

## HOUSE COMMITTEE ON JUDICIARY

February 17, 2003 Hearing Room 357

1:00 p.m. Tapes 41 - 42

**MEMBERS PRESENT:**        **Rep. Max Williams, Chair**  
                                 **Rep. Robert Ackerman, Vice-Chair**  
                                 **Rep. Gordon Anderson, Vice-Chair**  
                                 **Rep. Jeff Barker**  
                                 **Rep. Bob Jenson**  
                                 **Rep. Jerry Krummel**  
                                 **Rep. Greg Macpherson**  
                                 **Rep. Floyd Prozanski**  
                                 **Rep. Lane Shetterly**

**STAFF PRESENT:**        **Bill Taylor, Counsel**  
                                 **Ann Martin, Committee Assistant**

**MEASURE/ISSUES HEARD:**        **HB 2047 Public Hearing**  
                                 **HB 2091 Public Hearing**  
                                 **HB 2111 Work Session**  
                                 **HB 2113 Work Session**

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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.

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| <u>TAPE/#</u>                        | <u>Speaker</u> | <u>Comments</u>  |
|--------------------------------------|----------------|--|
| <b>Tape 41, A</b>                    |                |  |
| 004                                  | Chair Williams | Calls the meeting to order at 1:12 p.m.  |
| 006                                  | Bill Joseph    | Committee Counsel. Discusses documents provided for committee ( <b>EXHIBIT A</b> ).  |
| 027                                  | Chair Williams | Opens a public hearing on HB 2047.   |
| <b><u>HB 2047 PUBLIC HEARING</u></b> |                |  |
| 029                                  | Bill Taylor    | Committee Counsel. Introduces HB 2047 which requires police officers and reserve officers to notify detained foreign nationals of detainee's rights under Vienna Convention on Consular Relations. |
| 079                                  | Pete Shepherd  | Deputy, Attorney General, Department of Justice (DOJ). Submits testimony and testifies in opposition to HB 2047 ( <b>EXHIBIT B</b> ).  |
| 176                                  | Chair Williams | Asks if it is only Section 1 that the Department of Justice objects to.  |
| 180                                  | Shepherd       | Answers, no. Believes that simply tracking the federal language would not resolve the concerns for them.   |
| 205                                  | Rep. Shetterly | Wonders if we need HB 2047 at all. Asks if this is an issue for legislation or education.  |
| 213                                  | Shepherd       | Replies that it's an issue for education and legislation, but adds that they think the state should not act on this.   |
| 229                                  | Chair Williams | Asks if he thinks the other sections of the bill are unnecessary.  |
| 236                                  | Shepherd       | Says that they don't object to the other portions of the bill and there may be utility in the other sections.  |
| 256                                  | Rep. Ackerman  | Inquires about his objection.  |
| 266                                  | Shepherd       | Says that the text of Section 1 does not preclude civil liability brought against the individual's employer.   |

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| 276               | Rep. Krummel      | Wonders if the same lack of relief of civil liability be extended in Sections 4 and 5.   |
| 282               | Shepherd          | Answers, yes, one could make the same objection to the language in those provisions.   |
| 297               | John Powell       | Oregon State Sheriff's Association. Submits testimony and testifies in opposition to HB 2047 <b>(EXHIBIT C)</b> .  |
| 307               | Sheriff Burrigh   | Linn County. Testifies in opposition to HB 2047.   |
| 356               | Captain Montenaro | Klamath County Sheriff's Office. Testifies in opposition to HB 2047.   |
| 379               | Lt. Ed Stallard   | Lincoln County Sheriff's Office. Testifies in opposition to HB 2047.   |
| 416               | Powell            | Discusses detentions.  |
| <b>TAPE 42, A</b> |                   |  |
| 005               | Rep. Ackerman     | Asks if they are familiar with any cases in Oregon where the failure to advise a foreign national of his right to communicate with a consular office has been raised in a Miranda hearing.               |
| 011               | Lt. Stallard      | Says that they are not aware of a problem.   |
| 020               | Rep. Krummel      | Inquires about reading of the Miranda rights.  |
| 030               | Montenaro         | Says that there are many signs that advise people of their rights and they are verbally advised of their rights.   |
| 036               | Lt. Stallard      | States that currently there is no advice on the patrol side that takes care of this issue.   |
| 046               | Rep. Krummel      | Asks under Miranda do the rights have to be read at the time of the arrest or at the time of booking.  |
| 050               | Burrigh           | Explains Miranda rights.   |
| 066               | Dale Penn         | Marion County District Attorney. Submits testimony and testifies in opposition to HB 2047 <b>(EXHIBIT D)</b> . Explains that they oppose Sections 1 and 3 because it will increase litigation in Oregon. |
| 180               | Chair Williams    | Asks if the treaty uses the words "custody" or "arrest" or limits the discussion to "detain."  |
| 215               | Rep. Barker       | Points out that in other countries "detention" means locking them up.  |
| 230               | Taylor            | Explains that when they were drafting the bill, they tried to be consistent with the treaty so used the word "detain".   |
| 239               | Penn              | States that he does not think we should be making legislation for this issue at this time.   |
| 270               | Ingrid Swenson    | Oregon Criminals Defense Lawyers Association. Testifies on HB 2047.  |
| 411               | Rep. Shetterly    | Asks if there are remedies under federal law, like a uniform federal standard.   |
| <b>TAPE 41, B</b> |                   |  |
| 005               | Swenson           | Answers that she is not sure, but that this treaty is nearly 40 years old and it's only recently that people have attempted to implement it appropriately. Adds that this law should not be disregarded. |
| 013               | Taylor            | Explains the reasons that subsection (2) of Section 1 was put in the bill.   |
| 031               | Andrea Meyer      | American Civil Liberties Union of Oregon. Submits testimony and testifies in opposition to HB 2047 <b>(EXHIBIT E)</b> .  |
| 100               | Rep. Macpherson   | Asks if the warning would be given only to foreign nationals.  |
| 107               | Meyer             | Says that law enforcement does not want to be put in the position of racial profiling so she believes that anyone taken in would be alerted to their rights.   |
| 115               | Rep. Barker       | Wonders how they would know if they are truly foreign nationals  |

120 Swenson and how would the patrolmen deal with this.  
Says that this is a problem under current law and is not being created by this statute.

141 Rep. Barker Comments that there seem to be some confusion on when law enforcement officials need to notify foreign nationals of their rights.

150 Swenson Clarifies that foreign nationals would be notified with their Miranda rights.

162 Rep. Ackerman Comments that he is concerned about the analysis of this bill being an empty right. Believes that this is the grant of a statutory right.

175 Swenson Says that by statute it doesn't create a ground for suppression.

188 Karen Steele Attorney, Mexican Consulate. Testifies on HB 2047.

212 Chair Williams Closes the public hearing on HB 2047 and opens a public hearing on HB 2091.

**HB 2091 PUBLIC HEARING**

218 Timothy Travis Judicial Department. Submits testimony and testifies on HB 2091 which conforms Oregon law to Vienna Convention on Consular Relations (**EXHIBIT F**). Discusses the -1 amendments (**EXHIBIT G**).

305 Rep. Ackerman Asks how one determines if a child is a foreign national.

319 Travis Says that the information is provided by the petitioner.

300 Rep. Macpherson Inquires about the consequence of failure to notify the consulate and if that would invalidate the proceeding.

334 Travis States that the text of Article 37 (b) covers that problem.

348 Bill Taylor Committee Counsel. Informs the committee of a letter from Mickey Serice, Department of Human Services (**EXHIBIT H**).

361 Chair Williams Closes the public hearing on HB 2091 and opens a work session on HB 2111.

**HB 2111 WORK SESSION**

361 Bill Taylor Committee Counsel. Discusses HB 2111 which makes decree or order final judgment as to any child support or spousal support payment that accrues up to time party is served with motion to set aside, alter or modify decree or order. Discusses the -1 amendments (**EXHIBIT I**) and -2 amendments (**EXHIBIT J**).

406 Ronelle Shankle Testifies on HB 2111 and discusses memo regarding -1 amendments from the Department of Justice (**EXHIBIT K**).

**TAPE 42, B**

003 Shankle Continues her testimony on HB 2111.

012 Russ Lipetsky Attorney, Salem. Testifies in support of HB 2111 and -2 amendments (**Exhibit J**).

028 Shankle Says that they are neutral on the -2 amendments (**EXHIBIT L**).

**030 Rep. Shetterly MOTION: Moves to ADOPT HB 2111-1 amendments dated 02/12/03.**

**VOTE: 9-0-0**

**033 Chair Williams Hearing no objection, declares the motion CARRIED.**

**039 Rep. Shetterly MOTION: Moves to ADOPT HB 2111-2 amendments dated 02/12/03.**

**VOTE: 9-0-0**

**042 Chair Williams Hearing no objection, declares the motion CARRIED.**

**046 Rep. Shetterly MOTION: Moves HB 2111 to the floor with a DO PASS AS AMENDED recommendation.**

**VOTE: 9-0-0**

**050 Chair Williams AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.**

059 Chair Williams **REP. BARKER will lead discussion on the floor.**  
Closes the work session on HB 2111 and opens a work session on HB 2113.

**HB 2113 WORK SESSION**

061 Bill Taylor Committee Counsel. Introduces HB 2113 which limits disclosure of child support enforcement information. Discusses -1 amendments (**EXHIBIT M**).

070 Ronelle Shankle Department of Justice. Points out memo from her department regarding -1 amendments (**EXHIBIT N**).

082 Rep. Shetterly Asks if she has seen Layne Barlow's testimony (**EXHIBIT O**).

084 Shankle Says that she has not seen the letter given to the committee, but talked with him by phone last week. Looks at letter and discusses their conversation with Barlow.

123 **Rep. Barker** **MOTION: Moves to ADOPT HB 2113-1 amendments dated 02/17/03.**  
**VOTE: 9-0-0**

130 **Chair Williams** **Hearing no objection, declares the motion CARRIED.**

138 **Rep. Barker** **MOTION: Moves HB 2113 to the floor with a DO PASS AS AMENDED recommendation.**  
**VOTE: 9-0-0**  
**AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.**

140 **Chair Williams** **REP. PROZANSKI will lead discussion on the floor.**

142 Chair Williams Closes the work session on HB 2113 and adjourns the meeting at 2:44 p.m.

### **EXHIBIT SUMMARY**

**A – Memo, submitted by Bill Joseph, committee counsel, regarding National Institute of Corrections Curriculum, 2/17/03, 2 pgs.**

**B – HB 2047, written testimony, submitted by Deputy Attorney General Pete Shepherd, 13 pgs.**

**C – HB 2047, written testimony, submitted by John Powell, 2 pgs.**

**D – HB 2047, written testimony, submitted by Dale Penn, 1 pg.**

**E – HB 2047, written testimony, submitted by Andrea Meyer, 2/17/03, 2 pgs.**

**F – HB 2091, written testimony, submitted by Timothy Travis, 1/14/03, 21 pgs.**

**G – HB 2091, -1 amendments, submitted by staff, 1/20/03, 6 pgs.**

**H – HB 2091, written testimony, of Mickey Serice, submitted by staff, 2/17/03, 1 pg.**

**I – HB 2111, -1 amendments, submitted by staff, 2/12/03, 1 pg.**

**J – HB 2111, -2 amendments, submitted by staff, 2/12/03, 1 pg.**

**K – HB 2111-1, written testimony, submitted by Ronelle Shankle, Department of Justice, 2 pgs.**

**L – HB 2111-2, written testimony, submitted by Ronelle Shankel, Department of Justice, 1 pg.**

**M – HB 2113, -1 amendments, submitted by staff, dated 2/17/03, 2 pgs.**

**N – HB 2113-1, written testimony, submitted by Ronelle Shankle, Department of Justice, 2 pgs.**

**O – HB 2113, written testimony, of Layne Barlow, submitted by staff, dated 2/17/03, 1 pg.**