

SENATE COMMITTEE ON JUDICIARY

June 03, 1999 Hearing Room C

3:00 PM Tapes 212 - 215

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Duncan

Sen. Nelson

Sen. Tarno

STAFF PRESENT: Bill Taylor, Counsel

Kathy Courtney, Administrative Support

MEASURE/ISSUES HEARD: HB 3522A Public Hearing

HB 3084A Public Hearing

HJR 82A Public Hearing, Work Session

HB 2096A Public Hearing

HB 3158A Public Hearing

SB 65 Public Hearing

HB 3586A Reconsideration, Work Session

HB 3608A Work Session

HB 3591A 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 212, SIDE A		

005	Chair Bryant	Calls hearing to order at 3:05 PM.
<u>HB 3522A PUBLIC HEARING</u>		
012	Dave Cook	Director, Department of Corrections (DOC) Testifies in support of HB 3522A which creates the crime of custodial Sexual Misconduct I. Asserts that this legislation will end employees' sexual exploitation of inmates.
032	Chair Bryant	The HB 3522A amendments include DOC volunteers within the scope of the bill. What is DOC's position on the amendments? (EXHIBIT A)
035	Cook	DOC supports the amendments.
065	Dennis Palmieri	Amnesty International USA Testifies and submits written testimony in support of HB 3522A. (EXHIBITS B, C and D) Discusses sexual abuse of prisoners by custodial staff. Asserts that the nature of a custodial relationship removes the possibility of true consent.
130	Chair Bryant	Discusses how current Oregon law prohibits sexual relations between custodial workers and their wards.
137	Sen. Tarno	Defines the McKinney rule used when Oregon prisons had no women guards.
146	Rep. Kathy Lowe	State Representative, House District 26 Testifies and submits written testimony in support of HB 3522A. (EXHIBIT E) Discusses pending federal legislation (HJR 357) which relates to violence against women. Asserts that the nature of custodial relationships preclude consent.
178	Sen. Tarno	What is the current status of HJR 357?
180	Lowe	It is pending.
218	Mary Botkin	American Federation of State, County and Municipal Employees (AFSCME) Testifies with neutrality on HB 3522A. Asserts that Oregon's DOC is among the best prison systems in the country. Explains that inmates may file lawsuits against DOC staff to compromise the system.
310	Dave Fidanque	American Civil Liberties Union of Oregon Testifies in opposition to HB 3522A. Asserts that consensual sex within a

		custodial relationship within prison facilities should not be a crime. Discusses how a criminal investigation of custodial relationships may hinder administrative discipline of staff.
TAPE 213, SIDE A		
008	Fidanque	Continues discussion about administrative review of custodial relationships within prison facilities. Asserts that dismissal from employment for improprieties is appropriate.
016	Counsel Taylor	Discusses HB 3522A in relation to federal sex offender registration requirements.
033	Botkin	If HB 3522A offenses require federal sex offender registration, the AFSCME would change its position on the bill.
040	Sen. Duncan	Do your clients have a right to representation in sexual misconduct cases?
048	Botkin	Yes, but if the charges are upheld, they should be dismissed from employment. Compares consensual sex and sexual assault.
090	Chair Bryant	Closes HB 3084A Public Hearing.
<u>HB 3084A PUBLIC HEARING</u>		
094	Rep. Rob Patridge	State Representative, House District 50 Testifies in support of HB 3084A which allows conditional discharge for first misdemeanor offense. Explains the procedure to register and dismiss a plea.
038	Steve Dingle	Marion County District Attorney's Office Testifies in support of HB 3084A. Discusses the current practices of dismissing the first misdemeanor offense. Suggests exclusion of domestic violence cases.
062	Rep. Patridge	Supports Mr. Dingle's proposal to exclude domestic violence cases from the scope of HB 3084A.
167	Chair Bryant	Closes HB 3084A Public Hearing.
<u>HJR 82A PUBLIC HEARING</u>		
182	Bob Shiprack	Oregon Building Trades Commission

		Testifies and submits written testimony in support of HJR 82A which proposes an amendment to the Oregon Constitution to include the benefit of the community as a goal of prison work programs. (EXHIBITS F and G) Discusses the HJR 82A ñA3 amendments relating to problems with interstate products.
263	Ben De Haan	Deputy Director, Department of Corrections (DOC) Testifies in support of HJR 82A.
274	Mary Botkin	American Federation of State, County, and Municipal Employees Testifies in support of HJR 82A. Discusses the redeeming factor of work on inmate character.
310	Sen. Duncan	Discusses the need to balance limited resources for competing work programs for the disabled, prisoners and unskilled worker.
333	De Haan	Discusses the HJR 82A ñA3 amendments.
344	Rep. Dan Gardner	State Representative, House District 13 Testifies in support of HJR 82A. Asserts that HJR 82A will not displace law-abiding citizens from jobs.
352	Chair Bryant	Closes HJR 82A Public Hearing.
<u>HJR 82A WORK SESSION</u>		
365	Chair Bryant	MOTION: Moves to ADOPT HJR 82A-A3 amendments dated 05/26/99.
		VOTE: 7-0-0
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
367	Sen. Brown	MOTION: Moves HJR 82A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0-0

	Chair Bryant	<p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. BROWN will lead discussion on the floor.</p>
370	Chair Bryant	Closes HJR 82A Work Session.
<u>HB 2096A PUBLIC HEARING</u>		
408	David Myton	<p>Executive Secretary , Department of Safety Standards and Practices Commission</p> <p>Testifies in support of HB 2096A relating to disclosure of sealed police investigation reports. Discusses the legislative history of HB 2096A.</p>
TAPE 212, SIDE B		
003	Myton	Continues discussion about disclosure of relevant police investigation reports. Relates story about a statutory rape accusation.
009	Joe McKeever	<p>Department of Justice</p> <p>Testifies and submits written testimony in support of HB 2096A. (EXHIBIT H) Discusses the criminal expungement statute relating to arrests which do not result in convictions.</p>
044	AnnetteTalbot	<p>Employment Department</p> <p>Testifies and submits proposed amendments in support of HB 2096A. (EXHIBIT I) Asserts that police investigation records are essential to licensing good childcare workers.</p>
066	McKeever	Explains procedures for investigating improprieties.
074	Chair Bryant	Isn't there an element of hearsay within a police report?
076	McKeever	Yes, but police reports refresh the one's mind regarding an incident over time.
087	Sen. Brown	Would information contained within a police report be sufficient to revoke a license?
091	McKeever	No, not without collaborating evidence.

111	Sen. Courtney	It is conceivable to revoke a license based solely on a police report.
113	McKeever	Yes, but the license revocation may not be upheld by the court of appeals.
128	Sen. Burdick	Since these records are sealed, how do you know what you're looking for?
130	Myton	We would use sealed records as an investigative tool to follow up on a district attorney's report.
138	Talbot	Elaborates on the use of sealed records as an investigation tool.
143	Sen. Burdick	Would a police officer testify on the court of appeals level?
150	McKeever	Yes, and that would be a reversible error.
158	Sen. Brown	Do you seek open-ended access to sealed records?
178	Counsel Taylor	In misconduct investigations, do you subpoena the accused person?
185	McKeever	Yes.
186	Counsel Taylor	What happens if the person refuses to testify? Would you revoke his or her license?
195	McKeever	Not necessarily. Explains disciplinary procedures.
208	Bradd Swank	State Court Administrator's Office Testifies with neutrality on HB 2096A. Discusses the HB 2096A amendments. (EXHIBIT J)
265	Henry Kaplan	Bennett, Hartman & Reynolds Testifies and submits written testimony in opposition to HB 2096A. (EXHIBIT K) Discusses Supreme Court case involving a license revocation. Asserts that agency viewing of police reports is inappropriate and live testimony is more credible.
364	Chair Bryant	A police report cannot be used as testimony except as rebuttal, right?
365	Kaplan	Yes, but delays may deter access to live evidence.

TAPE 213, SIDE B

002	Kaplan	Continues discussion relating to the hearsay nature of police reports.
027	Ingrid Swenson	Oregon Criminal Defense Lawyers Association Testifies in opposition to HB 2096A. Discusses the nature of expungement statute. Only those with knowledge to anonymously report and those subject to court order not to disclose would know about an expunged record. Asserts that agencies should not routinely seek out expunged records. Discusses how HB 2096A amends the expungement statutes.
115	Sen. Brown	Asserts that crimes subject to expungement statutes, except crimes relating to drugs, are irrelevant to teacher licensing, correct?
124	Swenson	Discusses types of crimes which may be expunged.
150	Kaplan	Discusses a situation relating to a teacher's impropriety. Contends that accusations should be investigated promptly prior to the sealing of records.
170	Sen. Duncan	How does a school administrator curb hearsay within the student body and among parents?
187	Myton	Explains that district attorneys usually give school officials access to criminal records. HB 2096A relates to cases when charges are dismissed.
210	Swenson	Cases resulting in no convictions are not purged until one year has elapsed. This is sufficient time for school officials to access records.
238	McKeever	The suggestion that we will only access purged reports to discipline employees is biased. Contends that some officers do not have access to their reports when cases are acquitted or dropped.
308	Sen. Brown	Would child abuse reporting cases in divorce situations be included within the scope of HB 2096A?
310	McKeever	Yes, and they may contain inaccurate information.
350	Chair Bryant	Closes HB 2096A Public Hearing.

HB 3158A PUBLIC HEARING

356	Karen Brazeau	Oregon Youth Authority
-----	---------------	-------------------------------

		Testifies in support of HB 3158A which relates to a youth offender's transfer to a school district.
384	Kathie Osborn	Juvenile Rights Project Testifies with neutrality on HB 3158A. Discusses technical problem with HB 3158A and the need for a conflict amendment.
	Chair Bryant	Closes HB 3158A Public Hearing.
TAPE 214, SIDE A		
<u>SB 65 PUBLIC HEARING</u>		
010	Counsel Taylor	Discusses SB 65 which increases the number of circuit court judges. Explains the SB 65's amendments. (EXHIBIT L)
121	Chair Bryant	Will the state pay circuit court judges' medical insurance benefit?
122	Counsel Taylor	Yes, until their service is completed.
138	Kingsley Click	State Court Administrator's Office Testifies in support of SB 65 which will apply to about 20-25 judges.
142	Counsel Taylor	Discusses the accrual rate for pro-tem services.
152	Sen. Brown	Asserts that judges' retirement benefits are good. Why improve their benefits while reducing those of non-judicial state employees?
160	Counsel Taylor	To attract good qualified people to the bench. Compares Oregon judges' salaries with judges' salaries in other states.
180	Sen. Brown	Why focus on judges' salaries and not other state employees?
202	Counsel Taylor	Discusses the unique procedures for handling judges' benefits. Explains that SB 65 is a one-time benefit increase for judges who retired before January 1, 1981. Discusses tort reform history.
281	Counsel Taylor	Explains technical changes to SB 65 relating to court security.
300	Chair Bryant	What is the legislative salary component of SB 65?

310	Counsel Taylor	Explains why adjustment in judges' salaries must be independent of legislative salaries.
336	Sen. Brown	Asserts that reducing retirement benefits for regular state employees while increasing judges' benefits is inappropriate.
350	Chair Bryant	Closes SB 65 Public Hearing.
356	Chair Bryant	MOTION: Moves to RECONSIDER the vote which moved HB 3586A to the floor with a DO PASS recommendation.
		VOTE: 6-0-1 EXCUSED: 1 - Sen. Courtney
Chair Bryant		Hearing no objection, declares the motion CARRIED.
<u>HB 3586A WORK SESSION</u>		
382	Sen. Burdick	Discusses the legislative history of SB 59 relating to firearms. It is fitting to insert elements of SB 59 into HB 3586A.
392	Counsel Taylor	Discusses HB 3586 ñA4 amendments. (EXHIBIT M)
412	Chair Bryant	MOTION: Moves to ADOPT HB 3586A-A4 amendments dated 06/03/99.
		VOTE: 7-0-0
Chair Bryant		Hearing no objection, declares the motion CARRIED.
414	Chair Bryant	MOTION: Moves HB 3586A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0-0

	Chair Bryant	<p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. BRYANT will lead discussion on the floor.</p>
TAPE 215, SIDE A		
<u>HB 3608A WORK SESSION</u>		
001	Sen. Brown	Introduces HB 3608A which creates the crime of female genital mutilation. Discusses HB 3608 ñA4 and ñA5 amendments. (EXHIBITS N and O)
011	Sen. Brown	MOTION: Moves to ADOPT HB 3608A-A4 amendments dated 05/25/99.
		VOTE: 7-0-0
Chair Bryant		Hearing no objection, declares the motion CARRIED .
013	Sen. Brown	MOTION: Moves to ADOPT HB 3608A-A5 amendments dated 05/26/99.
		VOTE: 7-0-0
Chair Bryant		Hearing no objection, declares the motion CARRIED .
015	Sen. Brown	MOTION: Moves HB 3608A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0-0
Chair Bryant		<p>Hearing no objection, declares the motion CARRIED.</p> <p>SEN. BROWN will lead discussion on the floor.</p>

036	Chair Bryant	Closes HB 3608A Work Session.
<u>HB 3591A WORK SESSION</u>		
038	Sen. Courtney	MOTION: Moves to ADOPT HB 3591A-A5 amendments dated 06/03/99.
		VOTE: 7-0-0
Chair Bryant		Hearing no objection, declares the motion CARRIED.
048	Sen. Courtney	MOTION: Moves to AMEND HB 3591A by inserting HB 2305A lines 2 through 14 into the bill.
055	Sen. Courtney	VOTE: 6-1-0 AYE: 6 - Burdick, Courtney, Duncan, Nelson, Tarno, Bryant NAY: 1 - Brown
Chair Bryant		The motion CARRIES.
060	Sen. Courtney	MOTION: Moves HB 3591A to the floor with a DO PASS AS AMENDED recommendation.
066	Sen. Courtney	VOTE: 5-2-0 AYE: 5 - Burdick, Courtney, Duncan, Tarno, Bryant NAY: 2 - Brown, Nelson

	Chair Bryant	<p>The motion CARRIES.</p> <p>SEN. COURTNEY will lead discussion on the floor.</p>
066	Chair Bryant	Closes HB 3591A Work Session. Adjourns hearing at 5:30 PM.

Submitted By, Reviewed By,

Kathy Courtney, Sarah Watson

Administrative Support Office Coordinator

EXHIBIT SUMMARY

- A. HB 3522 ñA3 proposed amendments, Bill Taylor, 2pp
- B. Written testimony in support of HB 3522A, Dennis Palmieri, 1pp
- C. A Survey of Statutes on Custodial Sexual Contact, Dennis Palmieri, 9pp
- D. Violations of the Human Rights of Women in Custody, Dennis Palmieri, 103pp
- E. HR 357, Violence Against Women Act of 1999, Rep. Kathy Lowe, 2pp
- F. Written testimony in support of HJR 82, Bob Shiprack, 4pp
- G. HJR 82-A3 proposed amendments, Bill Taylor, 1p
- H. Written testimony in support of HB 2096, Joe McKeever, 3pp
- I. HB 2096-A5 proposed amendments, Bill Taylor, 1p
- J. HB 2096-A4 proposed amendments, Bill Taylor, 1p
- K. Written testimony in opposition to HB 2096, Henry Kaplan, 1p
- L. SB 65-3 proposed amendments, Bill Taylor, 41pp
- M. HB 3586-A4 proposed amendments, Bill Taylor, 4pp
- N. HB 3608-A4 proposed amendments, Bill Taylor, 1p
- O. HB 3608-A5 proposed amendments, Bill Taylor, 1p
- P. HB 3591-A5 proposed amendments, Bill Taylor, 1p
- Q. Written testimony in support of HB 3522, Rick Hill, 1p