

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

March 4, 1997 Hearing Room 357

1:00 PM Tapes 39 - 40

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:

Work Session - HB 2152

Public Hearings - HB 2431, HB 2660, HB 2679

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 39, A		
004	Chair Minnis	Calls subcommittee to order at 1:15 PM

<u>HB 2679 - PUBLIC HEARING</u>		
006	Chair Minnis	Opens public hearing on HB 2679
008	Lonnie Roberts	State Representative, District 21 >submits and summarizes written testimony, (EXHIBIT A)
023	Allen Resburg	Retired, Multnomah County Reserve Officers, >submits and reads written testimony, (EXHIBIT B)
061	Rep. Roberts	Comments that John Nichols of Oregon Gun Owners has a problem with "certified," but we want to make sure we get the word "reserve officer" in there >do not want to exclude retirees >going to ask LC for amendments
077	Chair Minnis	What were the amendments you asked for?
079	John Nieder	Reserve Sergeant, Multnomah County >Presently, peace officers are defined in ORS 161.015, subsection 4. >Reserve officers are not specifically covered in there. Some departments say we are covered and some do not which has led to some confusion. >The problem arises with regards to firearms as well.
104	Chair Minnis	It might be beneficial for you to describe what type of supervision or oversight you have internally, as reserve officers.
108	Nieder	We have a reserve command staff of sergeants, lieutenants, assistant commander, commander, and reserve coordinator. >We are ultimately responsible to the Chief Deputy of Law Enforcement and the Sheriff.
118	Chair Minnis	You don't go out and do police work off- duty, do you?
119	Nieder	Not if I can get out of it. I don't go around looking for it.
122	Chair Minnis	Asks about amendments
		With recent legislation requiring standardized training of reserves and certified reserves, we now know they will meet the qualifications.

123	Nieder	>Inclusion of reserves in ORS 133.005, subsection 3 and ORS 161.015, subsection 4 and also 166.260, subsection 1A will clearly define authority in the statutes.
144	Rep. Bowman	As a reserve officer, do you carry a gun on duty?
145	Nieder	Yes.
146	Rep. Bowman	And you perform the same duties as a police officer, except for free?
147	Nieder	We have the same commission as regular deputies.
155	Rep. Bowman	How many hours per week do you put in as a reserve officer?
156	Nieder	I put in about 1000-1500 hours per year.
157	Resburg	250 hours yearly is required.
165	Rep. Bowman	As a retired officer, do you keep up on your firearms training?
167	Resburg	When I was active, the sheriff had to certify us in a shotgun and a pistol every six months. >In my case, I do still have access to the range.
176	Rep. Wells	Currently do you have a concealed weapons permit?
180	Nieder	Right now we are given concealed weapons permits by the Sheriff to cover us while we are off duty.
195	Rep. Wells	This bill then would say you would not have to have a concealed weapons permit?
197	Nieder	It just defines police officer in the ORS's to include reserve officers. >It also changes the concealed weapons section to allow us to carry firearms off-duty.
205	Resburg	It would also clarify just what we can and can not do.
220	Rep. Roberts	I want to point out again that John Nichols has a problem with certified, and I am not sure how we are going to handle this. >If we drop certified and just keep reserve, I'm not sure that would take care of the problem.
228	Chair Minnis	We are clear on the objective, though.
233	Rep. Prozanski	Asks for clarification of language defining certified reserve officer versus reserve officer which seems more inclusive
242	Nieder	At the present time there are no certified reserve officers in the State of Oregon. >BPSST has been going over what does and does not constitute a certified reserve officer.

		>The difference is because smaller, rural sheriff's offices didn't have the funding to operate an academy.
265	Rep. Prozanski	Asks about the grandfathering of officers
268	Resburg	Some of us have had years of training already and without the grandfather clause, it would exclude us.
277	Rep. Prozanski	For those who have retired, are you trying to maintain status so that you don't have to go through the concealed weapons permit based on previous training?
283	Resburg	My permit was issued by the Sheriff's office because there was some confusion. >By including it in the measure, we wouldn't have to go through that because we would be treated like any other retired peace officer.
295	Rep. Prozanski	Asks about the liability and accountability issues of retired reserve officers >Would you receive legal counsel from the municipality you are serving with should you need it?
308	Nieder	In Multnomah County, a reserve officer was involved in a shooting about six years ago and the County covered legal and everything.
319	Rep. Prozanski	Was that person on duty at the time of the incident?
320	Nieder	Yes, he was on duty.
324	Rep. Prozanski	Do you know what the policy would have been if he was not on duty?
326	Nieder	At that time, the County's position was that all reserves were covered the same as regular officers, on or off duty, but County Council has vacillated over the years on this issue. >As for the off-duty situation, we are concerned because we don't know whether we are operating as an off-duty reserve officer or as a private citizen.
347	Chair Minnis	It sounds to me like the Sheriff needs to make up his mind.
359	Rep. Prozanski	Understanding the concerns you have and wanting to be identified in the statutes as a peace officer, it raises a flag to me as to potential claims for PERS. >Is it the intent that somehow you would gain some status in regards to PERS?
370	Nieder	No, the thought never even crossed my mind.
372	Rep.	Peace officers go into a different status as governmental employees.

	Prozanski	
379	Nieder	The intent is strictly to define us in the definition of peace officers and to give us the concealed weapons classification.
386	Rep. Prozanski	That is the total picture we should be coming away with then?
391	Nieder	Yes, and it is not intended to go any further with any other benefits.
393	Chair Minnis	It appears that the authority would be there, but the definition of peace officer doesn't specifically say "reserve officer."
413	Rep. Roberts	I just wanted to reiterate that there are 13 reasons they should be able to carry firearms.
422	Chair Minnis	I think that Sheriff's Departments and police agencies are using reserves more, largely due to the costs involved in operating these agencies, which is why reserve officers were addressed last session to assure continuity as far as training.
TAPE 40, A		
015	John Nichols	Lobbyist, Oregon Gun Owners >not here on behalf of Oregon Gun Owners, but on behalf of former, fellow deputies >formerly a reserve, then deputy, then corrections officer >personally doesn't carry a gun >The word "certified" would preclude anyone who retired prior to taking a course authorized by BPSST.
036	Chair Minnis	It's a little more than that. It would basically let them continue to do what they are already doing.
040	Rep. Courtney	How many are there?
041	Nichols	It's probably not more than a few hundred, but I don't believe there is any reporting of the statistics.
048	Russ Spencer	Oregon State Sheriffs Association >in a quandary over this bill, so no position yet >Our concern is that, as the law is applied, you are a deputy sheriff when you are sworn in and are allowed police power when appropriate.
		>The remedy is for the Sheriff to deputize them which I believe they already are which would resolve the liability coverage and off-duty issue.

		>The fact remains that if the Sheriff says you are a deputy, you may act as such.
091	Rep. Sunseri	If we don't do this, then we leave it up to the judgment of a particular Sheriff. Whereas if we do it, then there is a statute that covers this directly.
103	Spencer	You are correct to a point, but a sheriff has the ability to give as much or as little authority as he wants. >I don't know what the commission cards in Multnomah County say they can carry, but with the freedom also comes the liability.
116	Chair Minnis	I think if the Chief of Police said that officers are not to carry weapons off duty, I would be hard-pressed, as an employee, not to comply.
121	Spencer	That is a philosophy that varies from jurisdiction to jurisdiction.
124	Chair Minnis	If we do anything, we should be making it clear that a Sheriff has the power to authorize this without the concealed weapons permits.
131	Virginia Vanderbilt	Office of Legislative Counsel >I'm a little reluctant to say you are on the right track.
134	Chair Minnis	Let's ask the question of whether or not a sheriff has the authority to grant the power to reserve deputy sheriffs to carry weapons off duty.
137	Vanderbilt	I am probably the worst person to ask about that, but as far as I know it is a statutory matter.
143	Chair Minnis	We need to do some research.
150	Vanderbilt	There are a lot of different sources of authority.
154	Chair Minnis	Closes public hearing on HB 2679
<u>HB 2660 - PUBLIC HEARING</u>		
170	Chair Minnis	Opens public hearing on HB 2660
181	Rich Hein	Captain, Director, Oregon State Police Criminal Investigation Services Division >submits and reads written testimony, (EXHIBIT C)
189	Bruce Anderson	Director, Boxing and Wrestling Section, Oregon State Police >reads from EXHIBIT C
207	Rep. Wells	Can you tell us a little more about where this is happening?

211	Anderson	Responds that ultimate fighting is a multidisciplinary form of fighting >currently more common on East Coast
234	Rep. Sunseri	Is this intended to cover professional promotions or participants?
245	Hein	This would deal with anyone who profits from it.
255	Ryan Deckert	State Representative, District 8 >submits and summarizes written testimony and informational materials, (EXHIBIT D)
269	Rep. Shetterly	I don't see this being limited to professional events, so I think we would need some amending. >Do we want to limit it only to professional events? >Do we want to expand this to include the participants?
286	Rep. Sunseri	Do you have any facts as to the number of people that are seriously injured in these types of promotions?
291	Hein	We do not have any statistical information to that regard.
302	Rep. Sunseri	Someone who is knocked out isn't necessarily injured for a long period of time. >Here we are with the government trying to protect the people again. >What about the free enterprise aspects of this?
309	Rep. Deckert	In doing the research for this, there was a death contributed to ultimate fighting in Kansas. >This led to the impetus of states saying this is something we don't want to sanction or promote within our borders.
317	Rep. Sunseri	So do we outlaw boxing because people die in boxing?
320	Rep. Deckert	My testimony would be that boxing has safeguards and that if proper safeguards could be worked into this, I wouldn't object.
334	Chair Minnis	Asks Mr. Anderson what this bill provides that the boxing commission doesn't already have
338	Anderson	To do it statutorily is always an advantage. >There is current administrative rule which defines wrestling and boxing. >We look at ultimate fighting as wrestling. >Someone could argue that ultimate is outside of wrestling and so we

		would like to see something statutorily. >The purposeful letting of blood associated with this sport creates a public safety issue.
380	Rep. Shetterly	This bill would also, in effect, create a Class A Misdemeanor.
392	Chair Minnis	Is that your understanding of what the bill does?
395	Hein	The bill doesn't specifically, but that is my understanding.
400	Chair Minnis	This is what you want to have as opposed to the authority to regulate this kind of event.
403	Hein	We'll do whatever you want us to do.
412	Rep. Prozanski	Points out that Rep. Whelan wants to give testimony on the effects this bill would have on society
TAPE 39, B		
016	Tom Whelan	State Representative, District 32 >testifies in opposition to bill >type of activity does not rise to level of criminal or civil offense
049	Chair Minnis	What was your opposition based on?
050	Rep. Whelan	Just general opposition
051	Rep. Courtney	Where are you on cockfighting?
052	Rep. Whelan	I'd be opposed to cockfighting.
053	Rep. Courtney	Because it's a little animal that gets ripped up?
053	Rep. Whelan	I just can't bear to watch that.
065	Rep. Prozanski	As to the language in the bill, I understand that you are wanting some sort of regulatory authority and I don't see that within the bill. >I would suggest you put something in there to address that.
090	Rep. Courtney	Are these bills as fights to the death?
093	Rep. Deckert	The way they are billed, or advertised, are as fights to the death.

101	Rep. Courtney	Who stops them?
103	Hein	Responds that it is submission by one participant
105	Rep. Courtney	So, even if you're unconscious, I can keep hitting you and that is okay?
108	Hein	You'd assume that there is a competent referee that would step in.
113	Rep. Deckert	That is the problem; there is no regulation so there are situations where there are deaths.
115	Rep. Courtney	Can you hit someone below the belt in ultimate fighting?
119	Hein	This is entertainment, so very often it is choreographed. >Sometimes the referee is part of the show.
137	Rep. Courtney	Can women participate?
138	Hein	Not that I am aware of.
144	Rep. Courtney	I was looking for a little more direction.
148	Chair Minnis	I'm concerned as to why we are creating a crime as opposed to giving your agency regulatory authority.
152	Hein	My understanding was that they would be under the current statute of this section.
160	Rep. Deckert	The notion of the statute is to give Captain Hein and the State Police the authority to say promotion of this type of activity is illegal.
166	Chair Minnis	Don't they already have the authority?
167	Rep. Deckert	I would say this is more clear.
168	Chair Minnis	It might be more clear, but don't they already have the authority to regulate these matches.
169	Hein	We do, under administrative rule.
174	Rep. Prozanski	Maybe we could make it clear that this is a definition that is under their control. >They could then set the penalties and have the State Police enforce those.
180	Chair Minnis	Closes public hearing on HB 2660
<u>HB 2152 - WORK SESSION</u>		

183	Chair Minnis	Opens work session on HB 2152
185	Scott Lumsden	Committee Counsel >reads provisions of bill and -1 amendments dated 2/10/97, (EXHIBIT E) >submits -2 amendments, dated 3/3/97, (EXHIBIT F)
205	Chair Minnis	The public hearing we had on this was on January 16th.
207	Lumsden	The proposed amendments are LC drafts of the proposed amendments submitted by the Department of Corrections.
217	Al Chandler	Assistant Director, Department of Corrections >testifies in regards to -1 and -2 amendments >Department of Justice, specifically Jef Van Valkenburgh, assisted on -1 amendments
233	Scott Lumsden	Clarifies that if the -1 and -2 amendments were adopted, the -2's would be adopted into the bill so as to define "unusual security risk."
254	Rep. Sunseri	I have a note saying we were going to insert the phrase "statewide at any time" on line 20 and I don't see this reflected in the amendments.
259	Chandler	In the -1 amendments we put the last line 11, 12 and 13 and took the number out.
272	Rep. Sunseri	So you would construe that to mean anywhere statewide.
277	Rep. Prozanski	I'm assuming that if we put the -1 and -2 amendments together and put them on top of each other, it would be the complete bill without any further modification.
289	Lumsden	Clarifies that if the committee adopts the -1 amendments these would replace the original bill >If in addition, the -2 are adopted, they would be inserted to the original bill and would follow the -1 amendments. >All that would remain would be the text of the -1 and -2 amendments.
310	Chair Minnis	In essence we would have a brand new bill which is really just the -1 and -2 amendments.
315	Rep. Courtney	MOTION: Moves to ADOPT HB 2152-1 amendments dated 02/10/97.
		VOTE: 7-0
	Chair	

	Minnis	Hearing no objection, declares the motion CARRIED.
320	Rep. Courtney	MOTION: Moves to ADOPT HB 2152-2 amendments dated 03/03/97.
323	Rep. Wells	So we are taking out the reference to the ORS so that it just says Section 1.
325	Chair Minnis	I think it leaves line 2.
333	Rep. Wells	Asks for clarification of the appearance of final bill
342	Lumsden	Now that the -1 amendments have been adopted, the entire bill has been replaced by the -1 amendments.
345	Rep. Prozanski	That would be on the bottom of the -1 that's in type that says Section 1 and ending at the end of that page.
351	Chair Minnis	But you think we might need to amend the -2 amendments?
351	Lumsden	Line 1 of the -2 amendments would no longer have any meaning.
365	Chair Minnis	Asks if Rep. Courtney minds amending his motion to allow Legislative Counsel to adapt the -2 amendments to the -1 amendments >Once we adopt we will get an LC Draft before we move this to the full committee.
394	Rep. Courtney	I was going to adopt the -2 to the -1 amendments so that at least we have a legislative record.
401	Lumsden	Clarifies further the motion to amend the amendments
412	Rep. Courtney	I withdraw my motion to adopt the -2 amendments.
428	Chair Minnis	Notes that there are no objections to the withdrawal of -2 amendments
433	Chandler	The problem is with the numbering.
TAPE 40, B		
013	Chair Minnis	So if you look at the -2 amendments and there was a motion to delete line 1 and renumber 4 on line 2 with 3, it would flow.
016	Rep. Prozanski	MOTION: Moves to ADOPT HB 2152-2 amendments dated 03/03/97 with the deletion of line 1 and the renumbering of 4 to 3 on line 2.
		VOTE: 7-0
	Chair Minnis	Hearing no objection, declares the motion CARRIED.
022	Chair Minnis	We will get it all codified before we move it to full committee

		>Closes work session on HB 2430
<u>HB 2431 - PUBLIC HEARING</u>		
031	Chair Minnis	Opens public hearing on HB 2431
035	Fred Avera	<p>District Attorney's Association, Polk County District Attorney</p> <p>>Under Chapter 809, the Legislature has provided that a driver's license will be suspended if you are convicted with one or an enumerated number of crimes.</p> <p>>809.460 provides that the Department of Transportation must rescind the suspension during the time of the appeal.</p> <p>>Our suggestion is that there be a colorable claim of error by the trial court.</p> <p>>There should be a requirement that the person agree to notify the Department of Transportation when the appeal is dismissed or otherwise disposed of.</p> <p>>The current law provides a loophole where someone not desiring to have their license suspension following a conviction can tie it up for long periods of time or avoid the sanction altogether.</p> <p>>This bill would require that an application be made if you want the suspension stayed.</p>
085	Chair Minnis	Have you had any conversations with the Department of Transportation on this bill?
086	Avera	<p>Jim Arneson has told me that they called him about it.</p> <p>>He expressed to me that ODOT had some reluctance as to whether they wanted this discretion or not, but this has not been expressed to me personally.</p> <p>>It would be a better bill if the court directed ODOT to stay the suspension and then give the court the authority to exercise its discretion to stay the sanction as it does with any other penalty.</p>
096	Rep. Prozanski	This is a good suggestion because the court will know facts and be able to make a determination based on a case by case basis.
101	Rep. Shetterly	I'd support that and it would probably have less fiscal impact on ODOT.

105	Avera	I think that that would be a better bill and would be happy to work with people to make the changes.
106	Chair Minnis	We'll bring it back for a work session as soon as we have some amendments. >Closes public hearing on HB 2431
		Declares subcommittee adjourned.

Submitted by, Reviewed by,

BRIAN HIGGINS, SCOTT LUMSDEN,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2679, Written testimony, Rep. Lonnie Roberts, 2 pp.

B - HB 2679, Written testimony, Allen Resburg, 2 pp.

C - HB 2660, Written testimony, Rich Hein, Department of State Police, 2 pp.

D - HB 2660, Written testimony and informational materials, Rep. Ryan Deckert, 9 pp.

E - HB 2152, Proposed amendments, (-1 dated 2/10/97), Staff, 1 p.

F - HB 2152, Proposed amendments, (-2 dated 3/3/97), Staff, 1 p.