

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

February 13, 1997 Hearing Room 357

1:00 PM Tapes 24 - 26

**MEMBERS PRESENT:**

Rep. JOHN MINNIS, Chair

Rep. JO ANN BOWMAN, Vice-Chair

Rep. PETER COURTNEY

Rep. FLOYD PROZANSKI

Rep. LANE SHETTERLY

Rep. RON SUNSERI

Rep. LARRY WELLS

**MEMBER EXCUSED:**

**STAFF PRESENT:**

SCOTT LUMSDEN, Counsel

BRIAN HIGGINS, Administrative Support

**MEASURE/ISSUES HEARD:**

Public Hearings on HB 2380, HB 2429, HB 2433, HB 2432, HB 2435, and HB 2437

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.

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 24, A</b>		
004	Chair Minnis	Calls subcommittee to order at 1:09
<b><u>HB 2380 - PUBLIC HEARING</u></b>		

010	Chair Minnis	Opens public hearing on HB 2380
014	Dennis Luke	State Representative, District 54 >Central Oregon and Deschutes County see a lot of arson-related fires. >Awbrey Hall arson suspect was unprosecutable due to existing statute of limitations.
030	Ben Westlund	State Representative, District 55 >higher concentration of arson-related fires than any other part of state
047	Rep. Courtney	What was magic about 7?
050	Rep. Luke	Responds that it is tied to some current things in law
054	Greg Brown	Sheriff, Deschutes County, Central Oregon Arson Task Force >submits and reads written testimony, <b>(EXHIBIT A)</b>
108		>introduces Special Agent Ron Pugh, US Forest Service
112	Rep. Wells	Why did we have statute of limitations?
114	Brown	I don't know.
122	Chair Minnis	The theory is that you do not want to delay prosecution or investigation of a crime because the evidence becomes old.
127	Rep. Prozanski	It is also a policy decision of ranking the severity of crimes.
138	Chair Minnis	The more time passes, the easier it is for the defense attorney to attack memory issues.
141	Vice Chair Bowman	First 30 days are traditionally the most critical time as far as gathering evidence. >wondering if extending time helps? How does it help?
151	Brown	Arson involves painstaking details. >Most arsonists are serial criminals. >takes many years to get evidence
176	Chair Minnis	Asks for answer to Rep. Courtney's earlier question
178	Brown	Working off the records retention law of 7 years which Fire Department uses
		Oregon Criminal Defense Lawyers Association >answers purpose of statute of limitations

196	Jim Arneson	<ul style="list-style-type: none"> <li>&gt;difficulty of defending a crime as time passes by</li> <li>&gt;expresses concern over exceptions to statute of limitations for the sake of horror stories</li> <li>&gt;reluctantly suggests a narrow definition as in sex offenses and public officials to be required within a time from discovery, disclosure, etc.</li> </ul>
252	Hasina Cassim	<p>Oregon Fire Chiefs Association</p> <ul style="list-style-type: none"> <li>&gt;expresses support for this legislation on behalf of association</li> </ul>
260	Chair Minnis	Closes public hearing on HB 2380
<b><u>HB 2432 AND HB 2433 - PUBLIC HEARINGS</u></b>		
263	Chair Minnis	Opens public hearings on HB 2432 and HB 2433
272	Stephen Dingle	<p>Marion County District Attorney's Office</p> <ul style="list-style-type: none"> <li>&gt;Bill is an attempt to resolve an unworkable situation on the street.</li> <li>&gt;<i>State v. Petersen</i></li> <li>&gt;Court of Appeals says it is okay to get killed by polite suspect.</li> </ul>
338		<ul style="list-style-type: none"> <li>&gt;<i>State v. Senn</i> - very common situation</li> <li>&gt;explains why drugs are involved in legislation</li> <li>&gt;doesn't authorize a search, only an inquiry</li> <li>&gt;responds to criticism that measure will lead to harassment of citizens</li> </ul>
395		>not a constitutional issue, rather statutory which courts have narrowly defined
412	Rep. Wells	Comments on personal observations of searches of trunks
420	Dingle	<p>Responds that there could be many explanations</p> <ul style="list-style-type: none"> <li>&gt;We do have an automobile exception in this state.</li> </ul>
<b>TAPE 25, A</b>		

024	Rep. Wells	I guess what we're talking about is probable cause.
030	Dingle	When the gun is visible, these cases are easy for the officers and courts.
		>Peterson case where it is not so clear >Standard sounds good, but the way it has been applied doesn't seem to follow.
048	Rep. Wells	Would this language in the statute complete a normal procedure?
052	Dingle	Responds that it depends on circumstances >depends on officers' sense of the situation
066	Chair Minnis	I always asked if they had weapons when I made a stop. >For me, it was an officer safety issue.
		>Supreme Court's decision ultimately stopped this practice. >I did the same thing with Miranda rights.
079	Rep. Prozanski	Did the two cases you mentioned go up on appeal?
080	Dingle	Yes.
082	Rep. Prozanski	Asks about Dominguez-Martinez case >asks for how the court has ruled on officers' legal responses to furtive gestures
092	Dingle	<i>State v. Senn</i> >relates case in Salem where suspect was polite but officer still got shot
102	Chair Minnis	OSP had a shooting in Portland; most shootings are on second approach to car.
107	Rep. Prozanski	In my reading of the language, if an individual says no, this would not give the officer any authority except to accept those answers on their merit.
111	Dingle	It doesn't give authority to search to police officers.
115	Rep. Prozanski	My own interpretation on probable cause is that unless they have this, they can not search.
117	Dingle	Specific articulable facts is what is required for officers' safety.
124	Rep. Prozanski	Prior to Dominguez-Martinez decision an officer could ask for consent after issuance of citation.
130	Dingle	This can still be done, but the practical concern is for officer safety.
	Rep.	Under these cases, officers can not unholster their weapon if

137	Prozanski	they fear for their safety.
140	Dingle	Nothing physically prevents them from doing this, but officers risk a civil suit under an illegal search.
150	Rep. Prozanski	What is your interpretation of an officer asking an individual to step out of a vehicle based on fear for own safety?
153	Dingle	It's a seizure.
162	Rep. Prozanski	I see cases out of Florence all the time where they are consenting to do that, but what I am hearing is that they do not have the right to ask someone to take those actions.
167	Dingle	Not under these cases >In both those cases it was an inquiry and not a search.
185	Rep. Sunseri	Those you need this for is those carrying illegal weapons, because you can tell who might have a weapons permit.
190	Dingle	I am not sure.
193	Rep. Prozanski	It shows up on LEDS.
195	Dingle	I tell people that if you are carrying a weapon to declare it.
209	Rep. Sunseri	This limits what you need this for.
210	Dingle	Sure, but under stricter readings I am not sure courts would even allow that.
214	Vice Chair Bowman	On line 3 we are taking out "only", why?
219	Dingle	It came out of LC that way and was not part of our original draft. >I suspect it is because that is the word the courts have used.
227	Vice Chair Bowman	I think it is a good thing, but I am also concerned about broad interpretation. >Should the bill move forward we should look to put that word back in.
237	Dingle	Yes. Inquiry is limited to the certain circumstances. >no intention to turn into broad inquiry on anything
248	Vice Chair Bowman	It is a judgment call when it comes to individual officers. >people not knowing within their legal right not to answer
263	Dingle	There must be lawful reason for the stop. >Situations depend on the number of people. >The two cases I mentioned were single officers.
	Vice Chair	Is this restricted to automobiles? What about walking down the

292	Bowman	street?
302	Susan Tripp	Marion County District Attorney's Office >has to be reasonable belief that they have committed a crime
306	Vice Chair Bowman	But it doesn't matter whether they are in the car or walking on the street, correct?
307	Tripp	That's correct.
313	Dingle	HB 2432 deals specifically with traffic stops.
		>HB 2433 is the general stop statute.
331	Vice Chair Bowman	On behalf of Chair Minnis: >On HB 2433, line 5, terminology in Terry v. Ohio was "has committed," or "was about to commit." >wants to know why this language is not in the bill.
339	Tripp	The DAA has talked about reasons for stop; frisk and search may be changing in Oregon. >may need to bring in to be closer to federal law >These measures were written prior to this realization.
354	Dingle	ORS 131.615 = Oregon law is narrower than federal law
368	Chair Minnis	We've argued on the floor about it, but it seems inconsistent to talk about community policing without giving law enforcement officers the authority.
371	Dingle	This only authorizes the asking of the question. >Comfort zone is what is important for officers.
387	Vice Chair Bowman	I would probably be the one who says no because I know my rights.
390	Dingle	Most times they take off and run.
396	Tripp	In line 13 of HB 2433, regarding person's possession of weapons, our suggestion would be "regarding the presence of weapons or controlled substances" and also the same change in HB 2432 on line 19.
413	Dingle	Gives citations for the cases cited in testimony
436	Rep. Shetterly	The question I have on the bills is the connection being made between officers' safety and controlled substances.
<b>TAPE 24, B</b>		
		Responds that the most dangerous situation for an officer is the

019	Dingle	individual who is on a controlled substance and there is a strong correlation between drugs and weapons >Hypodermic syringes have become a concern as well.
040	John O'Keeffe	Lieutenant, Beaverton Police Department >submits and reads written testimony, <b>(EXHIBIT B)</b>
094	Michael Bell	Lieutenant, Portland Police Bureau
		>endorses both bills and urges acceptance >If asked, people most often will admit to having weapons. >Current procedures are intrusive.
146	Vice Chair Bowman	How often does someone say no I don't have a gun, and you then later find out they did have a gun?
152	Bell	Responds that if they say no, then that is the end of it.
173	Vice Chair Bowman	I assume that most people answer police questions honestly. >The average citizen doesn't necessarily know they don't have to offer that information - where's the balance?
202	Bell	I think the District Attorney addressed this. >The changes in law happen only after the stop. >This does not change what we do; only allows us to ask a question.
211	Jim Stevenson	Captain, Director, Patrol Services Division, Oregon State Police >in support of both bills >beneficial to those officers who work alone especially in rural areas >a tool to deal with pathways of drugs coming into state on transportation system
247	Russ Spencer	Oregon State Sheriffs Association, Oregon Law Enforcement Legislative Committee >Is this an unreasonable intrusion on rights? >The issue of less cover is an extremely important issue. >This bill is a very limited inquiry and is reasonable and prudent.
		Oregon Council of Police Associations

288	Brian DeLashmitt	<p>&gt;submits written testimony, <b>(EXHIBIT C)</b></p> <p>&gt;introduces Jim Botwinis</p> <p>&gt;Minor suggestions of language are not objectionable to us.</p>
300	Jim Botwinis	<p>President, Oregon State Police Officers Association</p> <p>&gt;gives endorsement of both bills</p>
318	Celia Nunez-Brewster	<p>Executive Director, Oregon Commission on Hispanic Affairs</p> <p>&gt;submits and reads written testimony in opposition to both bills on behalf of Angel Lopez, Commissioner <b>(EXHIBIT D)</b></p>
353	Chair Minnis	Do you have any additional testimony?
354	Nunez-Brewster	<p>One concern we have is that we support the police, but what concerns us is individual officers' perceptions.</p> <p>&gt;Bad police officers make it bad for all good police officers.</p>
368	Chair Minnis	Where do the bills speak to the issue of perception?
370	Nunez-Brewster	It is the fact that it is up to an individual officer to ask.
378	Chair Minnis	<p>I find it offensive that this is being used to assume this is the case within the community of law enforcement.</p> <p>&gt;under impression that allowance of question will thus make it prosecutable</p> <p>&gt;doesn't see anything in bill attributed to perception</p> <p>&gt;Where is the conclusion drawn that there is this perception of "driving while Hispanic"?</p> <p>&gt;I don't find this is a common term or topic in the daily experience of law enforcement community.</p>
429	Nunez-Brewster	Responds that she is unable to speak for Mr. Lopez, but the Commission has dealt with complaints where officers have gone beyond the written statutes.
<b>TAPE 25, B</b>		
014	Chair Minnis	<p>I raise the issue because I've heard it on the House floor too.</p> <p>&gt;If we're going to use the terminology, it should be based on some set of facts.</p>
	Nunez-	



018	Brewster	I can provide you with some cases.
022	Chair Minnis	I think this type of behavior is unconscionable on behalf of law enforcement officers. >You may be right on this issue, but I am trying to draw some relevance to the bill we are dealing with.
027	Vice Chair Bowman	Statistics show that baggy pants, gender and skin color get stopped more than anyone else. >It is a fact that people get stopped due to fitting a profile.
040	Chair Minnis	What I am saying is that there is not a policy (in the Portland Police Bureau) of discrimination. >Discrimination is seriously disciplined. >Bill does not allow individual officers to discriminate due to race, income or anything else.
048	Vice Chair Bowman	The only point I want to make is in giving police additional powers of discretion.
056	Chair Minnis	I don't think those clichés do the State any good without supporting documentation.
072	Jim Arneson	Oregon Criminal Defense Lawyers Association >belief that this bill really is too broad >introduces John Henry Hingson
082	John Henry Hingson	Criminal Defense Lawyer >submits and summarizes written testimony, <b>(EXHIBIT E)</b>
129	Chair Minnis	Where do the Oregon Courts give the authority to do pretext stops?
134	Hingson	<i>State v. Olaz</i>
136	Chair Minnis	My understanding is that if stop is based on pretext for the purposes of suspecting a separate crime then that is an illegal stop.
143	Hingson	The Courts decided, this past term, in <i>Wren</i> that the subjective intent of officer does not supersede the facts.
158	Chair Minnis	My training and experience is that I must have a reason for the stop which is other than what I ultimately might find. >If I suspect someone of a crime, I can not wait until they cross the line to stop them.
174	Hingson	I think I'll mention things you never will do.
		> <i>Matthews</i> case is important here where taillights being too

		<p>bright was sufficient enough to stop someone.</p> <p>&gt;refers to amendment to traffic code about "any inquiry" being necessary</p> <p>&gt;Legislature has decided that traffic stops should be minimal intrusions stopped for infractions.</p>
224		>refers to 1991 Oregon Court of Appeals case - <i>State v. Mercado</i> (page 2 of exhibit)
		>violation of equal protection
		>Bill would cause greater schism between people of difference.
263	Chair Minnis	What you're saying is that court bought that.
264	Hingson	<p>The court said that this was an improper basis for the stop.</p> <p>&gt;Minorities are going to be the ones to suffer here if police officers have unbridled discretion.</p>
269	Chair Minnis	That 1977 case was ruled to be illegal, right?
271	Hingson	Illegal, yes.
273	Chair Minnis	How does this bill make that legal?
274	Hingson	Responds that <i>Kolender v. Lawson</i> on page 5 of exhibit has the answer.
304	Rep. Shetterly	<p>Based on your testimony, there is no requirement there be a hint of safety before inquiry.</p> <p>&gt;Line 18 of HB 2432 indicates that they may make any inquiry necessary to ensure safety of the officer.</p>
318	Hingson	Are we going to have 2 separate distinctions for a Charles Atlas officer and for one who is not as strong?
323	Chair Minnis	<p>Isn't there a different standard for Charles Atlas and for the one who is not?</p> <p>&gt;relevance to size and amount of discretion</p>
335	Hingson	<p>Court will have to make the determination and not an individual police officer.</p> <p>&gt;pg. 9 of exhibit, Cicero = economic aspect</p> <p>&gt;current legislation adequate to protect officers' safety</p> <p>&gt;<i>State v. Taylor</i> permits officers to make inquiries about weapons in the vehicle.</p>
		<p>&gt;What about innocent people?</p> <p>&gt;political standpoint, people I represent are unpopular</p>

388		>This type of contact increases tension between people and police.
		>comments on article in day's edition of <i>The Oregonian</i> about Miami Police using illegal roadblocks
<b>TAPE 26, A</b>		
014	Hingson	Refers to page 6-9 of submitted testimony
031	Rep. Shetterly	Has anyone done a constitutional analysis of this?
033	Arneson	I have not.
036	David J. Fidanque	Executive Director, American Civil Liberties Union of Oregon >member, Asset Forfeiture Committee >These bills are not just about officer safety but also about consent to search vehicles. >trooper study of 6400 traffic stops on I-5
90		>Legislature made changes in response to this. >Data from this study gave rise to the term "driving while Hispanic." >Committee asked OSP to continue to track this information for all traffic stops. > <i>Dominguez-Martinez</i> case has cut back on the number of consent searches. >encourages further hearings to view data
112	Chair Minnis	With current status of law, how does this bill exacerbate this? >I'm sure OSP does not have a policy based on that criteria to be able to stop somebody. >I don't understand the relevance to some bad practices within the department.
126	Fidanque	With all of the best intentions of the State Police, there was a major disproportionate impact on motorists based on their race and national origin. >suggests there be changes to bills to lessen impact
		Is there a distinction that when it comes to a search and that

134	Rep. Courtney	when it comes to an issue of the safety of the officer versus evidence of a crime that there is a distinction as to how far you would allow the arm of the law to go?
145	Fidanque	There is a difference.
151	Rep. Courtney	What is the difference?
152	Fidanque	Comments that he thinks a narrowly tailored exception aimed at protection of officer that is not an excuse for a fishing expedition would be appropriate
156	Rep. Courtney	Would you make a distinction on the basis of the security of officer?
163	Hingson	Asks for clarification >If officer has reasonable suspicion, not probable cause, he can make inquiries about contents of vehicle ( <i>State v. Taylor</i> ).
173	Rep. Courtney	What you're saying is officer has more authority to make the search?
179	Hingson	Clarifies previous answer >Can they search? >Law says there must be probable cause, but this statute and <i>Terry v. Ohio</i> , says it is reasonable suspicion.
197	Rep. Courtney	Is it your testimony that these bills are, as drafted, racist?
199	Hingson	There is a difference between de facto and de jure. >de jure, no; de facto, not always >Human nature and power being what they are we know that we must be most vigilant in protecting those classes of disfavor from police abuse.
215	Rep. Courtney	Do you want to go further than that with regards to these statutes?
219	Fidanque	I fear that they would have a disparate impact unless amended to narrow them substantially. >encourages committee to research into recent practices
228	Rep. Courtney	Do you have some specific language to amend the bills?
229	Fidanque	I have some concepts, but I don't know how effective they would be.
233	Chair Minnis	Closes public hearings on HB 2432 and HB 2433
		>The other bills will be sent over until next Tuesday

		[Written testimony submitted for the record by Mexican Consulate, <b>EXHIBIT F</b> ]
237	Chair Minnis	Declares subcommittee adjourned at 3:15 pm.

Submitted by, Reviewed by,

BRIAN HIGGINS, SCOTT LUMSDEN,

Administrative Support Counsel

**EXHIBIT SUMMARY**

**A - HB 2380, Written testimony, Sheriff Greg Brown, 2 pp.**

**B - HB 2433, Written testimony, Kevin John O'Keeffe, Beaverton Police, 2 pp.**

**C - HB 2432, Written testimony, Douglas Hoffman, submitted by Brian De Lashmitt, OCPA, 2 pp.**

**D - HB 2432 and HB 2433, Written testimony of Angel Lopez, submitted by Celia Nunez-Brewster, 1 p.**

**E - HB 2432 and HB 2433, Written testimony of John Henry Hingson III, OCDLA, 9 pp.**

**F - HB 2432 and HB 2433, Written testimony, Mexican Consulate, 1 pp.**