

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

May13, 1999 Hearing Room 357

8:30 a.m. Tapes 193 - 194

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 2350 Work Session

HB 2535 Public Hearing and Work Session

SB 700 Public Hearing and Work Session

SB 34A Public Hearing and Work Session

SB 35B Public Hearing

SB 78A Public Hearing

SB 341 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.

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TAPE/#	Speaker	Comments
TAPE 193, SIDE A		
004	Chair Mannix	Calls meeting to order at 8:45 a.m.
<u>WORK SESSION - HB 2350</u>		
009	Counsel Horton	HB 2350 establishes additional mandatory period of imprisonment for person convicted of major crime if person has previous conviction for major crime, aggravated murder or murder. Discusses the need to rescind this bill from going to Ways and Means.
014	Rep. Prozanski	MOTION: Moves HB 2350 to the floor with a DO PASS recommendation and the SUBSEQUENT REFERRAL to the committee on Ways and Means BE RESCINDED.
018	Counsel Horton	Discusses the technical reasons why HB 2350 must be rescinded from Ways and Means.
025		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED. REP. BOWMAN will lead discussion on the floor.
<u>COMBINED PUBLIC HEARING ON HB 2535 AND SB 700</u>		
043	Rod Harder	National Rifle Association (NRA) Testifies in opposition to SB 700. Discusses the problems with keeping records on law-abiding citizens. States that the NRA supports background checks at gun shows, but they oppose the act of keeping records. Explains that the NRA supports keeping guns out of the hands of criminals. Feels that nothing in SB 700 would have prevented the tragedies of the recent school shootings.

097	Rep. Gianella	We heard testimony yesterday about gun confiscation in Australia. Do you have any information on that?
099	Harder	Discusses the problems in Australia with taking away guns from the citizens. Crime rates against people have gone up 31% in Australia since this has happened. The number of firearms used in crimes has gone up.
130	Rep. Bowman	I disagree with your characterization of people who are looking for gun safety legislation as being anti-gun advocates. I think that is an inappropriate label to put on people who are looking for a way to keep their families safe. The issue of the records is a separate issue. Did you say that you support background checks at gun shows?
142	Harder	NRA's policy is to support background checks at gun shows as long as there is no record keeping.
145	Rep. Bowman	Most of the general public is getting tired of the NRA's rhetoric. The public wants to assure that only law-abiding citizens have guns. What would you suggest that the public do to ensure that guns are only in the hands of people who are responsible?
152	Harder	I think background checks are fine, but don't keep records on honest citizens. For something like violent crime, there is not necessarily an easy solution.
160	Rep. Hansen	What do you think of the idea of making it a class C felony if records are not checked when transferring firearms?
169	Harder	We are talking about transfers between fathers and sons and friends and neighbors. That is an intrusion and I would not support something like that.
184	Rep. Hansen	I'm sure we could clarify that in terms of inter-family transfers and inheritance transfers, but stranger to stranger transfers might need some legislation.
188	Harder	The provisions of HB 2535 actually do that. I would like to see a class C felony for inappropriate use of the records that are being retained.
196	Rep. Sunseri	I don't support the idea of not keeping records because I want records on felons kept. We need to have that information. I don't want records kept on people who have not broken any laws.
205	Harder	Testifies in behalf of HB 2535. I don't feel that this bill has many advantages towards gun owners. Discusses those who should and should not go through a background check. I cannot say whether I support this bill or not because I have not seen the final version yet.
220	Chair Mannix	There are some additional revised versions of HB 2535 that have been ordered on a priority basis from Legislative Counsel and they should be ready by noon.

229	Chris Clemens	Salem Resident Testifies as being neutral to HB 2535. Discusses the aspect which deals with child access prevention.
236	Sharon Clemens	Salem Resident Shares a personal experience about her nephew who was killed accidentally by his best friend due to a firearm that was not properly stored in the house. Discusses the problems with leaving a loaded firearm in one's house.
268	Chair Mannix	Explains the provisions to HB 2535. One of the provisions says that if any person leaves their firearm with a trigger lock in place or in a locked container, then that person is exempt from liability should anyone gain access to that firearm. Another provision says that if a child under the age of 15 is allowed access to a loaded firearm, which is not set with a trigger lock and is not in a lock container and there is no supervision and that child uses the firearm and injures or kills someone within the next 24 hours, that the owner of the firearm is held liable for a violation.
306	C. Clemens	I don't understand why there is a 24 - hour limit on this version. If a child gets access to a firearm the morning before and then takes it to school, I don't understand why there would be no penalty. It doesn't make sense that there are only penalties if someone is killed or injured. It seems to me that it would more appropriate to have language saying it is unlawful to store a firearm if someone is killed, injured or that child commits any crime with that weapon. You should hold the parents responsible if that child takes the weapon to school.
392	Rep. Bowman	How old was your nephew?
394	S. Clemens	He was 14 years old.
395	Rep. Bowman	HB 2535 would not protect those that are over 15. Discusses the definition of violation. I feel that issuing a violation is a weak way to deal with this kind of problem.
420	Rep. Prozanski	Discusses Rep. Walkers' work on suicide prevention.
441	Norman Cobb	Keizer Resident Testifies and submits written testimony against SB 700 (EXHIBIT A). Discusses his feelings about SB 700 being a political, rather than a law enforcement issue.
TAPE 194, SIDE A		
034	Rep. Bowman	Did you hear testimony yesterday that law enforcement are at every gun show in the State of Oregon and that they arrest people that purchase guns who are not eligible to be law abiding gun owners?

037	Cobb	No.
040	Rep. Bowman	How do you think gang members get guns?
042	Cobb	I can only offer an opinion. Many of them obtain guns from their peers, which are originally generated through thefts.
054	Rep. Bowman	What in your opinion should lawmakers be doing to make sure that children do not have access to firearms?
056	Cobb	I am here to testify on SB 700 with respect to background checks at gun shows. Feels that the relationship that a child has with a gun should come from good upbringing in the home.
079	Rep. Prozanski	Have you heard if any line officers have any objections to SB 700?
082	Cobb	No.
083	Rep. Simmons	Several of my colleagues have received calls from field officers saying that SB 700 is an unneeded bill.
088	Cobb	Why are these field officers not present?
090	Rep. Simmons	I don't know.
093	Chair Mannix	Perhaps they have full confidence in our capabilities to discern whatever the right thing is to do.
094	Cobb	I'm sure they must.
105	Chair Mannix	Discusses the possibility of having a work session on SB 700 and HB 2535 later on during the day.
<u>PUBLIC HEARING n SB 34A</u>		
136	Dale Penn	Marion County District Attorney, District Attorneys Association Testifies in favor of SB 34A. Discusses the changes that SB 34A makes to a rule of law concerning the release of a victim's address or phone number to a defendant in a criminal case. Right now the process is that any victim or witness may request that the court order that this information not be released to a defendant. Most district attorney's offices have forms that need to be signed to pass this motion and I have never heard of one of these requests being denied. States why he feels that the law should be changed.

177	Rep. Prozanski	I thought we took care of this last session?
180	Penn	I don't recall that.
187	James Rice	Oregon Criminal Defense Lawyers Association (OCDLA) Testifies against SB 34 A. I see the system working fine the way it is. In a case where the court orders a victim's address or phone number, it will involve more paper work and more court time and more attorney time.
211	Chair Mannix	Is it the defense or the prosecution side that has to file all the paperwork?
213	Rice	It takes a number of people for these things to happen in the judicial system. Under the current system the DA has a form that says to not release that information.
220	Chair Mannix	It seems that under the current system there may be a hundred units of workload for the DA and under the revised system there may be one unit of workload for the defense attorney.
224	Rice	That is probably true, but that one unit would require stacks of paperwork.
229	Chair Mannix	Couldn't the DA simply agree to the authorization from the court?
231	Rice	Yes.
236	Penn	I want to make it clear that I have never heard when it has been necessary for the defense to get an order to release the victim's phone number to the defendant. We have thousands of requests going through the system now when it is unnecessary. This is not a process where the DA is requesting to refuse to give the address to anyone. There is a procedure for protective order where the information is given to the attorney, but it is said to be prohibitive when giving it to the defendant. There is a separate statute where a victim may come forward and make a request to have this information concealed. The amendment we have in this bill addresses this statute.
329	Rep. Prozanski	My reading of ORS 139.170 is what we use now in making that request from the court. SB 34A does not make any reference to that section.
<u>WORK SESSION n SB 34 A</u>		
346	Rep. Bowman	MOTION: Moves SB 34A to the floor with a DO PASS recommendation.
		VOTE: 7-0

	Chair Mannix	<p>Hearing no objection, declares the motion CARRIED.</p> <p>REP. PROZANSKI will lead discussion on the floor.</p>
<u>PUBLIC HEARING n SB 35 B</u>		
351	Greg McMurdo	<p>Oregon Department of Education</p> <p>Testifies in behalf of SB 35B. Requests an emergency clause to the bill so that it can pass through faster. Discusses the concerns of Teacher Standards and Practices Commission (TSPC).</p>
402	Chair Mannix	This bill was requested by the Department of Education. It was filed by the Senate Judiciary Committee. Does TSPC support your stand on the bill?
412	McMurdo	Their concerns are different than ours. TSPC would like you to recede from your amendments. They believe that you have made it more lenient for the employment of certain teachers whom they would like to see barred from teaching permanently.
TAPE 193, SIDE B		
001	Charlie Sharp	<p>Superintendent of Principals at Elkton Schools Commissioner, TSPC</p> <p>Testifies and submits written testimony against SB 35B (EXHIBIT B).</p>
012	Chair Mannix	Discusses the process of how agendas are put out and the time frame given to do so. Explains who it is that usually comes to public hearings.
020	Sharps	Discusses Exhibit B and explains that it contains a list of people who have had their teaching licenses permanently revoked.
024	Chair Mannix	Asks about the TSPC's policy perspective on who should have their licenses revoked. Do you think that that people with these kind of convictions should be eligible to be back into the circle of people who can work with kids at school?
030	Sharps	No.

032	Chair Mannix	Discusses the idea of the representatives from TSPC work with Legislative Counsel on an amendment to SB 35B that would satisfy all of your concerns.
040	Rep. Bowman	Is sex abuse 3 a misdemeanor or is that a felony crime?
041	Counsel Horton	It is a class A misdemeanor.
047	Rep. Hansen	You look at the list of the crimes that those people have committed and I have no doubt that the TSPC would not reinstate them after five years. I'd also be very doubtful that these people would ever reapply for reinstatement.
059	Chair Mannix	I think their problem is a Ways and Means kind of problem. You'd be surprised how much one contested case can cost.
066	Sharps	We have a backlog now that we are struggling through with the normal discipline cases that we deal with. Discusses some specific cases where a person did actually try to contest a case.
076	Rep. Bowman	Suggests some minor changes to the language that said "with the exception of anyone convicted of sex crime". I don't think that any of us would want any of these people near a classroom.
083	McMurdo	I think there are some crimes other than sex offenses that rise to a serious nature such as endangering the welfare of a minor. I don't think it would be smart to limit those crimes to just sex offenses.
087	Rep. Bowman	I think we might disagree with that. Someone who has been previously convicted of drugs, but has rehabilitated, can in fact be a good citizen and a good example for young people.
091	Chair Mannix	Closes public hearing on SB 35B.
<u>PUBLIC HEARING - SB 78 A</u>		
095	Counsel Horton	SB 78A authorizes juvenile court to recall case if juvenile fails to appear as summoned in criminal or municipal court.
111	Nancy Miller	State Court Administrator's Office Testifies and submits written testimony (EXHIBIT C) in support of SB 78A. This bill was proposed by the Judicial Department. This closes up a loophole in the system that does not allow to detain juveniles who fail to appear or violate their probation.
123	Rep. Bowman	Are these young people in custody?

124	Miller	Most often they are not.
131	Kathy Osborne	Juvenile Rights Project Testifies in support of SB 78 because it closes a loophole that has been a problem. They've actually added some offenses that could be mandatorily waived to municipal court. With those additions this could become more of a problem in that there is no way to create sanction for a child who does not appear or who fails to do what the judge has ordered the youth to do.
145	Steve Carmichael	Oregon Juvenile Department Directors, Lane County Testifies and submits written testimony in support of SB 78A (EXHIBIT D). Introduces the 3 amendments (EXHIBIT E). After the Springfield shooting, we found that police officers had the choice, if there was an immediate danger, to bring the child to detention.
165	Chair Mannix	Isn't there a bill that is in the process that relates to the Kip Kinkel type of situation?
155	Rep. Sunseri	That is SB 344.
169	Carmichael	That bill only applies to guns in schools whereas SB 78A is a suggestion that any juvenile who has violated the law and is taken into custody, the officer does not have to make the decision of whether that child should go to assessment right away.
175	Chair Mannix	What is the relating clause on SB 344?
175	Rep. Sunseri	It relates to firearms in the schools.
180	Carmichael	The law enforcement officers have to make the decision on the street whether to take a child to detention or release them. This amendment simply moves the assessment process from a law officer on the street to allow them to take the child someplace that is not detention, but is a place where that assessment can occur.
190	Rep. Sunseri	Who is paying for the assessment?
191	Carmichael	This is a permissive recommendation, so it is not a requirement. If SB 55 passes, which has to do with the funding for juvenile crime prevention plan, we will use some of that money. Other communities may use other funds. It is not requirement, so if a community does not have funds, then they don't have to do it.
200	Rep. Bowman	Are there any assessments in the 36 counties that are currently able to provide this service?

203	Carmichael	The only one I know of is Clackamas County. We are building a shelter that will be an assessment center.
208	Rep. Bowman	The language that appears on pg. 1, lines 14-15 seems to require whoever comes into contact with that youth to have some type of mental health assessment type skill. Are we setting people up for civil liability because they don't have that kind of training?
220	Carmichael	I suppose that might be something that any assessment center has to evaluate.
230	Rep. Bowman	Does the person that initially comes into contact with that youth need to be trained? And if they are not, will they be liable for dealing with the child?
236	Carmichael	I think a law enforcement officer would be responsible for making that decision.
240	Chair Mannix	Have you talked to Nancy Miller or Kathie Osborn about these amendments before?
242	Carmichael	The ñA3 amendments came through Rep. Morrisette's office yesterday so I have not had a chance to talk to them about the amendments yet.
246	Chair Mannix	There are going to be a lot of issues raised by this amendment. I detect a real resistance to this amendment.
264	Rep. Hansen	This is a very important issue. I think we need more time to look over the changes.
278	Rep. Sunseri	I presently would oppose this bill as it is written.
288	Counsel Horton	One of the statutes dealt with in the proposed amendments has already been dealt with in HB 2599.
293	Chair Mannix	Closes public hearing on SB 78A.
<u>PUBLIC HEARING - SB 341</u>		
306	Karen Brazeau	Oregon Youth Authority (OYA) Testifies and submits written testimony in support of SB 341 (EXHIBIT F).
313	Rep. Bowman	Does the Oregon Youth Authority contract on their own for psychological evaluations or do you do those in conjunction with the Department of Corrections?

318	Brazeau	Sometimes both. It depends on where the juvenile comes from.
<u>WORK SESSION - SB 341</u>		
335	Rep. Sunseri	MOTION: Moves SB 341 to the floor with a DO PASS recommendation.
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED. REP. BOWMAN will lead discussion on the floor.
337	Chair Mannix	Recesses meeting at 10:15 a.m.
340	Chair Mannix	Reconvenes meeting at 12:45 p.m.
<u>WORK SESSION n HB 2535 and SB 700</u>		
342	Chair Mannix	<p>Discusses the n5 amendments to HB 2535 (EXHIBIT G). It is my understanding that the n5 amendments, as they are presented, are supported by the Oregon State Sheriff's Association, by the Chiefs of Police and by the Oregon State Police. The Oregon Gun Owners support the n5 amendments. The National Rifle Association does not object to the n5 amendments although a point has been raised about</p> <p>some lack of language concerning administrative rules.</p>
391	Kevin Campbell	Oregon Association of Chiefs of Police Testifies in support of the n5 amendments to HB 2535.
396	Chair Mannix	You can mention technical amendments today and they will be considered, but they will have to be voted on in the Ways and Means committee.
406	Campbell	Continues discussion of the technical changes made to the n5 amendments.
TAPE 194, SIDE B		
030	Campbell	Refers to pg. 29, lines 19-20, which refers to civil penalties.

062	Bob Smit	Oregon State Police Testifies in support of HB 2535.
069	Russ Spencer	Oregon State Sheriffs Association Testifies in support of HB 2535. We fully endorse the amendments to HB 2535, but we do object to closing the concealed handgun license records. We believe they should remain in the open public records law.
078	Chair Mannix	The bill still allows a determination of public interest overriding certain cases so the records can be disclosed.
088	Sen. Burdick	State Senator, Senate District 6 Testifies in support of SB 700. Explains and gives her thanks to those that have helped this bill move forward.
118	Rep. Randy Leonard	State Representative, House District 21 Testifies in support of SB 700. Apologizes for certain statements that he made about the bill while on the floor. Compliments his colleagues on their work on this bill.
140	Chris Dearth	Legislative Director for Governor Kitzhaber Testifies in support of SB 700. Thanks the committee and chair for their cooperation in hearing this bill.
146	Steve Marks	Governor Senior Policy Advisor Testifies in support of HB 2535. Encourages the committee to send HB 2535 to Ways and Means.
162	Ron Harder	National Rifle Association (NRA) Testifies against HB 2535 and SB 700. We do not support any increases in the penalties. We do support technical amendments.
168	Chair Mannix	There will be a provision for administrative rules as to the current policy.
176	Harder	We will let you know whether we are able to support what that provision takes care of.
180	John Helen	Oregon Gun Owners We concur with the NRA that the administrative rules procedure definitely needs to be in there. We do not support background checks in concept, if the will is there to do something, we feel this is the best approach.

190	Rep. Prozanski	MOTION: Moves to ADOPT HB 2535-5 amendments dated 05/13/99.
		VOTE: 7-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Mannix	The motion CARRIES.
193	Rep. Prozanski	Based on what we have heard from all of the different parties, I think it is appropriate to move this bill to Ways and Means.
204	Chair Mannix	Discusses the need for a conceptual amendment. There needs to be a provision for administrative rules to be established by the Oregon State Police as to their standards for maintaining the records on background checks.
207	Rep. Prozanski	MOTION: Moves to CONCEPTUALLY AMEND HB 2535-5 further by stating that there needs to be a provision for administrative rules to be established by the Oregon State Police as to their standards for maintaining the records on background checks.
220		VOTE: 7-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Mannix	The motion CARRIES.
231	Rep. Gianella	I will be voting for this just for purposes of sending it to Ways and Means and knowing that there will be an amendment in regards to the administrative rule.
250	Rep. Prozanski	MOTION: Moves HB 2535 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means.
252	Rep. Bowman	We had various technical amendments suggested. Is it the intent of this motion that we have adopted all of the technical amendments that have been suggested thus far?
257	Chair Mannix	The technical amendments have been presented to us. The are mostly corrections to the bill. One is an adjustment and that will need to be discussed in Ways and Means. Amendments can be presented in Ways and Means.

265	Rep. Bowman	Are we sending this bill to Ways and Means because of its fiscal impact or is it a way to bury the bill?
270	Chair Mannix	I can assure you that the schedule we are on right now does not consist in burying this bill.
282		VOTE: 7-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Mannix	The motion CARRIES.
<u>WORK SESSION ñ SB 700</u>		
297	Chair Mannix	Discusses the idea of Sen. Burdick sponsoring a campaign that would fund a program to publicize the firearms laws which would require background checks to be carried out. Discusses ñA16 amendments (EXHIBIT H).
311	Sen. Burdick	I think that is a positive addition to HB 2535. Discusses her reluctance to lose SB 700 in its original form.
326	Rep. Simmons	MOTION: Moves to ADOPT SB 700-A16 amendments dated 05/12/99.
326	Rep. Simmons	I do think that education is a key. People will realize that currently, we do have some pretty tough firearms laws.
333	Rep. Prozanski	This amendment is new to me. I didn't think that we would even be moving SB 700 since we had been working on HB 2535. We need to have a postponement on this vote.
340	Rep. Sunseri	I object.
343	Chair Mannix	Our plan today is to get this to Ways and Means. More discussion and thought can be given to the bill in Ways and Means.
353	Rep. Gianella	Discusses the educational video titled "Eddie Eagle".
358	Rep. Prozanski	Refers to Section 2 in the ñA16 amendments. Asks about the amount of \$60,000 to be used only for carrying out the provisions of section 1.
360	Chair Mannix	It is a beginning figure. I hope that more will be funded.

367		VOTE: 5-2 AYE: 5 - Gianella, Hansen, Simmons, Sunseri, Mannix NAY: 2 - Bowman, Prozanski
	Chair Mannix	The motion CARRIES.
374	Rep. Simmons	MOTION: Moves SB 700 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means.
378	Rep. Bowman	I believe that we have a lot of vehicles in this session to do with education around guns. That is the only thing that has been moving thus far. I'm not comfortable supporting SB 700 as amended at this time.
385	Rep. Hansen	I think some of us feel reluctant to see SB 700 going away. I see it as filling another valuable need. I will support this bill.
392		VOTE: 5-2 AYE: 5 - Gianella, Hansen, Simmons, Sunseri, Mannix NAY: 2 - Bowman, Prozanski
	Chair Mannix	The motion CARRIES.
400	Chair Mannix	Adjourns meeting at 1:20 p.m.

Submitted By, Reviewed By,

Rachel Short, Sarah Watson,

Administrative Support Administrator

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EXHIBIT SUMMARY

A ñ Testimony against SB 700, Norman Cobb, 2 pgs.

B ñ Memo to Chair Mannix from David Myton, Charlie Sharp, 2 pgs.

C ñ Testimony of Terry Ann Leggett, Nancy Miller, 2 pgs.

D ñ Testimony from Steve Carmichael, Steve Carmichael, 1 pg.

E - -A3 Proposed Amendments to SB 78, Counsel, 3 pgs.

F ñ Memo to Chair Mannix from Rick Hill, Karen Brazeau, 2 pgs.

G - -5 Proposed Amendments to HB 2535, Chair Mannix, 29 pgs.

H - -A16 Proposed Amendments to SB 700 A, Counsel, 1 pg.