

## HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

April 6, 1999 Hearing Room 357

8:30 a.m. Tapes 120 - 122

**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 3006 Public Hearing

HB 2568 Public Hearing

HB 3302 Public Hearing

HB 3051 Public Hearing

HB 3376 Public Hearing

SB 75A Public Hearing and 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 120, A**

005	Chair Mannix	Calls meeting to order at 8:37 a.m.
<b><u>HB 3006 &amp; HB 3302 COMBINED PUBLIC HEARING</u></b>		
012	Counsel Horton	HB 3006 creates an exception to the crime of exhibiting a person in a trance. HB 3302 repeals the crime of exhibiting a person in a trance.
028	<b>Rep. Judy Uherbelau</b>	<b>State Representative, House District 52</b>  Testifies in support of HB 3006 and HB 3302. There are entertainment circuits that bring hypnotists to universities, and when students at Southern Oregon University wanted to do this, they were told it was against the law. Discusses the history of the law since its first enactment in 1905. People at the State Fair would also like this law repealed.
084	<b>John McCulley</b>	<b>Oregon Fairs Association</b>  Testifies and submits written testimony in support of HB 3006 and HB 3302 ( <b>EXHIBIT A</b> ). Believes hypnotists would be a good draw to the fairs because they attract very large crowds.
107	<b>Ed Dougherty</b>	<b>Concert Services</b>  Testifies in support of HB 3006 and HB 3302. Discusses acts that are needed to keep the fairs competitive to draw crowds. A hypnotist is very reasonable to pay and draws a crowd.
126	Chair Mannix	Do you know anything about the history of why this law was established?
129	Dougherty	No.
146	Rep. Sunseri	I am concerned about someone giving control of their mind and body over to someone else, like a person being told to disrobe in front of an audience when they normally wouldn't perform that behavior in public.
183	Rep. Hansen	I could support the repeal, but I wouldn't mind waiting a week to see if there are case studies of on-going problems caused by amateur hypnotists.
192	Rep. Prozanski	I am in favor of focusing on "for the purpose of entertainment". There have been no examples shown to us where this statute has been abused. Perhaps we should redefine the law so someone who is hypnotized isn't put in an awkward position that is against their nature or personality.
223	Rep. Bowman	I would be comfortable with the repeal of this law because it is so old and has never been used.

227	Chair Mannix	My initial reaction was to repeal the law because it had not been used or enforced. Discusses exhibitions that used to appear at carnivals when people were exhibited for ridicule. I would welcome feedback from the Oregon Psychiatric Association on HB 3006 and HB 3302. Closes the public hearing on HB 3006 & HB 3302.
<b><u>HB 2568 PUBLIC HEARING</u></b>		
264	Counsel Horton	HB 2568 expands the information that must appear on a citation issued for a crime or violation to include a fingerprint and a signature.
310	Rep. Bowman	When would someone receive a citation for a crime?
312	Counsel Horton	A person arrested for shoplifting, but not taken into custody, is issued a citation for that crime.
328	Rep. Prozanski	Under current law, an officer can take a person into protective custody if they need time to identify them. Page 2, lines 12-14, are ambiguous.
352	Rep. Simmons	Is HB 2568 intended to apply to traffic citations?
353	Rep. Prozanski	Yes.
355	<b>Dale Penn</b>	<p><b>Oregon District Attorney's Association</b></p> <p>Testifies as neutral to HB 2568. The intent of HB 2568 is to establish the true identity of the person being issued the citation so warrants are not issued for people who have been falsely identified. When the person falsely accused does come before the court, it is difficult to clear their name and establish the true identity of the person who actually committed the crime. Law enforcement is concerned with hostilities escalating if a person stopped for a violation is asked to wait to have their picture taken or asked to sign something.</p>
<b>TAPE 121, A</b>		
003	Rep. Prozanski	Are all departments using a standard citation form that has a place for the date of birth?
008	Penn	I believe so.
012	Rep. Prozanski	Could giving false information to an officer elevate a violation to a crime?
017	Penn	Yes. Discusses the difficulty of trying to determine when false information has been given to an officer. The Supreme Court says you cannot search for a person's driver's license.

025	Chair Mannix	Is that because it is a B or C misdemeanor?
026	Penn	The Supreme Court determined that a crime is completed once a driver's license is not produced. Therefore, for that crime only, there is not evidence to search for.
029	Chair Mannix	What level of crime is that?
030	Penn	I don't know. If an officer does make an arrest they can look for weapons only, not search through a wallet for identification.
037	Chair Mannix	But when you take them to jail, you could do an inventory search.
038	Penn	We tell law enforcement that before they can arrest for false information, they need to have a reason why they think this person has lied to them.
049	Chair Mannix	Would you have a problem with us putting into statute that the date of birth has to appear on the citation?
051	Penn	No.
058	Chair Mannix	What if we "allowed" rather than "required" that certain things be done based on the officer's judgment at that time?
062	Penn	If you leave discretion with the officer, I would have to tell the officers to do the same procedure with everyone so problems with racial bias wouldn't occur.
076	Chair Mannix	What do you think of the process in HB 2568 that would allow correction of the name of the defendant?
078	Penn	It is good to address the issue of correcting the records, but the language may need changing.
081	Chair Mannix	Do you believe it is a good idea to restrict the release of someone who has been arrested and is suspected of giving false information?
082	Penn	Yes.
090	Rep. Simmons	Do people who cannot produce proper identification also have trouble producing verification of insurance coverage?
092	Penn	Yes.

100	<b>Sgt. Michael Johnston</b>	<b>Deschutes County Sheriffs Department</b>  Testifies in opposition to HB 2568. Asking for a signature on a citation can escalate into violence, plus handing over the citation book can give the person stopped a weapon they didn't have before.
124	Rep. Bowman	Is someone currently required to sign a traffic citation?
126	Johnston	No.
136	<b>Stan Robson</b>	<b>Oregon State Sheriffs Association</b>  Testifies in opposition to HB 2568. Discusses his concerns about pushing a person to get their true identification. A person's date of birth would be produced when a driver's license is checked for outstanding warrants, so no one should object to a mandated date of birth being added to the statute.
160	Chair Mannix	Are there parts of HB 2568 that would be more helpful than other parts?
163	Robson	Being able to hold a person who fails to declare a true name would be advantageous.
190	Rep. Simmons	Are there things missing from HB 2568 that would help you with making a positive identification?
200	Robson	Being able to look in a wallet or a glove compartment to ascertain a person's true identity would be helpful.
216	Rep. Bowman	When a person is stopped and you ask for identification, which they don't have, would you like to be able to search that car for some form of identification?
220	Robson	No, I don't want to search the car, but the person should have a wallet that should contain identification or the glove compartment might have a registration to identify the person.
228	Rep. Prozanski	If you see a wallet in a person's back pocket, but the person won't produce identification, do you have the right to take that person into custody to establish identity?
243	Robson	Yes.
250	<b>Beth Vargas Duncan</b>	<b>League of Oregon Cities</b>  Testifies in opposition to HB 2568. The League of Oregon Cities opposes HB 2568 for many of the same reasons expressed by earlier witnesses. Some cities are worried about the potential of unfunded mandates. If the date of birth is not presently on a city's citations, and it becomes mandatory, it may take a while to

		get new citations printed.
288	Rep. Prozanski	We may want to phase-in the date of birth being required on future citations after the cities use up their current supply.
293	Duncan	That would be appreciated. You mentioned a hold on these people who give false information on page 2, Section 3, part 4(b). My concern with this hold would be the cost of incarceration to local jurisdictions.
300	Chair Mannix	Discusses identity theft which is in another bill and how difficult it is to get your name cleared in the judicial system.
317	<b>Mark Landauer</b>	<b>City of Portland</b>  Testifies and submits written testimony in opposition to HB 2568 ( <b>EXHIBIT B</b> ). Discusses the cost impact to the City of Portland for the tools and training that would be required in HB 2568.
344	Chair Mannix	Discusses proceeding with a process for clarification of true name and a delay to the date of birth having to appear on citations.
363	Rep. Prozanski	At the current time, if a person refuses to give a judge their true name, the court moves ahead with the prosecution.
375	Rep. Bowman	I am concerned that there should be a distinction between individuals who are "knowingly" giving false information and someone who might be using a nickname or go by a different name on the streets.
396	Chair Mannix	The main point is that someone has stolen someone else's identity and the person whose identity is stolen needs to be exonerated from any judicial proceedings incurred by the offender. Is it necessary to put in the statutes that the date of birth is needed on the citation form?
415	Robson	It is my understanding that all citations have a place for the date of birth.
426	Chair Mannix	Closes the public hearing on HB 2568.
<b>TAPE 120, B</b>		
<b><u>HB 3051 PUBLIC HEARING</u></b>		
002	Counsel Horton	HB 3051 provides an extension of a hearing if a police officer is ill or on vacation. Testimony given by a police officer at a Department of Motor Vehicle (DMV) hearing is not admissible in a criminal trial. However, if a police officer gives testimony at a criminal trial that contradicts testimony he gave at the DMV

		hearing, that evidence can come into the criminal trial under impeachment evidence.
045	<b>Jim Harper</b>	<b>Oregon Association of Chiefs of Police</b>  Testifies and submits a letter from Steven Winegar in support of HB 3051 <b>(EXHIBIT C)</b> . Discusses the importance of a police officer to have the same rights as a defendant in gaining an extension of a trial for illness or when on leave. Describes situations when a trial might need to be extended because an officer is on administrative leave.
086	Rep. Prozanski	If police officers are on administrative leave, can they conduct business as police officers?
088	Harper	No. Expresses a concern that when an officer is set to testify at a DUII hearing, it becomes an extended discovery process where the officer is "grilled" by the defendant's attorney.
108	<b>Dale Penn</b>	<b>Oregon District Attorney's Association</b>  Testifies in support of HB 3051. Department of Motor Vehicle (DMV) administrative hearings on DUII suspensions were supposed to be very narrow, but gives an example of how the DUII hearings have gotten broader. HB 3051 provides leeway for an officer's schedule or illness. Discusses ways of bringing these hearings back to their original purpose including using affidavits, training with hearing's officers and rewriting the statute. Discusses what evidence the defendant has a right to bring forward in their trial for DUII including impeachment evidence. Section 3 on page 2 of HB 3051 gives the district attorney the right to exclude any testimony that occurred at the DMV administrative hearing that is not applicable to the DUII trial.
199	Chair Mannix	Should we have a provision that says evidence at implied consent hearings shall be limited to evidence that is material and relevant as to the legal requirements of the Implied Consent Law?
202	Penn	Yes, it would be helpful to say only relevant evidence can be used in both the DMV administrative hearing and the trial on DUII.
214	Rep. Prozanski	Discusses horror stories heard from police officers when they were present at implied consent hearings. In your discussions with the DMV, did they relate what directions they are giving their hearing's officers and why they have not been able to monitor how broad these hearings are getting?
224	Penn	The DMV administration is very supportive of trying to make these hearings comply with their original statutory purpose. Some statutory change might be helpful, but the language needs to be precise that only relevant evidence should be included in the administrative hearing.
241	Chair Mannix	Do we require the Department of Transportation (DOT) hearing's officers to be members of the Oregon State Bar?

243	Penn	I am not certain, but I believe most are members of the Bar.
246	<b>Stan Robson</b>	<b>Oregon State Sheriffs Association</b>  Not all hearing's officers are members of the Bar. Many of these hearings are dictated by case law and when unrelated evidence is allowed into complied consent hearings, that unrelated evidence becomes acceptable as case law.
269	Rep. Bowman	What constitutes an "official duty conflict" so a police officer could not participate in a hearing?
277	Robson	Describes the case of an officer travelling to an implied consent hearing and having to stop to give assistance at an accident. Because he was late for the implied consent hearing, and there is no exception for being late, the case was thrown out.
292	Rep. Bowman	On page 1, lines 15 and 16 of HB 3051 "official duty conflicts" is already in the statute, so wouldn't the case you gave be covered for receiving an extension of a hearing?
299	Robson	We had that situation happen and it was not an excuse for an extension.
300	Chair Mannix	Would you make a list of "official duty conflicts" that should appear in statute for which postponement must be granted?
305	Robson	We can attempt to get that done.
307	Rep. Bowman	Could we also ask for the DOT to provide their administrative rule on what is considered to be an "official duty conflict"?
310	Penn	From previous discussions with the DOT, I know that illness and vacation would not comply with the administrative rule.
318	Rep. Prozanski	If an officer is subpoenaed to appear in another court, is that considered to be official duties?
324	Penn	I think officers subpoenaed to other cases are authorized to reschedule.
334	<b>Sgt. Bruce Hoffman</b>	<b>Oregon State Police</b>  Testifies and submits written testimony in support of HB 3051 ( <b>EXHIBIT D</b> ).
344	<b>Jack Powell</b>	<b>City of Portland Police</b>  Testifies and submits written testimony in support of HB 3051 ( <b>EXHIBIT E</b> ).



		Describes a list of "conflicts of duty" which includes an officer on military duty. Discusses some of his personal experiences when appearing before a DMV administrative hearing. Because of my expertise, many of the DUII traffic stops are turned over to me, but because I didn't make the initial traffic stop, I can't relate to a DMV hearing what the initial officer said or did at the time of the stop.
427	Chair Mannix	I stated that the evidence at the implied consent hearing should be limited to issues that are material and relevant to the implied consent issue. We should also have the restriction for the drunk driving prosecution that none of evidence from the implied consent hearing would be admissible except for purposes of perjury or false swearing.
438	Powell	Explains that for various reasons, some criminal prosecutions do not occur until 3 years after the DMV hearing. After that length of time, it is difficult to remember all the facts of the case. Gives some of the benefits of not allowing testimony from the implied consent hearing at the criminal trial.
<b>TAPE 121, B</b>		
018	Rep. Bowman	Does the accused person have their attorney present at the implied consent hearing?
020	Powell	I have seen lawyers present at 95% of the hearings I have attended.
025	Rep. Bowman	Are the defendant's lawyer, law enforcement and a representative from DMV determining if the law was followed?
028	Powell	Explains that the officer who had probable cause to make the DUII stop is not subpoenaed to the administrative hearing, only the officer who performed the breathalyzer test.
036	<b>Sgt. Michael Johnston</b>	<b>Oregon State Sheriffs Association</b>  Testifies in support of HB 3051.
042	<b>Vinita Howard</b>	<b>Governor's Advisory Committee on Driving Under the Influence of Intoxicants (DUII)</b>  Testifies and submits written testimony in support of HB 3051 ( <b>EXHIBIT F</b> ). If the defense can reschedule hearings for vacation or illness why can't police officers? Discusses Section 3 of HB 3051 making testimony given at the implied consent hearing inadmissible in a prosecution. The original intention of this type of legislation was to revoke the driver's license of a person convicted of DUII as quickly as possible with this procedure separate from the criminal prosecution.
080	Chair Mannix	Didn't these cases have a jury trial in district court?
081	Howard	All appeals of suspension on the implied consent went to the circuit court in the

		county where the driver lived.
098	<b>Beth Vargas Duncan</b>	<b>League of Oregon Cities</b>  Testifies in support of HB 3051.
103	<b>Ingrid Swenson</b>	<b>Oregon Criminal Defense Lawyers Association</b>  Testifies in opposition to HB 3051. We are not opposed to the continuation of the hearing, but we are strongly opposed to prohibiting the use of lawfully obtained information during the course of a criminal trial. Discusses that the guidelines for obtaining evidence at the DMV administrative hearing are very clear and defined by statute. Gaining information that is not relevant to the case is not going to be stopped by having HB 3051 make that information inadmissible in a prosecution.
177	Rep. Prozanski	Should we insert language stating only one extension is allowed and how long the delay can be?
185	Chair Mannix	That is a good suggestion. Amendments will need to be prepared for a work session.
192	Rep. Prozanski	Suggests individuals for a work group to specify administrative leave and defining in statute "official duty conflicts". Language could also be added on to indicate what is admissible evidence in these administrative DMV hearings.
202	Chair Mannix	Discusses tendency by hearings officers to "let the entire barn in" so they don't leave anything out of the hearing if they come under review.
225	Chair Mannix	Closes the public hearing on HB 3051.
<b><u>HB 3376 PUBLIC HEARING</u></b>		
228	Counsel Horton	SB 3376 expands criminal trespass in first degree to include certain activities involving railroad tracks, yards, bridges and rights of way.
258	<b>Everett Cutter</b>	<b>Manager, Oregon Railroad Association</b>  Testifies and submits written testimony in support of HB 3376 ( <b>EXHIBIT G</b> ). We believe this legislation will make a stronger case for local law enforcement and judges to enforce laws that govern trespassing on private property belonging to railroads. Gives figures on the number of trespassing fatalities in the last year. The railroad companies have stepped up aggressive trespasser abatement programs and have sought legislation in several states to mitigate the problem. Discusses the importance of education and programs like Operation Lifesaver to stop railroad crossing deaths. Describes the model Trespass Prevention Pilot Project that was introduced in Salem in 1996.

368	<b>Tom Harris</b>	<b>Union Pacific Railroad Police</b>  Testifies in support of HB 3376. Describes the vast amount of railroad property in Oregon with only 8 police to cover this area. Discusses the ages of trespassers on railroad property and the number of citations written for trespassing. Some of the people cited have committed homicides or are wanted by the police.
418	<b>John Cyrus</b>	<b>Oregon Shortline Railroad Association</b>  Testifies and submits written testimony in support of HB 3376 ( <b>EXHIBIT H</b> ). Lacking physical means of deterring trespassing on railroad property, we have focused on education. Unfortunately, the news media tends to glorify the act of trespassing on railroad property as shown in the enclosed articles. Reducing trespass on railroad property will reduce crime, injuries and the tragic loss of life.
<b>TAPE 122, A</b>		
022	<b>Claudia Howells</b>	<b>Oregon Department of Transportation Rail Division</b>  Testifies in support of HB 3376. Discusses the three Eis: enforcement of railroad and crossing regulations, quality engineering, and long-term education on railroad crossing safety. Gives an example of trespassing when the North Salem track team was seen running on the tracks at the direction of their coach. Making trespassing on railroad property more than just a casual violation of the law should help deter trespassing.
052	Rep. Prozanski	How will changing this law from a Class C misdemeanor to a Class A misdemeanor keep people off your property?
063	Harris	Local law enforcement will be more willing to make an arrest for a Class A misdemeanor.
067	Rep. Prozanski	Law enforcement has no authority to enforce your right to prohibit people on your property unless you have entered into an agency agreement with them.
070	Harris	We have entered into agreements with local law enforcement in most major cities in Oregon.
071	Rep. Prozanski	So law enforcement has been given the authority to arrest trespassers as your agent for a Class C misdemeanor?
072	Harris	Yes.
073	Chair Mannix	The real issue here may be the statute that limits the power of officers to arrest for a Class B or C misdemeanor only if the crime was committed in the officer's

		presence or a warrant has been issued. An arrest can be made for a Class A misdemeanor based upon probable cause.
081	Rep. Prozanski	The officer does not have the right to enforce private rights without agreements saying they are designated as agents for the railroad. When trespass occurs in the officer's presence, they could enforce it if they have an agreement.
100	Howells	Because there is no sign saying "no trespassing" on the railroad tracks, the police won't cite individuals trespassing. The public doesn't recognize that being on a railroad track is against the law.
114	Chair Mannix	The railroads are concerned with the enforceability of current law. The DOT would like it in statute that being on railroad tracks is a form of criminal trespass. What about inserting in the criminal trespass in the second-degree statute that trespassing on railroad property is a crime?
133	Cutter	It would be an improvement to have "railroad trespassing is a crime" spelled out in the statute.
136	Chair Mannix	Did you have language changes that needed to be made in HB 3376?
138	Cutter	There was a request from professional surveyors that "county" be stricken on page 1, line 17 so the rights or duties of professional surveyors are not modified. The other change had to do with authorization for the railroad to use property that is not owned by the railroad, like an industrial spur.
156	Chair Mannix	Would it serve your purpose to specify that it is criminal trespass in the second degree to be on railroad property?
170	Harris	Yes.
172	Rep. Prozanski	Discusses the summer rites of passage where kids are running the tracks or jumping off the trestles. Better educating youth as to the dangers surrounding railroad tracks might be the way to go.
193	Rep. Sunseri	I do not think that increasing the penalty in HB 3376 will have any impact on individuals who are riding the rails from one town to another committing crimes.
204	Chair Mannix	What if we said trespassing on railroad property was criminal trespass in the second degree and that there was no posting requirement, but add a civil penalty process for trespass that could be carried out by the Department of Transportation?
225	Howells	We don't have a process for administrative penalties for trespassing because we don't have jurisdiction over the railroad right-of-way between public grade

		crossings. However, adding new areas to our legal jurisdiction requires us to do hearings, which requires money.
231	Rep. Prozanski	Could the railroads enforce trespass through a civil process?
236	Cutter	I would have to consider that.
237	Chair Mannix	Discusses the civil action for trespass.
277	<b>Ingrid Swenson</b>	<b>Oregon Criminal Defense Lawyers Association</b> Testifies in opposition to HB 3376.
281	Chair Mannix	Closes the public hearing on HB 3376.
<b><u>SB 75A PUBLIC HEARING</u></b>		
288	Chair Mannix	SB 75A requires the local citizen review board to review cases of youth offenders in custody of the Oregon Youth Authority who are placed in substitute care.
300	<b>Nancy Miller</b>	<b>Director of the Citizen Review Board, Office of State Court Administrator</b> Testifies and submits written testimony in support of SB 75A ( <b>EXHIBIT I</b> ). We have been reviewing the cases of youth offenders placed in foster care. We tried very hard to develop a review process focusing on community safety, accountability and reformation of these youth, but federal regulations are making it more difficult to do this review.
322	Chair Mannix	Do you have any problems with SB 75A?
322	Miller	No.
323	Chair Mannix	Does the Oregon Youth Authority have any problems with SB 75A?
323	<b>Karen Brazeau</b>	<b>Oregon Youth Authority</b> Testifies in support of SB 75A.
325	Rep. Prozanski	Are there any other interested parties who would have concerns since SB 75A has come out of the Senate with amendments?

329	Miller	Those amendments were proposed by the State Court Administrator's Office. SB 75A passed the Senate without opposition.
337	Chair Mannix	Closes the public hearing on SB 75A.
<b><u>SB 75A WORK SESSION</u></b>		
339	Rep. Prozanski	<b>MOTION: Moves SB 75A to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 6-0-1</b> <b>EXCUSED: 1 - Rep. Hansen</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 SB 75A.
348	Chair Mannix	Adjourns the meeting at 10:50 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,  
Administrative Support Administrator

#### **EXHIBIT SUMMARY**

**A ñ HB 3302, written testimony submitted by John McCulley, Oregon Fairs Association, dated 4/6/99, 1 pg.**

**B ñ HB 2568, written testimony submitted by Mark Landauer, 1 pg.**

**C ñ HB 3051, written testimony submitted by Jim Harper, dated 4/5/99, 1 pg.**

**D -- HB 3051, written testimony submitted by Sgt. Bruce Hoffman, Oregon State Police, 1 pg.**

**E ñ HB 3051, written testimony submitted by Jack Powell, Portland Police Department, dated 4/6/99, 2 pgs.**

**F -- HB 3051, written testimony submitted by Vinita Howard, Governorís Advisory Committee on DUII, dated 4/6/99, 1 pg.**

**G ñ HB 3376, written testimony submitted by Everett Cutter, Oregon Railroad Association, dated 4/6/99, 2 pgs.**

**H ñ HB 3376, written testimony submitted by John Cyrus, Oregon Shortline Railroad Association, dated 4/6/99, 5 pgs.**

**I ñ SB 75A, written testimony submitted by Nancy Miller, Office of State Court Administrator, dated 4/6/99, 2 pgs.**