

**HOUSE COMMITTEE ON JUDICIARY**

**SUBCOMMITTEE ON CRIMINAL LAW**

**April 24, 1997 Hearing Room 357**

**1:00 PM Tapes 98 - 99**

**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**

**STAFF PRESENT:**

**Scott Lumsden, Counsel**

**Brian Higgins, Administrative Support**

**MEASURE/ISSUES HEARD:**

**HB 3009 - Public Hearing HB 3298 - Public Hearing**

**HB 3340 - Public Hearing HB 3540 - Public Hearing**

**HB 3611 - Public Hearing HB 3686 - Public Hearing**

**HB 3708 - Public Hearing HB 3702 - Public Hearing**

**HB 2862 - Public Hearing HB 2920 - 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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 98, A</b>		

005	Chair Minnis	Calls the meeting to order at 1:13 p.m.
<b><u>HB 2920 - PUBLIC HEARING</u></b>		
010	Chair Minnis	Opens public hearing on HB 2920. Gives background of HB 2920.
023	David Paul Rader	Detective, Multnomah County Sheriff's Office Discusses problems involving child pornography and computers. Child pornography is readily available. Law is not keeping up with technology. Discusses relating statutes (ORS 163.684 through 168.687). Discusses the Stoneman decision of the Oregon Supreme Court. Discusses the "no right to abuse" decision of the Oregon Supreme Court. Multnomah County will be trying the first internet child pornography case.
083	Rader	Individuals, not using computers, are taking child magazines and cutting and pasting with adult nude photos. Discusses the intent of the altered printouts. Comments that the burden, in court cases, falls on the state, and the state must prove that the pictures are of real children.
108	Chair Minnis	You brought more materials with you.
110	Rader	Yes. I have photographs, and some of them are actual depictions of what we have downloaded.
114	Chair Minnis	The law may cover child pornography, but the issue in the trial is whether the photo is of a real person, under 18.
116	Rader	Yes, because the statute and the Stoneman decision require that a child be harmed in the creation of the photograph.
117	Rep. Bowman	How would this bill help you, regarding the current internet case you mentioned?
118	Rader	Current federal laws were amended to include computer simulation, animation, and the altering of pictures. If, at this time, Oregon had a law with those amendments, there would be no defense because these pictures have been proven to be of a real child.
127	Chair Minnis	Discusses the bill, as originally drafted by Legislative Counsel.
130	Rep. Prozanski	Do we have copies of what the "feds" have done, so we can mirror or monitor that?
131	Chair Minnis	That has been requested.
		Regarding Rep. Bowman's question, there is nothing we can do to impact

133	Rep. Prozanski	that particular case because that was not the law at the time the individual was apprehended.
147	David Fidanque	Executive Director, American Civil Liberties Union (ACLU) of Oregon Testifies in opposition to HB 2920 (as currently written). In <i>State v. Stoneman</i> , we attempted to deal with the appeal in the child pornography case. Comments that he believes current statute is constitutional.
155	Chair Minnis	I don't think anyone is questioning whether current statute is constitutional. The issue is whether we need to prove the person in photograph is a real, living, breathing human being.
157	Fidanque	Currently, possession under ORS 168.000 is deemed a Class C felony. There could be proportionality questions with this level. Until last year, federal law also included that requirement. Discusses the Child Pornography Prevention Act of 1996.
175	Chair Minnis	Are you familiar with the Knox decision out of Pennsylvania?
176	Fidanque	No, I'm not.
177	Chair Minnis	I'll have to look up the citation. Discusses the Knox case, where an individual was convicted of child pornography, despite the fact the child was fully clothed.
194	Fidanque	There is a different issue, which I think that case may have dealt with, and that is simulated sexual conduct. That is also included in the Oregon statute. However, both federal and state cases were required, until last summer, to prove the photographs involved an actual child. Discusses <i>New York v. Ferber</i> . Discusses material, which would arouse some pedophiles, which is completely protected under the Constitution.
231	Chair Minnis	The Knox decision said that child pornography isn't the picture itself. It wasn't a First Amendment at all; the issue was the purpose or intent of the individual collecting the pictures. It had to do with a collection and simulation of material for the perpetrator and the purposes that individual had for that material.
249	Fidanque	I think you could find a way to craft a statute, out of the second half of that, but the first part sounds like you are policing their thoughts rather than their conduct.
262	Chair Minnis	When we talk about pornography, the First Amendment always comes up, but it takes on a different meaning when you are talking about intent. Discusses a case out of California.
289	Fidanque	I think some of those things will be difficult to prove, but the act of grooming children for future sexual abuse could be made criminal. As far as I know, it is currently not criminal. I would be happy to work with you on that.
309	Chair Minnis	Discusses a case, where an individual invited children to his home and had them view adult pornography.
312	Fidanque	That is the way it needs to be written, but it isn't currently.
	Chair	I will look forward to some suggested changes. Closes public hearing on

315	Minnis	HB 2920.
<b><u>HB 3009 - PUBLIC HEARING</u></b>		
324	Vice-Chair Bowman	Opens public hearing on HB 3009.
328	John Nichols	Oregon Gun Owners Association Discusses HB 3009 and concerns about the bill. Submits and discusses the Department of Justice (DOJ) amendments (-1) <b>(EXHIBIT A)</b> and a "Charitable activities" graph <b>(EXHIBIT B)</b> .
350	Russ Laybourn	Assistant Attorney General, Charitable activities section, DOJ Discusses <b>EXHIBITS A and B.</b>
<b><u>TAPE 99, A</u></b>		
008	Laybourn	Continues testimony.
015	Chuck Richards	Oregon Sports Academy Testifies in favor of HB 3009 with the -1 amendments.
021	Rep. Prozanski	Does the DOJ support this bill? What impact does this have on the Governor's gambling bill?
023	Laybourn	We support the bill with the -1 amendments; we wouldn't support it without them. You're referring to HB 2195 (the Governor's gambling bill), and this is independent of that. I don't believe that HB 2195 addresses bingo at all.
038	Vice-Chair Bowman	Closes the public hearing on HB 3009.
<b><u>HB 3340 - PUBLIC HEARING</u></b>		
045	David Fidanque	Executive Director, ACLU of Oregon Discusses and testifies against HB 3340. Most of the costs are passed on indigent people. You would need to look at the priority at which costs are reimbursed.
064	Rep. Prozanski	Regarding apprehension, are they talking about someone taking flight after conviction? Discusses law enforcement expenses, as they relate to the bill.
072	Fidanque	That is the way I read the bill.
075	Vice-Chair Bowman	Closes the public hearing on HB 3340.

<b><u>HB 3611 - PUBLIC HEARING</u></b>		
079	Jim Arneson	Oregon Criminal Defense Lawyers Association (OCDLA) Testifies in favor of HB 3611. We would support an increase in the penalty.
090	Rep. Prozanski	Sponsor of HB 3611 The bill was brought forward for the Oregon Justice of the Peace Association. This seems to be reasonable upgrade in cost of a fine for a violation. There is no requirement, when you have a violation, to appoint counsel, and this may make that more attractive.
100	Vice-Chair Bowman	Closes public hearing on HB 3611.
<b><u>HB 3708 - PUBLIC HEARING</u></b>		
106	Jim Arneson	OCDLA Testifies in favor of HB 3708. Records ought to be expunged, and people should be given a fresh start, if they have reformed. I think it makes sense to remove criminally negligent homicide from the list which generally has sex offenses, manslaughter, etc.
126	Rep. Prozanski	I think another reason would have to be the intent of the crime.
128	Arneson	I think that is correct. The mental state that would be required is different than any of the offenses listed.
133	Vice-Chair Bowman	Closes public hearing on HB 3708.
<b><u>HB 2862 - PUBLIC HEARING</u></b>		
138	Vice-Chair Bowman	Discusses HB 2862.
145	Rep. Courtney	Submits and discusses written testimony, for Rep. Tom Whelan, district 32 ( <b>EXHIBIT C</b> ).
160	Vice-Chair Bowman	Closes public hearing on HB 2862.
<b><u>HB 3298 - PUBLIC HEARING</u></b>		

174	Kimberly Merlitti	Legislative Assistant for Rep. Carolyn Oakley, District 36 Testifies in support of HB 3298. Discusses intent of HB 3298.
180	Rep. Prozanski	Did the Representative indicate to you why she would want to move backwards? Discusses current law.
190	Merlitti	Many defendants won't appear for their trials. If they paid a larger amount of money, it would take the pressure off the system to have to hunt them down and get them the trial.
200	Rep. Prozanski	It would be nice to get some of the research you have done regarding the success of such programs.
207	David Fidanque	Executive Director, ACLU of Oregon Testifies in opposition to HB 3298. I would encourage modifying the existing system, if there is a problem, rather than going back to the old one. This bill would have a negative fiscal impact on state budget.
235	Rep. Prozanski	So, you would prefer to see additional money, from the state, go to funding of more personnel to establish security amounts for individuals.
241	Fidanque	Exactly. There are other programs which are in place that require defendants to regularly check-in with police officers while they are out in the community, and they have been very cost effective.
250	Kingsley Click	Submits written testimony, for the record, in opposition to HB 3298 <b>(EXHIBIT D)</b> .
259	Jim Arneson	OCDLA Testifies in opposition to HB 3298. Discusses a letter from Judge Snuffer. We have been opposed to similar bills every session since 1987. We are concerned with the abuses that happen under this system, and we would like to be able to bring in some witnesses to demonstrate that abuse. We would also like to suggest some alternatives.
276	Vice-Chair Bowman	Closes public hearing on HB 3298.
<b><u>HB 3540 - PUBLIC HEARING</u></b>		
284	Vice-Chair Bowman	Discusses HB 3540. For the record, no one signed up to testify on the bill.
287	Vice-Chair Bowman	Closes public hearing on HB 3540.
<b><u>HB 3686 - PUBLIC HEARING</u></b>		

300	Hasina Cassim	Oregon Fire Chiefs Association and Tualatin Valley Fire and Rescue Introduces Alec Jensen.
302	Alec Jensen	Executive Officer, Tualatin Valley Fire and Rescue Testifies in favor of HB 3686. It is crucial that we undergo ongoing, post-incident critique. Discusses critique processes. Discusses Aloha complex fire. It makes sense to go on live TV for critiquing purposes.
352	Jensen	Continues testimony. Discusses an incident where a fire hydrant popped out of the ground.
365	Gail Ryder	Oregon Newspaper Publishers Association (ONPA) Submits and reads aloud written testimony ( <b>EXHIBIT E</b> ).
<b>TAPE 98, A</b>		
014	Ryder	Continues testimony.
020	Rep. Prozanski	Gives an example of the law and information used to prosecute. It's difficult to balance the public's right to know with records law. If "free-flowing" dialogue cannot take place, public safety may be jeopardized even further.
034	Ryder	There is nothing that stops individuals from conferring with each other, but if the records are made secret, it allows for the potential for abuse.
042	Rep. Prozanski	Quotes "...the right of citizens to monitor what elected and appointed officials are doing on the job." from Ms. Ryder's testimony. Is it the position of ONPA that someone, who is not elected or appointed, should be exempt from the public records law?
045	Ryder	No, I don't believe so. I was just quoting the language that was used in the Attorney General's public records and meetings law.
048	Rep. Prozanski	I was trying to point out that the position the court has taken, and the position it seems you have taken with that statement, is directed toward elected and public persons. Is that correct?
050	Ryder	That's the way the law's written.
051	Rep. Prozanski	Are you asking us to expand what the courts have already asked that the public records law should be.
053	Ryder	We are not asking for expansion of current law. We are just asking that you don't close down records further than they already are.
055	Vice-Chair Bowman	Closes public hearing on HB 3686.
<b><u>HB 3702 - PUBLIC HEARING</u></b>		
060	Vice-Chair	Discusses HB 3702.

	Bowman	
060	Jim Arneson	OCDLA Testifies in favor of HB 3702. Discusses, essentially, what the bill would do. It would provide for an appeal by the state.
080	Janet Metcalfe	Assistant to the Attorney General, DOJ Testifies in opposition to the language of the bill, but not in opposition to the bill's concept. There are no amendments at this point, but would like to work with OCDLA.
100	Vice-Chair Bowman	Closes public hearing on HB 3702. Adjourns at 2:16 p.m.

Transcribed by, Reviewed by,

Lisa Fritz, Scott Lumsden,

Administrative Support Counsel

**EXHIBIT SUMMARY**

**A - HB 3009, proposed amendments (-1), Russ Laybourn, Department of Justice, 2 pages.**

**B - HB 3009, written testimony, Russ Laybourn, Department of Justice, 1 page.**

**C - HB 2862, written testimony, Rep. Tom Whelan, district 32, 1 page.**

**D - HB 3298, written testimony, Kingsley Click, State Court Administrator, 1 page.**

**E - HB 3686, written testimony, Gail Ryder, Oregon Newspaper Publishers Association, 1 page.**