

**HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW**

**April 28, 1999 Hearing Room 357**

**8:00 a.m. Tapes 164 - 166**

**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 2096 Work Session**

**HB 3458 Work Session**

**HB 3598 Work Session**

**HB 3208 Work Session**

**HB 3395 Work Session**

**HB 3608 Work Session**

**HB 2454 Work Session**

**HB 3086 Work Session**

**HB 3492 Work Session**

**HB 3591 Work Session**

**HB 2605 Work Session**

## HB 3522 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
<b>TAPE 164, A</b>		
010	Chair Mannix	Calls the meeting to order at 8:15 a.m.
<b><u>HB 2096 WORK SESSION</u></b>		
022	<b>Henry Kaplan</b>	<b>Attorney</b>  Testifies and submits written testimony in opposition to HB 2096 that establishes that police investigative reports are not official records in a criminal case subject to being sealed ( <b>EXHIBIT A</b> ). The changes to ORS 137.225 primarily affect those individuals found innocent or acquitted in a proceeding because it is unfair for arrest reports of a factually innocent citizen to be made available. Discusses the ñ1 amendments to HB 2096 ( <b>EXHIBIT B</b> ). Police investigation reports on a sealed record shouldn't be offered in lieu of testimony because it bars cross-examination.
091	Rep. Bowman	Does current law allow for police records to be introduced to determine whether or not someone is eligible for a teaching certificate?
095	Kaplan	If the records have not been sealed, they can be permitted as hearsay evidence in an administrative agency proceeding. Most agencies have regulations that permit hearsay to be offered.
107	Chair Mannix	Recesses the work session on HB 2096.
<b><u>HB 3458 WORK SESSION</u></b>		
115	Counsel Horton	Discusses the ñ2 amendments to HB 3458 that establishes a county victim and offender reconciliation program ( <b>EXHIBIT C</b> ).
161	<b>Rep. Bowman</b>	<b>MOTION: Moves to ADOPT HB 3458-2 amendments dated 04/16/99.</b>
		<b>VOTE: 6-0-1</b>  <b>EXCUSED: 1 - Rep. Simmons</b>

	Chair Mannix	Hearing no objection, declares the motion CARRIED.
169	Rep. Bowman	MOTION: Moves HB 3458 to the floor with a DO PASS AS AMENDED recommendation and the SUBSEQUENT REFERRAL to the committee on Ways and Means BE RESCINDED.
		VOTE: 6-0-1 EXCUSED: 1 - Rep. Simmons
		Chair Mannix Hearing no objection, declares the motion CARRIED.  REP. PIERCY will lead discussion on the floor.
177	Chair Mannix	Closes the work session on HB 3458.
<b><u>HB 3598 WORK SESSION</u></b>		
187	Chair Mannix	HB 3598 creates the Public Defense Services Corporation. This bill requires a referral to Ways & Means. The ñ1 amendments clarify some of the corporate elements, but other amendments may be coming ( <b>EXHIBIT D</b> ).
200	Rep. Sunseri	MOTION: Moves to ADOPT HB 3598-1 amendments dated 04/27/99.
		VOTE: 6-0-1 EXCUSED: 1 - Rep. Simmons
		Chair Mannix Hearing no objection, declares the motion CARRIED.
204	Rep. Sunseri	MOTION: Moves HB 3598 to the floor with a DO PASS AS AMENDED recommendation.

207	Rep. Bowman	How did this legislation come about?
211	Chair Mannix	Discusses scenarios that have been looked at in the past for reorganizing indigent defense and why this legislative approach was decided upon.
251	Rep. Prozanski	Would Rep. Sunseri be willing to rescind the "do pass" recommendation and send it to Ways and Means "to be reviewed"?
258	Chair Mannix	If we send it to Ways and Means with no recommendation, it means we haven't made any substantial judgement about the matter.
261	Rep. Sunseri	I'd like to send it with a "do pass" recommendation.
267	Rep. Hansen	We've always struggled with funding indigent defense, and I am concerned that a separate corporation may not have the same political will with regards to funding.
279	Chair Mannix	Discusses why the Oregon Criminal Defense Lawyers Association prefers the funding of indigent defense staying with the Judicial Department.
303	Rep. Sunseri	<b>MOTION: Moves HB 3598 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means.</b>
		<b>VOTE: 5-2</b> <b>AYE: 5 - Gianella, Prozanski, Simmons, Sunseri, Mannix</b> <b>NAY: 2 - Bowman, Hansen</b>
	<b>Chair Mannix</b>	<b>The motion CARRIES.</b>
312	Chair Mannix	Closes the work session on HB 3598.
<b><u>HB 3208 WORK SESSION</u></b>		
316	Counsel Horton	HB 3208 requires that the Department of Human Resources, the Employment Department and the Department of State Police waive state fees for criminal background checks if the person being checked is a volunteer for a non-profit organization. The ñ2 amendments delete the Employment Department in the waiver of fees ( <b>EXHIBIT E</b> ).

329	Rep. Prozanski	<b>MOTION: Moves to ADOPT HB 3208-2 amendments dated 04/27/99.</b>
		<b>VOTE: 7-0</b>
	Chair Mannix	<b>Hearing no objection, declares the motion CARRIED.</b>
337	Chair Mannix	I received the ñ1 amendments from Rep. Kafoury late last night <b>(EXHIBIT F)</b> .
358	Chair Mannix	Recesses the work session on HB 3208.
<b><u>HB 3492 WORK SESSION</u></b>		
370	Rep. Lynn Lundquist	<p><b>State Representative, House District 59</b></p> <p>Testifies in support of HB 3492 that prohibits the purchase of tobacco to a person under 18 years of age. Submits a memo from Larry Didier at the Department of Human Resources to Mark Gardner, Department of Justice, outlining the concerns of the Office of Alcohol and Drug Abuse Programs regarding HB 3492 <b>(EXHIBIT G)</b>. Discusses the ñ3 amendments that eliminate the suspension of the driverís license and lower the fine imposed from \$500 to \$250 <b>(EXHIBIT H)</b>.</p>
<b>TAPE 165, A</b>		
001	Rep. Prozanski	I donít know why we have this bill before us because it is already illegal for a minor to be in possession of tobacco products and they receive community service for that violation.
010	Rep. Lundquist	We want to bring <i>attempting</i> to buy tobacco products on the same level as alcohol which is a violation for a minor.
022	Rep. Prozanski	Why couldnít we just charge them with an attempt to buy tobacco?
026	Rep. Lundquist	I canít answer why not, but it is not illegal to attempt to buy cigarettes now.
032	Rep. Prozanski	How are we going to enforce this legislation?
037	Rep. Lundquist	If communities want to support this kind of legislation and have an impact, they will enforce this legislation more than the police force. If a store clerk is presented a driverís license to purchase tobacco, the clerk can record that

		number. The important thing is that we are sending a message to minors that attempting to purchase tobacco is illegal.
055	Rep. Prozanski	How about a sanction for the store clerk or owner who provides the tobacco products to the youth?
058	Rep. Lundquist	The clerks are sanctioned, but that is a separate issue. The stores do spend time training their clerks to handle illegal sales of alcohol and tobacco. We need to send a message to our students that the attempt to purchase tobacco is illegal for anyone under 18 years of age.
087	Rep. Prozanski	How are communities going to enforce this? I don't know why youth can't be charged under the current law for the attempt to purchase rather than put a new law in the statutes.
095	Rep. Lundquist	Law enforcement will not be policing the stores 24 hours a day. We need to send the message that children need to take responsibility for their actions.
105	Chair Mannix	We are awaiting another amendment from the Department of Justice for gray market tobacco (products manufactured in the U.S. for export without having paid excise tax that end up back in the U.S.). If we regulate those sales, we will get a bigger cut of the tobacco settlement.
137	Rep. Gianella	Would a youth lose their driving privileges under this legislation?
138	Chair Mannix	No. That sanction has been removed from the bill.
144	Rep. Prozanski	Draws attention to ORS 167.400 that talks about the prohibition of minors being in possession of tobacco products. This is the statute that could be used in charging a minor with the <i>attempt</i> to purchase tobacco.
152	Chair Mannix	Recesses the work session on HB 3492.
<b><u>HB 3208 RECONVENES WORK SESSION</u></b>		
161	<b>Rep. Deborah Kafoury</b>	<b>State Representative, House District 18</b>  Testifies in support of HB 3208 that requires that the Department of Human Resources, the Employment Department and the Department of State Police waive state fees for criminal background checks if the person being checked is a volunteer for a non-profit organization. Right now non-profit organizations contract only through the State Police for criminal background checks. The bill amendments relate the waiver of the fee only to the State Police (EXHIBIT F).

174	Chair Mannix	Will there be a fiscal impact with the ñ1 amendments?
175	Rep. Kafoury	There should not be sufficient impact to refer the bill to Ways and Means.
180	Rep. Prozanski	<b>MOTION: Moves to ADOPT HB 3208-1 amendments dated 04/27/99.</b>
		<b>VOTE: 7-0</b>
	Chair Mannix	Hearing no objection, declares the motion <b>CARRIED</b> .
187	Rep. Prozanski	<b>MOTION: Moves to RESCIND the motion to adopt the ñ2 amendments to HB 3208.</b>
		<b>VOTE: 7-0</b>
	Chair Mannix	Hearing no objection, declares the motion <b>CARRIED</b> .
192	Rep. Prozanski	<b>MOTION: Moves that the SUBSEQUENT REFERRAL to the committee on Ways and Means BE RESCINDED.</b>
		<b>VOTE: 7-0</b>
	Chair Mannix	Hearing no objection, declares the motion <b>CARRIED</b> .
196	Rep. Prozanski	<b>MOTION: Moves HB 3208 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 7-0</b>
	Chair Mannix	Hearing no objection, declares the motion <b>CARRIED</b> .

		<b>REP. KAFOURY will lead discussion on the floor.</b>
200	Chair Mannix	Closes the work session on HB 3208.
<b><u>HB 3492 RECONVENES WORK SESSION</u></b>		
207	Rep. Prozanski	Discusses why the attempt to purchase tobacco products could not be charged under current statutes as he had thought previously.
215	<b>Mark Gardner</b>	<b>Special Counsel to the Attorney General</b> The anticipated amendments should be done later today.
250	Chair Mannix	Closes the work session on HB 3492.
<b><u>HB 2096 RECONVENES WORK SESSION</u></b>		
267	Chair Mannix	Discusses the conceptual ñ2 amendments that adjust the time frame for expunction of misdemeanors from 3 years to 5 years and 10 years for felonies.
308	Rep. Bowman	Expresses a concern with Mr. Kaplanís testimony that a police record of an arrest could prohibit a person from obtaining a position that required licensing.
316	Chair Mannix	I disagree with his interpretation that a regulatory body would simply rely on a police record to disqualify a person.
337	Rep. Prozanski	I heard Mr. Kaplan say <i>hearsay</i> , not just police reports were admissible at an administrative hearing and the police report could be used as substantial evidence.
347	Chair Mannix	The standard rules of evidence for civil procedure do not apply to administrative proceedings, but hearsay can be admitted.
376	Chair Mannix	Closes the work session on HB 2096.
<b><u>HB 3395 WORK SESSION</u></b>		
386	Counsel Horton	HB 3395 relates to hearsay evidence, especially in situations of domestic violence



431	Dale Penn	<p><b>Oregon District Attorney's Association</b></p> <p>Testifies in support of HB 3395 because it moves domestic violence cases forward for intervention without forcing a victim to appear in court. Discusses the types of hearsay that are allowed in domestic violence cases now, including medical and excited utterance hearsay. This bill would allow the court to look at hearsay beyond what is allowed in excited utterance. HB 3395 also allows prior statements of witnesses to come in as evidence and the jury can now rely upon this prior evidence which is important in domestic violence and gang-related issues.</p>
<b>TAPE 164, B</b>		
020	Rep. Bowman	How would this bill help you with gang members when it relates to sexual misconduct and domestic violence issues?
023	Penn	The hearsay exception applies only in domestic violence, but the part of the bill talking about the use of a prior statement would apply to any situation.
036	Chair Mannix	Closes the work session on HB 3395.
<b><u>HB 3608 WORK SESSION</u></b>		
041	Counsel Horton	Discusses the 11 amendments to HB 3608 that creates the crime of female genital mutilation ( <b>EXHIBIT I</b> ).
048	Rep. Prozanski	<b>MOTION: Moves to ADOPT HB 3608-1 amendments dated 04/27/99.</b>
		<b>VOTE: 7-0</b>
Chair Mannix		<b>Hearing no objection, declares the motion CARRIED.</b>
051	Rep. Prozanski	<b>MOTION: Moves HB 3608 to the floor with a DO PASS AS AMENDED recommendation.</b>
054	Rep. Bowman	I thought there was a desire to change the Class C felony to a misdemeanor.
062	Lynn Partin	<b>Women's Rights Coalition</b>

		Discusses a bill from the 1997 Session that dropped the penalty to a Class B felony. We are getting the penalty down to a Class C felony. We are less interested in the punishment than in sending a message that female genital mutilation is not acceptable in Oregon and we want to do the outreach activities as stated in Section 2 on page 1 of HB 3608.
086	Chair Mannix	A Class A misdemeanor is up to one year in jail with a fine of \$5,000. A Class C felony is up to five years in prison with a \$100,000 fine. Can you imagine someone carrying out this procedure who may be of sufficient financial means that we would want to impose the higher penalty of the Class C felony?
093	Partin	I imagine that there are people coming from foreign countries that could afford that penalty.
099	Chair Mannix	If the person does not have sufficient funds it won't matter except in terms of the prison time.
101	Partin	The prison time is significant, but it is not the intention of the Women's Rights Coalition to lock up the person supporting the girl because we don't want the girl both mutilated and starving.
114	Rep. Bowman	<b>MOTION: Moves to SUSPEND the rules for the purpose of adopting a conceptual amendment.</b>
		<b>VOTE: 7-0</b>
	Chair Mannix	<b>Hearing no objection, declares the motion CARRIED.</b>
118	Rep. Bowman	<b>MOTION: Moves to ADOPT the conceptual amendment to HB 3608 changing the Class C felony on line 10 to a Class A misdemeanor.</b>
		<b>VOTE: 7-0</b>
	Chair Mannix	<b>Hearing no objection, declares the motion CARRIED.</b>
129	Rep. Bowman	<b>MOTION: Moves HB 3608 to the floor with a DO PASS AS AMENDED recommendation.</b>

		<b>VOTE: 7-0</b>
	<b>Chair Mannix</b>	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>REP. GIANELLA will lead discussion on the floor.</b>
140	Chair Mannix	Closes the work session on HB 3608.
<b><u>HB 2454 WORK SESSION</u></b>		
148	Counsel Horton	HB 2454 directs the Oregon Criminal Justice Commission to review sentencing guidelines and recommend legislative changes necessary to make sentencing guidelines discretionary rather than mandatory. The ñ2 amendments replace the original content of the bill ( <b>EXHIBIT J</b> ).
159	Rep. Prozanski	Why are we deleting the original bill?
164	Chair Mannix	I thought the Criminal Justice Commission was going to do a review.
168	Rep. Prozanski	I propose we include the original bill with the amendments because we don't know what interim committees the Speaker may appoint.
174	<b>Rep. Mannix</b>	<b>MOTION: Moves to SUSPEND the rules for the purpose of adopting a conceptual amendment.</b>
		<b>VOTE: 7-0</b>
	<b>Chair Mannix</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
176	<b>Rep. Sunseri</b>	<b>MOTION: Moves to ADOPT the conceptual amendment to add the ñ2 amendments, with line 3 omitted, to HB 2454.</b>

		<b>VOTE: 7-0</b>
	<b>Chair Mannix</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>180</b>	<b>Rep. Sunseri</b>	<b>MOTION: Moves to ADOPT HB 2454-2 amendments dated 04/21/99.</b>
		<b>VOTE: 7-0</b>
	<b>Chair Mannix</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>183</b>	<b>Rep. Sunseri</b>	<b>MOTION: Moves HB 2454 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means.</b>
		<b>VOTE: 7-0</b>
	<b>Chair Mannix</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>189</b>	<b>Chair Mannix</b>	<b>Closes the work session on HB 2454.</b>
<b><u>HB 3086 WORK SESSION</u></b>		
<b>194</b>	<b>Counsel Horton</b>	<b>HB 3086 makes a third or subsequent conviction for driving while under the influence of intoxicants (DUII) a Class C felony. Discusses the ñ1 amendments submitted by Rep. Patridge regarding sentencing prior to a person entering a diversion program for DUII (EXHIBIT K).</b>
<b>213</b>	<b>Rep. Prozanski</b>	<b>I question the cost to the system because everyone who is eligible for diversion can be put into a judicial trial. We are being asked to change policy with no discussion, no debate, no evidence or testimony as to the impact for the system.</b>

241	Chair Mannix	This legislation doesn't remove the option of the diversion program, it just eliminates having to go back to court to enter a guilty plea, if a person should fail the diversion program.
251	Rep. Prozanski	I have a concern that an offender would have to admit guilt before the prosecutor has a chance to see the case.
288	<b>Dale Penn</b>	<b>Oregon District Attorney's Association</b>  We supported the bill in the 1997 Session because the case of a person who flunks out of diversion years later could not be won at trial because the incident happened too long ago to remember the facts. We believe this change in the bill offers more motivation to comply with the diversion program to get the guilty plea withdrawn. Discusses the motivation behind the drug court program that is set up to have the guilty plea prior to entering treatment.
321	<b>James Rice</b>	<b>Oregon Criminal Defense Lawyers Association</b>  Testifies in opposition to HB 3086. Right now, there are no lawyers involved in these cases. However, if we are asking for guilty pleas up front, lawyers will have to be brought into the process right away for the technical requirements.
348	Rep. Prozanski	Diversion is a one-year program, not a number of years as Mr. Penn alluded.
360	Penn	The Governor's Council on DUII supports HB 3086 because this is a continuing problem throughout the state.
378	Rep. Prozanski	Are the courts not following the petition that a guilty plea has to be entered if a person fails the diversion program, even after adding the six-month extension?
384	Penn	We continue to see people offer excuses for not completing the diversion program beyond the 18 months so it hasn't solved the problem.
402	<b>Rep. Gianella</b>	<b>MOTION: Moves to ADOPT HB 3086-1 amendments dated 04/21/99.</b>
		<b>VOTE: 4-3</b>  <b>AYE: 4 - Gianella, Simmons, Sunseri, Mannix</b>  <b>NAY: 3 - Bowman, Hansen, Prozanski</b>
	<b>Chair Mannix</b>	<b>The motion CARRIES.</b>

415	Rep. Hansen	How many failed diversion cases would have to come to trial in Marion County?
427	Penn	I believe this will have minimal impact on increased trials.
<b>TAPE 165, B</b>		
002	Rep. Hansen	How many diversion cases do you have for DUII?
003	Penn	Marion County has 1/10 th of the criminal cases in the state. If there are 10,000 DUII diversion cases statewide, I would have 1,000.
008	Rep. Hansen	How many cases for diversion take longer than one year?
010	Penn	I don't know, but my staff tells me about cases that are 3-4 years old.
<b>019</b>	<b>Rep. Prozanski</b>	<b>MOTION: Moves HB 3086 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means.</b>
021	Chair Mannix	What is the reason for the referral to Ways and Means?
021	Rep. Prozanski	Attorneys will be needed up front for the 10,000 DUII diversion cases that will need to plead guilty.
027	Chair Mannix	I believe this legislation will save money because there won't have to be a trial to plead guilty if the person fails the diversion program.
		<b>VOTE: 3-4</b>  <b>AYE: 3 - Bowman, Hansen, Prozanski</b>  <b>NAY: 4 - Gianella, Simmons, Sunseri, Mannix</b>
	<b>Chair Mannix</b>	<b>The motion FAILS.</b>
036	Rep. Prozanski	Asks for clarification from the Chief Clerk's office on the rules for sending legislation to the committee on Ways and Means.
040	Chair Mannix	You are welcome to talk to the Chief Clerk, but I intend to proceed with the agenda.

041	Rep. Gianella	<b>MOTION: Moves HB 3086 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 4-3</b>  <b>AYE: 4 - Gianella, Simmons, Sunseri, Mannix</b>  <b>NAY: 3 - Bowman, Hansen, Prozanski</b>
	Chair Mannix	<b>The motion CARRIES.</b>  <b>REP. MANNIX will lead discussion on the floor.</b>
053	Rep. Prozanski	Gives notice of a possible minority report on HB 3086.
054	Chair Mannix	Closes the work session on HB 3086.
<b><u>HB 3591 WORK SESSION</u></b>		
058	Counsel Horton	HB 3591 creates the crime of interference with making a report. Discusses the ñ1, the ñ2, and the ñ3 amendments to HB 3591 <b>(EXHIBITS L - N)</b> .
079	Rep. Simmons	<b>MOTION: Moves to ADOPT HB 3591-2 amendments dated 04/26/99.</b>
081	Rep. Hansen	Could counsel explain the difference between <i>supplying</i> alcohol to a minor and <i>selling</i> alcohol to a minor?
084	Counsel Horton	The substantive difference would be if I <i>gave</i> alcohol to a minor vs. if a clerk <i>sold</i> alcohol to a minor.
090	Rep. Hansen	Is there much difference in dollar amount for the penalties?
091	Counsel Horton	No.
093		<b>VOTE: 5-0-2</b>  <b>EXCUSED: 2 - Rep. Bowman, Rep. Prozanski</b>

	Chair Mannix	Hearing no objection, declares the motion CARRIED.
096	Rep. Simmons	MOTION: Moves to ADOPT HB 3591-3 amendments dated 04/27/99.
		VOTE: 5-0-2 EXCUSED: 2 - Rep. Bowman, Rep. Prozanski
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
099	Rep. Simmons	MOTION: Moves HB 3591 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-2 AYE: 5 - Bowman, Gianella, Simmons, Sunseri, Mannix NAY: 2 - Hansen, Prozanski
	Chair Mannix	The motion CARRIES.  REP. SIMMONS will lead discussion on the floor.
114	Rep. Prozanski	Gives notice of a possible minority report.
116	Chair Mannix	Closes the work session on HB 3591.
<b><u>HB 3086 RECONVENE WORK SESSION</u></b>		
120	Rep. Prozanski	We do not have a fiscal impact on HB 3086, and we should have that document before the bill is sent to the floor for a vote of the House.
127	Counsel Horton	We do not have a fiscal impact on the ñ1 amendments to HB 3086, but we can pass the bill out without a fiscal impact.
136	Ramona Kennedy	Chief Clerk of the House



		Discusses Committee Rule #14 that states that the committee shall not report a measure to the floor unless the written Legislative Counsel amendments have been approved by a majority of the committee. In addition, the committee shall review any fiscal or revenue impact statement issued in compliance with House Rule 8.20.
148	Chair Mannix	We have been adopting amendments to bills all session.
149	Kennedy	If amendments are adopted without someone raising the question of a need for a fiscal impact, that amendment is being approved by implied consent. If a member raises the question as to whether or not the fiscal impact statement is available, the committee must get a rule suspension because there is an objection to passage.
155	Chair Mannix	We will await a fiscal impact statement on HB 3086 and I won't sign off on the referral to the floor until that statement is obtained.
159	Rep. Prozanski	Would it be more appropriate to rescind the action of the committee until we have the fiscal impact statement?
162	Kennedy	Since the committee has reported the bill out, I would suggest you put HB 3086 on notice for possible reconsideration.
175	Chair Mannix	Serves notice of possible reconsideration of HB 3086.
176	Rep. Prozanski	<b>MOTION: Requests to CHANGE vote from NAY to AYE and gives notice of possible reconsideration of HB 3086.</b>
		<b>VOTE: 7-0</b>
Chair Mannix		<b>Hearing no objection, declares the motion CARRIED.</b>
186	Chair Mannix	Closes the work session on HB 3086.
<b><u>HB 2605 WORK SESSION</u></b>		
195	Counsel Horton	HB 2605 imposes a mandatory life imprisonment for third or subsequent conviction for specified sex offenses. Discusses the ñ5, the ñ6, and the ñ7 amendments to HB 2605 ( <b>EXHIBITS O - Q</b> ). If the ñ5 amendments are adopted, the bill would need to go to Ways & Means, but not if the ñ6 amendments are adopted.

242	Rep. Prozanski	If these sex offenses apply to the second conviction rather than the third, wouldn't there be a larger fiscal impact on HB 2605?
246	Counsel Horton	It would have a fiscal impact, but it only needs to go to Ways and Means if that fiscal impact is occurring in the next four years and the fiscal impact for this legislation will occur 15-20 years from now.
258	Rep. Prozanski	Aren't we throwing out the process of having accounting or forecasting for prison space?
263	Chair Mannix	There is a separate process to determine long-term prison space.
271	Rep. Prozanski	Discusses the difficulty Ways & Means has when trying to determine long-term impact.
291	<b>Scott Taylor</b>	<b>Assistant Director, Department of Corrections (DOC)</b>  I have asked research for a bed-capacity number for a second conviction on specified sex offenses, but that number is not available today.
300	Chair Mannix	What are those specified sex offenses?
301	Counsel Horton	Rape I, Sodomy I, Unlawful Sexual Penetration I, Using A Child In Display Of Sexually Explicit Conduct, and Sex Abuse I.
<b>307</b>	<b>Rep. Gianella</b>	<b>MOTION: Moves to ADOPT HB 2605-6 amendments dated 04/27/99.</b>
		<b>VOTE: 7-0</b>
<b>Chair Mannix</b>		<b>Hearing no objection, declares the motion CARRIED.</b>
311	Rep. Prozanski	We do need to determine a fiscal impact.
315	Chair Mannix	Is there any fiscal impact beyond \$50,000 in the next two years?
319	Taylor	There should not be a fiscal impact within the next two years.
<b>331</b>	<b>Rep. Gianella</b>	<b>MOTION: Moves HB 2605 to the floor with a DO PASS AS AMENDED recommendation.</b>

333	Rep. Bowman	We currently do not provide any kind of treatment for sex offenders while they are incarcerated. I would like to see some kind of treatment program while they are incarcerated.
367	Taylor	The DOC decided treatment should happen in the community. After their first conviction, the offender would attend treatment in the community to stop this behavior.
385	Rep. Bowman	If this bill becomes law, are you going to re-evaluate treatment occurring inside the correctional facility?
389	Taylor	We are continually reviewing that decision and are gathering studies from around the country on doing treatment inside the institution.
398	Rep. Sunseri	We are talking about a second conviction in HB 2605 which means the sex offender should have had some exposure to treatment that apparently didn't work. We need to protect the public from people who have taken sex offenses on as a lifestyle.
409	Rep. Prozanski	Discusses concurrent convictions not counting as separate convictions, but the ñ6 amendments do not address that.
424	Chair Mannix	Line 2 on page 1 of the ñ6 amendments state "as a result of the prior conviction" so there had to be some opportunity for treatment on that first conviction.
433	Rep. Prozanski	Is the intent of HB 2605 to make sure that a sex offender had the opportunity for treatment after the first conviction, whether they took advantage of that treatment or not?
<b>TAPE 166, A</b>		
003	Chair Mannix	Yes.
<b>005</b>	<b>Chair Mannix</b>	<b>VOTE: 5-2</b> <b>AYE: 5 - Gianella, Hansen, Simmons, Sunseri, Mannix</b> <b>NAY: 2 - Bowman, Prozanski</b>
	<b>Chair</b>	<b>The motion CARRIES.</b>  <b>REP. SUNSERI will lead discussion on the floor.</b>

007	Rep. Bowman	Gives notice of a possible minority report.
019	Chair Mannix	Closes the work session on HB 2605.
<b><u>HB 3522 WORK SESSION</u></b>		
053	Counsel Horton	HB 3522 increases the penalty for the second or subsequent conviction for certain sex offenses. Discusses the ñ1 amendments, a narrowed version of custodial sexual misconduct, that replace the original bill ( <b>EXHIBIT R</b> ).
078	Rep. Bowman	I have problems with the language on line 15 of page 1 of the ñ1 amendments where the imprisoned person instigated sexual contact. A person working for a correctional institution should never have sexual contact with an inmate, so I don't like the idea that they should have less responsibility for the sexual act if it was instigated by an inmate.
086	Chair Mannix	Discusses the different gradations of misdemeanor and the parallel sanctions that a correctional officer is subject to if sexual misconduct is proved.
100	Rep. Bowman	The person incarcerated doesn't have the ability to instigate or give consent for sexual contact in that type of environment. If there is sexual contact, it is because someone with authority over that inmate has instigated that behavior.
113	Chair Mannix	Discusses that there are severe consequences no matter who instigated the sexual behavior.
125	Counsel Horton	A youth correctional facility is not part of this bill and it should be.
129	Rep. Prozanski	Are we setting up a lower standard by making these offenses misdemeanors?
137	Chair Mannix	If any sex offenses were committed and can be proven, like rape, the sanctions for those crimes will apply.
148	Counsel Horton	A class A misdemeanor does not rise to the level of Rape I, it is not forcible compulsion, but it falls somewhere between rape and consent, like favors granted or denied in exchange for sex.
154	Rep. Prozanski	We do have certain rules that are a part of the statutes that pertain to certain people not being able to consent to engage in certain sexual conduct, and maybe we want to amend those statutes.

161	Chair Mannix	Discusses that legislation being made for someone in custody is much more difficult than for people not incarcerated.
183	Rep. Bowman	This is important legislation, and we don't want to set a double standard for those people who work inside a correctional facility. I have a very hard time accepting the fact that a correctional officer could be coerced into sexual misconduct by an inmate when the officer is in the position of authority.
211	<b>Rep. Kathy Lowe</b>	<b>State Representative, House District 26</b>  Testifies in support of HB 3522 and the ñ1 amendments (EXHIBIT R). The youth correctional authority is included in this legislation under ORS 162.135. There are documented case histories that do cross gender lines.
236	Rep. Bowman	<b>MOTION: Moves to ADOPT HB 3522-1 amendments dated 04/27/99.</b>
		<b>VOTE: 6-0-1</b>  <b>EXCUSED: 1 - Rep. Simmons</b>
	Chair Mannix	<b>Hearing no objection, declares the motion CARRIED.</b>
242	Rep. Bowman	<b>MOTION: Moves HB 3522 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 6-0-1</b>  <b>EXCUSED: 1 - Rep. Simmons</b>
	Chair Mannix	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>REP. LOWE will lead discussion on the floor.</b>
249	Chair Mannix	Closes the work session on HB 3522.
256	Chair Mannix	Adjourns the meeting at 10:25 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson

Administrative Support Office Administrator

**EXHIBIT SUMMARY**

**A - HB 2096, written testimony submitted by Henry Kaplan, dated 4/28/99, 1 pg.**

**B - HB 2096, -1 amendments (LC 962), dated 3/30/99, submitted by Henry Kaplan, 2 pgs.**

**C - HB 3458, -2 amendments (LC 3758), dated 4/16/99, staff, 1 pg.**

**D - HB 3598, -1 amendments (LC 3689), dated 4/27/99, staff, 2 pgs.**

**E - HB 3208, -2 amendments (LC 3291), dated 4/27/99, staff, 1 pg.**

**F - HB 3208, -1 amendments (LC 3291), dated 4/27/99, Rep. Deborah Kafoury, 1 pg.**

**G - HB 3492, memo from Larry Didier to Mark Gardner, DOJ, submitted by Rep. Lynn Lundquist, dated 4/14/99, 2 pgs.**

**H - HB 3492, -3 amendments (LC 2168), dated 4/27/99, Rep. Lynn Lundquist, 1 pg.**

**I - HB 3608, -1 amendments (LC 2964), dated 4/27/99, staff, 1 pg.**

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

**K - HB 3086, -1 amendments (LC 2107), dated 4/21/99, Rep. Rob Patridge, 20 pgs.**

**L - HB 3591, -1 amendments (LC 4125), dated 4/26/99, staff, 1 pg.**

**M - HB 3591, -2 amendments (LC 4125), dated 4/26/99, staff 2 pgs.**

**N - HB 3591, -3 amendments (LC 4125), dated 4/27/99, staff, 1 pg.**

**O - HB 2605, -5 amendments (LC 2214), dated 4/27/99, staff, 3 pgs.**

**P - HB 2605, -6 amendments (LC 2214), dated 4/27/99, staff, 1 pg.**

**Q - HB 2605, -7 amendments (LC 2214), dated 4/27/99, staff, 1 pg.**

**R - HB 3522, -1 amendments (LC 3105), dated 4/27/99, staff, 2 pgs.**