

HOUSE COMMITTEE ON JUDICIARY

March 27, 1997 Hearing Room 50

7:30 A.M. Tapes 17 - 18

MEMBERS PRESENT:

Rep. John Minnis, Chair

Rep. Floyd Prozanski, Vice-Chair

Rep. Roger Beyer

Rep. Jo Ann Bowman

Rep. Peter Courtney

Rep. George Eighmey

Rep. Lane Shetterly

Rep. Charles Starr

Rep. Ron Sunseri

Rep. Judy Uherbelau

Rep. Larry Wells

STAFF PRESENT:

William E. Taylor, Counsel

Scott Lumsden, Counsel

Lauri A. Smith, Administrative Support

MEASURE/ISSUES HEARD:

HB 2793 - Work Session HB 2727 - Work Session HB 2468 - Work Session HB 2983 - Work Session

HB 3003 - Work Session HB 2992 - Work Session

HB 2158 - Work Session HB 2994 - Work Session

HB 2240 - 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 17, A		
003	Chair Minnis	Calls the meeting to order at 7:31 a.m.
<u>HB 2793 - WORK SESSION</u>		
007	Chair Minnis	Opens a work session on HB 2793.
008	William E. Taylor	Counsel Reads a Preliminary Staff Measure Summary on HB 2793. Note: -1 amendments adopted by Subcommittee
011	Rep. Shetterly	MOTION: Moves HB 2793 to the floor with a DO PASS AS AMENDED recommendation.
016		VOTE: 9-0-2 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 2 - Rep. Beyer, Rep. Bowman
	Chair Minnis	The motion CARRIES. REP. SHETTERLY will lead discussion on the floor.
020	Chair Minnis	Closes the work session on HB 2793.
<u>HB 2468 - WORK SESSION</u>		
022	Chair Minnis	Opens the work session HB 2468.
023	William E. Taylor	Counsel Reads a Preliminary Staff Measure Summary on HB 2468. Note: -1 Amendments adopted by Subcommittee
029	Rep. Shetterly	MOTION: Moves HB 2468 to the floor with a DO PASS AS AMENDED recommendation.
041	Rep. Uherbelau	Did anyone ask why it should cost \$10? I would think it should be less.
047	Frank Brawner	Oregon Bankers Association Provides clarification as to measure's intent.

064	Chair Minnis	Perhaps one alternative could be to state it as "\$10 or actual cost which ever was greater?"
068		VOTE: 11-0-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES. REP. BEYER will lead discussion on the floor.
072	Chair Minnis	Closes the work session on HB 2468.
<u>HB 3003 - WORK SESSION</u>		
073	Chair Minnis	Opens the work session on HB 3003.
074	William E. Taylor	Counsel Reads a Preliminary Staff Measure Summary on HB 3003.
077	Rep. Shetterly	MOTION: Moves HB 3003 to the floor with a DO PASS recommendation.
085	Rep. Courtney	Wasn't this measure amended? Was there no dissent? When was the last time we increased the fees?
087	Shetterly	The measure was not amended, and there was no dissent. The fee was last increased 40 years ago.
089		VOTE: 10-1-0 AYE: 10 - Rep. Beyer, Rep. Bowman, Rep. Courtney, Rep. Eighmey, Rep. Shetterly, Rep. Starr, Rep. Sunseri, Rep. Uherbelau, Rep. Wells, Rep. Prozanski NAY: 1 - Chair Minnis
	Chair Minnis	The motion Carries. REP. PROZANSKI will lead discussion on the floor.
097	Chair Minnis	Closes the work session on HB 3003.
<u>HB 2158 - WORK SESSION</u>		
098	Chair Minnis	Opens the work session on HB 2158.
099	Scott Lumsden	Counsel Reads a Preliminary Staff Measure Summary on HB 2158.
104	Rep.	MOTION: Moves HB 2158 to the floor with a DO PASS

	Sunseri	recommendation.
107	Rep. Bowman	Shares concerns regarding this measure after last subcommittee hearing. I have received two reports from the Governor's office and have since been satisfied that my concerns have been met.
112	Rep. Uherbelau	Why are we abolishing the Ombudsman?
113	Chair Minnis	Explains intent of measure.
125		VOTE: 11-0-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Minnis	The motion CARRIES. REP. PROZANSKI will lead discussion on the floor.
130	Chair Minnis	Closes the work session on HB 2158.
<u>HB 2240 - WORK SESSION</u>		
131	Chair Minnis	Opens the work session on HB 2240.
132	Scott Lumsden	Counsel Reads a Preliminary Staff Measure Summary on HB 2240. Note: -2 amendments adopted by subcommittee
141	Rep. Prozanski	MOTION: Moves HB 2240 to the floor with a DO PASS AS AMENDED recommendation.
144	Rep. Wells	Refers to subsection 1(b), line nine through 14 of the original printed measure. There are three reasons why arrest records may be expunged after one year. Refers to the -2 amendments. How do the state or municipal traffic offenses fit into the three reasons that arrest records may be expunged?
188	Chair Minnis	Responds by stating that subsection 1(b) refers to criminal offenses of which traffic offenses may not be included. Seeks clarification.
191	Rep. Uherbelau	We need to compare subsection 1(a) instead of subsection 1(b) of the original measure, along with subsection (5), Page two, and subsection (6). I am uncertain the intent of the measure after reviewing each of these sections separate and together.
		Proponents stated that, under current law, there is no relief for anyone who has ever been arrested let alone who has been

209	Rep. Prozanski	<p>convicted of a traffic offense to expunge their records as anyone else would.</p> <p>If a person, who has been arrested for DUII, goes into a diversion program, those records will be retained. As well as suspension records that would come from arrest of DUII, not the conviction. There are multiple ways of getting suspended besides just a conviction.</p> <p>Provides views of Department of Motor Vehicle ("DMV") officials.</p>
234	Rep. Uherbelau	I do not believe the language in measure does what they want..
240	Rep. Shetterly	It is a pretty narrow measure. Provides an example for clarification.
261	Rep. Eighmey	"It is not the fact that there was an acquittal or a dismissal. The crucial one is the accusatory instrument. Wasn't there an accusatory instrument filed in this particular case?"
268	Rep. Shetterly	"So in subsection 1(b) it is in the disjunctive. It is `or'."
269	Rep. Eighmey	It doesn't have to be an "and"; it could be an "or." The language could read "or an accusatory statement has been filed" or "or an accusatory instrument has been filed."
277	Lumsden	The measure is in the disjunctive state in subsection 1(b), so the arrested person may apply in either case.
285	Rep. Prozanski	MOTION: Moves to RECONSIDER the motion which moves HB 2240 to the floor with a DO PASS AS AMENDED recommendation.
286		VOTE: 11-0-0
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
288	Rep. Sunseri	MOTION: Moves HB 2240 be rereferred to the subcommittee on criminal law for reconsideration.
289		VOTE: 11-0-0
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
290	Chair Minnis	Closes the work session on HB 2240.
<u>HB 2727 - WORK SESSION</u>		
292	Chair Minnis	Opens the work session on HB 2727.
		Counsel

293	Scott Lumsden	Reads a Preliminary Staff Measure Summary on HB 2727. Note: -6 amendments incorporate what was passed out of the subcommittee [LC #2713 dated 3/25/97] (EXHIBIT A) .
306	Rep. Prozanski	MOTION: Moves HB 2727 to the floor with a DO PASS AS AMENDED recommendation.
312		VOTE: 10-0-1 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Rep. Starr
	Chair Minnis	The motion CARRIES. REP. EIGHMEY will lead discussion on the floor.
320	Chair Minnis	Closes the work session on HB 2727.
<u>HB 2983 - WORK SESSION</u>		
323	Chair Minnis	Opens the work session on HB 2983.
324	Scott Lumsden	Counsel Reads a Preliminary Staff Measure Summary on HB 2983. Note: -2 amendments reflect the conceptual amendments which were adopted by committee (EXHIBIT B) .
334	Rep. Prozanski	MOTION: Moves HB 2983 to the floor with a DO PASS AS AMENDED recommendation.
356	Rep. Prozanski	Provides the intent of the measure.
394	Rep. Eighmey	Per the fiscal impact this will increase the cost to the indigent defense account from \$11,000 to \$51,000?
401	Chair Minnis	Following the assumptions of legislative fiscal, they are providing a "worse case" scenario. So, your answer would be yes. Provides information from discussion in Subcommittee on Criminal Law.
414	Rep. Eighmey	It is going to be an extra cost on the indigent defense fund.
416	Rep. Prozanski	It could be. In reality, anytime you bump a misdemeanor level to a felony level it is going to have an impact on that fund.
418	Chair Minnis	The question is whether it is good public policy or not.
420		VOTE: 10-0-1 AYE: In a roll call vote, all members present vote Aye.

		EXCUSED: 1 - Rep. Starr
	Chair Minnis	The motion CARRIES. REP. PROZANSKI will lead discussion on the floor.
427	Chair Minnis	Closes the work session on HB 2983.
<u>HB 2992 - WORK SESSION</u>		
428	Chair Minnis	Opens a work session on HB 2992.
431	Scott Lumsden	Counsel Reads a Preliminary Staff Measure Summary on HB 2992.
445	Rep. Prozanski	MOTION: Moves HB 2992 to the floor with a DO PASS recommendation.
Tape 18, A		
032	Rep. Uherbelau	Refers to line 12 of the printed measure. Could you give me an example of what other kind of behavior we might be talking about?
038	Lumsden	It could include behavior prior to the second process.
042	Rep. Uherbelau	Behavior problems?
046	Lumsden	Behavior prior to the second process.
047	Rep. Uherbelau	What kind of behavior?
048	Chair Minnis	Provides an example for clarification.
049	Rep. Uherbelau	But, it states: "but is not limited to, behavior clearly intended ..." on line 12 of the printed measure. I would think, in your example of kicking out the back window, it is clearly intended to prevent being taken into custody. I want to know what kind of behavior, other than that, we are talking about.
055	Rep. Prozanski	I am uncertain as to what other behavior problems there would be that I could give an example. "I think that it is more on the words of Legislative Counsel making certain that your inclusive as compared to ... What is your concern?"
059	Rep. Uherbelau	This new language is very vague.
060	Chair Minnis	I do not believe it is vague. This new language envisions that they have actually been taken into physical custody with handcuffs and they are continuing to act out.
		I would like to state for the record that this measure is to cover not

062	Rep. Uherbelau	only before being taken into custody, but once taken into custody, when the offender is trying to get away.
064	Chair Minnis	Provides an example.
066	Rep. Prozanski	That is why I suggest going through the booking process. We have officers that are attempting to do the final part of actually lodging them where the conduct is continuing to be acted out. Some courts believe the resisting arrest stops at the point when the physical restraints have been placed on the person, not after.
069	Rep. Shetterly	For the record, my impression of line 12 is that it opens the door to other amendments in the statute. The booking process obviously takes place after arrest, so I think the new language "but is not limited to, behavior clearly intended ..." was necessary to expand the crime to post arrest situations.
071	Rep. Uherbelau	I have no problem with the new language, if we are limiting it to time and not to a vague behavior.
072		<p>VOTE: 9-1-1</p> <p>AYE: 9 - Rep. Beyer, Rep. Courtney, Rep. Eighmey, Rep. Shetterly, Rep. Sunseri, Rep. Uherbelau, Rep. Wells, Rep. Prozanski, Chair Minnis</p> <p>NAY: 1 - Rep. Bowman</p> <p>EXCUSED: 1 - Rep. Starr</p>
	Chair Minnis	<p>The motion Carries.</p> <p>REP. PROZANSKI will lead discussion on the floor.</p>
082	Chair Minnis	Closes the work session on HB 2992.
<u>HB 2994 - WORK SESSION</u>		
083	Chair Minnis	Opens the work session on HB 2994.
084	Scott Lumsden	Counsel Reads a Preliminary Staff Measure Summary on HB 2994.
093	Rep. Bowman	MOTION: Moves HB 2994 to the floor with a DO PASS recommendation.
097	Rep. Eighmey	Asks for clarification of the measure.
102	Chair Minnis	That is correct. Rep. Prozanski noted that the Constitution would clearly prevent us from doing that without consent of the defendant.

104	Rep. Prozanski	This measure is designed for cost savings.
111		VOTE: 10-0-1 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Rep. Starr
	Chair Minnis	The motion CARRIES. REP. PROZANSKI will lead discussion on the floor.
123	Chair Minnis	Closes the work session on HB 2994.
<u>HB 2793, HB 2468 AND HB 3003 - REOPENED WORK SESSIONS</u>		
124	Chair Minnis	Reopens the work sessions on HB 2793, HB 2468, and HB 3003.
126	Rep. Sunseri	MOTION: Moves to SUSPEND the rules for the purpose of RECONSIDERING the vote on HB 2793, HB 2468, and HB 3003.
127		VOTE: 9-0-0
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
128		Rep. Bowman votes Aye on HB 2793, HB 2468, and on HB 3003.
130		Rep. Beyer votes Aye on HB 2793.
132	Chair Minnis	Closes the work sessions on HB 2793, HB 2468, and HB 3003. Adjourns the meeting at 8:10 a.m.

Submitted by, Reviewed by,

Lauri A. Smith, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - HB 2727, -6 amendments [LC # 2713 dated 3/25/97], Staff, 1 page.

B - HB 2983, -2 amendments [LC # 3362 dated 3/25/97], Staff, 1 page.