

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

March 10, 1997 Hearing Room 357

3:15 PM Tapes 43 - 46

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 Hearing and Work Session - HB 2310 and HB 2817

Public Hearing - HB 2887, HB 2975, HB 2958, HB 2942, HB 2943, HB 2950

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 43, A		
004	Chair Minnis	Opens subcommittee at 3:28 PM

<u>HB 2310 - WORK SESSION</u>		
005	Chair Minnis	Opens work session on HB 2310
008	Scott Lumsden	Committee Counsel >reads provision of bill and -1 amendments, (EXHIBIT A)
022	Rep. Prozanski	MOTION: Moves to ADOPT HB 2310-1 amendments dated 03/10/97.
025	Rep. Sunseri	Could this also affect common law people?
028	Rep. Prozanski	It will and I have another bill which specifically addresses the false filing of documents. >This one is more inclusive.
039		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Shetterly
	Chair Minnis	The motion CARRIES.
043	Rep. Prozanski	MOTION: Moves HB 2310 to the full committee with a DO PASS AS AMENDED recommendation.
046		VOTE: 6-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Shetterly
	Chair Minnis	The motion CARRIES. REP. PROZANSKI will lead discussion in full committee.
050	Chair Minnis	Closes public hearing and work session on HB 2310
<u>HB 2817 - PUBLIC HEARING AND WORK SESSION</u>		
052	Chair Minnis	Opens public hearing HB 2817
		Assistant Director, Community Corrections, Department of Corrections

062	Scott Taylor	>submits and summarizes written testimony, (EXHIBIT B)
092	Chair Minnis	How will this impede the current projects?
093	Taylor	Responds that there are five projects in the process of being sited >Process would need to be restarted; a site in Columbia County could be affected by this. >may only limit the state's ability to develop additional space
105	Rep. Sunseri	It seems that if we're building on ground that can't support the building, then we are creating a problem that we will have to pay for again later.
111	Taylor	Responds that the local governments have already gone through the siting process and have determined the frugality of owning that building for the next 30 to 50 years
119	Rep. Sunseri	If that's true, then why is this bill before us?
121	Taylor	If they have addressed this at the local level, then it probably has been considered how it is going to be managed.
127	Rep. Prozanski	I need to ask why we don't have the duty to be assured that state dollars are being used prudently. >I believe in local control and the process Corrections has gone through, but do we not have the responsibility to make sure funds are prudently being used?
142	Taylor	Responds that he can't argue with the prudence aspect of this and that local governments should be addressing this and managing those concerns
158	Dan Noelle	Sheriff, Multnomah County >submits and summarizes written testimony, (EXHIBIT C)
208		Continues testimony
233	Rep. Prozanski	My concerns are making sure there are the safeguards regarding public money. >asks about studies done and other public facilities in the area in regards to the floodplain
243	Noelle	This is the Radio Tower site. >In Multnomah County, we have to use industrial zoned property, which this property is, to site correctional facilities. >For site to be workable, some dike repair is necessary as well as some preliminary mitigation and fill-in.

		<p>>Long term use of the site is a valid issue.</p> <p>>Some sites are easy to build one, but are more expensive; others require more development.</p>
284	Rep. Prozanski	<p>Regarding the time frame, do you have any idea when that will occur, in relation to our session?</p> <p>>Is there still time to pull out of the site and move to a different one?</p>
293	Noelle	<p>Responds that the process was initiated to arrive at one site</p> <p>>talks about other sights: Port of Portland and NW Portland sight</p> <p>>NW Portland sight is a Superfund site which makes it more problematic.</p> <p>>County Board of Commissioners must authorize the deal.</p>
325	Thomas Wilde	<p>State Senator, District 8</p> <p>>responds to comments made by Sheriff</p> <p>>The bill only deals with funds coming from the state.</p> <p>>Legislature has a responsibility to ensure that funds are spent wisely and into buildings with an expected life.</p> <p>>If we are to build in a floodplain, we must also have a contingent facility to move those people to in the case of a natural disaster.</p>
364	Rep. Bowman	Comments that the state funds are for operation of the facility [as opposed to construction]
381	Sen. Wilde	If we are addressing a single facility, we must discuss what happens in the instance of a natural disaster.
396	Rep. Bowman	You've had extensive involvement with Multnomah County?
397	Sen. Wilde	Yes, I have.
399	Rep. Bowman	Is it your opinion that Multnomah County operates ethically and responsibly within the law?
402	Sen. Wilde	They operate in a way to serve their best interests.
405	Rep. Bowman	To serve whose best interest?
406	Sen. Wilde	The government's.
407	Rep.	Is that also your opinion of state government?

	Bowman	
409	Sen. Wilde	No. With the variety of opinion here as well as the diverse areas represented, I think it is more reasonable.
418	Rep. Bowman	How many of the community meetings did you attend?
419	Sen. Wilde	Four
422	Rep. Bowman	Have you been involved with community corrections meetings?
428	Sen. Wilde	I went to the city's one at the University of Portland.
433	Rep. Bowman	Have you also attended the meetings about the health clinic in North Portland?
434	Sen. Wilde	Yes, I went to one meeting.
TAPE 44, A		
014	Rep. Prozanski	It appears that the structure is going to be built using county's funds, so the only thing that could happen is that we may disable the corrections program and increase transportation costs.
027	Sen. Wilde	Responds that he did not sign on to the bill to address one single issue, but as a matter of good public policy
036	Rep. Prozanski	Would it be better to expand this bill to any and all public facilities?
038	Sen. Wilde	I, personally, would feel very comfortable with that.
040	Mike Fahey	State Representative, District 17 >I am for the jail, but in an industrial area, not in the middle of a sports complex. >At the last meeting the Port of Portland site was number one and then all of a sudden it was the Radio Tower site. >We could be building in 60-90 days on the Port of Portland property.
074	Rep. Courtney	The bill talks about county correctional facilities on wetlands or floodplains, but I have a feeling that, if you look at state facilities, we would have to move all of the state facilities out of Salem.
088	Rep. Fahey	That's probably one of your largest employers down here in Salem.
092	Sen. Wilde	I think this is something that the Land Use Committee should look at in terms of state facilities.

100	Chair Minnis	Does the Governor's Office have a position on siting correctional facilities on wetlands?
107	Steve Marks	Governor's Office >not familiar with Department of Corrections' criteria when they look at a floodplain >generally look at allowable uses on that land and work backwards from there
118	Chair Minnis	The testimony earlier was that this site was going to take 142,000 cubic yards of fill in an area that is currently a wetland. >Does the Governor have the veto power to say to move the facility to a site that is more environmentally sound?
131	Marks	I would have to respond at a later date.
134	Chair Minnis	It seems appropriate we should look at these issues as an interesting policy discussion. >Normally we criticize businesses for building on wetlands and here we have the government doing it.
142	Rep. Wells	It seems to me that there was discussion to not consider sites within a 100-year floodplain. >We don't build houses within 100-year floodplain, why prisons?
162	Rep. Fahey	Responds to supersiting process involving only state prisons and not county facilities
168	Chair Minnis	If that's true than this is an appropriate issue to discuss as a matter of public policy.
172	Rep. Bowman	I agree with you in principle, but I don't know if you have the experience that I've had with siting prisons. >If people want prisons, we will have to get used to the idea that they are going to be near our neighborhoods.
185	Chair Minnis	It's not my intent to revisit the siting issues of the 1995 Legislature. >not just a Multnomah County issue >would like to have Governor's opinion
196		Closes public hearing on HB 2817
<u>HB 2887 - PUBLIC HEARING</u>		

199	Chair Minnis	Opens public hearing on HB 2887
204	Cynthia Wooten	<p>State Representative, District 41</p> <p>>in support of bill</p> <p>>submits newspaper article, (EXHIBIT D)</p> <p>>If passed, measure will go into the statutes making it illegal for authorities to tape record conversations between inmates and members of the clergy.</p> <p>>recalls incident in Lane County from April 1996 in which this loophole was revealed</p> <p>>Unless consent is given, taping can not be used.</p>
254		<p>>matters of freedom of religion</p> <p>>Bill will codify 9th Circuit Court of Appeals ruling.</p> <p>>will not apply to include anyone but clergy as defined currently in statute</p> <p>>unconstitutional to allow taping but not yet law in Oregon</p>
307	Chair Minnis	Asks for clarification of the instance when detailed information is given about criminal behavior and this person does not know whether or not they are speaking to clergy
320	Rep. Wooten	It is not the intent of the bill to do that.
322	Chair Minnis	What if it was not their intent to reveal it to a member of the clergy?
327	Rep. Wooten	<p>The bill suggests that if one or more of the party is a willing participant, the restriction would apply.</p> <p>>Court has said that secret taping violates the 4th Amendment.</p>
355	Rep. Prozanski	<p>Clarifies the earlier testimony regarding Lane County given by Rep. Wooten</p> <p>>I have to disagree that the DA ordered this to occur.</p>
367	Rep. Wooten	It was not my intent to place blame on the DA's.
395	Rep. Prozanski	It's important to understand that this was not unilaterally done.
397	Rep. Wooten	Forgive me if I appeared to say or indicated otherwise.

TAPE 43, B		
001	Les Dolecal	Inspector General, Oregon Department of Corrections >submits and reads written testimony, (EXHIBIT E)
017	Father Michael Sprauer	Administrator of Religious Services, Department of Corrections >submits and reads written testimony, (EXHIBIT F)
055	Chair Minnis	Asks Father Sprauer to identify the possible amendments he may be talking about
056	Father Sprauer	The crux of the problem is how a person receiving a telephone call from an inmate is intended to be a privileged communication.
069	Rep. Courtney	How long have you been at OSCI?
071	Father Sprauer	I've been in the Department of Corrections since 1975.
076	Rep. Courtney	In your experience have you been privy to some sensitive conversations?
082	Father Sprauer	That's correct.
086	Rep. Courtney	Did you report those conversations to others who might be interested in them?
088	Father Sprauer	The difference between confessions and other conversations with an inmate are significant. >Confessionals always deal with prior events and not planned activities.
097	Rep. Courtney	Suppose they did talk about past actions, do you talk to the Superintendent about those?
100	Father Sprauer	Chaplains in correctional institutions wear unique hats with respect for the safety of the building but also representing other values. >It is important that inmate have confidence in ability to relate confidentially to chaplain.
113	Rep. Courtney	So you would err on the side of confidentiality?
114	Father Sprauer	Yes, I would.
		Do you feel that conversations between a priest, who also

115	Rep. Courtney	happens to be an attorney, would be subject to the double protection? >withdraws question
124	Rep. Prozanski	Is it the Department of Corrections position that there needs to be some sort of affirmative notice by the individual who is seeking counsel or confession from the clergy to make that request before the conversation takes place?
131	Father Sprauer	That would be the position of the Department of Corrections. >incumbent upon both parties to be aware of the confidential responsibility
141	Rep. Prozanski	Do you also believe that the determination is properly placed with the individual rather than the clergy?
146	Father Sprauer	There is a misunderstanding as to who owns the privilege of communication. >The narrow definition would be the penitent. >Understanding is not the same among Catholic priests. Owning of the privilege also belongs to the priest. >The bill would reflect better policy if it engaged both parties to provide that safety.
162	Rep. Sunseri	Where do confessionals take place within a correctional facility?
168	Father Sprauer	It could be all of the above locations stated in your testimony. >The overriding requirement is that it be a confidential setting.
183	Jim Arneson	Oregon Criminal Defense Lawyers Association >supports HB 2887 as it places the current privilege into statute >difficult to have a private moment when incarcerated
214	David Fidanque	Executive Director, ACLU of Oregon >in support of HB 2887 but thinks bill can be improved >clarifies that taping was made before judge's order [in Lane County case] >Privilege in evidence code adopted as protection to the parties of the case, not the clergy. >Evidence code doesn't currently grant privileges to clergy, only to the penitent.

		<p>>Clergy needs to know when the statement is going to be recorded.</p> <p>>Bill is about drawing lines as to what is allowed when and to put everyone on notice.</p> <p>>There is a difference between how telephone and in-person conversations are currently treated under the statute.</p>
264		<p>>In-person conversations could not be recorded without committing a crime as this bill is drafted.</p> <p>>Committee needs to address how telephone calls will be handled.</p>
276	Chair Minnis	I think we will need to have some additional public hearings to narrow the scope of the bill.
279	Rep. Prozanski	<p>Responds to David Fidanque's comments on the Lane County case</p> <p>>not ordered to be taped by the District Attorneys office but a decision made by the investigators</p>
291	Chair Minnis	Closes public hearing on HB 2887
<u>HB 2975 - PUBLIC HEARING</u>		
294	Chair Minnis	Opens public hearing on HB 2975
298	Kitty Piercy	<p>State Representative, District 39</p> <p>>bill came from a constituent</p> <p>>reads provision of the bill</p>
329	Chair Minnis	<p>We'll have another subsequent public hearing on another date.</p> <p>>Closes the public hearing on HB 2975</p>
<u>HB 2958 - PUBLIC HEARING</u>		
345	Chair Minnis	Opens a public hearing on HB 2958
		Assistant Director, Human Resources, Department of

		Corrections
355	Karen Roach	>introduces Michael Taaffe, Administrator of Work Programs >submits and reads testimony in support of measure, (EXHIBIT G)
405		Continues testimony
TAPE 44, B		
011	Michael Taaffe	Administrator of Inmate Work Programs, Department of Corrections >no comments
014	Chair Minnis	Where does this bill restrict the authority to just the prison work program?
016	Roach	It says Department of Corrections, but it was requested for just the Inmate Work Program.
022	Chair Minnis	The object of this bill is to allow the flexibility as long as you don't supersede your budget authority?
024	Roach	That's correct.
025	Rep. Bowman	What is the current guard to inmate ratio?
028	Roach	I do not know right now.
030	Rep. Bowman	I ask that question because I think it is a major safety issue at a 100 to 1 ratio.
036	Taaffe	Most of the work program that needs development is in the institutions and wouldn't be a situation where work guards would be pulled out to participate in work programs.
041	Chair Minnis	Closes public hearing on HB 2958
HB 2942, 2943, 2950 - PUBLIC HEARINGS		
041	Chair Minnis	Opens public hearings on HB 2942, HB 2943, and HB 2950
		AFSCME >We don't represent guards but officers in the corrections profession.

046	Mary Botkin	<p>>The average is about an 8 to 1 inmate to staff ratio.</p> <p>>Biennial goal is 4 to 1 which is the national average.</p> <p>>We do have a plan to replace the free weights with universal machines using inmate labor to build them.</p> <p>>Currently officers go through BPSST certification to allow them to possess a concealed weapon.</p>
079	Rep. Prozanski	You made a reference to a background check, but under the new CCW guidelines I was under the impression that you just needed to show proficiency.
083	Botkin	One of the officers here has more knowledge on that than I do, so I will let him testify on that.
096	Bryan Branstetter	<p>AFSCME</p> <p>>submits and summarizes written testimony in support of HB 2942, (EXHIBIT H)</p>
132	Herman Green	<p>AFSCME</p> <p>>testifying in support of HB 2942</p> <p>>need for more security staff to protect inmates</p> <p>>seeing more young inmates who have less fears about life and limb</p> <p>>New equipment can only do so much; it can't save lives.</p> <p>>receive more training per officer than any other state but doesn't make up for lack of staff</p>
194	Paul Gilliland	<p>AFSCME, Pendleton, Shift Supervisor, EOCI</p> <p>>in support of HB 2942</p> <p>>ratios from 1 to 72 and 1 to 85</p>
244		<p>>Anything happening on east side of institution has a significant impact.</p> <p>>The inmate ratio has been as high as 137 to 1.</p> <p>>We control the institution only because the inmates allow us to.</p> <p>>National accreditation rate of 4 to 1 would be the best ratio.</p>

		>Governor Kitzhaber took tour of EOCI in Spring, 1994 in which he noticed the low number of response staff.
292	Louis Michael	In support of HB 2942 and HB 2943 >submits and summarizes testimony, (EXHIBIT I)
342	Michael	Continues testimony
392	Michael	Continues testimony
TAPE 45, A		
010	Michael	Continues testimony
060	Michael	Continues testimony
092	Chair Sunseri	What happened to the inmate?
088	Michael	Responds that he was sentenced to twenty years for attempted murder with no chance of parole
098	Chair Sunseri	How much time did he have left?
099	Michael	He was in on a parole violation and had several months left on that. >He eventually hung himself.
103	Chair Minnis	Invites the Department of Corrections to come up >decides to defer to testifiers who have come for more than 100 miles away
114	Bryan Branstetter	AFSCME >Testifies in support of HB 2950 >held to same standard as police officers in terms of background checks >give us ability to carry concealed weapons to protect ourselves
133	Rep. Prozanski	I'm assuming this is for correctional officers for as long as you are employed as such.
135	Branstetter	The deletion included only allowed for "while escorting inmates."
142	Chair Minnis	Are you also assuming the agency has the ability to give direction to the carrying of firearms off-duty?
145	Branstetter	I do not know why not, as long as they are in line with what everyone else in the state has to comply with.

148	Chair Minnis	In the Portland Police Bureau, they are not allowed to carry weapons off-duty and as an agent of that Bureau, I would have to submit to that.
152	Branstetter	Comments on private citizens ability to carry concealed weapons
154	Chair Minnis	That is a separate issue.
156	Rep. Prozanski	This is basically an exemption.
159	Branstetter	I believe this bill is under the ability for the background checks for the concealed weapons permits.
161	Chair Minnis	This bill is much broader than that. >granting the authority to carry a concealed weapon because you are a corrections officer
165	Herman Green	AFSCME >bill would equate us with others in the law enforcement community >want this to pass so that we can protect ourselves from inmates when we are away from the institution
180	Rep. Prozanski	Because of your status with the department, you would have more flexibility as to when you can carry a firearm. >Even if the department grants you authority to carry concealed weapons, you would still have the same requirements and restrictions as to when you can and can't use deadly force.
191	Green	Responds that it is not their intent to do away with those restrictions
209	Rep. Prozanski	Asks the Department of Corrections for clarification of free weights issue and what has happened since the incident described in previous testimony >Where is the process at of replacing the free weights with universal ones?
221	Al Chandler	Assistant Director of Institutions, Department of Corrections >testifies in opposition and presents written testimony on HB 2942, HB 2943, and HB 2950. (EXHIBIT J) >Department has not made any changes in regards to the free weights. >The Eastern Oregon incident is the only one I am aware of in

		<p>the 40 - 50 years that we have had free weights.</p> <p>>Department's position is that they have a problem with the initiation of a statute as opposed to administratively handling the issue.</p>
257	Rep. Wells	How do you figure your staff to inmate ratio?
266	Chandler	<p>Your question is in regards to HB 2942.</p> <p>>Averages or statistics are information that can be used in whatever way it takes to make the point.</p> <p>>The department is evaluating the inmate to staff ratio.</p> <p>>There is a difference between shift ratios and the total number of security staff for the institution.</p> <p>>New facilities are being built so as to maximize staff efficiency.</p>
322	Rep. Prozanski	Regarding the potential of using inmate labor to produce the universals, would the department have a problem with that?
333	Chandler	<p>The department would have no problem with doing that, but the difficulty is the lack of production resources.</p> <p>>Our one metals shop's capacity is full with other projects.</p>
342	Rep. Prozanski	But that is something that the department would be willing to consider?
343	Chandler	Over the course of time, we would be willing to do that.
344	Rep. Prozanski	What about the issue of shop materials and tools being used for weapons against inmates and staff?
358	Chandler	<p>There are many things that can be used as deadly weapons.</p> <p>>They can come from the kitchens and from work crews on the inside and outside, or from the metal shop.</p> <p>>Were we to remove the weights, would that decrease the danger? Absolutely not.</p>
378	Rep. Courtney	Are you understaffed?
381	Chandler	The Department of Corrections is a very lean staffed department.
385	Rep. Courtney	I know this is a difficult question, and I appreciate your testimony on the ratios, but I need to know are you understaffed?
395	Chair Minnis	I don't think this is a Ways and Means issue at all.

397	Rep. Courtney	I'm not trying to put you on the spot.
398	Chandler	I think there are places in the department that are understaffed. >I also understand we have a resource problem in this state in trying to deal with that. >We are trying to respond to those staffing issues through technology and a variety of other ways in order to bring about improved security.
411	Chair Minnis	Would you answer the same way if I was to issue a subpoena?
414	Chandler	Yes, under certain circumstances, we are understaffed.
419	Chair Minnis	We know you need to toe the company line, but some of us would really like to get to the truth. >We operate in a vacuum sometimes, but we need to evaluate the merits.
438	Rep. Prozanski	I think it is difficult for us to sit here and micromanage the institutions.
TAPE 46, A		
018	Rep. Prozanski	But if we are understaffed in the big picture, then that is something we need to know so we can make a policy decision as to the amount of money you need. >We're hearing these different ratios thrown at us, but I need to know what the standard is with the type of facilities we have that should be expected for the safety of inmates, staff and the public.
027	Dave Cook	Director, Department of Corrections >agrees with Mr. Chandler that in some instances we are understaffed >disagrees with the testimony of a national standard for staffing >preparing documents in regards to staffing levels with respect to particular facilities in other states >We have safe facilities largely due to the training of our officers.
051	Chair Minnis	Do you have an agency analysis of minimum staffing levels on each shift?

058	Cook	What we have is an expected full staffing pattern which varies between institutions.
061	Chair Minnis	So you have something like that. Do you record how many days you are at or below that minimum?
062	Cook	Yes, we do.
063	Chair Minnis	Maybe we need to see those documents which show how many days you are either over or under that level.
065	Chandler	What we have is a roster management system which examines, reviews and tracks our existing positions as they are funded. >doesn't relate to required staffing level
069	Chair Minnis	The shift supervisors are not working with a minimum staffing level?
070	Chandler	Each of our security posts are ranked according to level of criticalness.
077	Chair Minnis	What is your vacancy factor?
080	Cook	We would have to bring Ms. Acuff in to answer that. I am not sure I could give you that information.
081	Chair Minnis	What about overtime?
082	Cook	We could provide those to you.
084	Chair Minnis	Wouldn't it ultimately be more safe to hire more officers and utilize less overtime?
088	Cook	That is the point of the roster management system.
091	Chair Minnis	I think it is important to have the information so that we can, at least, forward that to Ways and Means.
094	Rep. Prozanski	I am actually on the subcommittee of Ways and Means which is going to devote a considerable amount of time on the Corrections Department. >We need to set some priorities.
101	Chair Minnis	It's obvious that we need to revisit this issue.
102	Rep. Courtney	I'm not trying to trick you into supporting a bill, I just felt it was very important to address the understaffing.
107	Chandler	The context of this bill would make it very costly and not the way to manage it.
112	Chair Minnis	Asks if they have requested more positions from the Governor
113	Chandler	For current facilities, no.

Submitted by, Reviewed by,

BRIAN HIGGINS SCOTT LUMSDEN

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2310, Proposed amendments (-1), Staff, 1 p.

B - HB 2817, Written testimony, Scott Taylor, Department of Corrections, 1 p.

C - HB 2817, Written testimony and informational materials, Sheriff Dan Noelle, Multnomah County, 8 pp.

D - HB 2887, "DA Weighs High Court Ruling," *Eugene Register-Guard*, Rep. Cynthia Wooten, 1 p.

E - HB 2887, Written testimony, Les Dolecal, Inspector General, 1 p.

F - HB 2887, Written testimony, Father Michael Sprauer, Department of Corrections, 1 p.

G - HB 2958, Written testimony, Karen Roach, Department of Corrections, 2 pp.

H - HB 2942, Written testimony, Bryan Branstetter, 2 pp.

I - HB 2942, Written testimony and *Statesman-Journal* article, Louis Michael, 3 pp.

J - HB 2942, HB 2943, HB 2950, Written testimony, Al Chandler, Department of Corrections, 3 pp.