

**HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW**

**April 22, 1999 Hearing Room 357**

**8:00 a.m. Tapes 152 - 154**

**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 3583 Public Hearing**

**HB 3342 Public Hearing**

**HB 3343 Public Hearing**

**HB 3492 Public Hearing**

**HB 2454 Public Hearing**

**HB 3086 Public Hearing**

**HB 3522 Public Hearing**

**HB 3046 Public Hearing**

**HB 2744 Public Hearing**

**HB 3084 Public Hearing**

**HB 2902 Public Hearing**

## HB 2434 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
<b>TAPE 152, A</b>		
006	Chair Mannix	Calls the meeting to order at 8:12 a.m.
<b><u>HB 3522 PUBLIC HEARING</u></b>		
028	Chair Mannix	Closes the public hearing on HB 3522.
<b><u>HB 3046 PUBLIC HEARING</u></b>		
030	Chair Mannix	Closes the public hearing on HB 3046.
<b><u>HB 2902 PUBLIC HEARING</u></b>		
031	Chair Mannix	Closes the public hearing on HB 2902.
<b><u>HB 3342 PUBLIC HEARING</u></b>		
061	Counsel Horton	HB 3342 requires the Department of State Police to hire 125 additional officers for highway patrol each year for the next two years.
064	<b>Jim Botwinis</b>	<b>President, Oregon State Police Officers' Association</b>  Testifies and submits written testimony in support of HB 3342 ( <b>EXHIBIT A</b> ). Discusses the decline the Department of State Police has seen in funding for the last decade and why the additional troopers proposed in HB 3342 still falls short of their staffing needs.
115	Chair Mannix	Can you find out what percentage of the trust fund dollars was used for policing highways at the time highway trust fund was shutoff in 1980?
123	Botwinis	Yes.

124	Chair Mannix	Recesses the public hearing on HB 3342.
<b><u>HB 3583 PUBLIC HEARING</u></b>		
127	Counsel Horton	HB 3583 creates the crime of partial birth infanticide. There are ñ6 amendments to HB 3583 ( <b>EXHIBIT B</b> ).
147	<b>Senator Marilyn Shannon</b>	<b>State Senate, Senate District 15</b>  Testifies in support of HB 3583. Partial birth delivery is used to save the life of the mother, but doctors admit there is no reason for this to be necessary, it does not save the life of the mother. Describes that these full-term babies are turned feet first and delivered except for 2 inches of the head. Congress has passed similar legislation twice, but the President has vetoed it.
194	Rep. Bowman	The term "infanticide" is used to inflame the situation. What is the definition of "infanticide"?
198	Shannon	The term "infanticide" means to allow a newborn baby to die or to kill it. In partial birth abortion, a live baby is delivered feet first except for two inches of the head. The doctor takes a pair of scissors and makes an incision in the back of the neck. A tube is placed in that incision and the brains are suctioned out, killing the baby.
205	Rep. Bowman	This procedure does not take place!
206	Shannon	Yes, it does.
207	Rep. Bowman	Do you have proof that this takes place?
207	Shannon	Yes.
214	Rep. Bowman	I would like to see the proof that this procedure of a newborn baby being killed by a doctor is taking place.
232	<b>Rep. Kitty Piercy</b>	<b>State Representative, House District 39</b>  Testifies in opposition to HB 3583. Indicates she debated about giving this legislation any credibility by testifying on this bill that would legislate medical care options. HB 3583 is about politics, not medicine. This bill would undermine a physician's ability to determine the best choice of treatment for a patient.
283	<b>Dr. Richard Thorne</b>	<b>Obstetrician and Gynecologist</b>  Testifies and submits written testimony in support of HB 3583 ( <b>EXHIBIT C</b> ). Discusses medical misinformation about partial birth abortion. Describes the procedure of partial birth abortion. Tells why partial birth abortions are

		performed and how often. Discusses the "myths" and misinformation surrounding partial birth abortion.
<b>TAPE 153, A</b>		
042	Rep. Bowman	Is this a move to do away with legal abortions?
046	Dr. Thorne	No.
048	Rep. Bowman	You described horrendous endings of children's lives, but that is not the issue today. We are talking about a legal procedure that women have the option to use because women have "choice". Are you trying to say that women shouldn't have the choice to have an abortion?
056	Dr. Thorne	This has nothing to do with <i>Rowe v. Wade</i> and in no way impinges on a woman's right to have an abortion. We are talking about a baby being killed while in the birth process which has been termed a homicide and upheld by the Supreme Court.
068	Rep. Bowman	At five months, someone is not in the process of giving birth.
069	Dr. Thorne	Describes the difference between "live birth" and "full term". "Live birth" is defined as any baby, after 20 weeks, coming out with one gasp of breath. "Full term" means delivery of an infant over 37 weeks old.
079	Rep. Hansen	Could you provide documentation for your testimony?
083	Dr. Thorne	There is a bibliography in the back of my submitted testimony.
084	Rep. Hansen	On page 2 of your testimony you discuss why and how often partial birth abortions are done. Could I get the documentation for the numbers you used there?
091	Dr. Thorne	That information is in Dr. Haskell's testimony in front of the U. S. Senate hearings on this issue.
094	Rep. Hansen	Is the documentation that he used available or is this his opinion of the numbers and percentages?
096	Dr. Thorne	That quote of Dr. Haskell's is from the American Medical News of May 17, 1995.
101	Rep. Hansen	But is it his testimony and not the documentation that his testimony is based upon?

102	Dr. Thorne	Dr. Haskell is quoted as saying that 80% of these procedures that he performed were "elective".
108	Chair Mannix	Recesses the public hearing on HB 3583.
<b><u>HB 3086 PUBLIC HEARING</u></b>		
126	Chair Mannix	Closes the public hearing on HB 3086.
<b><u>HB 3084 PUBLIC HEARING</u></b>		
139	Chair Mannix	Closes the public hearing on HB 3084.
<b><u>HB 2434 PUBLIC HEARING</u></b>		
155	Chair Mannix	Closes the public hearing on HB 2434.
<b><u>HB 2744 PUBLIC HEARING</u></b>		
160	Counsel Horton	HB 2744 requires the county juvenile departments to enter specified information about youths into juvenile justice information systems utilized by counties and state.
171	<b>Karen Brazeau</b>	<b>Deputy Director, Oregon Youth Authority (OYA)</b>  Testifies and submits written testimony in support of HB 2744 ( <b>EXHIBIT D</b> ). The OYA would like to see everything in the bill deleted and substitute the conceptual amendments on page 2 of my testimony.
195	<b>Joanne Fuller</b>	<b>Deputy Director, Multnomah Community Justice Department</b>  Testifies and submits written testimony in support of HB 2744 ( <b>EXHIBIT E</b> ). Multnomah County supports the OYA's proposed amendments to HB 2744.
198	Chair Mannix	Closes the public hearing on HB 2744.
<b><u>HB 3343 PUBLIC HEARING</u></b>		
209	Counsel Horton	HB 3343 creates a Joint Legislative Task Force On Juvenile Violence.
216	<b>Kathie Osborn</b>	<b>Juvenile Rights Project</b>

		Testifies as neutral on HB 3343. Believes this task force is a good idea and needs to happen, but should be expanded to encompass other people in Oregon working on juvenile violence. Suggests that juvenile violence would be a good issue to work on during the interim.
247	Chair Mannix	Closes the public hearing on HB 3343.
<b><u>HB 2454 PUBLIC HEARING</u></b>		
258	<b>Scott Taylor</b>	<b>Assistant Director, Department of Corrections (DOC)</b>  Testifies as neutral to HB 2454 which directs the Oregon Criminal Justice Commission to review sentencing guidelines and recommend legislative changes necessary to make sentencing guidelines discretionary rather than mandatory. One of our concerns is to ensure that the length of post-prison supervision times is re-stated to make sure people know what they are. Another concern is our ability to project prison population when there are fluctuations in sentencing practices. Finally, we would like to encourage a broader look at the number of sentences and the overlay between those sentences.
281	Chair Mannix	Have you seen the ñ1 amendments and the ñ2 amendments to HB 2454 <b>(EXHIBITS F &amp; G)?</b>
282	Taylor	No.
304	Chair Mannix	Closes the public hearing on HB 2454.
<b><u>HB 3583 PUBLIC HEARING</u></b>		
315	<b>Gayle Atteberry</b>	<b>Executive Director, Oregon Right To Life</b>  Testifies and submits written testimony in support of HB 3583 <b>(EXHIBIT H)</b> . Describes the partial birth abortion procedure using anatomically correct infant mannequins. Discusses the testimony of various individuals regarding this procedure and the frequency of its use. Approximately 33 states have passed a ban on partial birth abortions. Discusses the Oregon Vital Statistics Report of 1997 which appears on the last page of her testimony.
<b>TAPE 152, B</b>		
011	<b>Michael Howden</b>	<b>Oregon Physicians Resource Council</b>  Testifies and submits written testimony in support of HB 3583 <b>(EXHIBIT I)</b> . Discusses the Council's three main concerns. One, the partial birth abortion procedure defies ethical treatment of a child. Two, this procedure is not necessary to preserve the life of the mother, and three, the claim that anesthesia received by the mother for pain kills the baby is false. Many believe that the baby actually feels the pain of this abortion procedure.

087	<b>Sandi Hansen</b>	<b>Executive Director, Oregon National Abortion and Reproductive Rights Action League (NARAL)</b>  Testifies and submits written testimony in opposition to HB 3583 ( <b>EXHIBIT J</b> ). Urges that the medical decision on abortion should be left to a woman and her doctor. The American Medical Association (AMA) rejects the use of the term "partial birth abortion" because it is not a medical term. Oregon NARAL agrees with the AMA that government leaders are not elected to practice medicine.
105	Chair Mannix	Where would you say that intervention is appropriate for a late-term fetus?
110	Hansen	Medical professionals need to determine that.
112	Chair Mannix	Should a one-year old be legally protected as a separate human being?
113	Hansen	We do have laws about liability issues.
116	Chair Mannix	We have had a number of bills before this committee that deal with government intervention on behalf of children. Working our way backwards, at what point in a child's life does the government have a legitimate interest in intervention? Do you agree that government can intervene on behalf of a one-year old child?
123	Hansen	Yes.
124	Chair Mannix	Should government be able to intervene if the child is six months old?
125	Hansen	You are talking about cases where the child has been alive for several months.
126	Chair Mannix	Would you agree that the government can intervene from birth?
128	Hansen	We do already, don't we? The law before you does not describe a definition of "infanthood" as much as proscribe a medical procedure. I am not qualified to talk about medical procedures and medical terms nor am I prepared or able to give you a full discussion today on legal definitions.
141	Chair Mannix	Have you read the original bill?
141	Hansen	Yes.
143	Chair Mannix	In your opinion, when does infanticide begin?
144	Hansen	I am not prepared to discuss that issue because that is not what I am here for.

153	Lois Backus	<p><b>Planned Parenthood Affiliates of Oregon</b></p> <p>Testifies and submits written testimony in opposition to HB 3583 (<b>EXHIBIT K</b>). Doctors, not politicians, should make medical decisions and HB 3583 is an unprecedented political intrusion into medical practice. We should we working together to increase access to birth control and family planning to decrease unintended pregnancies and thus, abortion. We want to see every child be planned, wanted, loved and well cared for. HB 3583 is bad law and bad public policy.</p>
187	Chair Mannix	At what point would you support government intervention of a newborn infant?
192	Backus	Planned Parenthood has always been supportive of all child-protection laws following the birth of a child. We have supported child endangerment laws and child parental neglect laws. We are fully supportive of the state stepping in and taking action to protect all born children.
197	Chair Mannix	How would you define "born"?
198	Backus	A "born" child is one who is born by any legitimate medical procedure and breathes and survives on its own.
206	Chair Mannix	I am trying to draw the line where government intervention begins in a child's life.
211	Backus	The line has been drawn. Rowe v. Wade draws a very clear line allowing any state legislature to make bills that would proscribe pregnancy termination in the third trimester. Planned Parenthood has always supported Rowe v. Wade and that is not what we are here today to discuss.
223	Chair Mannix	Would you agree that Justice Stewart was one of the primary participants in the affirmative decision in Rowe v. Wade?
225	Backus	I am not that familiar with each of the justices and where they stood on Judge Justice Blackman's decision.
227	Chair Mannix	Discusses the oral argument transcript of Rowe v. Wade where Mr. Justice Stewart and another lawyer stated that they were not dealing with the process of killing a child in the process of childbirth, that abortion was separate from that. Describes a Texas statute having to do with the act of killing a child during the process of childbirth. Quotes Justice Stewart, Mr. Flowers and Justice Marshall speaking about when is an abortion is considered homicide. I am just trying to clarify where to draw the line on government intervention in a child's life.
252	Backus	I do not believe that any of us are the ones who should be drawing that line. Only trained, licensed medical providers can determine that.
265	Rep. Bowman	Is there an ORS definition of "infanticide"?



280	Chair Mannix	I do not see a definition in the Oregon Revised Statutes.
281	Rep. Bowman	I did not see one in ORS either and there isn't a definition in the bill. Maybe we need to create one.
292	<b>Lynn Partin</b>	<b>Women's Rights Coalition</b>  Testifies in opposition to HB 3583. Discusses the second page of Dr. Thorne's testimony ( <b>EXHIBIT C</b> ) stating that people do not undertake procedures like this lightly. These are medical emergencies or extreme circumstances and any decision needs to be left between a woman and her doctor.
328	<b>David Fidanque</b>	<b>Executive Director, American Civil Liberties Union of Oregon</b>  Testifies in opposition to HB 3583. Courts have permanently enjoined many of the partial birth abortion bans that have been passed in states around the country. Discusses the 6 amendments ( <b>EXHIBIT B</b> ) stating that they would not comply with the federal constitutional standards.
377	Chair Mannix	Recesses the public hearing on HB 3583.
<b><u>HB 3492 PUBLIC HEARING</u></b>		
383	Counsel Horton	HB 3492 prohibits a person under 18 years of age from purchasing tobacco products.
395	<b>Rep. Lundquist</b>	<b>State Representative, House District 58</b>  Testifies and submits the 2 amendments ( <b>EXHIBIT L</b> ) in support of HB 3492. I believe a minor should be held responsible for trying to buy tobacco products by imposing community service upon the person and suspending their driving privileges. Discusses the 2 amendments. I understand that there may be a problem enforcing this type of legislation, but we need to send a message to our youth that it is illegal to obtain tobacco products under the age of 18.
<b>TAPE 153, B</b>		
022	<b>Capt. Bob Smit</b>	<b>Oregon State Police</b>  Testifies in support of HB 3492 and the 2 amendments.
034	Rep. Bowman	Is it currently illegal for someone under 18 to have possession of tobacco products?
036	Lundquist	Yes.

037	Rep. Bowman	If we suspend a minor's driving privileges for having possession of tobacco, don't you think a lot of young people will be driving around on suspended licenses?
044	Lundquist	There is always that potential.
048	Rep. Bowman	I don't see anything in HB 3492 which would get young people into tobacco treatment programs.
054	Lundquist	There is nothing in this bill about treatment programs, but I have another bill that I hope will address that. Young people need to be responsible and understand that they are breaking the law when they attempt to buy tobacco.
063	Rep. Bowman	Don't retail outlets have a responsibility to not sell tobacco products to anyone under 18 years of age?
067	Lundquist	Yes, but both the buyer and the seller should be responsible.
070	Rep. Bowman	Who is going to pay the \$500 fine?
071	Lundquist	That will vary from family to family. In my case, the child would pay for it.
075	Rep. Gianella	Do you think this legislation will prevent teenagers from getting hooked on cigarettes?
077	Lundquist	If young people knew they were going to lose their driver's license for purchasing tobacco, it would have an impact on their behavior.
095	<b>Dr. David Fleming</b>	<b>Oregon Health Division</b>  Testifies and submits written testimony in opposition to HB 3492 ( <b>EXHIBIT M</b> ). The Oregon Health Division has two concerns about this bill, and the two amendments handle one of those. The other is storeowners being held responsible for selling to minors. A "blame the kids only" approach will not be effective. All parties need to be responsible if we expect to reduce illegal sales of tobacco to minors.
133	Rep. Bowman	How will this bill be implemented on the street level? Is anyone who looks under age and is in possession of tobacco products going to be stopped on the streets?
147	Dr. Fleming	We need to attack this problem with multiple approaches. A picture ID should be asked for at the time of purchase.

155	Rep. Bowman	Would current law fine the clerk who sold the tobacco product to a minor?
157	Dr. Fleming	Yes.
158	Rep. Bowman	Would you want the storeowner to also be held responsible for that sale?
161	Dr. Fleming	Yes.
162	Rep. Hansen	Both the minor attempting to buy tobacco and the seller should be held responsible. Should we also look at suspending the driver's license of the clerk and the storeowner?
171	Chair Mannix	What if we change this bill to say that no one under the age of 18 can attempt to buy tobacco unless they are under the direction of a government agency? If they do, a fine of \$500 and/or community service will be imposed.
188	Dr. Fleming	That is an unbalanced approach unless we hold all parties responsible.
191	Chair Mannix	I don't want to exempt the seller from responsibility, but right now it is not a violation for a 16-year old to attempt to purchase tobacco, and we want to make that attempt to purchase a violation.
197	Dr. Fleming	Under current Oregon law, there is no fine that is levied against the owner of a retail establishment for selling tobacco to minors.
201	Chair Mannix	Why is that?
201	Dr. Fleming	I don't know.
202	Chair Mannix	Maybe it should be a violation for both the seller and the minor buyer.
205	Dr. Fleming	We would support that balanced approach to this problem, but right now 30% of establishments that sell tobacco products are selling to minors and there is no pressure put on those owners to stop those sales.
213	Chair Mannix	What if this legislation made "recklessly" selling tobacco products to a minor a violation for retail establishments?
222	Dr. Fleming	It is the clerk who is responsible for selling the product, but owners can put systems in place in their stores so clerks will not sell to minors. We would like to see the liability also fall on the owner of the establishment, not just the clerk selling the merchandise

231	Chair Mannix	What if the language of this legislation was based on the strict liability that if you furnish tobacco products to a minor it is a \$50 fine to the clerk and the store can be fined \$100 per episode? The minor who attempts to purchase could be fined from \$100 to \$500.
245	Dr. Fleming	I would agree with that approach, but the penalty for the owner should be equal to or more than the sanctions imposed on the clerk and buyer.
269	Rep. Hansen	To send a strong message to store owners, we could say that after repeated violations of selling tobacco to minors, the store would lose the privilege of selling tobacco products.
279	Rep. Bowman	I would like to see these young people put into a smoking cessation program as another part of the sanction on HB 3492.
298	Chair Mannix	Recesses the public hearing on HB 3492.
<b><u>HB 3583 PUBLIC HEARING</u></b>		
310	<b>Bob Castagna</b>	<b>Oregon Catholic Conference</b>  Testifies and submits written testimony in support of HB 3583 ( <b>EXHIBIT N</b> ). Reads statements regarding the medical consensus that has emerged with respect to partial birth abortion. We believe this gruesome procedure contributes to a culture of death and we need to restore our respect for life.
364	Chair Mannix	Recesses the public hearing on HB 3583.
<b><u>HB 3342 PUBLIC HEARING</u></b>		
382	<b>Capt. Greg Willeford</b>	<b>Oregon State Police</b>  Testifies and submits written testimony in support of HB 3342 that requires the Department of State Police to hire 125 additional officers for highway patrol each year in the next two years ( <b>EXHIBIT O</b> ). Discusses the need for more state police troopers. On page 1, line 8 of HB 3342, we would recommend that the reference to "highway patrol" mean the full service, police law enforcement function that uniform troopers in the Patrol Division perform today and have since 1931.
<b>TAPE 154, A</b>		
054	Chair Mannix	Should line 8 read, "The department shall assign the members hired under this section to police patrol activities in the Patrol Division"?
056	Willeford	Yes. We have always been full-service patrol, not just highway patrol.

063	Rep. Bowman	Why should we support HB 3342 that authorizes 125 additional troopers (25 officers beyond the Governor's request for 100 troopers) when the Ways & Means process would allow only 100 officers to be hired over the next biennium?
080	Willeford	HB 3342 would be referred to Revenue or Ways & Means after this committee, but as an agency we support bridging our service gap.
093	Rep. Hansen	What if we add 100 officers through the Ways & Means process, and the next 100 officers could be added as state grants to counties as deputy sheriffs?
103	Willeford	We do support local law enforcement, but we feel state funds should be used to support the state law enforcement and criminal justice system first.
115	<b>Rep. Juley Gianella</b>	<b>State Representative, House District 38</b>  Testifies in support of HB 3342. Discusses the need for more state troopers to protect Oregon's citizens and promote safety on Oregon's highways.
135	Chair Mannix	Closes the public hearing on HB 3342.
<b><u>HB 3492 PUBLIC HEARING</u></b>		
144	<b>Kelly Taylor</b>	<b>Oregon Department of Transportation</b>  Creating a new category for driver's license suspension would require some software programming and we would request that, if the suspension portion is left in HB 3492, it be given a later operative date, perhaps March or April of 2000.
152	Chair Mannix	If a trimmed-down version of HB 3492 proceeds, it will not include suspension of driving privileges. Submits written testimony of Jerry Spegman ( <b>EXHIBIT P</b> ).
164	Chair Mannix	Closes the public hearing on HB 3492.
<b><u>HB 3583 PUBLIC HEARING</u></b>		
165	Chair Mannix	Submits the written testimony of Rep. Betsy Close in support of HB 3583 ( <b>EXHIBIT Q</b> ).
171	Chair Mannix	Closes the public hearing on HB 3583.

171	Chair Mannix	Adjourns the meeting at 10:15 a.m.
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Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Officer Administrator

### **EXHIBIT SUMMARY**

**A - HB 3342, written testimony submitted by Jim Botwinis, State Police Officer's Assoc, dated 4/22/99, 2 pgs.**

**B - HB 3583, -6 amendments (LC 3473), dated 4/21/99, staff, 2 pgs.**

**C - HB 3583, written testimony submitted by Dr. Richard Thorne, dated 4/22/99, 10 pgs.**

**D - HB 2744, written testimony submitted by Karen Brazeau, OYA, dated 4/22/99, 6 pgs.**

**E - HB 2744, written testimony submitted by Joanne Fuller, Multnomah Co., 1 pg.**

**F - HB 2454, -1 amendments (LC 1537), dated 4/21/99, staff, 4 pgs.**

**G - HB 2454, -2 amendments (LC 1537), dated 4/21/99, staff, 2 pgs.**

**H - HB 3583, written testimony submitted by Gayle Atteberry, Oregon Right to Life, dated 4/22/99, 5 pgs.**

**I - HB 3583, written testimony submitted by Michael Howden, Oregon Physician's Resource Council, dated 4/22/99, 22 pgs.**

**J - HB 3583, written testimony submitted by Sandi Hansen, NARAL, 1 pg.**

**K - HB 3583, written testimony submitted by Lois Backus, dated 4/22/99, 1 pg.**

**L - HB 3492, -2 amendments (LC 2168), dated 4/19/99, 1 pg.**

**M - HB 3492, written testimony submitted by Dr. David Fleming, DHR, dated 4/22/99, 2 pgs.**

**N - HB 3583, written testimony submitted by Bob Castagna, 1 pg.**

**O ñ HB 3342, written testimony submitted by Capt. Greg Willeford, State Police, dated 4/22/99, 5 pgs.**

**P - HB 3492, written testimony submitted by Jerry Spegman, American Cancer Society, 3 pgs.**

**Q - HB 3583, written testimony submitted by Rep. Betsy Close, District 36, dated 4/22/99, 3 pgs.**