

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

April 21, 1999 Hearing Room 357

8:00 a.m. Tapes 150 - 151

MEMBERS PRESENT: Rep. Mannix, Chair

Rep. Prozanski, Vice-Chair

Rep. Bowman

Rep. Gianella

Rep. Hansen

Rep. Simmons

Rep. Sunseri

STAFF PRESENT: John Horton, Counsel

Rachel Short, Administrative Support

MEASURE/ISSUES HEARD:

HB 2977 - Work Session

HB 2394 - Work Session

HB 2275 - Work Session

HB 2488 ñ Work Session

HB 2729 - Public Hearing

HJR 82 - Public Hearing

HB 3598 - 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.

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TAPE/#	Speaker	Comments
TAPE 150, SIDE A		
008	Chair Mannix	Calls meeting to order at 8:17 a.m.
<u>WORK SESSION n HB 2977</u>		
013	Counsel Horton	Discusses the nA3 amendments of HB 2977 (EXHIBIT A), which relates to penalties for boating infractions.
027	Paul DonHeffner	Director, State Marine Board I have visited with certain legislative members to learn their concerns and share these amendments. They seem to be more supportive of the bill now that we have these amendments.
051	Rep. Bowman	MOTION: Moves to ADOPT HB 2977-A3 amendments dated 04/14/99.
		VOTE: 6-0 EXCUSED: 1 - Rep. Simmons
		Chair Mannix Hearing no objection, declares the motion CARRIED.
053	Rep. Bowman	MOTION: Moves HB 2977 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0 EXCUSED: 1 - Simmons
		Chair Mannix Hearing no objection, declares the motion CARRIED.

		REP. BOWMAN will lead discussion on the floor.
067	Chair Mannix	Closes work session on HB 2977.
<u>WORK SESSION n HB 2275</u>		
070	Counsel Horton	Discusses n4 and n5 amendments (EXHIBITS B & C), which creates the crime of mail theft.
093	Bowman	What does "secretion" mean?
097	Chair Mannix	"Secretion" means to hide away in a secret way.
105	Sunseri	For clarification, does section 4, subsection 2 remove destruction of mail as a class C felony?
106	Counsel Horton	Yes.
107	Chair Mannix	That is already covered under the vandalism laws.
109	Rep. Bowman	How do you embezzle mail?
110	Chair Mannix	Embezzlement of mail is when someone tries to use someone else's mail in a way that would be financially advantageous to him or her.
118	Rep. Bowman	MOTION: Moves to ADOPT HB 2275-5 amendments dated 04/16/99.
		VOTE: 6-0 EXCUSED: 1 - Simmons
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
137	Rep. Bowman	MOTION: Moves HB 2488 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 6-0 EXCUSED: 1 - Simmons

142	Chair Mannix	<p>Hearing no objection, declares the motion CARRIED.</p> <p>REP. BOWMAN will lead discussion on the floor.</p>
149	Chair Mannix	Closes Work Session on HB 2275.
<u>WORK SESSION n HB 2488</u>		
156	Counsel Horton	Discusses the n1 and n2 amendments to HB 2488 and that new amendments will be coming (EXHIBITS D & E).
163	Benjamin DeHaan	<p>Deputy Director, Oregon Department of Corrections</p> <p>Explains what the new amendments will do.</p>
185	Chair Mannix	Closes work session on HB 2488.
<u>PUBLIC HEARING n HJR 82</u>		
192	Chair Mannix	Discusses n1 amendments to HJR 82 (EXHIBIT F), which adds specific language and replaces the original bill. It also retains most, but not all, of the language currently in Section 41, Article 1 of the Constitution. Discusses the original idea of having a prison industries board. The amendments will remove language, making inmate work programs subject to regulation by prison industries board. It will also make programs subject to regulation by corrections director. Discusses lines 14-27, which pertains to competition for the private sector. Discusses the idea of charitable organizations being helped by prison work programs.
366	Benjamin DeHann	<p>Deputy Director, Oregon Department of Corrections</p> <p>We may need some small refinements in some of the language in HJR 82.</p>
389	Mary Botkin	<p>American Federation of State, County and Municipal Employees (AFSCME)</p> <p>Discusses the n1 amendments. Discusses the unfair competition with the private sector. One area of concern is the issue of the elimination of the board, which we like, but we feel that the advisory committee should be reestablished.</p>
427	Chair Mannix	The director should feel free to establish an advisory committee and the constitution will not prevent him from doing so.

433	Botkin	I do think there should be some kind of board that the president of the advisory committee should consult with.
468	Chair Mannix	Closes public hearing on HJR 82.
TAPE 151, SIDE A		
<u>PUBLIC HEARING n HB 2729</u>		
034	Counsel Horton	HB 2729 establishes mandatory conditions of parole and post-prison supervision for certain sex offenders.
060	Scott Taylor	Assistant Director, Department of Corrections Testifies and submits written testimony in opposition to HB 2729 (EXHIBIT G). Explains that they currently have a system where a board, at the time of parole, has the ability to impose conditions of supervision. The bill creates a mandatory set of conditions on every sex offender. Discusses the need to focus the conditions towards the individual they're supervising. Discusses curfew for the offenders. We already have the ability to implement certain conditions, but these conditions are not being imposed where they should be. Discusses possible language changes on pg. 2, line 1.
113	Rep. Jeff Kruse	State Representative, House District 45 Testifies in support of HB 2729. Discusses a situation at a county fair where a sex offender was employed in the children section and the manager felt that there was nothing he could do to unemploy him. Discusses the importance of victim's rights.
174	Rep. Prozanski	I understand the intention of the bill, but I am concerned with a "one size fits all" kind of program. Explains his concerns about the curfew for certain offenders.
196	Rep. Kruse	Explains that curfew can be different based on employment.
212	Rep. Sunseri	How do you define "successful completion"?
218	Rep. Kruse	I'm not too sure. I think it would have to be based on the track record of the program.
236	Rep. Sunseri	Explains that after talking to certain constituents, he feels that there have been no successful sex offender counseling programs.
249	Rep. Kruse	I'm not saying that there is a program out there that is successful, but that doesn't preclude a program from being developed in the future that would be successful.

260	Chair Mannix	It appears that statutory authorization is not needed to implement any of these restrictions which are in the bill as stated.
269	Taylor	That is correct.
269	Chair Mannix	Assuming for purposes of argument the committee decides that it does not need to implement this legislation, are there other statutory changes that are needed under the relating clause of "relating to sex offenders"?
319	Chair Mannix	If you find that there is some case law out there that has hemmed in some of the discretion that is needed, please let us know. If you find some case out there that really needed statutory authority, we want to hear about that.
327	Taylor	I will survey the network just to make sure, but I believe that our management of sex offenders is one of the national models. We also try to search for every type of monitoring and tight supervision that could control the population that we have.
340	Rep. Sunseri	Has there been any treatment programs lately that are showing promise for success that you have been made aware of?
344	Taylor	Discusses the definition of "success". Discusses a program that comes from Jackson County that they are excited about.
378	Chair Mannix	Closes public hearing on HB 2729.
<u>PUBLIC HEARING n HB 3598</u>		
383	Counsel Horton	HB 3598 creates Public Defense Services Corporation.
415	Jim Rice	Oregon Criminal Defense Lawyers Association Testifies in a neutral position for HB 3598. Discusses those that receive Public Employment Retirement System (PERS) and those that don't. Discusses the idea of a commission.
TAPE 150, SIDE B		
018	Rice	Discusses the rules of court.
066	Chair Mannix	There is a specific group of people included in PERS who would move over to a new corporation in order to protect their PERS status.
072	Rice	I think the Public Defense Services Corporation is an interesting idea, but it

		would take a significant amount of study and money to figure out if this would be a prudent step to take for the people of the State of Oregon.
085	Chair Mannix	We already have a privatized public defender system other than the appeals.
090	Rice	Discusses the worth in letting the counties decide what kind of system would be best for them.
099	Chair Mannix	Discusses the Public Defense Services Corporation and the contract process which they must go through.
108	Rice	Discusses the responsibility of the judges in the Public Defense Services Corporation.
122	John Potter	<p>Oregon Criminal Defense Lawyers Association</p> <p>Testifies in opposition to HB 3598. Discusses the idea of having a commission. Feels that adding additional staff to the current system would be a good idea in order to add better coverage. Having a separate commission divorced from the Judicial Department has a negative impact on our ability to secure funds for indigent defense. Discusses concerns over the indigent defense services not receiving a fair share of the allotted budget. In essence the Public Defense Services Corporation is going to be more expensive and it will weaken the position of indigent defense to get funding.</p>
182	Rep. Prozanski	It sounds to me that the concept is a good one if it can be worked out. Asks about an interim group that would specifically deal with the issue of public defense services.
194	Potter	We have studied in the past how to ensure quality but we have never done a study that comes up with a business plan. A study, if it is done right, will cost money.
207	Rep. Prozanski	Discusses the cost of providing a study. Discusses the importance of evaluating the current system before spending money on a study.
221	Rice	Discusses the mechanics and cost of putting together a corporation.
245	Rep. Simmons	The problems that you see as objectives could be worked out if the right people were brought to the table.
251	Rice	I agree. These objectives don't have to be obstacles, we just need to be aware of the work and the cost.
270	Kingsley Klick	<p>State Court Administrator</p> <p>Discusses SB 66, which relates to appropriating money to indigent legal services.</p>

		HB 3598 and SB 66 are headed towards the same goal, which is to put together a corporation that addresses the provision of legal services in the mandated case areas as a separate entity. I think that both bills are goal oriented to setting it up in a very business like fashion. The department has not had a chance to look at the advantages and disadvantages of a non-profit corporation versus a commission.
323	Rep. Prozanski	From your perspective of being an administrator, it would help me to know exactly what you think would be an appropriate plan for implementing this type of overhaul and change.
338	Klick	I think we have a very vested interest in this being successful. We want to make sure that it is done in a way that does not jeopardize the system or the stability that has been brought to the system.
345	Chair Mannix	Closes public hearing on HB 3598. Opens work session on HB 2394.
<u>WORK SESSION ñ HB 2394</u>		
351	Counsel Horton	HB 2394 expands murder to include deaths caused by person fleeing or attempting to elude police officer or, under some circumstances, by person driving while under influence of intoxicants. Explains the ñ7 and ñ8 amendments (EXHIBITS H & I), which replace the original bill by providing that homicide constitutes murder if the offender causes the death through eluding a police officer, etc.
395	Rep. Prozanski	Discusses concerns over the definitions of murder and assault 1 and 2.
TAPE 151, SIDE B		
024	Chair Mannix	Closes work session on HB 2394. Discusses the nature of next weeksí work sessions.
045	Chair Mannix	Discusses HJR 7 and the majority and minority reports.
071	Chair Mannix	Adjourns meeting at 9:45 a.m.

Submitted By, Reviewed By,

Rachel Short, Sarah Watson,

EXHIBIT SUMMARY

A ñ Amendments (-A3) to HB 2977, Judiciary staff, 2 pgs.

B ñ Amendments (-5) to HB 2275, Judiciary staff, 3 pgs.

C ñ Amendments (-4) to HB 2275, Judiciary staff, 1 pg.

D ñ Amendments (-1) to HB 2488, Judiciary staff, 1 pg.

E ñ Amendments (-2) to HB 2488, Judiciary staff, 53 pgs.

F ñ Amendments (-1) to HJR 82, Judiciary staff, 5 pgs.

G ñ Testimony on HB 2729, Scott Taylor, 1 pg.

H ñ Amendments (-7) to HB 2394, Judiciary staff, 6 pgs.

I ñ Amendments (-8) to HB 2394, Judiciary staff, 6 pgs.