

HOUSE COMMITTEE ON JUDICIARY - CRIMINAL LAW

March 29, 1999 Hearing Room 357

8:30 a.m. Tapes 108 - 109

MEMBERS PRESENT: Rep. Mannix, Chair

Rep. Prozanski, Vice-Chair

Rep. Bowman

Rep. Hansen

Rep. Simmons

Rep. Sunseri

MEMBER EXCUSED: Rep. Gianella

STAFF PRESENT: John Horton, Counsel

Patsy Wood, Administrative Support

MEASURE/ISSUES HEARD:

HB 2790 Public Hearing

HB 2770 Public Hearing

HB 2904 Public Hearing

HB 2903 Public Hearing

HB 3049 Public Hearing

HB 3009 Public Hearing

HB 2483 Public Hearing

HB 2593 Public Hearing

HB 2772 Public Hearing

HB 2931 Public Hearing

HB 2914 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 108, A		
006	Chair Mannix	Calls meeting to order at 8:35 a.m.
<u>COMBINED PUBLIC HEARING HBs 2790, 2770, 2904, 2903, 3049, 3009, 2483, 2593, 2772, 2931, & 2914</u>		
027	Counsel Horton	HB 2790 establishes personal income tax subtraction from taxable income for the cost incurred in purchasing a firearm safe storage device. HB 2770 establishes credit against personal income taxes for costs incurred in purchasing a firearm safe storage device. HB 2904 extends the duration of a concealed handgun license to five years. HB 2903 reduces the period of time that the Department of State Police may retain information obtained in conducting background checks for handgun purchases. HB 3049 prohibits a suit by a city or county against firearms manufacturer or dealer for damages resulting from the design, manufacture, marketing or sale of firearms. HB 3009 prohibits the disclosure of any information obtained in connection with a concealed handgun license permit.
062	Rep. Sunseri	On HB 2790, how can our state legislation affect federal taxable income?
064	Counsel Horton	I don't know.
067	Chair Mannix	That is probably why there is a subsequent referral to the Revenue Committee to determine the revenue implications.
083	Russ Spencer	Oregon Law Enforcement Legislative Committee Testifies and submits written testimony in opposition to HB 2483 (EXHIBIT A) and HB 2593 (EXHIBIT B). Describes the organizations that comprise the Law Enforcement Legislative Committee and why they feel HB 2483 would be bad public policy. The present concealed handgun license program strikes a very reasonable balance between personal liberty and public safety. Expresses a concern about how the program will be implemented and the time involved to run a Law Enforcement Data System (LEDS) check.
130	Chair Mannix	What about the current state of the law that says a person who is not prohibited from possessing a firearm can openly carry a firearm? Is there a distinction between that and carrying a concealed handgun?

141	Spencer	Carrying a concealed weapon is more alarming to law enforcement and the general public because we are not used to seeing that.
153	Capt. Sherwood Stillman	Oregon State Sheriffs Association Testifies and submits a letter he wrote to Rep. Mannix in opposition to HB 2483 (EXHIBIT C). Discusses that a background check would have to be made on everyone in possession of a firearm to either confirm or deny that they are authorized to carry a firearm. No other state is considering legislation similar to HB 2483. Testifies and submits a letter written to Rep. Mannix in opposition to HB 2593 (EXHIBIT D). Discusses ORS 166.291 that allows a person from a contiguous state to apply for a concealed handgun license in Oregon. Under HB 2593, the state has the burden to prove that anyone living in another state and in possession of a concealed firearm was in possession of a firearm license from their state of residence. Discusses the Appellate court decision that specifies it is up to the district attorney to prove that a person does not possess a concealed handgun license in order to prove violation of ORS 166.250.
263	Chair Mannix	Should Oregon host a national conference to come up with a model reciprocity act for those that want to participate in reciprocity?
288	Spencer	Our position regarding reciprocity is that we don't oppose it if the other states' laws are at least as stringent as Oregon's laws. We would not object to or encourage hosting a symposium on reciprocity.
303	Chair Mannix	We have model acts for lots of things, but reciprocity laws for concealed handgun permits are very unclear.
315	Spencer	Discusses that there are no general standards for reciprocity regarding concealed handguns.
328	Chair Mannix	Oregon seems to be fairly progressive in looking at all sides of an issue. Gives the example of only those considered mentally ill and dangerous as not being able to keep and bear arms.
349	Rep. Simmons	By opposing HB 2483 aren't you presuming people are either guilty or incompetent of carrying a concealed weapon?
369	Spencer	If you extend that out to its farthest degree, yes. There are people out there who shouldn't be carrying handguns. This gives us a safety net to capture that part of the population and avoid unfortunate incidents.
387	Stillman	We have no opposition to law-abiding citizens carrying concealed handgun licenses, the problem is how do you know they are licensed? Discusses the worst-case scenario of bringing the justice system to a halt with the constant background checks to see if everyone carrying a concealed weapon has a license to do so. We are worried there are people who will carry firearms who are not legally allowed to do so and some of these people may not know they're not

		allowed, like someone on probation.
433	Rep. Sunseri	I do not understand the rationale behind saying if HB 2483 is passed the justice system will come to a halt?
TAPE 109, A		
004	Stillman	We would be spending a lot of time doing background checks on every person we found with a concealed weapon.
006	Rep. Sunseri	Why are background checks necessary if a person had to go through a background check in the first place to purchase the firearm? If a person can't legally have a gun, they will have one whether they have to carry permits or not.
014	Spencer	An officer would not know if the firearm was obtained legally (through a background check) or not.
017	Rep. Sunseri	But if the person has purchased a firearm with a legal background check, there is no reason that the officer is even going to know that the person has a concealed weapon.
019	Spencer	That is correct.
019	Rep. Sunseri	If the person is wearing the gun in plain site that is legal, but that is something that is currently being addressed.
021	Spencer	We would not necessarily know he was carrying a firearm. In most traffic stops, we routinely ask if a person is carrying a firearm. Discusses how dangerous these routine traffic stops can be when the person stopped is in possession of a concealed weapon.
031	Rep. Sunseri	Do you have specific citations or statistics for someone with no criminal background being stopped by the police and getting into a gunfight with the police?
032	Spencer	Describes a situation on I-5 where a husband and wife were driving back from a retirement party. The driver was drunk, got into a gunfight with the police, and was killed. This might be an isolated incident, but even one death like this is too many. I will try and compile that information for you.
041	Rep. Sunseri	Expresses concern if there are law-abiding citizens that have carry permits who are getting into shoot-outs with law enforcement.
048	Spencer	I was not speaking of someone who carries a concealed handgun license because HB 2483 contemplates that there is no such license.

056	Rep. Simmons	I think the question of lawful possession is being raised now on traffic stops, but wouldn't it be better to expand the list of those who are not authorized to carry a weapon rather than presume guilt or incompetence on all the general public who may own a firearm?
066	Stillman	We have lots of statutes in place that explain when a person is prohibited from possessing a firearm, but when we make a traffic stop we are not aware if the person stopped is authorized to carry that weapon.
077	Chair Mannix	We are coming at this from two different perspectives. Discusses positive validation v. negative validation. Discusses the "social shift" in people's thinking about seeing a firearm carried by a person. The police do not know those who are authorized to carry a weapon v. those people who feel they have the right to bear arms.
147	Spencer	Discusses the issue of liability for the police officers who are making a routine traffic stop and don't confiscate a weapon that is later used to commit a crime. I could be sued for negligence because I didn't take the gun. However, if I do take the gun, I may be sued because the person was authorized to carry the weapon.
176	Rep. Betsy Close	State Representative, House District 36 Testifies in support of HB 3568 concerning notification to renew concealed handgun licenses being sent to individuals before the license expires.
193	Chair Mannix	What if we said it expired on a person's birthday five years from the year of issuance?
198	Rep. Close	That would be acceptable. Discusses how she had to appear in Corvallis to apply in person for this renewal, and her schedule restricts appearing in person. I would ask that renewal of this license be available in any county sheriff's office in Oregon.
209	Chair Mannix	Is your main concern the inconvenience of applying for renewal in person?
211	Rep. Close	Yes.
212	Chair Mannix	Should the Department of Motor Vehicles be authorized to accept these applications for renewal or should we look for other agencies to handle applications?
220	Rep. Close	They let us come in at night to be fingerprinted, but we are not allowed to renew at night.
222	Chair Mannix	Since law enforcement is open 24 hours a day for the purpose of booking an offender, do you think they should be open 24 hours a day to process paperwork such as these license renewals?

224	Rep. Close	Yes.
230	Chair Mannix	Consideration of these ideas might be incorporated into the relating clause of another bill.
243	James Rice	Oregon Criminal Defense Lawyeris Association Testifies in opposition to HB 2772. This legislation seems to be overly broad in the way it is written. Gives the example of a grandmother who knowingly lends her vehicle to her son who does a drive-by shooting and grandmais car could be taken. A knowledge requirement could be inserted saying that the auto is being used with the owneris consent. Discusses lien holders of cars who could lose an auto if it is involved in a drive by shooting.
324	Kevin Starrett	Gun Owners of America Testifies in support of HB 2483. I assume that police officers who find a concealed weapon while making a routine traffic stop do a background check now. This law is also being considered in Ohio, Texas, Oklahoma, and Colorado. Expresses some confusion about who is and who isnit allowed to carry a firearm when on probation.
385	Chair Mannix	It is a condition of probation to not carry a firearm. If you have been convicted of a felony, you canit possess a firearm for 15 years, but certain misdemeanors might vary in the length of prohibition.
392	Starrett	There are a number of states with reciprocity like Indiana and Michigan. Discusses no state being good enough to meet Oregonis permit standards. I am in support of HB 2904 and the bills regarding personal income tax credits. If the record retention time in HB 2903 is finite, why are we keeping records at all? Are there criminal penalties for someone who doesnit destroy that information? We have no objection to HB 3049. The concealed handgun license list is currently being used as a marketing tool. Will HB 3009 prohibit the lists that are currently out there from being used? Who is going to provide the education portion of HB 2772? HB 2931 should include a sunset provision that if the federal government did away with background checks, the state would eliminate those checks also. Eliminating places where a person can possess their firearm, like HB 2914 and HB 3103 do, means a person wonit always have a weapon to protect themselves.
TAPE 108, B		
091	John Nichols	Executive Director, Oregon Gun Owners Discusses how he became a lobbyist for gun rights in 1975. Describes applying for or renewing a carry permit license in Oregon, Washington, Idaho and Florida.
125	Rep. Sunseri	If you can apply for a carry permit by mail in the state of Florida, how do you get the gun on the airplane to take it with you?

129	Nichols	You can take a firearm with you on the airplane in your checked baggage as long as you are going to a state that allows weapons.
134	John Hellen	Oregon Gun Owners Testifies and submits written testimony in support of HB 2770 and HB 2790. We would prefer a tax credit equal to the cost incurred for purchasing a gun storage device (as in HB 2790), but the \$100 maximum credit in HB 2770 is acceptable (EXHIBIT E). Testifies and submits written testimony in support of HB 3009 which restricts public access to registration records for a concealed handgun license (EXHIBIT F). Testifies and submits written testimony in support of HB 2903 regarding records retention by the State Police (EXHIBIT G). Testifies and submits written testimony in support of HB 2904 which extends a concealed handgun license to five years (EXHIBIT H). Testifies and submits written testimony in support of HB 3049 which prohibits lawsuits by a city or county against firearms manufacturers (EXHIBIT I).
287	Nichols	When we support the bills that reduce record keeping and limit access to public registration records, we are not criticizing the record keeping being done by the Oregon State Police.
300	Hellen	When law enforcement officials pull someone over in a routine traffic stop and they are trying to determine if that person is authorized to carry a weapon or not, the driver's license record of that individual could be labeled to show if that person is prohibited from carrying a firearm.
316	Chair Mannix	How about a red-stripe law showing felons who are prohibited from possessing a handgun?
338	Hellen	If we have to notify for sex offenders moving into neighborhoods, it isn't a stretch to use the red stripe on felons who shouldn't possess firearms.
357	Rod Harder	National Rifle Association Testifies and submits written testimony in support of HB 2790 (EXHIBIT J). Discusses safe storage items shown in the handout and the fact that HB 2790 does not have a maximum income tax credit. Discusses the Vermont-style bill regarding carrying a concealed weapon. Mentions HB 3568, proposed by Rep. Close, pertaining to handgun licenses and Lane County's issuance of handgun licenses. Renewal of a handgun license every five years on your birth date would be supported. We would support the tax credit of \$100 in HB 2770. Testifies in support of HB 2904. HB 2903 addresses record retention by the State Police from 5 years to 2 years. We are in support of records being kept for no longer than 90 days.
TAPE 109, B		
019	Rep. Prozanski	Discusses a 1995 agreement that was made so the state, rather than the federal government, did the instant background checks and retained those records. Why would we want to undo that agreement?

031	Harder	When the technology became available, the instant background check replaced a 15-day waiting period with the federal government.
042	Rep. Bowman	If the State Police did not have the records on handgun applications, how would we ever recover stolen handguns?
049	Harder	There are many ways to recover stolen weapons.
054	Rep. Bowman	How?
055	Harder	I will furnish you with that information. Testifies in support of HB 3049. The National Rifle Association is attempting to have laws similar to HB 3049 passed in every state. Discusses the fact that crimes in Australia have gone up since guns were prohibited. Testifies in support of HB 3009 that prohibits disclosure of information obtained in concealed handgun licensing. We would support HB 2931 if everything remains in tact and a criminal penalty is included. We would urge some type of sunset provision in HB 2931 if the Brady Bill goes away at the federal level.
134	Captain Tom Dixon	<p>Oregon State Police</p> <p>Testifies and submits written testimony in opposition to HB 2903 which reduces the retention period for handgun sales in Oregon from 5 years to 2 years (EXHIBITS K & L). Describes how the State Police became the repository for background checks on handgun sales and discusses how that system is working. Describes what the State Police do with the retained records when a background check is performed. Since the instant check was instituted, I am not aware of any misuse of the information obtained. Discusses the Customer Satisfaction Survey that is mailed to gun dealers asking them to rate the services provided by the background check unit. Ninety-seven percent of the dealers said they were pleased with the program. If there is concern with a 5-year record retention period, allow us to come back in five years to report on the value of the program. Discusses information he was asked to provide pertaining to concealed handgun license (CHL) holders. Gives statistics on CHL holders who had criminal activity: 1,068 in 1998, 973 in 1997, and 893 in 1996.</p>
252	Rep. Simmons	What kind of threshold is used to establish that data? Is it more than a speeding ticket?
257	Capt. Dixon	I do not have the breakdown on what conduct was used. Discusses that the CHL is entered on a criminal history record if a person is stopped for a traffic violation. Fingerprints would have been taken only if the person was arrested and lodged in jail, not just a traffic infraction.
279	Dr. Larry Priano	<p>Physician</p> <p>Testifies in support of HB 2483. Discusses his experience dealing with gunshot wounds in the operating room. Wonders if law enforcement is making too many routine traffic stops because routine traffic stops do not lead to a high percentage of felons being captured. A doctor doesn't know if people are HIV positive and a police officer shouldn't assume people stopped in traffic stops are going to shoot</p>

		them.
374	Chair Mannix	Just as you worry about coming into contact with an HIV positive individual, don't the police have to approach a person on a routine traffic stop as if that person might be armed and dangerous?
385	Dr. Priano	I don't ask every individual I encounter if they are HIV positive and policemen shouldn't ask every law-abiding citizen if they are carrying a handgun. Are we trying to do too many things that aren't necessary and in turn cause a deterioration of relationships between the police and citizens?
412	Chair Mannix	Enters into the record a letter from the League of Oregon Cities in opposition to HB 3049 (EXHIBITS M), and a letter from Portland Mayor Vera Katz in opposition to HB 3049 (EXHIBIT N).
423	Rep. Simmons	Could the information Captain Dixon is compiling include any convictions relating to concealed handgun permit holders?
435	Capt. Dixon	Yes.
437	Rep. Prozanski	Is it correct that a CHL holder may have been arrested, but the information may not show up on the records if the case is pending?
446	Capt. Dixon	Yes. We may not have some of the newer information.
453	Chair Mannix	Closes the combined public hearing on HBs 2790, 2770, 2904, 2903, 3049, 3009, 2483, 2593, 2772, 2931, & 2914.
454	Chair Mannix	Adjourns the meeting at 10:30 a.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Administrator

EXHIBIT SUMMARY

A - HB 2483, written testimony submitted by Russ Spencer, Law Enforcement Legislative Committee, 1 pg.

B ñ HB 2593, written testimony submitted by Russ Spencer, Law Enforcement Legislative Committee, 1 pg.

C ñ HB 2483, written testimony submitted by Captain Sherwood Stillman, Oregon State Sheriffs Association, dated 3/26/99, 1 pg.

D ñ HB 2593, written testimony submitted by Captain Sherwood Stillman, Oregon State Sheriffs Association, dated 3/26/99, 1 pg.

E ñ HB 2770 & 2790, written testimony submitted by John Hellen, Oregon Gun Owners, dated 3/29/99, 1 pg.

F ñ HB 3009, written testimony submitted by John Hellen, Oregon Gun Owners, dated 3/29/99, 1 pg.

G ñ HB 2903, written testimony submitted by John Hellen, Oregon Gun Owners, dated 3/29/99, 1 pg.

H ñ HB 2904, written testimony submitted by John Hellen, Oregon Gun Owners, dated 3/29/99, 1 pg.

I ñ HB 3049, written testimony submitted by John Hellen, Oregon Gun Owners, dated 3/29/99, 69 pgs.

J ñ HB 2790, article on gun storage devices submitted by Rod Harder, National Rifle Association (NRA), 2 pgs.

K ñ HB 2903, written testimony submitted by Captain Tom Dixon, Oregon State Police, dated 3/29/99, 2 pgs.

L ñ HB 2903, written testimony submitted by Captain Tom Dixon, Oregon State Police, 1 pg.

M ñ HB 3049, written testimony submitted by Beth Vargas Duncan, League of Oregon Cities, dated 3/26/99, 1 pg.

N ñ HB 3049, written testimony submitted by Vera Katz, Portland Mayor, dated 3/26/99, 3 pgs.