3105 requires a court when paroling a defendant outside a county jail to order the local supervisory authority to supervise the defendant.
078	Rep. Prozanski	Describes the concept of HB 3105.
090	Chair Mannix	Closes public hearing on HB 3105.
<u>HB 3105 WORK SESSION</u>		

091	Rep. Prozanski	MOTION: Moves HB 3105 to the floor with a DO PASS recommendation.
094	Rep. Bowman	What is the fiscal impact to local counties when offenders have to be supervised?
100	Chair Mannix	The concept of supervision may sound like someone has to watch an offender, but it means someone has responsibility for that offender.
103	Rep. Prozanski	These types of cases are called "case banking" where there is an overview or checks and balances kept on an individual.
120	Rep. Bowman	I can't support this bill without knowing what the fiscal impact is going to be to local counties.
125	Rep. Hansen	I have the same concerns on the fiscal impact and would like HB 3105 set over to check with Multnomah County's probation and parole office.
139	Chair Mannix	This committee sets its agenda about three weeks in advance so people have had the opportunity to respond if they had a problem with the bill.
152	Rep. Simmons	Has a fiscal impact statement been requested?
153	Counsel Horton	We have not gotten it yet.
157	Rep. Prozanski	MOTION: Moves to withdraw previous motion to send HB 3105 to the floor with a DO PASS recommendation.
174	James Rice	Oregon Criminal Defense Lawyers Association Offers clarification for what is happening in Lane County when offenders are released from custody into a treatment program and have to be supervised by the local authorities.
193	Chair Mannix	Closes the work session on HB 3105.
<u>HB 3189 PUBLIC HEARING</u>		
195	Counsel Horton	HB 3189 requires defendant charged with misdemeanor in justice or municipal court to elect whether to transfer to circuit court or to remain in justice or municipal court. Discusses the 11 amendments to HB 3189 (EXHIBIT B).
227	Rep. Prozanski	Discusses the 11 amendments that state a defendant could choose to go through a trial for a misdemeanor in a justice or municipal court or a court of record. If they choose a court of record, they would not be allowed to have the case retried

		in circuit court. Having only one trial should keep the cost down for municipalities.
270	Ann Christian	State Court Administrator's Office Testifies as neither opposed nor supportive of HB 3189. There is a potential that HB 3189 with the ñ1 amendments could have an adverse impact on the state court system.
287	Chair Mannix	Do you think if people had to choose between going to the circuit court and the municipal court, they would choose the circuit court?
289	Christian	Yes.
290	Rep. Prozanski	If a municipal court becomes a court of record, there would be no opportunity for retrial.
302	Chair Mannix	I would like to give all interested parties a chance to look at the ñ1 amendments to check for any impacts and re-set HB 3189 for later this week.
315	Rep. Prozanski	We sent a copy of the ñ1 amendments to the Supreme Court to examine.
326	Christian	We want it known for the record that we do not oppose HB 3189, in fact it may have a positive impact for municipal and justice courts to become courts of record.
331	Chair Mannix	Closes the public hearing on HB 3189.
<u>HB 3158 PUBLIC HEARING</u>		
335	Counsel Horton	HB 3158 requires that a person who supervises a youth offender to notify a school district when a youth offender transfers into that school district.
367	Rep. Vic Backland	State Representative, House District 33 Testifies in support of HB 3158. Discusses numerous instances where a student under the supervision of a parole officer has been transferred into a school district and the school administration had no prior notice of the student's background. School counseling could be provided to these students if the school knew ahead of time the probationary status of these students. Notice has to be given within 72 hours of the transfer.
416	Rep. Hansen	Is there a problem with school transfers within a district?
423	Rep. Backland	We see the problem when a youth comes in from another school district and the

		paperwork for that student is not available.
436	Rep. Hansen	Are you comfortable with the transfers being done within the district?
TAPE 131, B		
001	Backland	I will leave that testimony up to our resident expert.
028	John Bohlander	Assistant Principal, McNary High School, Salem, Oregon Testifies and submits written testimony in support of HB 3158 (EXHIBIT C). Discusses some of the problems that can occur when a student comes into the district from another school district and the school is not aware of their criminal background.
050	Doug Jantzi	Principal, Oak Creek Youth Correctional Facility School Testifies and submits written testimony from Principal Dan Jamison in support of HB 3158 (EXHIBIT D).
059	Dr. Patrick McArthur	Principal, Lord High School, MacLaren Youth Correctional Facility Testifies and submits written testimony in support of HB 3158 (EXHIBIT E).
068	Vickie Fleming	Willamette Education Service District Testifies in support of HB 3158. Discusses the transition of youth out of correctional facilities into local school districts.
087	Karen Brazeau	Deputy Director, Oregon Youth Authority (OYA) Testifies in support of HB 3158. Discusses wanting an amendment that states who in the school district should be receiving enrollment information about a youth offender transferring into a local school district.
095	Chair Mannix	Does anyone object to putting the word "superintendent" after school district so HB 3158 reads "Öshall notify the school district superintendent"?
097	Brazeau	No.
101	Rep. Prozanski	I think it is more appropriate for this information to go to the district superintendent than from one principal to another where it could get lost in the shuffle.
103	Chair Mannix	Is that your only concern?

104	Brazeau	Draws the committee's attention to language in HB 3158 on line 17 of page 1 relating to public information. Line 26 of page 1 seems to restrict the disclosure of information that is public information in current law.
122	Chair Mannix	That creates some additional issues that we don't want to address with HB 3158.
125	Brazeau	That is fine.
128	Nancy Miller	State Court Administrator's Office Discusses that page 2, lines 18-24 makes the release of information discretionary for the OYA when that information is already public record.
134	Chair Mannix	We could just instruct the OYA to give a school district any pertinent information.
137	Miller	Yes. Subsection (3) on page 2, lines 22-24 are unnecessarily restrictive.
140	Chair Mannix	Lines 22-24 would not be needed in HB 3158?
141	Miller	Correct. Line 18 should be "shall" instead of "may".
153	Rep. Prozanski	Then we would have two different standards between Section 3 and Section 1 and the language of HB 3158 would appear inconsistent.
158	Karen Brazeau	The public information law regarding information for juvenile offenders was changed last session and at the same time the information on Section 1 was put in and that is what caused this discrepancy.
170	Chair Mannix	No one is objecting to the concept of providing information when there is a transfer from district to district, but we might need to approach the rest of the technical language with caution.
176	Carl Myers	Oregon Juvenile Department Director's Association Testifies in support of HB 3158. Recommends that the 72-hour proposed notice is needed only if there is a health or safety issue involved. Otherwise, the juvenile authority would continue with monthly notice to school districts of youth offenders that are enrolled.
203	Kathie Osborn	Juvenile Rights Project Testifies in support of HB 3158. If school districts are going to be notified of a youth offenders enrollment, we would ask for notification if the student has a

		current Individualized Education Plan (IEP) and is in need of special education services.
238	Chair Mannix	Once the school is notified about the probation, it seems the school district would be interested in finding out as much as possible about that student including the IEP.
244	Osborn	Unfortunately, special education is one of the last things that a school district finds out about.
273	Chair Mannix	Closes the public hearing on HB 3158.
<u>HB 3265 PUBLIC HEARING</u>		
280	Judge Jad Lemhouse	Justice of the Peace Association Testifies in support of HB 3265. Section 1 clarifies the criminal jurisdiction of the justice courts.
309	Rep. Prozanski	Suggests an exception may be needed for page 1, lines 16-17 because some justice courts sit under some type of jurisdiction agreement with cities.
315	Judge Lemhouse	The draft I submitted to Legislative Counsel would have excluded from the limitation courts that had entered into an intergovernmental agreement with municipal courts.
335	Chair Mannix	Were there any other areas in HB 3265 that needed to be adjusted?
337	Judge Lemhouse	No. Discusses the type of "housekeeping" issues that would be clarified by HB 3265.
363	Chair Mannix	Is the Justice of the Peace Association in favor of HB 3265?
365	Judge Lemhouse	Yes.
381	Chair Mannix	Closes the public hearing on HB 3265.
381	Chair Mannix	Adjourns the meeting at 10:24 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2934, written testimony submitted by Kathie Osborn, Juvenile Rights Project, 56 pgs.

B ñ HB 3189, -1 amendments (LC 139), dated 4/9/99, staff, 5 pgs.

C ñ HB 3158, written testimony submitted by John Bohlander, McNary High School, 1 pg.

D ñ HB 3158, written testimony of Dan Jamison, Memorial Middle School, submitted by Doug Jantzi, 2 pgs.

E ñ HB 3158, written testimony submitted by Dr. Patrick McArthur, Lord High School, dated 4/12/99, 1 pg.