

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

May 6, 1999 Hearing Room 357

8:00 a.m. Tapes 185 - 186

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 2275 Work Session HB 3086 Work Session

HB 2605 Work Session HJR 87 Work Session

HJR 88 Work Session HJR 89 Work Session

HJR 90 Work Session HJR 91 Work Session

HJR 92 Work Session HJR 93 Work Session

HJR 94 Work Session HB 3395 Work Session

HB 3374 Work Session HB 2350 Work Session

HB 2903 Work Session HB 3596 Work Session

TAPE/#	Speaker	Comments
TAPE 185, SIDE A		
015	Chair Mannix	Opens hearing at 8:17 a.m. Gives an update of each bill on the agenda.
<u>WORK SESSION - HB 2275</u>		
064	Counsel Horton	HB 2275 creates crimes of mail theft. Explains that this bill is up for reconsideration because a fiscal statement was received.
075	Chair Mannix	Discusses his concerns with sending more bills to Ways and Means.
092	Rep. Bowman	Discusses her concern with delaying the implementation of certain bills.
097	Rep. Hansen	By removing the emergency clause we are not delaying the implementation.
100	Chair Mannix	The emergency clause is in effect in June and that is a fast impact.
114	Phil Lemman	Criminal Justice Commission I don't think that delaying the bill would help you avoid sending this bill to Ways and Means.
128	Rep. Prozanski	MOTION: Moves HB 2275 to the floor with a DO PASS recommendation and the SUBSEQUENT REFERRAL to the committee on Floor BE RESCINDED and BE REFERRED to the committee on Ways and Means.
		VOTE: 7-0
Chair Mannix		Hearing no objection, declares the motion CARRIED.
<u>WORK SESSION - HB 3086</u>		
130	Counsel Horton	HB 3086 makes third or subsequent conviction for driving while under the influence of intoxicants Class C felony.
144	Rep. Prozanski	This is the bill that would require an upfront guilty plea before the individual is allowed into the diversion.

157	Chair Mannix	Closes work session on HB 3086.
<u>WORK SESSION - HB 2605</u>		
160	Counsel Horton	HB 2605 imposes mandatory life imprisonment for third or subsequent conviction for specified sex offenses. Explains the fiscal impact to HB 2605.
168	Chair Mannix	Discusses the implementation dates of the fiscal impact of HB 2605. Asks about the ñ7 amendments (EXHIBIT A).
175	Counsel Horton	We have not adopted the ñ7 amendments.
176	Chair Mannix	Discusses the idea of sending HB 2605 to Ways and Means.
190	Rep. Sunseri	MOTION: Moves to ADOPT HB 2605-7 amendments dated 04/27/99.
194	Rep. Bowman	Do we have any concept of how many bills that we have done this to already?
203	Chair Mannix	Discusses his philosophy on whether a bill should be sent to Ways and Means or not.
218	Rep. Bowman	Discusses the overall fiscal cost of all the bills that have been sent to Ways and Means from the committee.
226	Ann Christian	Director, Indigent Services Division I'm never certain what legislative fiscal includes in their fiscal statement. It is a difficult bill to do a fiscal on because we don't have a similar type of bill to look at for an example. I want to make it clear that our fiscal indicates \$63,000 or more per biennium. Giving this bill more time may give us more information to work with.
252	Rep. Prozanski	Discusses the stand that the committee needs to take when deciding whether to send a bill to Ways and Means or not.
287	Rep. Simmons	I know there is some concern over fiscal issues, but if we were to adopt the ñ7 amendments we should send this bill to the floor.
296	Chair Mannix	Recesses work session on HB 2605.
<u>WORK SESSION - HJR 87-94</u>		

302	Chair Mannix	Asks about SB 936 and the fact that it limited the jury pool for criminal trials to persons who are not felons and registered voters, but did not do so for civil trials. Discusses the victim's rights amendment. Discusses jury pools and the restrictions put on jury composition.
365	Jim Rice	Oregon Criminal Defense Lawyers Discusses the typical viewpoint towards the government of a person that was convicted of a felon in their earlier years.
405	Chair Mannix	Closes work session on HJR 87-94.
<u>WORK SESSION - HB 2605</u>		
414	Chair Mannix	Discusses the status of HB 2605 and the motion before the committee which is to adopt the 7 amendments.
444		VOTE: 4-3 AYE: 4 - Gianella, Simmons, Sunseri, Mannix NAY: 3 - Bowman, Hansen, Prozanski
	Chair Mannix	The motion CARRIES.
448	Rep. Sunseri	MOTION: Moves HB 2605 to the floor with a DO PASS AS AMENDED recommendation.
448	Chair Mannix	VOTE: 4-3 AYE: 4 - Gianella, Simmons, Sunseri, Mannix NAY: 3 - Bowman, Hansen, Prozanski
	Chair Mannix	The motion CARRIES. REP. SUNSERI will lead discussion on the floor.
464	Rep. Prozanski	I serve notice of a possible minority report.
468	Chair Mannix	Closes work session on HB 2605.

TAPE 186, SIDE A

WORK SESSION # HB 3395

017	Counsel Horton	HB 3395 modifies rules of evidence relating to hearsay. Introduces the #1 and #2 amendments (EXHIBITS B and C).
025	Steve Dingle	Oregon District Attorney's Association (ODAA) Discusses the difference between the #1 and #2 amendments. The issue is whether or not the amendments will actually amend the definition of hearsay as opposed to making it an exception. Our position is that it really doesn't matter how we do that, as long as the policy that is embodied in these amendments are carried forward. The policy would be to allow statements made by victims, within the parameters that have been discussed, to be used as substantive evidence.
044	Chair Mannix	It seems that the #2 amendments are more limited in range.
045	Dingle	Our priority is domestic violence. The amendments need to extend to sexual abuse cases.
049	Chair Mannix	So the more limited version is the #2 and this would limit the legislation to domestic violence situations?
051	Dingle	Yes. The #2 amendments do not change the difference of hearsay, it makes it an exception.
058	Rep. Bowman	MOTION: Moves to ADOPT HB 3395-2 amendments dated 05/05/99.
058	Rep. Sunseri	Asks for clarification on what action the ODAA wants to do about domestic violence.
061	Dingle	The #1 amendments would create the same exception for complaints involving sexual abuse by a child. Those statements could be considered as substantive evidence.
069	Rep. Sunseri	Don't the #2 amendments do that?
070	Dingle	No. The #2 amendments strictly limit it to the domestic violence situation. Discusses the possibility of amending the definition of hearsay.
079		VOTE: 6-0

		AYE: 6 - Bowman, Gianella, Hansen, Prozanski, Sunseri, Mannix EXCUSED: 1 - Simmons
	Chair Mannix	The motion CARRIES.
079	Rep. Bowman	MOTION: Moves HB 3395 to the floor with a DO PASS AS AMENDED recommendation.
082	Rep. Gianella	Is the hearsay evidence only admissible when there is proof that the victim has been hurt or battered?
086	Chair Mannix	Discusses the times when hearsay is admissible as evidence.
088	Dingle	This is not a situation where the person making the statement would be unavailable at trial. You will still have all of the requirements in place for any offense. There is no specific section that requires a description of evidence before this provision would apply, other than the one that currently exists in law.
111	Rep. Prozanski	Explains what would determine a witness.
120	Dingle	This is why we have juries.
123	Rep. Prozanski	Discusses what would be considered substantive evidence.
128	Dingle	Discusses what juries might pay attention to.
131	Counsel Horton	The hearsay evidence by itself would not be enough to convict a person.
136	Dingle	There would have to be some evidence supporting physical injury.
140		VOTE: 6-0 EXCUSED: 1 - Rep. Simmons
	Chair Mannix	Hearing no objection, declares the motion CARRIED. REP. BOWMAN will lead discussion on the floor.

147	Chair Mannix	Closes work session on HB 3395.
<u>WORK SESSION - HB 2903</u>		
162	Counsel Horton	HB 2903 reduces period of time that Department of State Police may retain information obtained in conducting background checks for handgun purchases. Introduces the ñ1 and ñ2 amendments (EXHIBITS D and E), which both would replace the original bill.
176	David Amesbury	Department of Justice The ñ2 amendments are included within the ñ1 amendments. Discusses the general prohibition against carrying a handgun within a vehicle. Explains that the state must prove that an individual did not have a permit in order to convict them of carrying a handgun without a permit.
197	Rep. Prozanski	Would that require the individual who is claiming that they have a permit to prove that?
199	Amesbury	That is correct. It would take the issuance of a handgun permit out of the list of elements of a crime and create an affirmative defense.
208	Chair Mannix	Right now the prosecution has to prove that there was no such permit issued.
209	Amesbury	That is correct. Discusses a Court of Appeals decision regarding a person that carries a handgun without a permit.
221	Chair Mannix	Discusses creating a centralized registry of handgun permits as an option or make sure that if one has a permit they need to show it to the proper authority.
227	Amesbury	There are other possibilities, but those are the two choices that are the most likely.
236	Rep. Prozanski	Whoever would be prosecuting that case is going to have to make a lot of inquiries.
240	Counsel Horton	Explains that what the trial perceive is that the language currently in the statute is an affirmative defense.
249	Chair Mannix	This would fulfill the expectations that are out there rather than creating something new
250	Amesbury	Practically speaking, yes.

252	Rep. Simmons	What is the effect of these amendments on the original bill? Refers to pg. 3, line 4.
256	Chair Mannix	This is a gut and stuff.
259	Rep. Simmons	Explains the practical law that this would represent.
261	Chair Mannix	There is no practical change, but there are some technical changes.
277	Rep. Simmons	The burden of proof is on the permit carrier.
279	Chair Mannix	All other elements of the crime need to be proven along a reasonable doubt by the prosecution.
285	Amesbury	It would become an affirmative defense and the defendant would have the opportunity to come in and present the permit or present other evidence. The state would have to prove affirmatively beyond a reasonable doubt that this person had never been issued a permit in any county in the state in the last four years.
308	Chair Mannix	If a person has their permit on them, an officer cannot arrest them for carrying a firearm.
314	Rep. Simmons	Poses a specific situation where an innocent person might get caught for having a firearm and not having a permit.
329	Amesbury	Under current law one could still get convicted if they have the knowledge. If they don't have the knowledge then they probably won't get convicted. This bill doesn't create criminal liability. It fulfills the expectations of the prosecutors, that if someone claims that they have a permit, they need to show it.
353	Chair Mannix	In order to be convicted of carrying a firearm, the state has to prove that you knew that you had the firearm.
357	Rep. Prozanski	It has always been the law that the person with the handgun must know that they have the handgun in order to be convicted.
369	Counsel Horton	As a practical matter, it would never get to that point in trial.
375	Rep. Hansen	This is like someone being stopped who couldn't produce a driver's license. To

		make that conviction stick, the state would have to prove that in the other 50 states they had not been issued a driver's license.
384	Chair Mannix	Unlike driver's license, you must carry the permit with you all the time.
401	Amesbury	I would like to clarify that the Department of Justice (DOJ) has taken a position on all of the sections of the bill except Section 5, which involves the peace officer arrest of someone not holding a permit on them.
413	Rep. Prozanski	Discusses permits for people having machine guns.
TAPE 185, SIDE B		
008	Rep. Gianella	If you had a handgun and your permit was in another purse, can they check records or do you have to have that with you?
014	Amesbury	The bill as drafted would prevent a peace officer from arresting a person based on a concealed handgun charge if they had the permit on their person immediately
017	Chair Mannix	Refers to page 3 and 4 of the ñ1 amendments. Discusses the validity of concealed weapons permit.
049	Rep. Bowman	Are the ñ1 and ñ2 amendments combined?
051	Counsel Horton	It generally does the same thing, but they aren't identical. I will have to inquire more into whether they are combined or not.
057	Amesbury	Both of the amendments remove what qualifies "conventional" for handguns. If you are carrying an unconventional handgun you still fall within the statute. The ñ1 amendment deletes the reference to machine pistols. Under the existing statute, a machine pistol is not covered by the definition. It seems best to go with the ñ1 amendments.
073	Rep. Simmons	I get mad when I have to get permission to do what I have a constitutional right to do. I am not ready to move this bill today.
079	Rep. Bowman	MOTION: Moves to ADOPT HB 2903-1 amendments dated 05/05/99.

086	Ron Harder	National Rifle Association (NRA) Discusses the ñ1 amendments. It is already illegal to carry a concealed weapon without a permit. The current law says you can carry a concealed weapon if you are going to and from shooting or hunting. I would like to know if the amendments would have any effect on this portion of the current law.
102	Chair Mannix	Refers to page 4 of the ñ1 amendments. The existing law is still left in place and the amendment would not apply to or affect that portion of the law.
110	Harder	We want to make sure that people are not being cited for hunting.
114	Kevin Starrett	Gun Owners of America, American Firearms Federation I do believe that current law says that if you don't have your permit in your possession then you don't have a permit. This bill may be a solution if it creates an affirmative defense.
123	Chair Mannix	It does create that defense.
125	Rep. Prozanski	Discusses pg. 6 of the ñ1 amendments. If you find yourself in a position when you are carrying a gun without your permit, sometimes the officer will let you retrieve your permit and that is when the case ends.
134	Chair Mannix	Refers to Section 5. Your permit is your shield.
142	Starrett	I feel this would be an improvement. As far as the centralized database, I know when you apply for a pistol permit in Oregon your name goes into the system.
149	Chair Mannix	The centralized database is not a sufficient basis to prove a charge because that is a database. They would have to go to the source of the information. What is your comfort level with the ñ1 amendments?
160	Starrett	If it is as you described, then the amendments are fine with me.
164	Harder	I support the ñ1 amendments.
167	Jim Rice	Oregon Criminal Defense Lawyers If a valid permit is presented at a first time court appearance, the case shall be dismissed at that time.
185		VOTE: 5-0 EXCUSED: 2 - Bowman, Simmons

	Chair Mannix	Hearing no objection, declares the motion CARRIED.
	Chair Mannix	Closes work session on HB 2903.
<u>WORK SESSION n̄ HB 3596</u>		
199	Counsel Horton	HB 3596 creates crime of custodial sexual misconduct in first degree. Discusses the n̄3 amendments (EXHIBIT F).
217	Rep. Prozanski	I think this is an area that we may want to have some focus and concern with. Do we have a fiscal statement"
225	Counsel Horton	Not yet. The earlier indication was that there would not be an impact above \$50,000.
230	Phil Lemman	Criminal Justice Commission We have not run the actual numbers on this. There are several hundred arrests every year for public indecency. We have not looked at whether they have a prior conviction either for public indecency or a sexual offense, but given that number, I think you will need to send this to Ways and Means.
236	Rep. Prozanski	MOTION: Moves to ADOPT HB 3596-3 amendments dated 05/05/99.
		VOTE: 5-0 EXCUSED: 2 - Bowman, Simmons
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
240	Rep. Prozanski	MOTION: Moves HB 3596 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means.
245		VOTE: 5-0 EXCUSED: 2 - Bowman, Simmons

	Chair Mannix	Hearing no objection, declares the motion CARRIED.
249	Chair Mannix	Closes work session on HB 3596.
<u>WORK SESSION - HB 3374</u>		
255	Counsel Horton	HB 3374 creates crime of harassment in first degree.
269	Rep. Prozanski	Discusses ñ9 amendments (EXHIBIT G), which holds a person accountable for interfering with a peace officer. If someone was resisting in a pacified manner, they would not be charged of resisting arrest.
300	Rep. Prozanski	MOTION: Moves to ADOPT HB 3374-9 amendments dated 05/05/99.
310		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
313	Counsel Horton	Discusses the ñ10 and the -11 amendments (EXHIBITS H and I).
340	Rep. Bowman	The original language in the current law says that a police officer can basically arrest somebody for anything except traffic infractions and violations.
348	Counsel Horton	That is not correct. The current state of the law says that a police officer can arrest if he or she has a probable cause for a felony regardless of whether or not it is committed in the officer's presence. The same goes for a class A misdemeanor. Discusses when it is appropriate or lawful for an arrest to take place.
363	Chair Mannix	Both ñ10 and ñ11 amendments take out the restriction on misdemeanor arrests.
369	Counsel Horton	The difference between the two amendments can be found on lines 19 and 20 of both sets of amendments. The - 10 amendments would provide that an officer cannot arrest for any infraction or any violation. The ñ11 amendments would leave a provision in the law that says that an officer can arrest for any other offense in the officer's presence except for traffic infractions and violations.
380	Chair Mannix	The irony is that right now the officer cannot arrest for a B or C misdemeanor unless it has been committed in the presence of the police officer, but the officer can arrest for a boating infraction.

384	Counsel Horton	The interpretation of the law is very unclear in this point.
389	Rep. Prozanski	You see more of these situations in hunting violations. Discusses the definition of "violation".
409	Chair Mannix	The ñ11 amendment seems to be the best way to go.
418	Rep. Prozanski	Some of the hunting offenses may be unclassified misdemeanors.
428	Rep. Bowman	MOTION: Moves to ADOPT HB 3374-11 amendments dated 05/05/99.
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
432	Counsel Horton	Discusses the ñ13, -14. And -15 amendments (EXHIBITS J, K, L).
448	Rep. Bowman	Is there a current law of attempted auto theft?
450	Counsel Horton	There is a class C felony of unauthorized use of a motor vehicle or an attempted unauthorized use of a motor vehicle, which is a class A misdemeanor.
TAPE 186, SIDE B		
016	Rep. Bowman	Do we have a lot of people entering a car just so they can sit inside?
017	Counsel Horton	There are cases where a person would enter into a car so they could sleep in it. That is not considered trespassing.
023	Rep. Prozanski	People without means sometimes look for shelter and sometimes use cars as a place to sleep.
028	Rep. Prozanski	MOTION: Moves to ADOPT HB 3374-13 amendments dated 05/05/99.
033	Rep. Bowman	I did raise the issue of getting into an automobile that you think is your own and you just don't know that it's not yours. I don't think this amendment deals with that.

039	Chair Mannix	Maybe the word "knowingly" should be added.
045	Rep. Prozanski	If it is not in the actual charge and you don't prove it, the jail sanction is not available.
049		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
058	Rep. Simmons	Discusses the 8 amendments to HB 3374 (EXHIBIT M).
080	Rep. Mannix	MOTION: Moves to SUSPEND the rules for the purpose of creating a conceptual amendment to HB 3374-8.
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
081	Rep. Prozanski	Discusses the language that should be found in the 8 amendments.
082	Rep. Simmons	MOTION: Moves to AMEND HB 3374-8 on page 1, in line 17, after "license suspended for a period of one year for a first," insert "offense, two years for a second offense, and permanently suspended for any subsequent offense".
081	Rep. Hansen	Was the penalty described in the initiative?
085	Rep. Simmons	I don't know for a fact, but I believe it was. I have not read a copy of the initiative recently.
088	Rep. Prozanski	As noted at the bottom of the statute, it was adopted by the people by petition.
100	Dave Fidanque	American Civil Liberties Union of Oregon (ACLU) I think this would be covered by Measure 10.
101	Chair Mannix	No, I don't think so. This is not a mandatory minimum sentence to imprisonment. It is a license suspension.

106		VOTE: 4-3 AYE: 4 - Gianella, Simmons, Sunseri, Mannix NAY: 3 - Bowman, Hansen, Prozanski
	Chair Mannix	The motion CARRIES .
120	Rep. Bowman	MOTION: Moves to RECONSIDER the adoption of the ñ6 amendments.
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED .
134	Rep. Prozanski	MOTION: Moves to RECONSIDER the adoption of the ñ3 amendments.
		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED .
	Rep.	MOTION: Moves HB 3374 to the floor with a DO PASS AS AMENDED recommendation.
147	Rep. Simmons	VOTE: 4-3 AYE: 4 - Gianella, Simmons, Sunseri, Mannix NAY: 3 - Bowman, Hansen, Prozanski
	Chair	The motion CARRIES . REP. MANNIX will lead discussion on the floor.
153	Rep. Bowman	I serve notice of a possible minority report.

155	Rep. Prozanski	I also serve notice of a possible minority report.
161	Chair Mannix	Closes work session on HB 3374.
<u>WORK SESSION n HB 2350</u>		
165	Counsel Horton	HB 2350 establishes additional mandatory period of imprisonment for person convicted of major crime if person has previous conviction for a major crime of aggravated murder or murder.
171	John Bradley	Multnomah County District Attorney's Office Discusses the n2 amendments (EXHIBIT N). Explains the program STOP, which is a drug treatment program. The STOP program has been one of the most successful drug programs that our county has had. Discusses the funding problem that they've had with the program. The state may not give money back to the program unless there is a guilty finding. Right now when someone stipulates to the facts, but there is no guilty finding.
218	Chair Mannix	Lists the officials that are in support of HB 2350. No one seems to oppose this.
226	Rep. Prozanski	I know this is a great program, but it might need to go to Ways and Means because of the potential impact of district attorneys that will need to be appointed.
230	Bradley	I don't think it will need to go to Ways and Means for that reason. The public defender has a special contract and this won't alter that in any way.
240	Chair Mannix	We are not talking about a situation where people would not have already had a right to counsel.
248	Bradley	Drug cases are much different in Multnomah County. Even though the person is technically given an attorney, when someone is eligible for the STOP program, they are turned over to the public defender's office. They meet with the person who will go through the program with them and then they decide whether they will participate or not. The normal defense costs will not be the same.
266	Rep. Bowman	MOTION: Moves to ADOPT HB 2350-2 amendments dated 05/04/99.
267	Rep. Bowman	I want to say that the STOP program is phenomenal. I have seen it in action and it is very individually oriented.
272	Rep. Hansen	There is an incredible spirit of cooperation within this program. Their biggest setback is funding.

282		VOTE: 7-0
	Chair Mannix	Hearing no objection, declares the motion CARRIED.
286	Chair Mannix	Discusses the ñ3 amendments to HB 2350 (EXHIBIT O), which streamlines the process for people who want to request criminal records.
290	Chair Mannix	Closes work session on HB 2350.
<u>WORK SESSION - HB 3374</u>		
294	Rep. Prozanski	I would like to set HB 3374 until tomorrow. I know the chair is not impacted by Measure 10, but I believe it is because we are actually changing the sentence that has been imposed by the people to the vote from a class A misdemeanor to a class C misdemeanor.
305	Chair Mannix	Adjourns meeting at 10:30 a.m.

Submitted By, Reviewed By,

Rachel Short, Sarah Watson,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ Proposed -7 amendments to HB 2605, Counsel, 1 pg.

B ñ Proposed -1 amendments to HB 3395, Counsel, 1 pg.

C ñ Proposed -2 amendments to HB 3395, Counsel, 1 pg.

D ñ Proposed -1 amendments to HB 2903, Counsel, 6 pgs.

E ñ Proposed -2 amendments to HB 2903, Counsel, 2 pgs.

F ñ Proposed -3 amendments to HB 3596, Counsel, 3 pgs.

G ñ Proposed -9 amendments to HB 3374, Counsel, 1 pg.

H ñ Proposed -10 amendments to HB 3374, Counsel, 4 pgs.

I ñ Proposed -11 amendments to HB 3374, Counsel, 4 pgs.

J ñ Proposed -13 amendments to HB 3374, Counsel, 2 pgs.

K ñ Proposed -14 amendments to HB 3374, Counsel, 6 pgs.

L ñ Proposed -15 amendments to HB 3374, Counsel, 2 pgs.

M ñ Proposed -8 amendments to HB 3374, Counsel, 1 pg.

N ñ Proposed -2 amendments to HB 2350, Counsel, 1 pg.

O ñ Proposed -3 amendments to HB 2350, Counsel, 3 pgs.

**P ñ Legislative Impact Assessment of HB 2275-5, Oregon
Criminal Justice Commission. 1 pg.**