

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

February 3, 1999 Hearing Room 357

8:30 a.m. Tapes 24 - 27

MEMBERS PRESENT: Rep. Mannix, Chair

Rep. Prozanski, Vice-Chair

Rep. Bowman

Rep. Gianella

Rep. Hansen

Rep. Simmons

Rep. Sunseri

STAFF PRESENT: John Horton, Counsel

Patsy Wood, Administrative Support

MEASURE/ISSUES HEARD:

**** Discussion of Measure 40 Related Issues ****

HB 2352 Public Hearing and Possible Work Session

HB 2353 Public Hearing and Possible Work Session

HJR 7 Public Hearing and Possible Work Session

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 24, A		

004	Chair Mannix	Calls meeting to order at 8:32 a.m.
<u>HB 2352, HB 2353, HJR 7 CONSOLIDATED PUBLIC HEARING</u>		
023	Counsel Horton	HB 2352 and HB 2353 set provisions on a special election and HJR 7 (formerly known as Ballot Measure 40) consists of 9 separate amendments to the Oregon Constitution.
051	Steve Doell	<p>President, Crime Victims United of Oregon</p> <p>Testifies in support of HB 2352, HB 2353 and HJR 7. Summarizes 11 rights guaranteed to crime victims under Ballot Measure 40. States in 1998 Ballot Measure 40 was found to be unconstitutional on procedural grounds in <u>Armatta v. Kitzhaber</u>. HJR 7 is a recodification of Ballot Measure 40 to comply with the Supreme Court decision that ballot measures need to be voted on separately. States his goal of guaranteeing victim's rights and gives examples where these rights have been ignored. Discusses the lack of victim's rights in the Oregon State Constitution. (EXHIBIT A)</p>
130	Doell	States that 60% of Oregonians voted to amend the Oregon Constitution to protect people's rights. Asks that Oregon voters be allowed the right to decide if the separate amendments in HJR 7 should be included in the constitution.
217	Sarah Zimmerman	<p>Crime Victim</p> <p>Testifies in support of HB 2352, HB 2353 and HJR 7. Relates two separate incidents where a man she had been dating tried to kill her. On September 26, 1998 he tried to kill her in a car launch off I-205 and on December 8 he held her hostage and shot both Sarah and her mother. Sarah lost her eye and a finger in the shooting. States this wouldn't have happened if he hadn't been let out on bail. Explains there should have been a law to hold such a dangerous person in jail while awaiting trial on the first attempt to kill her. (EXHIBIT B)</p>
254	Doell	Speaks to the issue of pre-trial detention and names several groups who support victim's rights. States it would have cost approximately \$15,000 to hold Sarah's boyfriend in pre-trial detention. Instead he was released on bail, attempted to kill Sarah again and shot her mother, and then was shot himself adding even more cost to the incident to take care of him.
283	Rep. Bowman	Where do you draw the line on holding someone in jail until their trial?
309	Doell	States the onus is now on the state to show that the defendant will not re-offend. People won't be denied bail.
346	Rep. Prozanski	States that in Paragraph 3 of HJR 7, the burden of proof by the state has been lowered from clear and convincing to probable cause. Asks Mr. Doell to provide the committee with the constitutional provisions of the 32 states who guarantee victim rights.

369	Doell	States there is a broad spectrum within those states and references the California law.
373	Rep. Prozanski	Asks for clarification on Mr. Doellis statement that Measure 40 returned Oregon to the status that existed in 1982. Gives examples and questions if evidentiary rules were pre-existing prior to 1982.
391	Doell	About 1982 is when the Supreme Court entered into a campaign to re-interpret the State Constitution and changed the laws that had to do with search and seizure and bringing relevant evidence into the courtroom.
413	Chair Mannix	Discusses a 1973 Oregon Supreme Court decision on search and seizure.
428	Rep. Prozanski	States he shares the same concern about protecting all peopleís rights.
TAPE 25, A		
016	Bradley Holliday	Brother of a crime victim Testifies in support of HB 2352, HB 2353 and HJR 7. Discusses brotherís death and how he was a crime victim. States that the cost to keep the defendant in jail prior to trial would have been far less than the cost of keeping the defendant in jail for the rest of his life, and his brother would still be alive if defendant had been kept in jail awaiting trial. (EXHIBIT C)
128	Mona Simons	Sister of a crime victim Testifies in support of HB 2352, HB 2353 and HJR 7. Discusses the incident of a woman murdering her brother. States she was a crime victim and wanted victimís rights. States reasons why constitutional rights need to be afforded to victims. (EXHIBIT D)
259	Doug Beloof	Teaches Law at Northwestern School of Law at Lewis & Clark Testifies in support of HB 2352, HB 2353 and HJR 7. Discusses what happened to exclude the victimís rights and tells why it is important for the victim to participate in the criminal process. Thirty-one states have passed constitutional amendments about victimís rights. Before the Supreme Court struck down Measure 40 in Oregon, it was considered the best victim bill or rights in the nation. States an amendment to the U.S. Constitution is pending for crime victimís rights. Reads the statement of Lawrence Tribe, Harvard Law School, in support of the proposed amendment to the U. S. Constitution granting crime victimís rights.
427	Chair Mannix	Explains the exclusionary rule.
TAPE 24, B		

002	Beloof	Continues to discuss the exclusionary rule.
033	Rep. Prozanski	Would you advocate that we go back to private prosecution?
034	Beloof	No. Gives reasons why he wouldn't go back to private prosecution.
044	Rep. Prozanski	Do you advocate that no matter when an individual's rights have been violated, the exclusionary rule should never be applied?
047	Beloof	No. Gives circumstances when the rule of exclusion is called for.
054	Chair Mannix	States the bills before the committee do not eliminate the exclusionary rules.
059	Beloof	You're correct.
061	Rep. Prozanski	Do you believe in state rights, the right of the state to choose and determine its own destiny outside of the confines of the U. S. Constitution?
064	Beloof	I believe the citizens of this state have the right to pass an initiative that gives crime victims civil rights in this state.
068	Chair Mannix	I think the philosophical question was broader than that; the state is taking an independent view of their own constitutional provisions and interpreting them differently from the U. S. Constitution under the U. S. Supreme Court interpretations.
071	Beloof	The Oregon Supreme Court can interpret it any way they wish, and the people of Oregon have the ability to change the Constitution.
082	Norm Frink	Deputy District Attorney, Multnomah County Testifies in support of HB 2352, HB 2353 and HJR 7. States that these are moderate measures that propose moderate changes to the constitution. Specifically describes the procedural rights granted by this legislation.
172	Rep. Hansen	How many cases would this involve in Multnomah County?
177	Frink	Dozens of cases as opposed to the thousands and thousands of cases prosecuted in Multnomah County that the pretrial detention would affect.
188	Rep. Hansen	How long was Measure 40 in effect?
189	Frink	Three months. The court should consider if people who can make bail, but have

		committed such violent crimes, should be released.
203	Rep. Hansen	Why limit the jury pool to just registered voters?
211	Frink	It was thought that if you did not participate in the political process (vote), you should not be making major decisions in the criminal justice process. There has been no decrease in the diversity of juries shown.
226	Rep. Bowman	Asks about his statement that pre-trial confinement would impact only a couple dozen under HJR 7.
230	Frink	The current language of HJR 7 would not have wide ranging impact on the number of additional people to be detained, but that would be even clearer in the final language.
244	Chair Mannix	You had testified about a few dozen cases being impacted during a year's time. What impact did you see on the numbers during the three months that Measure 40 was in effect?
249	Frink	Five to ten cases during that time.
252	Rep. Bowman	Do you feel there may be more diversity in the jury pool if motor vehicle registration was used rather than voter registration?
260	Frink	Motor voter law may change the diversity.
267	Rep. Bowman	How diverse are jury pools in Multnomah County and how limited are people of color to serve on those jury pools?
271	Frink	Jury pools are limited to registered voters. Feels limiting jury pools to only registered voters has no impact on diversity because anyone can register to vote.
292	Rep. Bowman	During the last legislative session former Supreme Court Justice Peterson spoke about a report released by the Supreme Court addressing disparity in the criminal justice system. One issue debated heavily was the limited diversity of juries if they were limited to just registered voters.
307	Chair Mannix	Asks Counsel Horton to get the voter registration figures to see if they show racial characteristics.
311	Frink	They do not.
316	Chair Mannix	Asks Counsel Horton to check if there is information available on the impact of the statute limiting juries to registered voters.

324	Rep. Prozanski	Discusses the jury pool being reduced since it has been limited to only registered voters.
347	Chair Mannix	We will gather any information available regarding reduction to the jury pool.
349	Rep. Bowman	States that a bill was passed in 1989 to use DMV records as well as voter records for jury pools. If we look at previous records, we may see a change in diversity of jury pools.
362	Dale Penn	<p>Oregon District Attorney's Association</p> <p>Testifies in support of HJR 7. This bill is the number one priority of the District Attorney's Association because the voters have already approved all these measures. They should be allowed to individually review these measures and vote once again. Discusses why HJR 7 should be included in the Constitution. Explains that there have been statutes passed addressing reform in the criminal justice system, but these are not being followed in the court system. Discusses how SB 936 is not being followed with respect to victim's rights. States because the statutes are not being followed, the only recourse is to put these statutes in the Constitution.</p>
TAPE 25, B		
007	Penn	States HJR is a technical measure and gives an example of the benefits to the public, to victims and to the State if the legislation is passed. Describes the term "use immunity", which would be allowed under HJR 7, and gives an example.
060	Rep. Bowman	Has anyone looked at the constitutionality of these measures being proposed to the voters?
064	Penn	Discusses referring this legislation back to the people on an individual basis, section by section.
081	Frink	Discusses the constitutionality of Measure 40.
096	Rep. Hansen	Because some of the language in HJR 7 is so technical, would it make sense to deal with each section by statute?
111	Penn	The U. S. Supreme Court stated that the use immunity concept does not violate the 5 th Amendment right of self-incrimination or any other U.S. Constitutional right. However, the Oregon Supreme Court has said that use immunity violates the Oregon Constitution. States the legislature had passed a statute to allow for use immunity, but the Oregon Supreme Court considered it unconstitutional. The only way to get this concept into law is for the Oregon citizens to vote it into the Oregon Constitution

138	Doell	Discusses how the states that border Oregon allow certain evidence that Oregon does not allow. Only the risk of flight is taken into account in Oregon when determining the release of a defendant. In Washington they look at how dangerous the person is, the severity of the crime that they committed, their chances to re-offend, etc. We are not taking away defendant's rights, just asking for a level playing field by giving victims the same rights.
193	A. Sue Guthrie	Defense Lawyer Expresses her concern that there is no interpreter for Spanish-speaking individuals who might be attending the hearing today.
220	Chair Mannix	States that if anyone wanted to testify in any language other than English, or needed interpretation of what was being said in the hearing, an interpreter would be arranged for them.
228	Guthrie	Testifies in opposition to HJR 7. States that the victims who have spoken today gave moving testimony, but they are the minority. States that many of the people she represents have been accused without being perpetrators of a crime. Gives instances of cases where defendants were unfairly accused because they were Spanish-speaking. She feels these people are the victims in these cases. States her concern with creating new felonies and gives examples. Feels if judges are not following these statutes now, then they won't follow them as constitutional amendments either.
TAPE 26, A		
017	Guthrie	States that the ballot measure should be named by the Secretary of State. Gives examples of rights that victims already have in Marion County. This bill makes it easier for vindictive, unstable or attention-seeking people, who may claim victimhood, to ruin the lives of other people.
047	Eric Thompson	Testifies against HJR 7. States he and his brothers have never committed a crime, but because of the color of their skin, they fit a criminal profile to arrest first and ask questions later. States he has been pulled over by the police a disproportionate number of times compared to Caucasian men the same age. This measure states that you're presumed guilty before the trial begins by leaving out the presumption of innocence until proven guilty. As several other people stated previously, it is a very technical piece of paper. HJR 7 does not give victims more rights, it just makes more victims.
161	Rep. Bowman	What was the outcome of your nephew's case?
164	Thompson	My nephew was eventually released after the charges were found to be false. States his nephew lost two weeks of his life being incarcerated, but nothing happened to the girl who falsely accused him.
182	Rep. Bowman	Your nephew was in jail for 2 weeks?

184	Thompson	About two weeks totally under court supervision.
185	Rep. Bowman	The judge didn't want to pre-trial release him because of the severity of the charges against him?
189	Thompson	Yes, and he had no prior criminal record whatsoever.
190	Rep. Bowman	You stated the charges were eventually dropped, but the district attorney did not make charges against the person who falsely accused your nephew.
194	Thompson	Yes.
195	Rep. Bowman	How many times have you been stopped in Marion County by law enforcement?
196	Thompson	Over 7 times in the last 2 years, resulting in 1 ticket.
198	Rep. Bowman	Out of those 7 times, 6 times you were released with no additional interaction?
201	Thompson	Explains what kinds of questions were asked on the 6 occasions when he was stopped without being cited.
208	Chair Mannix	Was the person who made this false accusation, personally known by your nephew?
209	Thompson	Yes, it was an acquaintance.
210	Chair Mannix	Was it a woman or a man?
210	Thompson	It was a young woman.
214	Robert Thompson, Jr.	<p>Father of young man falsely accused.</p> <p>Testifies in opposition to HJR 7. States the prosecutor's office saw this as a high-profile case that would make them look good by prosecuting this young man to the fullest extent of the law. When we finally did get to see the judge, there was no paperwork, nothing from the district attorney or from the police. The District Attorney's office said because this was a high-profile case and because of the severity of the crime, the accused had to be held over until something else was discovered. States when he was 17 in Salem, he was pulled over by the police at least twice a week just to find out what he was doing. After the age of 30, being pulled over by the Police stopped. His younger sons are now going through the same treatment he did as a young black man in Salem.</p>

288	Chair Mannix	Was your son qualified for the indigent defense program for an appointed attorney?
291	Thompson	He probably was, but I did not trust my son's life to that.
293	Chair Mannix	States that \$117 million is being spent this biennium to pay for indigent defense, but in your case you chose to hire your own attorney?
297	Thompson	Yes. Would you trust your son to that?
299	Chair Mannix	No.
300	Thompson	States his children are the most important things in his life and that is what brought him here today. Feels that because he had the money to get involved in the system, his son was released.
319	Chair Mannix	What was the charge that was brought against your son?
320	Thompson	Rape, kidnapping, menacing, burglary ñ everything that they could find.
325	Chair Mannix	What if one of your daughters said that someone had raped her, had menaced her, had kidnapped her, and burglarized her residence, what would you want the police to do in response?
329	Thompson	I would want them to do a thorough investigation.
333	Chair Mannix	There is no indictment sought by the Grand Jury?
334	Thompson	Once the Grand Jury saw it, they did nothing about it.
335	Chair Mannix	States that the Grand Jury process traditionally is to serve as a citizen protection against false charges and would not indict unless there was probable cause. Your problems sound like they came prior to the Grand Jury hearing. Your son was held for 9 days?
343	Thompson	Somewhere around 9 days. My son became extremely depressed after this incident. Asked if his son qualified for victim's assistance. When I tried to get my son's file closed, I was told I owed \$119.
368	Chair Mannix	The real focus here is the pre-trial detention where your son was held for 9 days.
376	Thompson	Discusses how devastating this has been to his very close-knit family.

TAPE 27, A

003	Rep. Bowman	How has this experience impacted your family? Are the warnings you give your kids now when they walk out the door different from the warnings you gave them before this incident?
009	Thompson	I've always told my kids that they are different; that they have to be better than everyone else because of the color of their skin. I physically had to know where my children were at all times so they wouldn't get wrongly accused of something.
031	Rep. Bowman	You said you have five children?
032	Thompson	Yes.
032	Rep. Bowman	Are all of them 17 years or older?
032	Thompson	Yes.
033	Rep. Bowman	Are the instructions you give your daughters different from those you give your sons?
035	Thompson	They all have the exact same instructions.
040	Rep. Bowman	This isn't the first time I've heard stories about men of color being stopped on a regular basis, especially in the Salem and Eugene area. My point is, are your instructions when your children leave the house different for males v. females?
048	Thompson	Yes. I don't ever remember telling my daughters how to deal with the police. Relates incident of what happened to his son.
054	Rep. Bowman	Did law enforcement ask for consent to search his vehicle?
054	Thompson	They asked, he said no, and they searched anyway.
060	Bruce Thompson	Uncle of young man falsely accused Testifies in opposition to HJR 7. As a black man, I feel I am treated differently by the police and the justice system. Describes a publication by Justice Peterson showing minorities are stopped and detained more by the police. Between the ages of 16-25 I was pulled over 50-60 times and never got a ticket. But after reaching age 30 the police didn't put me into the profile of a young black man who is pulled over regularly just to see what he is doing

109	Rep. Hansen	Before I was 25 years old, I was pulled over around 30 times with only 4 violations. Maybe the bias is against youth, not just young blacks.
126	Chair Mannix	Adjourns meeting at 11:02 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2352, HB 2353 and HJR 7, written testimony of Steve Doell, Crime Victims United dated 2/3/99, 3 pgs.

B - HB 2352, HB 2353 and HJR 7, written testimony of Sarah Beth Zimmerman, dated 2/3/99, 2 pgs.

C - HB 2352, HB 2353 and HJR 7, written testimony of Bradley D. Holliday, dated 2/3/99, 2 pgs.

D - HB 2352, HB 2353 and HJR 7, written testimony of Mona Simons, dated 2/3/99, 3 pgs.