

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

February 18, 1997 Hearing Room 357

1:00 PM Tapes 29 - 30

**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 2429, HB 2435, HB 2437, HB 2507, HB 2224, SB 36

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 29, A</b>		
004	Chair Minnis	Calls subcommittee to order at 1:08
<b>SB 36 - PUBLIC HEARING</b>		

005	Chair Minnis	Opens public hearing on SB 36
011	Bill Markham	State Representative, District 46 >offers clarification on intent of bill
018	Glen Rader	Lieutenant, Oregon State Police, Patrol Services Division >introduces Chuck Hayes, Albany Patrol Office >submits and summarizes written testimony in favor of SB 36 <b>(EXHIBIT A)</b>
043	Chuck Hayes	Lieutenant, Albany Station Commander, Oregon State Police and Coordinator, Drug Recognition Program >summarizes written testimony submitted as part of <b>EXHIBIT A</b>
086	Rep. Wells	Wasn't there a more controversial version of this bill in the 1993 session and how does it differ from this bill?
091	Rader	The difference is there was controversy over taking of urine samples and this one is more specific and has a sunset clause.
098	Rep. Wells	Are you taking the samples differently now since you are not using the monitor?
100	Rader	It was not different except that it would be done in private.
107	Russ Spencer	Oregon State Sheriff's Association >previously, samples voluntary >Side-benefits are the drug recognition training of personnel.
131	Rep. Markham	Offers historical background of this legislation
141	Rep. Prozanski	Have the safeguards implemented been working?
144	Spencer	They work well for us.
145	Rep. Prozanski	So, you are only asking for the discontinuance of the sunset?
147	Spencer	That's correct.
148	Rep. Shetterly	How have the results held up in prosecution?
152	Hayes	The District Attorney's Association fully supports this. >Drug recognition program has well-trained officers testifying.
170	Chair Minnis	Closes public hearing

		[Testimony submitted for the record in support of SB 36 by Edward Marges, Oregon Department of Transportation, Transportation Safety Section ( <b>EXHIBIT B</b> ) and by Oregon Association Chiefs of Police ( <b>EXHIBIT C</b> )]
<b><u>HB 2507 - PUBLIC HEARING</u></b>		
171	Chair Minnis	Opens public hearing
172	Bill Markham	State Representative, District 46 >headed in the right direction with this legislation
180	Russ Spencer	Oregon State Sheriff's Association >supports concept of this bill
199	Ingrid Swensen	OCDLA >no particular advice for the committee >distinction between alcohol and controlled substances >Criminal penalization doesn't seem to work. >civil detox programs >CA statute deals with public places and not private. >Prescribed drugs are exempt with this bill which could be a problem.
255	Chair Minnis	Assumes that illegal substances in body or in hand should be prosecutable >problem with documentation
278	Rep. Shetterly	Ms. Swensen raises some good issues about alcohol.
285	Rep. Prozanski	Difficulties with proof to prosecute this beyond a reasonable doubt
292	Chair Minnis	I think it would be easy to demonstrate because of the paraphenalia.
301	Rep.	Could have a prosecution on just possession charge in MIP cases

	Prozanski	>reality is inability to bring substantial evidence to prove beyond a reasonable doubt
313	Rep. Shetterly	We do have MIP in which there is no need to prove under the influence.
331	Chair Minnis	Closes public hearing on HB 2507
<b><u>HB 2429 - PUBLIC HEARING</u></b>		
339	Chair Minnis	Opens public hearing on HB 2429
350	Floyd Prozanski	State Representative, District 40 >Current law requires appearance in court within 2 weeks of citation. >asks extension to 30 days
		>Court only operates one day a week. >People travelling through have difficulty meeting the 14 days. >With Measure 47, court won't be in session as frequently.
392	Pete Sandrock	District Attorney's Association, District Attorney, Benton County >recognizes amount of staff needed to review matters >Missed deadlines cause extra work. >would find 30 days useful, especially in college jurisdictions
430	Chair Minnis	Are these citations in lieu of custody?
431	Sandrock	Yes. Chapter 133 misdemeanor citations
437	Chair Minnis	So, these are standard for criminal offenses up to and including C felony.
444	Chair Minnis	Closes public hearing on HB 2429
<b><u>TAPE 30, A</u></b>		
<b><u>HB 2435 - PUBLIC HEARING</u></b>		

014	Chair Minnis	Opens public hearing on HB 2435
016	Pete Sandrock	District Attorney's Association, District Attorney, Benton County
		<ul style="list-style-type: none"> <li>&gt;gives authority to law enforcement officers to issue functional equivalents of traffic tickets for non-criminal violations</li> <li>&gt;reduction of costs for DA's offices</li> <li>&gt;eliminates work load for DA's offices</li> <li>&gt;does not affect rights of defendants charged with violations</li> </ul>
070		<p>DA's looking at categories of offenses that will be unprosecutable due to staff cutbacks.</p> <ul style="list-style-type: none"> <li>&gt;broken window theory of public safety</li> <li>&gt;submits proposed amendments (<b>EXHIBIT D</b>)</li> <li>&gt;Amendments would change ORS 161.565 which says misdemeanors will be treated as violations.</li> <li>&gt;authorizes DA's to authorize law enforcement officers within jurisdictions to reduce identified misdemeanors to violations</li> <li>&gt;minor reductions in indigent defense costs</li> </ul>
122	Vice Chair Bowman	Asks for explanation of difference between misdemeanor and citation
124	Sandrock	<p>In Oregon law, there are 3 flavors: felonies, misdemeanors and violations</p> <ul style="list-style-type: none"> <li>&gt;violations punishable only by fine; functional equivalents to traffic infractions</li> <li>&gt;equivalent to traffic infractions</li> </ul>
135	Vice Chair Bowman	Currently half-ounce of marijuana is an infraction?
136	Sandrock	It is a violation not punishable by incarceration.
141	Vice Chair Bowman	It seems there is an apparent conflict with the testimony we just heard on HB 2507.
149	Chair Minnis	There is a marijuana recriminalization bill.
		Questions language on lines 11-12

152	Rep. Shetterly	<p>&gt;does not prohibit use of uniform citation</p> <p>&gt;Is this broader than the intent?</p> <p>&gt;Does it permit the use of uniform citation?</p>
165	Sandrock	<p>Yes, but there is a difference</p> <p>&gt;Chapter 133 uniform crime citation = paper arrest</p> <p>&gt;Chapter 153 contains complaint, skipping DA's office going straight to the court</p>
182	Rep. Shetterly	Under subsection 2 of Section 1, it says it must comply with Chapter 153 requirements so that it would contain the complaint?
184	Sandrock	Yes.
185	Rep. Shetterly	So are we talking about this applying to B and C felonies?
188	Sandrock	No, only those offenses treatable as violations
190	Rep. Shetterly	<p>This section does not prohibit the citation for offenses.</p> <p>&gt;Offenses here seems to mean all offenses.</p>
198	Sandrock	Are you looking at lines 11-12 of proposed amendments?
205	Bradd Swank	<p>State Court Administrator's Office</p> <p>&gt;Rep. Shetterly's question has already occurred from original bill.</p> <p>&gt;2 different types of citations: infractions and citations in lieu of custody</p>
		<p>&gt;want to create a more efficient system</p> <p>&gt;The bill and amendments don't clearly identify relationships.</p> <p>&gt;assume these will go to LC for cleanup</p>
255		<p>&gt;supportive of concept if it makes it more efficient for DA's</p> <p>&gt;propose 2 things: 1) make the tie-in between the 2 different citations and 2) allow them to proceed as violations</p>
278	Chair Minnis	Expresses concern about giving DA broad discretion
282	Rep. Prozanski	They already have that in existing statute under 161.565.
295	Chair Minnis	<p>Questions:</p> <p>&gt;allowance for issuance of citations for violations</p>

		>may need uniform violation citation
309	Swankk	It operates differently in different courts. >reflects demand of DA's time >It is authority they already have.
322	Sandroch	The reason we ask for authority is because we understand that we should be exercising discretion to reduce some misdemeanors to violations. >With Measure 47, we may not be able to prosecute cases at all which isn't good policy.
354	Rep. Shetterly	On page 3, line 1 of amendment: misdemeanors can be classified as violations. >page 2, line 13 exception for attempting to elude
372	Rep. Prozanski	Expresses concern that intent should be with clear directives as to how to apply these rules to general population >the tool being used differently by different officers
398	Sandroch	With regards to equity, this is why language in proposed amendments, says district attorney can limit this authority. >The threat already exists with traffic citations.
428	Rep. Prozanski	This will need to be fairly and equally applied across the board. >can't have selective prosecution or selective discrimination >must be safeguards for no matter who you are
<b>TAPE 29, B</b>		
029	Chair Minnis	If we do research on creation of authority to district attorney, I think we'd see that it was not meant to be carte-blanc, rather case-by-case. >potential search and seizure problems ending up in the courts
050	Sandroch	DA's exercise their discretion every day and not just on case-by-case basis.
066	Chair Minnis	Where's the statutory authority to do that?
067	Sandroch	It's Constitutional authority not to file a charge.
069	Chair Minnis	Can you site the article?
070	Sandroch	No.

071	Chair Minnis	I think the Constitution says that the Legislature sets policy. >Article 7, Section 17 = authority comes from legislative assembly >Where does statutory authority lie?
098	Sandrock	Then there is no prosecutorial discretion.
100	Chair Minnis	Only that given specifically by the legislative assembly
104	Rep. Prozanski	District Attorneys' official position is that they are part of the Executive branch.
107	Chair Minnis	The law-making body of the government is the Legislature. >What is statutory authority?
112	Sandrock	Prosecutors have broad discretion in the decision to file or not to file - >ORS 161.565 has given this discretion with respect to misdemeanors and violations.
119	Chair Minnis	I'd just like to know where the lineage of authority lies.
123	Rep. Prozanski	I'll be glad to do a search through CRIMLAW on how courts have ruled.
127	Chair Minnis	Even though courts have ruled, the only obligation we have is to codify or not codify the decisions of the court.
133	Rep. Shetterly	If the court has interpreted the Constitution, there is really nothing for us to codify.
140	Chair Minnis	What this bill does is create a very broad authority for DA's to do what they are already doing.
142	Sandrock	Except for the fact about political accountability
147	Chair Minnis	Will search and seizure be compromised?
152	Sandrock	In practical effect, it is not a problem.
157	Chair Minnis	Closes public hearing on HB 2435
<b><u>HB 2437 - PUBLIC HEARING</u></b>		
166	Chair Minnis	Opens public hearing on HB 2437
179	Stephen Bach	Gun owner >offers testimony against bill



		>substantial change in law in 1989 regarding barrel length
245		>National Firearms Act >best procedure not to change law but to adjust police protocol >ATF can not disclose private tax information
295		Continues testimony >Bill would impact those who are in compliance with federal regulations.
366	Rep. Prozanski	This bill is put forth by the District Attorney's Association; I had a similar bill that I did not draw up.
385	John Nichols	Executive Director, Oregon Gun Owners
		>introduces Jim Ebert and Justin Burns
<b>TAPE 30, B</b>		
018	Justin Burns	Oregon Gun Owners >goal to prove compliance with federal law >People who currently abide with law should not be subjected to court costs.
027	John Nichols	These items have been required by federal government since 1939.
037	Chair Minnis	Part of the question is if person is not registered it is violation of federal code. >It is prosecutable in federal court.
042	John Nichols	In 1987 or 1989, these items were not even in Oregon statute.
053	Chair Minnis	The reason I mention it is because the earlier testifier had mentioned that the ATF would be interested, but not willing to prosecute.
058	John Nichols	Yes, they should be interested. >We want the DA's to be able to prosecute the bad guy.
065	Jim Ebert	Oregon Gun Owner's Association, Board of Directors Member >offers testimony in opposition to measure >want to protect those who own these items legally
084	Justin Burns	Would like to satisfy needs of District Attorneys without placing

		burden of proof on legal owners
089	Chair Minnis	If someone purchases an AK-47 and then converts it, is there another provision in statute?
093	John Nichols	That would be unlawful possession and manufacture which are federal crimes.
095	Chair Minnis	Under this statute?
097	John Nichols	Under the statute as it exists
101	Rep. Shetterly	Were this law put into effect these men would be subject to arrest as they sit here. >also risk of multiple prosecutions
114	Chair Minnis	It's worse than that because I could get a search warrant and disrupt your private life.
116	Rep. Shetterly	Possession is a continuing offense; double jeopardy doesn't apply.
118	John Nichols	Previously, the burden of proof used to be on the individual. >DAA's want bill as is, but said no DA would prosecute nor judge convict. >worried about officers with personal bias
142	Floyd Prozanski	State Representative, District 40 >had similar bill but didn't drop due to one from ODAA >federal authorities not cooperating >federal prosecutors limited in applying this >suggested compromise is to give directive within statute that proof might provide as evidence to avoid citation >precedent exists in ORS 166.250 and 166.350 >Individuals still must have paperwork. >language possible to satisfy ODAA and Oregon Gun Owners
203	Chair Minnis	Closes public hearing on HB 2437
<b><u>HB 2224 - PUBLIC</u></b>		

<u>HEARING</u>		
205	Chair Minnis	Opens public hearing on HB 2224
212	Ingrid Swensen	<p>OCDLA</p> <ul style="list-style-type: none"> <li>&gt;Current law prohibits operation of any vehicles under the influence of alcohol.</li> <li>&gt;asks committee to remove bicyclists from this provision</li> <li>&gt;other mechanisms to deal with drunken bicyclers such as Class C misdemeanor</li> <li>&gt;extreme penalty for this crime</li> <li>&gt;more desirable to have people riding bicycles than driving cars</li> </ul>
261	Rep. Wells	Where did we come up with this definition that puts bicycles under vehicles?
262	Swensen	The courts have found that bicycles are vehicles.
269	Rep. Prozanski	Skateboards have also been defined as vehicles.
270	Swensen	I think that it is likely skateboarding would be covered.
276	Rep. Shetterly	<p>We have prosecuted some bicycle cases in Dallas.</p> <ul style="list-style-type: none"> <li>&gt;public safety issues - cars needing to swerve to avoid bicyclists</li> <li>&gt;maybe a lesser offense, but not decriminalization</li> </ul>
293	Swensen	<p>It certainly is a question of a level of risk.</p> <ul style="list-style-type: none"> <li>&gt;characterizing risk differently</li> </ul>
301	Rep. Prozanski	<p>We have prosecuted several BUUI cases in my jurisdiction.</p> <ul style="list-style-type: none"> <li>&gt;Legislature has noted some differences between the two crimes: 1) driver's license is not subject to suspension nor 2) breathalyzer.</li> <li>&gt;a public safety issue if evasive action necessary</li> <li>&gt;still a need to sanction conduct</li> </ul>
336	Rep. Courtney	<p>Bike lanes fall under the rules of the road.</p> <ul style="list-style-type: none"> <li>&gt;shouldn't completely walk away from this act</li> <li>&gt;notes increasing use of bicycles</li> </ul>

363	Mark Cotter	Sergeant, Patrol Services Division, Oregon State Police >submits and summarizes written testimony in opposition to measure <b>(EXHIBIT E)</b>
402	Rep. Prozanski	Asks for department position on whether we should be looking to lower the sanction
409	Cotter	Responds that main concern is that it removes it all together
424	Ed Marges	Manager, Transportation Safety Section, ODOT >submits and summarizes written testimony <b>(EXHIBIT G)</b>
444	Chair Minnis	Do you know of any departments which actually target enforcement towards bicyclists?
449	Marges	None that I know of
450	Rep. Prozanski	You might see this in college areas.
458	Chair Minnis	It is interesting because more bicycles are being used and it is my perception that they are more likely to disobey traffic laws.
472	Chair Minnis	Closes public hearing on HB 2224 >Declares subcommittee adjourned

Submitted by, Reviewed by,

BRIAN HIGGINS, SCOTT LUMSDEN,

Administrative Support Counsel

**EXHIBIT SUMMARY**

**A - SB 36, Written testimony, Lieutenant Glen Rader, OSP, 11 pp.**

**B - SB 36, Written testimony, Edward Marges, ODOT, 1 p.**

**C - SB 36, Written testimony, Oregon Association Chiefs of Police, 1 p.**

**D - HB 2435, Proposed Amendments, Pete Sandrock, ODAA, 4 pp.**

**E - HB 2224, Written testimony, Mark Cotter, OSP, 4 pp.**

**F - HB 2224, Written testimony and newspaper article, Ed Marges, ODOT, 2 pp.**