

HOUSE COMMITTEE ON JUDICIARY COMMITTEE

SUBCOMMITTEE ON CRIMINAL LAW

January 27, 1997 Hearing Room 357

3:15 pm Tapes 10 - 11

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 Hearings on Measures 2222, 2312, 2313, 2311, and 2303

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		
<u>HB 2222 - PUBLIC HEARING</u>		
03	Chair Minnis	Opens public hearing on HB 2222

08	Dale Penn	District Attorney, Marion County
		<ul style="list-style-type: none"> >introduces Steve Dingle, Deputy District Attorney >county will always have the biggest load of cases. >partially opposed to some sections >likes guilty pleas and diversion courses >often lose cases due to the time between arrest and time of trial >allude cases should be prioritized in the criminal code >I have a problem with the criminal assault provision >alternatives have not been explored which are more cost-effective >we do not prosecute misdemeanor crimes which occur in prisons
65	Penn	<p>Felony crimes inside the prison will always be prosecuted, especially assaults</p> <ul style="list-style-type: none"> >misdemeanor cases are time-consuming and costly; swift justice is important >can sanctions be increased? >would like to utilize extension of sentence by eliminating good behavior time; this can be done administratively
116	Penn	<ul style="list-style-type: none"> >any cases involving injury, we will prosecute >revoking of good time will be an effective sanction >when you're talking about increasing lengths, the system is already crowded >supportive of the concept but concern is that I can not respond to 100 cases, especially in light of Measure 47.
152	Chair Minnis	Do you believe that a Department of Corrections officer has less rights than anyone else who brings a complaint to your office?
		We do not prosecute first offense, non-violent misdemeanors.

157	Penn	>has to do a 1/3 budget cut. >proposes to take good time away as one option
173	Chair Minnis	There may also be some civil rights issues involved. Who protects the civil rights of the workers inside the institution? >I find it offensive the way they're treated. >Renumeration is not enough to have to deal with this.
194	Penn	Please don't mischaracterize my testimony. I do not believe it is appropriate for a prison guard to be assaulted.
200	Chair Minnis	What about the individual rights?
204	Penn	When you break criminal laws you should receive sanctions. >would love to see the resources >must look at the entire system
213	Chair Minnis	Asks if Marion County is receiving another judgeship
214	Penn	They're asking for two.
215	Chair Minnis	Well maybe we could ask for one to be put at the Oregon State Penitentiary along with one of your prosecutors.
217	Rep. Sunseri	What is the safety of the guards if felony assaults are not going to be prosecuted?
223	Penn	We can only do so many cases. >The reality is we only have so many people. >I'm not saying it's not appropriate to not sanction them. >We can't pass laws without resources.
247	Chair Sunseri	Is a 5 year mandatory sentence for assault would be a deterrent for

		others?
251	Penn	We are talking about very difficult people within the penitentiary. >If we can prove the case, we will prosecute it.
273	Steve Dingle	Deputy District Attorney, Marion County >the longer the time served, the more likely to find a weapon >Prisoners have already resigned themselves to their situations >People don't care about the time, it's where they do it. >Some inmates have been prosecuted 7,8,9 times. >Attorneys want to know if you can get them back in the general population.
313	Chair Minnis	You're point is what?
314	Penn	One of the restrictions put on corrections was the Court of Appeals decision which limits the amount of time a prisoner can spend in an IMU. >no more than one year
329	Chair Minnis	So, the point is we should be punishing people through IMU's.
331	Dingle	It's not how long they do it, it's where and how they do it.
338	Chair Minnis	Maybe we should be building another maximum-security prison.
340	Rep. Bowman	I'm concerned that people can get injured without being prosecuted.
367	Penn	The policy is we will always prosecute a felony assault, if we can prove it. >sometimes we can't if someone doesn't step up

393	Rep. Bowman	In regards to the particular case we're talking about, a lot of people were being assaulted by one inmate who was never charged and is now going to be released soon.
402	Penn	Those are all factors we would take into account.
408	Chair Minnis	We'll get copies of testimonies to you.
415	Rep. Prozanski	Questions comments made about diversions >Re: DA diversions - ORS 135.891 >asks if there are problems with having DA diversion cases go forward
430	Penn	I don't like the restriction about the number of days. >would like to see days increased
TAPE 11, A		
21	Rep. Prozanski	Sec. 18 deals with the drunk driving diversion. >This may change the philosophy from people going forward on diversion by requiring the guilty [plea].
35	Penn	I agree with those concerns. >We have sponsored guilty diversion several times. >In the overall cases, this would be a positive change. >Court would be willing to say 3 chances is enough
51	Rep. Prozanski	What is your opinion on strengthening what's existing now?
60	Penn	I think that would be a good option. >We have seen them extend beyond a year.

		>Anyway to shorten the time would be positive.
66	Chair Minnis	Do you have a copy of written policies regarding prosecutions within the institutions?
67	Penn	Yes, we do. I've given copies to the State Police.
74	Chair Minnis	Do you do the same with the Salem PD?
76	Penn	The policies do not apply to people on the streets. >only people confined in a state institution for some period of time
80	Chair Minnis	Do these policies apply to county institutions as well?
83	Penn	Ability is not the same to give administrative sanctions.
87	Chair Minnis	Differentiation is based on administrative sanctions are available within the institution
90	Penn	County jails are not a good place for the IMU.
92	Chair Minnis	I like my idea of putting a judge at the penitentiary.
94	Rep. Prozanski	I'm thinking there are alternatives to limiting the extension of the diversion program.
98	Penn	That might be a good mechanism.
100	Chair Minnis	Has anyone ever filed a writ of mandamus to force you to prosecute. >asks about DA discretion statute
104	Penn	There is no statute, but there is case law.
106	Chair Minnis	Asks for clarification of writ of mandamus

110	Penn	The Supreme Court cases talk about discretion of the executive >the difficulty is the cases you can not prove
121	Chair Minnis	What if politician is making an error because they're doing it on a prejudicial basis? >suggests there is a standard of two different classes of individuals
126	Penn	That would be an issue to be decided by the voters of that district.
128	Chair Minnis	What do you mean by that? >The only regress is to fight you in a political campaign.
133	Penn	Or, the governor has the authority to remove the DA from a case and request the attorney general to take over the case.
145	Chair Minnis	You said there were some U.S. Supreme Court cases and State Supreme Court cases and I would like to review them.
151	Michael Bouchard	Submits and reads written testimony, (EXHIBIT A)
210		Continues reading from written testimony.
246	Kelly Taylor	Oregon Department of Transportation >submits and reads from written testimony, (EXHIBIT B)
291	Rep. Courtney	Were you involved in the creation of the bill?
292	Taylor	No we were not.
302	Hasina Cassim	Special Districts Association, Oregon Fire Chiefs Association, Oregon Fire District Directors Association, Oregon Volunteer Firefighters Association, Oregon Fire and Medical Administrators >We have a concern that penalties are too high.

		>would like to include blood on page 2, line 4
329	Michael D. Van Patton	Correctional Sergeant, Oregon State Penitentiary >Sentencing guidelines and administrative sanctions are not enough. >The small sentence people will be affected by this (short-timers). >prosecuting these people, it would go on their public record as someone who assaults peace officers
398	Van Patton	Continues testimony. >offers personal story from Feb. 1988 in disciplinary segregation unit >lost sick leave and vacation time
TAPE 10, B		
10	Van Patton	Continues with testimony
22	Rep. Prozanski	Where did incident occur?
23	Van Patton	Oregon State Penitentiary
29	Rep. Bowman	Can you elaborate on the altercation?
31	Van Patton	Explains the incident
46	Chair Minnis	Do you have the right to strike?
48	Van Patton	We are under binding arbitration.
50	Chair Minnis	I would not want to do that job. >getting treated like second-class citizens
57	Van Patton	Some things [administrative procedures] have changed with imu's. >Hearings officers are allowed to resanction them.

65	Rep. Bowman	Was he charged with assault?
68	Van Patton	He got an administrative sanction.
72	Rep. Bowman	Did you file a complaint?
73	Van Patton	More worried about family and self
77	Dale Penn	Marion Co. District Attorney
		>clarifies Sandra Finical's case to committee >unable to prove intentional assault >injury was caused by secondary circumstances of assault >was prosecuted as a reckless assault
104	Chair Minnis	How do you normally prove intent?
105	Penn	Sometimes it is clear - wall, baseball bat, knives, etc.
122	Chair Minnis	Do you have any feel whether these cases are thoroughly investigated?
127	Penn	The OSP would investigate the crimes within the state institutions, but they are not appropriately staffed.
139	Chair Minnis	The Oregon State Penitentiary has no polic officer investigator
140	Penn	Inspector General has some resources.
151	Rep. Courtney	Have you ever attempted to address correctional officers abuse by inmates?
154	Penn	The DOC filed a similar bill, but the prison bed impact made it

		unendorsable.
172	Rep. Bowman	If HB 2222 were to pass, how many cases would get prosecuted by DA?
178	Penn	Comments that Measure 47 has caused uncertainties with his office.
203	Chair Minnis	Closes public hearing on HB 2222
<u>HB 2312 - PUBLIC HEARING</u>		
204	Chair Minnis	Opens public hearing on HB 2312
216	Mary Ellen Johnson	Director of Crime Victim Assistance Section, Department of Justice >submits and reads testimony in support of HB 2312, (EXHIBIT C)
250	Rep. Courtney	Asks why she wants the records
252	Johnson	Clarifies that records are only allowed in injury cases.
258	Rep. Courtney	Asks for clarification on the need for records of juvenile criminals
261	Johnson	We are talking about two different issues. >1)if offender is juvenile and 2)for child victims
270	Rep. Sunseri	Which records are you specifically looking for access to?
274	Johnson	Comments that they are looking for law enforcement investigatory reports and legal custody records
284	Rep.	Are you looking for records for only those juveniles who have

	Bowman	committed crimes where there is compensation?
288	Johnson	Responds that it is not just in cases where compensation is involved.
303	Rep. Bowman	Comments that it sounds like a broad category is being asked for and would like specifics.
312	Johnson	That's happening now. We currently have this authority except in severe cases.
324	Rep. Bowman	Asks for clarification of need for records.
337	Johnson	Responds that this is not always the case
341	Rep. Shetterly	Comments that the language is broad
349	Chair Minnis	This is restricted to sub 3 in 192.504.
353	Rep. Shetterly	Comments that it appears schools would fall under local government units >seems like bill goes farther than we need
369	Chair Minnis	Questions what they do with records once they get them
370	Johnson	We are very successful in protecting our records.
382	Chair Minnis	Asks if they are required to stockpile records
384	Johnson	Responds that they keep them for a period of 3 years for benefits, plus 1 year for archivists
390	Chair Minnis	Asks for clarification as to where the records go after this

391	Johnson	Responds that at some point they are put in archives
400	Bradd Swank	State Court Administrator's Office
		>refers to line 9 of bill, section 419A.255, specific to juveniles
426	Johnson	Comments that there is some confusion that under what authority records can be released.
TAPE 11, B		
11	Chair Minnis	Comments that the discussion is useful, because people invoke the power of confidentiality laws even when they don't have it
21	Johnson	Responds that it is correct.
22	Rep. Courtney	Asks if this is the Crime Victim's Compensation Fund that was set up in 1983 session
23	Johnson	Responds that it was actually set up prior to that and amended in 1983. >originally set up in 1977
28	Rep. Courtney	Questions what has been done to take care of the juvenile victims and offenders if we haven't been able to get the records
30	Johnson	Responds that they have been getting the records up until recently.
32	Rep. Courtney	Where were the records being kept that you couldn't get?
34	Johnson	In Juvenile Department in Washington County
35	Rep. Courtney	Comments
37	Johnson	Responds that they did not want to violate the statutes

42	Rep. Prozanski	Asks for legal counsel's advice on issue
46	Kristin Preston	Legal Counsel, Crime Victim Assistance Section, Department of Justice
		>refers to 419A.255 analysis
64	Rep. Prozanski	Offers proposed language to fix the above statute
		>Is there a cleaner way to take care of this?
76	Preston	Responds to technical language of bill
82	Rep. Prozanski	Comments that this might solve immediate problems
84	Preston	Comments that someone else is proposing similar legislation
88	Chair Minnis	Comments that committee probably won't act on bill in near future >would like more clear written analysis
98	Chair Minnis	Closes public hearing on HB 2312
<u>HB 2313 - PUBLIC HEARING</u>		
99	Chair Minnis	Opens public hearing on HB 2313
102	Mary Ellen Johnson	Director, Crime Victime Assistance Section, Department of Justice >submits and reads written testimony supporting HB 2313, (EXHIBIT D)
125	Chair Minnis	Want to know where definition of international terrorism came from.

127	Johnson	Responds that it is defined in Section 2331 of Title 18, United States Code.
161	Rep. Bowman	We would cover people who are not Oregonians?
163	Johnson	Responds
167	Chair Minnis	Asks for clarification on how bill pertains to just crime
175	Johnson	If it is a crime, we wouldn't cover them if there are other resources.
182	Chair Minnis	Asks for further clarification
188	Rep. Sunseri	Asks for clarification on compensation requirements
192	Johnson	Responds that he would qualify, but not necessarily be paid
201	Chair Minnis	Closes public hearing on HB 2313
<u>HB 2311 - PUBLIC HEARING</u>		
202	Chair Minnis	Opens public hearing on HB 2311
204	Mary Ellen Johnson	Director, Crime Victim Assistance Section, Department of Justice >submits and reads written testimony supporting HB 2311, (EXHIBIT E)
235	Rep. Wells	Discusses issues with Johnson
251	Chair Minnis	Closes public hearing on HB 2311
		>tomorrow DOC will be up for overview

		>HB 2303 will be sent over to another department
		>Declares meeting adjourned at 5:00 pm

Submitted By, Reviewed By,

BRIAN HIGGINS, SCOTT LUMSDEN,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2222, written testimony, Michael Andrew Bouchard, 3 pp.

B - HB 2222, written testimony, Kelly Taylor, 1 p.

C - HB 2312, written testimony, Mary Ellen Johnson, 1 p.

D - HB 2313, written testimony, Mary Ellen Johnson, 1 p.

E - HB 2311, written testimony, Mary Ellen Johnson, 1 p.