

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

May 5, 1999 Hearing Room 357

8:00 a.m. Tapes 182-184

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 2351 Work Session HJR 87 Work Session

HB 2535 Work Session HJR 88 Work Session

HB 2772 Work Session HJR 89 Work Session

HB 3044 Work Session HJR 90 Work Session

HB 3343 Work Session HJR 91 Work Session

HB 2396 Work Session HJR 92 Work Session

HJR 93 Work Session

HJR 94 Work Session

TAPE/#	Speaker	Comments
TAPE 182, A		
008	Chair Mannix	Calls the meeting to order at 8:05 a.m.
<u>HJR 87 to HJR 94 WORK SESSION</u>		
028	Kathie Osborn	Juvenile Rights Project Testifies in opposition to HJR 87, and HJR 90 through HJR 94. Discusses areas in this legislation that is not in the best interest of juveniles and may be exploited by juvenile's attorneys.
061	Chair Mannix	Would you want the language of HJR 87 to refer to the "disposition" of juveniles?
062	Osborn	It would be technically correct to take out the term "criminal defendant" and use "alleged youth offender" in the case of juveniles.
083	Rep. Prozanski	States that the definition of "criminal defendant" in Section 3 (a) of the proposed draft changes to HJR 87 includes "alleged youth offenders" (EXHIBIT A) .
088	Osborn	You would not need that definition of "criminal defendant" in 3 (a) if you put "alleged youth offenders" in (1) of HJR 87.
095	Chair Mannix	What if we used generic language with regard to crime, but had a separate section that said that the rights granted to a victim as to an adult criminal defendant shall be the same for any victim as to an alleged youth offender in juvenile court?
101	Osborn	That would work. HJR 90 refers to bail in (1) (b) and juveniles don't have a right to bail in Oregon. Discusses leaving the Juvenile Release Statute the way it is because it allows juvenile departments to manage their detention beds very well. HJR 91 again has "criminal defendant" including youth offenders and juveniles do not need to be included in section (3).
169	Chair Mannix	Discusses that the Oregon Supreme Court might not see restrictions regarding juveniles so they might follow the same rules as for adults.
178	Osborn	There is a possibility of that, but there have been a lot of case studies that juveniles don't understand all adult proceedings like the Miranda warnings. HJR 92 deals with juries and juveniles are not included in that. HJR 93 deals with prosecution and conviction and juveniles are not convicted. Putting in language dealing with juveniles could solve this problem. HJR 94 (1) (a) creates the

		biggest problem for juveniles with the inclusion of imprisonment or commitment of juveniles not being set aside. I know the Oregon Youth Authority and the Juvenile Department Directors have asked for it to be removed.
225	Chair Mannix	Removal of that language is proposed in the next version of HJR 94.
230	David Fidanque	<p>Executive Director, American Civil Liberties Union (ACLU) of Oregon</p> <p>Testifies in opposition to HJR 87 through HJR 94 and submits the Oregon Bill of Rights (EXHIBIT B). Because these proposals could have remarkable consequences for decades and perhaps centuries to come, I would urge going through the process of amending the Oregon Constitution carefully by eliminating unnecessary language and preparing this legislation in very clear language. The ACLU is in support HJR 87. HJR 88 through HJR 94 do not directly relate to the rights of victims. Discusses how the portion of HJR 88 that deals with a trial being waived could be handled by amending Article 1, Section 11 of the Oregon Bill of Rights.</p>
TAPE 183, A		
006	Rep. Prozanski	You would rather have a proposal inserted in Section 11 of the Oregon Bill of Rights that a trial cannot be waived without the consent of the trial judge and the district attorney?
010	Fidanque	Yes. It is a policy choice that the ACLU opposes, but it is a way to change existing law without having to create a whole new amendment.
019	Rep. Prozanski	Would that be an amendment or a revision to the Constitution?
021	Fidanque	It would be an amendment to Article 1, Section 11 of the Oregon Bill of Rights. Inserting the phrase "without delay" in HJR 88 is unnecessary because that language is already in the Bill of Rights.
070	Chair Mannix	The intention of adding "without delay" is to insure that the victim has the right to a speedy trial for the defendant.
084	Fidanque	How is this going to be implemented? Will the victim have a right to object to the postponement of a trial or is the power given to the state through the district attorney to object to the postponement of a trial?
092	Chair Mannix	Discusses the Kip Kinkel case in Springfield, Oregon and that it has been almost a year since the incident and that no trial has taken place.
112	Osborn	Another problem with a speedy trial is the docket with a particular judge not having the time available to schedule a trial.
129	Fidanque	Instead of setting up a separate jury provision for HJR 89, existing language

		through the judicial branch of the Constitution could be modified. The bail provisions of HJR 90 are contained in Article 1, Section 14 of the Oregon Bill of Rights. I think the committee wants to expand the list of non-bailable offenses with HJR 90. The ACLU strongly opposes HJR 91. The Oregon Supreme Court interpreted Article 1, Section 9 of Oregon's Constitution differently from the 4 th Amendment of the U. S. Constitution regarding search and seizure. Discusses how the Oregon Supreme Court's interpretation of Article 9 has been much more consistent than the U. S. Supreme Court's interpretation of the 4 th Amendment regarding search and seizure.
330	Chair Mannix	Discusses the concept of unreasonable searches or seizures that has led to the rationale behind HJR 91.
385	Fidanque	Much of the displeasure with the Oregon Supreme Court's decisions in the search and seizure area resulted from decisions to exclude evidence based on statutory violations rather than constitutional violations. That has changed, but once we give up our liberty, it is very difficult to get it back. Discusses the ACLU's opposition to HJR 92, the non-unanimous jury provision. States that HJR 93 is an attempt to re-write Article 1, Section 12 of the Oregon Bill of Rights and that section could be amended rather than create a new provision.
TAPE 182, B		
064	Chair Mannix	States that you can have a 10-2 jury verdict for acquittal, but all 12 jurors must agree for guilt.
067	Fidanque	But the Oregon Constitution already accomplishes that so your language could just be blended into the present language of the Bill of Rights. I believe the technical problems with HJR 94 regarding juveniles have been voiced so I have nothing further to add.
100	Rep. Prozanski	Asks why changes should be made to Article VII, Section 5 of the Oregon Constitution, rather than the statutes, regarding juries?
118	Chair Mannix	This change would allow long-term predictability with regard to jury composition. It is also a philosophical question as to what the baseline standards for jury selection should be.
129	Rep. Prozanski	Those changes should be done through the republican form of government so that if there is a difference in philosophy, elected officials would be able to carry that out without going to the citizenry with another vote and another change to the Constitution.
140	Fidanque	Discusses problems that occur when jury composition is tied to registered voters.
163	Chair Mannix	Closes the work session on HJR 87 through HJR 94.

HB 3343 WORK SESSION

207	Chair Mannix	Why does the Committee on Education want HB 3343 referred to it?
215	Rep. Sunseri	HB 3343 would allow parents to be notified if their child's name appears on a "hit list" at school.
226	Rep. Sunseri	MOTION: Moves HB 3343 BE REFERRED to the committee on Education WITHOUT RECOMMENDATION as to passage.
		VOTE: 6-0-1 EXCUSED: 1 - Rep. Simmons
Chair Mannix		Hearing no objection, declares the motion CARRIED.
239	Chair Mannix	Closes the work session on HB 3343.

HB 2772 WORK SESSION

242	Counsel Horton	Discusses the ñ1 and ñ2 amendments to HB 2772 that authorizes forfeiture of a motor vehicle used in a drive-by shooting (EXHIBITS C & D).
269	Rep. Sunseri	Under ORS 475A do proceeds from a forfeiture go to the seizing agency or has that been removed?
273	Counsel Horton	It is my understanding that it has been removed.
274	Chair Mannix	This would be a forfeiture under the forfeiture statute, ORS Chapter 475A, which has a formula for the whole process.
281	Rep. Bowman	What is the connection to a drive-by shooting and the crimes listed in (a) through (h) on page 1 of the ñ2 amendments?
292	Chair Mannix	We are trying to deter drive-by shootings from occurring in populated areas.
303	Rep. Prozanski	Would passage of this legislation serve as a preemption for any local forfeiture ordinances regarding drive-by shootings?

314	Chair Mannix	This is the forfeiture statute about drive-by shootings with motor vehicles. We are not intending to preempt other kinds of motor vehicles for forfeiture.
324	Rep. Prozanski	If the state is providing forfeiture for a particular conduct, that will be the law of the state, not individual counties or cities making their own laws regarding forfeiture.
336	Chair Mannix	I agree. We are establishing the forfeiture process for this conduct.
340	Rep. Prozanski	Discusses statewide forfeiture regarding Driving Under the Influence of Intoxicants (DUI).
349	Rep. Simmons	MOTION: Moves to ADOPT HB 2772-2 amendments dated 05/04/99.
351	Rep. Bowman	Why was (i) on page 1 of the ñ1 amendments, "unlawful use of a weapon", removed in the ñ2 amendments to HB 2772?
357	Counsel Horton	The ñ2 amendments on page 1, lines 6 ñ 8 talk about the discharge of a firearm while committing or attempting to commit a crime and that overlaps with the definition of "unlawful use of a weapon".
362	Chair Mannix	We are making this behavior unlawful already so it was redundant.
373	Rep. Bowman	Does Section 1 deal with the driver or a passenger?
378	Chair Mannix	Clarifies that this legislation only allows forfeiture if the owner is in the motor vehicle; he could be a passenger.
392		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
397	Rep. Prozanski	Is there a fiscal impact on HB 2772?
400	Counsel Horton	It does not need to go to Ways and Means.

401	Rep. Prozanski	MOTION: Moves HB 2772 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED. REP. MANNIX will lead discussion on the floor.
417	Chair Mannix	Closes the work session on HB 2772.
<u>HB 2535 WORK SESSION</u>		
422	Senator Avel Gordly	State Senator, Senate District 10 Testifies and submits written testimony in support of HB 2535 that establishes additional mandatory minimum terms of imprisonment for persons convicted of certain crimes if the person used, possessed or discharged a firearm during the commission of a crime (EXHIBITS E ñ G). Asks the committee to consider the language of two bills from this session: SB 996 that establishes the Governorís Violent Injury Task Force and SB 1300 that modifies provisions relating to the sale, possession and discharge of weapons into HB 2535.
TAPE 183, B		
042	Rep. Bowman	Has SB 1300 gone through the legislative process on the Senate side?
044	Sen. Gordly	No.
049	Chair Mannix	Recesses the work session on HB 2535.
<u>HB 3044 WORK SESSION</u>		
057	Brian DeLashmutt	Oregon Council of Police Associations Testifies in support of HB 3044. Introduces the ñ1, ñ2, and ñ3 amendments to HB 3044 that provides the process for an expedited hearing in certain circumstances when public safety personnel request HIV or hepatitis testing of source person (EXHIBITS H ñ J).
060	Chair Mannix	Are the ñ3 amendments the modified version based upon your conversation with others?

062	DeLashmutt	Yes. Lists parties that were working on the technical aspects of this legislation. All parties were in agreement with the ñ3 amendments with two minor technical amendments.
066	Rep. Prozanski	Are the ñ2 amendments still being considered?
067	DeLashmutt	The ñ1 and the ñ2 amendments are not being considered because they have both been incorporated into the ñ3 amendments.
102	Rep. Mannix	MOTION: Moves to SUSPEND the rules for the purpose of adopting a conceptual amendment.
		VOTE: 7-0
		Chair Mannix
		Hearing no objection, declares the motion CARRIED.
108	Rep. Sunseri	MOTION: Moves to ADOPT HB 3044-3 amendments dated 05/05/99 and that the ñ3 amendments be FURTHER AMENDED on page 1, line 7, by changing "locate" to "identify" and after person add, "and the location of the source person, if known".
		VOTE: 7-0
		Chair Mannix
		Hearing no objection, declares the motion CARRIED.
116	DeLashmutt	Subsection (e) on page 2 of the ñ3 amendments, as proposed by State Court Administrator's Office, was inadvertently left out.
120	Rep. Mannix	MOTION: Moves to SUSPEND the rules for the purpose of adopting a conceptual amendment.
		VOTE: 7-0
		Chair Mannix
		Hearing no objection, declares the motion CARRIED.

123	Rep. Sunseri	MOTION: Moves to ADOPT the amendments offered by the State Court Administrator's Office to HB 3044 and to FURTHER AMEND the ñ3 amendments on page 2, line 13, by inserting "(e) The order is enforceable through the contempt powers of the court.".
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
134	Rep. Bowman	Who pays for the test of the source person?
136	DeLashmutt	If the source person is in custody, the jurisdiction who has them in custody would pay for the test. If they are not in custody, they pay for it themselves.
143	Rep. Bowman	HB 3044 says the person requesting the test cannot be charged. Why does someone having to give their body fluids have to pay for it?
148	DeLashmutt	I donít know. The court may have to decide that issue.
163	Rep. Bowman	I feel that if someone is required to give their body fluids, they shouldnít be presented a bill for it.
172	DeLashmutt	Page 2, Subsection 6, lines 31 & 32 of the original bill explains that the employer of the petitioner pays for the test.
179	Rep. Prozanski	To clarify, does the source person identified to give bodily fluids have to pay for this test?
183	Bradd Swank	State Court Administratorís Office No.
195	Rep. Bowman	MOTION: Moves HB 3044 to the floor with a DO PASS AS AMENDED recommendation.
196	Rep. Prozanski	Does HB 3044 need to go to Ways and Means?

198	Chair Mannix	No.
204		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED. REP. MONTGOMERY will lead discussion on the floor.
215	Chair Mannix	Closes the work session on HB 3044.
<u>HB 2396 WORK SESSION</u>		
224	Counsel Horton	HB 2396 expands the list of crimes for which youth 15 years of age or older may be waived to adult court to include any crime in which a youth used or threatened to use a firearm. The ñ1 amendments broaden the waiver authority for any Class C felony (EXHIBIT K).
242	Chair Mannix	This is a "may" waive youth to adult court, not that it is required.
249	Rep. Prozanski	MOTION: Moves to ADOPT HB 2396-1 amendments dated 05/04/99.
251	Rep. Bowman	Doesn't the juvenile court currently have the authority to request a waiver to adult court?
258	Counsel Horton	For certain crimes, not for all crimes.
273	Chair Mannix	There is a limited list of Class C felonies that are waivable to adult court.
280	Rep. Bowman	I am concerned with putting more power into the hands of the district attorney and not leaving it to the judge.
292	Chair Mannix	Here the judge makes the decision to waive to adult court.
295	Rep. Prozanski	The waiver to adult court is presumptive, not mandatory like with Measure 11.
297	Rep. Bowman	In Measure 11 it is mandatory that the juvenile go to adult court, but that decision is usually made before they get to court.

299	Rep. Prozanski	The way that HB 2396 is set means that the district attorney does not have exclusive power, they have to petition the court and the court has to consent to waive to adult court.
320		VOTE: 6-1 AYE: 6 - Gianella, Hansen, Prozanski, Simmons, Sunseri, Mannix NAY: 1 ñ Bowman
	Chair Mannix	The motion CARRIES.
326	Rep. Prozanski	MOTION: Moves HB 2396 to the floor with a DO PASS AS AMENDED recommendation.
	Chair Mannix	VOTE: 6-1 AYE: 6 - Gianella, Hansen, Prozanski, Simmons, Sunseri, Mannix NAY: 1 ñ Bowman
	Chair Mannix	The motion CARRIES. REP. WESTLUND will lead discussion on the floor.
340	Chair Mannix	Closes the work session on HB 2396.
<u>HB 2351 WORK SESSION</u>		
346	Counsel Horton	HB 2351 creates the ballot title, financial statement and explanatory statement for a special election. The ñ1 amendments reflect new revisions (EXHIBIT L).
352	Rep. Prozanski	When would this go to the voters?
353	Chair Mannix	It would be in the general election, November 2000.

256	Rep. Sunseri	MOTION: Moves to ADOPT HB 2351-1 amendments dated 04/28/99.
358	Rep. Prozanski	States that there seems to be no urgency to this legislation so why not let it proceed through the regular process as set up in the statutes?
376	Chair Mannix	This legislation lets the legislative assembly prepare its own ballot title with review by the Supreme Court.
404	Chair Mannix	Recesses the work session on HB 2351.
<u>HB 2535 WORK SESSION</u>		
410	Chair Mannix	Discusses a memo he distributed on HB 2535 that establishes additional mandatory minimum terms of imprisonment for persons convicted of certain crimes if the person used, possessed or discharged a firearm during the commission of a crime.(EXHIBIT M).
TAPE 184, A		
011	Kevin Campbell	Oregon Association Chiefs of Police Discusses the progress of SB 700 on the Senate side of the legislature.
015	Chair Mannix	Discusses the ñ1 amendments to HB 2535 (EXHIBIT N).
021	Campbell	Comments on the 25-gun standard that means wherever there are 25 guns available for sale, a background check would have to be done. SB 700 addresses this same issue of background checks at a gun show or a flea market.
057	Russ Spencer	Oregon State Sheriffs Association Testifies in support of record retention on handguns for five years and one to five years for the sellerís record retention on long guns.
075	Capt. Bob Smit	Oregon State Police Supports record retention for five years on handguns.
086	Chair Mannix	Assuming that the records retention issue was resolved to your satisfaction, which proposal would you prefer, SB 700 or HB 2535?
099	Spencer	I would have to confer with my client before I committed to a position.

102	Campbell	Discusses the reciprocity issue in 7 (b) of Rep. Mannix's memo (EXHIBIT M).
105	Chair Mannix	Let's assume that 7 (b) is eliminated, which bill do you prefer?
109	Capt. Smit	We are committed to finding agreement, but would like to see the new language.
125	Chair Mannix	Closes the work session on HB 2535.
<u>HB 2351 WORK SESSION</u>		
126	Chair Mannix	This legislation does not take out the Supreme Court review of the ballot title.
133	Rep. Prozanski	The Attorney General should have the opportunity to draft this proposal and then have input from proponents and opponents and any other interested parties rather than have it go straight to the Supreme Court for review.
141	David Fidanque	Executive Director, American Civil Liberties Union (ACLU) of Oregon Deleting the first three words in Section 1 of the ñ1 amendments to HB 2351 (EXHIBIT L) "Notwithstanding ORS 250.035" would provide for the Legislature to draft a ballot title in the case of a measure referred by the Legislature.
149	Chair Mannix	Would you be supportive of taking that phrase out?
149	Fidanque	Yes, but there is no procedure for the Legislature to draft explanatory statements which is the reason on page 2 of the ñ1 amendments that all of the explanatory statement provisions of the ORS are set aside for purposes of this explanatory statement. Therefore, there could not be court review of this explanatory statement, which I believe would be a problem for the Governor.
164	Chair Mannix	VOTE: 4-3 AYE: 4 - Gianella, Simmons, Sunseri, Mannix NAY: 3 - Bowman, Hansen, Prozanski
	Chair Mannix	The motion CARRIES.
169	Rep. Simmons	MOTION: Moves HB 2351 to the floor with a DO PASS AS AMENDED recommendation.

		VOTE: 4-3 AYE: 4 - Gianella, Simmons, Sunseri, Mannix NAY: 3 - Bowman, Hansen, Prozanski
	Chair Mannix	The motion CARRIES. REP. MANNIX will lead discussion on the floor.
176	Rep. Prozanski	Gives notice of a possible minority report on HB 2351.
179	Chair Mannix	Closes the work session on HB 2351
179	Chair Mannix	Adjourns the meeting at 10:37 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Office Administrator

EXHIBIT SUMMARY

A - HJR 87 - HJR 94, proposed amendments submitted by staff, 8 pgs.

B - HJR 87 - HJR 94, Article I of the Oregon Constitution submitted by David Fidanque, ACLU, 4 pgs.

C - HB 2772, -1 amendments (LC 2929), dated 4/27/99, staff, 1 pg.

D - HB 2772, -2 amendments (LC 2929), dated 5/4/99, staff, 1 pg.

E - HB 2535, written testimony submitted by Sen. Avel Gordly, dated 3/9/99, 1 pg.

F - HB 2535, SB 996 from the 70th Legislative Assembly submitted by Sen. Avel Gordly, 1 pg.

G - HB 2535, SB 1300 from the 70th Legislative Assembly submitted by Sen. Avel Gordly, 24 pgs.

H - HB 3044, -3 amendments (LC 2728), dated 5/5/99, submitted by Brian DeLashmutt, 2 pgs.

I - HB 3044, -2 amendments (LC 2728), dated 5/5/99, submitted by Brian DeLashmutt, 2 pgs.

J - HB 3044, -1 amendments (LC 2728), dated 4/29/99, submitted by Brian DeLashmutt, 1 pg.

K - HB 2396, -1 amendments (LC 338), dated 5/4/99, staff, 1 pg.

L - HB 2351, -1 amendments (LC 1540-2), dated 4/28/99, staff, 3 pgs.

M - HB 2535, written testimony submitted by Rep. Kevin Mannix, dated 5/4/99, 5 pgs.

N - HB 2535, -1 amendments (LC 2435), dated 4/27/99, staff, 28 pgs.

O - HB 2535, written testimony submitted by Anne Kelly Feeney, Oregonians Against Gun Violence, dated 5/5/99, 1 pg.

P - HB 2535, written testimony submitted by Handgun Control, Inc., dated 6/3/98, 1 pg.