

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

January 23, 1997 Hearing Room 357

1:00 pm Tapes 7 - 9

MEMBERS PRESENT:

Rep. JOHN MINNIS, Chair

Rep. JOANN BOWMAN, Vice-Chair

Rep. PETER COURTNEY

Rep. FLOYD PROZANSKI

Rep. LANE SHETTERLY

Rep. RON SUNSERI

Rep. LARRY WELLS

MEMBER EXCUSED:

STAFF PRESENT:

SCOTT LUMSDEN, Counsel

BRIAN HIGGINS, Administrative Support

MEASURE/ISSUES HEARD:

Public Hearing and Possible Work Session on HB 2156 and 2159

Public Hearing on HB 2329, HB 2310, HB 2217, HB 2222 and HB 2197

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 7, A		
05	Chair Minnis	Calls committee to order.
<u>HB 2156 - PUBLIC</u>		

<u>HEARING AND POSSIBLE WORK SESSION</u>		
14	Chair Minnis	Opens work session on HB 2156
15	Rep. Courtney	Asks if there are any amendments
20	Rep. Courtney	MOTION: Moves HB 2156 to the full committee with a DO PASS recommendation.
21		VOTE: 7-0
	Chair	Hearing no objection, declares the motion CARRIED. REP. SUNSERI will lead discussion on the floor.
<u>HB 2159 - PUBLIC HEARING AND POSSIBLE WORK SESSION</u>		
23	Chair Minnis	Opens public hearing on HB 2159
		Opens work session on HB 2159
26	Rep. Prozanski	MOTION: Moves HB 2159 to the full committee with a DO PASS recommendation.
28		VOTE: 7-0
	Chair	Hearing no objection, declares the motion CARRIED. REP. COURTNEY will lead discussion on the floor.
<u>HB 2329 - PUBLIC HEARING</u>		
48	Rep. Courtney	Submits and reads from written testimony, (EXHIBIT A)
86	Wayne Shuyler	Assistant Director, Oregon State Marine Board >submits and reads from written testimony,

		(EXHIBIT B)
102	Lindsay Ball	Oregon State Police Captain, Fish and Wildlife Division Director >submits and reads from written testimony, (EXHIBIT C)
143	Rep. Prozanski	This bill is inconsistent with existing statutes that also recognize property damage.
		>asks if there would be any problem to excluding this bill to death or injury to individual
156	Ball	I would have no problem with an amendment to the bill.
162	Chair Minnis	Questions regarding movements within waterway which are attempts at safety
173	Rep. Prozanski	Explains a defense of "choices of evils"
181	Chair Minnis	Is that defense restricted to any particular statutes?
184	Rep. Shetterly	Comments that there should be no problems with that aspect of the bill
190	Rep. Bowman	Has it been a problem of failure to report these incidences?
198	Shuyler	Yes.
203	Chair Minnis	Are there any guesstimates on numbers of cases that would be subject to this kind of prosecution?
205	Ball	There were 2 cases in 1995, and none in 1996.
211	Rep. Prozanski	Asks for clarifications on injuries in the two cases.

214	Ball	Reportable accidents are hinged on injury cases or damage to a craft exceeding \$500.
224	Chair Minnis	Closes public hearing on HB 2329
<u>HB 2222 - PUBLIC HEARING</u>		
230	Kevin Mannix	Private practice attorney and former representative
		>bill addresses public safety officers
		>bill developed by talking to people in the field >In response to critique, it is time to move forward. >needs to be a zone of safety around police officers
261		Overview of the bill as written >moves from Class A misdemeanor to Class C felony >through amendment process may want to add "blood" >Section 3 establishes crime of assaulting corrections officer. >Section 5 establishes crime of fleeing peace officers.
328		>Section 9 establishes interfering with a peace officer as a misdemeanor. >Sections 14-20 deal with diversion issues.
380	Rep. Wells	Asks question about appropriateness of including diversion section in the bill
383	Mannix	This bill is a vehicle for a few different issues.
391	Rep. Bowman	If purpose of bill is to give more protection to peace officers, what situations are being corrected by bill? >Consecutive mandatory minimum sentences may not help with inmate cooperation.
412	Mannix	This bill is geared towards those who have committed

		nasty, mean crimes.
		>lack of control within jail means person unlikely to control themselves in real life
430	Rep. Bowman	Expresses concern about giving police broad powers
TAPE 8, A		
19	Mannix	There is a requirement that the person know that it is a peace officer carrying out his duties.
23	Rep. Bowman	This bill does not say that a police officer needs to do anything to show that he is an officer.
30	Mannix	On page 3, Section 9 of the bill has the clarifying language
		>includes visual or audible signal
43	Rep. Prozanski	Asks to be shown where in Section 5 where it relates to knowledge on the part of the individual
48	Mannix	There is a requirement in criminal statutes that individual needs to show intent.
		>may be a good technical amendment to include a requirement of knowledge
54	Rep. Prozanski	There are 4 different types to the element.
61	Mannix	I had no intent to delete requirement of knowledge.
65	Rep. Shetterly	Refers to section 1, line 7-9, uses the word "knows"
		>"knows" appears to be defined on page 2
		>asks if this is a new standard of knowledge as defined
60	Mannix	"Reasonably should know" because it is difficult to prove sometimes that someone actually knows.

80	Chair Minnis	Suggests there will be additional hearings on this bill
91	Brian De Lashmitt	Oregon Council of Police Associations and Association of Corrections Employees
		>will be making some written responses
		>refers to page 1, section 1, 7-9; corrections officers are not included
106	Rep. Prozanski	Section 2 has a separate section on corrections.
110	De Lashmitt	Expresses concern about technical drafting
		>suggests personal safety zone should be 21, not 15 feet
121	Larry Burlison	President, Association of Oregon Corrections Employees
		>HB 2222 would be a deterrent for inmates
140	Gary Harkins	Sergeant,. Oregon State Penitentiary >This bill puts in some desperately needed sanctions. >55% of inmate assaults on staff at OSP involve urine, spit, feces, blood. >expresses need for meaningful sanctions
167	Chair Minnis	How often does this happen?
168	Harkins	About 8 assaults a month
171	Chair Minnis	Is there a log of assaults kept for all of the institutions?
175	Harkins	Yes, the results from last 3 years are about the same. >1996, 101 staff assaults
184	Rep. Prozanski	It appears we are confusing assault with harrassment.

		>Section 3 applying to Corrections officer and staff requiring only touching, pushing
		>Of assaults, did any contain physical injury?
202	Harkins	Series of physical injuries listed
		>All substances are treated as infectious.
214	Rep. Prozanski	Should there be equality on statute for conduct in and outside of the walls? >suggests there might be a double standard
226	Harkins	We consistently come up against this - yes, the penalties should be the same.
246	Rep. Prozanski	If someone is pushed, should sentence be minimum mandatory 5 years?
250	Harkins	No, the circumstances would dictate.
259	Rep. Prozanski	For the record, this bill, as it stands would include that sentence.
262	Chair Minnis	Agrees with Harkins
270	Rep. Bowman	Comes a point where sentence is no longer a deterrent >comments that laws already on the book would apply to these types of actions
288	Harkins	The sanctions work just like it does on the street.
291	Rep. Bowman	If this was true, the prisons wouldn't be filled.
293	Harkins	Current sanctions are not enough. >Most citizens take into account sanctions.
306	Rep. Sunseri	Are woman's prisons similar in types of assaults?

309	Harkins	Comments he is not versed with woman's facility
314	Mannix	Would like differentiation between type of staff assaulted >there is reason for minimum mandatory sentences
		>legislature has already made distinctions as with the intimidation statutes
362		>deterrent may or may not work, but also sense of justice
370	Chair Minnis	Alludes to some sort of indoctrination inside institutions
383	Rep. Shetterly	Assault of corrections officers as in Section 3, does not go as far as Section 1.
402	Harkins	We are concerned about that.
415	Rep. Courtney	The times I remember visualizing, during facility tours, the feces, etc. was on death row. >Are we talking about individuals which are already in isolation?
TAPE 7, B		
21	Larry Burlison	About 90% come from intensive management units. >explains differences in types of segregation units
45	Rep. Courtney	Wouldn't they be put in special management units?
47	Burlison	Yes.
48	Rep. Courtney	Should we not pass a law that protects you? >if you cause trouble, should go to one of the special units
		When segregated, the only way to lash out is to use

58	Harkins	feces and urine as weapons.
67	Rep. Courtney	Asks for comments on feel for other institutions in terms of incidence
70	Burlison	We're finding people will spit because they only have a week to go.
77	Harkins	It occurs at OSCI, limited at Snake River, mostly happens in segregated cells
84	Chair Minnis	It doesn't look like we'll get to HB 2310 or 2197 today.
95	Mike Pageler	Organizer with OPEU
		>some issues may need to be hammered out
		>protection is necessary due to conditions they work under
112	Sandra Finical	Employee of OSCI
		>drew up the bill
		>many physical injuries, including broken bones
		>Michael Glynn, inmate - history of assault of inmates and staff at different facilities - scheduled to be released soon
		>nothing happens to you if you beat an officer
		>more time in segregation if they assault another inmate than if they were an officer
159	Rep. Shetterly	Nothing in statute that says charges can't be brought
		>wants to know why charges are not being brought
160	Finical	Because it is a misdemeanor and the District Attorney has refused to charge misdemeanors.
175	Rep. Prozanski	I'm seeing lack of duty on DA's and ADA's

181	Finical	There has been a lack of support.
183	Rep. Prozanski	DA's should be prosecuting these. >by raising the penalty, doubts there will be any greater compliance
191	Finical	38 other states have these laws.
196	Rep. Prozanski	Do you understand there is currently law on the books for corrections officers to be protected from this type of conduct?
199	Finical	It's 7 days, but they take into consideration that they are already in jail.
202	Chair Minnis	You're referring to general assault statutes, aren't you?
207	Rep. Prozanski	It is not limited to 7 days, but 14 days and a Class A misdemeanor punishable by up to a year.
213	Mannix	HB 2334 last session does not include corrections officers.
220	Rep. Prozanski	Under Section 1, it signifies a Class A misdemeanor. >Why do people thinking we are limited to 7 days?
229	Mannix	It's under 163.208, currently sub 3, sub a.
236	Rep. Sunseri	Would like Marion Co. DA to come in and explain lack of pursuit of charges >this bill should be treated like existing statutes
243	Mannix	Where do you utilize your prosecutorial resources? >Lots of crimes don't get prosecuted because they are not high on the priority list when it comes to using staff.

253	Rep. Sunseri	In situations of chronic offender, it would be helpful to have additional charges so he wouldn't get released.
258	Mannix	Assault in 1st or 2nd degree there would be some hefty mandatory minimums
268	Rep. Shetterly	Assault of a peace officer is 7-14 day minimum, but does carry 1 year penalty
		>could prosecute as felony assaults
278	Finegal	This is why we want felony assault.
281	Chair Minnis	Must work with prosecutor otherwise we will not be able to accomplish much
273	Pageler	At issue is the lack of prosecution by officers and DA's.
298	Rep. Bowman	Are you currently allowed to press charges against an inmate?
300	Finical	No, because they are not filing Class A misdemeanors.
		>cites how bill works in Nevada
325	Rep. Bowman	Who were you told by?
327	Finical	Dale Penn's office
338	Rep. Courtney	It would be curious to see what Dale Penn would say.
358	Mannix	We need to remember that there will never be a perfect solution, but the question is whether it moves you towards improvement.
380	Rep. Courtney	Would like DA to see how legislature feels about this >legislative intent of this committee needs to be recorded.

400	Chair Minnis	The point is we need to bring in the DA.
404	Mannix	The legislature might consider special financial assistance to DA's offices where there are correctional facilities
411	Chair Minnis	Or we could take it away.
413	Rep. Sunseri	I am in general support of bill, but I want the DA to come in.
424	Finical	When the sanction is a large block of time, it is more likely to work as it has in ID.
TAPE 8, B		
10	John Marshall	Correctional Officer, Oregon State Correctional Institution >been assaulted twice by inmates
21	Rep. Shetterly	Asks for description of assaults
22	Marshall	My glasses were broke, lip was split and black eye
30	Finical	They've mainly been addressing the money. >last time he was assaulted, it cost him \$300 and two days of work
47	Chair Minnis	Do you have to take your own time off?
48	Finical	He used sick time.
58	Dan Andrews	City of Portland Police Officer
60	John Scruggs	City of Portland Police Officer
62	Rachel Haugh	City of Portland Police Officer

68	Dan Andrews	Need to look at human aspect of this
		>in support of interference with police statute
136		>we'll accept 15 feet, but would be glad to see amendment of 21 feet
143	John Scruggs	Relates personal experience testimony >explains need for fleeing statute as included in HB 2222 >more officers are injured in traffic pursuits than any other way
200		Continues testimony
222	Dan Andrews	Fleeing tends to be rewarded because there are no repercussions for it.
242	Rep. Bowman	Expresses fear of putting more laws on the books to give police more power
		>risks are involved in this job; what is the balance to guarantee safety on both ends
		>there are enough mandatory minimum sentences
275	Dan Andrews	Explains need for multiple officers at scenes
308	Chair Minnis	It was intimated that the number of officers may have been predicated by the race of those stopped.
320	Rep. Bowman	This was not my point; I'm talking about allocation of resources.
335	John Scruggs	This is statewide law, not directed towards Portland or Gresham. >the issue is safety, for officers and citizens
363	Rep. Bowman	I also have a problem that deals with 15 feet portion of bill.
		>am I subjected to this law if I'm on my property?
377	Andrews	Yes, in some cases, but we are trained to reply after incidents are over.

		>as a private citizen you are due an explanation AFTER the incident
430	Rep. Bowman	I would not do it to interrupt, but to watch.
434	Andrews	Within 15 or 21 feet you would need to see everything you need to see.
TAPE 9, A		
15	Rep. Wells	I'm beginning to agree on point of fleeing.
34	Rachel Haugh	City of Portland Police Officer >works on midnight to 8am shift >assaulted with a 40 oz. bottle of beer and ended up having two surgeries
53	Rep. Wells	I was thinking more about your attitude toward the job. >we need to support you so that our police don't get carried away in how they carry out their work. (cites Rodney King case)
67	Andrews	It would be good to know community is behind us, and that we have the tools we need for our job so that we do not get carried away.
77	Chair Minnis	Isn't purpose behind 15 feet, so you do not need to use more force?
84	Andrews	We're concerned with Dudley Doright citizens. >need to have ability for them to back up
89	Rep. Prozanski	Comments on support of pieces of bill >1) interference with police officer and 2) fleeing >Rep. Shetterly and hisself will work on language to these bills to improve what is already on books

110	Chair Minnis	We will hold over additional comment and invite district attorneys to come in and the Department of Corrections.
		>would like to sign a workgroup to work with proponents
		>Rep. Courtney will carry HB 2159 and Rep. Sunseri will carry HB 2156.
		Adjourns meeting at 3:05 pm.

Submitted By, Reviewed By,

BRIAN HIGGINS, SCOTT LUMSDEN,

Administrative Support Counsel

EXHIBIT SUMMARY

A - Written testimony, Rep. Peter Courtney, 1 p.

B - Written testimony, Wayne Shuler, 1 p.

C - Written testimony, Capt. Lindsay A. Ball, 3 pp.

D - Written testimony, Ingrid Swensen (not present at hearing), 7 pp.