

HOUSE COMMITTEE ON JUDICIARY

May 30, 1997 Hearing Room 357

7:30 A.M. Tapes 41, 42

MEMBERS PRESENT:

Rep. John Minnis, Chair

Rep. Floyd Prozanski, Vice-Chair

Rep. Jo Ann Bowman

Rep. Peter Courtney

Rep. George Eighmey

Rep. Lane Shetterly

Rep. Charles Starr

Rep. Judy Uherbelau

Rep. Larry Wells

MEMBER EXCUSED:

Rep. Roger Beyer

Rep. Ron Sunseri

STAFF PRESENT:

Scott Lumsden, Counsel

Bill Taylor, Counsel

Lisa Fritz, Administrative Support

MEASURE/ISSUES HEARD:

HB 3332 - Work Session

HB 3672 - Work Session

SB 440A - Work Session

SB 268A - 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 41, A		
003	Chair Minnis	Opens the work session on HB 3332.
<u>HB 3332 - WORK SESSION</u>		
004	Scott Lumsden	Counsel, reviews the provisions of the bill.
010	Chair Minnis	Asks Rep. Prozanski if he recalls which bill Rep. Bowman had a concern about.
012	Vice-Chair Prozanski	Responds that it was this bill and it is his understanding that her concern dealt with how the forfeitures would be tabulated. Comments that he believes Phil Lemman of the Criminal Justice Commission spoke with her and told her that they would be able to get that information and report it to her.
019	Chair Minnis	Comments that he was satisfied that there would be appropriate reporting.
020	Vice-Chair Prozanski	States that he also believes there will be appropriate reporting. From what Phil Lemman has said it may require some contact from his office to the Drug Forfeiture Counsel to be certain they are aware of the issue. The other area of concern may be on the local level where there are local ordinances being applied.
028	Chair Minnis	Informs Rep. Bowman of the bill the committee has in front of them. Asks her if the concerns she had with the bill have been addressed.
033	Rep. Bowman	Responds that she spoke to Rep. Carter's office regarding the asset forfeiture component and she is fine with how it will be reported. However, she has also suggested to Rep. Carter's office that there be a change in where the asset forfeiture funds go. The funds should go for alcohol and drug treatment and community-based prevention programs.
050	Chair Minnis	Asks if that is an issue that could be taken up by the Senate.
052	Rep. Bowman	Respond that she does not know if the Senate does these kinds of things.
056	Rep. Wells	Asks which amendment the committee is working on at the present time for this bill.
058	Chair Minnis	The -4 amendments [EXHIBIT A].
062	Lumsden	Comments that the -4 amendments were adopted in subcommittee.
064	Rep. Wells	Asks if the educational programs concerning guns have been taken out of the

		bill.
066	Lumsden	That is still a part of the bill. The -4 amendments do not replace the bill.
070	Rep. Wells	Comments that as he remembers, there was concern about how a person protected himself from being charged when he wasn't guilty.
074	Vice-Chair Prozanski	States that the issue with civil in rem forfeitures is that if they make a request for a hearing then they have the opportunity to appear in front of a judge and explain why they believe that they should not be subject to the forfeitures. Gives an example of an owner whose car was used, not necessarily stolen, in a drive-by shooting. Refers to line 3 of the -4 amendments.
086	Rep. Uherbelau	Asks if the sub-committee discussed a situation in which the owner knows the car has been taken or has consented the use of his car, but could not stop the borrower from using the car in this manner.
091	Vice-Chair Prozanski	Responds that maybe consent is a change in paradigm, which is something more intentional or willful. The sub-committee did not cover that ground.
093	Rep. Uherbelau	States that she could envision a situation where a person knows someone is using their car, but it is not with consent.
096	Rep. Bowman	States that Rep. Carter would like to leave the bill as is.
097	Rep. Wells	Asks if there was discussion on section 1, sub-section 3 regarding the educational programs. Is there currently a program or are we setting up a new program?
101	Chair Minnis	Responds that there is an "Eddie the Eagle" program which is in a bill passed out of the House.
105	Rep. Wells	Does not know how much money would be involved from the proceeds from these types of forfeitures. Is this appropriate use for these funds?
109	Rep. Bowman	States that she has the same concerns. She is concerned this would fund an NRA gun education program.
115	Rep. Courtney	States that he would like to move the bill so that the committee can move on.
117	Rep. Courtney	MOTION: Moves HB 3332 to the floor with a DO PASS AS AMENDED IN SUBCOMMITTEE recommendation.
123	Chair Minnis	Comments that the issue Rep. Uherbelau has raised is one that needs to be dealt with in the Senate.
128	Rep. Eighmey	Comments that he also agrees with Rep. Uherbelau because even giving consent has problems, gives an example of giving consent to use the car, but not consent to do a drive-by shooting.
141	Rep. Shetterly	States that the sub-committee covered that issue in respect to knowledge. The sub-committee made a record that "knowledge" would apply not only to use of the vehicle, but also to knowledge of the drive-by shootings.
146	Rep. Uherbelau	States that the bill does not read that way. Asks if that was the intent.
147	Rep. Eighmey	Yes, "knowledge" refers to knowledge before the incident that the car was intended to be used in a drive-by shooting.

151	Rep. Uherbelau	If the sub-committee discussed that "knowledge" meant that the owner of the car had to have knowledge that it was going to be used in a drive-by shooting then she does not have a problem. However, she does not think it reads correctly to show the intent of the sub-committee.
157	Rep. Shetterly	The record was made in the sub-committee and it will be made again in the full committee.
159		VOTE: 8-1 AYE: 8 - Courtney, Eighmey, Prozanski, Shetterly, Starr, Uherbelau, Wells, Minnis NAY: 1 - Bowman EXCUSED: 2 - Beyer, Sunseri
	Chair Minnis	The motion CARRIES. REP. CARTER will lead discussion on the floor.
165	Chair Minnis	Closes the work session on HB 3332, opens a work session on HB 3672.
<u>HB 3672 - WORK SESSION</u>		
165	Scott Lumsden	Counsel, reviews the provisions of the measure. Reminds the committee that the -2 amendments [EXHIBIT B] were adopted in sub-committee.
180	Rep. Shetterly	MOTION: Moves HB 3672 to the floor with a DO PASS AS AMENDED IN SUBCOMMITTEE recommendation.
184	Rep. Uherbelau	Asks if there was discussion in subcommittee about the constitutionality of this bill. Explains that she is asking because there is case law regarding the forced sterilization of women on welfare which was ruled unconstitutional.
197	Chair Minnis	Responds that there was not discussion relevant to the current constitutional status of chemical castration. Comments that the difference is that this bill is aimed at convicted sex offenders. This bill is intended to be for the predatory sex offender as defined under ORS 181.585. Comments that there was not any discussion as to whether this is constitutional.
207	Rep. Uherbelau	Responds that this is a "basic right" that is being taken away from people. Does not feel comfortable voting on this bill with out exploring this issue.
210	Chair Minnis	Comments that before this bill gets to the floor there should be some discussion on this issue. Some states have already explored the constitutionality issue.
215	Rep. Eighmey	Was there any discussion regarding the state's liability for adverse side effects to the medicine?
227	Chair	Responds that one issue that came before the subcommittee was that the power to do this already existed with some individuals. Assumes that

	Minnis	discussions with respect to liability of the state have already taken place.
236	Rep. Eighmey	Comments that by castrating one is unable to reproduce, but one is not unable to perform. Asks how this is supposed to work. Comments that rape and child abuse are not necessarily sex crimes.
248	Chair Minnis	Responds that part of the answer may be that this particular treatment, chemical castration, may lessen the desire.
250	Rep. Courtney	Comments there are safeguards regarding physician examinations of the individual, refers to the bottom of page 1 of the -2 amendments. Asks what the term "medically contraindicated" means.
267	Rep. Uherbelau	Defines "medically contraindicated" with an example of a person with high blood pressure who takes a medication that has an effect on their high blood pressure.
272	Rep. Courtney	Refers to subsection 1 of section 1. Comments on the use of "may require" on lines 7 and 8 when in section 2 it says "shall require as a condition." Comments that it may be that the use of both phrases prevents this from being a complete and comprehensive requirement.
284	Rep. Schrader	Comments that he is sensitive to the concerns of the committee, but thinks it is important to consider the nature of the population this bill addresses. The treatment program is geared to help these individuals. Many offenders are interested in this treatment. Refers to section 3 to address some of the concerns raised by the committee regarding side-effects and liability issues. This legislation is meant as a tool to help the department of corrections, offenders, and society to gain greater success in treatment of sex offenders.
324	Rep. Uherbelau	Comments that the requirement of informing the individual does not relieve the liability issue because the individual is not able to make a choice.
332	Rep. Schrader	Responds that the victims of these people do not have a choice.
333	Chair Minnis	Comments that the numbers of people being committed to the state correctional facilities for sex offenses are staggering. One reason these numbers are increasing is because the level of enforcement has increased. This bill provides for another method to deal with the problem.
361	Rep. Uherbelau	Comments that she is not raising these concerns because she sympathizes with sex offenders, but because she wants to address the possibility of a liability to the state and the issue of constitutionality.
371	Rep. Eighmey	Comments that he does not pass legislation to have it tested constitutionally.
408	Rep. Shetterly	Comments that this is an addition to the list of medications which are administered as part of post-prison supervision. Does not think this is a huge leap. It is merely a requirement of medication for a particular offense.
420	Rep. Courtney	Comments that when it comes to predatory sex offenders we have already done one thing to a public policy which may or may not be constitutional and that is sex offender notification. Asks if we are justified in taking this extraordinary public policy position at this time in our society for the safety of children.

TAPE 42, A		
025	Chair Minnis	Comments that to him, the question is whether the state has a compelling interest in taking such a step for convicted predatory sex offenders. Believes the state absolutely has a compelling interest. Comments that the only true option that would not be contested would be to keep sex offenders locked up in jail for the rest of their life to keep them out of society.
044	Rep. Courtney	That is also being constitutionally challenged.
047	Scott Taylor	Department of Corrections, the intention behind the -2 amendments was to narrow down the focus to those people that are under supervision, that are predatory, and in combination with the officer and the parole board, identify a small group of people for whom this is a supplement to their on-going treatment.
074	Rep. Uherbelau	Comments that in talking with the State Police, there are only two people listed as predatory sex offenders in the whole state.
079	Taylor	Responds that he would be amazed if that were the correct number. The Board on Post-Prison Supervision has a number of offenders classified as predatory, believes the number to be in the 2000 range. States that there is a tool used to determine if an offender is predatory, the degree of notification is based on the level of "predatory." Offenders off supervision are moved to the State Police.
088	Rep. Uherbelau	If you all work on the same criteria, there seems to be a discrepancy. Asks the committee if there was testimony regarding the long term effects. Is the castration permanent after a certain point?
101	Rep. Schrader	That was discussed in the sub-committee hearing. There are no permanent side-effects. These people will be monitored. This drug is used routinely by veterinarians. There are good results in a great number of cases in cats, dogs, horses. Not everyone is going to be cured. This is merely another tool to help with serious offenders. It has been used in Europe for decades. Notes that in section 2, subsection 4 these offenders have a choice. If they would rather be locked up for the rest of their lives, they merely have to not comply.
133	Rep. Eighmey	Humans are different. Comments that our society has not learned the proper way to deal with offenders. Considers this an inhumane method of treatment, likens it to a lobotomy performed without consent. Does not see this as voluntary or that the offenders have a choice.
188	Chair Minnis	I think there is a substantial difference between a frontal lobotomy and oral medication.
193	Rep. Uherbelau	Comments that she does not think her question was answered. Refers to testimony of Rep. Schrader, castration of animals is much different than castration of humans. Asks if there has been testimony from a medical doctor who is familiar with the use of this medication and has used it, and the long term effects (not just side effects).
	Rep.	There was not testimony from a medical doctor, there was testimony from Diane Middle, the director of the Parole Board. They are using this treatment

211	Shetterly	now on a voluntary basis. Her testimony did not suggest that there was any medical problems with the used of it.
220	Lumsden	Comments that Middle's testimony stated that there was not a long term effect.
221	Rep. Shetterly	There is a track record of use of this drug in Oregon.
228	Rep. Schrader	There was not enough time to get a medical expert here to testify. Comments that a retrospective study done in Texas over a ten year period indicated no permanent effects.
235	Rep. Bowman	Clarifies that in Middle's testimony before the subcommittee, she stated that she could think of two people using this treatment and it has not been happening for a long period of time in Oregon.
247	Rep. Shetterly	Responds that he recalls Middle stating that the use was limited, but does not recall her stating that it was two people.
250		<p>VOTE: 6-3</p> <p>AYE: 6 - Courtney, Prozanski, Shetterly, Starr, Wells, Minnis</p> <p>NAY: 3 - Bowman, Eighmey, Uherbelau</p> <p>EXCUSED: 2 - Beyer, Sunseri</p>
	Chair Minnis	<p>The motion CARRIES.</p> <p>REP. SCHRADER will lead discussion on the floor.</p>
266	Chair Minnis	Closes the work session on HB 3672, opens a work session on SB 440A.
<u>SB 440A - WORK SESSION</u>		
269	Rep. Shetterly	MOTION: Moves SB 440A to the floor with a DO PASS AS AMENDED IN SUBCOMMITTEE recommendation.
274	Lumsden	Counsel, reviews the provisions of the bill and the -2 amendments (EXHIBIT C).
288	Rep. Eighmey	Asks if there was discussion in the subcommittee as to why this is now a necessary piece of legislation.
293	Chair Minnis	There was a substantial amount of discussion in subcommittee on the rising levels of mail crimes, especially in the Portland metropolitan area. This is because of a lack of prosecution at the federal level and a lack of clarity in Oregon statute with respect to the value of a piece of mail.
313	Vice-Chair Prozanski	Asks if there was testimony regarding why it should be a Class C felony for the destruction of the mail boxes. Comments that there should be more significance placed on the mail itself as compared to the container it is housed in.
		Postal Inspector, testifies that the U.S. Attorney will not prosecute mail box

229	John Elms	vandalism. In any given case 20-30 mail boxes could be damaged in a rural area and under the current state statute it would be considered malicious mischief and the local jurisdiction probably would not pursue the case. This legislation would give the local jurisdiction a tool to properly prosecute and hold the vandals accountable.
353	Vice-Chair Prozanski	The DAs are not going to prosecute criminal mischief. There may need to be a specific crime level for the vandalism of a mail box. The mail has always been considered an exclusive federal jurisdiction.
380	Chair Minnis	Comments that the committee did change the crime category and the sentencing guidelines grid from a 3 to a 2. Reminds that a Class C felony can always be treated as a Class A misdemeanor.
392	Vice-Chair Prozanski	Responds that if there are multiple cases of vandalism, the cases can be put together and raise the threshold. But there will still be more of an impact at the local level.
411	Chair Minnis	Comments that it is a Class C felony to destroy a Tri-Met bus stop. Therefore this legislation is not inconsistent with other statutes dealing with vandalism and public property.
416	Rep. Shetterly	Comments that there was testimony in the subcommittee from the Criminal Justice Commission and their only concern dealt with the proportionality of the crime to the classification. This concern was addressed in the -2 amendments.
TAPE 41, B		
001	Rep. Bowman	Asks for a fiscal impact statement.
003	Chair Minnis	\$38,937 of the Department of Corrections general fund for 1997-99. For 1999-2001 the figure is \$187,987. With the amendment from the subcommittee that figure would be less.
007	Rep. Bowman	Asks if the fiscal estimate includes jail time. States that the committee cannot pass a bill that creates an unfunded mandate for local communities.
011	Chair Minnis	Comments that the money to house 1145 prisoners does come from the state.
014	Rep. Bowman	The reality in Multnomah County is that there has never been enough money coming for 1145.
016	Chair Minnis	The Governor's office disagrees with the Sheriff of Multnomah County with respect to the overall cost of administering the 1145.
019	Rep. Bowman	Local counties are going to opt-out and it is going to become a state problem.
021	Chair Minnis	Responds that no county which opted-in, can opt-out if the state has funded \$1 of the program.
025	Rep. Uherbelau	Asks if misdemeanors can also result in jail time.
030	Chair	Yes, up to 1 year.

	Minnis	
032	Rep. Uherbelau	What difference does it make on the argument of filling up our jails, whether we make it a misdemeanor or a Class C felony?
041	Chair Minnis	Responds that the fact of the matter is that the vast majority of these individuals will end up on some kind of probation.
043	Rep. Uherbelau	Are you more likely to be put on probation if it is a misdemeanor than if it is a felony?
045	Chair Minnis	Does not know the answer, it may depend on the county in which the crime occurs.
046	Rep. Uherbelau	Comments that she does not understand what the problem is.
048	Chair Minnis	Comments that in the Portland Metro area alone it is guesstimated that there will be 2954 projected mail thefts for this fiscal year. Gives data for Salem and Eugene.
059	Rep. Courtney	Comments that in his community there were 100 thefts in one day. They take all the contents and then they destroy the mail boxes.
080	Elms	There has been testimony by police officers and bank investigators that the criminals have found it is easier to steal checks and cash them than to commit a burglary.
086	Rep. Courtney	Comments that recently when he left his house early, he noticed that all the mail boxes on Front St. in Salem were completely wiped out.
092	Elms	Mail box vandalism is a kid's prank.
100	Rep. Wells	Comments that he likes the bill. The perception that the federal authorities are going to take care of this issue has been lost because they haven't been taking care it.
111	Rep. Starr	Comments that he appreciates the bill. He had his mail stolen during the height of campaign season. Thinks there should be a greater level of prosecution.
121	Vice-Chair Prozanski	I think the theft should be held to a higher standard than the vandalism. Is concerned that if in many cases this is a prank, there are going to be young people labeled as felons and they are going to lose some of the privileges of a young adult. The punishment for vandalizing a mail box should be at a lower level than the theft of mail. Comments on the proportionality issue.
146		VOTE: 8-0 AYE: 8 - Courtney, Eighmey, Prozanski, Shetterly, Starr, Uherbelau, Wells, Minnis EXCUSED: 3 - Beyer, Bowman, Sunseri
	Chair Minnis	The motion CARRIES. REP. WELLS will lead discussion on the floor.
153	Chair	Closes the work session on SB 440A, opens a work session on SB 268A.

	Minnis	
SB 268A - WORK SESSION		
156	Rep. Uherbelau	Comments that the Staff Measure Summary lists her as excused, but she believes she voted on the bill in subcommittee.
160	Chair Minnis	Reminds the committee that the -A4 amendments (EXHIBIT D) need to be adopted.
162	Rep. Shetterly	MOTION: Moves to ADOPT SB 268A-4 amendments dated 05/28/97.
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
167	Rep. Shetterly	MOTION: Moves SB 268A to the floor with a DO PASS AS AMENDED recommendation.
169		VOTE: 8-0 AYE: 8 - Bowman, Eighmey, Prozanski, Shetterly, Starr, Uherbelau, Wells, Minnis EXCUSED: 3 - Beyer, Courtney, Sunseri
	Chair Minnis	The motion CARRIES. REP. SHETTERLY will lead discussion on the floor.
176	Chair Minnis	Closes the work session on SB 268A.
182	Chair Minnis	MOTION: Requests unanimous consent that the rules be SUSPENDED to allow REP. BOWMAN to BE RECORDED as voting NO on SB 440A.
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
184	Chair Minnis	Adjourns the meeting at 8:45 a.m.

Submitted By, Reviewed By,

Lisa Fritz, Bill Taylor,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 3332, proposed amendments, staff, 1 p.

B - HB 3672, proposed amendments, staff, 3 pp.

C - SB 440A, proposed amendments, staff, 1 p.

D - SB 268A , proposed amendments, staff, 1 p.