

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

February 11, 1997 Hearing Room 357

1:00 PM Tapes 22 - 23

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

MEMBER EXCUSED:

STAFF PRESENT:

SCOTT LUMSDEN, Counsel

BRIAN HIGGINS, Administrative Support

MEASURE/ISSUES HEARD:

Public Hearings on HB 2421, HB 2427, HB 2426, HB 2428 and

HB 2436

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 22, A		
004	Chair Minnis	Calls Criminal Law Subcommittee to order at 1:09
<u>HB 2427 and HB</u>		

<u>2428 - PUBLIC HEARING</u>		
005	Chair Minnis	Opens public hearings on HB 2427 and HB 2428
009	Jason Carlile	District Attorney's Association, District Attorney, Linn County
		<p>>This is associated with SB 157 (EXHIBIT A).</p> <p>>geared towards restitution for victims of crimes</p> <p>>Current statutes require courts to determine financial loss and also defendant's ability to pay.</p> <p>>wants full amount of victim's restitution in judgment order</p>
037	Rep. Wells	What do you mean about full amount?
039	Carlile	Responds that judge must keep two things in mind during sentencing order: how much money victim is out and defendant's ability to pay
049	Chair Minnis	Are you testifying on HB 2427 or HB 2428?
051	Carlile	They go right together.
053	Chair Minnis	Allows testimony on HB 2428
055	Carlile	<p>HB 2427, line 28, deletes "imposed" and enters "as determined" thus obligating court to say how much money the victim is out.</p> <p>>HB 2428, line 9, deletes court's responsibility to consider defendant's ability to pay.</p>
075	Chair Minnis	2428 says they are going to determine the full amount and 2427 is determining some other amount?
079	Carlile	ORS 144.102 is the statute being amended.
083	Rep. Sunseri	On 2428, line 20, who determines installment and does victim have anything to say about installment plan?
088	Carlile	The Board of Parole determines it and the victims have the right to attend this decision-making process.
094	Rep. Shetterly	To what extent is full payment of restitution have a bearing on parole?
105	Carlile	These bills put it in the money judgment, but do not make it a condition of parole or probation.
116	Rep. Shetterly	On HB 2427, lines 27-28, this suggests that if they don't pay, they could be revoked.
122	Carlile	The court still has to make that determination of ability, but not as far as the amount of the money.
124	Rep. Prozanski	This decision used to be made at trial court regarding ability to pay and not at the board.

131	Rep. Courtney	Asks for clarification on retention of jurisdiction >Court has no jurisdiction over earnings while in jail?
141	Carlile	I think that is right.
142	Rep. Courtney	Who does have jurisdiction over those kinds of earnings?
144	Carlile	A victim would be able to execute a bank account, but I do not know for sure.
147	Rep. Courtney	So, the Parole Board takes over jurisdiction after they leave the big house? >but while they are in prison, we don't know who has jurisdiction?
151	Carlile	The honest answer is that I don't know.
152	Rep. Courtney	Do you think someone should have jurisdiction?
153	Carlile	Sure.
154	Rep. Courtney	If you are going to talk about the money when they leave, you should also talk about while they are in.
157	Carlile	This does not get to that issue at all.
158	Rep. Prozanski	It seems that DOC would have that jurisdiction under Measure 17.
163	Committee	General discussion between Rep. Courtney and Rep. Prozanski
179	Chair Minnis	I think that Measure 17 speaks to restitution very generally.
181	Rep. Sunseri	He raises a good point because there are no percentages attached to that criterion.
186	Rep. Courtney	He says that he doesn't know who has jurisdiction, but Rep. Prozanski says it's the Department of Corrections.
188	Chair Minnis	The object of these bills is to put it into the money judgment.
190	Carlile	We have a narrow focus here as to the money judgment.
191	Chair Minnis	You could do it, but whether it is enforceable or not will probably be cleared up by the time we get SB 157.
197	Rep. Courtney	With ballot measure 11, this restitution issue will be ongoing.
200	Rep. Shetterly	We should address the restitution during the time of incarceration.
		>unclear in lines 27-28 about civil issue
		>asks if these judgments are dischargeable in bankruptcy
214	Carlile	I don't think so.
220	Chair Minnis	What does HB 2427 try to do because it doesn't seem to speak to the civil process?

223	Carlile	The effect is that currently the judge can not order full amount of loss to the victim because he must consider defendant's ability to pay.
237	Chair Minnis	I think there is more research to do, but I expect we'll see more in SB 157.
253	Michael Bouchard	Private citizen, currently on parole
		>Restitution can not be discharged on bankruptcy.
		>BM 17 is vague on restitution.
		>against SB 157 based on Parole board wanting more control over charges >Parole board can make payment of restitution a condition of parole. >revoked in 1989 for restitution >Court has the ability to revoke probation.
310		>Court has jurisdiction to make finding of ability to pay. >if court is taken out, there is a due process problem >Citizens will be paying for my upkeep while I still have inability to pay
		>cites supreme court decision out of Georgia that individuals can not be sent to prison based on ability to pay restitution
		>suggests alternative measures
368	Chair Minnis	Are you contending that this bill sends people to prison based on a judgment of restitution?
371	Bouchard	The bill uses a lot of "mays"; it should be worded that this is not the sole reason of the bill.
387	Chair Minnis	You are not suggesting people in prison actually do that.
389	Bouchard	Yes, they would.
392	Rep. Shetterly	I do agree with 2428 on basis, but would like language that avoids a debtor's prison >keep this a civil judgment
413	Chair Minnis	At some point you'd be creating an economic outlaw.
422	Vice Chair Bowman	Expresses concern over restitution; must be balance between ability to pay and amount of damage >curious how this will help those who need to pay restitution

TAPE 23, A		
023	Rep. Courtney	Can a person be sent to jail for failing to pay child support?
026	Bouchard	Yes, there is a federal law concerning that issue.
028	Rep. Courtney	We need to have a dialogue about victimization issue.
040	Chair Minnis	Comments on creation of economic outlaw >need to have some sort of relative connection to a system of due process
051	Rep. Courtney	My office deals with people who haven't paid child support quite frequently. >need to recognize the difference between people who can't pay and those who won't
061	Bouchard	Resorting to path of least resistance if feeling that system is against me and will end up back in prison
072	Chair Minnis	How do we balance between the legitimate people and those others?
077	Rep. Courtney	Another issue is not being discussed and that is that criminal's can not fully restore their victims. >Crime Victim's Compensation Fund >Parole boards and courts are aware of lack of education having an impact on future earnings.
087	Chair Minnis	If sentence is determinate than people will know that when they are done, they are done.
111	Jim Arneson	OCDLA
		>against 2428 because intent is unclear >Paragraph 2, Section 28, HB 2428 says the court shall take into account order from criminal court
		>language is unclear about whether a parole judgment can be ordered
		>blurring of civil judgments with criminal ones
		>opposed on a policy basis due to not considering other obligations defendant will have
		>Judges would not have ability to take in to consideration ability to pay. >concerns about due process, equal rights issues

162	Chair Minnis	I'm curious about blending of civil judgments coming from criminal courts.
177	Rep. Shetterly	What is the current process for determining amount of restitution disregarding ability to pay? >Is there a hearing on the amount?
189	Arneson	The process is a hearing before the court which is often disputed.
197	Chair Minnis	In high dollar amounts, there is not a bar to a civil action.
210	Vice Chair Bowman	Why is this bill needed?
213	Carlile	Often times defendants will run into good fortune and we want the victim to be entitled in judgment form.
234	Vice Chair Bowman	This is not the norm that people walk out of jail with a fortune.
242	Carlile	Replies that this is done in allowing civil cases for amount of damages people have suffered. >legislature, in past, said there needs to be a money judgment
259	Vice Chair Bowman	If this bill passes, ability to pay is no longer taken into consideration.
273	Rep. Prozanski	Comments on fact a criminal case can be docketed as a civil case under ORS 137.80
294	Carlile	I often encourage victims to register the judgment. >judgment often appears as a slap in the face to victim >sometimes private lawsuit required
<u>HB 2421 - PUBLIC HEARING</u>		
317	Chair Minnis	Opens public hearing on HB 2421
328	Susan Tripp	Deputy District Attorney, Marion County
		>requests criminal mistreatment be moved from level 7 to level 8 in sentencing guidelines
		>failing to address crimes in the homes
		>requesting change so as to take some action against violence in the home
		>difference being it will be in optional treatment category
381		>If treatment is disregarded, then we are able to send them to prison.

394	Chair Minnis	Asks for explanation of criminal mistreatment
396	Tripp	It is a physical assault on a dependent person.
404	Chair Minnis	Asks for clarification
405	Tripp	The way Oregon law is written it can be broken bones, bruises if on the face only
TAPE 22, B		
020	Tripp	This would allow probation for same amount of time as level 7, but it also has a larger consequence for violating this probation.
034	Vice Chair Bowman	My reading of criminal mistreatment doesn't match with yours.
041	Tripp	153.205 sub b and sub a is the definition
048	Committee	General discussion
052	Chair Minnis	Do you ever prosecute under other theories?
053	Tripp	Sure
061	Committee	Discussion
070	Tripp	Mostly what we use criminal mistreatment for is physical assault.
082	Vice Chair Bowman	Is there not already something on the book that would address this?
089	Chair Minnis	When you are dealing with a dependent person a higher standard of care is expected. >juries tend to say this is more than a classical assault
098	Vice Chair Bowman	Isn't the sentence more for assault than it is for criminal mistreatment?
101	Tripp	If you took the dependent person part out of the equation
122	Chair Minnis	There is a criminal defense of disciplining the child.
127	Vice Chair Bowman	My concern is how we don't use laws already on the books.
134	Rep. Sunseri	Is spanking construed as a violation?
138	Tripp	Responds that sometimes they would be treated as misdemeanors, other times as felonies
145	Rep. Sunseri	Theoretically, if a child is spanked and has black and blue marks, you could put them in jail for 16 months.
150	Tripp	Theoretically, yes.
154	Chair Minnis	Often it is a judgment call on what can be proved on part of DA.
		My concern is the potential abuse of children who have been

163	Rep. Sunseri	taken from families in recent memory when it was totally the wrong thing to do.
172	Tripp	In my county, the one-time hit is not going to end up in jail for 16-18 months.
181	Chair Minnis	Comments on shaken baby incidents
191	Tripp	It would not change time of probations either way.
196	Chair Minnis	Expresses he likes the bill
197	Carlile	When we are able to convict, we want the presumption to be prison rather than probation. >don't forget about old folks
211	Rep. Shetterly	Is there a definable fiscal impact?
229	Jim Arneson	OCDLA >request is to allow Criminal Justice Commission to do its job in weighing all the crimes to see where they go on the chart >can always make a case for individual crimes >Guidelines allow for departure to account for aggravating factors.
282		>encourages legislature to allow CJC make recommendations for sentencing to legislature
298	Phil Lemman	Executive Director, Criminal Justice Commission
		>no position on bill >comments on process involved >historically these decisions have been delegated to a committee like Criminal Justice Council >subcategorization of crimes
339	Chair Minnis	Asks for explanation on how these grids are finalized
352	Lemman	Criminal Justice Council had authority until 1995, when the Commission was created and this power came back to the Legislature. >SB 227 brings back this authority to the commission
376	Chair Minnis	Offers clarification on creation of commission
392	Rep. Shetterly	Expresses concern about these if they are approached on an ad-hoc basis
		>curious about why DA's are coming with this bill and not to

		the commission
414	Lemman	It is not uncommon for someone to come to the commission to ask for a specific ranking.
418	Tripp	The DA's Association has noticed that criminal mistreatment has always been a 7.
		>relates inequality in with other crimes
TAPE 23, B		
022	Tripp	There was a feeling for this to go up.
027	Chair Minnis	Since 1989, there has been an evolution with respect to crimes involving children.
<u>HB 2426 - PUBLIC HEARING</u>		
041	Chair Minnis	Opens public hearing on HB 2426
045	Jim Carlile	District Attorneys Association >The language in 2426 jacks delivery from 4 to 8 after pleading in court. >We are beginning to see amphetamines and not just methamphetamines. >person with amphetamines can't be jacked up as it is now
073	Rep. Wells	We talked about the Criminal Justice Commission as setting the sentencing guidelines, but it appears this statute does the same thing. Why the statutory language?
087	Lemman	Guidelines used to have "scheme and network" which was held unconstitutional by Oregon courts. >It is not unprecedented that legislature establishes crime seriousness categories.
095	Chair Minnis	When we adopted them, the categories for drug crimes were not high enough.
102	Lemman	My comments before on process apply here as well.
103	Chair Minnis	Do you have the rule-making authority to change this by rule?
104	Lemman	We would be able to make additions to it, but not subtractions from it.
107	Carlile	That's why we're here, in this forum, because it is in the statute.
109	Chair Minnis	Maybe we should be doing something more broad to

		accommodate future changes in the chemistry of drugs.
112	Rep. Shetterly	We need to address this statutorily because of previous determinations.
119	Chair Minnis	Comments on capital murders
121	Carlile	That's still there.
123	Chair Minnis	Closes public hearing
<u>HB 2436 - PUBLIC HEARING</u>		
129	Chair Minnis	Opens public hearing on HB 2436
130	Jim Carlile	District Attorney's Association >boot camp bill >sentences can be reduced if successful in boot camp >line 30, key phrase = stipulated sentence
157	Vice Chair Bowman	Why would I want to go to boot camp?
158	Carlile	To get out early
159	Vice Chair Bowman	It says here you can't get out early.
164	Carlile	A stipulated sentence is one that everyone agrees to.
165	Vice Chair Bowman	So, it is a plea bargain. >So why would I do boot camp?
171	Carlile	If you're motivated, you can do it.
179	Vice Chair Bowman	So why don't we just prohibit those with stipulated sentences from applying to boot camp.
180	Carlile	That's what this does.
181	Vice Chair Bowman	They wouldn't even be offered boot camp.
188	Chair Minnis	If it is a stipulated sentence, we're going to go to trial. >DA could take more of a hardline view >the option is that they could have gone to trial
204	Rep. Prozanski	Is this geared not to allow for earned credit time that allows for earlier release than stipulated sentence?
211	Carlile	It is just to get to the boot camp issue.

216	Chair Minnis	Asks for clarification on Rep. Prozanski's question
217	Rep. Prozanski	Alternative incarceration allows for boot camp, but what else in the future would fall under this?
225	Carlile	People get what they bargained for; this is the goal. >no backdoor releases to denigrate the system
236	Rep. Prozanski	We're trying to achieve truth in sentencing. >not necessarily imposing a minimum mandatory on any stipulated sentence unless it is a Measure 11 offense
247	Carlile	Stipulated sentence would be subject to whatever law applies.
257	Al Chandler	Assistant Director, Department of Corrections >department is neutral because we don't have enough information on stipulated cases
265	Chair Minnis	How long do you think that might take?
267	Chandler	It would require a hand-done random sampling of cases.
275	Vice Chair Bowman	Asks about fiscal impact of measure
290	Lemman	Usually the first stop for crime bills is the Criminal Justice Commission, otherwise it is Legislative Fiscal. >bed impact should be done by work session
313	Chair Minnis	Mr. Chandler, you're answer would be the same, right?
315	Chandler	I agree with Mr. Lemman. >People in boot camp can not have a sentence longer than 3 years.
326	Vice Chair Bowman	Didn't we just extend the amount of supervision time for people leaving boot camp?
328	Chair Minnis	We did, yes, but now it is a Senate bill.
338	Jim Arneson	OCDLA >not in opposition to intent of bill, only how it is written
		>people who enter pleas in a different situation >could be legislation allowing for entering into a contract which would say it would not take advantage of the program to reduce the sentence, we would not be opposed
372	Chair Minnis	Suggests working with Mr. Carlile on amendments
377	Chair Minnis	Declares subcommittee adjourned at 2:54 pm

Submitted by, Reviewed by,

BRIAN HIGGINS, SCOTT LUMSDEN,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2427, Senate Bill 157, Staff Counsel, 6 pp.