

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

March 27, 1997 Hearing Room 357

1:00 PM Tapes 66 - 67

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:

Work Session - HB 2310, HB 2311

Public Hearing and Work Session - HB 3297

Public Hearing - HB 3156

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 66, A		
		Noting a quorum, calls subcommittee to order at 1:05 PM

003	Chair Minnis	>Announces HB 3019 and HB 2812 have been pulled from the schedule
<u>HB 2310 - WORK SESSION</u>		
010	Chair Minnis	Opens work session on HB 2310
013	Scott Lumsden	Committee Counsel >reads provision of bill and -3 amendments, (EXHIBIT A)
045	Brenda JP Rocklin	Department of Justice >Counsel's reading of the amendments is fair and accurate and we support the -3 amendments.
050	Rep. Shetterly	The definition of "person" comes from the 1971 rewrite of the criminal code. >I don't know that we had a problem before, but if we did, this fixes it.
058	Chair Minnis	That could have been the chair that thought that. >I think the amendments go to the issue of simulating the legal process.
066	Rep. Shetterly	We're going to have to have a revision at some point.
067	Chair Minnis	It has been since 1973 and there probably is going to be a need to do that.
083	Rep. Prozanski	I'm assuming we are going with the original definition of person under the criminal code as opposed to the previous definition.
086	Lumsden	LC originally thought that ORS 174.100 would apply, but after much discussion, it was agreed the criminal statute would apply, which is ORS 161.015, subsection 5.
093	Chair Minnis	And then we have tailored it as well.
095	Rep. Wells	So you left off the last part of that about government or government instrumentality?
098	Lumsden	That's correct.
100	Rep. Sunseri	MOTION: Moves to ADOPT HB 2310-3 amendments dated 03/18/97.
102	Rep. Bowman	In looking at hand-engrossed version, on line 16b is the definition.
106	Prozanski	Clarifies the numbering of the bill
	Chair Minnis	Hearing no objection, declares the motion CARRIED.

117	Rep. Sunseri	MOTION: Moves HB 2310 to the full committee with a DO PASS AS AMENDED recommendation.
120		VOTE: 6-0-1 EXCUSED: 1 - Courtney
	Chair Minnis	Hearing no objection, declares the motion CARRIED. REP. SUNSERI will lead discussion on the floor.
124	Chair Minnis	Closes work session on HB 2310
<u>HB 3211 - WORK SESSION</u>		
128	Chair Minnis	Opens work session on HB 3211
131	Scott Lumsden	Committee Counsel >reads provision of bill and -1 and -2 amendments, (EXHIBITS B AND C)
137	Chair Minnis	That is the conceptual amendment adopted by the committee.
138	Lumsden	Yes.
147	Rep. Prozanski	The only other concern is if the signs were posted, but they were removed for personal use.
151	Chair Minnis	That is a part that the officer would have to denote.
153	Rep. Sunseri	What happens currently if a stop sign is not posted or can't be seen?
155	Chair Minnis	If the officer does not denote that in the affidavit, the defendant may take pictures, etc. to present to the court.
169	Rep. Shetterly	MOTION: Moves to ADOPT HB 3211-1 amendments dated 03/25/97.
173		VOTE: 6-0-1 EXCUSED: 1 - Courtney
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
176	Rep. Bowman	MOTION: Moves to ADOPT HB 3211-2 amendments dated 03/25/97.
182		VOTE: 6-0-1 EXCUSED: 1 - Courtney
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
	Rep.	MOTION: Moves HB 3211 to the full committee with a DO

183	Bowman	PASS AS AMENDED recommendation.
186	Rep. Shetterly	Do we have other offenses that are dependent on signage?
193	Chair Minnis	I believe we do when there are violations of posted speed limits.
199	Rep. Prozanski	<p>A few things have happened in regards to speed regulations:</p> <ul style="list-style-type: none"> >Oregon has a residential speed maximum of 25 mph and this is considered general knowledge. >I am concerned about setting up a double standard. >In the construction zone doubling is there a requirement that signs be posted, or is it automatic?
218	Rep. Shetterly	<p>Something to think about in the -2 amendments as they relate to subsection 5 is that the signage is indicated to warn about the doubling of the fine</p> <ul style="list-style-type: none"> >no warning about the doubling of the fine >Didn't we talk about the educational value of signs which say "fines double"?
230	Lumsden	It says: "the signs authorized by section 5."
237	Rep. Prozanski	We're looking at the hand-engrossed one.
241	Randall Edwards	<p>State Representative, District 15</p> <ul style="list-style-type: none"> >chief sponsor of the bill which is modeled after the construction statute >Fines are not a contingent to the signs in the construction bill.
255	Rep. Sunseri	<p>I want to see this pass, but our reluctance was that we were relying on the PTAs to put up the signs.</p> <ul style="list-style-type: none"> >Should the public be liable while we are waiting on signs to be posted?
263	Rep. Edwards	Signing does help slow people down, but I felt the policy matter was the doubling and that signs are simply an additional deterrent.
272	Chair Minnis	<p>That may be the best in all theoretical worlds, but my political support for this disappears when we do this the other way.</p> <ul style="list-style-type: none"> >My feeling is that PTA's can post signs when they deem there is a problem and then the law is in effect.
288	Rep. Shetterly	The determination as to whether or not to effect this doubling of the fines seems to fall into the hands of the PTA.
303	Chair Minnis	The Road Authority would have to determine the circumstances.

307	Larry Christianson	Department of Transportation >It occurs to me that the doubling of the fines does not affect the requirement to obey the 20 mph law when that is in effect.
316	Chair Minnis	What are you saying?
317	Christianson	The posting of the signs is not a 55 mph or rural issue.
323	Rep. Wells	I may have mentioned that in regards to our attempts to define "when children are present."
334	Chair Minnis	It goes further than that too. This bill talks about "within a school zone" which is where the 20 mph part is in effect and the signs would be placed.
349	Rep. Shetterly	That's an issue that takes us back to HB 2462 - Rep. Luke's bill.
364	Chair Minnis	I was speaking to the idea of when fines are necessarily in effect.
372	Christianson	School zones are on both sides of road.
380	Chair Minnis	I know, but I am looking at that magical area in front of a school. >I envision this bill being targeted to where you have a problem when kids are being dropped off in front of school.
399	Rep. Sunseri	I was wondering if Rep. Edwards is comfortable with the way we are dealing with this bill.
404	Rep. Edwards	With the -2 amendments, yes. I think my district would be able to take care of our problems.
418	Chair Minnis	Even if your argument is correct, the issue we are dealing with is that if the PTA can get the signs up through the Road Authority, then the fine applies. >I like the idea of given the local schools the authority to do this.
431	Christianson	The cost of the signs should not be a big issue as I think the schools could set that money aside in their budgets. >The strength of the law is that the mentality of slowing down is carried through to other zones.
TAPE 67, A		
007	Rep. Bowman	Calls the question
008	Rep. Wells	I'm going to have a hard time supporting this bill.
011		VOTE: 5-1-1 AYE: 5 - Bowman, Prozanski, Shetterly, Sunseri, Minnis NAY: 1 - Wells

		EXCUSED: 1 - Courtney
	Chair Minnis	The motion Carries. REP. EDWARDS will lead discussion on the floor.
<u>HB 3297 - PUBLIC HEARING</u>		
026	Chair Minnis	Opens public hearing on HB 3297 >states background on the need for the bill
042	James Ragon	Detective, Department of State Police, Criminal Investigation Services Division, Manager, Sex Offender Registration Program >submits and reads written testimony, (EXHIBIT D)
064	Rep. Prozanski	My reading looks like this appears to be a notice to release them from their duty to register. >I understand the need for a uniform form, but I want to make sure the safeguards are in there.
072	Chair Minnis	Responds that the idea was that this notice would be given upon release and have a requirement that it be signed.
079	Ragon	Responds that there are currently two different forms being used, one by the Department of Corrections and one by the local police agency which is basically the same form
098	Rep. Prozanski	It seems like the bill has some sort of finality or am I misreading the bill?
101	Ragon	These guys have been released.
104	Rep. Prozanski	I've got it and see my mistake.
105	Chair Minnis	What was happening before is that they were being released, assigned a parole officer, and this officer was supposed to tell them, but the denotations weren't being made. >Closes public hearing on HB 3297
<u>HB 3297 - WORK SESSION</u>		
113	Rep. Sunseri	MOTION: Moves HB 3297 to the full committee with a DO PASS recommendation.

114	Rep. Shetterly	The last two lines of the bill create a prima facie evidence involvement which creates an obligation of the state to give the notice.
121		VOTE: 6-0-1 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Courtney
	Chair Minnis	The motion CARRIES. REP. MINNIS will lead discussion on the floor. >Closes work session on HB 3297
<u>HB 3156 - PUBLIC HEARING</u>		
126	Chair Minnis	Opens public hearing on HB 3156
140	James Ragon	Detective, Department of State Police, Criminal Investigation Services Division, Manager, Sex Offender Registration Program >submits and reads written testimony, including a proposed amendment, (EXHIBIT E)
189	Rep. Bowman	We hear that people are being moved to community facilities from state facilities. >The problem is that the community facilities are not capable of taking in these sex offenders, so my assumption is that one of the community facilities being built will serve that purpose. >How would this bill impact those being moved into a community facility?
203	Ragon	The way I read this bill is that there is an additional hearing that can be held to determine whether this person has been treated. >If this person is released, I'd like to see that person be required to register as a sex offender.
212	Rep. Bowman	The proposed budget does not allow for sex offender treatment in prison for the next biennium, so I don't think it's just enough to register people if we are not treating them.
225	Ragon	That's not a question I am really capable of answering.
227	Chair Minnis	It's murky talking about sex offender treatment and their successes or unsuccesses.

240	Ingrid Swensen	<p>Oregon Criminal Defense Lawyers Association</p> <ul style="list-style-type: none"> >opposed to HB 3156 >Identifying people, in advance, who might commit sex crimes is not effective. >not correct to identify such people except by their conduct >looks to confine large numbers of people to prevent small number of people from committing offenses >have talked to 2 psychologists whose sole job it is to treat sexual offenders who were not available to testify today but are available at a future date
276	Chair Minnis	If we are going to pursue this, we might bring up Dr. Larry Blum from Los Angeles who is a clinical psychologist who deals with violent sex offenders.
283	Ron Adams	<p>State Representative, District 27</p> <ul style="list-style-type: none"> >bill patterned after law in Washington >law requires a psychiatric analysis before they are released >issue is in the Supreme Court >relates incident in West Linn of sex offender from Washington >Chip Lazenby from Governor's Office helped write the bill with me.
329	Vice-Chair Bowman	On page 1 of the bill, lines 28-29, Section 3 it talks about those convicted or charged of a sex crime and so this bill appears to apply whether or not one has been convicted.
339	Rep. Adams	Responds that on page 2 it says that this person had previously been convicted and sentence is about to expire
346	Rep. Shetterly	Subsections 1 and 2 on top of page 2 would deal with situations in which the person had been convicted in juvenile or criminal court.
360	Rep. Courtney	<p>Is this a civil commitment?</p> <ul style="list-style-type: none"> >Is this legislation on appeal in Washington?
365	Rep. Adams	Yes, it is.
366	Rep. Courtney	Has there been any sort of decision on it at all?
369	Rep. Prozanski	I don't think it has, but there were two states that have tried this approach and brought about a lot of controversy.

376	Rep. Courtney	Is it identical to the Washington statute?
379	Rep. Adams	It is probably identical, or close.
382	Rep. Shetterly	What's the latest court ruling in that case?
388	Rep. Prozanski	I don't remember.
394	Rep. Courtney	I have a feeling that the ACLU is in here somewhere, but I could be wrong.
414	Swensen	Resumes testimony >Washington courts have upheld the statute and the appellate process is now in the federal courts. >The Kansas case is the one before the Supreme Court at this point. >It is an unresolved legal issue.
427	Rep. Courtney	Who are the parties?
429	Swensen	I believe it is the person who is confined who is bringing it up, but I'm not sure. >goes over the language of the bill >Section 1 of the bill appears to contain circular reasoning.
TAPE 66, B		
019	Swensen	>Section 1 also lumps all offenders together, including those involving consensual acts.
028	Rep. Shetterly	You're reading off of line 12 which doesn't refer to sexually violent offenders.
037	Swensen	It's like assuming that all thieves are likely to rob and murder.
040	Rep. Courtney	Where is the inconsistency? >I see the words predator and violence which are key words.
046	Rep. Shetterly	It's on line 12 which doesn't refer to violence or predatory conduct.
048	Rep. Courtney	It then goes on to qualify that.
053	Rep. Prozanski	The issue here is on line 5, we're talking about a specific type of sex offender and when we look at 12, we're looking at the generic sex offender. >We're taking from a small group on line 5 and then saying all sex

		offenders are likely to repeat this type of acts.
065	Swensen	<p>Resumes testimony</p> <ul style="list-style-type: none"> >Section 2 language mixes psychological, sociological and legal terms. >spoke to treatment psychologists on this issue >"Sex crime" is a very broad definition. >One conviction for a sex offense would be subject to indefinite incarceration. >This is the most difficult part of this because it is sheer guesswork.
115		<p>Continues testimony</p> <ul style="list-style-type: none"> >Current law is based on the fact that sex crimes are given a long term of incarceration. >Our way of dealing with this has been to base decisions on conduct. >I do think that there are very strong procedural qualities of the bill, but even those are not fit to accomplish goal of the bill. >Section 6 of the bill talks about a person committed for an indefinite period of time. >What can change with offenders is that they can learn methods of controlling their own behaviors.
165		<p>Continues testimony</p> <ul style="list-style-type: none"> >bill applies to juvenile offenders >no three-year age rule in regards to incestuous acts >Section 4 talks about "not guilty except for insanity?" >bill allows prosecution to be brought at any time >could be 20 years after the sentence = broad latitude
220	Chair Minnis	Do you remember Richard Marquette?
221	Swensen	I remember the name.
		He was a psychosexual killer who cut up several people in the Portland area around 1962.

222	Chair Minnis	>After being paroled to southern Oregon, he returned to the same types of crimes.
232	Swensen	My point about waiting until the end of the sentence wasn't about that issue.
234	Chair Minnis	My thinking would be that a prosecutor or DA would use this very judiciously and only in cases where it is appropriate.
242	Swensen	We certainly hope so and I think that the language could be narrowed to address that. >This bill allows to select any sex offender regardless of whether violence was involved or not.
254	Chair Minnis	One would hope that they're being rehabilitated while in prison and in the event that they are not, this would allow for another process to make a judgment as to whether or not they are cured.
261	Swensen	I understand we don't talk in terms of cure very often, but in terms of techniques to control this type of behavior. >My suggestion would be to consider several things. >Rep. Courtney participated in a task force in the interim between the 1989 and 1991 sessions which took a comprehensive look at where we are with sex offenders.
281	Rep. Courtney	I think you point out some things that need to be considered. >Would you agree that we treat sex offenders differently than any other criminals?
293	Swensen	That is true.
296	Rep. Courtney	We don't register burglars or murderers or notify communities about these criminals. >Why have we separated out these individuals?
307	Swensen	Yes. It is how we judge their behavior, but it is also information that sex offenders often do have multiple victims.
312	Rep. Courtney	On that Task Force, there were severe disagreements between psychiatrists on whether or not they could even be treated. >Should we look at special incarceration for these individuals?
321	Swensen	It perhaps might be timely to look at where we are and how successful we are being in protecting the public.
329	Rep. Courtney	We are still talking about a very small number of people in terms of the numbers of sex offenders. >The word small appears on line 4 of the bill. >I think we need to focus, otherwise the discussion gets too

		generalized.
354	Rep. Shetterly	I agree with that and this bill seems like it is a pyramid, because it starts small and gets broader.
365	Rep. Prozanski	When you look at line 12 where it takes in the broader definition of sex offenders instead of the small subset of violent predators, then we have set up a larger base. >We must clean up those areas, or we will be setting up something we don't intend to include.
381	Chair Minnis	At what point do we narrow this? >A therapist in Washington County actually prescribed for a sex offender, as part of their treatment, that they put ads in the Willamette Week under "Men Seeking Women." >To me, this points to some of the unique behavior of some practitioners.
400	Rep. Prozanski	In regards to where we limit this, we could stay with the definition on line 5 of "sexually violent predators."
412	Chair Minnis	Sometimes sex offenders go through a certain diagnosis section and come out having homicidal ideation.
415	Barry Kast	Assistant Director, Department of Human Resources, Administrator, Mental Health and Developmental Disability Services Division >submits and reads written testimony, (EXHIBIT F)
TAPE 67, B		
015	Kast	Continues testimony
065		Continues testimony
101	Chair Minnis	The other alternative is to let them wander around.
102	Kast	Responds that there are other alternatives and that we have yet to submit a proposal to deal with this issue >would like to see stronger post-release management of offenders
125	Chair Minnis	Are you guys responsible for doing the psychological analyses of sex offenders?
129	Kast	There are 2 provisions, 161.365 and 161.370, which do pertain to that.
135	Chair Minnis	So the assumption would be then that they are done in-house.
138	Kast	Responds that some counties utilize mental health staff
		I assume you are willing to work on this and make this a better bill

142	Chair Minnis	if that's possible.
143	Kast	We would be willing to do that again.
150	Jeff Collins	Lane County Parole and Probation Department, Parole Officer >agree with idea of civil commitment >84-year old with a bad heart who is still offending >I do have some 19 and 20 years olds who I would never like see this apply to.
174	Rep. Prozanski	Thanks Jeff Collins for appearing before the subcommittee
177	Chair Minnis	Closes public hearing on HB 3156 >Declares subcommittee adjourned

Submitted by, Reviewed by,

Brian Higgins, Scott Lumsden,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2310, Proposed amendments (-3 dated 3/18/97), Staff, 1 p.

B - HB 3211, Proposed amendments (-1 dated 3/25/97), Staff, 1 p.

C - HB 3211, Proposed amendments (-2 dated 3/25/97), Staff, 1 p.

D - HB 3297, Written testimony, James Ragon, Oregon State Police, 3 pp.

E - HB 3156, Written testimony, James Ragon, Oregon State Police, 3 pp.

F - HB 3156, Written testimony, Barry Kast, Department of Human Resources, 3 pp.