

SENATE JUDICIARY COMMITTEE

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February 28, 2001 Hearing Room HR F
5:00 p.m. Tapes 77-79

MEMBERS PRESENT: **Sen. John Minnis, Chair**
 Sen. Peter Courtney, Vice-Chair
 Sen. Roger Beyer
 Sen. Ginny Burdick
 Sen. Verne Duncan
 Sen. Steve Harper
 Sen. Rick Metsger

STAFF PRESENT: **Bill Taylor, Counsel**
 Shannon Reed, Committee Assistant
 Patsy Wood, Office Coordinator

MEASURE/ISSUES HEARD: **SB 294 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 77, A 003	Chair Williams	Calls the meeting to order at 5:05 p.m. Opens a public hearing on HB 2393 that enacts the Interstate Compact for adult offender supervision.
<u>HB 2393 PUBLIC HEARING</u>		
030	Kermit Humphries	National Institute of Corrections (NIC) Submits testimony and testifies in support of HB 2393. Explains the dynamics of the Interstate Compact for Adult Supervision (which must be passed by 35 states before it can take affect) for the movement of adult offenders from state to state (EXHIBIT A).
080	Humphries	Discusses the advisory group and its conclusion that the old Interstate Compact would need to be replaced. Describes the resultant drafting group to proceed with re-drafting the Compact. Says the cost issue needed further exploration. Comments that there is no data on the probationer and parolee population. Mentions that the new Compact will take into account the role of victims.
142	Humphries	Describes the Parole & Probation Compact Administrators' Association (PPCAA) as a voluntary organization that sets up a state commission and state council.
170	Rick Masters	Council Of State Governments Testifies in support of HB 2393. Says that Oregon is a member

of 10 other compacts and names those compacts (**EXHIBIT B**). Mentions the fees that are paid for dues among the various compacts. Says this Interstate Compact is not new, but an update of the existing compact.

248	Masters	States that there are several defects in the existing compact that prevent it from being meaningfully enforced. Describes some of the defects, and therefore the reason for the update.
325	Masters	Continues to describe changes between the current and the revised compact with regard to constitutional issues.
354	Chair Williams	Asks for clarification on a particular case where a felon was sent from New Jersey to Colorado.
365	Masters	Clarifies that the inmate was from Maryland and describes his release under the terms of probation to a drug treatment program in Colorado.
378	Chair Williams	Asks if Colorado had no knowledge of this person's movement, if that would mean that Maryland violated the Compact.
380	Masters	Agrees that Maryland violated the compact and tells what happened in Colorado when this offender murdered someone in Colorado.
400	Chair Minnis	Wonders about the administrative placement of the Compact Administrator.
410	Masters	Says that the Compact has been so well hidden in many states that there are unqualified people making decisions about what types of people are being transferred, and feels the new revision will help to identify a state council as an advisory group.
434	Chair Minnis	Discusses the large number of sex offenders who are now incarcerated and the concern of transferring these people between states as well as into the communities.
455	Humphries	States that some of the specialized populations are not covered by the existing Compact, but will be by the new one.
TAPE 78, A		
015	Rep. Bowman	Asks if the new compact would cover 15, 16 and 17 year olds.
018	Masters	States that if they were adjudicated as an adult, charged and tried as an adult, yes.
020	Rep. Bowman	Wonders if the state is developing another government entity under this bill.
028	Masters	States that the National Commission would be the enforcer. Says that the funds collected would provide support staff to the existing administrative body.
501	Rep. Bowman	Asks if the \$25,000 that Oregon would pay would be for the national committee, and asks about a local committee.
049	Masters	Says only if the legislature decides to do that, and that it is not intended to create another bureaucracy.
060	Counsel Taylor	Clarifies what the State of Oregon is looking at developing with regard to the Compact.
077	Rep. Bowman	Asks if we have to do what the Compact says if this bill passes.
080	Counsel Taylor	Says that is correct.
081	Rep. V. Walker	Asks for a clarification on the ratification of this Compact and the amount of the dues in relation to the number of states participating.
094	Masters	Explains how the dues are figured for the Compact.
110	Humphries	Further explains the funding figure for the Compact.
127	Rep. Wilson	Asks about the relationship between a member state and a non-member state.

130	Masters	Says that a non-member could not participate in rulemaking activities, and could have offenders “dumped” in their state.
139	Sen. Metsger	Discusses Article 5, Article 7, and Article 14; Section 2 of the Compact, and wonders if these Articles would override Oregon’s legislation.
153	Masters	Says only if there was a conflict between the way in which the Compact did business in the limited area that it focuses on would there be an arguable superseding of the provision.
166	Sen. Metsger	Requests further clarification concerning open public records law.
175	Masters	Describes which would take precedence under particular circumstances.
185	Rep. Lowe	Asks for clarification on the state’s obligations if they enter into this Compact with respect to: <ul style="list-style-type: none"> • Page 8; line 23 regarding data being collected in a certain format.
222	Masters	Says that this is an existing Compact that has already established a set of rules regarding the sharing of information between states.
245	Rep. Lowe	Says that not all agencies can handle the data available.
255	Humphries	Talks about the group handling the data and what is currently being done.
277	Rep. Lowe	Asks if there are information technology specifications.
288	Humphries	Says they are roughly six weeks off.
308	Rep. Lowe	<ul style="list-style-type: none"> • Article 8; page 9 regarding rulemaking authority. • Article 12; line 40 regarding what happens if we don’t comply with the rules.
335	Masters	Says that the outcome could be judicially determined in federal court. States that there are already rules under the existing Compact.
351	Rep. Lowe	<ul style="list-style-type: none"> • Page 12; line 17 regarding the cost of supervision of individuals if the state withdraws from the Compact.
364	Masters	Says that there would be some follow-through involved.
381	Chair Minnis	Refers to page 9, line 12, and asks about the 12-month limit on addressing rules.
388	Masters	Replies that refers to changes, corrections, enhancements to the rules.
400	Chair Williams	Talks about the importance of getting in on the “ground floor”. Says that Oregon sends out more offenders than is received.
421	Counsel Taylor	Talks about the language in the bill that creates a fund and limits our liability.
437	Rep. V. Walker	Wonders if states that don’t participate would be coerced into participation if they get offenders “dumped” on them and wonders if a state can refuse to accept a parolee.
461	Masters	Explains that there is no federal law that would prohibit this. Says the realities of trying to move offenders from one state to another can be difficult at best.
TAPE 77, B		
036	Humphries	Comments that a couple of states have made it a violation to enter the state if not under the Compact, but this may be difficult to enforce. The intent is to establish a system that states can cooperate in.
056	Rep. Shetterly	Stresses the importance of recognizing that the state already

078	Rep. Bowman	operates under an existing Compact. Says that enforcement rights have to be mutual between states for the Compact to work. Talks about the different conditions of parole in various states. Wonders if the receiving state has to follow the rules of the state from which the offender is coming.
092	Humphries	Says that “you supervise as if in the receiving State,” and that each Compact participant would have rulemaking authority.
108	Rep. Bowman	Asks for additional clarification.
114	Humphries	Gives an example of what an Oregon offender might expect if moving to California and requires supervision.
123	Rep. Bowman	Asks for a copy of the administrative rules currently in effect in Oregon.
126	Masters	Says that Oregon should have copies of those rules through our Compact administration.
132	Rep. Lowe	Asks if the new information coordination piece of the computer hardware is in place.
136	Masters	Responds that it is not yet in place, and that it is estimated the cost will be about \$4,000 for the hardware, and that is if there is no computer hardware in place at all.
145	Rep. Lowe	Wonders if there is any federal money to help with this new technology requirement.
153	Masters	Describes what other states are doing in the way of receiving grants from the federal government and private monies.
167	Rep. Lowe	Asks if there is some coordinated effort to assist states in getting grants.
170	Masters	Stresses that the staff of the Commission is available to assist.

177	Rep. Shetterly	Asks if Article 7; page 8 relates specifically to the interstate movement of offenders.
185	Masters	Says that is correct.
204	Everette Dawes	Interstate Compact Manager, Department of Corrections Submits testimony and testifies in support of HB 2393 (EXHIBIT C). States that this bill updates the current Interstate Compact Agreement in which Oregon entered in 1937. Says that there have been many individual modifications resulting in very little uniformity. Mentions the number of offenders that Oregon sends to other states vs. those it supervises.
246	Counsel Taylor	Describes the proposed amendments to HB 2393 (EXHIBIT D).
256	Jeff VanValkenburgh	Department of Justice Testifies as neutral to HB 2393. Discusses the contingent liability and says that the amendments are constitutional. Addresses the specifics of the amendments being addressed by the Department of Justice (Exhibit D). Asks that an emergency clause be attached.
335	Sen. Courtney	Comments that the figures being used by the Department of Corrections are 5 months old.
343	Dawes	Says that is correct.
344	Sen. Courtney	Wonders if Oregon is sending out more offenders “today”.
350	Dawes	Comments that he doesn’t know what the figure would be today. Says that the information was not updated for this presentation.
368	Sen. Courtney	Wonders where the 966 offenders leaving the state are going.
370	Dawes	Says that the majority go to surrounding states – California, Idaho, Washington.
377	Sen. Courtney	Wonders how many offenders coming into Oregon are sex offenders.
378	Dawes	States that he does not have a breakdown of the offenses.
383	Sen. Courtney	Asks if sex offenders are registered in the state.
385	Dawes	States that sex offenders are obligated to register in the state of Oregon.
386	Rep. Bowman	Asks for a copy of the rules currently in effect.
389	Chair Williams	Asks for an updated count on these offenders and an update on the specific offenses.
399	Chair Minnis	Asks if funds could be anticipated in the Department of Corrections budget, and not the Governor’s budget.
405	Dawes	Says that anything is possible, but the funds would have to come from somewhere else in the budget.
428	Sen. Courtney	Asks if the Department of Corrections supports the passage of HB 2393.
431	Dawes	Says yes.
441	Sen. Courtney	Asks what the yearly costs are.
443	Dawes	\$25,000 per year is the estimated portion of Oregon’s obligation.
452	Chair Williams	Asks how much it costs to house a single inmate in Oregon.
459	Claudia Black	Department of Corrections Says it is \$65/day or \$24,000 a year.
482	Counsel Taylor	Informs the committee that Oregon’s ability to amend this Compact is limited—in the sense that it is in the nature of a contract.
498	Chair Williams	Closes the public hearing on HB 2393 and opens a public

hearing on SB 294.

TAPE 78, B

SB 294 PUBLIC HEARING

048	Chair Minnis	Opens a public hearing on SB 294 that ratifies the National Crime Prevention and Privacy Compact.
054	Lt. Clifford Daimler	Oregon State Police Submits testimony and testifies in support of SB 294 (EXHIBIT E & F). States the purpose of the Compact is to authorize participating State criminal history repositories and the FBI to make all unsealed criminal history records available for such purposes as background checks on those seeking employment and providing services to children, the disabled or the elderly. Lists the states that have ratified or are considering ratification of the Compact.
084	Rep. Bowman	Points out that his testimony says the Compact would be “helpful” to those states, but does not say that they “support” the Compact.
089	Lt. Daimler	Clarifies the issue of “support” for this Compact.
104	Chair Minnis	Asks if there is a penalty for non-participation in this Compact.
109	Daimler	States that he is not aware of a monetary penalty, but says there are processing fees.
115	Counsel Taylor	Clarifies that the charges for non-participants are approximately 50% higher.
124	Keith L. Kutler	Department of Justice Responds that counsel is correct.
125	Chair Minnis	Asks if this information also includes arrest information.
127	Kutler	Responds, yes.
131	Chair Minnis	Asks if sharing arrest records is currently done between states.
132	Kutler	Says, yes.
137	Rep. Bowman	Wonders why Oregon is tying arrest data to this national file.
144	Lt. Daimler	Explains that arrest data has always been reported to the FBI.
146	Rep. Bowman	Asks why.
147	Lt. Daimler	States that it has been a historical practice, and that criminal offenders tend to travel from state to state.
154	Rep. Bowman	Wants further clarification on why this information would be turned over to the FBI for a national database – especially if a person has not been convicted of a crime.
165	Lt. Daimler	Explains why this information is given to the FBI. States that the arrest data is the basic foundation of criminal history records nationwide, supported by fingerprints.
185	Rep. Bowman	Asks if the record is destroyed if the person is not convicted.
187	Lt. Daimler	Comments that only if the person makes a formal motion to set aside an arrest.
198	Sen. Burdick	Asks what steps are taken to clarify the information if there is an arrest, but no conviction.
207	Lt. Daimler	States that the “not guilty” information is posted, but not automatically removed from the record.
218	Kutler	Explains that an individual can have the record “sealed” and thereby removed from the state and federal database.
229	Rep. Lowe	Asks about juvenile expungement.
233	Kutler	Says there is a difference between “sealing” arrest records and “expunging” juvenile arrest records.
248	Lt. Daimler	Explains current state policy with regard to juveniles and the

		expunction of records.
271	Rep. Bowman	Asks how much an expungement would cost.
277	Lt. Daimler	Replies that the cost to set aside a conviction is \$80, and there is no fee to set aside an arrest, except for costs incurred by a person making the motion through the district attorney.
284	Rep. Bowman	Wonders if people know that these records are kept for the rest of their life, how to set these records aside and who pays for it.
289	Lt. Daimler	Replies that he does not know the answer to that.
312	Chair Minnis	Explains why the information is needed to find people.
330	Sen. Duncan	Clarifies that he is not worried about fingerprints being on file, but is more concerned about a person being listed as having been arrested.
341	Lt. Daimler	Explains how an expunction record would proceed in the courts.
374	Rep. Krieger	Referring to page 5, Section 2 of the Compact, asks who makes an authorized, non-criminal justice request.
381	Lt. Daimler	Responds that the Department of Human Services could ask for this information to establish the fitness and eligibility of people to be employed or who volunteer around children, elderly or disabled.
402	Ingrid Swenson	Oregon Criminal Defense Lawyers Association (OCDLA) Submits testimony including conceptual amendments and testifies in opposition to SB 294 (EXHIBIT G). Expresses her concerns about the use of arrest information. Says this Compact would supersede state law.
TAPE 79, A		
037	Rep. Ringo	Asks if other states base employment decisions on arrest records.
040	Swenson	States that she is not sure, but says it can be explored. Discusses an arrest case in Portland where the information collected would be detrimental to the individual. Continues to discuss her concerns with this Compact. Describes a potential amendment to SB 294 that is included in Exhibit G.
109	Sen. Burdick	Asks if the proposed amendment would mean the arrest information would be added after a conviction.
114	Swenson	Says yes, because it would be a sealed record not subject to disclosure until there was a conviction.
119	Sen. Courtney	Asks if Oregon keeps arrest records the same length of time as the FBI.
125	Lt. Daimler	Says an arrest/fingerprint card is kept until age 80.
134	Chair Minnis	Explains how any information presented in court becomes public information.
149	Rep. Bowman	Comments that this Compact requires all arrest information to be sent.
157	Chair Minnis	Says that this information has to be requested.
160	Lt. Daimler	Concurs that is correct.
166	Kathie Osborn	Juvenile Rights Project Testifies in opposition to SB 294. Discusses how this national Compact would affect juveniles. Says that juveniles must wait 5 years after getting off probation before their juvenile record can be expunged. States that she supports the proposed amendments in Exhibit G.
210	Chair Minnis	Announces that Harlan Levy, Oregon Association of Realtors, had to leave the hearing, but is in support of SB 294.

218	David Myton	Teacher Standards & Practices Commission Testifies in support of SB 294 and discusses how this arrest information is valuable when hiring teachers. Says that the Law Enforcement Data System (LEDS) is now used to check perspective persons to be hired or licensed.
299	Sen. Burdick	Asks what happens if they come across an arrest with no conviction.
303	Myton	Responds that they send a certified form letter asking for a certified true copy of the court record.
323	Sen. Burdick	Asks for clarification of what is asked of the applicants.
327	Myton	Replies that there are 11 character questions asked of applicants.
345	Kutler	Addresses the proposed amendment by the OCDLA suggesting that the amendment become Section 3 of the bill. Discusses concerns about changes to the Compact making it null.
389	Chair Minnis	Adjourns the meeting at 7:20 p.m.

Transcribed by,

Reviewed By,

Jane Bodenweiser,
Committee Assistant

Bill Taylor,
Counsel

EXHIBIT SUMMARY

- A – HB 2393, written testimony submitted by Kermit Humphries, 9 pp**
- B – HB 2393, reprint of Oregon’s Current Compacts, submitted by staff, 1 p**
- C – HB 2393, written testimony submitted by Everette Dawes, dated 2/28/01, 1 p**
- D – HB 2393, proposed amendments submitted by Department of Corrections, 1 p**
- E – SB 294, written testimony submitted by Lt. Clifford Daimler, dated 2/28/01, 18 pp**
- F – SB 294, reprint of National Crime Prevention and Privacy Compact submitted by Lt. Clifford Daimler, 8 pp**
- G – SB 294, written testimony with proposed amendments submitted by Ingrid Swenson, dated 2/28/01, 3 pp**