

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

February 4, 1999 Hearing Room 357

8:30 a.m. Tapes 28 - 31

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:

**** Continuation of February 3, 1999 Meeting ****

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 28, A		
005	Chair Mannix	Calls meeting to order at 8:34 a.m.

HB 2352, 2353 & HJR 7 CONSOLIDATED PUBLIC HEARING

023	Stan Robson	State Sheriffis Association Testifies support of HB 2352, HB 2353 and HJR 7. Discusses issue of bed impact on the jails. Agrees that the provisions in the re-write do allow for some exception on Measure 11 incarceration. Discusses SB 936, from the 1997 session, with regard to supervisory authority mitigating sentences rather than a judge. There needs to be a balance between hard time served and work release (with monitoring) and gives statistics on how this is happening in Benton and Linn Counties.
101	Lynette Thompson	Mother of victim , Christopher Thompson, who was falsely accused. Testifies in opposition to HJR 7. Describes what her family had to endure while her son was incarcerated, and how her son became a victim of the system. According to the proposed legislation, the accused is automatically guilty until proven innocent. I was taught a person is innocent until proven guilty.
187	Rep. Bowman	Is Marion County helping you resolve the issue of false accusation?
190	Thompson	We have filed a lawsuit against Marion County.
195	Rep. Bowman	The District Attorney refused to prosecute the alleged victim for filing false information?
199	Thompson	Discusses what the District Attorney's office decided on that issue.
210	Rep. Bowman	Was it proved that someone did commit these crimes and your son was falsely accused or was it a false report?
214	Thompson	No conclusion was drawn because the District Attorney's office could not tell whether the young woman was telling the truth. There was no proof she was raped by anyone.
232	Christopher Thompson	Young man falsely accused and incarcerated. Testifies in opposition to this legislation. Asks for a definition of a "victim".
242	Rep. Prozanski	Reads definition of victim from Measure 40.
254	Thompson	States he was the victim of this incident and describes what happened when he was arrested. I was told the charges against me and left in jail for 5 days not knowing what was happening with my case. States the police put him in jail before they investigated his story. Describes how this incident has impacted his life.

304	Chair Mannix	When did these events take place?
306	Thompson	November 11, 1996.
307	Chair Mannix	When was the date of the alleged rape?
309	Thompson	October 7, 1996.
318	Rep. Bowman	You were arrested at your job?
319	Thompson	Yes.
320	Rep. Bowman	Everyone saw you handcuffed and taken out?
323	Thompson	The police tried to pull me to the side so no one would see what was happening.
327	Rep. Bowman	Did you lose your job because you were gone for 5 days?
328	Thompson	No. I quit because I couldn't handle the stress.
335	Rep. Bowman	Are you currently in counseling?
335	Thompson	Yes.
336	Rep. Bowman	How long have you been in counseling because of this incident?
339	Thompson	Not very long.
340	Chair Mannix	You have a civil action pending against a number of people and Marion County?
342	Thompson	Yes.
343	Chair Mannix	You are seeking damages over this event?
344	Thompson	Yes.
352	Paul Snider	Association of Oregon Counties Testifies as neutral regarding HJR 7. Discusses differences between jail and prison. States 14 counties were sued for jail over-crowding

		which resulted in the capping capacity of county jail. Describes what happens when a jail reaches its capacity. Discusses the impact of HJR 7 on county jails.
TAPE 29, A		
025	T. W. Jackson	100 Good People Testifies in opposition to HJR 7. Asks for clarification on how the committee process works.
039	Chair Mannix	Explains how witnesses are called forward to testify in a legislative hearing.
050	Jackson	Discusses that the hearing yesterday was not on a "level" playing field and gives examples. I wonder if HJR 7 will give the same level playing field as we heard yesterday?
068	Chair Mannix	We will hold hearings on these measures and decide what needs to be done in terms of public policy
080	Jackson	States concerns he has with HJR 7.
086	James Ramsey	Testifies in opposition to HJR 7. Describes an incident when he was driving and stopped by a police officer and wrongly accused on a drug warrant. The James Ramsey in question was a white male with brown hair and brown eyes. States his fear of unfair incarceration just because the officer assumed he was the suspect.
148	Jackson	Gives a dictionary definition of victim. States Mr. Thompson and his family were victims under HJR 7.
157	Chair Mannix	States that HJR 7 was not in effect at that time.
158	Jackson	The model of HJR 7 was used in Mr. Thompson's case.
161	Chair Mannix	He testified the incident happened in November 1996, and HJR 7 did not exist at that time.
162	Jackson	I am using that as an example of how HJR 7 can create victims like Mr. Thompson.
169	Chair Mannix	Discusses different definitions that can be used for "victim".
177	Jackson	Discusses his concerns with HJR 7 and its effect on minorities.

216	Rep. Bowman	Asks Mr. Ramsey if he lives in Salem.
216	Ramsey	Yes.
217	Rep. Bowman	How long have you lived in Salem?
218	Ramsey	Eleven years.
220	Rep. Bowman	How many times have you been stopped by the police?
221	Ramsey	At least four times. States he works at the YMCA and knows many police officers through that association.
252	Rep. Bowman	Asks Mr. Jackson if he lives in Salem.
253	Jackson	Yes.
253	Rep. Bowman	How long have you lived in Salem?
253	Jackson	Seven years.
254	Rep. Bowman	How many times have you been stopped by law enforcement?
256	Jackson	Gives statistics on how many times he was followed or stopped for violations.
279	Rep. Bowman	You said you got a ticket for watching TV as a passenger?
280	Jackson	Yes.
280	Rep. Bowman	Is that illegal?
281	Jackson	I will know after I go to court February 9.
310	Steve Kanter	Constitutional Law Professor Testifies as being neutral to HJR 7. I testified in 1997 that much or all of Measure 40 would be found unconstitutional in our court systems.
365	Chair Mannix	The Supreme Court ruled against the multiple changes in the constitution, not the constitutionality of the provisions.

369	Kanter	Even if the structural issue had not lead to the fall of Measure 40, many of the provisions would have been declared unconstitutional. Discusses the original 1857 Oregon Constitution stating none of the original bill of rights had been repealed until 2 years ago.
TAPE 28, B		
015	Kanter	Discusses HJR 7 beginning with paragraph 4.
051	Chair Mannix	Would you add the phrase, "other than when ordered by a court" in your suggested modification?
052	Kanter	Yes. Continues discussion of HJR 7. Discusses restitution system.
067	Rep. Bowman	What does "making the restitution system better" mean?
071	Kanter	Not everyone who is convicted of a crime goes to prison. Discusses how those criminals not in prison need to make restitution. Continues to discuss HJR 7 specifically mentioning human dignity and firm trial dates. Discusses paragraph 2 of HJR 7 and "use immunity".
143	Chair Mannix	Could you provide the committee with your suggested language?
145	Kanter	Let me give that some thought and I'll get back to you.
148	Chair Mannix	As testimony showed yesterday, the proponents of this bill want to do what you discerned they want to do.
149	Kanter	I would be happy to talk with them. Discusses HJR 7, paragraph 3. States it is unconstitutional as written and notes <u>U. S. v. Salerno</u> . Discusses clear and convincing evidence v. probable cause. According to HJR 7, someone charged with murder or aggravated murder would have an easier time getting pre-trial release than someone charged with a lesser offense. Discusses burden of proof v. probable cause.
210	Chair Mannix	The burden will be changed to clear and convincing evidence. Do you suggest that we limit this legislation to a person who is charged with a crime of violence and who has a prior, felony conviction?
214	Kanter	Yes. I do not believe in categorical pre-trial detention. Discusses his concerns with paragraph 5 of HJR 7. Discusses the Oregon Supreme Court case <u>Eacret v. Holmes</u> where justice was removed from the private individual and made the business of the people.
256	Chair Mannix	Isn't it the district attorney who asserts the rights on behalf of the victim so the

		district attorney would assert the right to the trial by jury?
260	Kanter	I don't see anything in HJR 7 where the district attorney is the representative of the victim. The district attorney should not have veto power over waiver of a jury trial. Discusses <u>Singer v. U.S.</u> saying a judge can insist on a jury trial. Discusses paragraph 6 regarding jury pools. Describes <u>Buckley v. American Constitutional Law Foundation</u> where the U. S. Supreme Court found it unconstitutional to limit signature gatherers to registered voters.
356	Chair Mannix	States his interpretation of the Buckley case.
375	Kanter	My recollection is that they mentioned the other issues, but they didn't resolve them. Discusses rights of a citizen to serve on a jury
388	Chair Mannix	From 1859-1991 Oregon restricted jurors to registered voters. Have there been any cases in the U.S. where that system has been held unconstitutional?
400	Kanter	Historically jurors were chosen from voter rolls, but there have been recent cases challenging juries. Oregon has reformed and expanded the jury pool to residents to get more people involved in jury duty.
423	Chair Mannix	What about the restriction of felons serving on juries?
424	Kanter	Discusses restrictions of jury duty stating someone who commits a crime does give up certain rights.
TAPE 29, B		
004	Kanter	Discusses paragraph 7 of HJR7 relating to jury verdicts. I think this section is constitutional, but I would prefer to see unanimous verdicts in all cases. Paragraph 8 of HJR 7 tells us that whatever the U. S. Supreme Court says is the bottom line for the Oregon Constitution on this provision.
108	Chair Mannix	Discusses cases in Oregon that paralleled the search and seizure provisions to the U. S. Supreme Court.
114	Kanter	From 1963-1972 Oregon's Constitution paralleled the U.S. Constitution; prior to that and after that we do not. Discusses the state Bill of Rights that precedes the federal Bill of Rights. If this section is adopted, the people of Oregon will not know they are repealing the search and seizure provision of the Oregon Constitution. Reiterates what he said in 1997 about Measure 40.
218	Claudia Thompson	Grandmother of crime victim Testifies in opposition to HJR 7. Discusses personal history as a young girl facing discrimination. Discusses the incident involving her grandson, Christopher Thompson, when he was incarcerated on false charges.

TAPE 30, A		
025	Rep. Bowman	I admire such a strong, supportive family and have sympathy for what the family has been going through.
033	Rep. Prozanski	Explains the city, county or state has the burden to prove the guilt, not the defendant.
040	Thompson	There should have been some kind of paperwork showing they had investigated the charges against her grandson.
065	James Rice	Oregon Criminal Defense Lawyer's Association Testifies in opposition to HJR 7. Discusses immunity including "use immunity" and "transactional immunity".
160	Johnny Lake	Commission for Black Affairs Testifies in opposition to HJR 7. Discusses his association with the Thompson family. States there is not fair representation for blacks in the judicial system in this community. Describes an incident of being stopped by the police.
280	Rep. Bowman	How many times have you been stopped by the police?
281	Lake	About 7 times in Salem since 1987.
287	Rep. Bowman	You have three sons?
288	Lake	Yes.
288	Rep. Bowman	How many of them are old enough to drive?
289	Lake	Only my 21-year old son is driving and he has been stopped 7 times without being issued a ticket.
297	Rep. Bowman	Have your other two sons been stopped just walking down the street?
299	Lake	Describes an incident of his son being stopped as a passenger in a vehicle.
318	Rep. Bowman	Did you go to the police department and complain about these stops?
322	Lake	Describes what happened at the police department when he complained about a ticket he was issued.

398	David Fidanque	Executive Director, American Civil Liberties Union (ACLU) Testifies and submits written testimony in opposition to HB 2352, HB 2353 and HJR 7. (EXHIBIT A) Discusses how he has been trying to implement the provisions of HB 2433 (regarding vehicle stops by police officers) from the 1997 Legislature.
TAPE 31, A		
029	Fidanque	Discusses <u>Armatta v. Kitzhaber</u> as a legal challenge to Ballot Measure 40. Describes the steps in amending the Oregon constitution. I believe the voters should get to vote on each change to our Bill of Rights separately based upon its own merits.
103	Peter Gartlan	Oregon Criminal Defense Lawyers Association Testifies in opposition to HB 2352, HB 2353 and HJR 7. Discusses the differences between amending statutes and amending the Oregon Constitution. Discusses paragraph 5 of HJR 7 stating this would increase the number of trials. Discusses paragraph 8 of HJR 7 that would eliminate the protection of privacy and property rights of individuals.
199	Paul Levy	Public Defender Testifies in opposition to HB 2352, HB 2353 and HJR 7. Discusses the difficulties defenders, prosecutors and judges had in deciding which parts of Measure 40 to apply to avoid litigation if Measure 40 was found unconstitutional. Discusses victims rights. Discusses the release provision. Discusses rights to a trial by jury and who has the right to request a jury. Discusses the 1971 Criminal Code.
422	Neal Thompson	Uncle of Christopher Thompson Testifies in opposition to HB 2352, HB 2353 and HJR 7. States that defendants and their family members can become victims.
TAPE 30, B		
021	Thompson	Discusses Measure 11 and the Miranda decision. Discusses case of nephew, Christopher Thompson, who was falsely accused and incarcerated. Discusses the police department and their policy on search and seizure.
123	Kathie Osborn	Juvenile Rights Project Testifies in opposition to HJR 7. States the majority of juveniles she represents are crime victims. The Juvenile Rights Project supports victims rights, but we feel it shouldn't be in the Constitution. Discusses the impact of HJR 7 on juveniles and why it is important to have someone with juvenile experience work with any group making changes to HJR 7. Discusses paragraph 9 explaining that having a set time on treatment programs could destroy the intent of getting the juvenile out as quickly as possible.

246	Gail Meyer	Lawyer Testifies in support of and in opposition to HJR 7. Discusses how all crime victims are not alike. Describes her client base. Describes three different types of victims. Discusses paragraphs 4 and 5 of HJR 7. Discusses the court overruling the victim's rights to a jury trial as stated in Measure 40. States HJR 7 does not have a definition of a crime victim. Paragraph 5 needs to be clear if it is the prosecutor's right or the victim's right to a jury trial.
TAPE 31, B		
006	Dale Penn	Marion County District Attorney Testifies in support of HB 2352, HB 2353 and HJR 7. Discusses Ballot Measure 40 and its implementation by district attorneys. Discusses the Christopher Thompson. Discusses search and seizure issues and why it is important to have one rule on search and seizures rather than multiple rules.
139	Chair Mannix	Would HJR 7 prevent the legislature from developing remedies for violations other than the exclusionary rule?
142	Penn	No.
145	Steve Doell	Crime Victims United Testifies in support of HB 2352, HB 2353 and HJR 7. Discusses the murder of his daughter, Lisa, and how it affected his family.
225	Rep. Bowman	Asks if this testimony is appropriate given that it doesn't look like new information.
230	Chair Mannix	I try to give the same consideration to all witnesses.
235	Doell	I think we should take a look at juveniles waiving jury rights. Asks the committee to vote HJR 7 out to the floor.
255	Rep. Prozanski	I want it known for the record, in my sister's case, the defendant was released because the exclusionary rule was in place and followed in the state of Texas.
268	Chair Mannix	Closes public hearing on HB 2352, HB 2353 and HJR 7. Adjourns meeting at 12:05 p.m.

Patsy Wood, Sarah Watson,
Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2352, HB 2353 & HJR 7, written testimony, David J. Fidanque, ACLU, 2/4/99, 11 pgs.