

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON CRIMINAL LAW

March 13, 2001
8:30 a.m.

Hearing Room 357
Tapes 35 - 37

MEMBERS PRESENT: **Rep. Max Williams, Chair**
 Rep. Robert Ackerman
 Rep. Jo Ann Bowman
 Rep. Wayne Krieger
 Rep. Lane Shetterly
 Rep. Vicki Walker
 Rep. Carl Wilson

STAFF PRESENT: **Bill Taylor, Counsel**
 Patsy Wood, Office Coordinator

MEASURE/ISSUES HEARD: **HB 2008 Public Hearing**
 HB 2853 Public Hearing
 HB 2884 Public Hearing
 HB 2860 Public Hearing
 HB 2887 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.

TAPE/#	Speaker	Comments
TAPE 35, A		
003	Chair Williams	Calls the meeting to order at 8:35 a.m. Opens a public hearing on HB 2008.
<u>HB 2008 PUBLIC HEARING</u>		
009	Rep. Mark Simmons	Speaker of the House Testifies in support of HB 2008 which increases penalties for littering on beaches. Describes the littering he has encountered in different parts of the state.
049	Joe Easley	Oregon Trawl Commission Testifies as neutral to HB 2008. Expresses his concerns about the language being subjective. Mentions that he would like an exception for fishing gear.
079	Chair Williams	Responds that he feels language could be found to ease the concerns regarding fishing gear (annex 7 – maritime section of UN). Says that Terry Thompson also wanted to testify on this bill so it will be heard again on Thursday.
099	Rep. Shetterly	Asks counsel why the preamble on HB 2008 does not appear in bold print.
110	Counsel Taylor	Says he doesn't know, but can look into it.
114	Chair Williams	Wonders if only the words after "be it enacted" are bolded.
119	Counsel Taylor	Refers to (b) line 1 on page 2 for clarification.

138	Easley	Says that things can drift in the ocean for 20-30 years.
145	Chair Williams	Closes the public hearing on HB 2008 and opens a public hearing on HB 2853.
<u>HB 2853 PUBLIC HEARING</u>		
153	Counsel Taylor	Introduces HB 2853 which changes crime of assault in fourth degree committed under specified circumstances to crime of assault in third degree.
167	Phil Lemman	Executive Director, Criminal Justice Commission States they have no position on the bill. Says keeping the current structure allows for convictions to be tracked so they know the exact impact of the sentencing.
186	Rep. Bowman	States her thoughts regarding last session when the penalty was increased for domestic violence if the child was present.
191	Lemman	Says he isn't sure.
193	Rep. Shetterly	Comments that ORS 163.160 holds that notwithstanding (2), which is a class two misdemeanor, is still an assault four but becomes a class C felony if assault is committed in the immediate presence of or witnessed by a minor child or stepchild.
204	Lemman	Says there was something done with "witnessed" and "in the presence".
212	Gina Skinner	Oregon District Attorney's Association Testifies as neutral to HB 2853. Clarifies that the felony language was changed in 1997 to include small children too young to testify. States that assault in the third degree is a waivable offense. Says this statute is designed to deal with juveniles in domestic violence situations so the juvenile could be waived to adult court.
256	Rep. Bowman	Asks if the purpose of this bill is to try 15-17 year olds as adults.
259	Skinner	Responds that there is confusion in the criminal justice system concerning assault four and this legislation changes it to a waivable offense.
295	Counsel Taylor	Explains what Judge Murphy's attempt was for this legislation and asks if this bill makes it harder or easier to waive a juvenile to adult court.
303	Skinner	Says this makes it easier and explains the current statute.
334	Kathie Osborn	Juvenile Rights Project Testifies in opposition to HB 2853. Describes a reoccurring incident involving a juvenile in a domestic violence situation where the mother repeatedly pressed charges of assault (falsely), and this bill would have waived him to adult court.
403	Rep. Bowman	Refers to line 10, back page, and asks if the person has to be at least 18 years of age. Asks if the shift from a misdemeanor to a felony conviction is what creates the potential for the waiver.
411	Counsel Taylor	Responds that he doesn't know.
413	Osborn	Explains which statutes/crimes allow a juvenile to be waived to adult court.
440	Rep. Bowman	Refers to page 2 (j) and asks if one of the three conditions have to be met.
448	Chair Williams	Replies yes.
452	Chair Williams	Closes the public hearing on HB 2853 and opens a public hearing on HB 2884.

HB 2884 PUBLIC HEARING

010	Rep. Deborah Kafoury	House District 18 Testifies in support of HB 2884 which authorizes entities to request criminal offender information from the Department of State Police. This bill covers the entire cost and clarifies definition of mentoring and tutoring.
030	Wendy Hunt	Gresham Police Department Testifies in support of HB 2884.
045	Lt. Cliff Daimler	Oregon State Police (OSP) Testifies in support of HB 2884 and speaks to Section 1 of HB 2884, and the cost of fingerprinting.
072	Chair Williams	Mentions the -2 amendments (EXHIBIT A) and asks if these were sponsored by Rep. Kafoury.
076	Rep. Kafoury	Responds yes.
078	Chair Williams	Asks about the expense.
094	Lt. Daimler	Explains the fiscal impact and that there would be no fee charged to a non-profit agency.
102	Rep. Shetterly	Refers to page 3 of the -2 amendments (5) and wonders if the legislature can dictate to the FBI.
109	Counsel Taylor	Responds that he doubts that we can.
113	Rep. Shetterly	Asks how this relates to legislation passed in the 1999 session.
119	Rep. Kafoury	Explains the difference between last session's legislation and HB 2884.
133	Chair Williams	Tells why the non-profit, one-on-one mentoring groups were chosen for waiving the fees.
154	Rep. V. Walker	Notes how this bill pertains to elderly and disabled persons.
159	Rep. Lowe	Refers to page 4, lines 6-8, and wonders about excessive requests.
167	Lt. Daimler	Says that is included in the bill, but excessive money requests could go to the E board.
182	Rep. Kafoury	States that they don't anticipate a large number of these.
186	Rep. Ackerman	Refers to the -2 amendments and asks if there was any input regarding immunity submitted by Rep. Kafoury's group.
191	Lt. Daimler	Says that the OSP commented, but there wasn't additional input.
197	Rep. Ackerman	Asks that it be noted qualified immunity that is granted is consistent with article one, section ten of the constitution.
221	Bruce Bishop	Coquille Tribal Gaming Commission Submits testimony and testifies in support of HB 2884 (EXHIBIT B). Says the tribal authorities have been seeking the authority to get background checks through the Oregon State Police. Believes that the -2 amendments would address the tribe's concerns.
265	Chair Williams	Asks by what basis the Governor's office determined that tribal governments weren't entitled to the information.
270	Bishop	Responds that there was a narrow interpretation of the statutes.
279	Chair Williams	Talks about the tribe being their own entity and therefore limited to Law Enforcement Data Systems (LEDS) checks. Asks if tribal police agencies (like the Warm Springs) are limited in their access to LEDS.
297	Bishop	Believes that tribal law enforcement does have access to LEDS for casino worker checks. States that in the case of the Coquille tribe the gaming commission is able to access information for

308	Chair Williams	the employees of the casino but not for other tribal programs. Recommends that a reference to tribal organizations in this legislation be specific.
319	Bishop	Agrees.
323	Andrea Meyers	American Civil Liberties Union (ACLU) Testifies as neutral to HB 2884 with the –2 amendments. Stresses that their original concern had to do with the return of fingerprints. Notes two scribner’s errors in the amendments – pg. 3 Section 5, and subsection 6.
370	Rep. Shetterly	Takes issue with Section 5 of the –2 amendments and line 16 says “if the bureau policy is changed”, but that the statute doesn’t expressly say what the policy is now.
398	Meyers	Agrees that the policy should be stated, but her main concern is keeping a database of fingerprints by the FBI.
420	Chair Williams	Asks for OSP clarification of Sections 5 and 6 stating that the current policy is not known.
TAPE 35, B		
009	Lt. Daimler	Explains that the FBI has to return the cards, but to save postage they destroy them (according to federal statute).
020	Rep. Shetterly	Says the statute could be tied to the federal statute explaining that process. Suggests additional language referencing the federal statute.
033	Lt. Daimler	Does not object to that additional language. Says that the OSP does not have the resources to maintain those cards so they would be destroyed if returned.
039	Bill Houser	Oregon Criminal Defense Lawyers Association (OCDLA) Testifies as neutral to HB 2884.
047	Chair Williams	Closes the public hearing on HB 2884 and opens a public hearing on HB 2860.
<u>HB 2860 PUBLIC HEARING</u>		
055	Chair Williams	Announces that HB 2860 which allows the court to set aside conviction of record of arrest for municipal traffic offenses will be coming back to the committee because one of the witnesses was unable to testify today.
067	Bill Houser	Oregon Criminal Defense Lawyers Association (OCDLA) Testifies in support of HB 2860.
075	Gina Skinner	Oregon District Attorneys Association (ODAA) Testifies in opposition to HB 2860, as it would relate to diversion programs and suspension of a license.
134	Rep. Bowman	Expresses her confusion of DUII going through municipal or county court.
139	Skinner	Explains that many people are involved in making that decision – the city, the county, or the officer citing the violation.
169	Rep. V. Walker	Asks if Salem is the only city who does this sort of thing.
171	Skinner	Responds that she cannot comment on other cities, because she is not aware of what they do.
184	Rep. V. Walker	Asks if DUII was exempted from this bill, would they still be in opposition.
189	Skinner	Says the DUII is their primary opposition to this bill.
196	Rep. Shetterly	Comments that he wasn’t aware that Salem had its own DUII ordinance saying that Dallas cites to the city court.
207	Skinner	Believes there is someone here better qualified to comment on

		the questions.
227	Rep. Wilson	Explains his concern that expunction could apply to, has worse crimes that a municipal traffic offense.
245	Skinner	Responds that the DUII statute compounds leading to a prison term.
261	Rep. Wilson	Feels that the comparison for expunction is important.
276	Rep. Krieger	Wonders whether the imposed fine goes into city court or county court.
282	Skinner	Answers that she doesn't know for sure, but explains the fine structure in Salem.
314	Carl Myers	Oregon Municipal Judges Association Testifies as neutral on HB 2860. Says it is unclear what a "municipal traffic offense" is. Says the City of Keizer prosecutes all offenses under the state statutes. Says that state traffic offenses should be expunged as well as municipal and explains why the bill is really unneeded. Explains that traffic offenses eventually get expunged, unlike more serious crimes that Rep. Wilson was concerned about. Notes that the process for expungement will be costly for the local jurisdictions.
TAPE 36, B		
015	Myers	Continues to testify as neutral on HB 2860 and talks about the motion to set aside being discretionary.
038	Rep. Wilson	Asks if an individual's driving record past 3 years can be viewed.
041	Myers	Answers no.
049	Christie Munson	League of Oregon Cities Describes how many cities now handle traffic offenses in the state. Addresses her concern about the expense of expunging records.
078	Rep. Lowe	Wonders if the city can impose a filing fee to include the cost of expunging the record.
083	Munson	Says there is a filing fee in this statute. Says, however, the expenses would still be increased.
092	Chair Williams	Closes the public hearing on HB 2860. Announces that HB 2560 will be held over for further amendments. HB 2404 will be held over as well as HB 2343. Opens a public hearing on HB 2887.

HB 2887 PUBLIC HEARING

111	Rep. Jo Ann Bowman	House District 19 Submits testimony and testifies in support of HB 2887 which requires a peace officer when making stop to provide person stopped with business card containing officer's name, information about agency employing officer and process for filing complaint (EXHIBIT C).
158	Rep. Ackerman	Understands the statute as authorizing stops rather than providing probable cause. Asks if that is her understanding also.
161	Rep. Bowman	Says that the authority of officers was broadened in 1997 which now needs to show probable cause.
170	Rep. Ackerman	Asks if the card should be delivered by the officer not only in stops, but whenever the stop results in an arrest.
173	Rep. Bowman	Responds no. Says that if an officer is called to a situation, he doesn't need to provide the business card. If the officer initiated a stop, and the stop did not result in an arrest, the officer would

184	Rep. Ackerman	then need to issue a card. Wonders if an officer has to deliver the card if he has probable cause to make an arrest.
188	Rep. Bowman	Says no.
191	Rep. Krieger	Asks what cities do this now.
192	Rep. Bowman	Answers Lane County, the City of Eugene, and believes the City of Salem.
198	Rep. Krieger	Asks if data has been compiled.
202	Rep. Bowman	Says it was too complicated to collect data around the state, but an area targeted for data collection did not show valuable information.
225	Rep. V. Walker	Says that the Governor's budget allocates \$300,000 and says HB 2441 is her bill. Says Utah did this in reference to their data collection.
242	Rep. Bowman	Responds that she is correct. Feels that this bill would lessen the number of complaints against police officers. States for the record, the figure of \$500,000 mentioned earlier, should be \$300,000.
273	Rep. Lowe	Wonders what data is now available showing this would reduce complaints. Wonders if there is legislation for a municipality who receives these complaints to keep track of that data.
285	Rep. Bowman	Responds that each agency has a process for keeping track of citizen complaints. Tells about her conversations with police officers that give out their business cards having fewer complaints.
329	Bill Houser	Oregon Criminal Defense Lawyers Association (OCDLA)
276	Kathie Osborn	Testifies in support of HB 2887. Juvenile Rights Project Testifies in support of HB 2887 saying that this procedure would make for better relations between juveniles and police officers. Feels that there is a problem in Portland with police officers acting inappropriately and feels handing out business cards would reduce this situation.
TAPE 37, A		
008	Rep. Lowe	Suggests that the business card could include a picture of the officer.
025	Capt. Bob Smit	Oregon State Police Testifies that many officers live in their communities so there would be a significant cost to hand out cards to their neighbors. Asks for clarification of exactly who is to receive these business cards. Expresses concern about the undercover operations not wanting to give out their business cards. Says that all complaints that they receive are investigated.
084	Lt. Malcolm Lewis	Internal Affairs, Oregon State Police Wonders what will be articulated after the business cards are given out and will giving the business cards change anything.
107	Mark Landauer	City of Portland Expresses his concerns about HB 2887 and discusses how the City of Portland currently handles complaints. Provides a cost estimate for creating business cards for the City of Portland officers of \$37,500.
138	Brian DeLashmutt	Oregon Council of Police Associations

		Comments that the language in HB 2887 was unclear. Expresses his concerns about undercover operations having to give out cards. Notes that in rural or small communities, everyone in town knows the police officers. Says that they would adamantly oppose pictures on cards because that could lead to targeting.
169	Rep. Bowman	Asks if there is currently a policy to give an officer's name if asked.
174	Landauer	Says he does not know.
175	Capt. Smit	Says yes.
179	DeLashmutt	Says yes.
183	Rep. Bowman	Describes situations where she has asked officers for their name and they have refused to give it. Says the issue of undercover officers can be addressed. States this legislation is not as broad as many have interpreted it to be.
212	Rep. Lowe	Explains why she feels pictures on the cards could be valuable.
218	Chair Williams	Closes the public hearing on HB 2887 and adjourns the meeting at 10:37 a.m.

Submitted By,

Reviewed By,

Patsy Wood
Office Coordinator

Bill Taylor,
Counsel

EXHIBIT SUMMARY

A – HB 2884-2 amendment, submitted by staff, dated 3-12-01, 4 pgs.

B – HB 2884, testimony submitted by Bruce Bishop, Coquille Tribal Gaming Commission, dated 3-13-01, 10 pgs.

C – HB 2887, testimony submitted by Rep. Jo Ann Bowman, House District 19, dated 3-13-01, 2 pgs.