

**SENATE COMMITTEE ON JUDICIARY**

**June 21, 1999 Hearing Room B**

**7:30 AM. Tapes 245 - 247**

**MEMBERS PRESENT: Sen. Bryant, Chair**

**Sen. Courtney, Vice-Chair**

**Sen. Brown**

**Sen. Burdick**

**Sen. Duncan**

**Sen. Nelson**

**Sen. Tarno**

**STAFF PRESENT: Bill Taylor, Counsel**

**John Horton, Counsel**

**Kathy Courtney, Administrative Support**

**MEASURE/ISSUES HEARD: HB 2306A Public Hearing**

**HB 2505A Work Session**

**SB 59A Work Session**

**HB 2494A Work Session**

**HB 2307A Public Hearing**

**HB 3395A Public Hearing**

**HB 3522A Public Hearing**

**HB 3047A Work Session**

**HB 1304 Work Session**

**HB 2436A Work Session**

**HB 2226A Work Session**

TAPE/#	Speaker	Comments
<b>TAPE 245, SIDE A</b>		
003	Chair Bryant	Calls meeting to order at 7:50 AM.
<b><u>HB 2306A PUBLIC HEARING</u></b>		
<b>007</b>	<b>Dale Penn</b>	<b>Marion County District Attorney</b>  Testifies in support of HB 2306A which allows admission of evidence in criminal sex offense trials prior to conviction. Discusses the crimes within the scope of HB 2306A.
042	Chair Bryant	Discusses the merits of excluding statutory rape from HB 2306A.
<b>050</b>	<b>Ingrid Swenson</b>	<b>Oregon Criminal Defense Lawyers Association</b>  Testifies in opposition to HB 2306A. Discusses jury bias and the prosecution's use of circumstantial evidence. Cites the failure of HB 2306A to include a time frame and standards of relevance.
125	Sen. Brown	HB 2306A relates specifically to sex offenses. Why shouldn't it include all types of crimes?
130	Penn	Discusses the tendency of sex offenders to re-offend.
159	Sen. Brown	When will circumstantial evidence be allowed under HB 2306A?
160	Penn	Only in trials when an alleged sex offender testifies.
176	Swenson	Asserts that Mr. Penn's concerns can clearly be addressed by other means without jeopardizing the objectivity of a jury.
187	Chair Bryant	Closes HB 2306A Public Hearing.
<b>192</b>	<b>Chair Bryant</b>	<b>MOTION: Moves to RECONSIDER the vote which sent HB 2505A to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 6-0-1</b>  <b>EXCUSED: 1 - Sen. Burdick</b>

	Chair Bryant	Hearing no objection, declares the motion CARRIED.
<b><u>HB 2505A WORK SESSION</u></b>		
207	Sen. Ted Ferrioli	Testifies in support of HB 2505A which allows cities to recover the costs of incarceration of convicted defendants. Discusses HB 2505 ñA2 amendments. <b>(EXHIBIT A)</b>
253	Chair Bryant	<b>MOTION: Moves to ADOPT HB 2505A -A2 amendments dated 04/06/99.</b>
		<b>VOTE: 7-0-0</b>
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
255	Chair Bryant	<b>MOTION: Moves HB 2505A to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 7-0-0</b>
	Chair Bryant	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>SEN. FERRIOLI will lead discussion on the floor.</b>
268	Chair Bryant	Closes HB 2505A Work Session.
<b><u>SB 59A WORK SESSION</u></b>		
285	Sen. Burdick	SB 59 creates the crime of possession of a firearm while on a mass transit vehicle. Discusses the SB 59 ñA16 amendments and the need to track SB 59 violations on the Law Enforcement Data System. <b>(EXHIBIT B)</b>

300	Chair Bryant	<b>MOTION: Moves SB 59A to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 6-1-0</b> <b>AYE: 6 ñ Brown, Burdick, Courtney, Duncan, Tarno, Bryant</b> <b>NAY: 1 ñ Nelson</b>
	Chair Bryant	<b>The motion CARRIES.</b>  <b>SEN. BRYANT will lead discussion on the floor.</b>
310	Chair Bryant	Closes SB 59A Work Session
<b><u>HB 2494A WORK SESSION</u></b>		
318	Counsel Taylor	HB 2494A eliminates spiritual treatment defense to murder and certain manslaughter charges. Discusses the HB 2494A ñA15 amendments. <b>(EXHIBIT C)</b>
366	Sen. Brown	Does the presiding judge have discretion in sentencing a parent for a HB 2494 offense?
367	Counsel Taylor	Yes.
394	Sen. Courtney	Discusses the general agreement on HB 2494A ñA15 amendments.
400	Counsel Taylor	Elaborates on the presiding judge's discretion in sentencing HB 2494 offenses.
<b>TAPE 246, SIDE A</b>		

004	Counsel Taylor	Continues discussion about HB 2494 sentences. Explains that HB 2494 does not allow an affirmative defense for spiritual treatment.
014	Sen. Courtney	Explains the narrow scope of HB 2494.
035	Sen. Brown	My concern relating to a judge's sentencing discretion is the potential pardon for subsequent HB 2494 offenses.
040	Chair Bryant	I doubt that a presiding judge would pardon subsequent offenses.
041	Sen. Courtney	Discusses the Christian Scientists' ex-communication policy regarding its members' participation in non-sanctioned medical procedures.
086	Sen. Courtney	<b>MOTION: Moves to ADOPT HB 2494A-A15 amendments dated 06/11/99.</b>
		<b>VOTE: 5-1-1</b> <b>AYE: 5 - Brown, Burdick, Courtney, Duncan, Bryant</b> <b>NAY: 1 - Nelson</b> <b>EXCUSED: 1 - Tarno</b>
Chair Bryant		<b>The motion CARRIES.</b>
112	Counsel Taylor	Discusses the HB 2494A ñA16 amendments. <b>(EXHIBIT D)</b>
115	Sen. Courtney	Discusses the work group's role in creating consensus on HB 2494A.
133	Counsel Taylor	Discusses the HB 2494A ñA17 amendments. <b>(EXHIBIT E)</b> Defines the term "health care."
141	Sen. Brown	Clarifies that medical treatment does not include eastern Asia practices.
141	Sen. Courtney	<b>MOTION: Moves to ADOPT HB 2494A-A16 and A17 amendments dated 06/11/99.</b>
		<b>VOTE: 5-1-1</b> <b>AYE: 5 - Brown, Burdick, Courtney, Duncan, Bryant</b>

		<b>NAY: 1 - Nelson</b>  <b>EXCUSED: 1 - Tarno</b>
	<b>Chair Bryant</b>	<b>The motion CARRIES.</b>
<b>159</b>	<b>Sen. Courtney</b>	<b>MOTION: Moves HB 2494A to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 5-1-1</b>  <b>AYE: 5 - Brown, Burdick, Courtney, Duncan, Bryant</b>  <b>NAY: 1 - Nelson</b>  <b>EXCUSED: 1 - Tarno</b>
	<b>Chair Bryant</b>	<b>The motion CARRIES.</b>  <b>SEN. COURTNEY and SEN. BRYANT will lead discussion on the floor.</b>
<b>175</b>	<b>Chair Bryant</b>	<b>Closes HB 2494 Work Session.</b>
<b><u>HB 2307A PUBLIC HEARING</u></b>		
<b>187</b>	<b>Dale Penn</b>	Testifies in support of HB 2307A which creates the crime of Infant Assault I. Assaults against infants and young children are currently charged as reckless conduct. Discusses the impact of Measure 11 on infant assault sentences.
<b>264</b>	<b>Chair Bryant</b>	The presumptive HB 2307A sentence is 70 months. What would the likely sentence be?
<b>265</b>	<b>Penn</b>	HB 2307A allows sentencing departures down from 70 months.
<b>180</b>	<b>Chair Bryant</b>	What is the presumptive sentence for Assault 2?
<b>282</b>	<b>Penn</b>	It is approximately 30 months.

290	Chair Bryant	Would HB 2307A exclude motor vehicle injuries?
292	Penn	Yes. Infant assaults are inflicted with one's limbs against the child.
300	Chair Bryant	Would HB 2307A exclude boating injuries?
302	Penn	Yes, infant assault is primarily not accidental in nature.
320	Sen. Brown	Why limit the scope of HB 2307A to infants. Why not include seniors, other vulnerable groups, or the general population?
328	Penn	Because infants are extremely vulnerable. Discusses the legislative history of HB 2307A.
361	Counsel Taylor	Is a child's injury in a motor vehicle accident considered infant assault?
371	Chair Bryant	Discusses HB 2307A subsection 4 which excludes motor vehicle injuries from the infant assault offenses.
377	Ingrid Swenson	<b>Oregon Criminal Defense Lawyers Association</b>  Testifies in opposition to HB 2307A. Discusses current assault statutes and factors for assessing criminal liability. Asserts that HB 2307A changes a misdemeanor offense to a felony offense.
<b>TAPE 245, SIDE B</b>		
002	Swenson	Continues discussion about broad application of HB 2307A and suggests ways to limit its scope.
065	Penn	Asserts that shaking babies and breaking their bones is reckless conduct that must be prosecuted. Let's not encumber the issue.
107	Sen. Brown	Why not amend the current assault statutes to address infant assault?
117	Penn	Because reckless conduct is a high standard to prove.
147	Sen. Brown	If a trained childcare provider leaves hot coffee within reach of a toddler and the toddler is severely burned, isn't that reckless conduct?
158	Penn	Absolutely not. HB 2307A doesn't address that type of behavior.

246	Swenson	Discusses infant assault situations involving weapons.
250	Sen. Burdick	Is a cigarette a dangerous weapon?
251	Swenson	Yes, if a cigarette is used against the eye. Usually, an adult's hands and feet used against a child are considered dangerous weapons.
273	Chair Bryant	What is the definition of physical injury?
275	Penn	Defines physical injury as it relates to infants and young children.
318	Chair Bryant	Closes HB 2307A Public Hearing.
320	Chair Bryant	<b>MOTION: Moves to RECONSIDER the vote which sent HB 2494A to the floor with a DO PASS as AMENDED recommendation.</b>
		<b>VOTE: 7-0-0</b>
Chair Bryant		<b>Hearing no objection, declares the motion CARRIED.</b>
<b><u>HB 2494A WORK SESSION</u></b>		
337	Sen. Brown	Proposes changes to the HB 2494A-A14 amendments. <b>(EXHIBIT F)</b> Discusses the affirmative defense and the nature of health care.
367	Chair Bryant	Clarifies that spiritual treatment is included within "health care" but not within the term "medical care."
378	Counsel Taylor	Discusses the HB 2494A-A14 language relating to medical care.
392	Sen. Brown	<b>MOTION: Moves to AMEND HB 2494A on page 2, in line 9, change "medical" to "health".</b>
		<b>VOTE: 7-0-0</b>
Chair Bryant		<b>Hearing no objection, declares the motion CARRIED.</b>



402	Sen. Brown	<b>MOTION: Moves to ADOPT HB 2494A-A14 amendments dated 06/07/99.</b>
		<b>VOTE: 6-1-0</b> <b>AYE: 6 - Brown, Burdick, Courtney, Duncan, Tarno, Bryant</b> <b>NAY: 1 - Nelson</b>
	Chair Bryant	<b>The motion CARRIES.</b>
405	Chair Bryant	<b>MOTION: Moves HB 2494A to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 6-1-0</b> <b>AYE: 6 - Brown, Burdick, Courtney, Duncan, Tarno, Bryant</b> <b>NAY: 1 - Nelson</b>
	Chair Bryant	<b>The motion CARRIES.</b>  <b>SEN. COURTNEY and SEN. BRYANT will lead discussion on the floor.</b>
425	Chair Bryant	Closes HB 2494A Work Session.
<b>TAPE 246, SIDE B</b>		
<b><u>HB 3522A WORK SESSION</u></b>		
027	Counsel Taylor	HB 3522A creates crime of Sexual Misconduct I. Discusses the HB 3522A ñA6 amendments. <b>(EXHIBIT G)</b>

094	Sen. Burdick	An affirmative defense is disallowed even if the sexual partner consents to the sexual misconduct, correct?
096	David Fidanque	<b>American Civil Liberties Union</b>  Testifies and submits the A7 amendments in support of HB 3522A. <b>(EXHIBIT H)</b> Discusses sexual misconduct involving juveniles, sex offender registration statutes, and officer sexual misconduct with adults.
138	Dave Cook	<b>Director, Department of Corrections (DOC)</b>  Testifies in support of HB 3522A. Contends that the nature of the custodial relationship precludes consent by those in custody. DOC's code of ethics prohibits sexual relationships between staff and those in custody.
153	Chair Bryant	Discusses forcible compulsion that involves a threat of retaliation.
160	Cook	In this context, we do not consider a threat of retaliation as forcible compulsion.
165	Sen. Tarno	Do you consider the threat of loss of good time credit as forcible compulsion?
169	Cook	No, not in this context.
176	Mary Botkin	<b>American Federation of State, County and Municipal Employees</b> Testifies in support of HB 3522A -A7. Discusses sexual relationships between custodial officers and their ward. Asserts that losing one's career is sufficient discipline for the impropriety.
207	Chair Bryant	Discusses the affirmative defense in HB 3522A situations.
216	Cook	An officer's misconduct in a custodial sexual relationship will not be accessible without the existence of a criminal record. Discusses officer sexual misconduct with juveniles.
246	Sen. Tarno	Does DOC currently have the authority to terminate and de-certify an officer and de-certify for HB 3522A offenses?
258	Cook	Yes, but the de-certification would only apply to Oregon.
265	Sen. Burdick	By consensual sexual relationship, do you mean that the person in custody instigates the sexual interaction?
272	Fidanque	Yes. Discusses possible situations in which consensual relationships may occur in correctional institutions.

310	Sen. Burdick	Discusses the likelihood of manipulative female officers.
318	Cook	Explains the intricacies of an affirmative defense for custodial sexual misconduct.
329	Sen. Nelson	Asserts that the DOC's policy regarding custodial sexual misconduct is sufficient without HB 3522A.
335	Sen. Burdick	Could an affirmative defense act as leverage to dismiss an officer?
342	Cook	Explains how the affirmative defense undermines DOC's professional standards. Contends that an officer who swears to uphold laws does not have this defense.
364	Sen. Tarno	Mr. Fidanque, do you support HB 3522A?
365	Fidanque	I'm ambivalent about it.
377	Sen. Duncan	It's clear that custodial sex is not acceptable and will lead to de-certification if an officer engages in it. What is the problem?
378	Cook	Oregon de-certification of officers fails to stop them from practicing their sexual misconduct in other states.
395	Sen. Duncan	Does this happen?
397	Cook	Yes.
400	Chair Bryant	Closes HB 3522A Work Session.
<b>TAPE 247, SIDE A</b>		
<b><u>HB 3047A WORK SESSION</u></b>		
<b>012</b>	<b>Rep. William Morrisette</b>	<b>State Representative, House District 42</b>  Testifies and submits the 2 amendments in support of HB 3047A which relates to juvenile delinquency proceeding dispositions. <b>(EXHIBIT I)</b> Discusses the HB 3047A 2 amendments which would create an interim committee to develop a list of safe school practices.
<b>043</b>	<b>Larry Oglesby</b>	<b>Oregon Juvenile Department Directors Association</b>

		Testifies and submits written testimony and the ñA4 amendments in support of HB 3047A. <b>(EXHIBIT J)</b>
050	Sen. Brown	<b>MOTION: Moves to ADOPT HB 3047A-A4 amendments dated 06/15/99.</b>
		<b>VOTE: 6-0-1</b> <b>EXCUSED: 1 - Sen. Courtney</b>
	Chair Bryant	<b>Hearing no objection, declares the motion CARRIED.</b>
052	Chair Bryant	Do you have any objections to the HB 3047A ñA2 amendments, Mr. Oglesby?
053	Oglesby	No. Proposes making the safe school allianceís role less narrow by deleting some of the language in HB 3047 ñA2.
074	Sen. Bryant	<b>MOTION: Moves to AMEND HB 3047A on page 1, in line 7, after "possible," place a period and delete "the remainder of the text through line 10 of the amendment."</b>
		<b>VOTE: 6-0-1</b> <b>EXCUSED: 1 - Sen. Courtney</b>
	Chair Bryant	<b>Hearing no objection, declares the motion CARRIED.</b>
080	Chair Bryant	<b>MOTION: Moves HB 3047A to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 6-1-0</b> <b>AYE: 6 - Brown, Burdick, Courtney, Duncan, Tarno, Bryant</b> <b>NAY: 1 - Nelson</b>
	Chair Bryant	<b>The motion CARRIES.</b>

		<b>SEN. COURTNEY will lead discussion on the floor.</b>
090	Chair Bryant	Closes HB 3047A Work Session.
<b><u>SB 1304 WORK SESSION</u></b>		
091	Chair Bryant	Discusses the legislative history of SB 1304 which relieves primary caregivers of children under six without childcare from jury duty. Discusses the SB 1304 ñ2 amendments. <b>(EXHIBIT K)</b>
109	Chair Bryant	<b>MOTION: Moves to ADOPT SB 1304-2 amendments dated 05/25/99.</b>
		<b>VOTE: 7-0-0</b>
	Chair Bryant	<b>Hearing no objection, declares the motion CARRIED.</b>
113	Chair Bryant	Discusses the legislative history of the SB 1304 ñ2 amendments.
122	Chair Bryant	<b>MOTION: Moves SB 1304 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 6-1-0</b> <b>AYE: 6 - Brown, Burdick, Courtney, Duncan, Tarno, Bryant</b> <b>NAY: 1 - Nelson</b>
	Chair Bryant	<b>The motion CARRIES.</b>  <b>SEN. STARR will lead discussion on the floor.</b>
123	Sen. Nelson	Asserts that the court has authority to excuse people from duty when appropriate. SB 1304 is not necessary.

125	Sen. Burdick	Do courts excuse sole business owners from jury duty?
127	Chair Bryant	Not necessarily. Compares the past and current procedure to request a pardon from jury duty.
<b><u>HB 2436A WORK SESSION</u></b>		
140	Counsel Taylor	HB 2436A relates to transporting offenders who lack fitness to the state hospital within 72 hours. Discusses the HB 2436A ñA10 and ñA8 amendments. <b>(EXHIBITS K and L)</b>
156	Chair Bryant	Compares the HB 2436A ñA10 amendments with the original bill.
175	Sen. Tarno	Who is responsible for an inmate's custodial care under HB 2436A?
178	Chair Bryant	Discusses the financial burden of custodial care in correctional facilities and the state hospital.
189	Sen. Tarno	Is HB 2436 an unfunded mandate?
192	Chair Bryant	No, because if an offender is in the county's custody, the county is fiscally responsible for the offender. HB 2436A does not change this.
202	Chair Bryant	<b>MOTION: Moves to ADOPT HB 2436A-A10 amendments dated 6/18/99.</b>
		<b>VOTE: 7-0-0</b>
Chair Bryant		<b>Hearing no objection, declares the motion CARRIED.</b>
205	Chair Bryant	Discusses HB 2436A-A8 which adds a sunset provision to the bill.
222	Sen. Brown	HB 2436A ñA8 looks more substantive. Why?
224	Counsel Taylor	Explains that the HB 2436A ñA8 mirrors the language in the original bill, as well as the sunset provision.
241	Chair Bryant	<b>MOTION: Moves to ADOPT HB 2436A-A8 amendments dated 06/10/99.</b>

		<b>VOTE: 7-0-0</b>
	<b>Chair Bryant</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>243</b>	<b>Chair Bryant</b>	<b>MOTION: Moves HB 2436A to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 7-0-0</b>
	<b>Chair Bryant</b>	<b>Hearing no objection, declares the motion CARRIED.</b>  <b>SEN. COURTNEY will lead discussion on the floor.</b>
<b>246</b>	<b>Chair Bryant</b>	Closes HB 2436A Work Session.
<b><u>HB 2226A WORK SESSION</u></b>		
<b>248</b>	<b>Chair Bryant</b>	HB 2226A includes employees of the Support Enforcement Division within the scope of the abuse reporting statutes. Discusses how HB 2226A addresses the unintended liability issues created by the abuse reporting statutes.
<b>331</b>	<b>Counsel Taylor</b>	Presents a brief overview of the HB 2226A ñA2 through ñA14 amendments. <b>(EXHIBIT M)</b>
<b>400</b>	<b>Chair Bryant</b>	Closes HB 2226A Work Session. Adjourns hearing at 10:04 AM.

Submitted By, Reviewed By,

Kathy Courtney, Sarah Watson

**EXHIBIT SUMMARY**

- A. HB 2505A ñA2 proposed amendments, Bill Taylor, 2pp
- B. SB 59A ñA16 proposed amendments, Bill Taylor, 1pp
- C. HB 2494A ñA15 proposed amendments, Bill Taylor, 1p
- D. HB 2494A ñA16 proposed amendments, Bill Taylor, 2pp
- E. HB 2494A ñA17 proposed amendments, Bill Taylor, 3pp
- F. HB 2494A ñA14 proposed amendments, Bill Taylor, 3pp
- G. HB 3522A ñA6 proposed amendments, Bill Taylor, 3pp
- H. HB 3522A ñA7 proposed amendments, Bill Taylor, 3pp
- I. HB 3047A ñA2 proposed amendments, Bill Taylor, 1p
- J. HB 3047A ñA4 proposed amendments, Larry Oglesby, 2pp
- K. HB 1304 ñ2 proposed amendments, Bill Taylor, 1p
- L. HB 2436A ñA10 proposed amendments, Bill Taylor, 2pp
- M. HB 2436A ñA8 proposed amendments, Bill Taylor, 5pp
- N. HB 2226A ñA2 through ñA14 proposed amendments, Bill Taylor, 16pp
- O. HB 2494 MR A-Engrossed proposed amendments, Bruce Fitzwater, 2pp
- P. Written testimony in support of HB 3522, Rick Hill, 1p