

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

April 16, 1999 Hearing Room 357

8:00 a.m. Tapes 142 - 144

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 2612 Public Hearing and Work Session

HB 3596 Public Hearing

HB 2479 Work Session

HB 3189 Work Session

HB 3105 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 142, A		

006	Chair Mannix	Calls meeting to order at 8:03 a.m.
<u>HB 2612 PUBLIC HEARING</u>		
017	Counsel Horton	HB 2612 includes the administration of specified substances by stealth, deception or force to cause incapacity to consent. Discusses the ñ2 and the ñ4 amendments (EXHIBITS A & B).
043	Rep. Prozanski	Discusses a newspaper article (EXHIBIT C) about "the sentence did not fit the crime" when a young man should have been convicted of a sex crime, but because no law existed he was convicted of burglary.
096	Aimee Sperl	Womenís Crisis Service Testifies and submits written testimony in support of HB 2612 (EXHIBIT D). Discusses cases of women being sexually assaulted while under the influence of certain drugs. When impaired by these drugs, consent to any sexual act cannot be given.
121	Chair Mannix	The District Attorneyís Association said HB 2612 would make it more difficult to prosecute for rape because this legislation narrowly defines certain things like "mental incapacity".
143	Dave Cook	Director, Department of Corrections (DOC) Testifies as neutral to HB 2612.
152	Chair Mannix	Closes the public hearing on HB 2612.
<u>HB 3189 WORK SESSION</u>		
165	Rep. Prozanski	HB 3189 allows the municipal or justice court to become a court of record or retain their current system. Either the circuit court or the court of appeals would be the appellate court on a direct review. We need to bring HB 3189 before the committee at a later date for further amendments.
183	Judge Jad Lemhouse	Municipal Judge Testifies in support of HB 3189.
234	Chair Mannix	Closes the work session on HB 3189.
<u>HB 3596 PUBLIC HEARING</u>		
239	Rep. Kathy Lowe	State Representative, House District 26

		Testifies and submits written testimony in support of HB 3596 which creates the crime of custodial sexual misconduct in the first degree (EXHIBIT E). This legislation will set a legal standard that sexual relationships between institutional custodians and inmates are not tolerated in our prisons, whether consensual or not. Discusses federal House Resolution 357 that encourages this same standard. Explains the ñ1 and the ñ2 amendments to HB 3596 (EXHIBITS F & G).
337	Dennis Palmieri	Amnesty International Testifies and submits written testimony in support of HB 3596 (EXHIBITS H, I & J). Discusses a recent report by Amnesty International entitled " <i>Not part of my sentence</i> " <i>Violations of the Human Rights of Women in Custody</i> that reveals widespread forms of torture, cruel, inhuman treatment of women prisoners. Rape is underreported to begin with but more so in the correctional context. Discusses the gender neutrality of HB 3596 that can pertain to men or women being the victim of sexual misconduct. Amnesty International hopes Oregon will join the 41 states already supporting this legislation.
TAPE 143, A		
020	Rep. Gianella	Could you please explain line 18 on page 1 of HB 3596, "consent of the other person to sexual intercourse is not a defense under this section".
024	Rep. Lowe	In a controlled population, like prison, there can be sexual contact between two individuals, even if both are willing, where there is an element of coercion.
047	Chair Mannix	Even though there may have been the appearance of consent, there are some circumstances where sexual contact is not consensual, like parent and child or a person in custody.
057	Rep. Gianella	Is it a felony for a prison guard and an inmate to have sexual contact in prison?
059	Rep. Lowe	The penalty for a consensual relationship would be a misdemeanor.
063	Rep. Bowman	I thought HB 3596 implied that there could be no consent.
066	Rep. Lowe	Correct.
067	Rep. Bowman	But you stated that if a guard and an inmate consented to a relationship it would be a misdemeanor and a felony if they did not consent.
068	Rep. Lowe	Describes sexual misconduct in the first degree as a felony and sexual misconduct in the second degree as a misdemeanor. Both acts are wrong and need to be punished, but the more serious crime of non-consensual sex carries the tougher penalty of being a felony.
086	Rep. Bowman	Is it a felony to have a sexual relationship if you are in a position of power in a

		correctional environment?
089	Rep. Lowe	HB 3596 would make non-consensual, sexual relationships a felony.
091	Rep. Bowman	Is sexual interaction other than sexual intercourse a misdemeanor?
094	Rep. Lowe	No. Any consensual sexual misconduct is a Class A misdemeanor; if any sexual misconduct is non-consensual, it would be a felony.
121	Rep. Gianella	Is consensual sex between an inmate and a guard a felony?
125	Rep. Lowe	Yes.
130	Dave Cook	Director, Department of Corrections Testifies and submits written testimony in support of HB 3596 (EXHIBIT K). HB 3596 raises acts of sexual misconduct in a correctional facility to a criminal level. We do support the 11 amendments (EXHIBIT F). In the past, Oregon has been able to deal with sexual misconduct through the employee association. Discusses federal legislation HR 357, the Violence Against Women Act of 1999.
213	Rep. Bowman	It is my understanding that HB 3596 would not require the perpetrator to register as a sex offender, but if someone is using their position of power for sexual misconduct, they should be registered as a sex offender.
219	Cook	This particular crime may not rise to the level requiring sex offender registration.
226	Chair Mannix	Describes the line drawn between predatory conduct and unlawful conduct. If a correctional officer committed this crime, he wouldn't be in the institution to do this again so it wouldn't become predatory.
241	Cook	The federal law does require a registration to allow for a check of predatory sex offenders before working in a custodial environment.
250	Chair Mannix	We don't want to overburden the registration system unless we support with money and manpower the group handling the registration.
276	Cook	Oregon is one of the leading states in not hiring correctional officers who have prior convictions in the area of sexual misconduct.
301	Rebecca Prinslow	Asst. Superintendent, Women's Correctional Institution Testifies and submits written testimony in support of HB 3596 (EXHIBIT L). Discusses the information received at the training session on sexual misconduct presented by the National Institute of Corrections.

341	Cook	Discusses proposed amendments to HB 3596 (EXHIBIT M).
420	Russ Spencer	Oregon State Sheriffs Association Testifies in support of HB 3596. The Corrections Advisory Council of the Department of Public Safety Standards & Training plans on enhancing the training of corrections officers by addressing the issue of sexual misconduct and how to avoid it in the first place.
TAPE 142, B		
025	James Rice	Oregon Criminal Defense Lawyers Association Testifies in opposition to HB 3596. Take all the sexual abuse and rape talk and separate it from HB 3596. Non-consensual sex is rape and carries a Measure 11 sentence of 100 months.
034	Chair Mannix	Is rape in the 1 st degree in Oregon a Class A felony?
035	Rice	Yes, with a 100-month, mandatory minimum sentence. Sexual abuse carries a 75-month sentence.
038	Chair Mannix	So the non-consensual side of HB 3596 is handled?
039	Rice	Very adequately. Sexual crimes may be under reported, but they are often the most falsely reported crimes. People in any job can do something wrong, and if they do, they can get fired. Why not reprimand misconduct through administrative rules rather than criminalize this conduct? Delete the section of HB 3596 that removes the defense.
075	Rep. Bowman	Could you name a situation where a person has as much control over another individual as a corrections officer?
095	Rice	The military is one place that comes to mind. I think people should be held accountable for what they do, and I am not condoning sexual misconduct, but is creating a felony-label for a person the right way to go?
113	Rep. Bowman	It is my belief that you cannot consent to anything if you have no power, and people in prison have no power.
118	Rice	I don't believe you have no power in prison because a lawyer went to prison and told us things he did in prison to maintain some control over his life while incarcerated.

137	Rep. Sunseri	If it is not illegal for two consenting adults to have a sexual relationship in prison, then how do you fire them for that?
142	Chair Mannix	People get fired all the time for things that are not illegal, but their actions have gone against the rules.
153	Andrea Meyer	American Civil Liberties Union (ACLU) Testifies in opposition to HB 3596. Adults should be allowed to engage in activities they consent to.
168	Chair Mannix	Is this an official ACLU position in regard to this type of legislation or the ACLU's position on HB 3596?
183	Meyer	It would be our position on HB 3596. We do not support sexual misconduct in a correctional facility.
192	Chair Mannix	Discusses the extreme of a brutal prison system versus a certified parole and probation officer supervising a woman released from the women's correctional institution with minimal security supervision and over time they develop a relationship or get married. After the fact, we find out they engaged in sex before marriage. Are we going to criminalize that behavior?
216	Meyer	I haven't seen the Amnesty International report, but I don't think the incidents described are occurring in Oregon. If employees violate the rules, it is a rule violation and should be handled as such.
228	Rep. Bowman	Chair Mannix, in your scenario, did that parole officer have the ability to send that woman back to prison if she hadn't enter into a relationship with him?
233	Chair Mannix	You have to figure out where to draw the line from either absolute criminalization to tolerance or regulatory control.
241	Rice	Discusses Oregon being the only state in the United States where sexual relations are prohibited between attorney and client.
260	Rep. Hansen	Discusses the vulnerability of women prisoners or parolees who may have suffered a very high level of previous sexual abuse.
300	Palmieri	Discusses the issue of consent between correction's officers and inmates and the fact that rape is very difficult for an inmate to prove. Relates a case from the State of Washington where an inmate was raped, but couldn't prove it because consent could not be decided, but the inmate did have a baby. Describes the kind of power corrections officers have over the lives of inmates while they are incarcerated. Amnesty International does not think firing a person for sexual misconduct is enough of a deterrent to this type of crime. ACLU of Oregon is out of step with their counterparts in other states who strongly support custodial sexual misconduct legislation.

004	Chair Mannix	Closes the public hearing on HB 3596.
TAPE 143, B		
<u>HB 2479 WORK SESSION</u>		
007	Counsel Horton	HB 2479 adopts amendments to the rules of the Oregon Criminal Justice Commission ranking and classifying crimes created and modified by the 69 th Legislative Assembly. Discusses the ñ2 and the ñ3 amendments (EXHIBITS N & O).
037	Phil Lemman	Oregon Criminal Justice Commission Testifies and submits written testimony in support of HB 2479 (EXHIBIT P).
064	Rep. Prozanski	MOTION: Moves to ADOPT HB 2479-2 amendments dated 04/12/99.
		VOTE: 6-0-1 EXCUSED: 1 - Rep. Bowman
		Chair Mannix Hearing no objection, declares the motion CARRIED.
067	Rep. Prozanski	MOTION: Moves to ADOPT HB 2479-3 amendments dated 04/14/99.
		VOTE: 6-0-1 EXCUSED: 1 - Rep. Bowman
		Chair Mannix Hearing no objection, declares the motion CARRIED.
070	Rep. Prozanski	MOTION: Moves HB 2479 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0-1 EXCUSED: 1 - Rep. Bowman

	Chair Mannix	<p>Hearing no objection, declares the motion CARRIED.</p> <p>REP. PROZANSKI will lead discussion on the floor.</p>
076	Chair Mannix	Closes the work session on HB 2479.
<u>HB 2612 WORK SESSION</u>		
087	Rep. Prozanski	MOTION: Moves to ADOPT HB 2612-4 amendments dated 04/02/99.
		<p>VOTE: 6-0-1</p> <p>EXCUSED: 1 - Rep. Bowman</p>
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
090	Rep. Prozanski	MOTION: Moves HB 2612 to the floor with a DO PASS AS AMENDED recommendation.
		<p>VOTE: 6-0-1</p> <p>EXCUSED: 1 - Rep. Bowman</p>
	Chair Mannix	<p>Hearing no objection, declares the motion CARRIED.</p> <p>REP. PROZANSKI will lead discussion on the floor.</p>
099	Chair Mannix	Closes the work session on HB 2612.
<u>HB 3105 WORK SESSION</u>		

102	Rep. Prozanski	HB 3105 requires the court when paroling a defendant outside a county jail to order local supervisory authority to supervise the defendant. This legislation is narrowly construed to catch those individuals who are being released before their full sentence expires. I will bring back amendments at a later date and ask for passage of the legislation then.
126	Chair Mannix	Closes the work session on HB 3105.
<u>HB 3596 PUBLIC HEARING</u>		
133	Karen Andall	Oregon Youth Authority Testifies and submits written testimony in support of HB 3596 (EXHIBIT Q). Discusses HB 3596 with regard to youth correctional facilities.
160	Terry Crawford	Detective, Oregon State Police Testifies in support of HB 3596. Discusses compromising the safety of an institution if a correctionis officer is involved in a sexual relationship with an inmate.
176	Mary Botkin	American Federation of State, County and Municipal Employees Testifies in opposition to HB 3596. In the last few years there have been 36 reported incidences of sexual misconduct in the Oregon prison system. Of those 36, it was the staff who reported 30 of those incidences. Oregon has an exceptional correctional system where inmates can file grievances at any time and those grievances are taken very seriously.
275	Brian DeLashmutt	Association of Oregon Corrections Employees Testifies in opposition to HB 3596. The concept has some validity, but a number of the cases previously discussed are already covered by statutes on harassment, sexual abuse or rape.
298	Rep. Prozanski	Are you advocating we look for problems in our institutions that may be occurring in other states?
303	Botkin	No, but I am not sure how we confront the issue of one person having so much authority over another should sexual misconduct occur.
329	Dave Cook	Director, Department of Corrections We arenit looking for a problem, but we want to be prepared if a problem should arise. The law needs to be used as a tool in training and for setting an ethical standard.
348	Botkin	Discusses the benefits of training for corrections staff.

362	Rep. Bowman	Could Ms. Botkin address the issue of "consent" while incarcerated and while under supervision of a parole or probation officer?
372	Botkin	People who work in the corrections system must know there is zero tolerance for any sexual misconduct with someone you are supervising. There have been only 36 incidences of sexual misconduct since 1997 and the staff reported 30 of those.
418	Rep. Bowman	Could you address the issue of "consent" when outside the institution on parole or probation?
419	Botkin	I don't know how you break that supervision component?
422	Rep. Bowman	It is clear to me: if you supervise that person, you do not get involved in an intimate relationship with that person.
424	Botkin	There could always be the potential for a problem if the supervising person has the authority to break the other person's parole.
TAPE 144, A		
002	Cook	The answer could be a transfer of supervision to an adjacent county or to some other structure.
009	Rep. Bowman	A parole officer should not be having any kind of relationship with someone they supervise.
033	Rep. Lowe	I see HB 3596 as a preventative device so sexual misconduct does not take place in Oregon's correctional institutions.
057	Rep. Hansen	Early disclosure of any association is the answer to preventing a conflict if a relationship already exists between a corrections staff person and someone who goes on probation or parole.
084	Rep. Prozanski	Closes the public hearing on HB 3596.
085	Rep. Prozanski	Adjourns the meeting at 10:00 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,
Administrative Support Administrator

EXHIBIT SUMMARY

- A - HB 2612, -2 amendments (LC 2573), dated 3/29/99, staff, 3 pgs.**
- B - HB 2612, -4 amendments (LC 2573), dated 4/2/99, staff, 3 pgs.**
- C - HB 2612, *Oregon Daily Emerald* newspaper article submitted by Rep. Prozanski, dated 2/12/99, 2 pgs.**
- D - HB 2612, written testimony submitted by Aimee Sperl, Mid-Valley Women's Crisis Center, 1 pg.**
- E - HB 3596, written testimony submitted by Rep. Kathy Lowe, House District 26, dated 4/16/99, 5 pgs.**
- F - HB 3596, -1 amendments (LC 4126), dated 4/15/99, staff, 1 pg.**
- G - HB 3596, -2 amendments (LC 4126), dated 4/15/99, staff, 1 pg.**
- H - HB 3596, written testimony submitted by Dennis Palmieri, Amnesty International, dated 4/16/99, 1 pg.**
- I - HB 3596, written testimony submitted by Dennis Palmieri, Amnesty International, 9 pgs.**
- J - HB 3596, Amnesty International Report submitted by Dennis Palmieri, 105 pgs.**
- K - HB 3596, written testimony submitted by Dave Cook, DOC, dated 4/16/99, 2 pgs.**
- L - HB 3596, written testimony submitted by Rebecca Prinslow, DOC, dated 4/16/99, 2 pgs.**
- M - HB 3596, proposed amendments submitted by Dave Cook, DOC, 1 pg.**
- N - HB 2479, -2 amendments (LC 1005), dated 4/12/99, staff, 3 pgs.**
- O - HB 2479, -3 amendments (LC 1005), dated 4/14/99, staff, 1 pg.**
- P - HB 2479, written testimony submitted by Phil Lemman, Oregon Criminal Justice Commission, dated 4/16/99, 6 pgs.**
- Q - HB 3596, written testimony submitted by Karen Andall, Oregon Youth Authority, dated 4/16/99, 1 pg.**