

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

April 21, 1997 Hearing Room 357

3:15 pm Tapes 92 - 93

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 - HB 3612, HB 2726, HB 2822, HB 3548, HJR 16, HB 2865, HB 2160, HB 2953, HB 3642, HB 3668, HB 2963, HB 2960

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 92, A		
003	Chair Minnis	Calls subcommittee to order
<u>HB 3612 -</u> <u>PUBLIC</u>		

<u>HEARING</u>		
005	Chair Minnis	Opens public hearing on HB 3612
007	Chair Minnis	Closes public hearing on HB 3612
<u>HB 3668 - PUBLIC HEARING</u>		
012	Chair Minnis	Opens public hearing on HB 3668
013	Vern Faatz	Psychiatric Security Review Board (PSRB) >proposes -1 amendment with Rep. Gardner, (EXHIBIT A) >concerns with page 3, section 9b >overbroad, needs modification
054	Jeff Watkins	Oregon Advocacy Center (OAC) >testifies that he needs to see the proposed amendment before he can take a position
058	John McCulley	Oregon Psychiatric Association >My concerns with confidentiality of patient records may have been taken care of by the amendment.
070	Ingrid Swenson	Oregon Criminal Defense Lawyers Association (OCDLA) >Testifies that if the proposed amendments are adopted, we will not have any further objection to this bill.
074	Chair Minnis	Closes public hearing on HB 3668
<u>HB 2960 - PUBLIC HEARING</u>		
078	Chair Minnis	Opens public hearing on HB 2960
089	Vern Faatz	Psychiatric Security Review Board (PSRB) >explains the intent of the bill >There have been times when the board decides whether or not to extend the period of jurisdiction over a defendant equal to the time the defendant would spend in prison. >gives example

		>It is not appropriate for the board to handle extending the period of time spent in the hospital. >It would be better if this were handled at the time of sentencing.
114	Chair Minnis	This would shift the responsibility to the court.
115	Faatz	Yes, the court would make the determination at the time of sentencing.
116	Chair Minnis	And you are supportive?
116	Faatz	Yes.
118	Chair Minnis	Who is the woman who had more information?
119	Faatz	Mary Clair Buckley, Executive Director of the PSRB.
120	Chair Minnis	We have had some requests from her to hold some of these bills over.
121	Faatz	Responds that it is not these two bills
124	Chair Minnis	Closes public hearing on HB 2960
<u>HB 3612 - PUBLIC HEARING</u>		
126	Chair Minnis	Opens public hearing on HB 3612
128	Floyd Prozanski	State Representative, District 40 >testifies in support of HB 3612 >addresses Minor in Possession (MIP) charges
144	Chair Minnis	Is this the vehicle for the MIP component of changes?
144	Rep. Prozanski	Yes.
145	Chair Minnis	Closes public hearing on HB 3612
<u>HB 2726 - PUBLIC HEARING</u>		
146	Chair Minnis	Opens public hearing on HB 2726
149	Floyd Prozanski	State Representative, District 40 >testifies in support of HB 2726 >addresses Driving Under the Influence of Intoxicants (DUII) revisions

155	Chair Minnis	It should be noted that this is a vehicle for a larger DUII package.
160	Chair Minnis	Closes the public hearing on HB 2726
<u>HB 2822 - PUBLIC HEARING</u>		
163	Chair Minnis	Opens public hearing on HB 2822 >explains that this is a vehicle bill for some revisions to the management structure and oversight to the Board of Police Safety Standards and Training (BPSST)
172	Chair Minnis	Closes public hearing on HB 2822
<u>HB 3548 - PUBLIC HEARING</u>		
179	Chair Minnis	Opens public hearing on HB 3548
182	Rep. Prozanski	Someone dropped off a packet from the Probation Parole Officers of Washington County dealing with this measure.
194	Lucinda Carol	Probation Parole Officer, Washington County.
196	Kenneth Keller	Parole and Probation Officer, Clackamas County.
198	Carol	An issue regarding paraprofessionals came up in Washington County about three years ago which prompted this measure.
220	Keller	The Court of Appeals ruled that there are certain jobs which must be done by certified Board of Police Safety Standards and Training probation and parole officers. >Supreme Court denied review of that case and it is now the law of Oregon.
252	Rep. Wells	Have you seen the proposed -1 amendment, (EXHIBIT B) ?
254	Carol	Yes.
254	Rep. Wells	The amendments appear to narrow the scope of the bill.
261	Carol	Management has also narrowed our duties to just a small part of what they actually are. This really is not necessary under the law right now.
293	Keller	The county specifies the duties which creates an opening to allow the administration to decide what is appropriate instead of the professionals who do the job.

		>There is no certainty with this language and so we are simply asking for oversight by a BPSST officer.
305	Chair Minnis	Closes public hearing on HB 3548
<u>HB 3668 - PUBLIC HEARING</u>		
310	Chair Minnis	Opens public hearing on HB 3668
313	Dan Gardner	<p>State Representative, District 13</p> <p>>testifies in support of HB 3668</p> <p>>This measure came out of Marysville residents where a psychiatric home was opening up in the neighborhood.</p> <p>>The Southeast Uplift agreement allowed for a local officer to have jurisdiction.</p> <p>>would like to see the criteria, agreed upon by the Psychiatric Security Review Board for one home be extended to all homes in the state</p>
345	Rep. Prozanski	We're talking about a group home that is still under the jurisdiction of the board?
351	Rep. Gardner	It is a five person or less home located in the community. The -1 amendments appear to be okay with Psychiatric Review Board.
362	Ingrid Swensen	<p>Oregon Criminal Defense Lawyers Association</p> <p>>the amendments are satisfactory and she has no objection to amendments or bill</p>
359	Jeff Watkins	<p>Oregon Advocacy Center</p> <p>>The amendments address our concerns.</p>
371	Rep. Wells	The agency that may want the information is not in the same locality as where the person lives. How does the information get back and forth?
384	Watkins	Responds that he does not know
386	Chair Minnis	My understanding is that it would be something like neighborhood police.
389	Vern Faatz	<p>Psychiatric Security Review Board</p> <p>>responds that he believes some of this information is already available to police officers in any jurisdiction</p>

		>A copy of the conditional release may be the only issue.
404	Rep. Wells	Gives an example of Salem police needing information that Aumsville police have
412	Faatz	I'm not familiar with this situation.
416	Rep. Shetterly	It may just be a misreading of the bill. I see this as a request from the agency in the community a person lives in.
424	Chair Minnis	If they did, they would have to drive to Aumsville for it.
427	Rep. Prozanski	We're talking about the site where the group home is located. I do not see how other jurisdictions could go and get this information unless there was a nexus of that individual moving from one location to another to get the records that may have already been disbursed.
436	Chair Minnis	Closes public hearing on HB 3668
<u>HB 2160 - PUBLIC HEARING</u>		
442	Chair Minnis	Opens public hearing on HB 2160.
<u>TAPE 93, A</u>		
016	Jim Lockwood	Public Relations Director, Department of Corrections >We are in the process of developing amendments along with the Department of Justice. >If Measure 49 does not pass in May, we can have a bill prepared to work in its place.
023	Chair Minnis	There is another bill, HB 2161?
024	Lockwood	HB 2161 is our preferred bill, but this way we are prepared. This is more narrow.
028	Chair Minnis	HB 2161 is up tomorrow.
030	Chair Minnis	Closes public hearing on HB 2160
<u>HB 2953 - PUBLIC HEARING</u>		
033	Chair Minnis	Opens public hearing on HB 2953
		Government Relations Office, City of Portland

037	Jackie Bloom	>comments that they are looking for clarification in gray areas. >The City Attorneys' Office and the Multnomah District Attorney's Office are working on some amendments. >wants to limit arenas in which ordinances have been overturned
055	Chair Minnis	Closes public hearing on HB 2953
<u>HB 2963 - PUBLIC HEARING</u>		
064	Chair Minnis	Opens public hearing on HB 2963
069	Dianne Middle	Chairperson, Board of Parole and Post-Prison Supervision >submits and reads written testimony, (EXHIBIT C) >allows for a pro-tem board member when the need arises >The workload has increased while the staff has been reduced. >They are able to appoint a member without Senate confirmation for a 90 day period.
133	Rep. Wells	How many board members do you have now?
133	Middle	Three.
134	Rep. Wells	According to statute, you can have up to five, correct?
135	Middle	You can have up to five, but we are budgeted for three.
141	Ingrid Swensen	Oregon Criminal Defense Lawyers Association >has no comment at this time
146	Chair Minnis	Closes public hearing on HB 2963
<u>HJR 16 - PUBLIC HEARING</u>		
148	Chair Minnis	Opens public hearing HJR 16
149	Liz VanLeeuwen	State Representative, District 37 >asks that the committee will keep this bill open
158	Chair Minnis	You introduced in essence the same language that was in Measure 31. Did you have some other designs on the language?

164	Rep. VanLeeuwen	We can change that language if we need to. I have some real concerns about what we are exposing our children to. >recent study in another state about how people reacted
175	Rep. Courtney	I've always been there on this issue, but the voters rejected the initiative.
177	Rep. VanLeeuwen	They said no to lots of things this time because there were so many on the ballot.
181	Rep. Courtney	Haven't we voted on this twice already? >The voters don't seem to want this. >I thought you could give me some guidance and direction as to why we need this.
198	Rep. VanLeeuwen	I hope you will keep the option open.
206	David Fidanque	Executive Director, American Civil Liberties Union (ACLU) Oregon >testifies in opposition to HJR 16 >identical language to Measure 31 and similar to language in Ballot Measure 19 in 1994 >We need to try and fashion remedies aimed at the negative effects of expression rather than prevent or regulate expression based on its content.
235	Chair Minnis	We previously have concentrated the first part of the language in Article 1, Section 8, but perhaps we ought to look at the latter half of that paragraph. >I raise the example because, at 212th and NE Ratter Road, you can walk into a store and see adult pornography in plain view. >This is a complex discussion, but I think people agree that there should be a line drawn somewhere. >We should look at the abuse of free speech when it infringes on my right to not see it.
287	Fidanque	There is a statute on the books, which doesn't seem to be used, that prohibits the display of obscene material to minors. >The Oregon Supreme Court has made it clear that the Legislature is free to regulate material aimed at minors. >In terms of preventing that display to adults, it could be a problem.
309	Chair Minnis	But what about the adults who choose not to see it?

313	Fidanque	I think they have a right to not go back.
315	Chair Minnis	That is where I think you are out of your mind.
324	Fidanque	I understand your concerns.
325	Chair Minnis	My reaction would be to do something with an incendiary device which would probably be illegal.
333	Fidanque	The federal constitution protects a great amount of free speech which is very offensive. An amendment to the state constitution would not affect that.
344	Chair Minnis	We will be hearing a bill on Thursday about non-existent beings. There is a differentiation between the federal and state laws in this aspect of pornography.
370	Fidanque	I look forward to that.
373	Rep. Courtney	He did note a law that he would be willing to work on and I hope we can find a way for this to happen.
383	Chair Minnis	I agree and I don't know whether the committee will be willing to visit this issue of pornography again. There is a point in which free speech infringes on my right not to view it.
399	Rep. Prozanski	It does seem like the current statute, ORS 167.080, would apply.
406	Chair Minnis	You probably need an unaccompanied minor to complain.
409	Rep. Shetterly	If they are visible on general display to minors that seems to close the case.
412	Chair Minnis	Having a no complaint from the District Attorney's office because you do not have a specific victim, probably will not get a complaint issued.
419	Rep. Shetterly	It's that prosecutorial discretion.
447	Chair Minnis	Closes public hearing on HJR 16
TAPE 92, B		
<u>HB 3642 - PUBLIC HEARING</u>		
014	Chair Minnis	Opens public hearing on HB 3642
015	Darin Campbell	Oregon Association of Chiefs of Police >introduces Chief Elkins from Molalla Sheriff's Office
		Chief of Police, Molalla Sheriff's Office

022	Rob Elkins	<p>>There are no laws which cover being under the influence of a controlled substances, only the possession.</p> <p>>This would be a tool to allow pre-emptive strikes on abuse prevention and domestic violence</p>
035	Rep. Shetterly	Didn't we have a bill similar to this earlier in the session?
043	Rep. Bowman	So now, in addition to being in possession, they get a bunch of stuff on top of that. Do they get charged for the possession or the use first? Or do they get charged for both? How many people are we going to put in jail for marijuana?
056	Elkins	Our view is to address the more harder drugs. The marijuana part is a difficult issue.
066	Rep. Bowman	I appreciate that, but I tell you I have a real fear because I know this bill will be abused in my district. I'm worried about the discretion of whoever stops the suspect as to how this bill will be implemented.
074	Elkins	I understand your concerns.
075	Rep. Prozanski	I think the "proof" problem is going to need to be addressed. The presence of marijuana is there after 30 days.
081	Elkins	That will be provided at a later hearing.
084	Chair Minnis	<p>I think these discussions are helpful because it is changing paradigms of people's thinking.</p> <p>>This bill again identifies diversion relevant to controlled substances.</p>
093	Rep. Prozanski	The \$100,000 for attorney's fees can go toward drug rehabilitation.
099	Glen Rader	<p>Lieutenant, Oregon State Police</p> <p>>The officer has to prove that the person is under the influence.</p> <p>>The suspect will have to manifest some behavior which gains the officer's attention.</p>
109	Rep. Prozanski	<p>What is it that I am going to be able to take into court and present to a jury of 6-12 people?</p> <p>>I don't see anything in this bill about blood or urine tests.</p>
121	Chair Minnis	This is modeled after an existing California law. It has been appealed all the way to the Supreme Court and it has been upheld.
124	Rep. Prozanski	It is just a policy decision.
124	Chair Minnis	I agree, hard things are difficult to do.
		<p>Oregon Criminal Defense Lawyers Association</p> <p>>There is a previously identical bill, HB 2507, on which there was</p>

128	Ingrid Swensen	<p>testimony on February 18.</p> <p>>There is a problem with the bill's circular definition of under the influence.</p> <p>>What is the public policy purpose of this bill? Is it to protect people from intoxicated people?</p> <p>>In the DUII context, there is a measure for what the committee is talking about.</p> <p>>The minimum sentence creates issue of proportionality.</p> <p>>concerned for potential of disparate treatment</p>
181	Chair Minnis	So, one of your admonitions might be to narrow the definition of controlled substance.
186	Swensen	Or broaden it to include alcohol.
187	Chair Minnis	You cannot because of the relating clause.
189	Chair Minnis	Declares subcommittee adjourned at 4:31 p.m

Transcribed by, Reviewed by,

Gina Cross, Scott Lumsden,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 3668, Proposed amendments (-1 dated 4/9/97), Vern Faatz, 1 p.

B - HB 3548, Proposed amendments (-1 dated 4/11/97), staff, 1 p.

C - HB 2963, Written testimony, Dianne Middle, 2 pp.