

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

April 1, 1997 Hearing Room 357

1:00 PM Tapes 70 - 71

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 2523, HB 2660, HB 2975

Public Hearing and Work Session - HB 2619, HB 3132,

HB 3364, HB 3613

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 70, A		
003	Chair	Calls subcommittee to order at 1:10 PM

	Minnis	
<u>HB 2523 - WORK SESSION</u>		
004	Chair Minnis	Opens work session on HB 2523
011	George Eighmey	State Representative, District 14 >goes over provisions of bill, history, -2 amendments (EXHIBIT A) and their relation to HB 2632 and HB 2820
041	Chair Minnis	Rep. Shetterly had raised the issue of trying to narrow this and I think that is successfully done on line 13 of page 1.
348	Rep. Eighmey	Coincidentally, we had the "material fact" situation in there which is a high standard, so I think there are adequate safeguards.
058	Rep. Wells	Asks about line 20 and definition of "reasonable"
064	Chair Minnis	It is really open-ended as to what is reasonable meaning the committee chair could do more than what is enumerated. >The test would be that if there was a violation, I would have to go to the Speaker and successfully argue the situation in order to initiate an investigation.
084	Rep. Wells	Have we taken any statutes out of current law?
089	Chair Minnis	That appears on page 2 of the amendments. >This is not intended to delete anything.
093	Rep. Shetterly	Subsections 2 and 3a, lines 11-14 appear to say the same thing but I am not sure that they do. >The distinction could be important.
111	Rep. Eighmey	We have no responsibility to tell them this is the law other than the sign-up sheet, but if they give false testimony on material facts, they are subjecting themselves to a penalty. >Everyone is subject to the knowledge of the existing statute. >Section 2 says you need to know the law.
136	Chair Minnis	From a structural perspective, Section 2 is the element of intent and Section 3 defines what is and is not reasonable.
	Rep.	

143	Shetterly	I am satisfied with that.
148	Chair Minnis	I think the record clearly says that.
149	Rep. Shetterly	Page 3, line 1 dealing with conflict of interest appears to be overly broad.
156	Chair Minnis	I think that reflects the current statute.
158	Scott Lumsden	Committee Counsel >I believe this came from a statute in corporate law on the fiduciary duties of a board member.
168	Rep. Eighmey	I think it does come from corporate law and it is the relative that you are associated with, not a distant relative.
175	Rep. Bowman	Section 5, page 2 really troubles me where it talks about the process of notifying the body when they come to testify whether they are receiving governmental grants. >What business is it, of this body, where someone's money comes from?
184	Rep. Eighmey	That is very relevant to the point that it goes towards the veracity of the statement. >Their testimony may be weighted differently knowing they have a vested interest in the outcome.
201	Rep. Bowman	I can see that in court, but here it is an invasion of privacy to reveal where one's resources come from.
208	Rep. Eighmey	It doesn't say that I need to know where your money comes from, it states that if you have a conflict of interest the body needs to know.
223	Rep. Bowman	I'm trying to imagine a situation.
224	Chair Minnis	Let's take the example of the Ways and Means Committee where we have a corporation arguing for a certain line in an appropriations bill. >If they are going to reap a financial benefit from that, I think the committee may want to know that. >As a committee chair, I may ask who you represent.
250	Rep. Eighmey	I had a person last session who was trying to influence the siting of prisons during his testimony before the Ways and Means Public Safety subcommittee, and when I asked him who he represented, he told me he owned the property which he was promoting. >Unless I had probed that, there is a direct conflict of interest.
263	Rep. Bowman	I guess for me, it is still too broad, because if it is a Ways and Means issue then that's one thing, but if we are arbitrarily telling anyone they need to

		announce they have a conflict of interest, I have a problem with that.
270	Rep. Shetterly	I like the conflict of interest, but I am thinking that in House rules, we have a definition of conflict of interest which could narrow the scope.
293	Chair Minnis	It seems to me that case law would take care of this.
311	Rep. Prozanski	I think that on the concept of declaration of conflict of interest, it does create a vital part. >A person should be obligated to say that passage of a bill will enhance their own business interests.
335	Chair Minnis	Part of the resolution might be on page 2, line 1, where it defines the conflict of interest as being limited it to private pecuniary benefit.
340	Rep. Sunseri	It doesn't mean we have to discount that testimony, either.
341	Chair Minnis	Absolutely not.
343	Rep. Sunseri	That person may be able to provide us with pertinent facts.
347	Rep. Shetterly	I could see if that language is helpful and we could hand-engross it in, so we could move this today.
351	Chair Minnis	Let's go ahead and do that.
356	Rep. Bowman	Does this mean that the three bills are being consolidated into one bill?
357	Chair Minnis	That's correct.
358	Mike Fahey	State Representative, District 17 >in support of -2 amendments and the consolidation >I think it is interesting that we make laws without people being sworn in and yet the judges have to enforce them that way. >When we create a law, we should know that people are being truthful.
376	Chair Minnis	I think so. It seems logical to me. >Announces 5 minute recess >Calls subcommittee back to order at 1:47 PM
		It appears the language on conflict of interest was taken from ORS 244.020 which is part of the Government Standards and Practice statute and defines actual versus potential conflicts of interests. >On page 3, at the end of line 2, we would add the following sentence:

382	Rep. Shetterly	"Conflict of interest does not include any testimony which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or person's relative is associated is a member or engaged."
416	Rep. Shetterly	MOTION: Moves to AMEND HB 2523-2 amendments on page 3, line 2, by inserting text from ORS 244.020 as written above.
418		VOTE: 7-0-0
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
436	Rep. Shetterly	MOTION: Moves to ADOPT HB 2523-2 amendments dated 03/26/97 and that the measure be FURTHER AMENDED with the previously adopted conceptals.
438		VOTE: 7-0-0
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
442	Rep. Shetterly	MOTION: Moves HB 2523 to the full committee with a DO PASS AS AMENDED recommendation.
456	Rep. Bowman	Why is there an emergency clause?
459	Chair Minnis	Because we will still be in session.
465		VOTE: 7-0-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES. REP. EIGHMEY will lead discussion on the floor.
471	Chair Minnis	Closes work session on HB 2523
TAPE 71, A		
<u>HB 2619 - PUBLIC HEARING</u>		
023	Chair Minnis	Opens public hearing on HB 2619
		State Representative, District 5

024	Jim Hill	>The bill came out of discussions I have had with the State Parks Superintendent. >mentions that surplus tents are available for this for few dollars
050	Jessica Harris	Legislative Assistant, Sen. Jeannette Hamby >has looked into possibility of creating juvenile work camps >have located excess federal property to facilitate camps
068	Chair Minnis	Do you have any pictures?
074	Rep. Courtney	Where is Sen. Hamby?
076	Harris	She is ill.
077	Rep. Courtney	Will they be provided potties?
079	Rep. Hill	We could issue port-a-potties to the prisoners.
085	Rep. Courtney	Will you allow one of these parks to be within 3 miles of a school?
087	Rep. Hill	Responds that he is not familiar with the locations of parks in relation to schools
092	Rep. Courtney	How many of these parks are in Hillsboro?
094	Rep. Hill	Responds that there are no state parks in Washington County
102	Rep. Bowman	Have you investigated the cost for supervision of these personnel and its impact on prisoners inside the facility?
106	Rep. Hill	Responds that the DOC would better be able to assess the impact
119	Rep. Bowman	I understand the Senator is interested in the same type of program for juvenile offenders?
122	Harris	Yes, she is.
123	Rep. Bowman	This is a living arrangement concept, correct?
125	Harris	Her concept is for a boot camp type setting as in Shutter Creek, but a mobile one which would move from park to park.
130	Rep. Bowman	I know the challenge of siting of facilities, so I'm wondering if you have considered what the public impact would be?
141	Rep. Hill	These are limited duration facilities with a specific purpose to rehabilitate parks.
167	Jeannette	State Senator, District 5 >submits a map showing geographic distribution of state camps and Youth Authority boot camps, (EXHIBIT B)

	Hamby	>In response to concerns about escapes, there are electronic bracelets which can be tracked via satellite which could be utilized at a cost of \$15 per day.
217	Rep. Wells	This is interesting, but none of this can happen without this bill, so what is it in the bill that allows this to happen?
220	Rep. Hill	Nothing in this bill gives them authority which they don't already have, but this bill would make it required.
231	Michael Taaffe	Department of Corrections, Administrator of Inmate Work Programs >supports conceptually the idea, but has some security concerns >worries about "homeless" population of staff members >Construction of mobile prisons not currently funded in the corrections or parks budgets.
272	Chair Minnis	I think Rep. Wells had a question about authority of which it was said you currently have if you wanted to do this.
275	Taaffe	That is correct.
279	Rep. Bowman	What are the safety concerns?
285	Taaffe	It's a 24-hour operation that is not as secure as ordinary facilities thus requiring increased staffing patterns.
304	Robert Meinen	Director, Oregon Parks and Recreation Department >submits and summarizes written testimony, (EXHIBIT C)
354		Continues testimony
404		Continues testimony
TAPE 70, B		
004	Chair Minnis	Closes public hearing on HB 2619
<u>HB 2660 - WORK SESSION</u>		
008	Chair Minnis	Opens work session on HB 2660
010	Rep. Prozanski	This bill was brought to us by Rep. Deckert who is out of town and he asked me to bring forward the -2 amendments, (EXHIBIT D) .

		>We decided that what we really needed to do was to give the Wrestling and Boxing Commission the authority to regulate this.
027	Chair Minnis	Page 1, line 8 of the -2 amendments defines boxing as a contest between 2 contestants, so what about a contest with 3 or 4?
042	Eric Gilatly	Legislative Assistant, Rep. Ryan Deckert >We have no preference.
044	Chair Minnis	If we were going to be consistent we would also delete the words "two or more" on line 26, page 3.
048	Bruce Anderson	Executive Director, Wrestling and Boxing Commission >The assumption here is that boxing is going to have two contestants and that wrestling has the potential for two or more, so I think the language is appropriate.
054	Rep. Bowman	So, you're suggesting we not make the change?
055	Anderson	I'm suggesting to leave the amendment as it is written.
057	Rep. Shetterly	I think it would be a surprise to find an exception for three person contests in the statutes by limiting the numbers here.
062	Chair Minnis	I think it avoids future problems.
068	Rep. Prozanski	I think you could use administrative rule to hone in on the regulations.
075	Anderson	If the committee desires the language, by all means, put it in there and move this bill along.
081	Rep. Prozanski	MOTION: Moves to ADOPT HB 2660-2 amendments dated 03/31/97.
086	Rep. Bowman	My understanding of this bill is that extreme fighting would include boxing, martial arts or wrestling. >I would suggest that if we move the amendments we take out the 2 on page 1 and page 3.
093	Rep. Sunseri	I am a no vote on this because I don't think we should be regulating this.
096	Chair Minnis	I don't think deleting those numbers will do any damage. >Would you accept those as a friendly amendment, Rep. Prozanski?
101	Rep. Prozanski	On behalf of Representative Deckert, yes.
102	Chair Minnis	So, we are going to delete the number 2 throughout the amendments.
105	Rep. Courtney	Between here and the Senate we should make sure the questions of numbers are dealt with.

117		VOTE: 7-0-0
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
119	Chair Minnis	Asks question of Mr. Anderson about his previous testimony that some of these events are choreographed >If this is in fact choreographed is it not protected by Article 1, Section 8 of the Oregon Constitution?
133	Rep. Shetterly	If they are billed as performances, I think it is okay, but if they are billed as fights then you are dealing with fraud.
136	Chair Minnis	Are some of these choreographed?
140	Anderson	That's the acceptable feeling inside the business.
142	Chair Minnis	But it is not common knowledge.
143	Anderson	I don't think the general public believes that it is not a fight.
156	Rep. Prozanski	MOTION: Moves HB 2660 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 5-2-0 AYE: 5 - Bowman, Courtney, Prozanski, Shetterly, Minnis NAY: 2 - Sunseri, Wells
	Chair Minnis	The motion Carries.
263	Chair Minnis	Closes work session on HB 2669
<u>HB 3132 - PUBLIC HEARING</u>		
169	Chair Minnis	Opens public hearing on HB 3132
174	Tony Corcoran	State Representative, District 44 >submits news article from <i>Register-Guard</i> dealing with topic of bill, (EXHIBIT D) >In consultation with David Shuman of the Attorney General's office, we propose a change in language in Section 1 so that it refers to a rule promulgated by the State Board of Education and not a national rule.

		<p>>This bill came out of the fact that when unlawful recruitment occurs of a high school athlete, there is no penalty for the recruiter.</p> <p>>If the committee has an interest in the bill, I will work with the AG's office to bring forth amendments.</p>
234	Chair Minnis	One of my concerns is that it appears to be overly broad.
241	Rep. Corcoran	Responds it is his understanding that the rules promulgated by the NCAA and the NAIA can be adopted by the state institutions so that they won't be in violation or conflict
258	Rep. Bowman	Are there rules in high school sports that would govern this?
266	Rep. Corcoran	I believe there are rules established by the OSAA that would apply.
285	Chair Minnis	Asks question about the actual crime and the inducement of the crime carrying the same penalty whereas usually there are different levels of penalties here
297	Rep. Prozanski	Are there other states that have adopted similar types of legislation?
299	Rep. Corcoran	<p>I had hoped to have that for you, but I didn't know this bill was coming up until yesterday.</p> <p>>There is a similar law in California, I'm told.</p>
310	Chair Minnis	<p>If you're serious about pursuing this, I'm putting the onus on you to work with the Attorney General and Counsel to come up with some amended language.</p> <p>>Closes public hearing on HB 3132</p>
<u>HB 3613 - PUBLIC HEARING</u>		
344	Chair Minnis	Opens public hearing on HB 3613
355	Floyd Prozanski	<p>State Representative, District 40</p> <p>>gives testimony on behalf of Oregon Justice of Peace Association</p> <p>>making courts more accessible to settle civil differences that are above existing \$2500 level</p>
389	Rep. Bowman	Why the change from 80,000 inhabitants?
		My understanding is that there are certain courts which have jurisdiction

396	Rep. Prozanski	that is limited based on population and I assume that some justice courts have a jurisdiction which now have a geographic area now having larger population amounts.
417	John Gervais	Oregon Justice of Peace Association
421	Rep. Bowman	What's the difference between the justice court and civil courts and is there a competition between the two?
427	Rep. Prozanski	Justice courts are usually used in counties. For example, Lane County has ones in Springfield, Florence and Oak Ridge which all have varying jurisdictions. >Often Justice judges will sit as small claims court judges; these are not courts of record.
TAPE 71, B		
016	Chair Minnis	By courts of records, do you simply mean there is a recording?
017	Rep. Prozanski	They are transcribed and there is a record which could be referred to.
018	Rep. Bowman	What takes place in a justice court?
019	Rep. Prozanski	Responds that justice courts are historical courts which were set up in territories to bring a judge to that geographic area >These courts do not require an individual to be an attorney to be a judge, they are elected.
030	Rep. Bowman	How does this fit into the court consolidation taking place?
032	Rep. Prozanski	The consolidation is focused on District and Circuit courts and shouldn't affect Justice courts.
043	Chair Minnis	I think historically they dealt with misdemeanor crimes, but I believe over time, the jurisdictions have crossed.
045	Rep. Prozanski	That's still true except for felonies on arraignments.
048	Chair Minnis	When the merger occurs that distinction will go away.
050	Rep. Wells	Why are we doing this and raising the amount?
054	Rep. Prozanski	Responds that it is a result of the rising costs of actions
061	Gervais	That is the reason.

065	Rep. Bowman	Asks about 80,000 population element being deleted
067	Gervais	I'm going to have to check on that for you, but I think it might have something to do as to where Justice of the Peace courts are allowed.
072	Rep. Prozanski	It's probably worth noting that they are not just civil courts, some have criminal cases which are misdemeanor or less.
085	Chair Minnis	I don't see the Chief Justice of the Supreme Court in here complaining about the bill, as I am sure he would be if he had a problem with it.
		>closes public hearing on HB 3613
<u>HB 3364 - PUBLIC HEARING</u>		
091	Chair Minnis	Opens public hearing on HB 3364
093	Tom Hart	Marion County District Attorney's Office, Oregon District Attorneys Association >testifying in support of measure >It sets forward that to be a juror in Oregon, certain requirements must be met. >This would amend ORS 10.030. >Subsection 5 is the operative of the bill stating that someone who has been convicted of a felony within the last 15 years can not be a juror.
128	Rep. Sunseri	If the felony conviction is expunged from the record, is the 15 years element still enforced?
131	Hart	If it's expunged, it doesn't exist, meaning we would not have access to any records showing that.
135	Chair Minnis	Why is it fifteen years, is it because it is consistent with other timeframes?
139	Hart	It is consistent with other timeframes in the criminal and evidence codes.
147	Rep. Prozanski	When we mention felons, this makes the legislation pretty inclusive and that is a concern of mine.
157	Hart	Our county does not prosecute DWS felonies, but we're aiming for the more traditional view of felons. >I believe the criminal laws ought to be applied consistently throughout.
		Oregon Criminal Defense Lawyers Association

182	Jim Arneson	>testifying in opposition to the bill >We did away with forfeiture of civil rights long ago, but are now putting it back in with this type of legislation. >I would question as to whether all felons would be a problem to the grand jury. >My understanding, is that in Chapter 10, there is a provision for excluding jurors when that person has an interest in the outcome of the case.
225	Chair Minnis	Doesn't that require a hearing before the judge?
228	Arneson	Responds that he doesn't know >We are excluding a body of people with a different point of view.
236	Chair Minnis	In Multnomah County, we have had some difficulties in obtaining indictments because there were felons sitting on the Grand Jury.
240	Arneson	Responds that there would need to be one, or more than one, to go along with the felon
241	Chair Minnis	Whether it is the power to influence within that secret body has created some problems. >asks for suggestions as to how district attorneys would deal with this
247	Arneson	There is the possibility of a challenge for cause.
249	Chair Minnis	Comments on the efforts of prohibition of convicted felons serving in the legislature
		Declares subcommittee adjourned at 3:05 PM

Submitted by, Reviewed by,

Brian Higgins, Scott Lumsden,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2523, Proposed amendments (-2 dated 3/26/97), Staff, 3 pp.

B - HB 2619, "Examples of State Parks Near OYA Facilities," Sen. Jeannette Hamby, 1 p.

C - HB 2619, Written testimony and informational materials, Robert Meinen, Oregon Parks and Recreation Department, 14 pp.

D - HB 2660, Proposed amendments (-2 dated 3/31/97), Staff, 4 pp.

E - HB 3132, "Dealing with an Agent's Lure," *Eugene Register-Guard*, October 5, 1995, Rep. Tony Corcoran, 1 p.