

SENATE COMMITTEE ON JUDICIARY

July 01, 1999 Hearing Room C

8:00 a.m. Tapes 264 - 266

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Burdick

Sen. Duncan

Sen. Nelson

Sen. Tarno

MEMBER EXCUSED: Sen. Brown

Sen. Courtney, Vice Chair

STAFF PRESENT: Bill Taylor, Counsel

Kathy Courtney, Administrative Support

MEASURE/ISSUES HEARD: HB 3304B Reconsideration, Work Session

HB 2605A Public Hearing, Work Session

HB 2772A Public Hearing, Work Session

HB 2870A Public Hearing, Work Session

HB 3492A Work Session

HB 2801A Work Session

HB 3374B Work Session

HB 3395A Work Session

HB 3361A Work Session

HB 2307A 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.

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TAPE/#	Speaker	Comments
TAPE 264, SIDE A		
004	Chair Bryant	Calls hearing to order at 8:10 AM.
005	Chair Bryant	MOTION: Moves to RECONSIDER the vote which moved HB 3304A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 4-0-3 EXCUSED: 3 ñ Sen. Burdick, Sen. Courtney, Sen. Duncan
Chair Bryant		Hearing no objection, declares the motion CARRIED.
<u>HB 3304A WORK SESSION</u>		
011	Counsel Taylor	HB 3304A authorizes seizure of vehicles operated by intoxicated drivers. Discusses the HB 3304A ñA13 amendments.
023	Chair Bryant	MOTION: Moves to ADOPT HB 3304A-A13 amendments dated 06/30/99.
		VOTE: 5-0-2 EXCUSED: 2 ñ Sen. Courtney, Sen. Duncan
Chair Bryant		Hearing no objection, declares the motion CARRIED.
040	Chair Bryant	Closes HB 3304A Work Session.
<u>HB 2605 PUBLIC HEARING</u>		
044	Rep. Lane Shetterly	State Representative, House District 34 Testifies in support of HB 2605 which imposes mandatory life imprisonment for

		specified subsequent sex offenses. Discusses legislative history of HB 2605 and the ramifications of life civil commitment.
091	Chair Bryant	Is HB 2605 compatible with the prison legislation which we have adopted this session?
092	Rep. Shetterly	No. HB 2605 heads in a different direction.
094	Sen. Nelson	Is that direction good or bad?
096	Rep. Shetterly	Explains how HB 2605 differs philosophically from other prison legislation.
112	Ingrid Swenson	Oregon Criminal Defense Lawyers Association Testifies in opposition to HB 2605. Discusses the propensity to re-offend, intensive supervision and deterrence programs for sexual predators. Discusses the broad scope of HB 2605 offenses.
204	Chair Bryant	Closes HB 2605 Public Hearing.
<u>HB 2605 WORK SESSION</u>		
205	Sen. Tarno	MOTION: Moves to TABLE HB 2605.
		VOTE: 5-0-2 EXCUSED: 2 - Sen. Brown, Sen. Courtney
		Chair Bryant Hearing no objection, declares the motion CARRIED.
207	Chair Bryant	Closes HB 2605 Work Session.
<u>HB 2772A PUBLIC HEARING</u>		
214	John Heller	Oregon Gun Owners Testifies in support of HB 2772A. Discusses legislative history of HB 2772A. A vehicle owner bears responsibility in drive-by shooting incidents.
236	Sen. Burdick	What is the position of other major firearm groups on HB 2772A?

239	Heller	The National Rifle Association supports this legislation.
242	Sen. Burdick	Why did you take a vehicle owner's knowledge into account in HB 2772A offenses?
247	Heller	Explains that vehicles stolen or taken without an owner's knowledge are excluded from HB 2772A.
256	Sen. Burdick	If an owner loans a vehicle involved in a drive-by shooting, is that vehicle subject to forfeiture?
258	Heller	It would be difficult to prove that a vehicle was used with permission.
291	Dale Penn	Marion County District Attorney Discusses criminal mischief crimes prompted by the victim's race and religion. Explains that HB 2772A requires a vehicle owner to be an abettor in a drive-by shooting.
321	Sen. Nelson	Does HB 2772A attempt to hold a vehicle owner, who is in the vehicle at the time of a drive by shooting, responsible for the incident?
340	Chair Bryant	It depends on the facts of the specific case. Explains that HB 2772A is similar to other forfeiture legislation.
348	Penn	Explains that criminal charges require the showing of intent.
363	Chair Bryant	Closes HB 2772A Public Hearing.
<u>HB 2772A WORK SESSION</u>		
364	Sen. Tarno	MOTION: Moves HB 2772A to the floor with a DO PASS recommendation.
		VOTE: 5-0-2 EXCUSED: 2 - Sen. Brown, Sen. Courtney
Chair Bryant		Hearing no objection, declares the motion CARRIED. SEN. TARNO will lead discussion on the floor.

367	Chair Bryant	Closes HB 2772A Work Session.
<u>HB 2870A PUBLIC HEARING</u>		
386	Joseph Keizur	Rep. Randy Leonardís Office Testifies in support of HB 2870A which requires a youthís parent or legal guardian to attend the initial juvenile court hearing. Asserts that HB 2870A encourages parental participation in juvenile delinquency hearings.
431	Chair Bryant	Can a parent be held in contempt of court for an HB 2870A offense?
TAPE 265, SIDE A		
001	Keizur	Continues discussion about a presiding judgeís discretion to excuse a parent from a jurisdictional hearing.
015	Timothy Travis	Oregon Judicial Department Testifies and submits proposed amendments with neutrality on HB 2870A. (EXHIBIT A) Asserts that HB 2870A ensures that parents are knowledgeable about and take part in a youthís life.
026	Kathie Osborn	Juvenile Rights Project Testifies in support of HB 2870A. Discusses a parentís right to take part in a juvenile disposition hearing.
038	Travis	Explains the non-punitive nature of HB 2870A.
050	Sen. Duncan	Why are you neutral on HB 2870A?
051	Travis	The Judicial Department does not take positions on substantive law.
057	Sen. Tarno	Does HB 2870A excuse the parents of emancipated youth?
059	Travis	Yes.
061	Chair Bryant	Closes HB 2870A Public Hearing.
<u>HB 2870A WORK SESSION</u>		
065	Counsel Taylor	Discusses HB 2870A ñA3 amendments.

072	Sen. Tarno	MOTION: Moves to ADOPT HB 2870A-A3 amendments dated 05/20/99.
		VOTE: 5-0-2 EXCUSED: 2 - Sen. Brown, Sen. Courtney
Chair Bryant		Hearing no objection, declares the motion CARRIED.
075	Sen. Tarno	MOTION: Moves HB 2870A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0-2 EXCUSED: 2 - Sen. Brown, Sen. Tarno
Chair Bryant		Hearing no objection, declares the motion CARRIED. SEN. NELSON will lead discussion on the floor.
<u>HB 3492A WORK SESSION</u>		
082	Counsel Tweedt	HB 3492A aligns state law with the federal Cigarette Labeling and Advertisement Act. Discusses the HB 3492A ñA11 and ñA14 amendments. (EXHIBITS B and C)
110	Chair Bryant	Discusses the federal law prohibiting smoking by minors even with parental permission.
147	Sen. Burdick	Iím concerned about any bill that regulates behavior in oneís home.
158	Dale Penn	Marion County District Attorney Discusses the enforcement issues and limitations of HB 3492A.
172	Chair Bryant	Explains that religious issues complicate alcohol and smoking issues.
181	Counsel Tweedt	Discusses the Division of Motor Vehicle request to include alcohol within the

		scope of HB 3492A.
190	Chair Bryant	MOTION: Moves to AMEND HB 3492A-A14 by inserting "the driver license suspension provision become effective date on April 1, 2000."
203	Sen. Burdick	Discusses the prohibition against minors possessing tobacco products in HB 3492A. Explains that minors would be prohibited from smoking in public as well as in their homes.
225	Ingrid Swenson	Oregon Criminal Defense Lawyers Association Explains that older children in foster care homes would run away if not allowed to smoke.
228	Chair Bryant	Withdraws motion for conceptual amendment to HB 3492A ñA14 relating to the effective date of the driver license suspension.
236	Chair Bryant	MOTION: Moves to AMEND HB 3492A-A14 on page 1, in line 6, after "ORS 431.840" insert "except when such minor is in a private residence accompanied by a parent or guardian and with the parent or guardian's consent".
		VOTE: 5-0-2 EXCUSED: 2 - Sen. Brown, Sen. Courtney
		Chair Bryant Hearing no objection, declares the motion CARRIED.
246	Chair Bryant	MOTION: Moves to ADOPT HB 3492A-A14 amendments dated 06/30/99.
		VOTE: 5-0-2 EXCUSED: 2 - Sen. Brown, Sen. Courtney
		Chair Bryant Hearing no objection, declares the motion CARRIED.
255	Chair Bryant	MOTION: Moves HB 3492A to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Public Affairs.

		VOTE: 5-0-2 EXCUSED: 2 ñ Sen. Brown, Sen. Courtney
	Chair Bryant	Hearing no objection, declares the motion CARRIED .
260	Chair Bryant	Closes HB 3492A Work Session.
<u>HB 2801A WORK SESSION</u>		
266	Counsel Horton	HB 2801A modifies methods for private property to deter criminal trespass. HB 2801A changes criminal trespass from a criminal to a civil offense. Discusses the HB 2801A -A6 amendments. (EXHIBIT D)
303	Chair Bryant	MOTION: Moves to ADOPT HB 2801A-A6 amendments dated 06/30/99.
		VOTE: 5-0-2 EXCUSED: 2 - Sen. Brown, Sen. Courtney
	Chair Bryant	Hearing no objection, declares the motion CARRIED .
306	Chair Bryant	MOTION: Moves HB 2801A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0-2 EXCUSED: 2 - Sen. Brown, Sen. Courtney
	Chair Bryant	Hearing no objection, declares the motion CARRIED . SEN. NELSON will lead discussion on the floor.
<u>HB 3374B WORK SESSION</u>		

344	Chair Bryant	HB 3374B allows the affirmative defense to unlawful possession of a firearm to concealed handgun permit holders. Discusses conceptual amendments to the HB 3374B ñB22 and ñB23 amendments. (EXHIBITS E and F)
346	Chair Bryant	MOTION: Moves to ADOPT HB 3374B-B20 amendments dated 06/21/99.
		VOTE: 5-0-2 EXCUSED: 2 - Sen. Brown, Sen. Courtney
Chair Bryant		Hearing no objection, declares the motion CARRIED.
353	Counsel Horton	Discusses HB 3374B ñB21 and B22. (EXHIBIT G)
364	Chair Bryant	MOTION: Moves to AMEND HB 3374B-B22 by deleting subsection 4.
		VOTE: 4-0-3 EXCUSED: 4 - Sen. Brown, Sen. Courtney, Sen. Duncan
Chair Bryant		Hearing no objection, declares the motion CARRIED.
391	Chair Bryant	MOTION: Moves to ADOPT HB 3374B-B22 amendments dated 06/25/99.
		VOTE: 4-0-3 EXCUSED: 3 - Sen. Brown, Sen. Courtney, Sen. Duncan
Chair Bryant		Hearing no objection, declares the motion CARRIED.
395	Counsel Horton	Discusses the HB 3374B ñB23 amendments.
401	Chair Bryant	MOTION: Moves to ADOPT HB 3374B-B23 amendments

		dated 6/25/99.
		VOTE: 4-0-3 EXCUSED: 3 - Sen. Brown, Sen. Courtney, Sen. Duncan
	Chair Bryant	Hearing no objection, declares the motion CARRIED .
404	Counsel Horton	Discusses the HB 3374B ñB24 amendments. (EXHIBIT H)
TAPE 164, SIDE B		
002	Chair Bryant	MOTION: Moves to ADOPT HB 3374B-B24 amendments dated 6/25/99.
		VOTE: 4-0-3 EXCUSED: 3 - Sen. Brown, Sen. Courtney, Sen. Duncan
	Chair Bryant	Hearing no objection, declares the motion CARRIED .
004	Counsel Horton	Discusses HB 3374B ñB25 amendments. (EXHIBIT I)
008	Chair Bryant	MOTION: Moves to ADOPT HB 3374B-B25 amendments dated 6/25/99.
		VOTE: 5-0-2 EXCUSED: 2 - Sen. Brown, Sen. Courtney
	Chair Bryant	Hearing no objection, declares the motion CARRIED .

009	Counsel Horton	Discusses the HB 3374B ñB26 and B27 which relate to aggregation of criminal offenses. (EXHIBITS J and K)
037	Ingrid Swenson	Oregon Criminal Defense Lawyers Association Testifies in opposition to the HB 3374B ñB26 amendments. Asserts that combining separate offenses to create a felony conviction is not constitutionally sound. Discusses the time element and aggregation of offenses in the HB 3374B ñB27 amendments.
063	Dale Penn	Marion County District Attorney Testifies in support of the HB 3374B ñB26 amendments. Asserts that aggregation of offenses in criminal mischief cases is efficient. Discusses offense aggregation guidelines.
101	Sen. Burdick	Do the HB 3374B ñB27 meet the aggregation guidelines?
105	Penn	Yes. Compares the HB 3374B ñB26 and ñB27 amendments.
136	Sen. Tarno	MOTION: Moves to ADOPT HB 3374B-B27 amendments dated 06/30/99.
		VOTE: 5-0-2 EXCUSED: 2 ñ Sen. Brown, Sen. Courtney
Chair Bryant		Hearing no objection, declares the motion CARRIED.
139	Counsel Horton	Compares the use of the affirmative defense and the reasonable doubt standard. Proposes a conceptual amendment.
180	Sen. Burdick	HB 3374B refers to "a person summoned by a police officer in making an arrest." Who is that person?
192	Sen. Tarno	That could include anyone summoned such as a member of the military reserves.
199	Chair Bryant	A summoned person would include retired or authorized person also.
205	Sen. Duncan	Explains that HB 3374B should specify the exclusion of active and reserved members of the police force.

241	Sen. Burdick	HB 3374B puts aggregate law enforcement officers in the same category with parole and probation officers. Is this appropriate?
252	Penn	Yes. Explains that officers who are armed in the course of their official duties would not be subject to HB 3374B. This group of officers would include parole and probation officers.
290	Sen. Duncan and Chair Bryant	MOTION: Moves to AMEND HB 3374B on page 3, in line 8, before "Members," insert "Active or reserved," and on page 3, in line 37, after "(c)," delete "A," and " insert " "An active or reserve". On page 3, in line 26, after "(1)," insert "(b) to (h)," and on page 3, in line 45, after "(2)," insert "(b) to (f)".
		VOTE: 5-0-2 EXCUSED: 2 - Sen. Brown, Sen. Courtney
Chair Bryant		Hearing no objection, declares the motion CARRIED.
311	Chair Bryant	MOTION: Moves HB 3374B to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0-2 EXCUSED: 2 - Sen. Brown, Sen. Courtney
Chair Bryant		Hearing no objection, declares the motion CARRIED. SEN. NELSON will lead discussion on the floor.
318	Chair Bryant	Closes HB 3374B Work Session.
<u>HB 3395A WORK SESSION</u>		

336	Chair Bryant	HB 3395A modifies rules of evidence relating to hearsay. Discusses the HB 3395A ñA3 amendments. (EXHIBIT L)
365	Chair Bryant	MOTION: Moves to ADOPT HB 3395A-A3 amendments dated 06/18/99.
		VOTE: 5-0-2 EXCUSED: 2 - Sen. Brown, Sen. Courtney
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
367	Chair Bryant	MOTION: Moves HB 3395A to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0-2 EXCUSED: 2 - Sen. Brown, Sen. Courtney
	Chair Bryant	Hearing no objection, declares the motion CARRIED. SEN. BROWN will lead discussion on the floor.
373	Chair Bryant	Explains that impeachment evidence cannot be used as substantive evidence. Recesses meeting at 9:35 AM.
TAPE 265, SIDE B		
002	Chair Bryant	Reconvenes meeting at 2:57 PM.
<u>HB 3361A WORK SESSION</u>		
008	Counsel Taylor	HB 3361 adds a child's social security benefits to the formula for child support awards. Discusses the HB 3361A ñA8 amendments. (EXHIBIT M)

021	Jean Fougherty	Department of Justice Testifies in support of HB 3361A.
022	Bradd Swank	Oregon State Court Administrator's Office Testifies in support of HB 3361A. Discusses the necessity to give notice to a depositor who makes a security deposit.
035	Chair Bryant	Ms. Fougherty, do you currently give notice to anyone regarding the security deposit?
037	Fougherty	Yes, to the defendant. Discusses the security deposit release and augmented workload issues relating to notice procedures.
047	Chair Bryant	Currently, does the court have authority to award deposit to someone other than the defendant?
049	Fougherty	Yes. The HB 3361A A8 clarifies the court's authority.
071	Sen. Burdick	How does a notice form read?
073	Bradd	Discusses the language of a notice document. We advise those who post bail that it may not be returned.
080	Sen. Burdick	Would you compare the current procedures to HB 3361A?
083	Fougherty	Clarifies that HB 3361A places the burden to give notice on the agency. The current system requires the depositor to request the deposit.
100	Chair Bryant	MOTION: Moves to AMEND HB 3361A-A8 on page 1, in lines 14 and 15, after "defendant," delete "and the person, if not the defendant, who made the security deposit." On page 1, in lines 16 and 17, after "defendant," delete "and the person, if not the defendant, who made the security deposit."
		VOTE: 4-0-3 EXCUSED: 3 - Sen. Brown, Sen. Courtney, Sen. Nelson
Chair Bryant		Hearing no objection, declares the motion CARRIED.

120	Chair Bryant	MOTION: Moves to ADOPT HB 3361A-A8 amendments dated 07/01/99.
		VOTE: 4-0-3 EXCUSED: 3 - Sen. Brown, Sen. Courtney, Sen. Nelson
	Chair Bryant	Hearing no objection, declares the motion CARRIED.
129	Counsel Taylor	Compares the HB 3361A ñA6 and ñA7 amendments. (EXHIBITS N and O)
135	Ronelle Shankle	Support Enforcement Division (SED) Testifies in support of the HB 3361A ñA7 amendments. Explains that the HB 3361A ñA7 amendments allow retroactive credit only in specific situations whereas the ñA6 amendments are more broad.
161	Chair Bryant	Does SED credit a partyís balance due for overpayment of an award?
165	Shankle	Yes, but we may credit against future support.
215	Rep. Bill Witt	State Representative, House District 7 Testifies and submits proposed amendments in support of HB 3361A. (EXHIBIT P) I have not carefully reviewed the ñA6 and ñA7 amendments. I prefer the ñA2 amendments which propose a dollar for dollar offset.
229	Chair Bryant	Discusses his opposition to the ñA2 amendments based on the current child support obligation formula.
248	Rep. Witt	Discusses the legislative history of HB 3361A.
268	Chair Bryant	Which amendments would be most beneficial to Mr. Hooymanís child support case?
273	Shankle	Explains that the HB 3361A ñA6 and ñA7 would allow Mr. Hooyman to seek a modification request, the ñA6 would offer more relief.

300	Chair Bryant	Closes work session on 3361A.
<u>HB 2307A WORK SESSION</u>		
307	Chair Bryant	HB 2307A creates the crime of Infant Assault I.
331	Dale Penn	Marion County District Attorney Compares the HB 2307A ñA10 and ñA11 amendments and assessed penalties for offenses. (EXHIBITS Q and R)
390	Chair Bryant	What are a judgeís sentencing considerations for an A felony?
393	Penn	Discusses the presumptive sentence of 70 months and departure up or down based on prior record.
404	Chair Bryant	The maximum sentence is 20 years, correct?
405	Penn	Yes.
406	Sen. Burdick	Currently, what level of crime is a HB 2307A offense against a stranger?
400	Penn	It would be an Assault 1 or 2. Compares HB 2307A offenses with current assault offenses.
TAPE 266, SIDE A		
001	Penn	Discusses the nature of crimes which HB 2307A addresses.
004	Sen. Burdick	Asserts that a physically abusive parentís hands are weapons against a small child.
006	Penn	In practical terms, that is our motivation for HB 2307A. In legal terms, hands are not weapons.
010	Ingrid Swenson	Oregon Criminal Defense Lawyers Association Testifies in opposition to HB 2307A. Compares HB 2307A and the current

		assault statutes. Contends that the assault statutes maintain proportionality with aggravators. Suggests options to address infant assault within the current assault statutes.
070	Penn	Discusses the Criminal Justice Commission's role in HB 2307A.
103	Swenson	Suggests a conceptual amendment to HB 2307A.
115	Chair Bryant	MOTION: Moves to AMEND HB 2307A-A10 on page 1, in line 1, after "age," insert "under circumstances that a reasonable person would perceive as creating more than a remote risk of serious physical injury."
		VOTE: 4-0-3 EXCUSED: 3 - Sen. Brown, Sen. Courtney, Sen. Nelson
Chair Bryant		Hearing no objection, declares the motion CARRIED.
153	Chair Bryant	MOTION: Moves to AMEND HB 2307A on page 1 by deleting "lines 19 through 24".
		VOTE: 4-0-3 EXCUSED: 3 - Sen. Brown, Sen. Courtney, Sen. Nelson
Chair Bryant		Hearing no objection, declares the motion CARRIED.
166	Sen. Bryant	MOTION: Moves HB 2307A to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means.
		VOTE: 4-0-3 EXCUSED: 3 - Sen. Brown, Sen. Courtney, Sen. Nelson
Chair Bryant		Hearing no objection, declares the motion CARRIED.

170	Chair Bryant	Closes HB 2307A Work Session. Adjourns hearing at 3:35 PM.
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Submitted By, Reviewed By,

Kathy Courtney, Sarah Watson

Administrative Support Office Coordinator

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EXHIBIT SUMMARY

- A. HB 2870A ñA3 proposed amendments, Bill Taylor, 1p
- B. HB 3492A ñA11 proposed amendments, Bill Taylor, 1p
- C. HB 3492A ñA14 proposed amendments, Bill Taylor, 16pp
- D. HB 2801A ñA6 proposed amendments, Bill Taylor, 2pp
- E. HB 3374B ñB22 proposed amendments, John Horton, 2pp
- F. HB 3374B ñB23 proposed amendments, John Horton, 2pp
- G. HB 3374B ñB21 proposed amendments, John Horton, 1p
- H. HB 3374B ñB24 proposed amendments, John Horton, 1p
- I. HB 3374B ñB25 proposed amendments, John Horton, 1p
- J. HB 3374B ñB26 proposed amendments, John Horton, 1p
- K. HB 3374B ñB27 proposed amendments, John Horton, 2pp
- L. HB 3395A ñA3 proposed amendments, Bill Taylor, 1p
- M. HB 3361A ñA8 proposed amendments, Bill Taylor, 1p
- N. HB 3361A ñA6 proposed amendments, Bill Taylor, 2pp
- O. HB 3361A ñA7 proposed amendments, Bill Taylor, 1p
- P. HB 3361A ñA2 proposed amendments, Bill Taylor, 1p
- Q. HB 2307A ñA10 proposed amendments, Bill Taylor, 1p
- R. HB 2307A ñA11 proposed amendments, Bill Taylor, 1p
- S. HB 3374B ñB20 proposed amendments, John Horton, 1p