

## HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

May 25, 1999 Hearing Room 357

8:30 a.m. Tapes 206 - 207

**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 2238A Work Session

SB 844A Work Session

SB 18A Public Hearing and Work Session

SB 944A Public Hearing

SB 975A Public Hearing

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 206, A		

003	Chair Mannix	Calls meeting to order at 8:32 a.m.
<b><u>HB 2238A WORK SESSION</u></b>		
004	Chair Mannix	HB 2238A permits the Employment Department representative and hearing referee and Employment Appeals Board to address issues in unemployment compensation eligibility cases, notwithstanding how issues are characterized by parties. Introduces the ñA9 amendments to HB 2238A ( <b>EXHIBIT A</b> ).
005	Rep. Simmons	<b>MOTION: Moves to ADOPT HB 2238A-9 amendments dated 05/24/99.</b>
		<b>VOTE: 4-0-3</b>  <b>EXCUSED: 3 - Rep. Bowman, Rep. Hansen, Rep. Prozanski</b>
		<b>Chair Mannix</b>  <b>Hearing no objection, declares the motion CARRIED.</b>
007	Rep. Simmons	<b>MOTION: Moves HB 2238A to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 5-0-2</b>  <b>AYE: 5 - Bowman, Gianella, Simmons, Sunseri, Mannix</b>  <b>EXCUSED: 2 - Hansen, Prozanski</b>
		<b>Chair Mannix</b>  <b>The motion CARRIES.</b>  <b>REP. MANNIX will lead discussion on the floor.</b>
018	Chair Mannix	Closes the work session on HB 2238A.
<b><u>SB 18A PUBLIC HEARING</u></b>		
022	Counsel Horton	SB 18A authorizes Chief Justice of Supreme Court to establish procedures for consolidation of multiple probation violations.

031	Ann Christian	State Court Administrator's Office Testifies in support of SB 18A.
036	Chair Mannix	Was there any objection to SB 18A in the Senate?
036	Christian	No.
037	Chair Mannix	Are you in support of the bill as amended?
038	Christian	Yes.
040	Chair Mannix	Closes the public hearing on SB 18A.
<b><u>SB 18A WORK SESSION</u></b>		
041	Rep. Sunseri	<b>MOTION: Moves SB 18A to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 6-0-2</b> <b>EXCUSED: 2 - Rep. Hansen, Rep. Prozanski</b>
	Chair Mannix	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>REP. SIMMONS will lead discussion on the floor.</b>
047	Chair Mannix	Closes the work session on SB 18A.
<b><u>SB 944A PUBLIC HEARING</u></b>		
052	Counsel Horton	SB 944A modifies the definition of forcible compulsion for purposes of sexual offenses.
064	David Nebel	<b>Oregon Law Center</b>  Gina McClard from the Oregon Coalition Against Domestic and Sexual Violence got stuck in traffic and asked me to sign her up to testify in support of SB 944A.

068	Chair Mannix	Was there any objection to this bill in the Senate?
068	Nebel	The only objection came from the Oregon Criminal Defense Lawyers Association.
070	Chair Mannix	Were there any modifications proposed to deal with those objections?
071	Nebel	There were some amendments dealing with the A-Engrossed version.
082	<b>James Rice</b>	<b>Oregon Criminal Defense Lawyers Association</b>  Testifies in opposition to SB 944A. Discusses the issue of "lack of verbal or physical resistance" on page 2 of the original bill. Suggests deleting "verbal or" from line 5 on page 2 to clarify the bill.
124	Chair Mannix	What is your reaction to that, Mr. Nebel?
125	Nebel	I can't speak for the proponents.
129	Chair Mannix	Recesses the public hearing on SB 944A.
<b><u>SB 844A WORK SESSION</u></b>		
142	<b>Sen. Peter Courtney</b>	<b>State Senator, Senate District 17</b>  Testifies in support of SB 844A that defines a school safety zone.
180	<b>Mike Kolb</b>	<b>Principal, North Salem High School, Salem, Oregon</b>  Testifies and submits written testimony in support of SB 844A ( <b>EXHIBIT B</b> ). Discusses how expelled students return to school waiting for students they are having a conflict with or gangs park around the school looking for revenge with rival gangs. This legislation would make the school a safer environment.
246	<b>Mark Davalos</b>	<b>Principal, Sprague High School, Salem, Oregon</b>  Testifies and submits written testimony in support of SB 844A ( <b>EXHIBIT C</b> ). A school should be a safe haven where students have a chance to learn. Describes incidences of youth and adults on school grounds causing unsafe conditions.
301	Rep. Prozanski	How are we going to address the problem of violence by passing this legislation? How was the safety zone of 1,000 feet chosen? Why can't you "trespass" anyone off school property if they are causing trouble?
322	Sen. Courtney	I chose 1,000 feet to coincide with similar legislation in other states.

331	Kolb	We do use the current trespass law, but when we "trespass" someone, the boundary is the sidewalk. We want to move them farther away from the school so they can't interact with the students.
343	Davalos	Discusses the youths and adults that trespass on school property and pose a threat to other students and parents.
362	Chair Mannix	We have exclusion zones if someone is found guilty of a certain offense. Could you use this option of an exclusion zone?
378	Sen. Courtney	I want to help these school administrators with this problem, so I'm open to using any zone that will make schools safer.
392	Kolb	The city owns a 10 or 12 foot strip of sidewalk along the street, but once you leave that sidewalk you are on school property.
403	Chair Mannix	Can trespassed people still be on the sidewalks out front?
408	Kolb	Yes. We're asking for help because at dismissal times we have a stressed management situation and have no control over who can be adjacent to our property. We need to push the safety zone perimeter farther out to get students in their cars and on buses.
435	Rep. Prozanski	The only thing SB 844A does is enhance a penalty for an existing crime of disorderly conduct from a Class B to Class A misdemeanor.
<b>TAPE 207, A</b>		
008	Chair Mannix	The schools have individuals hanging out that contribute to a hostile environment that they want moved further from the school.
028	Rep. Prozanski	What enforceability is there on the existing laws? Are these people who are trespassing being cited by the Salem Police and taken to court?
036	Davalos	We can "trespass" individuals off school property, but lingering students who are not supposed to be on school property cause a stressful environment.
090	Rep. Bowman	If you call the Salem police because people are creating a disturbance outside the school, do the police come and issue a citation?
093	Kolb	Yes, if the individuals are breaking a law.
099	Rep. Bowman	Have you seen the amendments to SB 844A that create a school safety zone alliance of schools, law enforcement agencies, juvenile justice agencies and

		district attorneys ( <b>EXHIBIT D</b> )?
107	Chair Mannix	Explains that the ñA3 amendments were requested by Rep. Morrisette to be added to SB 844A.
115	Sen. Courtney	These amendments do not accomplish what we are trying to do with this legislation.
124	Rep. Bowman	How will this legislation be implemented and will we end up criminalizing normal, rambunctious, youthful behavior?
136	<b>Kevin Campbell</b>	<b>Oregon Association Chiefs of Police</b>  Testifies in support of SB 844A. The police never want to arrest first, but would try and disperse a potential conflict. A safety zone would help provide more of a buffer so students could concentrate on learning and not fear for their safety when they leave the school.
177	Rep. Prozanski	SB 844A is extremely broad. What if the teacheris go on strike and want to picket out front. Would they be violating this safety zone? SB 844A doesnit move disorderly students; it just enhances the penalty if they are within 1,000 feet of the school.
216	Rep. Sunseri	Would someone who lives within 1,000 feet of a school have the potential of violating the school safety zone? Iím worried about current laws that are not being enforced. Why canít the city council do something about these problems you are having?
242	Davalos	My only agenda is the safety of the students, but there are individuals who need to remain at a reasonable distance from the school so students and teachers donít feel threatened.
261	Kolb	We can "trespass" someone to the edge of our property, but the harassment and intimidation often continues.
288	Counsel Horton	Outlines exclusion zones that are in place in Portland including prostitution-free zones and drug-free zones.
312	Chair Mannix	Suggests having a school safety zone that outlines where a person convicted of trespass cannot appear.
328	Rep. Gianella	How many times have you had to call the Salem Police?

332	Kolb	There have been at least 8-10 times when we have had to call the Salem Police for traffic control and the gang task force.
340	Rep. Gianella	Was the offender given an order to stay away from the school?
343	Kolb	Not to my knowledge. When there has been an arrest, they have been "trespassed" from the school property, but we haven't been able to push them further out.
349	Rep. Bowman	Has the local school board or local city council looked at changes they could make to help you?
354	Kolb	The school district has established rules and expectations of behavior for all users of the facility on school property, but nothing has been done at the city level to expand that.
359	Chair Mannix	The city would have to issue the exclusion order and establish the exclusion zones.
370	Rep. Hansen	I think the school safety exclusionary zone might be the way to go. Discusses a "bubble" of protection around certain areas that might correspond to schools.
405	Chair Mannix	Perhaps the school district could contract with the district attorney's office to provide additional law enforcement for school property and the adjoining areas.
<b>TAPE 206, B</b>		
019	Rep. Prozanski	This is a local issue that should be addressed on the local level. From a legal perspective, administrators will become vulnerable to liability when "trespassing" people within this safety zone. SB 844A is not getting to the root of the problem or enforcing current law.
064	Rep. Simmons	Section 1, subsection (B) on page 1 of SB 844A states that a person has been notified that their conduct is causing problems. Is that notification verbal or in writing?
070	Sen. Courtney	Verbal notification would be considered sufficient.
076	Kolb	We give written notification of trespass, but we are often given an incorrect name.
087	Rep. Sunseri	Is there a legal definition of causing "public inconvenience" or "annoyance"?
097	Sen. Courtney	That language exists in Section 1, subsection (1) on page 1.

104	Chair Mannix	We will endeavor to find a solution, perhaps with the school and city working together.
120	Chair Mannix	Closes the work session on SB 844A.
<b><u>SB 944A RECONVENES PUBLIC HEARING</u></b>		
141	<b>Gina McClard</b>	<b>Oregon Coalition Against Domestic and Sexual Violence</b>  Testifies and submits written testimony in support of SB 944A ( <b>EXHIBITS E &amp; F</b> ).
153	<b>Dale Penn</b>	<b>Oregon District Attorneys Association</b>  Testifies in support of SB 944A stating that Oregon is one of only four states that require that a victim has to physically fight their attacker to prove rape. Discusses line 5 on page 2 of SB 944A that "a lack of verbal or physical resistance does not constitute consent". The state still has to prove that there was not consent to the sexual act, but if a victim has not verbally or physically resisted, that does not mean there was consent. Victims in sexual assaults are attacked and blamed and this law shows the victim that they are not going to be blamed.
194	Rep. Sunseri	What effect will this have on people in terms of false accusations?
195	Penn	In the midst of a sexual assault trial, the victim blaming will be restricted because the victim is not required to verbally or physically resist their attacker to prove lack of consent. The state will still have to prove lack of consent for a conviction.
223	<b>James Rice</b>	<b>Oregon Criminal Defense Lawyers Association (OCDLA)</b>  Testifies in opposition to SB 944A. Discusses what happens in the midst of a sexual assault trial and that the defendant needs to speak out. The aspect of the victim saying "no" has not been adequately addressed so the "lack of verbal resistance" should be deleted from the statute.
244	McClard	The "lack of verbal resistance" was not raised as an issue with the (OCDLA) in earlier discussions. Describes that there is a distinction between the Oregon Code and the Student Code at the University of Oregon. Discusses the incident of a sexual assault where the woman being raped did not cry out because she didn't want her two small children running into the room.
284	Rep. Bowman	Since this "lack of verbal resistance" on line 5 of page 2, seems to be a problem for some people, is this something you are willing to work on or eliminate?
305	McClard	We are willing to work on any aspects of SB 944A.



311	Chair Mannix	The prosecution has to prove beyond a reasonable doubt that the victim did not consent, but the lack of verbal or physical resistance does not constitute consent. A criminal defense attorney will try to prove that lack of resistance implies consent, but there are cases of assault where the woman won't say anything because of threats, intimidation and fear. Is that your position?
344	Penn	Yes. That is why I believe line 5 is the correct statement of the law. The district attorney would still have to convince the jury that this woman did not give consent.
355	Chair Mannix	In closing arguments at a sexual assault trial this legislation could be used to prove rape because saying nothing does not constitute consent.
382	Rep. Sunseri	Discusses that this portion of the bill in question could lend itself to false accusations being filed against a person.
392	Counsel Horton	Isn't page 2, line 5 jury instruction from the judge that lack of resistance does not constitute consent?
416	Penn	Yes.
423	Rep. Prozanski	What language is being used in other states regarding this legislation?
427	McClard	It is aligned with the Illinois law on sexual assault, but I don't know about other states.
<b>TAPE 207, B</b>		
002	Rep. Prozanski	I'd like to know if there is more than one state using this language.
005	Penn	A variety of states have gone beyond describing what "consent" is, while many states use the concept that lack of resistance doesn't prove consent.
013	Chair Mannix	Discusses options for amendments to SB 944A concerning a lack of verbal and/or physical resistance do not constitute consent but may be considered in the facts of the case.
023	Rep. Bowman	Could we have an amendment deleting line 5 on page 2?
024	Chair Mannix	Yes.
036	Chair Mannix	Closes the work session on SB 944A.

043	Rep. Bowman	<b>MOTION: Moves to SUSPEND the rules for the purpose of allowing Rep. Hansen and Rep. Prozanski to vote on HB 2238A.</b>
		<b>VOTE: 3-4</b>  <b>AYE: 3 - Bowman, Hansen, Prozanski</b>  <b>NAY: 4 - Gianella, Simmons, Sunseri, Mannix</b>
Chair Mannix		<b>The motion FAILS.</b>
<b><u>SB 975A PUBLIC HEARING</u></b>		
055	Brian DeLashmutt	<b>Oregon Council of Police Associations (OCPA)</b>  Testifies in support of SB 975A that prohibits a public body from disclosing information about undercover employee of criminal justice agency, unless required by law. We are working on amendments with the Attorney General's office to clarify some of the technical language.
087	Chair Mannix	Closes the public hearing on SB 975A.
111	Chair Mannix	Adjourns the meeting at 10:01 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Office Administrator

#### **EXHIBIT SUMMARY**

**A - HB 2238A, -A9 amendments (LC 639), dated 5/24/99, staff, 1 pg.**

**B - SB 844A, written testimony submitted by Mike Kolb, North Salem High School Principal, dated 4/16/99, 1 pg.**

**C - SB 844A, written testimony submitted by Mark Davalos, Sprague High School Principal, dated 5/25/99, 2 pgs.**

**D - SB 844A, -A3 amendments (LC 1636), dated 5/24/99, staff, 1 pg.**

**E - SB 944A, written testimony submitted by Gina McClard, OCADSV, 2 pgs.**

**F - SB 944A, written testimony of sexual assault survivor submitted by Gina McClard, OCADSV, 4 pgs.**