

SENATE COMMITTEE ON JUDICIARY

June 08, 1999 Hearing Room C

3:00 p.m. Tapes 220 - 222

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Duncan

Sen. Tarno

STAFF PRESENT: William E. Taylor, Counsel

Judith Minnich, Administrative Support

MEASURE/ISSUES HEARD: HJR 87 Public Hearing

HJR 88 Public Hearing

HJR 89 Public Hearing

HJR 90 Public Hearing

HJR 91 Public Hearing

HJR 92 Public Hearing

HJR 93 Public Hearing

HJR 94 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 220, A		
003	Chair Bryant	Calls meeting to order at 3:14 p.m.
<u>HJR 87, HJR 88, HJR 89, HJR 90, HJR 91, HJR 92, HJR 93, & HJR 94 PUBLIC HEARING</u>		
021	Steve Doell	Crime Victims United of Oregon Discusses the history of Ballot Measure 40 and its provisions. Notes that the Oregon Supreme Court ruled Measure 40 unconstitutional because it changed many statutes at the same time. HJR 87 through HJR 94 separates these same issues and allows the electorate to consider each change individually (EXHIBITS A & B) .
127	Chair Bryant	How do the eight measures differ from Measure 40?
144	Josh Markee	Clatsop County District Attorney Testifies in support of HJR 87 through HJR 94. Indicates that the HJR measures being considered are needed and that many citizens believe that these provisions are already in effect. Discusses his work as a district attorney and how it would be effected by the passage of HJR 87 through HJR 94. Discusses the provisions of each HJR.
255	Rep. Kevin Mannix	State Representative, House District 32 Discusses the Oregon Supreme Court finding in the case of Measure 40. Defines victimis rights and how reform and support of these rights will change the justice system for the better. Indicates the vote on Measure 40 was 59% in support. Asks that this commanding majority be considered when the committee votes on whether to allow the eight HJRs to be sent to the voters. Argues in favor of the amending of the Oregon Constitution. Each of these HJR measures addresses one portion of Measure 40.
455	Chair Bryant	Asks that he summarize each HJR and explain what they do and how they differ from Measure 40.
460	Rep. Mannix	Indicates the preamble for each HJR is similar with minor modifications to fit each bill. Indicates that some of the language in each HJR has deliberately been left for the courts to interpret.
509	Sen. Brown	Asks for information about how the issues addressed by each HJR have been addressed by other states.
Tape 221, A		

054	Chair Bryant	Asks how a fair trial can be guaranteed if the victim can't be excluded from witnessing the trial, even if he is a witness.
059	Rep. Mannix	The defendant is there for the whole trial even if he is a witness, the victim whether or not he is a witness should also be allowed.
082	Chair Bryant	If the victim wants to testify and the district attorney doesn't want him to, what happens then?
084	Rep. Mannix	The district attorney has the prerogative to use the victim as a witness or not. I would say that the victim could certainly ask the defense attorney to let him testify.
102	Sen. Duncan	Why should these measures be constitutional changes rather than statutory changes?
108	Rep. Mannix	The overall rationale for putting it in the constitution is to make it harder to change and to ensure that victim rights are represented as well as the rights of the accused. Both parties in the civil trial have people in the court at all times. This will guarantee that right to the victim as it is already guaranteed to the defendant.
134	Sen. Brown	Asks about the victimization of women by the knowledge that crimes such as those in Forest Park are being committed.
144	Rep. Mannix	You must suffer direct, rather than indirect, victimization. Discusses the preamble to HJR 87.
203	Sen. Brown	Who determines a victim? The women who use Forest Park have been directly affected because they use the park and now they're afraid.
215	Rep. Mannix	You asked me to interpret victim, I have done that. If you wish to be considered a victim I guess you could ask the court to consider you one.
230	Chair Bryant	Offers a scenario and asks who the victim would be.
242	Rep. Mannix	Further discusses who may be a victim under HJR 87. Indicates that most cases are commonsense.
286	Chair Bryant	A notice is required to victims, how does the district attorney decide who to give notice to?
289	Rep. Mannix	The intent is to ensure that the defendant will not be able to use victim's rights as either a sword or shield.

306	Chair Bryant	Would the costs come out of the district attorney's budget?
309	Rep. Mannix	Since there is no requirement as to who pays, it will depend on budgetary practices.
316	Sen. Nelson	This gives victims the right to refuse a request for an interview, discovery or other depositions by the defendant. Do you anticipate any problems with this?
326	Rep. Mannix	This is basically current law and practice. We do not anticipate a problem. It is my understanding that victims already have a great deal of protection right now.
348	Chair Bryant	The trial court will have to weigh the right to a fair trial against these provisions.
356	Rep. Mannix	That might happen. The court would then have to weigh these issues. It would allow the confronting of these issues rather than the current bias in favor of the defendant. The district attorney would be doing some of the balancing.
380	Chair Bryant	Someone who is a legitimate witness might use the status of victim to avoid testifying.
390	Rep. Mannix	The beauty of this is that the issues must be confronted.
399	Chair Bryant	If I witness a violent crime, I know the victim and I'm very upset by it, could I assert that I was a victim and refuse to talk to defense counsel?
407	Rep. Mannix	The court would have to decide.
448	Chair Bryant	Let's go on to HJR 88.
452	Rep. Mannix	HJR 88 has a preamble that talks about the criminal justice system. We are recognizing that while the defendant has the right to a jury trial, the people have a right for a trial by jury also. Either side can waive that right.
Tape 220, B		
036	Sen. Brown	Why exclude juveniles from the right to a jury trial?
038	Rep. Mannix	There are no jury trials in juvenile delinquency proceedings.
039	Sen. Brown	Why aren't there jury trials?
041	Rep. Mannix	Discusses history of juvenile justice and the move to consider the youth a ward

		of the court. The juvenile system was designed to protect the best interests of the child and was not designed as a traditional criminal adjudication.
054	Sen. Brown	So you are not intending that these resolutions will result in juveniles having jury trials?
055	Rep. Mannix	Not at all. The intent is to maintain a firm difference between juvenile and adult proceedings.
059	Sen. Brown	Why were juveniles included in the rights provisions in HJR 87?
060	Rep. Mannix	That is a different context.
066	Sen. Brown	Are there any other states that have this provision?
067	Rep. Mannix	I don't know.
069	Chair Bryant	Discusses the meaning of "without delay" and "speedy trial".
072	Rep. Mannix	I was just told that 35 other states give the state the right to require a jury trial. I think that without delay is different than speedy trial.
087	Chair Bryant	Let's go to HJR 89.
088	Rep. Mannix	HJR 89 asks that criminal juries be composed of responsible citizens who are focused on the rights of the defendant and the rights of the victims. Requires that for 15 years a felon can't serve on a jury and specifies that a criminal jury must be picked from the voter rolls rather than the licensed driver rolls as they are now.
143	Sen. Brown	The Access to Justice for All Committee believes that limiting the rolls to voters would systematically reduce the number of young adults, minorities and people from lower income levels from the pool of potential jurors.
151	Rep. Mannix	We had a special session and invited former Chief Justice Peterson to testify. We have considered this issue.
167	Sen. Courtney	Having spent a lot of time walking door to door, I have been impressed by the huge numbers of people who don't vote.
180	Chair Bryant	In 1988 we were pushing a bond issue and we were told that the reason some people didn't register was to not be called for jury duty.

189	Rep. Mannix	Cites the Marion County jury system as an example of a good way to handle jury duty. There are some reforms that are needed. The point is that we need to allow the voters to revisit the issues they have already voted on.
214	Chair Bryant	Let's move on to HJR 90.
216	Rep. Mannix	HJR 90 contains a tighter list of pretrial release items to protect the victim. Indicates this HJR is easier in its requirements to obtain pre-release than the original Measure 40 was.
304	Sen. Duncan	How is this different from what happens right now?
305	Rep. Mannix	The presumption is in favor of bail. The almost quaint notion that the payment of money will guarantee the attendance of the defendant. This will give the judge a very clear standard upon which to make his determination.
329	Sen. Duncan	Pretrial release is still a judgment call by the judge?
331	Rep. Mannix	Yes. But; the standard to be used should be fairly clear.
344	Chair Bryant	Let's go to HJR 91 next.
359	Rep. Mannix	HJR 91 relates to the search and seizure provisions of the Oregon Constitution. Judicial interpretations in Oregon have moved away from the interpretation commonly given to these provisions on the federal level. We should reconnect with the 4 th amendment interpretation made by the federal system.
450	Chair Bryant	Let's discuss HJR 92.
455	Rep. Mannix	HJR 92 changes the number of jurors needed to vote to convict in order for a conviction of murder to be reached. In Oregon, for aggravated murder and murder convictions you need a unanimous verdict. This allows an 11-1 jury vote in order to convict.
479	Sen. Brown	Why is this necessary?
481	Sen. Mannix	Discusses the methodology of jury selection and the way this has subverted the process of justice. There have been many hung juries.
506	Sen. Brown	Have there been many murder convictions lost because of one holdout?
509	Sen. Mannix	Perhaps lost isn't the right term. Hung up by one juror is more realistic.

Tape 221, B

041	Sen. Tarno	How many other states have adopted the 11-1 ratio for murder?
042	Rep. Mannix	I don't know.
043	Sen. Tarno	Perhaps we could find out.
045	Rep. Mannix	There are others in this process who have that information and we can get it. HJR 93 encourages that all relevant evidence be introduced into evidence. HJR 94 says that the court that originally sentenced a defendant must consider a change in that sentence. It can't be done by legislative action.
124	Counsel Taylor	Could the judge waive his right, or incorporate possible changes in the law at the time of sentence?
129	Rep. Mannix	That sounds like a reasonable alternative. My initial reaction is that the judge could do that.
150	Chair Bryant	Is there an example of a current law that restricts a judge's ability to sentence?
151	Rep. Mannix	Sentencing guidelines limit the consecutive sentencing ability of the judge.
173	Judge Edwin Peterson	Retired Chief Justice, Oregon Supreme Court Testifies in opposition to HJR 89. Discusses "jury of their peers" and what that means. The trend is to broaden not narrow the pool of jurors. Discusses a taskforce he served on that studied the jury pools. Indicates he would support returning to the pre-1989 system and allow all adult citizens to serve on a jury.
258	Sen. Brown	Rep. Mannix was concerned that we have responsible jurors and he believes that voters are more responsible than other groups.
264	Peterson	I don't believe that is the case. There seems to be a little elitism in that attitude.
280	Sen. Nelson	If the defendant is a non-voter and all the jury members are voters is that a jury of your peers?
283	Judge Peterson	I would have no opinion on that.

290	Steve Kantor	<p>Professor of Law</p> <p>Indicates his concurrence with Judge Peterson's opposition to HJR 89 and discusses the historical context. Testifies in opposition to HJR 91 and HJR 93. States HJR 91 and HJR 93 are the most insidious of the group of potential referrals in front of the legislature. They essentially act to repeal Article I, Section 9 and Section 12 of the Oregon Bill of Rights. Discusses federal versus state power. Indicates these HJR's take away the authority of the Supreme Court to interpret and the legislature to legislate.</p>
Tape 222, A		
035	Kantor	Believes that we should protect the essential elements of the Oregon Bill of Rights and reject these measures.
076	Sen. Tarno	I have been under the impression that Oregon's search and seizure laws are more stringent than other states, is that true?
088	Kantor	We have been among the states that are willing to look at issues, even if they have been decided by the Supreme Court. I don't think we are out of the mainstream, however, Oregon courts have interpreted our bill of rights to give certain rights beyond the Federal Bill of Rights.
105	Sen. Brown	I appreciate your legal analysis but I am also concerned with the political implications. What is your assessment of the legislature's obligation toward the Measure 40 provisions passed by our voters?
118	Kantor	I do think that the legislature is obligated to perform their function. We do not have a pure democracy. I wish the legislature would consider substantive victims' rights without undermining individual liberties and without unduly aggrandizing district attorney's powers. Suggests areas in which this could be done.
176	Sen. Duncan	Did you testify in the House Committee against these measures?
178	Kantor	Yes, but earlier versions.
179	Sen. Burdick	If we decide to go ahead with this, should we repeal the sections in the Oregon Bill of Rights which currently address these issues?
185	Kantor	That would be a far more direct and honest way to do this.
215	Bryan Johnston	<p>Dean, Atkinson Graduate School of Management</p> <p>Testifies in opposition to HJR 94 that specifies if the sentence is announced in court, it can't be changed. There are three reasons for opposing this package of referrals: they mislead the public, they overly simplify complex problems and they're counter-indicated by the available research. Discusses his opposition to</p>

		HJR 89. HJR 94 would not allow us to change sentencing reforms that we have enacted. The courts, the legislature and even the people couldn't change a sentence already given whatever the reason. This raises righteousness to a new level. Recommends the minority report from the House as a better alternative.
342	Arwin Byrd	Survivors Advocating for an Effective System (SAES) Testifies in opposition to HJR 87 through HJR 94. Indicates that crime victims rights should be in statute not in the constitution. Indicates her support for SB 841 toward this end. Recommends voting against legislation that one knows or suspects is unconstitutional.
396	Chair Bryant	Adjourns hearing at 5:34 p.m.

Submitted By, Reviewed By,

Judith Minnich, Anne Tweedt,

Administrative Support Counsel

EXHIBIT SUMMARY

A ñ HJR 87 through HJR 94, written testimony from Steve Doell, 4 pp

B ñ HJR 87 through HJR 94, Measure 40, 10 pp

C ñ HJR 87 through HJR 94, Comparing Oregon's Proposed Victims' Rights Amendments with Other States, 1 pp