

## HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

**April 14, 1999 Hearing Room 357**

**8:30 a.m. Tapes 136 - 137**

**MEMBERS PRESENT: Rep. Mannix, Chair**

**Rep. Prozanski, Vice-Chair**

**Rep. Bowman**

**Rep. Gianella**

**Rep. Hansen**

**Rep. Simmons**

**MEMBER EXCUSED: Rep. Sunseri**

**STAFF PRESENT: John Horton, Counsel**

**Patsy Wood, Administrative Support**

**MEASURE/ISSUES HEARD:**

**HB 2319 Public Hearing and Work Session**

**HB 2213 Public Hearing and Work Session**

**HB 2002 Public Hearing**

**HB 2083 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 136, A**

006

Chair Mannix

Calls meeting to order at 8:37 a.m.

**HB 2083 WORK SESSION**

034

Counsel Horton

Discusses the ñ1 through ñ6 amendments to HB 2083 (**EXHIBITS A-F**). The ñ1 amendments can stand on their own; with the ñ2, -3, or ñ4 amendments the committee would have to choose just one, and the same for the ñ5 and the ñ6 amendments, only one could be chosen.

049

**Diane Rea****Chair, Board of Parole and Post Prison Supervision**

I just received proposed amendments from Rep. Bowman and would like to come back before the committee at a later date to discuss all of the amendments.

054

Chair Mannix

Closes the work session on HB 2083.

**HB 2319 PUBLIC HEARING**

067

**John Minnis****Detective, Portland Police Department**

Testifies in support of HB 2319 that creates the crime of Laundering a Monetary Instrument. I have seen the ñ4 and ñ5 amendments (**EXHIBITS G & H**) and I am satisfied that the ñ5 amendments meet the needs of the banking industry and automobile association.

077

Rep. Bowman

On page 1, line 5 of the ñ5 amendments it talks about a person "making a good faith effort". How do you make a good faith effort to commit a felony?

081

Minnis

The onus is on the State or the investigators to ensure that the person did not comply in good faith with sections 1 and 2 of this 1999 Act.

091

Chair Mannix

The prosecution has to prove beyond a reasonable doubt that there was not a "good faith effort" instead of the defendant having to prove an affirmative defense.

102

Minnis

HB 2319 is intended for a narrow group of individuals who do specific things to conceal financial transactions that are the proceeds of illegal activity.

112

**Karen Immergut****Multnomah County District Attorney's Office**

Testifies in support of HB 2319. Discusses the ñ4 amendments and the sentencing classification to reduce section 1 to a Class B felony and Section 2 to a Class C felony. However, both sections could be unranked under the sentencing guidelines for flexibility to negotiate a sentence.

140	Chair Mannix	Is there anything in this legislation that says sentencing guidelines will not take effect and this will remain inchoate? They will look at the range and come up with guidelines so they won't be restricted?
150	Immergut	Yes.
159	<b>Phil Lemman</b>	<b>Executive Director, Criminal Justice Commission</b>  Anytime the Legislature enacts a new felony or adopts a felony sentencing change and does not specify how it wants the sentencing guidelines to treat those, then that by default goes to the Criminal Justice Commission in its rule-making capacity. Discusses the advisory committee who reviews legislation and makes proposals on how these laws should be treated.
168	Chair Mannix	Do you have a problem with the format of sentencing guidelines being proposed?
169	Lemman	No.
172	Chair Mannix	It is the committee's understanding that the standard process will follow here. Is that your understanding?
173	Lemman	Yes. It is not unusual for felonies to remain unranked, like racketeering and election law violations.
180	Immergut	Discusses the intent of the 5 amendments.
189	<b>Ingrid Swenson</b>	<b>Oregon Criminal Defense Lawyers Association</b>  Testifies in support of the amendments, but in opposition to HB 2319.
221	Chair Mannix	Closes public hearing on HB 2319.
<b><u>HB 2319 WORK SESSION</u></b>		
247	Counsel Horton	The only amendments that need to be considered by the committee are the 4 and the 5 amendments ( <b>EXHIBIT G &amp; H</b> ).
255	Chair Mannix	The 4 amendments reduce the penalties and the 5 amendments narrow the scope.
257	<b>Rep. Bowman</b>	<b>MOTION: Moves to ADOPT HB 2319-4 amendments dated 03/16/99.</b>

		<b>VOTE: 6-0-1</b> <b>EXCUSED: 1 - Rep. Sunseri</b>
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
262	Rep. Bowman	<b>MOTION: Moves to ADOPT HB 2319-5 amendments dated 04/02/99.</b>
		<b>VOTE: 6-0-1</b> <b>EXCUSED: 1 - Rep. Sunseri</b>
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
265	Rep. Bowman	<b>MOTION: Moves HB 2319 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 6-0-1</b> <b>EXCUSED: 1 - Rep. Sunseri</b>
	Chair Mannix	Hearing no objection, declares the motion CARRIED.  <b>REP. BOWMAN will lead discussion on the floor.</b>
273	Chair Mannix	Closes the work session on HB 2319.
<b><u>HB 2213 PUBLIC HEARING</u></b>		
293	Dave Cook	<b>Director, Department of Corrections (DOC)</b>  Testifies and submits conceptual amendments in support of HB 2213 <b>(EXHIBIT I)</b> and is satisfied with the ñ1 amendments <b>(EXHIBIT J)</b> .

314	Chair Mannix	Closes the public hearing on HB 2213.
<b><u>HB 2213 WORK SESSION</u></b>		
323	Rep. Prozanski	<b>MOTION: Moves to ADOPT HB 2213-1 amendments dated 03/12/99.</b>
		<b>VOTE: 6-0</b> <b>EXCUSED: 1 - Rep. Sunseri</b>
	Chair Mannix	<b>Hearing no objection, declares the motion CARRIED.</b>
327	Rep. Prozanski	<b>MOTION: Moves HB 2213 to the floor with a DO PASS AS AMENDED recommendation.</b>
330	Rep. Bowman	The Staff Measure Summary (SMS) says the upper age limit is eliminated for any "male" above the age of 18. What about females?
335	Counsel Horton	That was my mistake on the SMS. It should include females.
343		<b>VOTE: 6-0-1</b> <b>EXCUSED: 1 - Rep. Sunseri</b>
	Chair Mannix	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>REP. PROZANSKI will lead discussion on the floor.</b>
348	Chair Mannix	Closes the work session on HB 2213.
<b><u>HB 2002 PUBLIC HEARING</u></b>		
359	Counsel Horton	Discusses the ñ1, ñ2 and the ñ3 amendments to HB 2002 ( <b>EXHIBITS K - M</b> ).

		Gives details of the ñ3 amendments that are a "gut & stuff" as the result of a work group on HB 2215 pertaining to felony Driving Under the Influence of Intoxicants (DUII).
<b>TAPE 137, B</b>		
015	Rep. Prozanski	Is the mandatory fine for the first DUII conviction still in HB 2002?
017	Counsel Horton	Yes.
024	<b>Sgt. Bruce Hoffman</b>	<b>Oregon State Police</b>  Testifies and submits written testimony in support of HB 2002 ( <b>EXHIBIT N</b> ) and the ñ3 amendments ( <b>EXHIBIT M</b> ). HB 2002 addresses the concern that sometimes Class C felonies are sentenced more lightly than misdemeanors due to sentencing guidelines.
042	Rep. Simmons	Were you part of the work group that helped develop the ñ3 amendments?
043	Sgt. Hoffman	No. However, I was in contact with members of the work group and I concur in the ñ3 amendments.
046	Rep. Simmons	Was there any discussion of vehicle forfeiture in the work group?
047	Rep. Prozanski	No.
048	Counsel Horton	I don't recall any discussion on vehicle forfeiture.
050	Rep. Prozanski	Individual cities have the authority to adopt local ordinances for forfeiture, but I am not sure if the ordinances are applied on the first offense or subsequent offenses.
060	<b>Debra Downey Gilmour</b>	<b>Governor's Advisory Committee on Driving Under the Influence of Intoxicants</b>  Testifies and submits written testimony in support of HB 2002 with the ñ3 amendments ( <b>EXHIBIT O</b> ). Because repeat DUII offenders demonstrate a blatant disregard for driving while intoxicated, a third or subsequent DUII conviction should carry increased penalties. Submits written testimony from the Department of Transportation in support of HB 2002 ( <b>EXHIBITS P &amp; Q</b> ).
081	Rep. Simmons	Do you think HB 2002 goes far enough in providing an incentive to not drive while intoxicated?
089	Gilmour	It helps. Discusses some high-profile cases in the last two years where the

		offenders had 11 and 12 DUI convictions. HB 2002 would provide a level of safety to the public by giving very serious offenders a tougher penalty.
102	Rep. Simmons	Don't habitual offenders drive even while suspended?
106	Gilmour	Yes, data has shown that that does happen. Discusses statistics from the Department of Transportation regarding repeat offenses and repeat convictions.
117	Rep. Simmons	Should we expand this law to those who are driving while suspended?
120	Gilmour	That is an issue, but the DUI portion is the critical portion of this bill so our committee had no issue with driving while suspended.
132	Rep. Prozanski	If a person is suspended because of DUI and they drive while suspended, they are charged with the felony Driving While Suspended (DWS).
137	Counsel Horton	In most cases, the DWS conviction will be lowered to a misdemeanor because, paradoxically, a misdemeanor conviction carries a longer sentence than a felony conviction.
144	Rep. Simmons	Perhaps we should look at changing that so the felony conviction gets at least as much time served as the misdemeanor conviction.
150	<b>Phil Lemman</b>	<p><b>Executive Director, Oregon Criminal Law Commission</b></p> <p>Testifies as neutral to HB 2002. This bill will need to go to Ways &amp; Means because of the impact on bed space when people with their third and subsequent conviction for DUI are charged as felons.</p>
201	Rep. Prozanski	Do you think the court's workload will be increased because defendants will be fighting these mandatory fines?
212	<b>Ingrid Swenson</b>	<p><b>Oregon Criminal Defense Lawyers Association</b></p> <p>Testifies in opposition to HB 2002. There are some people who will not be able to afford these fines or the counsel to fight the imposed fine.</p>
226	<b>Dale Penn</b>	<p><b>Oregon District Attorney's Association</b></p> <p>Testifies in support of HB 2002. Discusses the different fines imposed on DUI convictions and the need to raise fines to pay for the costs of the beds. HB 2002 will have a significant cost impact but will send the message that repeat DUI in Oregon will not be tolerated. Discusses the importance of Section 4 of the '03 amendments (<b>EXHIBIT M</b>) that the defendant can stipulate to the prior convictions. However, Section 4 in the '02 amendments (<b>EXHIBIT L</b>) says something different referring to a pre-trial notice process. Suggests having the defendant's prior DUI convictions validated pre-trial by the court so the</p>

		convictions can be litigated in the proceeding.
377	<b>Kelly Taylor</b>	<b>The Department of Transportation (DOT)</b>  Testifies in support of HB 2002 and the third DUII conviction being treated as a felony. Discusses some programming changes that may not be implemented with Y2K and suggests having a later operative date.
395	Chair Mannix	Would it help if we delayed the operative date until 4/1/2001?
406	Taylor	No. That would give us more time, but it won't change the amount of effort to do the programming, it would still be about \$15,000.
416	Rep. Bowman	There seems to be a discrepancy in the fines between page 2 and page 6 of the ñ3 amendments to HB 2002 ( <b>EXHIBIT M</b> ).
426	Counsel Horton	Clarifies that the fines on page 6 are for Driving While Suspended (DWS) and the fines on page 2 are for Driving Under the Influence of Intoxicants (DUII).
<b>TAPE 136, B</b>		
005	Rep. Bowman	So a second conviction or more for DUII would be \$1500 and for DWS the fine would be \$2000?
008	Counsel Horton	The reason for the DWS has to include a conviction for driving under the influence of intoxicants.
012	Chair Mannix	Does anyone have a problem with the delayed date of implementation?
021	Lemman	I don't know if moving to an April 1, 2001 effective date will trigger the \$50,000 threshold to send HB 2002 to Ways & Means.
047	Rep. Prozanski	There is a potential of 600+ individuals impacted by HB 2002, but many will not be doing prison time. Expresses a concern about short cutting the legislative process and not letting it go to Ways & Means.
073	Rep. Simmons	This is a policy that is long overdue and I would like to see it moved as expeditiously as possible.
084	Chair Mannix	We could put an operative date of January 1, 2000 to allow the DOT to get set up for implementation. If we run into a struggle in Ways & Means, an amendment could be drafted with a fallback date to delay the fiscal impact.



098	Rep. Prozanski	January 1, 2000 may be right in the middle of the start up of Y2K.
105	Taylor	January 1, 2000 is the worst operative date to pick if the bill has programming involved.
111	Chair Mannix	We could try January 15, 2000.
117	Rep. Hansen	Were the 680 people who had 2 or more convictions for DUII within the last 10 years?
120	Lemman	That is the number of people who would fit within the purview of HB 2002 for their third DUII conviction. If you draw the line at their fourth DUII conviction, that number shrinks to 250, and continues to shrink exponentially.
131	Chair Mannix	Do you desire the felony to become operative on the third conviction?
132	Lemman	Yes.
136	Chair Mannix	This committee would rather shift the implementation date than lose this legislation.
141	Rep. Hansen	Will there be a reduction in the number of repeat DUII convictions if it is widely perceived that a person's third conviction will be a felony?
146	Lemman	Different people have different opinions about what value increasing sentences will have on a crime. Criminal behavior doesn't go away, it just shows up somewhere else.
176	Counsel Horton	Asks for clarification on the fines that have been discussed.
181	Chair Mannix	Should the figures be the same for purposes of simplicity?
183	Rep. Bowman	Yes.
184	Counsel Horton	The proposed fines are \$1,000 for the first offense and \$2,000 for the second offense?
186	Chair Mannix	Yes, for either DWS or DUII.
188	Counsel Horton	Provided that the DWS charge is due to a conviction for DUII?

189	Chair Mannix	Yes.
192	Rep. Prozanski	My preference would be \$1,000, \$1,500 and \$2,000, the fine structure on page 2, lines 16-19, of the ñ3 amendments ( <b>EXHIBIT M</b> ). Discusses current fines in Lane County of \$350-\$400 and how some people consider that high.
212	Chair Mannix	We could use the fines of \$1,000, \$1,500 and \$2,000 on the DWS conviction as well as the DUII.
219	Rep. Prozanski	Should we have the first conviction at a lower mandatory minimum?
230	Rep. Simmons	I like the stiffer fines.
236	Rep. Bowman	Does the court or record currently determine the fine?
238	Rep. Prozanski	Each court throughout the state has different practices for imposing a fine for DUII. Currently, there is no mandatory fine for DUII, just a mandatory jail time of 2 days or community service of 80 hours. The court does have some discretion if an individual cannot pay a fine. I would suggest leaving the fines as proposed in the ñ3 amendments.
282	Rep. Bowman	I think it is appropriate to impose the \$2000 fine when a person has a second conviction for DWS as a result of DUII.
292	Rep. Prozanski	It has a greater impact when a person is hit in their pocketbook.
298	Rep. Hansen	We are trying to get people to avoid a felony conviction for the third DUII so the fine should be higher.
304	Chair Mannix	Are you comfortable with the suggestion of a pre-trial determination of prior convictions for DUII?
308	Swenson	As long as the time frames for this determination are reasonable, it should be done pre-trial.
312	Chair Mannix	What time frame would you recommend?
312	Swenson	The determination has to occur before the trial begins.
315	Chair Mannix	What about the challenge of validity 14 days before the trial?
317	Swenson	Discusses the problems with 14 days if people are in custody.

323	Chair Mannix	Would 21 days be more reasonable?
323	Swenson	I was thinking a shorter time frame.
326	Rep. Prozanski	Everyone agrees that this determination on prior DUII convictions must be made pre-trial, but defendants in circuit court currently appear a week prior to trial for a status report.
344	Chair Mannix	What if we make it 7 days?
350	Swenson	In most cases that would work.
372	Chair Mannix	Closes the work session on HB 2002.
377	Chair Mannix	Adjourns the meeting at 9:55 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

#### **EXHIBIT SUMMARY**

**A - HB 2083, -1 amendments (LC 731), dated 3/15/99, staff, 1 pg.**

**B - HB 2083, -2 amendments (LC 731), dated 3/15/99, staff, 1 pg.**

**C - HB 2083, -3 amendments (LC 731), dated 3/15/99, staff, 1 pg.**

**D - HB 2083, -4 amendments (LC 731), dated 3/15/99, staff, 1 pg.**

**E - HB 2083, -5 amendments (LC 731), dated 3/18/99, staff, 2 pgs.**

**F - HB 2083, -6 amendments (LC 731), dated 4/1/99, staff, 2 pgs.**

**G - HB 2319, -4 amendments (LC 359), dated 3/16/99, staff, 1 pg.**

**H - HB 2319, -5 amendments (LC 359), dated 4/2/99, staff, 1 pg.**

**I - HB 2213, written testimony submitted by Dave Cook, DOC, dated 2/26/99, 5 pgs.**

**J - HB 2213, -1 amendments (LC 785), dated 3/12/99, staff, 3 pgs.**

**K - HB 2002, -1 amendments (LC 3500), dated 3/22/99, staff, 6 pgs.**

**L - HB 2002, -2 amendments (LC 3500), dated 3/25/99, staff, 7 pgs.**

**M - HB 2002, -3 amendments (LC 3500), dated 4/13/99, staff, 7 pgs.**

**N - HB 2002, written testimony submitted by Sgt. Bruce Hoffman, Oregon State Police, 2 pgs.**

**O - HB 2002, written testimony of Peter Glazer submitted by Debra Downey Gilmour, Governor's Advisory Committee on DUII, dated 4/14/99, 1 pg.**

**P - HB 2002, written testimony of Troy Costales, DOT, submitted by Debra Downey Gilmour, Governor's Advisory Committee on DUII, dated 4/12/99, 1 pg.**

**Q - HB 2002, DUII statistics submitted by Debra Downey Gilmour, Governor's Advisory Committee on DUII, 2 pgs.**