

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

April 28, 1997 Hearing Room 357

3:15 PM Tapes 101 - 102

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

STAFF PRESENT:

Scott Lumsden, Counsel

Brian Higgins, Administrative Support

MEASURE/ISSUES HEARD:

HB 2317 - Work Session

HB 2432 - Work Session

HB 2433 - 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 101, A		
	Chair	

005	Minnis	Calls subcommittee to order at 3:28 p.m.
<u>HB 2317 - WORK SESSION</u>		
015	Chair Minnis	I wanted to start off by having someone discuss the -1 and -2 amendments, but I understand there are -3 amendments also.
019	Bob Rocklin	Department of Justice (DOJ) The -3 amendments are proposed by the Oregon Advocacy Center, and I believe that Ingrid Swenson is here to introduce those. I can talk about the difference between the -1 and -2 amendments.
020	Chair Minnis	The -2 amendments were supposed to be consensus amendments.
023	Rocklin	The -2 amendments are amendments that everyone agrees on. The DOJ wants the -1 amendments.
024	Chair Minnis	Let's talk about the -2 amendments, which are the consensus amendments, and then let's talk about the -1 amendments.
025	Rocklin	Submits and discusses written testimony regarding HB 2317 and the amendments to the bill (EXHIBIT A).
059	Chair Minnis	Point out the differences between the -2 amendments (EXHIBIT B) and -1 amendments (EXHIBIT C).
062	Rocklin	The -1 amendments change the aggravated murder sentencing statute by: (1) making it so the jury can consider all the evidence, in determining whether a defendant should face a sentence of death, and (2) current law says that, unless the defendant waives his or her right to a jury, in the sentencing phase, then he or she gets a jury, we change it so that, unless the state and the defendant agree to have a jury, there will be no jury.
094	Chair Minnis	Who disagrees with those two changes?
095	Rocklin	The Oregon Criminal Defense Lawyers Association (OCDLA) is the proponent of the -2 amendments.
096	Chair Minnis	Who is here from OCDLA?
098	Ingrid Swenson	OCDLA Introduces herself for the record.
100	Chair Minnis	Do you agree that those are the only two differences between the -1 and the -2 amendments?
102	Swenson	The -2 amendments are not consensus amendments. We do not object to them, but we do not concur. Gives background, concerning victim impact evidence. Discusses -1 amendments. Discusses the jury's "fourth question." Comments that there are so many different types of evidence for a jury to consider, and amending the current statute would be difficult.

152	Swenson	Continues testimony. Submits hand-engrossed copy of -3 amendments (EXHIBIT D) .
199	Bob Joondeph	Oregon Advocacy Center Our concern is for those with mental illness or mental retardation. Submits proposal statement for -3 amendments and summarizes (EXHIBIT E) .
249		The -3 amendments are submitted by staff (EXHIBIT F) .
250	Joondeph	Continues discussing his written testimony and the -3 amendments.
300	Joondeph	Continues testimony.
318	Chair Minnis	I'm afraid I am completely lost.
324	Rocklin	The -3 amendments incorporate all new language, and the hand-engrossed copy is all of that language engrossed into the original copy of the bill.
341	Rep. Wells	What are our options here?
342	Chair Minnis	Do we like the -1 and -2 amendments, or do we need more time to read them? You are interchanging the use of "sanity" and "competency."
351	Joondeph	I have interchanged them, but the standard used, in the amendments, is "competency."
358	Rep. Prozanski	I think I understand that all parties support the -2 amendments. If that's not the case, I would like to know that before we go any further.
363	Rep. Bowman	I thought I heard that not all of the parties support the -2 amendments, but they won't challenge them either.
367	Swenson	We will not object to the language, but we wouldn't choose to use it.
374	Rep. Prozanski	Has DOJ had the time to review the -3 amendments, or does the DOJ oppose the -3 amendments?
377	Rocklin	We strongly oppose them.
380	Rep. Bowman	I would feel more comfortable if we had more time to review these. I'm confused, and I'm not ready to vote at all.
383	Chair Minnis	Are there any other points you would like to bring up?
394	Swenson	Because we didn't have a public hearing, maybe the committee would prefer to hear from more witnesses, in the future, that may be more useful.
405	Rep. Prozanski	What part of the -3 amendments are you opposed to?
414	Rocklin	We are opposed to all of the -3 amendments. The -2 amendments are ones that no one would object to, but the -1 amendments are what the DOJ would prefer.
422	Rep. Sunseri	I'd like to read through the information myself.
431	Rep. Bowman	On page 11 of the -1 amendments, line 17, is this really new?

442	Rocklin	No. That is existing language. This bill has moved some things around, in an attempt to clean-up the statute.
TAPE 102, A		
010	Rep. Sunseri	The hand-engrossed version includes the -3 amendments. Right?
012	Swenson	Yes. The hand-engrossed includes only the -3 amendments. It doesn't make reference to anything in the -1 or -2 amendments. Only pages one through six are included, because the rest is identical to the bill.
017	Chair Minnis	Do you think the testimony would benefit the subcommittee?
019	Swenson	Dave Groom, who works for the Public Defenders Office, would be the most important witness. He deals with these legal issues on a regular basis. I think he would like to talk with you about his concerns, regarding the -1 amendments, their constitutionality, and the impact they would have on law in this area.
037	Rocklin	Everyone agrees, at a minimum, on the -2 amendments, which provide an agreement.
041	Chair Minnis	We are going to set this over to Thursday, and we will have invited testimony.
050	Chair Minnis	Closes work session on 2317.
<u>HB 2432 - WORK SESSION</u>		
062	Dale Penn	Oregon District Attorneys Association (ODAA) Submits and discusses written testimony regarding HB 2432 and 2433, as well as the -1 and -2 amendments to the bill (EXHIBIT G). Discusses officer safety. A second major purpose of these bills would be to authorize frisks.
112	Penn	Continues testimony. The present standard is one of reasonable suspicion and the ability to articulate facts. We need to de-escalate the things that these bills and amendments accomplish.
162	Penn	Continues testimony. These bring us into compliance with <i>Terry v. Ohio</i> .
183	Rep. Sunseri	When a person is pulled over, for a traffic stop, and the license is run through a check, if the person has a license for a hand-gun, will that show up as well?
186	Penn	Yes, it would.
187	Rep.	What, then, is the procedure, when there is the probability that that person is

	Sunseri	armed?
188	Penn	The officer could ask where the gun is, so they could get it and put aside. That's really all this is about: getting the weapon set aside so that we can talk about the situation.
194	Chair Minnis	I think it would be similar to when officers get stopped. The first thing I would tell an officer, if I am stopped, is that I am also an officer and that I'm armed.
202	Penn	In the -1 amendments, to HB 2432, I would request an amendment on line seven: substitute "an" for "any" and delete "that is necessary." If we leave those in there, it brings us back to the situation we are currently in.
214	Rep. Prozanski	Are you looking for broader language, in doing that?
230	Penn	I think it would be broader, but there are other things which could be a safety hazard. We don't want to confine ourselves to things which might not be classified as weapons (e.g. syringes).
241	Rep. Prozanski	The inquiry seems to regard any kind of instrument which could cause physical injury or danger.
246	Penn	Discusses subsection (d). A controlled substance would be contraband, and that would come under subsection (e).
258	Rep. Bowman	You're suggested amendment significantly changes what I thought the original bill was about. Why are we adding the additional language?
268	Penn	The issues we're trying to get at are officer safety and request for consent. The court has made it clear that, unless the legislature specifically says that an officer can do something, they can't, so we thought it would be best to specify.
292	Rep. Bowman	How do you think the ODAA would feel about an amendment to require officers to provide this inquiry in writing?
303	Penn	We would oppose that because, while it is wise, making it a must is not constitutionally required. Gives an example. We should not be providing new defenses to people guilty of crimes. Comments on forfeiture legislation.
349	Rep. Bowman	Officers don't leave the station without bullets in their gun and all the supplies they need for the evening, so I don't think it would be difficult for an intelligent police officer to carry the number of needed forms in their automobile. I would like to submit -3 amendments that would require this information to be given in writing.
359	Penn	I understand your concerns, but people who do hard time will talk, just not on tape and not in writing. People who have been "inside" may think, "if it's not on paper, then I can walk my way around it." If we have these rules that say statements have to be made in writing, we get into some problems. We may have a completely voluntary and lawful statement but, because it's not on paper, it's inadmissible and invalid information.
378	Rep.	I appreciate your explanation, but I am concerned about the other side. The idea that it is voluntary depends on the person being stopped. It has nothing to do with whether they have done anything wrong; it has do with their

	Bowman	perception of police officers in their community. I don't think this is an unreasonable request.
406	Penn	I have to prove, beyond a reasonable doubt, that consent was voluntary. The burden is on the state. Putting it in writing is not constitutionally required.
425	Rep. Bowman	Submits -3 amendments (EXHIBIT H).
426	Rep. Prozanski	Asks for clarification, regarding the reasons for taking out "that is necessary" from the -1 amendments.
437	Penn	The appellate courts have read into that language. We feel that if that phrase is left in, the courts will look to that as meaning the person must use the weapon before the officer is justified to make the inquiry.
TAPE 101, B		
021	Rep. Sunseri	MOTION: Moves to ADOPT HB 2432-1 amendments (as amended by Dale Penn's suggestions) dated 4/10/97.
		VOTE: 6 - 0 - 1 EXCUSED: 1 - Rep. Courtney
034	Chair Minnis	Hearing no objection, declares the motion CARRIED.
036	Rep. Bowman	The -3 amendments would give protection to both the officer and the person stopped, and they would keep the intent of the original bill. I see this as a public policy and safety issue. If we are going to give officers additional power to stop people, we must give those in the community additional power to know what their rights are.
064	Chair Minnis	Dale, have you had a chance to see the amendment?
065	Penn	Yes. It is the statute we agreed to four years ago with forfeiture. This would provide a new legal hurdle in every search case, where there was not written consent.
076	Rep. Bowman	This amendment only applies to traffic stops.
079	Chair Minnis	I'm wondering if these amendments would have an impact on searches and seizures.
086	Rep. Shetterly	Cites the third line of the -3 amendments.
087	Rep. Bowman	MOTION: Moves to ADOPT HB 3432-3 amendments dated 4/16/97.

089	Chair Minnis	I'm not convinced it has no impact on searches and seizures. Gives an example.
100	Rep. Prozanski	My concern regards consensual searches. There is a body of law which allows for consensual searches. I will not be able to support the -3 amendments at this time. If the power is abused, I will be there to support them.
134	David Fidanque	Executive Director, ACLU of Oregon The -3 amendments were prepared at my request. I tried to reach consensus on this bill with the Oregon State Police (OSP). It is clear that you are dealing with traffic stops and consensual searches. Submits notice to consent form (EXHIBIT I). The OSP already do this.
154	Penn	There are times you don't have a clear view for consent to search.
170	Rep. Prozanski	Can we get someone from OSP up here to tell us how long they've been using this form, and if that process seems to be working?
173	Chair Minnis	You can have them come up. The OSP has the forms, but they don't always use them because they are not required. Gives an example.
194	Lee Erickson	Major, Operations Bureau Commander I want to clarify the issue about when the consent form is used. We use a different type of consent in forfeiture. The officers are not mandated to use the consent forms in general criminal cases.
230		VOTE: 1 - 5 - 1 AYE: 1 - Rep. Bowman NAY: 5 - Rep. Prozanski, Rep. Shetterly, Rep. Sunseri, Rep. Wells, Chair Minnis EXCUSED: 1 - Rep. Courtney
237	Chair Minnis	The motion Fails.
239	Rep. Sunseri	MOTION: Moves HB 2432 to the full committee with a DO PASS AS AMENDED recommendation.
		VOTE: 5 - 1 - 1 AYE: 5 - Rep. Prozanski, Rep. Shetterly, Rep. Sunseri, Rep. Wells, Chair Minnis NAY: 1 - Rep. Bowman EXCUSED: 1 - Rep. Courtney
	Chair	

242	Minnis	The motion Carries.
HB 2433 - WORK SESSION		
252	Dale Penn	ODAA I tried to address HB 2433 when I spoke of HB 2432 earlier, and my written testimony covers both. Discusses -1 amendments to HB 2433 (EXHIBIT J) .
264	Rep. Prozanski	Clarifies that an officer can do a frisk when he suspects someone is armed. Discusses search and pat down.
275	Penn	The pat down is the frisk. Officers need to justify their contact with the suspect. Oregon statute differs from <i>Terry v. Ohio</i> . We want to make sure that you can do a pat down without a threat being there.
300	Rep. Shetterly	I don't think this changes much. The operative words seem to be on line 18, where "reasonable suspicion" is used. You're still talking about a "may be" situation. I don't see this as making a big difference. Am I missing something?
310	Penn	The court says that there must be some threat present in order for an officer to do a pat down. Explains the procedure, as it would occur, under the amendments. It is a major change for an officer on the street, but I don't think a citizen would see much difference.
335	Chair Sunseri	I want the officer to protect himself.
339	Chair Minnis	Gives example of when a pat down could occur, under current law and proposed law.
369	Rep. Bowman	Is this someone on foot and someone else in an automobile?
376	Penn	This bill relates specifically to traffic stops, but this clarifies the basis for the stop and pat down.
386	Rep. Sunseri	MOTION: Moves to ADOPT HB 2433-1 amendments dated 4/10/97.
390	Rep. Prozanski	I think we should let Dave Fidanque and Ingrid Swenson speak before we vote.
403	Ingrid Swenson	OCDLA Discusses the debate over the stop statute, regarding the detention of a person who is "about to commit a crime."
422	Chair Minnis	It's so difficult that 49 other states do it.
423	Swenson	I doubt that 49 other states do it. Explains the technicalities.

TAPE 102, A		
001	Swenson	Refers to section two. I think that is ambiguous.
012	Chair Minnis	Doesn't the term "reasonable" mean anything? Isn't that the test the court uses?
016	Swenson	Discusses court processes.
019	Chair Minnis	You "reasonably suspect" that I want to move this legislature out of my committee, but you have no facts to prove that. The same thing might apply to a particular suspect.
034	Swenson	Begins to discuss what an officer would have to say, under the discussed criteria.
036	Chair Minnis	You know better than that; you know courts hold police officers to a high standard. I have to articulate the reasons why I stopped someone.
041	Swenson	I'm fearful that this language invites ambiguity. When you talk about someone who "may" be armed or dangerous, you could include much of the population.
048	Chair Minnis	Discusses the term "reasonably suspects."
051	Swenson	I think a "reasonable suspicion" is what someone reasonably believes.
058	Chair Minnis	This committee believes that an officer would have to be able to articulate why they reasonably suspected someone. The Oregon courts are not very liberal when it comes to police officers' power: <i>State v. Westlund</i> .
066	Rep. Bowman	If there is a search and nothing is found, it does not make it to court. The court can only decide something, if charges are filed.
074	David Fidanque	Executive Director, ACLU of Oregon Addresses section one. The effect: the officer would be able to stop and frisk a suspect who is about to commit a crime.
085	Chair Minnis	Is the ACLU not up on things like community policing? Gives an example.
088	Fidanque	Of course we are. Contempt and conspiracy are also crimes. Having "reasonable suspicion" that a crime is in progress comes within the current sphere of the statute.
100	Chair Minnis	Gives an example: there is someone, standing outside your window, under current law, an officer cannot do anything until your house is broken into. Discusses <i>Terry v. Ohio</i> .
119	Penn	<i>Terry v. Ohio</i> would not apply under Oregon law. "May be armed" is from <i>Terry v. Ohio</i> . We are not talking about a full blown search; we are talking about a pat down.
135	Fidanque	Suggests, on line 19 of the -1 amendments, changing "may be armed" to "is armed."
139	Chair	"Is armed" is the language we are currently deleting.

	Minnis	
140	Fidanque	I got the impression that the main problem was "presently dangerous" rather than "is armed." "Reasonably suspects" is a pretty low standard. I think it's an invitation to trouble.
156	Penn	We pulled the "may be armed" language from <i>Terry v. Ohio</i> .
162	Rep. Sunseri	I have moved the -1 amendments, as they are written.
163	Chair Minnis	I hope this committee will deal with police power and potential misuse of such power. I understand Rep. Bowman's concerns.
178	Chair Sunseri	We are talking about basic traffic stops in this bill. It is basic safety for the officer.
182	Rep. Shetterly	I take some comfort in the fact that this language comes from <i>Terry v. Ohio</i> .
193	Rep. Prozanski	This is difficult for me. We are asked to do away with law, which Oregon adopted, rather than what <i>Terry v. Ohio</i> states. I will not vote for it today.
206	Chair Minnis	I may be the one who caused this debate. I do have copies of <i>Terry v. Ohio</i> for your research.
215		<p>VOTE: 4 - 2 - 1</p> <p>AYE: 4 - Rep. Shetterly, Rep. Sunseri, Rep. Wells, Chair Minnis</p> <p>NAY: 2 - Rep. Bowman, Rep. Prozanski</p> <p>EXCUSED: 1 - Rep. Courtney</p>
222	Chair Minnis	The motion Carries.
223	Rep. Sunseri	MOTION: Moves HB 2433 to the full committee with a DO PASS AS AMENDED recommendation.
		<p>VOTE: 4 - 2 - 1</p> <p>AYE: 4 - Rep. Shetterly, Rep. Sunseri, Rep. Wells, Chair Minnis</p> <p>NAY: 2 - Rep. Bowman, Rep. Prozanski</p> <p>EXCUSED: 1 - Rep. Courtney</p>
226	Chair Minnis	The motion Carries.
229	Chair Minnis	Closes work session on HB 2433. Adjourns at 5:09 p.m.

Submitted by, Reviewed by,

Lisa Fritz, Scott Lumsden,

Administrative Support Counsel

EXHIBIT SUMMARY

A - HB 2317, written testimony, Robert Rocklin, Assistant Attorney General, Appellate Division, Department of Justice, 4 pages.

B - HB 2317, proposed amendments (-2), Legislative Counsel, 26 pages.

C - HB 2317, proposed amendments (-1), Legislative Counsel, 27 pages.

D - HB 2317, proposed amendments, hand-engrossed (-3), Ingrid Swenson, Oregon Criminal Defense Lawyers Association, 8 pages.

E - HB 2317, written testimony, Bob Joondeph, Executive Director of the Oregon Advocacy Center, 7 pages.

F - HB 2317, proposed amendments (-3), Legislative Counsel, 3 pages.

G - HB 2342 and HB 2433, written testimony and proposed amendments (-1 and -2), Dale Penn, Oregon District Attorneys Association, 4 pages.

H - HB 2432, proposed amendments (-3), Rep. Jo Ann Bowman, District 19, 1 page.

I - HB 2432, written testimony, David Fidanque, Executive Director, ACLU of Oregon, 1 page.

J - HB 2433, proposed amendments (-1), Legislative Counsel, 2 pages.