

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

May 20, 1999 Hearing Room 357

8:30 a.m. Tapes 203 - 204

MEMBERS PRESENT: Rep. Mannix, Chair

Rep. Prozanski, Vice-Chair

Rep. Bowman

Rep. Gianella

Rep. Hansen

Rep. Sunseri

MEMBER EXCUSED: Rep. Simmons

STAFF PRESENT: John Horton, Counsel

Rachel Short, Administrative Support

MEASURE/ISSUES HEARD:

SB 320A Public Hearing and Work Session

SB 844 Public Hearing

SB 345 Public Hearing

SB 443 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 203, SIDE, A		
005	Chair Mannix	Opens hearing at 8:38 a.m. Discusses the status of the bills.
<u>PUBLIC HEARING - SB 320A</u>		

019	Jeff Brown	Deputy Legal Counsel, Governor Testifies and submits written testimony in favor of SB 320A (EXHIBIT A). Discusses the importance of the bill and gives background information. This bill would amend a section of Oregon's version of the Uniform Criminal Extradition Act. Discusses how a court might extend custody of a fugitive.
041	Fran Lushenko	Extradition Officer, State of Oregon Testifies in favor of SB 320A.
043	Chair Mannix	Asks about the amendments made in the Senate.
044	Brown	The bill originally called for a 90 ñ day period, which was thought to be a bit too long by the defense attorneys. We amended the bill to 45 days.
045	Chair Mannix	Are the defense attorneys comfortable with that?
046	Brown	They will not oppose the bill.
047	Rep. Prozanski	Discusses certain situations where they could not get paperwork signed in the proper amount of time. Is there anything happening on the federal level to have this uniformed as to having something where everyone would be on the same time frames?
056	Brown	I don't know if there is a uniform standard in the federal legislation.
060	Lushenko	One of the main functions of the National Association of Extradition Officials is to unify different timelines. Our resolution is a recommendation for 90 days. We have taken into consideration different aspects of different people's input.
<u>WORK SESSION - SB 320 A</u>		
072	Rep. Prozanski	MOTION: Moves SB 320A to the floor with a DO PASS recommendation.
073		VOTE: 6-0 EXCUSED: 1 - Simmons
	Chair Mannix	Hearing no objection, declares the motion CARRIED.

REP. PROZANSKI will lead discussion on the floor.

PUBLIC HEARING - SB 844

094	Sen. Peter Courtney	State Senator, Senate District 17 Testifies and submits testimony in favor of SB 844 (EXHIBIT B). Discusses a letter that he has received from the principal of North Salem High. Discusses the sex offenders that have come into the halls of schools in the area. Discusses a Georgia statute that creates a school safety zone.
131	Chair Mannix	SB 844A takes the existing crime of disorderly conduct, which is a class B misdemeanor and elevates the crime to a class A, if they are within 1000 ft of a public school.
139	Sen. Courtney	Discusses the problems with the Georgia statute.
145	Chair Mannix	Discusses the definition of standard disorderly conduct.
147	Sen. Courtney	Defines the proximity of the school safety zone. Discusses the problems that local schools have had with drug sales, gang fights and sex offenders within school zones.
162	Rep. Bowman	This bill does not exempt students who are in the school from being charged for this crime. If students are messing around on the school grounds they could also be charged with this particular crime.
168	Sen. Courtney	If they were causing the kind of nuisances that apply with this bill, I would assume that this would apply to them.
171	Rep. Bowman	Is there a standard definition of gang member that would be used statewide in implementing this law?
175	Sen. Courtney	I don't know if there is a standard definition of a gang member. Gang membership is known to school officials.
180	Chair Mannix	There is nothing about gangs in this bill.
181	Sen. Courtney	I'm trying to give you some examples of the type of problems that schools face. Salem beats Portland on drive by shootings by gang members. Discusses the

		definition of sexual offenders. Police know how to distinguish a gang member.
199	Chair Mannix	We do have certain definitions of what it means to engage in concerted criminal behavior.
201	Rep. Bowman	Refers to Section A, line 7, which deals with the definition of disorderly conduct.
210	Sen. Courtney	The definition of disorderly conduct is already in law. Nothing was added to that definition.
228	Rep. Prozanski	Asks about the configuration of North High with the public street. If you trespass someone off the property that doesn't mean out of the building, that means off the school property.
236	Sen. Courtney	Discusses the history of the Salem high schools regarding their construction and the time they were built.
250	Rep. Prozanski	Asks about whether problems occurred because certain offenders didn't leave the school or the school property. Why can't these people be arrested for criminal trespassing?
253	Sen. Courtney	It is a public building and public sidewalk.
257	Chair Mannix	There is a walkway before you get to the public sidewalk. The problems seem to occur more on the public sidewalks.
266	Sen. Courtney	We need to know exactly where the boundaries are, so that administrators can be certain.
282	Rep. Prozanski	Under disorderly conduct, as it is currently written, it says that one can't make unreasonable noise. If you have students at the school that want to protest some type of action and they are exercising their free speech rights, are they going to be subject to these type of charges?
294	Sen. Courtney	If they are making noise or using boom boxes to the point that classes cannot be conducted, then they might be subject to these charges. We need to define what unreasonable noise is compared to freedom of speech.
313	Chair Mannix	Do you want this bill to address students who are registered at that school or not? The bill currently includes students at that school.
328	Sen. Courtney	There could be some marginal students that are outside, and I don't want them excluded if they are harassing other students within the school zone.

341	Chair Mannix	Discusses the idea that unreasonable noise could be perceived as many ways and might be considered disorderly conduct. Discusses how much authority that schools should have. This committee still has a lot of concerns about this bill that need to be worked out.
360	Rep. Hansen	If all we are doing is elevating disorderly conduct up from a class B misdemeanor to a class A misdemeanor, all the situations that we have discussed would have been prosecuted at the B level. If the Salem police are not currently enforcing the law that is on the books, then this might not change anything.
391	Sen. Courtney	Discusses the definition of a school safety zone. Discusses the importance of warning the offenders. Explains the difference between a Class A and Class B misdemeanor.
430	Rep. Hansen	Is the school safety zone law being enforced now?
431	Sen. Courtney	I think they are enforcing it, but we are not enforcing it enough. We need to make the message clearer that we do not want these offenders near our schools.
449	Rep. Prozanski	I have a problem with this school safety zone including residential areas. Protests should be allowed because of free speech rights. There must be a better way to focus on this issue than create a school safety zone.
478	Chair Mannix	There are too many concerns right now with this bill. The underlying issue is lack of prosecution.
TAPE 204, SIDE A		
037	Sen. Courtney	Discusses the large responsibility that high school principals have. Feels that defining a school safety zone is one way to help administrators and teachers.
060	Chair Mannix	Many of these crimes we have discussed today are very serious and will be taken care of through other laws.
066	Rep. Bowman	Asks about post-prison supervision for sex offenders and its relation to keeping the offenders away from schools.
073	Sen. Courtney	I don't know if that is always part of the post prison supervision.
076	Rep. Prozanski	Discusses the definition of disorderly conduct.
091	Sen. Courtney	We need some means to warn them if they start to cause trouble.
097	Chair Mannix	Discusses an exclusionary order. There are constitutional provisions in which

		somebody having committed one offense in one area can be excluded from that area.
105	Rep. Hansen	I do think that we need to do something about this problem, but I don't think this will get you where you need to go.
111	Chair Mannix	We need to be more precise about the crimes that would be committed within the zone.
117	Rep. Hansen	Discusses the issue of trespassing on school property.
120	Chair Mannix	Closes public hearing on SB 844.
<u>PUBLIC HEARING - SB 345</u>		
130	Diane Middle	Director, Department of Public Safety Standards and Training (DPSST) Testifies in favor of SB 345, which replaces list of various occupations with term public safety personnel or public safety officer in statutes dealing with Board on Public Safety Standards and Training and Department of Public Safety Standards and Training.
165	Chair Mannix	Discusses the idea of providing employment and education for those from smaller communities.
168	Middle	Discusses ways in which one could avoid a commute if they are from a small town. Discusses cost effective ways in getting the training delivered. Discusses certain amendments that deal with self-sponsored training.
203	Chair Mannix	What kind of support did you receive from the Senate side?
204	Middle	The Senate support is very good. We just made a few technical adjustments per the Senate's request.
207	Rep. Bowman	Why is DPSST charging for the use of their employees when their employees are asked to be an expert witness?
215	Middle	In civil litigations, private counsel would subpoena our staff to be expert witnesses and they would not compensate us. It became a huge burden on the agency because our instructors spent a large portion of their time waiting and testifying in courts.
235	Chair Mannix	Discusses the burden of long lengthy court trials.

238	Middle	The time in which these trials took place became very inconvenient for our agency.
244	Chair Mannix	Do we have an emergency clause in this bill?
244	Middle	No.
245	Rep. Bowman	What kind of training are we providing law enforcement agencies when it comes to laser pointers?
254	Middle	There is no direct training, but there is some training. Discusses what is included in the training. Discusses the fiscal impact that has been considered into their budget.
287	Rep. Sunseri	Closes public hearing on SB 345.
<u>PUBLIC HEARING - SB 443</u>		
330	Patty Amadeo	Oregon Community Pharmacy Council Testifies in opposition to the amendments of SB 443 (EXHIBIT C), which defines intoxicating substance to include something other than a controlled substance. Legal over the counter drugs may fall into this category, gives examples.
342	Chair Mannix	Is your concern the potential liability or that it is okay to be driving while under the influence of such substances?
346	Amadeo	Discusses the different reactions that some people have towards certain substances.
351	Chair Mannix	Discusses the responsibility one takes when driving under the influence of substances. Discusses the idea of adding immunity from liability.
384	Richard Costas	Johnson and Johnson Corp. My initial reaction would be to add no exemption from liability. Some of your prescription and over the counter drugs will have different individual responses. To one body makeup, it can make them drowsy or over stimulated.
400	Chair Mannix	Should they be driving under either of those circumstances?
402	Costas	If an individual were to ingest a cold pill and they experienced drowsiness and they had a problem, could that be used later on as introducing an intoxicant to the individual?

414	Chair Mannix	Shouldn't someone be in control of their faculties while driving a vehicle?
417	Costas	Yes.
418	Chair Mannix	Isn't that something that a judge or jury could make a call on?
TAPE 203, SIDE B		
006	Costas	If someone is acting irresponsibly they should be responsible for their actions. But if an individual takes no drugs, but they leave work in an extremely tired state, should that individual be operating a motor vehicle?
012	Chair Mannix	What is your position on inhalants?
020	Amadeo	We don't have any concerns with the inhalant language. Discusses situations where a person takes a legal over the counter drug and 9 times out of 10 they have an unusual reaction.
026	Chair Mannix	We will hold this bill while we wait for an inhalants amendment.
030	Rep. Sunseri	When a person drinks alcohol and they get into a car it is reasonable to expect that they will have a reaction if they have drunk too much. Aren't there situations where a person could take a medication where they are not reasonably expecting a certain reaction, but it happens anyway?
039	Chair Mannix	With alcohol the anticipated effect is more obvious, however the effects of certain medications can be unanticipated.
043	Rep. Bowman	Discusses some problems with the language in the -A2 amendments.
052	Chair Mannix	We will wait until we receive the next amendment and its fiscal statement to have a work session.
055	Lieutenant Hayes	Oregon State Police Discusses documented instances where people have used over the counter substances to an extreme degree. I think it comes down to responsibility and proving that the person is intoxicated. It is easy to determine a drowsy driver versus an intoxicated driver.
070	Chair Mannix	Discusses the idea of providing a specific provision for a person who intentionally takes an excessive dosage of a medication knowing that an excessive dosage would likely impair his capability to drive.

080	Rep. Sunseri	Discusses the possibility of endangering the innocent people who take an over the counter drug without being aware of the side effects.
091	Chair Mannix	Suggests adding "A person intentionally consumes a dosage which the person knows is in excess of the recommended dosage knowing that the consumed dosage is likely to impair the person's driving capability".
098	Rep. Bowman	Would that cover the person who drank too much coffee?
101	Hayes	Discusses "Papa Cava", which is an herbal relaxant. It is taken as a substitute for antidepressant drugs. Discusses cases in which Papa Cava has been taken in excess.
109	Chair Mannix	Can those people be pulled over for reckless driving?
109	Hayes	Yes.
113	Chair Mannix	Many inhalants are not prescribed, but are found in the household, such as whip cream and turpentine.
120	Rep. Hansen	How does the current system work? If someone fails a field sobriety test due to being impaired by over the counter drugs, what is the next step?
130	Hayes	If that person is deemed to be impaired at roadside through a series of field sobriety tests then that person is arrested and charged with driving under the influence of intoxicants. A breath test will be taken to determine exactly what it is that they are impaired with.
146	Rep. Hansen	Discusses the possibilities of mixing drugs with alcohol. Could that be grounds for prosecution?
154	Hayes	Yes. If the result of the blood test shows that it is a controlled substance.
167	Chair Mannix	Discusses the 3 and the 4 amendments to SB 848 (EXHIBITS D & E). Adjourns meeting at 9:52 a.m.

Submitted By, Reviewed By,

Rachel Short, Sarah Watson,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ Testimony in Support of Senate Bill 320, Jeff Brown, 1 pg.

B ñ Testimony by Senator Courtneyís Office: SB 844A, Sen. Peter Courtney, 2 pgs.

C ñ Proposed ñA2 Amendments to SB 443A, Counsel, 2 pgs.

D ñ Proposed ñ3 Amendments to SB 848, Counsel, 1 pg.

E ñ Proposed ñ4 Amendments to SB 848, Counsel, 1 pg.