

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

January 30, 1997 Hearing Room 357

1:00 PM Tapes 14 - 15

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 Measure 2329

Public Hearing on Measures 2310 and 2317

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 14, A		
005	Chair Minnis	Calls meeting to order
<u>HB 2329 -</u>		

<u>PUBLIC HEARING</u>		
016	Chair Minnis	Opens public hearing on HB 2329
019	Rep. Prozanski	Explains proposed amendment to HB 2329, (EXHIBIT A)
050	Chair Minnis	Orders committee to stand at ease
<u>HB 2329 - WORK SESSION</u>		
056	Chair Minnis	Opens work session on HB 2329
057	Rep. Wells	Asks about rewriting the bill to include amendment
058	Chair Minnis	Responds that they are not LC drafted
060	Rep. Prozanski	They were prepared with committee staff and are the amendments to existing HB 2329. >if approved would be put in standard form for full committee or the floor
065	Chair Minnis	Responds that this will not show up on full committee agenda until next week
067	Rep. Prozanski	Reviews proposed amendments to the measure
<u>HB 2329 - WORK SESSION</u>		
097	Chair Minnis	Opens work session on HB 2329
099	Rep. Wells	It appears we are rearranging or replacing the entire bill.
101	Rep.	Responds that existing bill is being divided out into two areas:

	Prozanski	property damage and hit and run involving death of an individual
112	Rep. Shetterly	Asks for clarification whether the motor vehicle code differentiates between serious physical injury or any injury
116	Chair Minnis	Section 2 of the bill is largely how it looks in its unamended form.
120	Rep. Wells	Is Section 1 language all new or a rewrite of Section 1 of the current bill?
124	Rep. Prozanski	It is a reworking of the existing statute with some additional language. >pertains to duty of owner/operator of the watercraft
140	Vice Chair Bowman	Comments that bill has changed from hit and run
148	Rep. Prozanski	Clarifies the language of the bill as written >not an act to charge the person who has caused injury but for failing to make reasonable attempts to reporting the information required
168	Vice Chair Bowman	Asks for clarification of when the person would be charged with Class C felony
170	Rep. Prozanski	Responds that if they follow the procedure they would not be charged.
173	Chair Minnis	This is not any different than currently applies to motor vehicles.
174	Rep. Prozanski	In essence we are giving operator more liberty in how they can report the damage.
184	Rep. Shetterly	Asks if this statute occurs within the context of other boating statutes
187	Rep. Courtney	Asks how amendment is going to be identified

195	Rep. Courtney	MOTION: Moves HB 2329 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
<u>HB 2310 - PUBLIC HEARING</u>		
220	Chair Minnis	Opens public hearing on HB 2310
230	Brenda JP Rocklin	Assistant Attorney General, Oregon Department of Justice
		>submits and reads written testimony in support of HB 2310, (EXHIBIT B)
		>submits and reviews copied letter to Secretary of State from the Common Law Supreme Court of Oregon, (EXHIBIT C)
305		>submits and reviews copied letter from Theodore Kulongoski, Attorney General, dated December 4, 1996, (EXHIBIT D)
316		>submits and reviews document "Summons in a Civil Case," (EXHIBIT E)
358		>submits and exhibits document from Anti-Defamation League on Common Law Courts, (EXHIBIT F)
395		>continues with reading of written testimony
408		>submits proposed amendments, (EXHIBIT G)
TAPE 15, A		
010	Rocklin	Continues testimony
050	Rep. Courtney	States that there will be a prison bed impact expense with this bill
063	Chair Minnis	Has asked counsel to have Department of Corrections do a presentation on prison bed space
		>comments that committee needs to concentrate on good public policy

075	Rep. Shetterly	Asks for clarification of definition of person as pertaining to the proposed amendments
080	Rocklin	That is correct. >Change is important so as to be able to include decisions against entities as well.
091	Chair Minnis	Expresses concern for private citizens affected by language in bill who can not hire an attorney in a civil court
098	Rocklin	Explains that these people would not be prosecuted because they must knowingly be filing false cases
113	Rep. Prozanski	States that difference is between filing in court versus filing in a false court not recognized by current body of law
120	Rep. Shetterly	Offers further clarification
125	Chair Minnis	Expresses worry about those who unknowingly file false claims
130	Rocklin	Asks if chair is concerned about mistakes within the complaint
132	Chair Minnis	Clarifies concern
136	Rocklin	This type of conduct is not addressed by this bill, it is more directed at the process
143	Chair Minnis	Clarifies that he would like the language of the bill to be very clear to not allow mistaken claims to be included
152	Rep. Shetterly	This may be addressed on line 6 of original statute.
161	Rocklin	Suggests that LC 1354 may clear up the confusion >(Rep. Prozanski submits draft of LC 1354 to committee,

		EXHIBIT H)
		>includes language "intent to defraud" on line 8
178	Rep. Shetterly	Suggests it should be restricted further to include harass
186	Rep. Wells	Asks for clarification of line 10 about definition of lien
190	Rocklin	Replies that it relates to HB 2318 and would fall under this crime
199	Rep. Wells	To which statute would this apply?
205	Rocklin	Yesterday we talked about civil penalties and this pertains to criminal penalties.
216	Chair Minnis	HB 2318 responds to those individuals who have been harmed financially by the filing of a false lien and this one involves the state.
224	Rep. Wells	Asks how Rep. Prozanski's bill responds to this problem
231	Rep. Prozanski	LC 1534 abstracts language from a current Alaska bill in which a person knowingly files a false claim with the court. >HB 2310 is broader and amends existing legislation.
249	Rep. Shetterly	Can we marry these two?
253	Rep. Prozanski	I think it can be done, but this legislation is directed toward the conduct of the individuals involved in these false claims.
272	Rep. Sunseri	Does this bill assume there is no constitutionality to common law?
274	Rocklin	Yes and this issue is addressed in [EXHIBIT D] .
283	Rep. Sunseri	Questions how 'intent' and 'knowingly' are established

298	Rocklin	Your point explains why there has not been many prosecutions.
		>must be able to prove that person has intent to defraud, harass, annoy or alarm public official or private citizen
338	Chair Minnis	States that the Common Law Constitution cites the authority of Bill of Rights
345	Rocklin	The Attorney General's letter didn't specifically address Article 1, Section 1.
351	Chair Minnis	We can't have 2 different court systems.
361	Rocklin	That article is addressed in the article by the Anti-Defamation League. >comments on discovery of invalidity
375	Rep. Sunseri	Have any states adopted this article?
377	Rocklin	Not to my knowledge
380	Rep. Shetterly	Asks to be taken through lines 23-29
395	Rocklin	On pg. 3 of written testimony, notice the 1971 version of law didn't address defense of nonexistence of public servant impersonated. >attempting to clarify those representing nonexistent government entities
431	Rep. Shetterly	Comments that the words `public servant' seem to cause some trouble
TAPE 14, B		
022	Rocklin	Comments she would be willing to work on this language
024	Chair Minnis	Closes public hearing on HB 2310

HB 2317 - PUBLIC HEARING		
032	Chair Minnis	Opens public hearing on HB 2317
042	Virginia Linder	Solicitor General, Department of Justice >on behalf of department, support of HB 2317 >introduces Robert Rocklin, Assistant Attorney General >deals with provisions pertaining to death penalty procedures following affirmation of judgment by Oregon Supreme Court
72	Bob Rocklin	Assistant Attorney General, Appellate Division, Department of Justice >submits written testimony, (EXHIBIT I) >submits proposed amendments, (EXHIBIT J)
		>summarizes written testimony
124		Continues testimony (Section 1)
180	Rep. Sunseri	The execution date must be set or announced within 120 days?
183	Rocklin	Responds that death warrant hearing must happen within 30 days after the appellate judgment becomes effective
190		Continues testimony (Section 3)
240		Continues testimony (Section 6)
265	Chair Minnis	Asks about time frame for court response to petition for certiori
272	Linder	90 days is limit to responding to certiori and response time is 30 days.
292	Chair Minnis	If they do not file after 90 days, then it is no longer an option, is this correct?
294	Linder	This is correct unless they apply for an extension

300	Rocklin	This is addressed in Section 6.
306	Rep. Shetterly	Asks about other avenues such as <i>habeas corpus</i>
313	Rocklin	These are the standard things one would go through if one wanted to challenge their death sentence.
326	Rep. Shetterly	Clarifies procedure with respect to federal <i>habeas</i> cases
338	Rep. Prozanski	Discusses time frames for certain procedures with Linder
381	Rep. Courtney	In section 3 on right to waive counsel, is court required require to go along with the defendant?
394	Rocklin	Yes, due to the federal Constitutional provision known as Firetta rights
		>allows court to appoint lawyer as adviser only
416	Rep. Wells	How will this legislation be perceived by people on both sides of the debate?
430	Linder	Responds that this bill does not involve a lot more process
TAPE 15, B		
015	Linder	Continues with response
037	Vice Chair Bowman	Expresses concern about waiver of jury trial and its impact from Measure 11 (pg. 3, bottom)
046	Rocklin	No, the point is this should be treated like other criminal procedures
055	Rep. Shetterly	Clarifies that this is during the penalty phase and not the guilt phase

059	Vice Chair Bowman	Did I hear that there is no automatic appeal under your suggestion?
063	Rocklin	No, we simply moved the appellate away from the trial stuff.
068	Vice Chair Bowman	Asks for clarification of `next friend' language in last section
075	Rocklin	It would require that they meet the requirements in Section 7.
078	Chair Minnis	It would help to have a visual timeline of the timeframe.
092	Rocklin	After Oregon Supreme Court has affirmed sentence of death, the criminal case is over.
100	Chair Minnis	What would be the argument in post judgment review?
102	Linder	Most are centered around competence of counsel
104	Chair Minnis	Based on that, there would need to be evidentiary hearings.
108	Rocklin	At that point it becomes a civil trial.
112	Vice Chair Bowman	In Section 7, the language appears very ambiguous in regards to the `next friend' portion.
121	Rocklin	We've attempted to bring some clarity to this identify exactly what the procedure should be.
139	Chair Minnis	In regards to Section 6, is it possible to go to Court of Appeals?
		>why not bypass Court of Appeals?
		>State courts decided that they wouldn't get overloaded.
151	Linder	We have in past sessions proposed direct review to the Supreme Court.
162	Rep. Wells	It appears we are satisfied with the system, but that we are not going to address the speed of the process in this bill.

179	Linder	This bill is not about speeding up the bill, but rather clarifying the process.
186	Chair Minnis	I am interested in speeding up the process.
		>Is there a consolidation law or must the motions be filed independently?
194	Rocklin	Post-conviction hearing is a civil process and generally do not get consolidated.
202	Chair Minnis	But if federal court denies certiori, you are back in the state courts, so are there other federal petition avenues?
205	Rocklin	If conviction is upheld by the Oregon Supreme Court, then one can direct appeal to U.S. Supreme Court.
214	Rep. Shetterly	Nothing we can do to change it in regards to the federal statutes.
217	Chair Minnis	I agree, but we do have some powers within the state court system.
224	Linder	There are limitations in state and federal laws against successive petitions.
231	Chair Minnis	Do we know what the longest time someone has spent on death row in Oregon?
234	Linder	At least 8 years old
		>cites U.S. Supreme Court case, <i>Penry v. Linnell</i> , which required reversal of some 22-24 cases
257	Vice Chair Bowman	I am not in any hurry to speed up death penalty process as there are too many things that can go wrong.
		>Why, in Section 7, are we going back to 1984?
274	Rocklin	That is carry over language from the draft and am unsure what the effect of that is.

279	Rep. Courtney	The legislature deals every session with the death penalty issue.
		>discusses history of dealing with death penalty in committee
		>expresses concern over the prospects of an appeal
331	Chair Minnis	Invites testifiers to come back on Tuesday.
		>suggesting defense council arguments should be done in court
345	Rocklin	Change in Section 7 Amendments, between 2a and 2b should be `and' not `or' as seen in proposed amendments.
365	Chair Minnis	Adjourns meeting at 2:51

Submitted By, Reviewed By,

BRIAN HIGGINS, SCOTT LUMSDEN,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2329, Memorandum including proposed amendments, Scott Lumsden, 2 pp.

B - HB 2310, Written testimony, Brenda JP Rocklin, 4 pp.

C - HB 2310, Common Law Supreme Courts, Brenda JP Rocklin, 12 pp.

D - HB 2310, Attorney General Kulongoski letter, Brenda JP Rocklin, 11 pp.

E - HB 2310, Common Law documents, Brenda JP Rocklin, 6 pp.

F - HB 2310, Anti-Defamation League - Common Law Courts, Brenda JP Rocklin 6 pp.

G - HB 2310, Proposed amendments, Brenda JP Rocklin, 1 p.

H - HB 2310, LC 1354 (draft), Rep. Prozanski, 1 p.

I - HB 2317, Written testimony, Bob Rocklin, 10 pp.

J - HB 2317, Proposed amendments, Bob Rocklin, 3 pp.