

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

May 1, 1997 Hearing Room 357

1:00 P.M. Tapes 103 - 104

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

Lisa Fritz, Administrative Support

MEASURE/ISSUES HEARD: HB 2317 - 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 |
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| Tape 103, A | | |
| 005 | Chair Minnis | Calls the meeting to order at 1:18 p.m. |
| <u>OPENS WORK SESSION ON HB 2317</u> | | |
| | Robert B. | Assistant Attorney General, Appellate Division, Oregon Department of Justice (DOJ). Submits written testimony, regarding HB 2317. [Exhibit B] Also submits proposed HB 2327-1 amendments |

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| 011 | Rocklin | as amended by the DOJ (Hand Engrossed) [Exhibit C] >expresses opposition to -3 amendments |
| 043 | Chair Minnis | Is there a relationship between amendments? |
| 045 | Rocklin | Actually, they have nothing to do with each other. Explains. |
| 050 | Rep. Shetterly | MOTION: Moves to ADOPT HB 2317-1 amendments as AMENDED by the Department of Justice dated 05/01/97. |
| | | VOTE: 4-0 EXCUSED: 3 - Rep. Courtney, Rep. Bowman, Rep. Prozanski |
| | Chair Minnis | Hearing no objection, declares the motion CARRIED. |
| 054 | Rocklin | Discusses Comparison of `Dash-1' and `Dash-2' Amendments [Exhibit A] |
| 073 | Rep. Prozanski | Questions witness for clarification. |
| 076 | Rocklin | Before 1995 the statute is 163.161A....and it's on page one of the -1 amendments. Continues. |
| 115 | Rep. Prozanski | Comments for clarification regarding -2 amendments. |
| 121 | Rocklin | DOJ likes -2 better than nothing, but we prefer -1 over -2. |
| 127 | David Groom | State Public Defenders Office, representing Oregon Criminal Defense Lawyers Association (OCDLA). Discusses the difficulty of understanding material unless you work with it every day. >procedure on death warrants and defendant waives his rights - resulted in the -2 amendments >we do not object to the -2 amendments >-1 amendments are more of a problem |
| 177 | Groom | Before 1995, the law was pretty clear. Continues. |
| 180 | Chair Minnis | Where does that interpretation come from? |
| 182 | Groom | Replies. My reading of Lockett v. Ohio. [Exhibit G] Continues. |
| 185 | Rep. Prozanski | Questions witness for clarification regarding body of law - Texas model. |
| 197 | Rocklin | Replies. Refers to a case where the U.S. Supreme Court said that the jury did not have an opportunity to give effect to some of the mitigating evidence it may have heard. Continues. |
| | | Continues questioning for clarification. |

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| 218 | Rep. Prozanski | >act upon and hear mitigating evidence >other evidence |
| 226 | Rocklin | You have to give a mechanism so they can give effect to mitigating evidence. |
| 228 | Rep. Prozanski | Continues questions. Can you tell us what the other three questions are? |
| 256 | Groom | Replies. We disagree with the Mr. Rocklin on `d'. Explains. |
| 294 | Rep. Prozanski | Is it limited to mitigation at this point, or has any other evidence been permitted? |
| 303 | Rocklin | I don't know of any other states that have addressed this issue. Not a lot of law out there that tells us how it would work. Continues |
| 309 | Groom | The Texas model is not followed by a lot of states. |
| 316 | Chair Minnis | What dangers would arise if we were to adopt the -1 amendments? |
| 322 | Groom | Replies. There is a lot of litigation that takes place around death penalty cases. Continues. |
| 358 | Chair Minnis | Do you see any state constitutional issues? |
| 370 | Groom | Replies. State v. Stevens >establishes that the fourth question is the mitigation question |
| | Chair Minnis | Constitutional or statutory interpretation. |
| 376 | Rocklin | Replies. It has to be a mitigation question to some extent. Explains. |
| 389 | Groom | Oregon Supreme Court approach in any case is to start with the statutes and reach an analysis. Continues. |
| 397 | Chair Minnis | Mitigation question. Continues questioning. |
| 404 | Groom | That's their interpretation. Continues. >open question at this time >victim impact |
| TAPE 104, A | | |
| 007 | Rep. Sunseri | In your comparison of the -1 and -2 amendments - victim's character. How broad of a door is that for jurors? |
| 013 | Rocklin | That's right. It's broad. Continues. >no problem with victim impact evidence |
| 023 | Chair Minnis | Do we like the -1 or the -2 amendments? |

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| 039 | Rep. Prozanski | Is there some way that the -1 and -2 could be merged? |
| 042 | Rocklin | I don't believe so. Explains. |
| 045 | Rep. Prozanski | Comments for clarification giving conceptual wording. >merge the -1 amendments after that...pick up "if one or more of the jurors..." Is there some way to blend that together? |
| 053 | Rocklin | I think that's what the -1 does. Doesn't take anything away. |
| 055 | Rep. Prozanski | I think it does take something away. Continues. >defendant's character or background |
| 061 | Rocklin | If you look at pages 2-3 of the -1 amendments, starting on line 29. Continues. |
| 072 | Rep. Bowman | The difference between -1 and -2 as it relates the penalty phase with the jury - >-1 state has to agree if the defendant wants the jury trial >-2 states defendant has the right to waive a jury trial That's a big difference. Why? |
| 080 | Rocklin | Replies. If there is no possibility that the defendant will receive a death sentence, this becomes like any other criminal case. Explains. |
| 088 | Rep. Prozanski | Required, or state by state in front of a jury? |
| 091 | Rocklin | I don't think there is a requirement for a jury during the penalty phase. Continues. >advisory opinion |
| 093 | Rep. Bowman | Defendant not entitled to a jury trial unless both lawyers agree? |
| 096 | Rocklin | Replies. In terms of sentencing, after a person's guilt has been determined - jury dismissed. Judge does the sentencing. |
| 098 | Groom | I might take exception to that, slightly. Explains, giving an example. |
| 110 | Chair Minnis | Comments. I actually like the fourth question issue but with juries, the -2. Continues. |
| 119 | Rocklin | No guidance; we have some general statements that the jury is supposed to consider. Continues. >jury can consider aggravating evidence on the fourth question |
| 128 | Rep. Prozanski | Comments. I do approve of the death penalty. When assessed, there are certain things that need to happen. Continues. |
| 143 | Chair | Discusses his concerns. |

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| | Minnis | |
| 148 | Rep. Prozanski | Continues his comments. |
| 153 | Chair Minnis | Don't know how to get around that. Continues. |
| 156 | Groom | The legislature already passed the 1995 statute. >battle between the court and legislature at this point >legislature is already on record as supporting aggravating evidence at the penalty phase |
| 166 | Rep. Bowman | Questions for clarification: -1 amendments, page 16, section 9 regarding non-licensed medically trained person may assist the Department of Corrections. |
| 171 | Chair Minnis | Can we come back to that? |
| 175 | Rep. Wells | Comments. I'm remembering that this is at the end, so I don't know whether the victim impact evidence is that important or not. |
| 193 | Chair Minnis | Comments for clarification. Once guilt is determined, there is another jury? |
| 197 | Rocklin | Same jury. |
| 198 | Rep. Wells | Continues questioning regarding different criteria. >guilt phase |
| 206 | Groom | Guilt phase is like any other trial. Explains. >limited by the rules of evidence - continues |
| 224 | Chair Minnis | Questions for clarification. >absent aggravating evidence |
| | Groom | Just in connection with that question, yes. |
| 229 | Rep. Sunseri | I liked the -1 amendments, until the witness said that the court has already acknowledged the legislature's desire to have aggravating and mitigating circumstances. |
| 238 | Groom | I didn't mean to say that was in connection with the fourth question. They haven't done that yet. |
| 240 | Rocklin | Responds to Chair Minnis. This is something we fight about all the time in the Oregon Supreme Court. Continues. >policy decision has already been made |
| 254 | Rep. Bowman | I like the -1 for the fourth question and a -2 for the penalty phase. |
| | | Comments that it is difficult because of never having been a juror. |

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| 265 | Rep. Wells | Explains. |
| 280 | Chair Minnis | Have some comfort that the rules of evidence apply. Continues. >help us understand how the judge goes through that analysis |
| 288 | Rocklin | Replies. At least in terms of mitigating evidence, huge category. That's what the penalty phase is all about - get as much information as you can about the crime and the person. Continues. |
| 307 | Chair Minnis | -1 or -2? |
| | Rep. Bowman | Either/or? |
| | Chair Minnis | My preference is the -1 on the fourth question issue |
| 319 | Rep. Bowman | MOTION: Moves to ADOPT HB 2317-1 amendments dated 04/03/97. |
| | | VOTE: 5-0 |
| | | EXCUSED: 2 - Rep. Courtney, Rep. Shetterly |
| | Chair Minnis | Hearing no objection, declares the motion CARRIED. |
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| 330 | Chair Minnis | On the question of the jury, prefer the -2 amendment giving reasons. |
| 346 | Rep. Wells | Questions the practicality of these types of cases? >judge makes the decision |
| 358 | Rocklin | It depends. Reasons that the defendant or the state would want a jury during the penalty phase. Continues. |
| 371 | Groom | In my experience, this particular issue will come up rarely. Explains. |
| 386 | Rep. Shetterly | Does Measure 40 have an impact on this? |
| 400 | Rocklin | Measure 40 doesn't affect it. |
| TAPE 103, B | | |
| 005 | Rep. Bowman | MOTION: Moves to ADOPT HB 2317-2 amendments dated 04/03/97. |
| | | VOTE: 6-0 |
| | | EXCUSED: 1 - Rep. Courtney |
| | Chair Minnis | Hearing no objection, declares the motion CARRIED. |
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| | Rep. | |

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| 007 | Bowman | Questions for clarification. Page 13, line 14. Significant relationship. |
| 019 | Rocklin | Replies. Tried to import a body of law from a U.S. Supreme Court case. Continues. |
| 029 | Rep. Bowman | Continues questioning for clarification. Page 16, line 18. Issue of non-licensed medically trained persons assisting at an execution. >law enforcement people |
| 033 | Rocklin | Replies. Anybody who could be seen to be practicing medicine. Continues. |
| 042 | Rep. Bowman | Asks for an example. |
| 043 | Rocklin | An orderly, or something like that. |
| 046 | Jim Lockwood | Oregon Department of Corrections. Replies to Rep. Bowman's question giving an example. |
| 060 | Rep. Bowman | Continues commenting/questioning for clarification. |
| 064 | Lockwood | Gives another example for clarification. |
| 074 | Chair Minnis | Comments: Speak to the -3 amendments? |
| 081 | Jim Arneson | Oregon Criminal Defense Lawyers Association. I thought that Mr. Joondeph was going to be here. Refers to memo. |
| 094 | Scott Lumsden | Committee Counsel. Memo was copied to the Chair. |
| 099 | Rocklin | Speaks in opposition to the -3 amendments in their entirety. >attempt to add things to a process/procedure that is dictated by the U.S. Constitution generally Discusses what he sees as problems: >some of them already covered in the -1 >is not the same kind of language the U.S. Supreme Court uses >confuses standards >provision to reopen death warrant hearing - adds more processes to attempt to avoid executions |
| | Rep. Bowman | Comments regarding execution of the mentally ill. |
| 153 | Rocklin | Replies. Mentally ill is a broad question. Explains. >violation of the 8th amendment |
| | Rep. | |

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| 162 | Bowman | Continues to question witness regarding subject. |
| 167 | Chair Minnis | Comments for clarification on subject. >kind of a separate issue - mental retardation/insanity >package in front of us that clarifies a lot of the difficult areas - prefer moving on without -3 amendments |
| 197 | Rep. Shetterly | MOTION: Moves HB 2317 to the full committee with a DO PASS AS AMENDED recommendation. |
| | | VOTE: 6-0 EXCUSED: 1 - Rep. Courtney |
| | Chair Minnis | Hearing no objection, declares the motion CARRIED. REP. BOWMAN will lead discussion on the floor. |
| 214 | Chair Minnis | Adjourns at 2:30 p.m. |

Transcribed by, Reviewed by,

Julie Clemente for

Lisa Fritz, Scott Lumsden,

Administrative Support Counsel

EXHIBIT SUMMARY

A - Comparison of HB 2317-1 and -2 Amendments - Robert Rocklin - 1 pg

B - Testimony on HB 2317 - Robert Rocklin - 11 pgs

C - Hand-Engrossed HB 2317 Amendments - Robert Rocklin - 4 pgs

D - Proposed HB 2317-1 Amendments - Staff - 27 pgs

E - Proposed HB 2317-2 Amendments - Staff - 26 pgs

F - Proposed HB 2317-3 Amendments - Staff - 3 pgs

G - Case History of Lockett v. Ohio - David Groom - 23 pgs