

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

March 18, 1997 Hearing Room 357

1:00 PM Tapes 53 - 55

MEMBERS PRESENT:

Rep. JOHN MINNIS, Chair

Rep. JO ANN BOWMAN, Vice-Chair

Rep. PETER COURTNEY

Rep. FLOYD PROZANSKI

Rep. LANE SHETTERLY

Rep. LARRY WELLS

MEMBER EXCUSED:

Rep. RON SUNSERI

STAFF PRESENT:

SCOTT LUMSDEN, Counsel

LISA FRITZ, Administrative Support

MEASURE/ISSUES HEARD:

HB 2899 - Public Hearing

HB 3000 - Public Hearing and Work Session

HB 2986 - Public Hearing and Work Session

HB 2999 - Public Hearing and Work Session

HB 3219 - Public Hearing and Work Session

HB 3123 - Public Hearing

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 53, A		
007	Chair Minnis	Calls the meeting to order at 1:07 p.m.
<u>OPENS PUBLIC HEARING ON HB 2899</u>		
010	Rep. Jim Hill	District five Testifies in favor of HB 2899. Cites a story, involving one of his constituents, to illustrate his position. Explains that the bill adds, in statute, an affirmative defense. The bill says that if the driver puts forth a reasonable effort to determine whether parties were actually injured, and all parties indicated, at the time of the accident, that they were not injured and left the scene, the driver should not be found guilty. This does not deal with civil liability because this is a Class C felony.
050	Rep. Bowman	Why would we go back to September 1, 1995, for the implementation date?
053	Rep. Hill	That is an arbitrary date, but it is specific enough to take in my constituent. That's the only reason for the date.
055	Rep. Wells	Can you relate this to two vehicles colliding, or is this only for a vehicle colliding with a pedestrian? Does this affect an automobile hit- and-run, or does it only affect an injured person?
059	Rep. Hill	I believe it would include all offenses related to a vehicle.
068	Chair Minnis	I assume the bill is intended to apply to circumstances where individuals are injured.
073	Rep. Wells	You could injure an individual by hitting his car, and he could say, "Oh, I'm fine," but you would still have the damage to the automobile.
075	Rep. Hill	This does not deal with civil liability. This deals with the fact that you are at fault, you stop, and you seek to give aid. The person gets up and leaves by their own will. You, as a driver, could still be held responsible, under the hit-and-run statute, because you did not wait for the police or call the police and say, "I hit a pedestrian. What am I to do?"
096	Rep. Prozanski	There are two different statutes for hit-and-run. This one involves injury to a person. It sounds to me that your constituent did not have the services of an attorney and decided to pursue on their own. Is that correct?
		They did have an attorney, but I understand that they did not have enough money. They were not poor enough to get an attorney given to them, and

101	Rep. Hill	they were not rich enough to pay the fees, to an attorney, to fight the case. I believe this is a reasonable approach that allows people to understand what they are looking at. It gives people an opportunity to prove their case.
113	Rep. Prozanski	By putting something in as an "affirmative defense," you are putting a higher burden on the defendant than is required by law now. It sounds to me that, if the situation that has been presented to you would have been presented to a trier of fact, then there would have been a determination as to whether the defendant fulfilled the requirements, under the statute. It's important to try to reach out to our constituents, but I would question whether this is good practice for an individual who has been charged with this. It's actually asking them to do more.
129	Rep. Hill	They never went to court. He plea bargained. You and I may choose a different course because we have a better understanding, but not everyone has the opportunity and ability to understand these things. People are frightened when presented with the charge of a Class C felony.
155	Chair Minnis	It seems as if you are turning the tables, in this instance, because of the higher standard.
158	Rep. Hill	I would welcome any suggestions.
162	Chair Minnis	I think there is post-conviction relief, process for appeal, etc.
163	Rep. Hill	That takes money. This is giving the opportunity that, if charged, for offense.
185	Brenda Rocklin	Oregon District Attorneys Association (ODAA), Department of Justice (DOJ) Testifies in opposition to HB 2899. This does set a higher standard. This is saying that the state only has to prove certain things, and the defense has an obligation to come forward and prove these three steps. I'm not sure this would solve the problem. I'm not sure what this would cause the defendant <u>NOT</u> to do. I read this to mean that the defendant would not have to remain at the scene until a police officer arrived (page two, lines 9-16). If the intent of HB 2899 is to provide that a defendant, involved in an injury hit-and-run, does not have to remain on the scene until an officer arrives, I think the law already provides for that. You only have to remain at the scene of an injury accident, after you have exchanged the information that is required under the law, unless the people you have injured are dead or injured to the point that they are unable to provide you with needed information.
226	Chair Minnis	I think that in the situation, Rep. Hill used, the person, the defendant would have exchanged information with, got up and walked away.
230	Rocklin	If those truly were the facts, I think the person may have taken reasonable steps. Under the law, reasonable steps are to notify the potentially injured person or a police officer that he/she has been involved in an accident, whether the person recognizes that they have been injured or not. If the person took reasonable steps, I don't think they'd be guilty of this crime.
242	Chair	It sounds like this constituent had a pretty good defense.

	Minnis	
247	Rocklin	That's what it sounds like, and I'm not sure what the lesser crime was that they plead to, but it sounds like, regarding this particular crime, they had a good defense because they would not have been able to prove it "beyond a reasonable doubt." The concern of the District Attorney (DA) is whether it is good public policy to single out one case and create a whole new trial situation, based on that one case. Let me say that this particular case would not have been protected under this bill anyway, as I read the language. In section three, language provides that if a person is convicted of violating ORS 811.705, the felony hit-and-run statute, they could go to court and seek a new trial. This person was not convicted of violating that statute. They were convicted of a lesser crime. Rep. Hill's particular constituent would not have benefited by section three, in any event, even if the subcommittee believes it would be good public policy to do that. In response to Rep. Prozanski (and the DA's) concern, even if there is an affirmative defense that would allow the individual to leave the scene, the DA would like to be clear that the person, even if it's only property damage, must take reasonable steps to exchange address, insurance, etc. information. We don't want this affirmative defense to mean that, if the person believes there is only property damage, they can then leave the scene, without the exchange of the information that is required by law.
280	Chair Minnis	Does ORS 811.705 require some knowledge of injury? If so, to what extent? Do you have to prove that as an element of trial? I don't see that in here.
287	Rocklin	I believe you would have to know that it was an injury accident.
292	Chair Minnis	Maybe that's what we should be codifying.
293	Rep. Prozanski	Well, with Ways & Means, we have to put something in there because there could potentially be a sentence of incarceration. You have to show intent and knowledge, recklessness, or criminal negligence. Even though it's not specifically stated in the statute, there's still an obligation.
303	Chair Minnis	This is fairly broad: injury or death. Is "injury" a cut on the arm?
308	Rocklin	It is my guess that it is probably any degree of injury. I would be happy to provide the jury instructions to the committee, concerning the case I mentioned.
313	Chair Minnis	I don't know that we can go back and help Rep. Hill's particular constituent, but if there is some need to clarify the statutes, we can do that.
320	Rep. Hill	Section three won't help my constituent, but I think it's important. Average people make decisions, not based upon justice, but based upon whether or not they will be incarcerated, and they will plead to a lesser offense to escape court costs, attorney fees, and the idea that they could go to jail. I don't know how we would address that. That's why my constituent plead to lesser offense. He was scared of what the result would be on the other side. I think any reasonable person would say that if you hit someone, you got out of the car, you sought to give aid, and the person got up and walked

		away, you would say, "Okay." In this case, he got back in his car, went to work, worked his day, and the police arrived at his door, in the evening, and arrested him. That's the result.
360	Rep. Prozanski	I understand you're frustration, but from what you've told us, he had an attorney, and he followed the advise of his attorney. I'm not sure how we fix the problem, beyond giving the notice that is required and making certain that people realize that. Your constituent actually had legal counsel to advise them, so I'm not sure how we fix that.
373	Rep. Hill	I think we could address the issue in terms of injury, within the statute, which would give a little more discretion to the police.
377	Chair Minnis	Maybe not discretion, maybe clarity. Why don't I release you to spend some time with Ms. Rocklin. I tend to agree with Rep. Prozanski, in that the trouble was really with the counsel that your constituent received. We may be able to provide clarity, in terms of statute, for law enforcement in the future, so they don't just broadly arrest. Is it common to plea bargain down from ORS 811.705 to ORS 811.700?
389	Rocklin	I honestly don't know.
394	Chair Minnis	What else could you plead down to?
395	Rep. Shetterly	Maybe careless driving.
401	Chair Minnis	Closes Public Hearing on HB 2899.
<u>OPENS PUBLIC HEARING ON HB 3000</u>		
TAPE 54, A		
015	Rep. Prozanski	District 40 Discusses HB 3000 and -1 amendments to the bill (EXHIBIT A).
065	Rep. Prozanski	Continues testimony.
115	Chair Minnis	If this extension were granted, then the guilty plea would be entered. What would have to be accomplished to complete the diversion agreement?
		Usually, in a diversion agreement, there is a requirement to go through a course. In many cases, the county would do some type of mental health evaluation to determine any type of drinking problem the individual may have. They will direct the individual to a program that is directed by the

123	Rep. Prozanski	county or by an independent contractor. Those programs vary in length, depending on the severity of the perceived problem. There's also a requirement to attend a victim impact panel, where victims or family members of deceased individuals, involved with driving under the influence of intoxicants (DUI) accidents, speak to them. At the time of an extension, usually what you see is the need to complete some additional classwork. In some cases, the individual fails to stay on top of it. In other cases, because of the demands within the system, the individual may not be able to start the program until five or six months into the year, depending on what county they're in. There is a one-year requirement, where they cannot be involved in any other problems, including DUI or the violation of any other law. The court would basically require them to complete what is pre-existing under the one-year agreement and, in some cases, the court may require them to do additional classwork, Alcoholics Anonymous (AA) meetings, some type of follow up, or verification that they have completed those issues and paid any costs due under their agreement.
160	Rep. Courtney	Gives an example of an individual, previously cited for DUI, being pulled over by a police officer. What would the police officer find?
170	Rep. Prozanski	What they should find is that the individual was arrested on a specific date for DUI, and the individual successfully completed the diversion program. There should be a notification on a Department of Motor Vehicles (DMV) printout, "DIVR," which would reflect the date of the diversion program. What it should not reflect is a conviction. However, under the new language, if the individual was to be arrested for another DUI, the driving suspension would be elevated because this is the second offense in less than 10 years.
187	Rep. Shetterly	The second arrest and conviction would actually be the first conviction.
191	Rep. Courtney	It's not that much different than it is now.
193	Rep. Prozanski	That's exactly right. Explains what would happen to a person, arrested for two or more DUI in a very short period of time, under the bill.
207	Chair Minnis	How would we pick up a subsequent arrest for DUI? Gives example.
217	Rep. Prozanski	The way this is set up, the defendant would basically be petitioning the court for an extension. I would expect that the prosecuting authority would run a records check on the individual, as to what has occurred during that period of time, to determine if there is anything that may cause them to object to that. I also believe that there may be a duty to report any other incidents to the court.
<u>OPENS WORK SESSION ON HB</u>		

3000		
237	Rep. Courtney	MOTION: Moves to ADOPT HB 3000-1 amendments dated 3/13/97.
		VOTE: 5-0-1 EXCUSED: 2 - Rep. Bowman, Rep. Sunseri
244	Chair Minnis	Hearing no objection, declares the motion CARRIED.
250	Rep. Shetterly	MOTION: Moves HB 3000 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0-1 EXCUSED: 2 - Rep. Bowman, Rep. Sunseri
253	Chair Minnis	Hearing no objection, declares the motion CARRIED. REP. PROZANSKI will lead discussion on the floor.
<u>OPENS PUBLIC HEARING ON HB 2986</u>		
260	Rep. Prozanski	Introduces Curt Curtis and Larry Christianson. Discusses HB 2986 and modifications.
310	Curt A. Curtis	Oregon State Police Submits and discusses proposed amendments (regarding lines 10-14) to HB 2986 (EXHIBIT B).
364	Larry Christianson	Submits written testimony regarding HB 2986 (EXHIBIT C).
370	Chair Minnis	"Stop" is defined somewhere. Isn't it?
376	Rep. Prozanski	I assume it would be in the vehicle code.
384	Chair Minnis	Some of the bolded language would be deleted.
	Rep.	That's correct. Based on my conversations with the State Police and Department of Transportation, I realized that the language I asked to be

388	Prozanski	drafted was pretty broad, and it could potentially cause problems with traffic flow.
TAPE 53, B		
018	Rep. Shetterly	I'm still concerned a little about the traffic flow and confusion. Gives example.
030	Rep. Prozanski	I would refer you to page one, which is current law. That allows the driver to continue, so long as the pedestrian has not reached the part of the crosswalk the driver would be turning into.
040	Rep. Shetterly	Would they have to stop to make that determination first?
042	Rep. Prozanski	Yes.
045	Curtis	The original bill would stop traffic, regardless of the direction, which could stop traffic totally. In talking with Rep. Prozanski, it seemed that his biggest concern was awareness. We created the amendments as a compromise.
068	Christianson	The traffic management section has a concern with the language "stop and remain stopped," especially in the initial phases of education, because this will be an education process for the citizens of Oregon. There may be some confusion, and that may lead to an increase of rear-end collisions.
076	Chair Minnis	What is the policy you are advancing?
083	Rep. Prozanski	I think it's good public policy to require individuals, who are operating vehicles, motorized or not, to be aware of what is going on around them, especially when they are entering or coming to a crosswalk, where there is potential for involvement in accidents. It is interesting that the bill, we heard at the very beginning, which Rep. Hill brought forward, was a pedestrian injury accident. I had some studies pulled for me, from the DMV, and I can't tell you there is any pattern, as far as the increase goes. It's just anecdotal. However, from what I've seen, there's more people on the streets and more near misses, involving pedestrians, because people, in their lifestyles, are finding themselves more rushed.
098	Chair Minnis	I've visited Seattle often, where there is strong enforcement. I may be turning the tides here, as far as pedestrians go, but in Seattle, you do not violate a crosswalk signal, in front of a Seattle officer, because you will get a citation. I know that when Chief Potter raised that issue in Portland, people publicly ridiculed him for being so petty. This bill deals with drivers stopping, but I don't know if it addresses pedestrians so much.
106	Rep. Wells	I think there are a lot of pedestrians out there that take advantage of their position. I think pedestrians bring a lot of this on themselves. I think there are two sides to the coin.

115	Rep. Shetterly	In terms of policy, I'm wondering if there should be pedestrian education and awareness. This bill encourages pedestrians to step out where vehicles are present. Granted, they may be stopped, but I think a better approach may be pedestrian awareness and education, so that pedestrians might wait for that gap in traffic, rather than stepping out where vehicles are in the immediate vicinity. The concern I have with that would be, especially, on a four-lane street, where you have two lanes of traffic going in the same direction. You may have a car or a few cars stopped in the curb lane, and traffic on the inside lane cannot see a pedestrian coming out. They don't see this pedestrian because this car is stopped. I've seen situations where a child, running across, in front of a stopped car, is not aware of oncoming traffic. Cars are also not aware of the child coming through the crosswalk. I'm just afraid of inviting people to get on the street where there are cars. I'd rather they just wait on the curb until there is a gap in traffic.
136	Chair Minnis	I don't mind the policy of the bill, but I'd like to see it go a little further and deal with pedestrians. Cites an example from his own experience as a police officer.
149	Christianson	To address the issue of whether this is a pedestrian or motorist issue: it is a two-sided coin, and there are responsibilities on both sides. The fact is that the body of education, to date, has been placing most of the burden on the pedestrian. I think this bill is an attempt to move more to the center, in creating definite awareness on the part of the motorist, in that there is a "stop" required. I think that may be a strength.
156	Chair Minnis	This bill mostly deals with areas where there are no traffic signals. Is that right?
160	Rep. Prozanski	No. My understanding is that there is a designated crosswalk or an intersection where there would be a crosswalk that is not designated.
161	Chair Minnis	I'm looking for traffic control devices.
165	Rep. Prozanski	It's another page. They're setting up different types of scenarios. I guess the one thing I would throw out as an option, if the committee is having problems with traffic control, as Rep. Shetterly is, the amendment, by the state police, would not be necessary to the intent of the bill, regarding the requirement to make motorists "stop," rather than yield. Gives example. To me it's a simple change in diction. Let's face it, vehicles are going to be doing the damage. They should have a higher duty, in my opinion, to make sure they are not running over somebody. Therefore, the "stop," as opposed to "yield," seems to be appropriate, in my perspective.
183	Christianson	If it is okay with Sgt. Curtis and Rep. Prozanski, I would propose that we move back to the original language, for the half-street presence, and that "stop" not be required, if the person is on the half that the motorist is not traveling in, so we do maintain that flow and remove some of the opportunities for panic stops, based on not understanding the situation.
192	Rep.	That's fine with me, but I do think it is necessary for the motorist to "stop" that vehicle, rather than playing with the semantics of "yield," and placing

	Prozanski	someone in jeopardy.
203	Curtis	We would be more than happy to withdraw that part of the amendment, if it would take us back to the original wording, and work it out to show "stop" for the pedestrians, on the side of the road that would be affected by the vehicle. However, that may be worded or worked out by the committee.
210	Chair Minnis	I would like to have Legislative Counsel amendments.
214	Rep. Prozanski	That has been done by the hand-engrossed bill I have distributed to the committee. Explains how the bill would read.
222	Chair Minnis	Walk us through the hand-engrossed bill.
237	Rep. Prozanski	Walks the subcommittee through the bill, explaining the amendments throughout.
<u>OPENS WORK SESSION ON HB 2986</u>		
271	Rep. Prozanski	MOTION: Moves to ADOPT the amendments offered by Rep. Prozanski, in committee (as explained and hand-engrossed), to HB 2986.
		VOTE: 5-1-1 AYE: 5 - Rep. Bowman, Rep. Courtney, Rep. Prozanski, Rep. Shetterly, Chair Minnis NAY: 1 - Rep. Wells EXCUSED: 1 - Rep. Sunseri
273	Chair Minnis	The motion Carries.
275	Rep. Prozanski	MOTION: Moves HB 2986 to the full committee with a DO PASS AS AMENDED recommendation.
276	Rep. Shetterly	So this basically just changes "yield" to "stop?"
277	Rep. Prozanski	Yes.

		<p>VOTE: 3-3-1</p> <p>AYE: 3 - Rep. Courtney, Rep. Prozanski, Chair Minnis</p> <p>NAY: 3 - Rep. Bowman, Rep. Shetterly, Rep. Wells</p> <p>EXCUSED: 1 - Rep. Sunseri</p>
279	Chair Minnis	The motion Fails.
282	Chair Minnis	Rep. Prozanski, I would suggest that you change your vote to "no," so you can pull it and perhaps have it reconsidered later.
285	Rep. Prozanski	I will vote, "no." Serves notice of possible reconsideration.
		<p>FINAL VOTE: 2-4-1</p> <p>AYE: 2 - Rep. Courtney, Chair Minnis</p> <p>NAY: 4 - Rep. Bowman, Rep. Prozanski, Rep. Shetterly, Rep. Wells</p> <p>EXCUSED: 1 - Rep. Sunseri</p>
<u>OPENS PUBLIC HEARING ON HB 2999</u>		
320	Rep. Prozanski	Discusses HB 2999.
343	Lieutenant Glen Rader	Oregon State Police Submits written testimony in favor of HB 2999 (EXHIBIT D) .
362	Rep. Bowman	Rep. Prozanski, is there a law that requires people to know what their social security number is?
363	Rep. Prozanski	No.
	Rep.	I can think of many times where I have given my social security number wrong. I wasn't trying to evade giving information, but I just mixed the numbers up. I'm just shocked that we would want to make this a crime,

365	Bowman	punishable by up to one year in jail and a \$5,000 fine. You should know your name and date of birth, but you are not required anywhere to know your social security number.
370	Rep. Prozanski	That's fine. You still have to show the intent that someone, purposely, with knowledge, gave information under false pretenses.
372	Rep. Bowman	How would you prove that I gave my social security number under false pretenses?
375	Rep. Prozanski	I would just have to show the facts and allow the trier of fact to decide. There are ways, as high-tech as our society is, to check these things. It's going to be much easier to prove that an individual, who gave their social security number and totally blew it, did it under false pretenses, than to prove an individual, who gave a social security number and came close, or who let the officer know that they are not sure the number they gave was correct.
TAPE 54, B		
022	Rep. Bowman	I'm sure that if someone didn't know where they live, that would be pretty easy to prove. However, the social security number is the one that has me stunned.
026	Lt. Rader	It doesn't say that they don't have to give us a number. If someone says, "I don't know my number," that's not a violation of the law, according to the proposed statute. If they give us a false number, intentionally, that is a violation.
033	Rep. Bowman	But, how do you prove it was done intentionally?
034	Chair Minnis	Social security numbers are usually given out by region. If I, as an investigator, ask someone for their social security number, and they give me one that starts with "319," it's common knowledge that that is an east coast number, but they are telling me that they were born in Cottage Grove, Oregon, and they've lived in Oregon all their life. Those are statements I could use to show that the person is lying. Officers get training in this area.
045	Rep. Courtney	My social security prefix is "018." I was born in Philadelphia, Pennsylvania. "018" is very distinctive. I get mixed up with the middle numbers, but if I start by telling an officer that my number begins with three or four or five, they will know something is wrong.
057	Rep. Wells	Social security numbers were not supposed to be national identification numbers. They were only supposed to be used in relation to paying social security, etc. I get a little concerned when I see that we are using social security numbers, more and more, for identification. I get perturbed when people ask me for my social security number when it does not relate to the original intent, and I resist that. For that reason, I could never support this bill.

068	Chair Minnis	If a police officer asks you what your social security number is, you don't have to tell him. That's not what the statute is saying.
<u>OPENS WORK SESSION ON HB 2999</u>		
079	Rep. Prozanski	MOTION: Moves HB 2999 to the full committee with a DO PASS recommendation.
		VOTE: 4-2-1 AYE: 4 - Rep. Courtney, Rep. Prozanski, Rep. Shetterly, Chair Minnis NAY: 2 - Rep. Bowman, Rep. Wells EXCUSED: 1 - Rep. Sunseri
081	Chair Minnis	The motion Carries. REP. PROZANSKI will lead discussion on the floor.
<u>PUBLIC HEARING ON HB 3219</u>		
112	Brenda Rocklin	Oregon Department of Justice (DOJ), Oregon District Attorneys Association (ODAA) Testifies in favor of HB 3219. This bill, essentially does two things. Section one of the bill would make the crime of DUII a Class C felony, if the defendant has three prior convictions, for DUII, within a 10-year period of time. Section two of the bill involves driving while suspended or revoked, and it would remove a number of the provisions of the law that are currently Class C felonies, and it would move those into the Class A misdemeanor section of the code. ODAA has no problem with section two of the bill, and they approve of section one, but there are two issues that I would like to bring to the subcommittee's attention, in terms of making the DUII a Class C felony. The concern is that, as the law stands now, if someone comes before the court with a third offense DUII, the court has the authority, as a Class A misdemeanor, to sentence that offender to one year in the county jail, and impose any fines that may be appropriate. If we make this a Class C felony, the penalty for this crime may be less, as a practical matter and jail time, depending on

		certain circumstances, than it would be as a Class A misdemeanor.
140	Chair Minnis	Why would we want to make these areas Class A misdemeanors, if we already have the prerogative of treating them as Class A misdemeanors?
150	Rocklin	The ODAA support the concept of treating all three offenses as Class C felonies. The only concern is with regard to punishment, under sentencing guidelines. As far as section two goes, you are correct, and the ODAA has no strong position on that part of the bill.
158	Rep. Prozanski	One of the issues I thought about was the prison count. We could elevate some of the count by having a "trade-off." When I talked to Rep. Rasmussen about this, she felt that DUII was more important than some of the rest of these crimes (that would be declassified).
174	Rep. Anitra Rasmussen	District 11, Chief Sponsor of HB 3219 Discusses background and purposes of HB 3219.
212	Chair Minnis	I guess I would submit that, where the bill deletes current felony treatment, it's unnecessary. The statutes already allow for misdemeanor treatment of those offenses, if the DA chooses to do that. I don't know that you could argue, successfully, that it actually saves anywhere.
223	Rep. Prozanski	Explains how he believes these issues would be handled, under the bill.
243	Chair Minnis	How often are these circumstances treated as misdemeanors, and at what point, during the process, is that decision made?
245	Rocklin	In terms of the driving while suspended, my understanding, in talking with the ODAA, is that it is not unusual to treat these as Class A misdemeanors.
250	Chair Minnis	You made an earlier point that the punishment might actually be greater as a Class A misdemeanor than it would be as a Class C felony.
252	Rocklin	For driving while suspended, that may be the case, but the concern that the ODAA had, with the felony DUII, is that if we make those a Class C felony, without pegging those at a particular place on the sentencing guideline scale, the penalty may actually be greater as a Class A misdemeanor. The court may have more power, with a Class A misdemeanor than a Class C felony, in terms of jail time. Explains how DUII convictions used to be handled, in the past, with regard to district attorneys and why that is of concern to the ODAA.
280	Chair Minnis	So, one concern is that the bill is not pegging this somewhere in the matrix for sentencing guidelines, which we could do as an amendment to the bill.
283	Rocklin	Yes.
285	Chair Wells	How does this fit in with the bill we were looking at the other day, which dealt with impounding or forfeiture of vehicle for second arrest of DUII or driving without a license? Would we look at the two bills together?
293	Chair Minnis	One of the reasons I wanted to have the public hearing now, is because we did have the other hearings on the other bills last week, and I hoped to put together some work groups of this committee to talk about issues. I want to deal with the whole area of DUII.

311	Rep. Rasmussen	One of the things that concerns me about the forfeiture issue is that you impact other members of the household when you go in and pull a car. This bill goes after the individual.
319	Chair Minnis	That point was brought up in some of the discussions we have had. You're bill would be like four strikes and you're out.
323	Rep. Rasmussen	Yes.
328	Chair Minnis	Assume this person has had three DUII convictions, and they are now facing a fourth conviction. What do you think is the most appropriate sentence?
335	Rep. Rasmussen	I want a time when the offender has "dried out," when they have had the opportunity to interact with whatever conversations or counsel support that may be available within the judicial system. They have an opportunity to get a significant interruption in their life to see why they're doing what they're doing.
355	Rep. Wells	I was just looking at page two. What is an "habitual offender?" I'm also confused as to the different statutes that are referenced. What exactly are we changing? I need some clarification.
374	Chair Minnis	There are a couple of things. What Rep. Rasmussen is doing, in the bill, is if someone is convicted a fourth time for DUII, it would be a Class C felony, for four convictions in a 10-year period. Then on page two, the current language would reinstate the deleted language.
TAPE 55, A		
005	Rep. Wells	Then, on the front we are talking about convictions.
007	Chair Minnis	That's right.
009	Rep. Bowman	Is the implication, in this bill, that if someone is found guilty of DUII, as a juvenile, that would be counted as an adult arrest and conviction as an adult?
014	Rep. Rasmussen	I expect that would be the implication.
016	Rep. Prozanski	The current law is that individuals, 15 years of age or older, can be tried as adults for traffic offenses, if the juvenile waives jurisdiction. In many counties, they have an automatic waiver, where individuals are automatically waived to the adult court, unless the juvenile court steps in, during a 10-14 day period, and pulls them back into the juvenile system.
022	Rep. Shetterly	But this doesn't say that, if you had a juvenile conviction, it would be treated other than a juvenile conviction. It just says it would be counted in determining if the defendant is up for the "fourth time."

025	Rep. Bowman	I thought juvenile records were juvenile records, and they are sealed. When you turn 18, they are no longer available for use to prove any kind of history. Is that not true?
030	Rep. Prozanski	Not necessarily.
035	Lt. Glen Rader	Suggests an amendment (see EXHIBIT D).
<u>OPENS PUBLIC HEARING ON HB 3123</u>		
057	Kelly Taylor	Oregon Department of Transportation (ODOT) I just want to let the committee know that at the bottom of this bill, lines 19-21, my suggestion is that the responsibility, referred to there, be placed with the DOJ, who does the support enforcement. That's where all the due process, for these cases, is handled currently. All ODOT can do is post and suspend. The due process is happening before we see it. This sort of determination needs to be made, as part of the due process.
068	Chair Minnis	Adjourns at 2:58 p.m.

Submitted by, Reviewed by,

LISA FRITZ, SARAH WATSON,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 3001, proposed amendments, Legislative Counsel, 2 pages.

B - HB 2986, proposed amendments, Oregon State Police, 1 page.

C - HB 2986, written testimony, Oregon Department of Transportation, 1 page.

D - HB 2999, written testimony, Lt. Glen Rader, Oregon State Police, 2 pages.