

SENATE COMMITTEE ON JUDICIARY

June 10, 1999 Hearing Room C

3:00 p.m. Tapes 227 - 228

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Duncan

Sen. Tarno

STAFF PRESENT: John Horton, Counsel

Judith Minnich, Administrative Support

MEASURE/ISSUES HEARD: SB 875 ñ Work Session

HB 3051A - Public Hearing

HB 2221A - Public Hearing and Work Session

HB 2350A - Public Hearing and Work Session

HB 2396A - Public Hearing and Work Session

HB 3047A - Public Hearing

HB 2462A - Public Hearing

HB 2225A - Public Hearing and Work Session

HB 2234A - Public Hearing and Work Session

HB 2236A - Public Hearing and Work Session

HB 2237A - 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 227, A		
003	Chair Bryant	Calls the meeting to order at 3:12 p.m.
<u>HB 2225A, HB 2234A, HB 2236A, HB 2237A PUBLIC HEARING</u>		
008	Ronelle Shankle	Department of Justice, Support Enforcement Division Submits written testimony and testifies in support of HB 2225A which deals with how we distribute child support payments (EXHIBIT A) .
042	Chair Bryant	Asks if she is in favor of the ñA3 amendments, which are conflict amendments (EXHIBIT B) ?
043	Shankle	Yes.
<u>HB 2225A WORK SESSION</u>		
047	Sen. Courtney	MOTION: Moves to ADOPT HB 2225A-A3 amendments dated 6/10/99.
		VOTE: 5-0 EXCUSED: 2 - Brown, Burdick
		Chair Bryant Hearing no objection, declares the motion CARRIED.
049	Sen. Courtney	MOTION: Moves HB 2225A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0

	Chair Bryant	<p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. DUNCAN will lead discussion on the floor.</p>
<u>HB 2234A PUBLIC HEARING</u>		
056	Ronelle Shankle	<p>Department of Justice, Support Enforcement Division</p> <p>Submits written testimony and testifies in support of HB 2234A (EXHIBIT C). HB 2234A would simplify the proceedings when a child support order is outstanding and the child involved is being parented by a relative other than a parent.</p>
<u>HB 2234A WORK SESSION</u>		
075	Sen. Duncan	MOTION: Moves HB 2234A to the floor with a DO PASS recommendation.
		VOTE: 7-0
	Chair Bryant	<p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. NELSON will lead discussion on the floor.</p>
<u>HB 2236A PUBLIC HEARING</u>		
082	Ronelle Shankle	<p>Department of Justice, Support Enforcement Division</p> <p>Submits written testimony and testifies in support of HB 2236A (EXHIBIT D). HB 2236A asks that the name Support Enforcement Division be changed to Division of Child Support.</p>
<u>HB 2236A WORK SESSION</u>		
098	Sen. Courtney	MOTION: Moves HB 2236A to the floor with a DO PASS recommendation.
		VOTE: 7-0

	Chair Bryant	<p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. COURTNEY will lead discussion on the floor.</p>
<u>HB 2237A PUBLIC HEARING</u>		
106	Ronelle Shankle	<p>Department of Justice, Support Enforcement Division</p> <p>Submits written testimony and testifies in support of HB 2237A (EXHIBIT E). HB 2237A would give authority to Oregon's Center for Health Statistics to create or amend a child's birth certificate not only by court order but also by administrative order.</p>
<u>HB 2237A WORK SESSION</u>		
118	Sen. Courtney	MOTION: Moves HB 2237A to the floor with a DO PASS recommendation.
		VOTE: 7-0
	Chair	<p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. TARNO will lead discussion on the floor.</p>
<u>HB 3051A PUBLIC HEARING</u>		
159	Dale Penn	<p>District Attorney, Marion County</p> <p>Testifies in support of HB 3051A and the ñA3 amendments. Indicates this is a high priority bill for law enforcement. HB 3051A authorizes the postponement of an implied consent hearing under certain conditions. Indicates he opposes the ñA2 amendments. (EXHIBITS F & G).</p>
296	Jack Powell	<p>Portland Police Bureau</p> <p>Submits written testimony and testifies in support of HB 3051A (EXHIBIT H).</p>
318	Chair Bryant	Could you give an example of what the problems are now in implied consent hearings?
323	Powell	Rules of evidence are extremely broad. Hearsay and secondary hearsay are allowed. I was asked about my own drinking habits. The questions can be pretty

		far afield. Only the judge and lawyer for the defense are in the implied consent hearing.
328	Penn	I have spoken to the DMV about this issue. They believe perhaps some additional training of the administrative law judges would be in order. We need to narrow the evidence allowed to the issue involved.
359	Sen. Brown	The ñA3 amendments require that the cost of the tape or transcript be paid by the party who receives the copy. Isn't the requestor usually the one who bears the cost?
367	Penn	We make it clear that it isn't required that the tape be transcribed. If you have it transcribed, then you need to provide a copy.
384	Sen. Brown	The party who receives the tape or transcript pays?
394	Penn	If I order a transcript, a copy needs to be provided. The cost of the copying of that transcript will be borne by the party receiving that copy.
405	Sen. Burdick	What happens now when an officer can't make it to a hearing?
413	Penn	If an officer can't appear, the driver's license suspension is not ordered.
422	Ingrid Swenson	<p>Oregon Criminal Defense Lawyers Association (OCDLA)</p> <p>Testifies regarding HB 3051A and in support of the ñA2 amendments. Indicates that a hearing of this nature, which would take away someone's driver's license before a conviction for misuse of that license, should rigorously adhere to the protections of due process.</p> <p>Discusses the ñA2 amendments and the reason they are supported by the OCDLA.</p>
Tape 228, A		
035	Swenson	Discusses the difficulty of positively knowing that certain testimony will be used before the trial begins. Discusses the difficulties with providing information to the prosecution that may not be used and may be damaging.
071	Chair Bryant	What if the defense didn't have to provide the information if it wasn't used?
073	Swenson	That would resolve the problem, but you may not decide that until the witness has testified.

084	Chair Bryant	In most cases, doesn't the defense attorney know seven days in advance that they will use the testimony from the prior hearing?
088	Swenson	In many cases they do. In some cases they do not.
098	Sen. Tarno	Doesn't a person have the right to refresh their memory regarding their prior testimony?
101	Swenson	They do. An officer knows if he has testified at a prior hearing and can inform the prosecutor in order that the prosecutor can get the tape.
107	Sen. Tarno	Doesn't the officer have the right to review his testimony?
111	Swenson	Yes, but nobody in particular has to provide it. The officer can get it on his own.
114	Chair Bryant	You wouldn't have an objection to the witness reviewing the prior testimony before cross-examination if the district attorney was going to use it?
120	Swenson	If you don't turn it over then, you'd better not use it. In my opinion you must provide it.
127	Sen. Brown	If HJR 87 passes the victim could provide testimony at one of these license suspension hearings. Notice must be given.
130	Swenson	I don't think it would be required since these are administrative hearings not criminal prosecutions.
139	Chair Bryant	Closes the public hearing on HB 3051A.
<u>SB 875 WORK SESSION</u>		
168	Sen. Tarno	Discusses the provisions of SB 875.
<u>HB 2221A PUBLIC HEARING</u>		
180	Ben DeHaan	Department of Correction Submits written testimony and testifies in support of HB 2221A (EXHIBIT J). HB 2221A would establish that the Department of Correction proceedings relating to inmate visitation issues are exempt from formal contested case provisions.
<u>HB 2221A WORK SESSION</u>		

221	Sen. Duncan	MOTION: Moves HB 2221A to the floor with a DO PASS recommendation.
		VOTE: 6-0 EXCUSED: 1 - Bryant
	Chair Courtney	Hearing no objection, declares the motion CARRIED. SEN. DUNCAN will lead discussion on the floor.
227	Sen. Brown	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. BROWN to BE RECORDED as voting AYE on the motions sending HB 2225A as amended to the floor DO PASS and HB 2234A, HB 2236A and HB 2237 to the floor DO PASS.
		VOTE: 6-0 EXCUSED: 1 - Bryant
	Chair Courtney	Hearing no objection, declares the motion CARRIED.
235	Sen. Burdick	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. BURDICK to BE RECORDED as voting AYE on the motions sending HB 2225A as amended to the floor DO PASS and HB 2234A, HB 2236A and HB 2237 to the floor DO PASS.
		VOTE: 6-0 EXCUSED: 1 - Bryant
	Chair Courtney	Hearing no objection, declares the motion CARRIED.
<u>HB 2350A PUBLIC HEARING</u>		

250	John Bradley	Multnomah County District Attorney's Office Testifies in support of HB 2350A which removes the restriction limiting diversion for possession of controlled substances to first-time drug offenders.
<u>HB 2350A WORK SESSION</u>		
326	Sen. Brown	MOTION: Moves HB 2350A to the floor with a DO PASS recommendation.
		VOTE: 6-0 EXCUSED: 1 - Bryant
Chair Courtney		Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor.
<u>HB 3047A PUBLIC HEARING</u>		
354	Rep. Bill Morrisette	State Representative, House District 42 Submits written testimony and testifies in support of HB 3047A and the ñA2 amendments (EXHIBITS K & L). HB 3047A restates the time limit on the period of institutionalization or commitment juveniles may serve in a youth correctional facility. The ñA2 amendments encourage school districts to form safe school alliances to identify, remove and assess juvenile offenders who commit crimes on school property.
437	Sen. Tarno	Asks about a software program that has been developed to track juvenile behavior in the schools.
443	Rep. Morrisette	Discusses the behavior tracking software.
Tape 227, B		
048	Kathie Osborn	Juvenile Rights Project Testifies on HB 3047A indicating that it is a product of a work group that met again and realized that another amendment is needed in order to accomplish what they set out to do.
<u>HB 2396A PUBLIC HEARING</u>		

056	Kathie Osborn	Juvenile Rights Project Testifies in opposition to HB 2396A. This bill deals with the waiver of juveniles to adult court. There is a list of crimes that only the court can waive. This bill would add Class C felonies when the youth used or threatened to use a firearm. Adding this poses a proportionality problem in the sentencing structure.
128	Chair Bryant	So you are asking for an opportunity to draft amendments?
132	Osborn	Yes. We need to fix the proportionality problem. But, even then, we would oppose moving another group of youth offenses into adult jurisdiction.
141	Dale Penn	Marion County District Attorney Testifies in support of HB 2396A. The reason for this bill is the increase of gang violence in Oregon. If no one is hit, then you have the crime of an unlawful use of a firearm, which is not an offense that can be waived. We have no options for these gang members who have an extensive juvenile record. This bill gives the court authority to do a remand hearing and authorize holding as an adult. If we don't do this, we have no options to address the repeated drive by shootings. The proportionality issue is not a problem. In the adult sentence structure, the penalty for use of a firearm is not changed by this bill. That is the law today and has been so for years.
199	Osborn	This language takes away the judge's discretion for that first offense.
206	Penn	The intent is not to mandate anything. We can change "shall" to "may" on page two, line 15 if that would alleviate concerns.
<u>HB 2396A WORK SESSION</u>		
225	Sen. Bryant	MOTION: Moves to AMEND HB 2396A on page 2, in line 15, change "shall" to "may".
		VOTE: 6-0 EXCUSED: 1 - Courtney
Chair Bryant		Hearing no objection, declares the motion CARRIED.
229	Sen. Bryant	MOTION: Moves HB 2396A to the floor with a DO PASS AS AMENDED recommendation.

		<p>VOTE: 6-0</p> <p>EXCUSED: 1 - Courtney</p>
	Chair Bryant	<p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. BRYANT will lead discussion on the floor.</p>
<u>HB 2462A PUBLIC HEARING</u>		
250	Steve Dingle	<p>District Attorney's Association</p> <p>Testifies in support of HB 2462A that would specify that payment of a civil penalty does not automatically require that criminal proceedings be dropped.</p>
280	Chair Bryant	Normally, if a civil compromise is reached, there is no guarantee that criminal prosecution won't continue, is that correct?
292	Dingle	No. Part of the paperwork for reaching a civil compromise under the civil compromise statutes is the victim signs an acknowledgement that payment of the penalty satisfies the entire charge and criminal prosecution will not occur.
300	Chair Bryant	But it is still up to the judge whether to accept it or not?
301	Dingle	That's true. Clarifies the difference between a civil penalty and a civil compromise.
324	Julie Brandis	<p>Associated Oregon Industries</p> <p>Submits written testimony and testifies in support of HB 2462A (EXHIBIT M). A recent Oregon Supreme Court decision said the payment of a civil penalty was a civil compromise. HB 2462A clarifies that payment of a civil penalty is not a civil compromise.</p>
387	Counsel Horton	When this bill came before the House Criminal Judiciary Committee it was certainly confusing. HB 2462A clarifies that if a civil action is taken, that civil action does not require that a criminal action be dropped. Additionally, it requires that the state prosecution consent to civil compromise.
Tape 228, B		
025	Ann Christian	<p>Department of Justice, Indigent Services Division</p> <p>Testifies as neutral on HB 2462A. Indicates support of the -A5 amendments</p>

		(EXHIBIT N). The ñA5 amendments would clear up a technical issue regarding the costs of indigent defense. Indicates she is unaware of any opposition to these amendments.
059	Ingrid Swenson	Defense Attorneyís Organization Testifies in support of the ñA4 amendments (EXHIBIT O). The ñA4 amendments would remove the provision that the state prosecutor must agree to the civil compromise. The district attorney is always a part of the discussion leading to a civil compromise but adding a veto capability is too much power.
090	Sen. Brown	Are you saying that if a victim agrees with the compromise the state has the power to overturn the victimís request?
092	Swenson	The A-engrossed version specifies that capability. The ñA4 amendments would remove it.
111	Chair Courtney	Adjourns the hearing at 4:40 p.m.

Submitted By, Reviewed By,

Judith Minnich, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A ñ HB 2225A, written testimony from Ronelle Shankle, 3 pp

B ñ HB 2225A, -A3 amendments dated 6/10/99, 1 pp

C ñ HB 2234A, written testimony from Ronelle Shankle, 3 pp

D ñ HB 2236A, written testimony from Ronelle Shankle, 2 pp

E ñ HB 2237A, written testimony from Ronelle Shankle, 2 pp

F ñ HB 3051A, -A2 amendments dated 5/24/99, 1 pp

G - HB 3051A, -A3 amendments dated 6/9/99, 1 pp

H ñ HB 3051A, written testimony from Jack Powell, 2 pp

I ñ HB 3051A, written testimony from Bruce Hoffman, 1 pp

J ñ HB 2221, written testimony from Benjamin de Haan, 2 pp

K ñ HB 3047A, -A2 amendments dated 5/24/99, 1 pp

L ñ HB 3047A, written testimony from Rep. Morrisette, 7 pp

M ñ HB 2462A, written testimony from Julie Brandis, 2 pp

N ñ HB 2462A, -A5 amendments dated 6/10/99, 1 pp

O - HB 2462A, -A4 amendments dated 5/24/99, 1 pp