

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CRIMINAL LAW**

**May 27, 1997 Hearing Room 357**

**1:00 P.M. Tapes 128 - 131**

**MEMBERS PRESENT:**

**Rep. John Minnis, Chair**

**Rep. Jo Ann Bowman, Vice-Chair**

**Rep. Peter Courtney**

**Rep. Floyd Prozanski**

**Rep. Lane Shetterly**

**Rep. Ron Sunseri**

**Rep. Larry Wells**

**STAFF PRESENT:**

**Scott Lumsden, Counsel**

**Lisa Fritz, Administrative Support**

**MEASURE/ISSUES HEARD:**

**SB 780 - Work Session**

**SB 613 - Public Hearing**

**HB 2197 - Work Session**

**HB 2433 - Work Session**

**HB 2751 - Work Session**

**HB 3624 - Work Session**

**HB 3738 - Informational Hearing**

**HB 3357 - Work Session**

**HB 3686 - Work Session**

**HB 3672 - Work Session**

**HB 3332 - Work Session**

**HB 3732 - Public Hearing**

**HB 2920 - 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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 128, A</b>		
009	Chair Minnis	Calls meeting to order at 1:20 p.m. Opens a work session on SB 780.
<b><u>SB 780 - WORK SESSION</u></b>		
027	Kevin Campbell	Oregon Association Chiefs of Police. Discusses -A8 amendments to SB 780 ( <b>EXHIBIT A</b> ).
077	Campbell	Continues testimony.
082	Chair Minnis	Discusses -A4 ( <b>EXHIBIT B</b> ) and -A5 amendments ( <b>EXHIBIT C</b> ).
105	<b>Rep. Prozanski</b>	<b>MOTION: Moves to RESCIND SB 780-A4 amendments dated 5/27/97 (EXHIBIT B).</b>
107	<b>Chair Minnis</b>	<b>VOTE: Hearing no objection, declares the motion CARRIED.</b>
108	<b>Rep. Prozanski</b>	<b>MOTION: Moves to ADOPT SB 780-A5 amendments dated 5/27/97 (EXHIBIT C).</b>
109	<b>Chair Minnis</b>	<b>VOTE: Hearing no objection, declares the motion CARRIED.</b>
116	<b>Rep. Sunseri</b>	<b>MOTION: Moves to ADOPT SB 780-A6 amendments dated 5/22/97 (EXHIBIT D).</b>
122	Campbell	Discusses preemption language following Section 3. Bankers amendment creates new Section 4. No preemption on Section 4.
131	<b>Chair Minnis</b>	<b>VOTE: Hearing no objection, declares the motion CARRIED.</b>
133	<b>Rep. Prozanski</b>	<b>MOTION: Moves to ADOPT SB 780-A8 amendments dated 5/27/97 as hand-amended deleting word "uninsured" from line 10 (EXHIBIT A).</b>
138	<b>Chair Minnis</b>	<b>VOTE: Hearing no objection, declares the motion CARRIED.</b>
	Chair	Discusses page 2 of hand-engrossed bill, line 43, subsection 3 of section 4, suggested language after word "of" insert "an

141	Minnis	administrative", delete "of \$15". After word "fee" insert "determined by the agency to be sufficient to recover its actual administrative costs for the impoundment".
166	Committee	Discusses language.
197	Rep. Wells	<b>MOTION: Moves to ADOPT conceptual amendments on line 43, subsection 3 of section 4, after word "of" insert "an administrative", delete "of \$15". After word "fee" insert "determined by the agency to be sufficient to recover its actual administrative costs for the impoundment".</b>
203	Chair Minnis	<b>VOTE: Hearing no objection, declares the motion CARRIED.</b>
209	Rep. Shetterly	<b>MOTION: Moves to send SB 780 to the full committee with a DO PASS AS AMENDED IN SUBCOMMITTEE recommendation.</b>
213		<b>VOTE: 7-0</b> <b>AYE: In a roll call vote, all members present vote AYE.</b>
217	Chair Minnis	<b>The motion CARRIES.</b> <b>Rep. Bowman will lead discussion with the full committee.</b> Closes work session, SB 780; opens public hearing, SB 613.
<b><u>SB 613 - PUBLIC HEARING</u></b>		
230	Steve Doell	Crime Victims United, testifies in support of SB 613.
270	Chuck French	Multnomah County District Attorney's Office. Testifies in support of SB 613. Outlines effect of bill.
306	Dale Penn	Marion County District Attorney, Oregon District Attorneys Association (ODAA). Testifies in support of SB 613. Discusses being direction for juries, giving good clarification of law.
355	Vice-Chair Bowman	Ask for clarification of lines 19-25. Asks what change will do to current law.
366	Penn	Responds. Discusses what present law says. Discusses language clarifying rule that defendant gets same number of challenges he would have had if he had been tried separately.
404	Rep. Bowman	Asks if they still have 24.
407	Penn	Responds criminal defendant receives 12. Present law allows maximum 24 with multiple defendants. However, have to agree among themselves.
421	Rep. Wells	Asks what this does to court costs.
426	Penn	Responds will not have impact as talking about jury deliberations.

<b>TAPE 129, A</b>		
013	Vice-Chair Bowman	Closes the public hearing on SB 613; opens work session, HB 2197.
<b><u>HB 2197 - WORK SESSION</u></b>		
021	Vice-Chair Bowman	Closes work session, HB 2197; opens work session, HB 2432 and HB 2433.
<b><u>HB 2433 - WORK SESSION</u></b>		
034	Vice-Chair Bowman	Discusses work group combining issues on HB 2432 and HB 2433.
056	Dale Penn	Marion County District Attorney. Discusses HB 2432, HB 2433. Submits, discusses written testimony ( <b>EXHIBIT E</b> ). Discusses HB 2433-3 amendments ( <b>EXHIBIT F</b> ).
103	Penn	Continues testimony on -3 amendments.
154	Rep. Wells	Asks about -4 amendments (EXHIBIT G).
156	Penn	Responds.
159	Vice Chair Bowman	<b>MOTION: Moves to ADOPT HB 2433-3 amendments dated 5/16/97, with a conceptual amendment on page 4, line 28, after "1999" delete "each law enforcement agency" and replace with "Oregon Judiciary Department Access to Justice For All Council" (EXHIBIT F).</b>
179	Chair Minnis	Asks if adoption of these conceptual amendments does damage to bill.
184	<b>Rep. Prozanski</b>	<b>MOTION: Moves to RESCIND HB 2433-1 amendments passed by subcommittee.</b>
187	Penn	States -3 amendments incorporates all -1 amendments.
190	<b>Chair Minnis</b>	<b>VOTE regarding rescinding HB 2433-1 amendments: Hearing no objection, declares the motion CARRIED.</b>
206	Committee	Discusses amendment.
223	Rep. Shetterly	Refers to page 4, line 20. Suggests adding "(E) Furnish data collected under this subsection to Oregon Judicial Department Access to Justice for All Council."
241	Penn	Discusses sending information to Council not being a problem. Important way is implemented - having work group totally inclusive having some participating in setting up how this will be done.
268	Rep. Bowman	States withdraws her motion of -3 amendments as conceptually amended. Proposes accept HB 2433-3 amendments with conceptual amendment on page 4, line 28 replacing "each law enforcement agency" with "the asset forfeiture committee."
290	Rep.	Asks about backing away from "Criminal Justice Commission."

	Shetterly	
297	Rep. Bowman	Responds did not feel appropriate to add additional burden.
302	Chair Minnis	Outlines motion: MOTION: Moves to ADOPT HB 2433-3 amendments with conceptual amendment on page 4, line 20, inserting new subsection, "(E) Furnish the data collected under this section to the Asset Forfeiture Committee created under ORS _____"; and conceptual amendment, page 4, line 28, after no later than March 1, 1999, replace "each law enforcement agency" with "the asset forfeiture oversight committee."
327	Rep. Prozanski	<b>MOTION: Moves to ADOPT HB 2433-3 amendments with proposed committee conceptual amendments and with conceptual amendments from Oregon District Attorneys Association dated 5/27/97 listing four lines about definition.</b>
333	Rep. Shetterly	Discusses amendments being fine. Suggests strike word "or" on page 2.
303	Rep. Prozanski	<b>MOTION: Moves to ADOPT HB 2433-3 with proposed committee conceptual amendments and with conceptual amendments from Oregon District Attorneys Association dated 5/27/97 listing four lines about definition and further striking the word "or" on line 2.</b>
346	Chair Minnis	<b>VOTE: Hearing no objection, declares the motion CARRIED.</b>
349	Rep. Bowman	<b>MOTION: Moves HB 2433 to the full committee with a DO PASS AS AMENDED IN SUBCOMMITTEE recommendation.</b>
355		<b>VOTE: 7-0</b> <b>AYE: In a roll call vote, all members present vote AYE.</b>
358	Chair Minnis	<b>The motion CARRIES.</b> <b>Rep. Bowman will lead discussion with the full committee.</b> Closes work session, HB 2433; opens work session, HB 2197.
<b><u>HB 2197 - WORK SESSION</u></b>		
399	Scott Lumsden	Committee Administrator. Discusses HB 2197 and amendments to bill.
413	Charles Taylor	Legislative Counsel. Discusses HB 2197-3 amendments <b>(EXHIBIT H)</b> .
<b>TAPE 128, B</b>		
001	Taylor	Continues testimony.
051	Rep. Prozanski	<b>MOTION: Moves to RESCIND HB 2197-1 and HB 2197-2 amendments.</b>

053	Chair Minnis	<b>VOTE: Hearing no objection, declares the motion CARRIED.</b>
054	Rep. Prozanski	<b>MOTION: Moves to ADOPT HB 2197-3 amendments dated 5/21/97 (EXHIBIT H).</b>
056	Chair Minnis	<b>VOTE: Hearing no objection, declares the motion CARRIED.</b>
058	Rep. Prozanski	<b>MOTION: Moves HB 2197 to the full committee with a DO PASS AS AMENDED IN SUBCOMMITTEE recommendation.</b>
060	Rep. Courtney	Questions, discussion about how long records are kept.
065	Patricia Kabele	Oregon Nurses Association. States does not know.
078	Taylor	Refers to page 1, lines 27-29 of bill which provides when board receives fingerprint cards back they are to be destroyed.
100	Chair Minnis	States need answer to that.
101	Rep. Prozanski	Withdraws motion for sending bill to full committee.
106	Rep. Courtney	Discusses background checks, cards.
110	Taylor	Refers to Section 1, line 8, page 1, as amended, provides could ask for background check for issuance or renewal of license. Refers to line 11, concerning "for cause" situation.
135	Rep. Wells	Asks for review of why doing this.
136	Mary Thompson	Board of Nursing. Responds.
157	Rep. Shetterly	Questions subsection 2.
161	Chair Minnis	States key in line 4.
170	Rep. Courtney	Asks about requiring all to go through this background check.
176	Thompson	States not intention at this time.
178	Rep. Courtney	Asks if they will pick and choose.
179	Thompson	States their intention at this time.
180	Committee	Discusses background checks.
205	Chair Minnis	Closes work session, HB 2197; opens work session, HB 2197.
<b>HB 2751 - WORK SESSION</b>		

222	Scott Lumsden	Committee Counsel, outlines provisions of HB 2751.
230	Vice-Chair Bowman	Discusses speaking with City of Portland on deletion of "registered" and "motor." States they have no objection leaving both words in bill.
244	Rep. Shetterly	Discusses voting yes.
248	Vice-Chair Bowman	States her preference to leave in.
250	<b>Rep. Prozanski</b>	<b>MOTION: Moves HB 2751 to the full committee with a DO PASS recommendation.</b>
254	Rep. Wells	Asks what if he had an electric vehicle.
258		<b>VOTE: 6-0</b> <b>AYE: In a roll call vote, all members present vote AYE.</b> <b>EXCUSED: 1-Minnis</b>
264	<b>Vice-Chair Bowman</b>	<b>The motion CARRIES.</b> <b>Rep. Bowman will lead discussion with the full committee.</b> Closes work session, HB 2751; opens work session, HB 3624.
<b><u>HB 3624 - WORK SESSION</u></b>		
276	Scott Lumsden	Committee Administrator. Outlines provisions of bill.
281	<b>Rep. Prozanski</b>	<b>MOTION: Moves HB 3624 to the full committee with a DO PASS recommendation.</b>
286		<b>VOTE: 4-3</b> <b>AYE: 4-Bowman, Courtney, Prozanski, Shetterly</b> <b>NAY: 3-Sunseri, Wells, Minnis</b>
289	<b>Chair Minnis</b>	<b>The motion CARRIES.</b> Closes work session, HB 3624; opens informational hearing, conceptual overview, HB 3738.
<b><u>HB 3738 - INFORMATIONAL HEARING</u></b>		
325	Steve Marks	Governor's Senior Policy Adviser. Submits and discusses written testimony regarding HB 3738 ( <b>EXHIBIT I</b> ).
335	Dave White	Assistant Director, Special Programs, Department of Administrative Services. Submits and discusses written testimony regarding HB 3738 ( <b>EXHIBIT J</b> ).

373	White	Continues testimony.
420	Tom Potter	Director, Board on Public Safety Standards and Training. Submits and discusses written testimony regarding HB 3738 (EXHIBIT K).
<b>TAPE 129, B</b>		
001	Potter	Continues testimony.
020	Rep. Wells	Asks about budget enhancement issue.
022	Marks	Responds.
028	Rep. Wells	Asks if Potter is in agreement with bill.
032	Potter	Discusses Board taking vote, bill supports needs, so support bill.
036	Chair Minnis	Asks about restructuring of Board and management.
040	Potter	Responds. States appointment of director shifts to governor's office.
047	Rep. Courtney	Asks if it requires Senate approval.
050	Marks	Responds.
064	Rep. Courtney	Asks if appointed indefinite.
066	Potter	Responds. Discusses following typical model of other agencies.
073	Rep. Bowman	Asks if bill creates a new state department.
075	Marks	Responds.
080	Potter	Responds further.
112	Rep. Courtney	Asks how many people are on the board. Asks if Oregon National Guard will have representative on board.
118	Potter	Responds.
128	Rep. Courtney	Asks about emergency services.
129	Potter	Responds.
145	Rep. Wells	Asks what going to do with requested \$800,000. Asks about budget.
156	Bill McGee	Department of Administrative Services. States portion of their budget coming from unitary assessment about 11 or 12 million dollars.
161	Rep. Wells	Asks how Potter appointed.
163	Potter	States was appointed by Executive Committee who was given authority of full board to appoint interim director.
165	Rep. Wells	Asks if there was a director before that.
170	Chair	Clarifies appointment by governor.



	Minnis	
176	Rep. Bowman	Asks about structure of board and how it will change.
196	Rep. Bowman	Asks if individuals stay on job as long as they are in that position.
205	Marks	Comments on proposed budget note. Reads note.
219	Chair Minnis	Asks about missing statement of purpose.
242	Chair Minnis	Asks where have published documents concerning efficiency of training for law enforcement, public safety personnel.
258	Rep. Prozanski	Comments.
274	White	Discusses moving to strategic planning model.
280	Chair Minnis	Discusses legacy of investigation report. Closes informational meeting on HB 3738. Recesses meeting at 3:04 p.m.
291	Chair Minnis	Reconvenes 3:30 p.m. Opens work session, HB 3357.
<b><u>HB 3357 - WORK SESSION</u></b>		
302	Brenda Rocklin	Oregon Department of Justice. Submits, discusses written testimony in support of HB 3357 ( <b>EXHIBIT L</b> ). Discusses -1 amendments ( <b>EXHIBIT M</b> ).
340	Rocklin	Continues testimony.
390	Rocklin	Continues testimony.
<b>TAPE 130, A</b>		
001	Rocklin	Continues testimony.
016	Chuck French	Deputy District Attorney, Multnomah County. Testifies in favor of HB 3357. Discusses <i>State v. Fair</i> .
066	French	Continues testimony.
080	Rep. Sunseri	Asks what is the implication here of racketeering.
090	Rocklin	Responds.
099	<b>Rep. Sunseri</b>	<b>MOTION: Moves to ADOPT HB 3357-1 amendments dated 4/10/97 (EXHIBIT M).</b>
101	Rep. Prozanski	Discusses concerns about individual being found not guilty, should be "acquittal."
110	<b>Chair Minnis</b>	<b>VOTE: Hearing no objection, declares the motion CARRIED.</b> <b>EXCUSED: Bowman, Courtney</b>
111	<b>Rep.</b>	<b>MOTION: Moves to send HB 3357 to the full committee with</b>

	<b>Sunseri</b>	<b>a DO PASS AS AMENDED recommendation.</b>
112	Rep. Wells	Asks for clarification.
120	Chair Minnis	Explains, clarifies.
124	Rep. Bowman	Asks why sexual offenses related to RICO.
130	Chair Minnis	Responds.
151	Rep. Shetterly	Clarifies "previous conduct."
154	Rocklin	States do not have to have prior conviction.
155		<b>VOTE: 6-1</b> <b>AYE: 6-Courtney, Prozanski, Shetterly, Sunseri, Wells, Minnis</b> <b>NAY: 1-Bowman</b>
160	<b>Chair Minnis</b>	<b>The motion CARRIES.</b> <b>Rep. Shetterly will lead discussion with full committee.</b> Closes work session, HB 3357; opens work session, HB 3686.
<b><u>HB 3686 - WORK SESSION</u></b>		
179	Alex Jenson	Tualatin Valley and Fire Rescue.
180	Rep. Prozanski	Asks for clarification of bill.
188	Jenson	Gives testimony in support of HB 3686. Outlines effect of HB 3686.
226	Rep. Bowman	Asks if bill passed, what public information would public be entitled to.
229	Rep. Shetterly	Comments important to have access to critique.
243	Rep. Wells	Asks what way media has caused problem in the past.
290	Rep. Prozanski	Questions about access to records.
315	Rep. Bowman	Asks why give fire department more protection than we would give any other person.
354	Committee	Discusses going into session.
357	Rep. Shetterly	Comments on reason for Tort Claims Act.
	Rep.	

385	Sunseri	Asks for clarification of videos relating to written reports, notes.
424	Rep. Bowman	Asks if critique could be done without videotaping.
<b>TAPE 131, A</b>		
002	Chair Minnis	Discusses taking no action at this time, during interim need to have discussion of confidentiality.
015	Gail Ryder	Oregon Newspaper Publishers Association. Original position to oppose; states may be compromise to reach.
026	Rep. Prozanski	Comments on subsection one of section one being big concern.
034	Chair Minnis	Closes work session, HB 3686; opens work session, HB 3672.
<b><u>HB 3672 - WORK SESSION</u></b>		
043	Rep. Kurt Schrader	District 23. Testifies in favor of HB 3672. Discusses -1 amendments to the bill ( <b>EXHIBIT N</b> ).
071	Rep. Bowman	Discusses being about power rather than sex, dealing with issue of violence.
087	Rep. Schrader	Discusses links in power and hormonal drive. Discusses controlling behavior.
111	Rep. Sunseri	Asks if there is a period of time before chemical action works in body. Asks about sunset clause.
121	Sen. Jeannette Hamby	District 5. Testifies in support of HB 3672.
157	Chair Minnis	Closes work session, HB 3672; recesses at 4:42 p.m.
158	Chair Minnis	Reconvenes at 6:03 p.m.; opens work session, HB 3332.
<b><u>HB 3332 - WORK SESSION</u></b>		
160	Rep. Carter	Discusses HB 3332 and the -4 amendments to the bill ( <b>EXHIBIT O</b> ).
196	Rep. Shetterly	Discusses hand-engrossed -4 amendments ( <b>EXHIBIT P</b> ).
205	<b>Rep. Courtney</b>	<b>MOTION: Moves to adopt HB 3332-4 amendments dated 5/12/97.</b>
210	Rep. Bowman	Asks if civil forfeiture of automobile.
219	Rep. Wells	Asks who makes the determination.
226	Rep. Shetterly	Asks about proving incident.

233	Rep. Wells	Asks how defend yourself if wrongly accused.
237	Rep. Carter	Outlines what sponsors of bill trying to do.
248	Chair Minnis	Discusses right to request hearing.
268	Rep. Sunseri	Asks question of what if someone steals car for drive-by shooting.
271	Chair Minnis	Discusses asking for hearing.
276	Rep. Prozanski	Comments would have filed a report with the police.
281	Chair Minnis	Comments -4 amendments require owner of car has knowledge.
294	Rep. Wells	Asks how this fits into issues of liens and other forfeiture statutes.
299	Chair Minnis	Responds.
304	Rep. Carter	States did not repeal any of the present statutes regarding civil forfeiture law.
311	Rep. Bowman	Asks if Rep. Carter would be interested in "friendly amendment" to require report back to next legislative session.
316	Chair Minnis	States that is already included.
321	Rep. Prozanski	Discusses forfeiture.
336	Rep. Bowman	Discusses concern with bill.
356	Rep. Carter	Asks that accept "friendly amendment" in concept.
374	Rep. Shetterly	Asks why on lines 9-11 reference to forfeiture law.
382	Rep. Prozanski	Responds.
401	Rep. Carter	States no objection to the "friendly amendment."
410	Chair Minnis	Asks Rep. Bowman to find out about adequate reporting mechanisms and if not, bring amendment to full committee.
431	Chair Minnis	<b>VOTE: Hearing no objection, declares the motion CARRIED.</b>
433	Rep. Courtney	<b>MOTION: Moves HB 3332 to the full committee with a DO PASS AS AMENDED IN SUBCOMMITTEE recommendation.</b>

440		<b>VOTE: 7-0</b>
		<b>AYE: In a roll call vote, all members present vote Aye.</b>
444	<b>Chair Minnis</b>	<b>The motion CARRIES.</b> Closes work session, HB 3332; opens public hearing, HB 3732.
<b>TAPE 130, B</b>		
<b><u>HB 3732 - PUBLIC HEARING</u></b>		
016	Rep. Carter	District 18, submits letter from Multnomah District Attorney <b>(EXHIBIT Q)</b> , testifies in favor of HB 3732. Compares bill to law regarding bartender selling alcohol, knowingly seeing the person is drunk.
035	Rep. Carter	Continues testimony, the deputy District Attorney has stated there are no constitutional problems with this bill.
078	Rep. Wells	The bill would allow, upon the death of an addict, to sue the dealer of the drugs. Asks how this would be proven.
083	Rep. Carter	Gives an example of a murder.
094	Rep. Wells	Comments that he reads the bill as pertaining to the death of those who overdose on drugs.
100	Chair Minnis	Asks Rep. Wells which bill he is referring to.
102	Rep. Wells	Responds that he is reading from the letter submitted by Rep. Carter <b>(EXHIBIT Q)</b> .
104	Chair Minnis	Comments that the bill simply makes someone who sells controlled substances to another person liable for crimes that person commits while under the influence of the drugs.
113	Rep. Wells	Comments on the letter <b>(EXHIBIT Q)</b> .
119	Rep. Sunseri	Comments that the liability would not be limited to deaths by overdose.
123	Chair Minnis	Comments that the definition on line 13 of the bill is a broad definition and could almost apply to a pharmacist.
125	Rep. Carter	Agrees.
128	Chair Minnis	Asks if the point is to get at illicit drug sales.
129	Rep. Carter	That is exactly right.
131	Rep.	Comments that the intent of the bill is good but there are significant proof problems. Comments on the bill calling for the

	Prozanski	drug seller to be criminally liable, maybe it should be a civil liability.
146	Rep. Carter	Discusses what she and her staff had in mind in drafting this bill. It should be just like the alcohol law, if someone sells drugs to a person they know is a drug addict, the seller should be liable.
157	Rep. Prozanski	States that he agrees with the intent of the bill but does not see how it can be proven, compared to alcohol there is a basis of proof: the person had to have actually been at the establishment held responsible.
173	Rep. Carter	Tells the committee they must tell her how this should be done so that it works.
178	Chair Minnis	Comments it can be done. The only thing the investigator has to prove is the seller of the drugs knew the buyer used drugs and the seller actually sold them. The question is did the person who sold the drugs actually intend for the crime to be committed and does that need to be shown?
192	Rep. Bowman	Asks Rep. Carter about section c. One would think that a drug addict would have many sellers and would mix.
204	Rep. Carter	There are some things that seem vague, but only in the process of investigating does the reality of the crime come forth. It is going to be a matter of asking questions.
221	Rep. Bowman	Expresses concern about giving the police another tool to add to their broad range of powers over people who may or may not be up to unlawful acts. Sees this bill as another tool for police to harass kids in the poor, black neighborhoods.
252	Rep. Bowman	Continues, this is not the way to get drugs and crime out of the communities.
266	Rep. Carter	Responds a gun barrel has no color. We need some kind of tools to stop what is happening in our communities. States that she is not someone who is always willing to give away the individual rights of people, but she is tired of the problems.
301	Chair Minnis	If you supplied a controlled substance to someone knowing they use the substance and they commit a crime, one question that needs to be answered is if the elements of the crime require an intentional act, on the part of the actor. Can we impute that vicarious criminal liability to the person who sold the drugs? Does not think it can be done.
312	Rep. Shetterly	If you are criminally liable for the criminal act of another person, then there is an equal level of offense. That makes the selling of drugs a possible capital offense if the person you sold drugs to commits a capital crime. Raises these issues because it is a criminal charge, would not if it were a civil case issue.
330	Rep. Carter	Comments that her impression from Legislative Counsel was this is the same model used for a crime committed under the influence of excessive alcohol from an establishment.

337	Chair Minnis	Comments the discussion is approaching a principle in criminal law which considers the mental intent of the individual committing the crime. The influence of drugs or alcohol may create reckless behavior or negligence.
341	Rep. Carter	Asks to be allowed to work on the issues discussed.
344	Rep. Prozanski	It is worth noting alcohol law is not criminal, it is civil.
363	Chair Minnis	Closes the public hearing on HB 3732 and re-opens the work session on HB 3672.
<b><u>HB 3672 - WORK SESSION</u></b>		
375	Rep. Schrader	Introduces witnesses from Department of Corrections.
378	Scott Taylor	Assistant Director, Department of Corrections, comments that he worked with Rep. Schrader and Sen. Hamby in drafting the bill and the amendments ( <b>EXHIBIT N</b> ). Testifies that the design of the amendments was to narrow the population to a specific group of predatory sex offenders who are not responding to the current treatments.
407	Diane Middle	Chairperson of the Board of Parole and Post-Prison Supervision, testifies the Board currently has the authority to require offenders to take a drug equivalent to the chemical castration drug. At this point there are very few cases in which this has to be used and it is in agreement with the offender as a part of their treatment.
421	Rep. Shetterly	Asks why the bill is necessary.
425	Middle	Responds that this bill will make this treatment more likely to be used and more available.
450	Rep. Sunseri	Asks if the drugs have side-effects.
458	Middle	Responds all medications have side-effects depending on the individual, this bill states that the treatment must be under a doctor's care and medically approved.
<b>TAPE 131, B</b>		
017	Rep. Schrader	The side effects most common with this medication result from too large of a dose. These can be reversed by stopping administration. There is no permanent damage.
020	Rep. Sunseri	States his concern as wanting these people to be productive and contribute to the society once they are out.
222	Rep. Schrader	There is no mental deficiency and it does not impair their ability to work.

025	Rep. Bowman	Asks how many offenders are currently taking the drugs.
028	Middle	Does not know the number, but there are very few. Can think of two in particular who began taking the medication while they were in the institution and have continued as part of their post-prison treatment.
037	Rep. Bowman	Asks if the two she has mentioned were considered predatory sex offenders.
040	Middle	Yes.
042	Rep. Wells	Discusses section 4 which states that the person will be required to pay the costs of the treatment.
046	Rep. Schrader	Comments that is a common practice.
049	Taylor	Offenders are currently charged to be under monthly supervision and sex offenders are commonly charged the majority of their treatment.
055	Rep. Wells	Comments there is not anything in the bill to offer an incentive to be part of the program.
059	Rep. Schrader	Responds there does not need to be an incentive in the bill, if they do not comply they break their post-prison supervision guidelines. The notification to the community they are a sex offender is a strong deterrent.
072	Rep. Wells	Are they still part of the notification process while undergoing this treatment?
073	Rep. Schrader	Yes.
074	Rep. Courtney	Comments in many cases notification of the community is a threat to convince offenders to continue with their treatment.
080	Rep. Wells	Asks for clarification as to whether there is a requirement for these offenders on this treatment to be involved in the notification program or if it is determined by the parole board.
082	Middle	When the conditions of supervision are being set up, one of the issues the board determines is if the offender has reached the level of predatory sex offender. Individual community corrections offices will determine if they will do notification and at what level.
094	Rep. Bowman	Asks if the recommendation for this treatment would be affected by the ability of the offender to pay for the treatment.
097	Taylor	In the community corrections, where these people will be supervised, there is money allocated to set up programs and take care of ongoing conditions. So if there is an indigent who can't afford the program there would be a repayment plan set up.
105	Rep.	Comments that section 2 may not be necessary for the



	Schrader	implementation of the bill.
112	Rep. Sunseri	<b>MOTION: Moves to ADOPT HB 3672-1 amendments dated 05/05/97.</b>
116	Chair Minnis	Asks Rep. Schrader about his comment regarding the deletion of section 2.
	Chair Minnis	<b>VOTE: Hearing no objection, declares the motion CARRIED.</b>
125	Chair Minnis	Discusses section 2.
127	Rep. Schrader	Comments that if section 2 is left in the bill it will make the bill only applicable to those convicted after November 1, 1997. The results of this bill won't be seen until 2003 if this section is left in the bill.
134	Rep. Prozanski	<b>MOTION: Moves to ADOPT proposed committee CONCEPTUAL AMENDMENTS to HB 3672, striking section 2 from the bill.</b>
	Chair Minnis	<b>VOTE: Hearing no objection, declares the motion CARRIED.</b>
140	Rep. Shetterly	Asks if the committee wants to address the sunset clause.
142	Chair Minnis	Asks what an appropriate sunset would be.
143	Rep. Wells	The issue has already been addressed.
145	Rep. Shetterly	<b>MOTION: Moves HB 3672 to the full committee with a DO PASS AS AMENDED IN SUBCOMMITTEE recommendation.</b>
		<b>VOTE: 6-1</b> <b>AYE: 6 - Minnis, Courtney, Prozanski, Shetterly, Sunseri, Wells</b> <b>NAY: 1 - Bowman</b>
	Chair Minnis	<b>The motion CARRIES.</b>
		<b>Rep. Shetterly will lead the discussion in front of the full committee.</b>
157	Chair Minnis	Closes the work session on HB 3672 and opens a work session on HB 2920.
<b>HB 2920 - WORK SESSION</b>		
158	Chair Minnis	Discusses and explains the -1 amendments to HB 2920 <b>(EXHIBIT R).</b>

186	Rep. Sunseri	<b>MOTION: Moves to ADOPT HB 2920-1 amendments dated 05/20/97.</b>
188	Rep. Prozanski	Comments on the current sanctions that would be proposed, raises the issue of proportionality.
215	Virginia Vanderbilt	Legislative Counsel, comments there is a series of laws regarding the encouragement of child sexual abuse in the first degree and the second degree (Class B and Class C felonies, respectively). An element of those crimes, the creation of the materials, involved sexually explicit conduct by children. The issue in the new offenses proposed by this bill is the child has not been used in the sexual conduct but is being influenced by the materials. There needs to be a rationale to justify the higher penalty proposed in this bill.
238	Chair Minnis	Comments in current statute the issue is the use of an actual child versus a computer image. The intent of this legislation is to address when those images are used with the intent to harm a child. Does not have a problem with reducing the classification of the crime.
251	Rep. Sunseri	<b>MOTION: Moves to conceptually amend the HB 2920-1 amendments dated 05/20/97 by deleting on page 1, line 15, following the word "Class", the letter "A" and inserting the letter "B"; and deleting on page 2, line 1, following the word "Class", the letter "B" and inserting the letter "A".</b>
257	Rep. Bowman	Asks if two 17 year olds will go to jail if they have sexual intercourse.
261	Rep. Prozanski	Not under this bill. Even under the other statutes there is a defense using the 3-year variance of age principle.
261	Chair Minnis	Reads part of the bill which refers to possession of material depicting sexually explicit conduct of a child.
267	Rep. Bowman	Comments that the bill states "under 18."
268	Chair Minnis	Responds that is a part of current law.
269	Rep. Bowman	Gives an example involving 17 year olds.
279	Chair Minnis	Responds if there is the use of visual images to induce a 17 year old to participate or engage in sexually explicit acts, the 17 year old would be considered a child.
298	Rep. Prozanski	Comments on the use of the Stoneman case and having Legislative Counsel review the aspect of visual depiction.
305	Vanderbilt	This issue is beyond the Stoneman case. This language comes from federal law. There is potentially a question because it is being tied into a particular use of the explicit material.
	Rep.	That is an issue we are unsure of how the courts are going to

331	Prozanski	deal with it.
332	Vanderbilt	That is correct.
333	Chair Minnis	In constructing this legislation, it was clear where there was a state interest in preventing harm to a child. That could potentially be an exception to the protection of free speech.
350	Rep. Bowman	Asks what the penalties are for Class B and Class C felonies.
353	Rep. Prozanski	Responds.
356	Chair Minnis	<b>VOTE: Hearing no objection, declares the motion CARRIED.</b>
360	Rep. Sunseri	<b>MOTION: Moves HB 2920 to the full committee with a DO PASS AS AMENDED IN SUBCOMMITTEE recommendation.</b>
		<b>VOTE: 7-0</b>
		<b>AYE: In a roll call vote, all members present vote Aye.</b>
	Chair Minnis	<b>The motion CARRIES.</b>
		<b>REP. MINNIS will lead discussion on the floor.</b>
372	Chair Minnis	Adjourns the meeting at 7:15 p.m.

Submitted by, Reviewed by,

Lisa Fritz, Scott Lumsden,

Administrative Support Counsel

Transcribed by,

Kellie A. Shoemaker,

Committee Clerk

**EXHIBIT SUMMARY**

**A - SB 780, proposed amendments, Kevin Campbell, 1 p.**

**B - SB 780, proposed amendments, Legislative Counsel, 1 p.**

**C - SB 780, proposed amendments, Legislative Counsel, 1 p.**

**D - SB 780, proposed amendments, Legislative Counsel, 1 p.**

**E - HB 2433, written testimony, Dale Penn, 43 pp.**

**F - HB 2433, proposed amendments, Legislative Counsel, 4 pp.**

**G - HB 2432, proposed amendments, Legislative Counsel, 1 p.**

**H - HB 2197, proposed amendments, Legislative Counsel, 3 pp.**

**I - HB 3738, written testimony, Steve Marks, 3 pp.**

**J - HB 3738, written testimony, Dave White, 2 pp.**

**K - HB 3738, written testimony, Tom Potter, 2 pp.**

**L - HB 3357, written testimony, Brenda Rocklin, 5 pp.**

**M - HB 3357, proposed amendments, Legislative Counsel, 1 p.**

**N - HB 3672, proposed amendments, Rep. Kurt Schrader, 3 pp.**

**O - HB 3332, proposed amendments, Rep. Margaret Carter, 1 p.**

**P - HB 3332, proposed amendments and hand-engrossed bill, staff, 2 pp.**

**Q - HB 3332, letter of testimony, Rep. Margaret Carter, 2 pp.**

**R - HB 2920, proposed amendments, Rep. John Minnis, 2 pp.**