

HOUSE JUDICIARY
SUBCOMMITTEE ON CRIME AND CORRECTIONS

Hearing Room
Tapes - 36

MEMBERS PRESENT:

Rep. Veral Tarno, Chair
Rep. Floyd Prozanski, Vice-Chair
Rep. Peter Courtney
Rep. Jerry Grisham
Rep. Leslie Lewis
Rep. Kevin Mannix

STAFF PRESENT:

Holly Robinson, Committee Counsel
Janet Ellingsworth, Committee Assistant

MEASURES HEARD:

Work session on HB 2316
Work session on HB 2123

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , A

004 CHAIR TARNO: Convenes meeting at 8:33 A.M.

OPENS the WORK SESSION on HB 2316

007 ROBINSON: Overview of HB 2316.

038 MOTION: REP. LEWIS: Moves -1 amendments.

044 REP. PROZANSKI: Why would you want to do that based on the discussions

we have heard
as to the separation of powers?

045 REP. LEWIS: This procedure is already in place. The officer's are already issuing the protective orders.

050 REP. PROZANSKI: Why do you believe a citation, that's an officer's protective citation, would not have that same effect?

061 REP. LEWIS: My understanding is that nothing has been ruled unconstitutional.

066 REP. MANNIX: The officer's protective order has not been subject to any adverse judicial ruling.

072 CHAIR TARNO: I understand that a protective order has not been challenged, or has it been challenged?

075 REP. MANNIX: That concept has not been challenged.

078 REP. PROZANSKI: Are we here to second guess as to waiting for something to happen? There is a separation of powers between judicial, executive and legislative branches.

078 REP. MANNIX: I don't have any hang up about police officer's issuing orders. They issue orders all the time.

080 CHAIR TARNO: How does law enforcement deal with restraining orders?

082 REP. PROZANSKI: Restraining orders are issued by a judge.

100 REP. MANNIX: We have the judicial concept of issuing a warrant of arrest. We require that warrants be issued in order to make an arrest. However, we have made exceptions.

114 REP. PROZANSKI: Why not call it "an officer's protective citation"?

116 CHAIR TARNO: (Inaudible)

119 REP. PROZANSKI: I am very concerned that we are setting up bad law.

137 CHAIR TARNO: Law enforcement officers do have a great deal of flexibility in the laws of arrest. (Inaudible).

148 REP. PROZANSKI: There is a distinction here. Explains concerns.

163 CHAIR TARNO: Last session, we gave law enforcement officers the authority. (Inaudible).

175 REP. PROZANSKI: Our job, in the legislature, is to put out what we believe is constitutional good law. What are the ramifications if this is challenged?

192 REP. GRISHAM: I intend to support it. I agree with Representative Prozanski that we need to write good law, and constitutional law.

206 REP. MANNIX: If the court was incorrect enough to say that an officer can't issue a protective order on the spot, despite the fact that officer's can tell you to leave the scene of a crime, what would happen is the officer's would arrest the perpetrator on the spot under the rest of the law.

219 REP. LEWIS: This was passed out by the last legislature. This procedure has been in place for two years.

231 CHAIR TARNO: (Inaudible) "Rep. Prozanski, will it be your intent to vote no, or to be against the -1 amendments"?

240 REP. PROZANSKI: Yes, as they pertain to the officer maintaining the power to issue a judicial order.

246 REP. LEWIS: I think it's important that we leave the bad faith clause in.

252 REP. PROZANSKI: I think we're jumping into an area that is not in the -1 amendments.

256 ROBINSON: Discusses -1 amendments.

269 REP. MANNIX: Discusses -2 amendments. [EXHIBIT C].

280 CHAIR TARNO: We are going to have a roll call vote on the -1 amendments, will there be other amendments after the vote?

285 REP. MANNIX: I believe Rep. Prozanski wants to raise the issue of removing the bad faith clause, and I believe that could be done by a -2 amendment.

290 TARNNO vote AYE, VOTE: In a roll call vote REPS. COURTNEY,
REP. PROZANSKI votes NAY.

300 CHAIR TARNO: The motion CARRIES.

302 REP. PROZANSKI: Discusses -2 amendments [EXHIBIT C].

350 REP. PROZANSKI: Discusses "bad faith" language.

403 REP. MANNIX: I think Rep. Prozanski has correctly stated the issue. I've not had any reports of bad faith reported to me.

450 MANNIX: My own recommendation would be that it would be preferential to simply excise that section by adopting the -2 amendments.

TAPE 34, A

030 ROBINSON: Explains -2 amendments.

046 CHAIR TARNO: Rep. Lewis, filing a false police report is a tool that could be used.

050 REP. GRISHAM: If we are going to leave "bad faith" in, would we want to add something to say "nothing in this would prohibit someone from pursuing additional remedies"?

054 ROBINSON: You could do it in that way.

057 CHAIR TARNO: What I'm hearing from Rep. Mannix is, we could delete or approve the -2 amendments and we still have other recourses that are available to us.

061 REP. LEWIS: To file a civil action would be expensive for most people.

091 MOTION: REP. PROZANSKI: Moves to adopt the -2

095 VOTE: In a roll call vote REPS. COURTNEY,
PROZANSKI and CHAIR TARNO vote AYE.
REPS. GRISHAM and LEWIS vote NAY.

100 CHAIR TARNO: The motion CARRIES.

105 CHAIR TARNO: There are no further amendments to HB 2316.

107 MOTION: REP. PROZANSKI: Moves HB 2316 to
the full committee with amendments.

110 VOTE: In a roll call vote all members present vote

114 CHAIR TARNO: The motion CARRIES.

CLOSES the WORK SESSION on HB 2316
OPENS the WORK SESSION on HB 2123

128 ROBINSON: Gives brief overview of HB 2123. Reviews each amendment.
[EXHIBIT E].

200 ROBINSON: Section 5 and 7, places in statutes the fees that are
charged by the Department
of Education and TSPC for fingerprinting.

258 CHAIR TARNO: We have some conceptual amendments to be presented.

268 ED EDWARDS, DIRECTOR of GOVERNMENT RELATIONS, OREGON SCHOOLS EMPLOYEE
ASSOCIATION: Submits and discusses [EXHIBIT D], conceptual amendments to
HB 2123. We are asking that the word "nationwide" be inserted before the
word "criminal".

288 CHAIR TARNO: Where is that to be inserted at?

290 EDWARDS: Line 14, page 2.

292 ROBINSON: On page 1, lines 14 and 15 of the bill, I think what Mr.
Edwards is doing is taking that concept and incorporating it throughout the
body of the bill.

303 CHAIR TARNO: If the intent of the bill is outlined on page 1, sub 2,
do you think it's necessary
to add it throughout the rest of the bill?

305 EDWARDS: No.

308 ROBINSON: I can check with legislative council to find out if it is
redundant.

314 EDWARDS: Discusses [EXHIBIT D].

387 CHAIR TARNO: Your concerns are already in draft form, correct?

391 EDWARDS: Except for the fact of the movement of a licensed school
employee into a non licensed position.

394 CHAIR TARNO: Should we deal with this one issue at this point and then
go on to other concerns?

401 REP. LEWIS: If we were to go with Mr. Edwards suggestions, were
setting up a situation where we don't have a level playing field.

436 ROBINSON: That's the impact of the -8 amendments.

439 REP. COURTNEY: There are two fairness issues here, one is treating all
groups of employees equally. The other issue is should you find something
through that background check, the standards that you apply be the same.

TAPE 33, B

035 REP. LEWIS: If we deleted sections 3 and 4, we would also have to
delete section two.

038 CHAIR TARNO: This was the intent in the 1993, to make it a level
playing field.

039 REP. COURTNEY: That's correct, and it was unsuccessful on the senate
side.

045 REP. PROZANSKI: I received some legislation, that was directed to
Rep. Parks. Discusses
SB 333.

065 REP. COURTNEY: John Danson came to my office and said that they could
live with and support a one time nationwide background check.

070 REP. PROZANSKI: That is fine. I knew what I had in my notes, and I
think it's the best thing
we can do to make sure everyone is covered.

074 REP. LEWIS: Are we increasing the fee? If were going to put in the
statutes what the fee is today, I'm fine with that but I don't want to
increase the fee.

078 CHAIR TARNO: Asks counsel about fee increases.

080 ROBINSON: I think it is a slight increase from \$38 to \$42.

087 REP. LEWIS: I would like to know what the fee is today.

091 ROBINSON: I would suggest that you adopt the -8 amendments.

094 MOTION: REP. COURTNEY: Moves the -8

098 REP. GRISHAM: Is it the intent to move the -8 amendments so we have a vehicle to work from?

099 ROBINSON: That is correct.

100 CHAIR TARNO: Hearing no objections the

103 EDWARDS: Continues discussion. When this bill was passed in 1993, the figures from the department of education was that there were about 200,000 volunteers in our schools.

156 EDWARDS: On page 5, section 5 (3), there is no language currently in the amendments.

198 CHAIR TARNO: It appears this is permissible and not mandatory.

204 EDWARDS: Under the teachers standards and practice, that is true. For classified school employees, there was nothing.

211 DAVID FIDANQUE, EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION OF OREGON (ACLU): Testimony on HB 2123. The standard under the current statute is subject to ORS 670.280.

248 EDWARDS: To comment on that statement as far as ORS 670.280, the law is fairly new. I can tell this committee that the way it is explained by the prior witness, is not the way it is applied.

278 CHAIR TARNO: Are you saying there is a dual standard?

280 EDWARDS: I think there is a dual application of this provision.

294 REP. COURTNEY: The 10,000 figure you used, does that apply to all or just the classified employees?

298 EDWARDS: My understanding is just classified employees.

300 REP. COURTNEY: The figures that my staff has handed to me from the state police shows that as of January there were 10,591 that have been done, and that is everyone.

305 EDWARDS: I may be incorrect in the number.

308 REP. COURTNEY: Those figures were just brought to me from the state police.

311 GREG MCMURDO, DEPARTMENT OF EDUCATION: Testimony on HB 2123. Discusses fees.

340 REP. COURTNEY: What was the senate bill?

342 REP. PROZANSKI: SB 333, there looking at having exemptions or exceptions placed in it.

347 MCMURDO: There is an increase in the fee. We need \$42 to cover our costs.

401 CHAIR TARNO: We have the ability to do a basic background checks on volunteers now through the Law Enforcement Data System (LEDS)?

405 MCMURDO: That is correct.

408 CHAIR TARNO: (Inaudible)

420 MCMURDO: We turn those over to the school districts.

TAPE 34, B

025 REP. PROZANSKI: Regarding what Mr. Edwards related to us, not having a level playing field in the since of it's black and white, if a classified worker's been convicted of a crime on their list, they are out of a job, is that the way the hearing's examiners are handling it at this time?

030 MCMURDO: Yes that is correct.

032 REP. PROZANSKI: I understand that for teachers there is a peer review that they take as one of the elements in consideration based on other criteria to make a decision as to whether or not that person will lose their employment.

035 MCMURDO: David Myton is here from Teachers Standards and Practices, he could answer that

for you.

037 AL SHANNON, DEPARTMENT OF EDUCATION: Testimony on HB 2123. Just to comment on the volume, we had about 900 in our office, the actual volume received was about 9,000 for the calendar year of 1994.

050 DAVID MYTON, EXECUTIVE SECRETARY, TEACHERS STANDARDS AND PRACTICES COMMISSION (TSPC): Discusses amendments to HB 2123.

107 CHAIR TARNO: Is using the LEDS system sufficient enough for volunteers?

111 MYTON: We don't do anything with volunteers, but we do the LEDS check with all renewals of teaching licenses.

112 CHAIR TARNO: (Inaudible)

113 MYTON: LEDS would certainly be sufficient for those who are permanent residents in the state.

120 CHAIR TARNO: Does LEDS charge you?

122 MYTON: We do have a charge for LEDS because we do have a terminal.

125 REP. PROZANSKI: It's my understanding that teachers go through a peer review, and that the conviction itself is not exclusive as to whether your in or your out.

132 MYTON: The procedure we use when we get a LEDS or a FBI hit, is that we send a letter to the individual saying a routine check of your criminal history shows you have had an arrest for this offense on this date, and we ask them to provide us a certified copy of they're court records.

184 REP. PROZANSKI: Would you agree that discretion for the hearings examiner or for the panel of the commission is important to make sure that all facts are reviewed pro and con?

187 MYTON: At the outset TSPC had proposed to adopt the department of education's list to make it a level playing field.

198 REP. PROZANSKI: I understand the department of justice has taken and I'm also hearing that possibly you would like to be under a system that is more rigid, I misreading you?

202 MYTON: No, I didn't mean to imply that a ridged system would be better, I think discretion really looks at the individual circumstances.

225 REP. LEWIS: Don't you already have records that you've already gone over on a particular case and decided whether or not the person should be employed?

231 MYTON: Yes, on our application form where I mentioned those character questions we have a place to check if you've previously reported this.

245 JIM GREEN, LEGISLATIVE ADVOCATE, OREGON SCHOOL BOARDS ASSOCIATION: We support the -8 amendments. Discusses and submits [EXHIBIT F].

340 CHAIR TARNO: Rep. Lewis, do you want to make a motion on the fees?

346 REP. LEWIS: I'm concerned about SB 333, I'm concerned the department of education has some legitimate reasons and that there costs have gone up.

360 CHAIR TARNO: We have no control over what the FBI charges on doing fingerprint and background checks.

375 REP. LEWIS: Subject to them showing us what they're actual costs are, I'm fine with putting the \$42 in if they can substantiate that's what they're costs are.

386 SHANNON: Twelve dollars to the state police, \$24 to the FBI and our portion is \$3.40.

389 REP. LEWIS: Do you have some way to document your \$3.40?

392 SHANNON: I don't have it with me.

394 REP. LEWIS: Is that what's gone up or did the FBI portion go up?

397 SHANNON: The FBI costs have not increased.

398 REP. LEWIS: So then it's your costs that have gone up?

400 SHANNON: It was an underestimate of what it costs to run the program.

400 MCMURDO: The \$3.40 is the departments costs, that includes everything it takes to run that program.

414 REP. LEWIS: You want to raise it from \$3.40 up to \$6 to cover your costs?

415 MCMURDO: Yes, that is correct.

424 REP. GRISHAM: What happens a year from now when the FBI decides to increase they're costs?

426 MCMURDO: You will see us again, that is one of the risks with SB 333.

438 REP. LEWIS: I'm not going to make a big issue over it. I would prefer the "may" language that Mr. Edwards suggested.

450 ROBINSON: My recommendation is to go back through the -8 amendments, clarify and address each of the issues that have been disrobed to you.

TAPE 35, A

030 ROBINSON: Gives overview of amendments. [EXHIBIT E].

057 CHAIR TARNO: Are there any concerns from the committee on section 1?

059 REP. PROZANSKI: Is council going to check as to the need for the word "nationwide"?

061 ROBINSON: Correct. Given the way this is set up in sections 2 (a) of 181, when you look at it in the statute, I don't think it will be necessary.

066 CHAIR TARNO: Is there a consensus that we can accept this as it is currently drafted?

071 ROBINSON: Discusses section 2 as amended.

078 CHAIR TARNO: Was there an issue on page 3, line 18?

080 ROBINSON: It has to do with the language that the Oregon School Board Association (OSB A) is recommending regarding collective bargaining agreements.

087 REP. LEWIS: This would only apply to persons who have direct unsupervised contact with children?

089 ROBINSON: That is correct.

094 CHAIR TARNO: Are there any additional thoughts or concerns with section 4?

098 ROBINSON: Discusses section 5.

103 REP. LEWIS: I would like to address the concept of changing the "shall" back to a "may".

114 MCMURDO: We have no problem with that being a "may".

120 GREEN: The districts do have the ability to charge that back to the employee.

134 REP. LEWIS: Do you have a problem with "may" as opposed to "shall"?

136 GREEN: No.

140 MOTION: REP. LEWIS: Moves that in the -8 amendments, page 4, line 21, we delete the "shall" and insert "may".

143 CHAIR TARNO: Hearing no objections the motion CARRIES.

149 CHAIR TARNO: Are there any objections to section 5?

150 REP. LEWIS: Where do we get into the hearings process?

152 ROBINSON: That is in section 6. Discusses section 6.

183 CHAIR TARNO: (Inaudible) It seems to be easy for someone to get into trouble anymore.

190 REP. PROZANSKI: We do have sex offenses that are misdemeanors.

194 REP. LEWIS: You meant to say that twenty years after the date you were convicted of a class A felony, not twenty years after you've completed your sentence, right?

198 ROBINSON: In that situation if someone would have been incarcerated it would have been a period of time after they were released.

205 REP. GRISHAM: Could you give examples of a class C misdemeanor, the worst case?

210 CHAIR TARNO: Trespassing on someone's property.

213 REP. GRISHAM: What I'm looking for is person crimes or sex offenses.

216 ROBINSON: Sex offenses would already be on this list. Discusses misdemeanor offenses.

223 REP. GRISHAM: With regard to driving under the influence, eluding a police officer, if there came a time where a child or student was left in school, there is no one else to give them a ride home, is there a danger to the student?

228 CHAIR TARNO: Unless it's repeated conduct. (Inaudible)

234 ROBINSON: What this list does is say that regardless of the offense there is a window of time in which you cannot be in the classroom.

242 REP. GRISHAM: If we were to delete "completed the sentence", I suppose there would come a time where someone would be convicted of murder, serve twenty years and according to this would then be free to be hired and start teaching upon their release.

247 ROBINSON: The intent was "when your done with everything".

263 REP. LEWIS: The sentence's vary in length, it does have something to do with the severity of the crime doesn't it?

267 ROBINSON: Absolutely.

274 CHAIR TARNO: Where did these come from?

278 ROBINSON: These are the statutory periods of time in which a person could be incarcerated.

290 REP. LEWIS: So we could be talking about someone's sentence of twenty years, and they did in fact serve the twenty years, and then when they got done they would have to wait an additional twenty years?

296 ROBINSON: That is correct. If they were convicted of a class A felony, then that would be the case.

301 CHAIR TARNO: Is there any problem from the committee with accepting the felony section?
To me a class C misdemeanor is the same as jay walking.

314 REP. PROZANSKI: That is true. I guess the question we have to ask as a committee is, where are we going to place people on that pendulum?

330 REP. COURTNEY: If the sheet turns up with one of these misdemeanors on it, how is it being handled now?

335 ROBINSON: For TSPC, it is discretionary as to whether or not it impacts teaching. For those people under the department of education, if it's a misdemeanor that is on the list, then they can't teach.

366 REP. LEWIS: Isn't it true that you can be accused of a class C felony and in plea bargaining it can be reduced to a misdemeanor?

373 CHAIR TARNO: That is something that can be considered by TSPC.

378 REP. PROZANSKI: That decision is going to be based on the conviction.

393 REP. LEWIS: Gives example of a case in here area.

411 CHAIR TARNO: We could leave the class A in and take out the B and C.

416 REP. GRISHAM: I'd like to leave them in.

425 REP. LEWIS: Discusses page 7, line 2.

TAPE 36, A

030 REP. GRISHAM: I believe that the line that Rep. Lewis just quoted, the "may" should be changed to a "shall".

038 ROBINSON: The other issue the committee has to consider is whether or not you want to create a hearings process.

054 CHAIR TARNO: How many class A felonies have been committed?

058 ROBINSON: I can't speak to that but maybe Mr. Shannon can answer that.

064 SHANNON: I didn't bring the statistical report with me but I believe that there have been approximately 20 to 30 felony convictions that we have reviewed over the last year.

079 DAVID FIDANQUE, AMERICAN CIVIL LIBERTIES UNION (ACLU): My understanding is that under the current statutes they can pick up felony convictions in

one of two ways.

106 REP. GRISHAM: On page 8, aren't we removing moral turpitude?

111 FIDANQUE: I cannot define it for you, but I can tell you there is a lot of case law out there dealing with that issue.

138 CHAIR TARNO: On page 7, lines 3 through 4, is a moot issue are they not?

142 FIDANQUE: They would cover that as well as the other offenses.

144 REP. PROZANSKI: There is a difference because under 2 through 4, it gives a discretion and as I read 5 through 23, there is no discretion.

147 ROBINSON: The discretion under 5 through 22 is only for a period of time.

155 CHAIR TARNO: Two through five is a back up.

160 FIDANQUE: The standard in lines 5 through 23 on page 7, is very different from the standards that are currently provided for other professional licenses.

168 CHAIR TARNO: I think it's because were dealing with kids, and that is why were looking at it with a separate standard.

172 FIDANQUE: So what your saying that anyone who works with kids cannot have a blemish on their record during these periods.

180 CHAIR TARNO: (Inaudible)

184 REP. COURTNEY: What got us into this thing is that one group complained that they had a review process and one didn't. Explains concerns.

213 REP. LEWIS: The classified employees have in the administrative rules this whole list of crimes for which they can be discharged for.

223 REP. COURTNEY: Why can't we say that system applies also to classified employees?

227 ROBINSON: You can if you can fund it. The bottom line is the cost of a hearing system.

232 CHAIR TARNO: We will bring this bill back.

243 REP. GRISHAM: About changing "may" to "shall", you either support it or you don't.

244 REP. PROZANSKI: Are you also going to include people that were convicted of possessing less than an ounce of marijuana before it was decriminalized.

258 REP. GRISHAM: Isn't there a process of expungement that can handle that?

261 CHAIR TARNO: The way I read this is that section B can be dovetailed. (Inaudible)

270 REP. COURTNEY: I have to go with the discretion of the commission, if they see something bad they will pull someone's license.

272 REP. PROZANSKI: I know were trying hard to do the best we can to make sure our kids have the best role models, the best examples we can give.

293 REP. GRISHAM: Many of us have read the article in the paper about the teacher in Portland that was selling drugs to students.

309 REP. COURTNEY: If you really want to get around that, the specifics of selling drugs as opposed to drug use, that is a huge area.

330 REP. PROZANSKI: Should we be looking at alcohol too? I see more damage in the criminal justice system from the use of alcohol than we have from illegal substances.

333 CHAIR TARNO: (Inaudible) The meeting is adjourned at 11:15 A.M.

Submitted by, Reviewed by,

Janet Ellingsworth Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

A - Proposed amendments (-1) to HB 2316 - Mannix - 2 pages

B - Proposed amendments (-4) to HB 2316 - Staff - 2 pages

C - Proposed amendments (-2) to HB 2316 - Mannix - 1 page

D - Conceptual amendments to HB 2123 - Edwards - 2 pages

E - Proposed amendments to HB 2123 - Staff - 9 pages

F - Hand engrossed amendments to HB 2123 - Green - 1 page