

**HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW**

**June 03, 1999 Hearing Room 357**

**8:00 a.m. Tapes 214 - 215**

**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 2605A Reconsideration and Work Session**

**HB 3374 Work Session**

**SB 345A Work Session**

**SB 975A 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.

| TAPE/#      | Speaker | Comments |
|-------------|---------|----------|
| TAPE 214, A |         |          |

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| 004                                  | Chair Mannix            | Calls meeting to order at 8:30 a.m.   |
| <b><u>SB 975A PUBLIC HEARING</u></b> |                         |   |
| 011                                  | <b>Brian DeLashmutt</b> | <b>Oregon Council Police Association</b><br><br>Testifies in support of SB 975A and submits corrections ( <b>EXHIBIT A</b> ) to the ñA3 amendments to SB 975A that prohibits public body from disclosing information about undercover employee of criminal justice agency, unless required by law ( <b>EXHIBIT B</b> ). |
| 036                                  | Chair Mannix            | The ñA5 amendments did not reflect the proper revisions ( <b>EXHIBIT C</b> ), but does SB 975A do what you want it to do with the correction you are requesting?  |
| 049                                  | DeLashmutt              | Yes.  |
| 056                                  | <b>Rich Peppers</b>     | <b>Oregon Public Employees Union</b><br><br>Testifies in support of SB 975A suggesting that "dates of birth" be inserted on line 31, page 2 of the original bill as an item that should not be released to the public because this item is an individual identifier.  |
| 073                                  | <b>Sarah Castner</b>    | <b>Department of Justice (DOJ)</b><br><br>Testifies as neutral to SB 975A. The DOJ got involved because SB 975A was originally too broad about what information would not be released.  |
| 105                                  | Chair Mannix            | Do you have any objection to Mr. Peppersí amendment inserting "dates of birth"?   |
| 107                                  | DeLashmutt              | No.   |
| 111                                  | Chair Mannix            | Have you checked with other agencies regarding this change?   |
| 113                                  | Peppers                 | I have checked with the Department of Administrative Services and they had no objections.   |
| 1118                                 | Rep. Prozanski          | Are the ñA5 amendments (EXHIBIT C) no longer to be considered?  |
| 121                                  | DeLashmutt              | No. Those amendments were supposed to delete "requested by and only to the extent" on line 22, page 2 of the ñA3 amendments, but they failed to do so.  |
| 140                                  | Chair Mannix            | Discusses the ñA2 amendments to SB 975A ( <b>EXHIBIT D</b> ).   |
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| 144                                | Chair Mannix | Closes the public hearing on SB 975A.  |
| <b><u>SB 975A WORK SESSION</u></b> |              |  |
| 150                                | Rep. Bowman  | <b>MOTION: Moves to ADOPT SB 975A-2 amendments dated 05/27/99.</b>   |
|                                    |              | <b>VOTE: 6-0-1</b><br><b>EXCUSED: 1 - Rep. Simmons</b>   |
|                                    | Chair Mannix | <b>Hearing no objection, declares the motion CARRIED.</b>  |
| 154                                | Rep. Bowman  | <b>MOTION: Moves to SUSPEND the rules for the purpose the adopting a conceptual amendment.</b>   |
|                                    |              | <b>VOTE: 6-0-1</b><br><b>EXCUSED: 1 - Rep. Simmons</b>   |
|                                    | Chair Mannix | <b>Hearing no objection, declares the motion CARRIED.</b>  |
| 168                                | Rep. Bowman  | <b>MOTION: Moves to ADOPT SB 975A ñ3 amendments dated 06/01/99 and that the measure be FURTHER AMENDED on page 1 by inserting "or the employee consents in writing to disclosure" after the first comma on line 14, and on page 2, line 22, by deleting "requested by and only to the extent".</b> |
|                                    |              | <b>VOTE: 6-0-1</b><br><b>EXCUSED: 1 - Rep. Simmons</b>   |
|                                    | Chair Mannix | <b>Hearing no objection, declares the motion CARRIED.</b>  |
| 173                                | Rep. Bowman  | <b>MOTION: Moves SB 975A to the floor with a DO PASS</b>   |

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|  |                     | <b>AS AMENDED recommendation.</b>  |
|  |                     | <b>VOTE: 6-0-1</b><br><b>EXCUSED: 1 - Rep. Simmons</b>   |
|  | <b>Chair Mannix</b> | <b>Hearing no objection, declares the motion CARRIED.</b><br><br><b>REP. BOWMAN will lead discussion on the floor.</b>   |
| 179  | Chair Mannix        | Closes the work session on SB 975A.  |
| <b><u>HB 2605 RECONSIDERATION AND WORK SESSION</u></b> |                     |  |
| 185  | Counsel Horton      | Discusses the ñA10 amendments to HB 2605A that imposes mandatory life imprisonment for third or subsequent conviction for specified sex offenses <b>(EXHIBIT E)</b> . This is up for reconsideration because the amendments adopted earlier by the committee were amendments to the original bill, not the A-Engrossed bill. |
| 193  | Rep. Prozanski      | The ñA10 amendments look the same as the minority report.  |
| 201  | Counsel Horton      | The difference between the committee report and the minority report is the operative date, and the A-Engrossed bill has the operative date.  |
| 208  | Rep. Prozanski      | I did not realize that the committee had narrowed down the sex offenses to the five particular charges in the minority report.   |
| 213  | Counsel Horton      | That is what the A-Engrossed bill mistakenly did, but the committee intended to narrow the charges down to five and mandate imprisonment upon the second offense rather than the third offense.  |
| 215  | Chair Mannix        | That is correct. Discusses the ñA10 amendments to HB 2605A.  |
| 263  | <b>Rep. Simmons</b> | <b>MOTION: Moves to RECONSIDER the vote by which HB 2605 was previously sent to the floor DO PASS AS AMENDED.</b>  |
|  |                     | <b>VOTE: 7-0</b>   |

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|                    | <b>Chair Mannix</b> | <b>Hearing no objection, declares the motion CARRIED.</b>  |
| 267                | Rep. Prozanski      | Discusses the advantages and disadvantages of maintaining individuals in prison until they die. Presents the concept of a mandatory minimum 30 years in prison with possible release after certain criteria are met as presented in testimony from the Sex Offender Supervision Network <b>(EXHIBIT F)</b> . |
| 314                | Chair Mannix        | Suggests that an offender could be released to a health care or long-term facility if the person is of such advanced age or in such poor health as to not constitute a significant threat to public safety.  |
| 320                | Rep. Prozanski      | There are some individuals in prison who would not be a risk to the public, but might not meet the criteria of being in poor health.   |
| 332                | Chair Mannix        | I stated either advanced age or debilitated medical condition could be a reason for release.   |
| 336                | Rep. Sunseri        | If the person is released to a long-term health care facility, who is going to pay for it?   |
| 337                | Chair Mannix        | The released person.   |
| 338                | Rep. Sunseri        | If they have just spent 30 years in prison, they would probably not have the means to pay for long-term care.  |
| 350                | Rep. Bowman         | Discusses her concern for juveniles who would only be about 45 years old after a mandatory 30-year sentence and would not meet the criteria of old age or poor health for release.   |
| 414                | <b>Jeff Collins</b> | <b>Chairman, Sex Offender Supervision Network (SOSN)</b><br><br>I asked the SOSN for criteria to give the Parole Board flexibility to develop possible release criteria for this segment of our population. Parole would not be mandated.  |
| 430                | Chair Mannix        | Are you asking for a life sentence with a mandatory 30 year minimum and the possibility of parole subject to certain criteria after the 30 years?  |
| 434                | Collins             | Yes.   |
| <b>TAPE 215, A</b> |                     |  |

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| 002          | Scott Taylor   | <b>Deputy Director, Department of Corrections (DOC)</b><br><br>Testifies in support of the possibility of parole for certain individuals after 30 years minimum and when particular criteria are met.                                |
| 008          | Chair Mannix   | Discusses the different options that could be used with HB 2605A.  |
| 022          | Rep. Gianella  | How do we know that nursing home staff will be safe if these previous sex offenders are released into their care?  |
| 026          | Collins        | That is a problem. Many nursing homes will not accept previously convicted sex offenders, so a secure residence has to be secured before any release.  |
| 041          | Rep. Sunseri   | <b>MOTION: Moves to ADOPT HB 2605A-10 amendments dated 06/02/99.</b>   |
|              |                | <b>VOTE: 7-0</b>   |
| Chair Mannix |                | <b>Hearing no objection, declares the motion CARRIED.</b>  |
| 048048       | Rep. Bowman    | <b>MOTION: Moves to SUSPEND the rules for the purpose of considering conceptual amendments.</b>  |
|              |                | <b>VOTE: 5-2</b><br><br><b>AYE: 5 - Bowman, Hansen, Prozanski, Simmons, Mannix</b><br><br><b>NAY: 2 - Gianella, Sunseri</b>  |
| Chair Mannix |                | <b>The motion CARRIES.</b>   |
| 070          | Chair Mannix   | Describes what the proposed conceptual amendment could say in terms of a 30-year minimum life sentence with the possibility of parole if certain conditions are met prior to parole. Asks the SOSN if that is what they had in mind? |
| 095          | Collins        | Yes.   |
| 097          | Rep. Prozanski | I would need to see this conceptual amendment in print from Legislative Counsel  |

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|                                    |                | before I could vote on this.  |
| 105                                | Chair Mannix   | Discusses the possibility of sending HB 2605A to the floor with a minority report.  |
| 112                                | Rep. Simmons   | I would be happy to move the conceptual amendment you proposed.   |
| 123                                | Chair Mannix   | Another alternative would be to send HB 2605A to the floor without amendments and make appropriate modifications next session before the bill's operative date of July 1, 2001. |
| 127                                | Rep. Hansen    | Discusses another criteria for release that the person does not pose any threat to public safety.   |
| 142                                | Rep. Bowman    | Expresses her concerns about the psychological evaluations which are now performed by the Parole Board.   |
| 156                                | Rep. Sunseri   | <b>MOTION: Moves HB 2605A to the floor with a DO PASS AS AMENDED recommendation.</b>  |
| 157                                | Rep. Prozanski | I feel the later operative date is "passing the buck".  |
|                                    | Chair Mannix   | <b>VOTE: 4-3</b><br><b>AYE: 4 - Gianella, Simmons, Sunseri, Mannix</b><br><b>NAY: 3 - Bowman, Hansen, Prozanski</b>   |
|                                    | Chair Mannix   | <b>The motion CARRIES.</b><br><br><b>REP. MANNIX will lead discussion on the floor.</b>   |
| 169                                | Rep. Prozanski | Gives notice of a possible minority report.   |
| 171                                | Chair Mannix   | Closes the work session on HB 2605A.  |
| <b><u>SB 345A WORK SESSION</u></b> |                |   |
| 179                                | Counsel Horton | Discusses the ñA6 and the ñA5 amendments to SB 345A that replaces list of various occupations with term public safety personnel or public safety officer in                     |

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|     |                       | statutes dealing with Board on Public Safety Standards and Training and Department of Public Safety Standards and Training (DPSST) ( <b>EXHIBITS G &amp; H</b> ). The ñA6 amendments increase the monthly distribution to the Police Standards and Training Account from \$390,630 to \$536,000. |
| 193 | Chair Mannix          | That figure is updating the protected amount that DPSST needs for training based upon their latest budget.   |
| 197 | Counsel Horton        | Discusses the ñA5 amendments that incorporate HB 3047 and HB 3458 into SB 345A. Both of these House bills passed on the floor with wide margins and incorporating them into SB 345A would ease the burden on the Senate Judiciary Committee of having to hear these bills separately.            |
| 221 | Rep. Bowman           | I donít understand the involvement of the Department of Revenue in DPSSTís funding.  |
| 224 | Chair Mannix          | The Department of Revenue distributes the funds from the Unitary Assessment to the Police Standards and Training Account.  |
| 231 | Rep. Bowman           | Donít they have to make that case for additional funds somewhere else, not to this committee?  |
| 232 | Chair Mannix          | Discusses how the Unitary Assessments were begun to fund this type of training program.  |
| 244 | <b>Kevin Campbell</b> | <b>Oregon Association Chiefs of Police</b><br><br>Testifies in support of SB 345A. This amendment is a technical fix that protects the funding to DPSST. Without it, the funding is not available.   |
| 268 | Rep. Prozanski        | Is the Governorís staff in support of this change?   |
| 271 | Campbell              | I believe so.  |
| 282 | <b>Kathie Osborn</b>  | <b>Juvenile Rights Project</b><br><br>Discusses that Section 9 of the ñA5 amendments is missing the Class B and Class C misdemeanors.  |
| 292 | Counsel Horton        | Has the Senate had a hearing or work session on this bill?   |
| 294 | Osborn                | No.  |
| 297 | Rep. Prozanski        | Proposes making the addition of the Class B and Class C misdemeanors in a conference committee.  |



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| 302                | Chair Mannix           | Where is the section that is missing this language?  |
| 305                | Osborn                 | Legislative Counsel has put in the original language from HB 3047 rather than the amended version of HB 3047 adding the Class B and Class C misdemeanors.  |
| 328                | <b>Larry Niswender</b> | <b>Legislative Fiscal</b><br><br>Discusses that the amount of money in statute has not changed for biennium and that the money just assures a base spending level for the Department.  |
| 341                | Rep. Bowman            | Does any other state agency have statutory language to protect their base budget?  |
| 343                | Niswender              | This is the only agency that their total budget is derived from that revenue source.   |
| 364                | Chair Mannix           | The ñA6 amendments provide the guaranteed base amount to go to DPSST so they don't have layoffs.   |
| 384                | Rep. Bowman            | Does DPSST charge for the training they provide to people other than law enforcement officers?   |
| 399                | Niswender              | Those concerns were addressed in Ways and Means. At present, their budget can only implement 10 of 16 weeks needed for a basic police training course and DPSST will need to come back next session to obtain funding for the full 16 weeks. |
| 424                | Chair Mannix           | Do trainees from the private sector pay for their training?  |
| 426                | Niswender              | Private security officers are paying for their training.   |
| <b>TAPE 214, B</b> |                        |  |
| 003                | Rep. Bowman            | Didn't we expand the number of weeks for training last session?  |
| 004                | Rep. Prozanski         | We tried, but DPSST has not been able to fund the full 16 weeks of training.   |
| <b>012012</b>      | <b>Rep. Prozanski</b>  | <b>MOTION: Moves to ADOPT SB 345A-6 amendments dated 06/02/99.</b>   |
|                    |                        | <b>VOTE: 7-0</b>   |
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|            | <b>Chair Mannix</b> | <b>Hearing no objection, declares the motion CARRIED.</b>   |
| 015        | Chair Mannix        | Suggests inserting Class B and Class C misdemeanors with their subsequent penalties into Section 9 on page 1 of the ñA5 amendments.   |
| 030        | Osborn              | I would suggest one year for a Class A, B or C misdemeanor because we are talking about the period of disposition for a juvenile, not the period of commitment or incarceration.  |
| 040        | Rep. Prozanski      | Is there a statute that limits the length of time someone can be on probation in line with the length of time that they can serve?  |
| 045        | <b>Dale Penn</b>    | <b>Marion County District Attorney</b><br><br>I donít know.   |
| 052        | Chair Mannix        | Is the Senate planning on moving HB 3047 out of committee?  |
| 053        | Osborn              | It is my understanding that it is set for a hearing.  |
| <b>060</b> | <b>Rep. Mannix</b>  | <b>MOTION: Moves to SUSPEND the rules for the purpose of adopting a conceptual amendment.</b>   |
|            |                     | <b>VOTE: 7-0</b>  |
|            | <b>Chair</b>        | <b>Hearing no objection, declares the motion CARRIED.</b>   |
| 064        | Rep. Gianella       | Did someone mention changing "criminal" to "delinquency" on line 22 of the ñA5 amendments?  |
| 066        | Counsel Horton      | That is a technical change that needs to be made because juveniles engage in "delinquent" matters, not "criminal" matters.  |
| <b>069</b> | <b>Rep. Bowman</b>  | <b>MOTION: Moves to ADOPT SB 345A-5 amendments dated 06/02/99 and that the measure be FURTHER AMENDED on page 1, line 5, by deleting "Section 9" and on page 1, line 22, by changing "criminal" matters to "delinquency" matters.</b> |
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|                                    |                       | <b>VOTE: 7-0</b>   |
|                                    | <b>Chair Mannix</b>   | <b>Hearing no objection, declares the motion CARRIED.</b>  |
| <b>075</b>                         | <b>Rep. Bowman</b>    | <b>MOTION: Moves SB 345A to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means.</b>   |
|                                    |                       | <b>VOTE: 7-0</b>   |
|                                    | <b>Chair Mannix</b>   | <b>Hearing no objection, declares the motion CARRIED.</b>  |
| <b>083</b>                         | <b>Chair Mannix</b>   | Closes the work session on SB 345A.  |
| <b><u>HB 3374 WORK SESSION</u></b> |                       |  |
| <b>088</b>                         | <b>Counsel Horton</b> | Discusses the 19 amendments to HB 3374A which provides that a person licensed to carry a concealed handgun has affirmative defense to charge of unlawful possession of a firearm <b>(EXHIBIT I)</b> .  |
| <b>100</b>                         | <b>Rep. Prozanski</b> | Are Sections 9 and 12 being deleted from HB 3374A?   |
| <b>102</b>                         | <b>Chair Mannix</b>   | Yes.   |
| <b>103</b>                         | <b>Rep. Sunseri</b>   | Asks for clarification for lowering the Class A misdemeanor to a Class C misdemeanor in Section 8.   |
| <b>108</b>                         | <b>Dale Penn</b>      | <b>Marion County District Attorney</b><br><br>The present system is very lengthy and bureaucratic and this measure would speed up that process by giving an officer probable cause arrest authority when a Class B or Class C misdemeanor offense occurs outside the presence of an officer. |
| <b>128</b>                         | <b>Rep. Sunseri</b>   | Are there any violations that would pertain to gun ownership here?   |
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| 130          | Penn           | I couldn't find any Class B or C misdemeanor firearm offenses that this legislation would apply to.  |
| 137          | Rep. Sunseri   | So the expansion of the officer's authority would have nothing to do with firearms?  |
| 139          | Penn           | That is correct.   |
| 141          | Rep. Prozanski | I thought there might be hunting code violations that might fall within this group.  |
| 145          | Penn           | There could be fish and wildlife offenses, but officers are already provided violation authority for those.  |
| 152          | Rep. Sunseri   | I am concerned that we could unintentionally expand the authority of officers to arrest for firearms violations.   |
| 157          | Chair Mannix   | Discusses the intent of Section 8. The 19 amendments would delete Sections 9 and 12 which were a concern to some legislators.  |
| 177          | Rep. Simmons   | <b>MOTION: Moves to ADOPT HB 3374A-19 amendments dated 06/02/99.</b>   |
|              |                | <b>VOTE: 7-0</b>   |
| Chair Mannix |                | <b>Hearing no objection, declares the motion CARRIED.</b>  |
| 201          | Rep. Sunseri   | Discusses his concern that if someone is arrested for shoplifting and they have a gun in their possession, with this legislation they will have additional problems because of that firearm. |
| 205          | Rep. Prozanski | If a person is arrested for shoplifting now, they will be searched for safety reasons.   |
| 213          | Rep. Sunseri   | If searches are currently taking place, why is it necessary to have this language in the bill?   |
| 216          | Counsel Horton | Clarifies that there are different classifications for shoplifting and only under extenuating circumstances is the person searched for a Class C misdemeanor.                                |
| 227          | Dale Penn      | <b>Marion County District Attorney</b>   |

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|     |                | Discusses the legal concept involved in determining if there is probable cause for an arrest that would justify the search of a suspect? This legislation would have more impact on cases of disorderly conduct or some other crime that an officer did not witness rather than shoplifting as witnessed by a store clerk. |
| 248 | Chair Mannix   | Discusses disorderly conduct at a school and an officer being able to look at the circumstances and make an arrest on the spot.  |
| 276 | Rep. Mannix    | <b>MOTION: Moves to SUSPEND the rules for the purpose of adopting a conceptual amendment.</b>  |
|     |                | <b>VOTE: 7-0</b>   |
|     |                | <b>Chair</b>   |
|     |                | <b>Hearing no objection, declares the motion CARRIED.</b>  |
| 277 | Rep. Sunseri   | <b>MOTION: Moves to DELETE Section 8 from HB 3374A.</b>  |
| 281 | Chair Mannix   | Cites instances when Section 8 would be helpful to deter crime in rural parts of the state.  |
|     |                | <b>VOTE: 3-4</b><br><b>AYE: 3 - Bowman, Gianella, Sunseri</b><br><b>NAY: 4 - Hansen, Prozanski, Simmons, Mannix</b>  |
|     |                | <b>Chair Mannix</b>  |
|     |                | <b>The motion FAILS.</b>   |
| 332 | Rep. Prozanski | <b>MOTION: Moves HB 3374A to the floor with a DO PASS AS AMENDED recommendation.</b>   |
|     |                | <b>VOTE: 7-0</b><br><b>AYE: In a roll call vote, all members present vote Aye.</b>   |
|     |                | <b>Chair Mannix</b>  |
|     |                | <b>The motion CARRIES.</b>   |

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|     |              | <b>REP. PROZANSKI will lead discussion on the floor.</b> |
| 351 | Chair Mannix | Closes the work session on HB 3374A.                     |
| 352 | Chair Mannix | Adjourns the meeting at 9:45 a.m.                        |

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Office Administrator

#### **EXHIBIT SUMMARY**

**A - SB 975A, suggested amendment submitted by Brian DeLashmutt, OCPA, dated 6/3/99, 1 pg.**

**B - SB 975A, ñA3 amendments (LC 2789), dated 6/1/99, staff, 3 pgs.**

**C - SB 975A, ñA5 amendments (LC 2789), dated 6/3/99, staff, 2 pgs.**

**D - SB 975A, ñA2 amendments (LC 2789), dated 5/27/99, staff, 1 pg.**

**E - HB 2605A, ñA10 amendments (LC 2214), dated 6/2/99, staff, 1 pg.**

**F - HB 2605A, written testimony submitted by Jeff Collins, SOSN, 2 pgs.**

**G - SB 345A, ñA6 amendments (LC 717), dated 6/2/99, staff, 2 pgs.**

**H - SB 345A, ñA5 amendments (LC 717), dated 6/2/99, staff, 2 pgs.**

**I - HB 3374A, ñA19 amendments (LC 3461), dated 6/2/99, staff, 1 pg.**

**J - SB 975A, written testimony submitted by Capt. Bob Smit, OSP, dated 5/28/99, 2 pgs.**