

SENATE COMMITTEE ON JUDICIARY

June 16, 1999 Hearing Room C

1:00 PM Tapes 239 - 242

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Duncan

Sen. Nelson

Sen. Tarno

MEMBER EXCUSED: Sen. Burdick

STAFF PRESENT: Bill Taylor, Deputy Counsel

John Horton, Counsel

Kathy Courtney, Administrative Support

MEASURE/ISSUES HEARD: HB 2353A Public Hearing

HB 3304A Public Hearing

HB 2801A Public Hearing

HB 3395A Public Hearing

HB 2278A Public Hearing, Work Session

HB 2173A Public Hearing, Work Session

HB 3522A Work Session

SB 59A 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 239, SIDE A		

004	Vice Chair Courtney	Calls meeting to order at 3:13 PM.
<u>HB 2353A PUBLIC HEARING</u>		
034	David Fidanque	American Civil Liberties Union of Oregon Testifies in opposition to HB 2353A. Asserts that HB 2353A is not necessary until HJR 87A ñ HJR 94A has been referred to voters.
058	Chair Bryant	Explains his intent to consider HB 2353A and HJR 87A-94A simultaneously.
074	Chair Bryant	Closes HB 2353A Public Hearing.
<u>HB 3304A PUBLIC HEARING</u>		
084	Paul Romain	Oregon Beer and Wine Distributors Association Testifies and submits written testimony in support of HB 3304A which relates to the seizure of vehicles operated by intoxicated drivers. (EXHIBIT A) Asserts that the hardship on a driver and family is preferable to risking a serious vehicle accident.
140	Chair Bryant	Did you consider issues relevant to those with security interests in an impounded vehicle?
145	Romain	Yes, the City of Portland also addresses these concerns in its policy.
150	Sen. Courtney	Does HB 3304A authorize cities to implement vehicle seizure policies?
158	Romain	Yes. Currently, cities may pass an ordinance for this authority.
163	Rep. Judy Uherbelau	State Representative, House District 52 Testifies and submits written testimony in support of HB 3304A. (EXHIBITS B and C) Discusses the legislative history of HB 3304A which is modeled after a Deschutes County ordinance. HB 3304A clarifies the current jurisdictional authority.
223	Sen. Courtney	Does the local county need to pass an additional ordinance to enforce the state law?
230	Rep Uherbelau	No, but a county may do so. Discusses the hardship of vehicle forfeiture on a family.

250	Chair Bryant	Who is responsible to pay the impoundment fees?
255	Rep Uherbelau	The registered or security of a vehicle must pay impoundment fees. State police cannot absolve these costs.
271	Romain	Discusses how HB 3304A targets high risk, repeat drunk drivers.
294	Chair Bryant	Do you have any amendments to HB 3304A?
295	Rep. Uherbelau	No.
316	Ingrid Swenson	Oregon Criminal Defense Lawyers Association Testifies in opposition to HB 3304A. Discusses the ambiguity of the impoundment and forfeiture procedures. Explains that HB 3304A allows vehicle forfeiture before a Driving While Under the Influence of Intoxicants (DUII) conviction.
TAPE 240, SIDE A		
001	Swenson	Continues discussion about how HB 3304A applies to those who do not have a DUII conviction but are in a diversion program.
017	Romain	Discusses the proposed vehicle forfeiture time frame of 2 convictions within a 3-year time period.
022	Sen. Courtney	Is diversion considered a conviction?
023	Romain	Yes.
036	Lisa Naito	Multnomah County Commissioner Testifies in support of HB 3304A. Discusses the need for consistency of DUII offenses throughout the state. Suggests maintaining the 10-year time frame for HB 3304A offenses.
063	Dan Oldham	Multnomah County Sheriff's Office Discusses the necessity to protect vehicle security interests in forfeited vehicles.
100	Christopher Carey	Multnomah County Deputy District Attorney Discusses vehicle impoundment procedures for registered vehicle owners who were not the driver cited for an HB 3304A offense.

109	Oldham	Defines impoundment and forfeiture.
115	Sen. Courtney	Asserts that vehicle seizure is essential for safety issues if person is inebriated. Forfeiture is a more complex issue.
139	Oldham	Explains that local entities can enact ordinances for situations not addressed by state law.
157	Counsel Taylor	Who is responsible for the costs of impoundment under HB 3304A?
160	Oldham	The vehicle owner pays impoundment costs. Discusses the circumstances under which a city may bear vehicle impoundment costs.
175	Christopher Carey	Describes the cooperative relationship between the sheriff's office and the City of Portland.
229	Rep. Uherbelau	Expresses concern about amending HB 3304A during the end of the legislative session. Relates the story of a 9-year old victim of a drunk driving accident.
286	Sen. Courtney	Do most counties have vehicle seizure ordinances on drunk driving?
290	Rep. Uherbelau	No. Some counties interpret the current seizure statutes only in the context of drug activity.
310	Ken Sherman	<p>Legal Counsel, Oregon Bankers Association</p> <p>Testifies in opposition to HB 3304A. Asserts that HB 3304A does not conform to current forfeiture statutes. Discusses the ambiguity between seizure, impoundment and forfeiture procedures in HB 3304A. Explains that HB 3304A does not preempt current forfeiture statutes.</p>
TAPE 239, SIDE B		
003	Rep. Uherbelau	Contends that vehicle and drug related forfeitures have different issues in terms of costs.
023	Sherman	Contends that security interests bear an unfair burden in vehicle forfeitures.
<u>HB 2801A PUBLIC HEARING</u>		
048	Rep. Jason Atkinson	<p>State Representative, House District 51</p> <p>Testifies and submits proposed amendments in support of HB 2801A which relates to criminal trespass posting of private property. (EXHIBIT D) Discusses</p>

		the legislative history and the 5 amendments of HB 2801A.
100	Chair Bryant	Discusses the current criminal trespass penalties. Wouldn't the current statutes address the HB 2801A situations?
109	Rep. Atkinson	Yes, but we wanted to create a more specific category.
116	Tim Bernasek	Attorney at Law Testifies in support of HB 2801A. Current criminal trespass statutes include the necessity to prove intent which is difficult to prove.
143	Rep. Jeff Kruse	State Representative, House District 45 Testifies in support of HB 2801A. Discusses the logistic problems with posting private property. Suggests the use of paint to mark property.
187	Sen. Tarno	Doesn't Montana statutes require posting private property with paint?
188	Rep Kruse	Yes. I suggest painting 5-6 inches of a landmark.
200	Sen. Courtney	Discusses the difficulty with identifying the purpose of painted landmarks.
222	Rep. Kruse	Explains the practicality of marking the circumference of a landmark.
247	Dale Penn	Marion County District Attorney Testifies in opposition to HB 2801A. Discusses the need for public information on trespass statutes. Suggests a strict liability trespass offense without the burden of intent.
314	Sen. Tarno	Must private property be posted for trespass to occur?
315	Penn	Yes.
316	Sen. Tarno	The statutes do not clearly state that property must be posted.
320	Penn	I agree, there is no statutory provision to post, but the prosecution needs to prove knowledge to file trespass violation.
338	Sen. Brown	Why not develop a symbol that means no trespassing.
362	Penn	The sign may be misinterpreted.

371	Counsel Horton	Discusses the issue of the proportionality paradox in relation to relative sanctions for offenses.
406	Chair Bryant	Please share your concerns with the bill's proponents.
TAPE 240, SIDE B		
001	Jean Underhill Wilkinson	Oregon Cattlemen's Association Testifies in support of HB 2801A. Discusses the burden on the public to readily identify posted private property and the burden on private landowners to clearly post private land. Contends that intent should not be a factor in criminal trespass offenses.
041	Sen. Brown	It is important for the public and landowners to readily identify private property.
043	Wilkinson	That's true. Discusses different means to distinguish private property.
062	Terry Lamers	Oregon Small Woodlands Testifies in support of HB 2801A. Explains that "No Trespassing" signs are removed routinely. I don't think painted natural barriers can be so easily removed.
075	Sen. Tarno	What is the allowed bail for HB 2801A offenses?
078	Counsel Horton	The violation sanction could vary.
082	Sen. Brown	Asserts that the public has a right to use all navigable waterways.
097	Chair Bryant	Closes HB 2801A Public Hearing.
<u>HB 3395A PUBLIC HEARING</u>		
108	Joel Shapiro	Multnomah District Attorney's Office, Student Intern Testifies and submits written testimony in support of HB 3395A which modifies rules of hearsay evidence. (EXHIBIT E) Discusses the legislative history of HB 3395A. Explains that reliable statements in domestic violence cases are often excluded from evidence.
141	Chair Bryant	HB 3395A allows a police officer to testify but provides for no cross-examination of the victim. Does that violate a constitutional right?

159	Shapiro	No. Discusses hearsay exception liability.
166	Chair Bryant	But that allows no opportunity to cross-examine the victim. Would HB 3395A apply only when you subpoena the victim and she refuses to testify?
170	Shapiro	That would put more incentive on the defense to allow access to the victim.
180	Chair Bryant	Mr. Penn, would you subpoena the victim?
183	Penn	Explains that HB 3395A is an extension of the excited utterance use. Currently, excited utterance applies up to 24 hours in domestic violence situations only. Discusses how the court determines the reliability of the statement.
217	Chair Bryant	Is one of the requirements that the witness not be available?
219	Penn	Not necessarily under the excited utterance exception because victims are often unable, unwilling and frightened to prosecute. Discusses the tremendous pressure on victims to recant their statements.
270	Chair Bryant	Does HB 3395A make impeachment of a witness substantive?
273	Penn	Impeachment evidence must be substantive evidence. Discusses the hearsay exception for child witnesses.
322	Sen. Brown	Why is this bill necessary?
330	Penn	HB 3395A is necessary to relieve victims of pressure to recant domestic abuse charges.
352	Shapiro	Discusses non-excited victim statements which HB 3395A would allow.
360	Sen. Tarno	Is a spontaneous declaration the same as excited utterance?
370	Penn	No.
378	Ingrid Swenson	Oregon Defense Lawyers Association Testifies in opposition to HB 3395A. Asserts that the prosecution makes decisions to use victims' statements to prosecute cases when asked not to do so.
TAPE 241, SIDE A		

004	Swenson	Continues discussion about the nature of an excited utterance statement. Explains that HB 3395A would allow statements from family members in conflict situations beyond spousal abuse. Discusses liability issues related to HB 3395A.
071	Penn	HB 3395A provisions about a child witness is not an expansion of the hearsay involving adults.
090	Swenson	Contends that HB 3395A page 3, lines 20 ñ 25 and 29 clearly refers to a person regardless of developmental disability.
100	Vice Chair Courtney	Closes HB 3395A hearing.
<u>HB 2278A PUBLIC HEARING</u>		
111	Counsel Taylor	HB 2278A relates to a corrections facility citing authority's refusal to adopt a site.
112	Vice Chair Courtney	Closes HB 2278A Public Hearing.
<u>HB 2278A WORK SESSION</u>		
122	Sen. Duncan	MOTION: Moves HB 2278A to the floor with a DO PASS recommendation.
		VOTE: 4-0-3 EXCUSED: 3 - Sen. Brown, Sen. Bryant, Sen. Burdick
Vice Chair Courtney		Hearing no objection, declares the motion CARRIED. SEN. DUNCAN will lead discussion on the floor.
140	Vice Chair Courtney	Closes HB 2278A Work Session.
<u>HB 2173A PUBLIC HEARING</u>		
142	Tom Johnson	Oregon Health Division Testifies and submits written testimony in support of HB 2173A which expands the definition of an illegal drug manufacturing site. (EXHIBIT F) Discusses the

		procedure for declaring a site "unfit for use." Compares current and proposed assessment, cleanup and certification procedures.
261	Shawn Miller	Oregon Housing Rental Association Testifies in support of HB 2173A. Discusses the financial burden on landlords from illegal drug site cleanup costs.
300	Sen. Nelson	Does HB 2173A increase the current civil penalty of drug manufacturing offenses?
305	Miller	Yes, the initial proposed penalty was \$5000. We compromised to a \$2000 penalty. The goal is to deter people from contaminating property.
325	Tom Johnson	Discusses options to decontaminate property. Declaring a site "Unfit for Use" is the last resort to protect health.
342	Sen. Nelson	Do you frequently condemn sites?
343	Johnson	Explains that HB 2173A is primarily a deterrent.
353	Sen. Tarno	Do you consider the growing of illegal crops a contamination of a site?
355	Johnson	Yes.
358	Sen. Tarno	Who pays for the cleanup of the illegal crop site?
368	Johnson	Discusses the Department of Environmental Quality and the Health Department's role in cleaning an illegal drug-manufacturing site.
374	Sen. Tarno	Is the number of drug manufacturing sites increasing?
375	Johnson	Yes.
380	Miller	Explains that drug-manufacturing sites are moving from cities to rural areas.
390	Sen. Nelson	How do you give Public Notice to contaminated buildings?
399	Ronald Hall	Oregon Health Division Testifies in support of HB 2173A. Explains the necessity of full disclosure to potential buyers of formerly contaminated property.

TAPE 242, SIDE A

017	Vice Chair Courtney	Closes HB 2173A Public Hearing.
<u>HB 2173A WORK SESSION</u>		
018	Vice Chair Courtney	MOTION: Moves HB 2173A to the floor with a DO PASS recommendation.
		VOTE: 4-0-3 EXCUSED: 3 - Sen. Brown, Sen. Bryant, Sen. Burdick
	Vice Chair Courtney	Hearing no objection, declares the motion CARRIED. SEN. TARNO will lead discussion on the floor.
028	Vice Chair Courtney	Closes HB 2173A Work Session.
<u>HB 3522A WORK SESSION</u>		
030	Counsel Taylor	HB 3522A creates the crime of Custodial Sexual Misconduct I. Discusses the HB 3522A ñA3 and ñA5 amendments. (EXHIBITS G and H)
093	Dave Cook	Director, Department of Corrections Testifies and submits proposed amendments in support of HB 3522A. (EXHIBIT I) Discusses the HB 3522A ñA4, the exclusion of the affirmative defense and juvenile victims.
121	David Fidanque	Executive Director, American Civil Liberties Union Testifies and submits written testimony in opposition to HB 3522A. Discusses the inclusion of an affirmative defense when an inmate instigates the sexual misconduct. Asserts that certification revocation is a sufficient sanction for custodial sexual misconduct.
179	Cook	Contents that an affirmative defense for an officer who engages in sexual misconduct is totally inappropriate due to the balance of power in the custodial relationship.

205	Fidanque	Explains that an officer would be subject to sex offender registration if convicted of custodial sexual misconduct.
215	Mary Botkin	American Federation of State, County and Municipal Employees Testifies in opposition to HB 3522A. Female officers may be compelled to engage in inappropriate sexual behavior with male inmates. Asserts that the certification revocation and loss of employment are sufficient sanctions for custodial sexual misconduct.
262	Vice Chair Courtney	Closes HB 3522A Work Session.
<u>SB 59A WORK SESSION</u>		
263	Counsel Taylor	SB 59A creates the crime of possession of a firearm while on a mass transit vehicle. Discusses SB 59A ñA16 amendments. (EXHIBIT J)
284	Vice Chair Courtney	MOTION: Moves to ADOPT SB 59A-A16 amendments dated 06/15/99.
		VOTE: 4-0-3 EXCUSED: 3 - Sen. Brown, Sen. Bryant, Sen. Burdick
		Hearing no objection, declares the motion CARRIED.
331	Sen. Courtney	Closes SB 59A Work Session. Adjourns meeting at 3:50 PM.

Submitted By, Reviewed By,

Kathy Courtney, Sarah Watson

Administrative Support Office Coordinator

EXHIBIT SUMMARY

A. HB 3304A proposed amendments, Paul Romain, 3pp

- B. Congressman Earl Blumenauer 4/29/99 letter, Rep. Judy Uherbelau, 2pp**
- C. Written testimony in support of HB 3304, Angela Austbo, 3pp**
- D. HB 2801-A5 proposed amendments, Bill Taylor, 1p**
- E. Written testimony in support of HB 3395, Joel Shapiro, 2pp**
- F. Written testimony in support of HB 2173A, Thomas Johnson, 4pp**
- G. HB 3522-A3 proposed amendments, Bill Taylor, 2pp**
- H. HB 3522-A5 proposed amendments, Bill Taylor, 3pp**
 - I. HB 3522-A4 proposed amendments, Dave Cook, 3pp**
 - J. SB 59A-A16 proposed amendments, Bill Taylor, 1p**
- K. State and Public Justice Offenses excerpt, Dave Fidanque, 1p -**