

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

February 24, 1997 Hearing Room 357

3:15 PM Tapes 31 - 32

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

MEMBERS EXCUSED:

STAFF PRESENT:

SCOTT LUMSDEN, Counsel

BRIAN HIGGINS, Administrative Support

MEASURE/ISSUES HEARD:

Work Sessions on HB 2425, SB 36, HB 2426, HB 2357, HB 2429,

HB 2323

Public Hearings on HB 2541 and HB 2486

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 31, A		
005	Chair Minnis	Calls subcommittee to order

<u>HB 2425 - WORK SESSION</u>		
007	Chair Minnis	Opens work session on HB 2425
010	Scott Lumsden	Committee Counsel >reads provisions of bill
018	Rep. Prozanski	MOTION: Moves HB 2425 to the full committee with a DO PASS recommendation.
020		VOTE: 5-0 EXCUSED: 2 - Rep. Courtney, Rep. Sunseri
	Chair Minnis	Hearing no objection, declares the motion CARRIED. REP. PROZANSKI will lead discussion on the floor.
		Closes work session on HB 2425
<u>SB 36 - WORK SESSION</u>		
025	Chair Minnis	Opens work session on HB 36
026	Scott Lumsden	Committee Counsel >reads provisions of bill
036	Rep. Prozanski	MOTION: Moves SB 36 to the floor with a DO PASS recommendation.
039		VOTE: 5-0 EXCUSED: 2 - Rep. Courtney, Rep. Sunseri
	Chair Minnis	Hearing no objection, declares the motion CARRIED. REP. SHETTERLY will lead discussion on the floor.
		Closes work session on SB 36
<u>HB 2426 - WORK SESSION</u>		
047	Chair Minnis	Opens work session on HB 2426

050	Scott Lumsden	Committee Counsel >reads provisions bill
067	Rep. Bowman	MOTION: Moves HB 2426 to the full committee with a DO PASS recommendation.
070		VOTE: 5-0 EXCUSED: 2 - Rep. Courtney, Rep. Sunseri
	Chair Minnis	Hearing no objection, declares the motion CARRIED. REP. BOWMAN will lead discussion on the floor.
		Closes work session on HB 2426
<u>HB 2429 - WORK SESSION</u>		
076	Chair Minnis	Opens work session on HB 2429
080	Scott Lumsden	Committee Counsel >reads provisions of bill
084	Rep. Prozanski	MOTION: Moves HB 2429 to the full committee with a DO PASS recommendation.
088		VOTE: 5-0 EXCUSED: 2 - Rep. Courtney, Rep. Sunseri
	Chair Minnis	Hearing no objection, declares the motion CARRIED. REP. WELLS will lead discussion on the floor.
		Closes work session on HB 2429
<u>HB 2323 - WORK SESSION</u>		
093	Chair Minnis	Opens work session on HB 2323
096	Scott Lumsden	Committee Counsel >reads provisions of bill
115	Rep. Shetterly	MOTION: Moves to ADOPT HB 2323-1 amendments dated 02/18/97.
		VOTE: 5-0

119		EXCUSED: 2 - Rep. Courtney, Rep. Sunseri
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
122	Rep. Shetterly	MOTION: Moves HB 2323 to the full committee with a DO PASS AS AMENDED recommendation.
127	Rep. Prozanski	Are we giving inmates access to attorneys to pursue lawsuits at the expense of the state for that counsel while they're incarcerated?
132	Lumsden	I don't know the answer to that.
133	Chair Minnis	I don't know either. Can you articulate on that a little more?
135	Rep. Prozanski	My concern is that if they have the same statute of limitations while incarcerated, are we going to be incurring the cost of providing access to attorneys?
149	Peter Cogswell	Legislative Assistant, Department of Justice >need to touch base with Jan Londahl and get back to you
157	Chair Minnis	You're not suggesting this creates some sort of right-to-counsel issue, are you?
158	Rep. Prozanski	I don't know, but I understand the frustration that could evolve if someone, after being in prison for 20 years, wants to pursue some action. >wants to ensure that we're not setting up that right
169	Chair Minnis	Suggests closing work session so as to get in contact with Legislative Counsel to clear up the issue
170	Rep. Shetterly	I've never represented anybody incarcerated on a civil action.
172	Lumsden	The original statute only extended the statute of limitations for 5 years and so this would not affect someone incarcerated for 20 years.
178	Rep. Prozanski	I think I would still like to get some answer so that we may get our intent on the record.
181	Chair Minnis	Closes work session on HB 2323
190	Committee	General discussion on committee rules
193	Chair Minnis	Reopens work session on HB 2323
194	Rep. Shetterly	Withdraws previous motion to move bill to full committee
195	Chair Minnis	Any opposition to withdraw the motion to move the bill to full committee?
	Committee	No objections
203	Chair Minnis	Closes work session on HB 2323
HB 2357 -		

<u>WORK SESSION</u>		
205	Chair Minnis	Opens work session on HB 2357
210	Scott Lumsden	Committee Counsel >reads provisions of bill and -1 amendments
	Committee	General discussion
237	Rep. Courtney	MOTION: Moves to ADOPT HB 2357-1 amendments dated 02/21/97.
242	Chair Minnis	Any discussion or objection?
243	Vice Chair Bowman	I object.
244	Chair Minnis	Rep. Bowman will be shown as an objection.
248	Committee	General discussion
300		>continues discussion
313	Rep. Courtney	Is this the same language we used regarding drugs within 1000 feet of school?
315	Rep. Sunseri	It's close.
324	Rep. Courtney	Could we get some ruling on that public-private issue of drugs within 1000 feet?
333	Adrian Sexnon	City of Salem >HB 2357's intent would be to mimic the drug house language that is currently in statute.
340	Rep. Courtney	Thank you. That was my understanding.
356	Vice Chair Bowman	Withdraws opposition to amendment
367	Rep. Courtney	MOTION: Moves HB 2357 to the full committee with a DO PASS AS AMENDED recommendation.
370		VOTE: 7-0
	Chair Minnis	Hearing no objection, declares the motion CARRIED. REP. COURTNEY will lead discussion on the floor.
		Closes work session on HB 2357
<u>HB 2323 - WORK SESSION</u>		

381	Chair Minnis	Reopens work session on HB 2323
388	Rep. Prozanski	In speaking with Bill Taylor, Committee Counsel, it is his position that he does not know of anything which would be created by passage of this legislation allowing inmates to demand counsel from the state.
401	Chair Minnis	We might be able to get a little more definitive before full committee.
404	Rep. Shetterly	MOTION: Moves HB 2323 to the full committee with a DO PASS AS AMENDED recommendation.
410		VOTE: 7-0
	Chair Minnis	Hearing no objection, declares the motion CARRIED. REP. PROZANSKI will lead discussion on the floor.
		Closes work session on HB 2323
TAPE 32, A		
<u>HB 2541 - PUBLIC HEARING</u>		
008	Chair Minnis	Opens public hearing on HB 2541
013	Lane Shetterly	State Representative, District 34 >submits and summarizes informational materials, (EXHIBIT C)
062	Rep. Prozanski	Comments that he would like clarification during further testimony on whether seeking contributions from pre-trial prisoners who go unconvicted and also the impact, with Measure 40, whether pre-trial costs will be collected
078	Chair Minnis	Doesn't line 6 cover that?
079	Rep. Prozanski	It does, but before that it addresses those in county jails pre-trial. >Four things: trial, sentence to imprisonment, or committed for non-payment >At what point are we going to be looking for costs?
088	Chair Minnis	Was that your intent, Rep. Shetterly?
089	Rep. Shetterly	No, but we are dealing with what LC put out. >intent was to run it like a hotel >will go along with committee as to whether they want it to be as broad as the Michigan statute

		>not intent to recoup costs for those who later are not convicted
101	Rep. Bowman	How will county make ascertainment to be able to make payment?
107	Rep. Shetterly	In Michigan statute, Section 801.83 prescribes a form to prescribe financial status. >As drafted, it would give discretion to the counties to determine ability to pay.
116	Rep. Bowman	Expresses concern of 36 counties determining separately who has ability to pay
121	Rep. Shetterly	It is difficult to draw financial qualifications too tightly. >Counties determination will be one of self-interest that will limit those people pursued.
131	John Anderson	Administrative Officer, Polk County
		>gives history of origin of legislation >endorsement by Oregon Association Counties >timely legislation given Ballot Measure 40 >SB 1145 = approximately \$53/day >benefits to Polk County? with BM 47 looking for resources >This would be enabling legislation for other counties.
181	Rep. Sunseri	What is criterion for reasonably determining repayment?
189	Anderson	Work-release is one of the things which can be charged for and there are no uniform rates there.
195	Rep. Sunseri	The rate is not the question; the ability to pay is the question.
196	Anderson	Responds that it appears that other states have set a flat rate which is waivable if it is uncollectable.
204	Rep. Shetterly	Refers to Michigan statute which establishes rate of not more than \$60 per day >12 month statute of limitations
214	Rep. Sunseri	How is the determination made that I am able to pay and so you are going to file a civil suit? What is the criterion?
222	Anderson	This is LC's approach, but we would just as soon go with a uniform rate.
231	Vice Chair Bowman	Have you checked with legal counsel to determine whether this falls under Measure 47 which would require you to go to the voters?
		Yes. He said we would have to set it before the voters and that we

237	Anderson	would have to set a fee.
240	Rep. Shetterly	Everyone is initially responsible and the ability to pay depends on the county's election to pursue a civil suit?
248	Rep. Sunseri	That appears to be different than the wording here.
251	Rep. Shetterly	If we can approve it in concept, I can go to Legislative Counsel to get something more like what I suggested.
254	Chair Minnis	It seems to me that we might be able to accommodate this in Measure 17 where prison-work programs recovery costs can be recuperated.
265	Rep. Wells	Regarding to SB 1145, does this apply to those people too?
267	Paul Snider	Association of Oregon Counties >This would apply to incarcerated offenders. >This is a fee for room and board and separate than SB 1145's fee recoveries.
275	Rep. Prozanski	Would this apply to a SB 1145 individual who are incarcerated due to sanctions for not doing what they were supposed to be?
282	Snider	I think that is probably right.
284	Rep. Prozanski	Anyone who is in facility of incarceration would be subject to this cost no matter why they are there.
291	Vice Chair Bowman	What has the success rate been of states that have implemented a law like this?
295	Rep. Shetterly	I can't tell you how much they collect.
299	Snider	We have varied experiences of success in different counties. >McComb County, MI, 1987, pop. 680,000: revenue to costs ratio is 3:1 >could already be collecting large slice of this >copied verbatim by TN last year >12 mo. statute of limitations >more complex than what is written in HB 2541
349	Chair Minnis	I think we should have a workgroup.
353	Rep. Shetterly	My preference would be to work some of these Michigan considerations into the bill.
357	Chair Minnis	Rep. Bowman and Rep. Shetterly will work together in a workgroup. >How much time do you need?
366	Rep.	Middle of next week we'll have something.

	Shetterly	
371	Chair Minnis	Closes public hearing on HB 2541
HB 2486 - PUBLIC HEARING		
373	Chair Minnis	Opens public hearing on HB 2486
380	Ron Foote	Gervais City Councilman >describes origin of bill >stems from problem in 1995 where they were without an officer and were unable to get coverage from neighboring localities >Board of Public Safety Standards Training requires training so should provide an officer to do it.
423	Chair Minnis	How large is your police agency?
424	Foote	We have one officer, and are trying to hire two more.
434	Rep. Prozanski	A couple of concerns: >What is the field training required?
TAPE 31, B		
029	Steve Bennett	Director, Board of Public Safety Standards and Training >Objective is to continue training begun in the academy. >Gervais circumstance is rare. >fundamentally impossible for us to move this forward because we don't know what local policies and procedures are >not best solution for this situation >Mutual agreements with neighboring localities usually work best. >work with Chiefs and Sheriffs to provide service
080	Rep. Prozanski	This is why I asked the question, knowing what the Eugene Police go through after the academy in terms of training. >potential for liability on state's part
		We're already on the hook to some extent because we mandate some

097	Chair Minnis	minimum training.
101	Rep. Prozanski	That's true, but here we're taking people from BPSST and putting them in the field without uniform training.
106	Chair Minnis	So, the thought is that it is scarier to put someone from BPSST on the streets by themselves.
109	Prozanski	This is why we are trying to increase the number of hours at BPSST.
111	Chair Minnis	There is a high standard assumed with respect to law enforcement officers. >Often times OSP will help these small jurisdictions.
121	Foote	We did talk to the OSP and they didn't have anything to offer us.
128	Rep. Courtney	There are standards. >How many Gervais's are there? >We need to know before we move on this bill. >Field stuff needs to be done after they graduate.
149	Rep. Prozanski	The reality is that if a city can't support a police force then maybe they need to look at county or state to provide that service. >Prosecutors need to know that officers are adequately trained.
167	Rep. Shetterly	What else is going on out there, or are these cases just not reaching the floor the way Gervais did?
173	Bennett	61% of all agencies in Oregon are 10 people or less and so Gervais is not unique there. >What is unique is inability to find local support.
183	Foote	We contacted Marion County and Woodburn and they both said it is a liability issue. >BPSST puts themselves at liability by allowing our County Recorder to sign off on the training.
195	Rep. Courtney	Did you comment on Marion County? >Does the county do it for anyone in Marion County?
200	Foote	No. They do it for themselves.
201	Rep. Courtney	Does Gates or Mt. Angel have a police department?
203	Foote	We contacted Ken Wright, Oregon Association Chief of Police, and he called several agencies and they all declined on the liability issue.
209	Rep. Sunseri	What would have been their response if they were released from the liability?

211	Foote	Our city insurance gave us a waiver, but the agencies still declined.
217	Rep. Wells	It's becoming more and more difficult for small cities to maintain police forces.
227	Foote	So far, it has been cost prohibitive to contract with Marion County. >For 3 of our officers, we could only get one of theirs for about 8 hours a day.
233	Bennett	We have a bill in this session that would create a 640 hour course.
255	Chair Minnis	What do you pay your police officers?
257	Foote	We start them out at \$1200/ month. >This is not a certified officer. >currently paying \$1900/month
264	Chair Minnis	That doesn't include benefits?
265	Foote	That is \$1900 with full benefits.
268	Chair Minnis	Do you have any analysis of officer salaries statewide?
270	Bennett	We have a personnel and budget study which would include all of that information.
272	Chair Minnis	Asks for copies of this study to be given to committee members
276	Bennett	One of the things that was unique here is that Gervais did not have any officers when the one came on.
282	Foote	That's correct but the officer we have now has an application in with the State Police which looks favorable for him leaving us in July.
297	Chair Minnis	Closes public hearing on HB 2486
298	Chair Minnis	Declares subcommittee adjourned at 4:37 pm

Submitted by, Reviewed by,

BRIAN HIGGINS, SCOTT LUMSDEN,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2323, Proposed Amendments, Staff, 1 p.

B - HB 2357, Proposed Amendments, Staff, 1 p.

C - HB 2541, Informational Materials, Rep. Lane Shetterly, 4 pp.