

HOUSE COMMITTEE ON JUDICIARY

February 28, 1997 Hearing Room 357

7:00 AM Tapes 10 - 11

**MEMBERS PRESENT:**

Rep. JOHN MINNIS, Chair

Rep. FLOYD PROZANSKI, Vice-Chair

Rep. ROGER BEYER

Rep. JO ANN BOWMAN

Rep. PETER COURTNEY

Rep. GEORGE EIGHMEY

Rep. LANE SHETTERLY

Rep. CHARLES STARR

Rep. RON SUNSERI

Rep. JUDY UHERBELAU

Rep. LARRY WELLS

**MEMBERS EXCUSED:**

**STAFF PRESENT:**

WILLIAM TAYLOR, Committee Counsel

BRIAN HIGGINS, Administrative Support

**MEASURE/ISSUES HEARD:**

Work Sessions - HJR 2, HB 2425, HB 2426, HB 2357A, HB 2429, HB 2323A, HB 2318, SB 36

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 10, A		

004	Chair Minnis	Calls committee to order at 7:03 AM
<b><u>HB 2318 - WORK SESSION</u></b>		
005	Chair Minnis	Opens work session on HB 2318
006	William Taylor	Committee Counsel >reads provisions of bill and -3 amendments
013	Chair Minnis	Did we decide that it was necessary to have that language for notarization?
014	Taylor	It's been added and appears on page 3 of -3 amendments.
017	Rep. Shetterly	<b>MOTION: Moves HB 2318 to the floor with a DO PASS AS AMENDED recommendation.</b>
020		<b>VOTE: 10-0</b> <b>EXCUSED: 1 - Rep. Eighmey</b>
	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>
030	Chair Minnis	Closes work session on HB 2318
<b><u>HJR 2 - WORK SESSION</u></b>		
033	Chair Minnis	Opens work session on HJR 2
034	Scott Lumsden	Committee Counsel >reads provision of measure and -2 amendments, <b>(EXHIBIT A)</b>
044	Rep. Prozanski:	<b>MOTION: Moves HJR 2 be sent to the floor with a BE ADOPTED AS AMENDED recommendation.</b>
047	Rep. Uherbelau	Per page 2 of original bill, asks if there was discussion in subcommittee about the effect of prison industry on the private sector
054	Chair Minnis	Responds that work group discussed issue and that they were satisfied in leaving that part in the measure
058	Rep. Uherbelau	Was there any discussion regarding "no compensation" being equated with involuntary servitude?
		Comments that the issue was discussed with the Attorney General and Legislative Counsel, and that under the federal minimum wage it is constitutional

061	Chair Minnis	>not intent to create involuntary servitude or labor without remuneration
069	Rep. Courtney	How fast-tracked is this bill?
070	Chair Minnis	Responds that it is relatively fast-tracked
	Rep. Courtney	Asks for clarification of dates and their relation to inclusion of measure in voter's pamphlet
074	Chair Minnis	The intent is to have it available in the voter's pamphlet.
078	Rep. Prozanski	It should be on the House floor for a vote Tuesday or Wednesday.
080	Rep. Beyer	Is there a fiscal statement?
		There is no fiscal impact.
081	Chair Minnis	>The bill which does have a fiscal impact is HB 2306 which we still have in our possession.
089	Rep. Beyer	That's just for the election or for the implementation?
091	Lumsden	This bill requires a special election which is under a different bill and, in my opinion, both bills will have the same fiscal impact.
095	Rep. Prozanski	Full implementation costs are between 70-150 million dollars which is already built into the Governor's budget.
		Implementation date is compelled for 2006.
101	Chair Minnis	>Legislature may have an interest to put in more money this session, but I think it is unlikely.  >2 potential impacts: 1) election costs and 2) implementation costs
115	Lumsden	My understanding is that this bill will not change fiscal impact of original bill.
128	Rep. Beyer	I'm satisfied, but I have a problem with implementing constitutional amendments and tying the hands of our future legislatures.
132	Rep. Uherbelau	This is related to BM 17 to which this cost is already tied so we are not adding anything.
138	Rep. Prozanski	Addresses Rep. Beyer's concern about implementation date  >difference between effective date and implementation date
153	Chair Minnis	On page 4, line 28, "as provided by law" and on page 3, the wording allows some legislative discretion with respect as to what full implementation will be.  >The programs are intended to be self-sufficient.
173	Rep. Shetterly	Is there not complete concurrence on the Senate side with these amendments?

175	Chair Minnis	That is correct. Sen. Stull would like to see an earlier implementation date, but Steve Marks is in dialogue with her about that.
184	Rep. Shetterly	So, we'll see this back.
185	Chair Minnis	My hope is that we can avoid a conference committee.
<b>191</b>		<b>VOTE: 11-0</b>
	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED.</b> <b>REP. PROZANSKI will lead discussion on the floor.</b>
205	Chair Minnis	Closes work session on HJR 2
<b>HB 2425 - WORK SESSION</b>		
206	Chair Minnis	Opens work session on HB 2425
209	Scott Lumsden	Committee Counsel >reads provisions of bill
<b>221</b>	<b>Rep. Shetterly</b>	<b>MOTION: Moves HB 2425 to the floor with a DO PASS recommendation.</b>
224	Uherbelau	Was there a discussion in terms of positive tests being retested as there are mistakes in lab results?
233	Chair Minnis	I don't remember a discussion of the fallibility of the testing procedures.
235	Rep. Shetterly	I think that is an issue that would come out in discovery.
239	Rep. Uherbelau	My concern is that this is being used as prima facie evidence.
249	Rep. Prozanski	One procedure that could be used is that the defense could do independent testing or recall the criminalist to the stand to review the procedures used.
257	Rep. Eighmey	Am I correct in suggesting that the burden is being shifted to the defendant?
266	Rep. Prozanski	The reality is that this is basically keeping the criminalist from being called in to testify on the side of the state and relies on the document itself which often goes uncontested anyway.
277	Chair Minnis	There is no bar to subpoenas for the entire lab if they choose.
282	Rep. Uherbelau	I think all of those safeguards exist, but my concern is does the burden of proof change because this is viewed as prima facie evidence?
		The reality is the jury will be allowed to weigh all evidence and this

287	Rep. Prozanski	simply prevents the criminalist from coming in on each and every case.
297	Rep. Eighmey	Expresses concern that the prima facie evidence is expected to be accurate, but mistakes are made >Currently, prosecution must prove accuracy of test, but this will shift the burden to the defendant.
318	Chair Minnis	The Oregon Criminal Defense Lawyers Association were present at the hearing and did not object to this bill.
324	Lumsden	There was no opposition.
327	Rep. Shetterly	The prima facie evidence is already in the statute; we are actually just expanding the use of that. >alludes to Supreme Court decision on criminalist needing to appear
343	Rep. Prozanski	Only difference is if you are going to say there is an additional requirement to bring them in. >At this time there is no testing but it is based on experience and exposure to the material.
356	Rep. Uherbelau	Rep. Shetterly is correct, but in the old statute it applied to certain statutes which have been removed.
		>What else are we taking in under the statutes?
366	Rep. Prozanski	Clarifies that this only takes away the need to bring in a live person to set the record
376	Scott Lumsden	In DUII prosecutions, is evidence of intoxication relevant to prosecution of driving under the influence?
385	Rep. Prozanski	Responds that it could be >There is a requirement to establish what the substance was based on the field tests of the officer.
397	Scott Lumsden	This is not reflected in the present statute.
405	Rep. Prozanski	If there was a lab test in that type of prosecution, many of those cases go on the experience and investigation of the field officer. >Those cases would require that the individual be there anyway.
420	Chair Minnis	If we were deleting subsection 4, which gives the opportunity to subpoena the criminalist, then I think it would give rise to your concerns.
431	Rep. Shetterly	Controlled substance statutes already provide for this.
<b>TAPE 11, A</b>		

020	Scott Lumsden	It is prima facie evidence of the results of analytical findings. It doesn't necessarily state that those results are accurate.
024		<b>VOTE: 11-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b>
	<b>Chair Minnis</b>	<b>The motion CARRIES.</b> <b>Rep. PROZANSKI will lead discussion on the floor.</b>
030	Rep. Courtney	Comments that issue of forensic labs is before Ways and Means in regards to the number of individuals working in those labs. >hopes that the number of people employed in the labs increases
043	Chair Minnis	Closes work session on HB 2425
<b><u>HB 2426 - WORK SESSION</u></b>		
048	Chair Minnis	Opens work session on HB 2426
049	Rep. Beyer	What exactly is the difference between an amphetamine and a methamphetamine?
054	Chair Minnis	Responds that testimony focused on the elements of a chemical compound
062	Rep. Uherbelau	Expresses concern that there is a chemical difference and that amphetamines are used medically >Was there any medical testimony?
070	Rep. Beyer	It looks like, from the dictionary, that it is over-the-counter allergy medication.
075	Rep. Prozanski	The latest craze is to buy amphetamines from a drug store, and through a process, convert them into methamphetamines. >It's a concern because the base drug can be bought over the counter. >bill brought forward so that chart would apply to this offense
095	Rep. Sunseri	My concern is that the new language only says "a detectable amount."
100	Chair Minnis	What specifically was Rep. Beyer's question?
102	Rep. Beyer	How much is 10 grams?
109	Rep.	Was there any medical testimony?

	Uherbelau	
113	Chair Minnis	Clarifies that he thinks there is no prosecution available if there is a valid prescription
125	Dale Penn	Marion County District Attorney >valid prescriptions not prosecutable >Four-year old drug laws that upgraded some to aggravators did not take into account this process of creating methamphetamine. >people buying cases of cold medicines from stores to do this process
176	Rep. Uherbelau	Comments that diet pills have amphetamines and are not subject to violent behaviors >would have felt more comfortable if there was technical testimony
185	Chair Minnis	What would the value of that testimony have been?
186	Rep. Uherbelau	Amphetamine is used frequently in prescription and non-prescription uses and so I am concerned that the testimony we have gotten may not have addressed this.
198	Rep. Sunseri	Comments that he is comfortable knowing there is no capability of prosecuting any type of prescription drug
201	Chair Minnis	I think the issue she [Rep. Uherbelau] is bringing up is the one of the detectable amount
206	Penn	It is not possible to prosecute for cold medicine bought from the store or for a prescribed use either.
211	Chair Minnis	How do you distinguish a traceable amount?
213	Penn	This is directly related to the quality of the narcotic. >must show there is 10 grams of substance of whatever the drug is
216	Chair Minnis	The law says 10 grams or more of a mixture or a substance containing a detectable amount of methamphetamine.
220	Penn	Comments on different ways of analyzing drugs >Oregon uses gross weight method.
230	Chair Minnis	I was reading it wrong.
233	Rep. Uherbelau	I will vote for this realizing I have time to talk to some experts between now and the floor vote.
236	Rep. Prozanski	This is to put this substance in the aggravated column to address the extreme cases.
253	Chair Minnis	There is another issue because didn't we outlaw precursor chemicals?
255	Dale Penn	It is not a crime to buy 3 cases of cold medicine. >only after it goes through distillation process that it becomes a

		criminal substance
265	Rep. Beyer	How much is 10 grams?
277	Penn	There are approximately 27 grams per ounce. So, this is less than 1/2 of an ounce. >We looked at user amounts and 10 grams is such that it is a distribution amount.
294	Chair Minnis	The record being set here is that this statute deals with delivery or manufacture.
303	Penn	The reason this bill came forward is that the Oregon Narcotics Officers Association was concerned about methamphetamine trade. >Oregon is in midst of methamphetamine craze.
333	Rep. Shetterly	This bill does not create any crimes so the underlying offense still has to be established.
343	Rep. Beyer	I'm going into this because I am curious, but I will vote for the bill.
347	Chair Minnis	The points you are raising are good for the record.
354	<b>Rep. Eighmey</b>	<b>MOTION: Moves HB 2426 to the floor with a DO PASS recommendation.</b>
359		<b>VOTE: 11-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b>
	<b>Chair Minnis</b>	<b>The motion CARRIES.</b> <b>REP. BOWMAN will lead discussion on the floor.</b>
367	Chair Minnis	Closes work session on HB 2426
		<b><u>HB 2357 - WORK SESSION</u></b>
370	Chair Minnis	Opens work session on HB 2357
371	Scott Lumsden	Committee Counsel >reads provisions of bill and adopted amendments
390	<b>Rep. Shetterly</b>	<b>MOTION: Moves HB 2357 to the floor with a DO PASS recommendation.</b>
395	Rep. Uherbelau	If someone is in a hotel within 1000 feet engaging in prostitution, can they be prosecuted?
404	Chair Minnis	That's correct.
410	Rep. Courtney	Clarifies that testimony of Rep. Edwards was that there was an incident in his district involving this situation which is one of the



		reasons it was amended
422	Rep. Beyer	What is the difference between a Class A misdemeanor and a Class C felony?
424	Chair Minnis	Clarifies that Class C felony is punishable by 5 years in state penitentiary and \$100,000 fine and Class A misdemeanor and 1 year in a county facility and \$5000
<b>TAPE 10, B</b>		
017	Rep. Courtney	The issue of 1000 feet came up when we passed a law several sessions ago about drugs within 1000 feet.
031	Rep. Eighmey	This would be a good bill. >Comments that there was a school in his district with a nearby rent-by-the-hour motel
035	Rep. Uherbelau	Can you prosecute "the john?"
037	Rep. Courtney	Lines 6 and 8 covers the prostitute, "the john," and maybe even the pimp.
045	Rep. Prozanski	There is another statute that deals with the manager of the individual, or pimp.
055	Chair Minnis	I actually would have wanted to include, through an amendment, to make it unlawful for the DA to allow a plea negotiation. >gives example of incidents of officers in Portland area
071	Rep. Sunseri	If the chair wants this, I think we could move it back to committee. I don't think there is any urgency to get this out.
073	Chair Minnis	There are some other bills with an appropriate relating clause that I've already scanned.
076	Rep. Eighmey	I would be very reluctant to expand penalties and deny individuals the rights just because they are in a particular profession.
087	Chair Minnis	I also don't think that police officers should have to testify before the Grand Jury in a sexual offense.
<b>100</b>		<b>VOTE: 11-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b>
	<b>Chair Minnis</b>	<b>The motion CARRIES.</b> <b>REP. COURTNEY will lead discussion on the floor.</b>
108	Chair Minnis	Closes work session on HB 2357
<b>HB 2429 -</b>		

<b><u>WORK SESSION</u></b>		
110	Chair Minnis	Opens work session on HB 2429
111	Scott Lumsden	Committee Counsel >reads provisions of bill
115	<b>Rep. Bowman</b>	<b>MOTION: Moves HB 2429 to the floor with a DO PASS recommendation.</b>
118		<b>VOTE: 11-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b>
	<b>Chair Minnis</b>	<b>The motion CARRIES.</b> <b>REP. WELLS will lead discussion on the floor.</b>
123	Chair Minnis	Closes work session on HB 2429
<b><u>HB 2323 - WORK SESSION</u></b>		
124	Chair Minnis	Opens work session on HB 2323
125	Scott Lumsden	Committee Counsel >reads provisions of bill and amendment
129	<b>Rep. Prozanski</b>	<b>MOTION: Moves HB 2323 to the floor with a DO PASS recommendation.</b>
132	Rep. Beyer	This is getting rid of the extension so we are actually shortening the time.
134	Rep. Uherbelau	Clarifies reasoning behind original inclusion in statute and why it is currently not needed
140	Chair Minnis	They also ended up with a longer period of time to file.
141	Rep. Uherbelau	Was there any objection to this in committee?
143	Chair Minnis	Initially, Rep. Prozanski objected but it was cleared up.
144	Rep. Prozanski	This deals with an individual incarcerated having the same amount of time to file as any other individual.
154		<b>VOTE: 11-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b>
	<b>Chair Minnis</b>	<b>The motion CARRIES.</b>

		<b>REP. UHERBELAU will lead discussion on the floor.</b>
170	Chair Minnis	Closes work session on HB 2323
<b>SB 36 - WORK SESSION</b>		
172	Chair Minnis	Opens work session on SB 36
174	<b>Rep. Shetterly</b>	<b>MOTION: Moves SB 36 to the floor with a DO PASS recommendation.</b>
183	Scott Lumsden	Committee Counsel >reads provisions of bill
187		<b>VOTE: 11-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b>
	<b>Chair Minnis</b>	<b>The motion CARRIES.</b> <b>REP. SHETTERLY will lead discussion on the floor.</b>
192	Chair Minnis	Closes work session on SB 36
		Declares subcommittee adjourned

Submitted by, Reviewed by,

BRIAN HIGGINS, BILL TAYLOR,

Administrative Support Administrator

**EXHIBIT SUMMARY**

**A - HJR 2, Proposed Amendments (-1), Staff, 5 pp.**