

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

May 20, 1997 Hearing Room 357

1:00 P.M. Tapes 123 - 125

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: SB 770 - Public Hearing and Work Session

SB 614A - Public Hearing and Work Session

SB 780A - Public Hearing and Work Session

HB 2997 - Public Hearing

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 123, A		
008	Chair Minnis	Calls the meeting to order at 1:14 p.m. Opens a public hearing on SB 770.
<u>SB 770 - PUBLIC HEARING</u>		
014	Brenda Rocklin	Assistant Attorney General, Oregon Department of Justice. Expresses support for SB 770.
		Representative, Multnomah County District Attorney's Office.

018	John Bradley	Summarizes provisions of the bill. Testifies in favor of SB 770. Indicates that SB 770, puts into law what is already in practice in several counties.
036	Rep. Bowman	Asks how many cases can be charged under Measure 11, but will be charged under a lesser crime.
039	Bradley	Doesn't know for sure. Continues to describe potential statistics based on different crimes.
043	Rep Bowman	Expresses concern for pushing people into pleading guilty for lesser offenses.
049	Bradley	Indicates that plea negotiations include pleading guilty to a lesser offense. Suggests that prosecutors push people into pleading.
071	Rep. Bowman	Asks if data is being kept on what people are arrested and charged for, who is pleading to a lesser charge, who is charged under Measure 11 and the ethnicities of those people charged.
077	Bradley	Indicates that records are being kept.
078	Rep. Bowman	States that she has spoken with Multnomah County, Marion County and other district attorney's offices. None of them are keeping information about ethnicities and who is pleading to lesser offenses.
084	Chair Minnis	Suggests that there is a system that will have ethnicity information about a defendant.
087	Rep. Prozanski	States that the Department of Corrections provided the Ways and Means subcommittee with information about who is serving time under Measure 11 and who were serving as plea bargains. Indicates that the Department of Corrections would have information about ethnicity.
103	Rep. Wells	Asks how the proposed legislation will affect the judges role in the process.
108	Bradley	Indicates that Measure 11 substantially changes the role that a judge plays in minimum sentencing. Describes agreements between the defendant, defense attorney and judge about plea bargains.
124	Chair Minnis	Indicates that judges ask questions of the prosecuting and defense attorneys as to their agreement.
127	Rep. Wells	Asks about specific language in the bill.
130	Bradley	Provides examples of the effects of the language.
147	Rep. Prozanski	Suggests that the language will also require the judge to accept a sentence if they agree to a plea. The bill provides more for the individuals and doesn't change much of what the court can do.
179	Ingrid Swenson	Oregon Criminal Defense Lawyers Association. Testifies in favor of SB 770 and suggests that it is directly related to Measure 11.
195	Rep. Bowman	Expresses concern with giving more power to district attorneys. Suggests that judges aren't needed anymore - just police officers and district attorneys. Indicates that support of the bill suggests support for a loss of judge's discretion.

211	Swenson	Agrees that the bill is giving more power to prosecutors. Indicates that the bill will allow the state and defense attorney to override a judicial decision when they agree.
230	Chair Minnis	States that judges do have more to do than just sentence.
236	Bradley	Urges the committee to notice that citizens of the state decided to give the power to the district attorneys.
270	Chair Minnis	Closes the public hearing on SB 770 and opens a work session on SB 770.
<u>SB 770 WORK SESSION</u>		
274	Rep. Shetterly	MOTION: Moves SB 770 to the floor with a DO PASS recommendation.
		VOTE: 5-1 AYE: 5 - Courtney, Prozanski, Shetterly, Wells, Minnis NAY: 1 - Bowman EXCUSED: 1 - Sunseri
297	Chair Minnis	The motion CARRIES. REP. WELLS will lead discussion on the floor.
298	Chair Minnis	Closes the work session on SB 770 and opens a public hearing on SB 614 A.
<u>SB 614A - PUBLIC HEARING</u>		
300	Dee Dee Kouns	Representative, Crime Victims United. Explains how victims of crime would benefit from the proposed legislation. Indicates that the bill will extend the statute of limitations on violent offenses. Describes experiences of victims. Suggests that the defense bar wants laws created on what might happen in the future, whereas Crime Victims United encourages laws to be created on what has happened in the past.
397	Bob Kouns	Representative, Crime Victims United. Reads testimony from Terri Jentz (EXHIBIT A).
<u>TAPE 124, A</u>		
001	Kouns	Continues to read testimony from Terri Jentz.
047	Rep. Bowman	Closes public hearing on SB 614A and opens a public hearing on SB 780.
<u>SB 780 - PUBLIC HEARING</u>		

055	Pat Merina	Chief of Police, Albany, also representing the Oregon Association of Chiefs of Police. (EXHIBIT C)
059	Pat Nelson	Traffic Division, Portland Police Bureau.
061	Marc Cotter	Sergeant, Oregon State Police, Patrol Services Division. (EXHIBIT B)
063	Merina	Indicates that testimony was provided on behalf of the Oregon Association of Chiefs of Police. Explains that the City of Albany enacted an ordinance in 1996 that is very similar to the proposed legislation. States that the ordinance has been effective.
070	Cotter	Provides testimony to the committee and explains that stations in Medford and Salem have the ability to tow vehicles for no liability insurance. Expresses support for expanding the program statewide.
080	Nelson	Expresses support for SB 780. Indicates that the problem of drivers driving without a license is greater than the no insurance problem. Suggests that the proposed legislation will reduce the number of hit and run accidents. Speaks of statistics of violations.
182	Rep. Wells	Asks what happens to vehicles after they are impounded.
189	Nelson	Explains that many vehicles are re-released once there is proof of registration.
218	Rep. Wells	Asks when a vehicle would be released if impounded because the operator was intoxicated.
224	Merina	Explains that the operator would have to prove they are not impaired, have proof of ownership, and have insurance.
248	Rep. Wells	Verifies that the proposed legislation is proposing to expand what is currently allowed in some areas.
257	Merina	States that a vehicle would not be released to an impaired driver.
260	Rep. Prozanski	Describes when cars can currently be impounded. Asks if a driver can recover the costs of impoundment if not found guilty.
277	Merina	Indicates that the proposed language allows a person to contest a towing.
291	Nelson	States that his organization has a process of appeal available to everyone.
302	Rep. Bowman	Asks for a clarification on the definition of "reasonably believes" as referenced in the bill.
310	Merina	Explains that reasonable belief is related to probable cause. There are facts of circumstances that causes a person to believe a situation is occurring.
321	Rep. Bowman	Believes that the bill is good, and thinks some of the language is broad. Asks how an officer could reasonably believe that a person's license is suspended.
327	Merina	Indicates that an officer would get the information from the Department of Motor Vehicles.

333	Nelson	Explains that when a person is stopped for a traffic violation, the officer would find out that the driver's license was suspended.
359	Rep. Bowman	Asks what towing costs the law enforcement agency would incur if they contract out for the actual towing.
373	Merina	Indicates that there are costs for generating public records and notification of impoundment.
391	Rep. Bowman	Verifies the costs would be associated with an officer's time.
396	Merina	Indicates that costs will vary for every department.
TAPE 123, B		
004	Rep. Bowman	Asks if there is a way to amend the "reasonably believes" language.
009	Merina	States that there are definitions for the language in the Oregon Statutes.
012	Chair Minnis	Indicates that "probable cause" is defined, but "reasonable belief" might not be.
015	Rep. Wells	Asks what happens to a vehicle if an arrest is made.
020	Merina	That depends on several variables including jurisdiction and where the car is located.
026	Rep. Wells	Asks what happens if the driver is alone and it is evident that the car needs to be towed.
028	Merina	Explains that the driver would be taken into custody and if the car is in a secure location it would be left there.
029	Rep. Prozanski	Indicates that much of the information required for impoundment of a vehicle can be found out from the Department of Motor Vehicles. Suggests that the only issue subject to an officer's interpretation would be DUI.
053	Nelson	Believes the proposed legislation is a valuable tool since the state already has penalties for other offenses.
079	Merina	Indicates the proposed legislation will allow for the recovery of costs to the law enforcement department.
082	Chair Minnis	Asks how departments deal with people who can't pay to retrieve their vehicles.
085	Merina	Explains that hasn't been a problem and suggests that operation of a vehicle can't be free.
087	Chair Minnis	Asks what the Portland Police charge for impounded vehicles.
091	Nelson	Explains that Portland charges a fee of \$15 that is independent of all other charges.
092	Chair Minnis	Asks if fees are ever waived.
093	Nelson	Doesn't know of situations when that has happened.
095	Chair Minnis	Asks how a "reasonable belief" is documented.
098	Nelson	Explains when a citation is written the driver's record is queried.
100	Chair Minnis	Asks if a written report is included in the file.

104	Nelson	Describes what is included in the report.
106	Merina	States that every law enforcement agency has a specific report to write.
112	Rep. Wells	Asks if Portland has been impounding vehicles for a while for lack of insurance.
120	Nelson	Answers affirmatively.
124	Rep. Wells	Asks what fee is referred to in a particular section of the bill.
125	Chair Minnis	Asks if it is relevant to uninsured motorists.
126	Merina	Explains that the fee exists in Oregon Statute.
129	Rep. Wells	Verifies that some related language is being removed.
132	Chair Minnis	Explains that the administrative fee is related to driving while suspended or under the influence.
139	Rep. Prozanski	Indicates that new fees are related to driving without financial responsibility.
144	Rep. Prozanski	Asks if the proposed legislation will be a way to bring in revenue, which probably wasn't the intent of the bill. Suggests that fees not be based on officer's salaries.
181	Rep. Wells	Asks if there is a conflict in the bill that is related to fees.
189	Chair Minnis	Explains how the fees are calculated. Describes separate reasons for impounding a vehicle.
197	Rep. Prozanski	Indicates that the proposed legislation is opening the opportunity for impoundment for three new reasons.
201	Chair Minnis	Closes the public hearing on SB 780 and opens a work session on SB 780.
<u>SB 780 - WORK SESSION</u>		
203	Chair Minnis	Suggests an amendment to the bill.
214	Rep. Wells	Asks how this proposed legislation is related to some related legislation.
218	Chair Minnis	Verifies that he is speaking of the DUII package.
219	Rep. Prozanski	Indicates that SB 780 will be a controlling point for the DUII package.
227	Rep. Prozanski	Suggests that the passage of SB 780 would be a sign of encouragement that vehicles should be impounded when a driver is in violation.
241	Rep. Wells	Indicates that earlier testimony from police officers was not in support of impounding on the spot and keeping vehicles for an extended period of time.
246	Chair Minnis	Indicates that it should be clear to local jurisdictions that police officers should be able to choose what to do.

251	Rep .Prozanski	Suggests non-preemption language be included so that local agencies would not lose what they have done.
256	Rep. Shetterly	Asks if discussion was held on language related to "is committing."
270	Chair Minnis	Suggests language changes on page 1, line 24, after "its" insert "actual administrative"
278	Rep. Prozanski	Asks if there should also be reference to an officer's salary.
280	Chair Minnis	Suggests that isn't necessary.
286	Rep. Prozanski	MOTION: Moves to AMEND SB 780 on page 1, in line 20, after "its," insert "actual administrative".
289	Chair Minnis	Hearing no objections, declares the motion CARRIED.
296	Rep. Shetterly	Suggests that "is committing" is odd language that might need to be changed.
298	Rep. Prozanski	Suggests "has committed."
303	Rep. Shetterly	Indicates that "has committed" brings forward a time frame question.
310	Rep. Wells	Suggests that "is committing" was the included language since it is relating to the action at the time of a stop.
314	Rep. Prozanski	Suggests "at the time of the stop."
315	Rep. Bowman	Expresses the desire to amend the probable cause language.
321	Chair Minnis	Indicates that the issue will be dealt with later.
327	Ingrid Swenson	Suggests that "has committed" be used in the bill.
329	Chair Minnis	Asks if there are preferences for "is" versus "has".
339	David Fidanque	Indicates that there might be a problem with the language.
367	Rep. Shetterly	Suggest another form of language.
383	Rep. Bowman	Continues to express concern for "reasonable cause" language.
389	Chair Minnis	Restates that an officer would stop an individual for a traffic offense and then find out that they are driving with a suspended license.
411	Rep. Prozanski	MOTION: Moves to AMEND SB 780 on page 1, in line 5, delete "is committing" and insert "has committed".
413	Chair Minnis	Hearing no objections, declares the motion CARRIED.
TAPE 124, B		
006	Rep. Bowman	Suggests a conceptual amendment to replace "reasonably believes" with "probable cause."
007	Rep. Shetterly	Points out that "reasonably believes" is in statute when referred to impoundment for uninsured drivers. Suggests that there is symmetry.
011	Rep. Bowman	Indicates that in the Oregon Statutes, "reasonably believes" is related to arrest, not a stop to inquire with a vehicle operator.
019	Ingrid Swenson	Provides a definition for "reasonably suspects".

023	Fidanque	Urges the committee to adopt probable cause for seizure. Indicates that it is a warrantless seizure and therefore the constitution probably requires probable cause for that seizure to occur.
031	Chair Minnis	Asks when there was an earlier objection to proposed language.
	Fidanque	Approximately two to four years ago.
034	Swenson	Agrees that probable cause is the minimum requirement for seizure.
035	Rep. Shetterly	Asks if there would be a case when an officer would not have probable cause to make an arrest but the auto would be seized.
032	Chair Minnis	States that he would have questions to answer, in his own mind as to why that action would take place.
044	Rep. Shetterly	MOTION: Moves to AMEND SB 780 on page 1, line 5 and page 2, line 32, delete "reasonably believes" and insert "as probable cause to believes".
045	Chair Minnis	Hearing no objections, declares the motion CARRIED.
064	Rep. Sunseri	Asks when a bank would pay for release of a vehicle, and at that point, what would the relationship be between the offender and the equity of the vehicle.
077	Frank Brawner	Oregon Bankers Association. Submits and discusses proposed amendments to SB 780A (EXHIBIT D).
080	Chair Minnis	Asks if the amendment was offered in the Senate.
081	Brawner	No, but there is a reason for that. Discusses the similarity to a forfeiture bill. Indicates that the banks are able to get the vehicles back and sell them. Suggests that the amendments will accomplish uniformity for all jurisdictions.
105	Chair Minnis	Verifies that most situations are handled within 24 hours.
107	Brawner	Agrees, but there are exceptions. Continues to explain the 48-hour notice of impoundment to the lien holder of the automobile.
117	Rep. Wells	Asks about time limit language in the amendments.
121	Brawner	Describes the 48-hour notice and how it specifically addresses the abandoned vehicle issue. Explains that the amendments are proposing uniformity across the state.
130	Chair Minnis	Verifies that the bill is fine as is.
	Brawner	Agrees that the bill is fine, but wishes it would cover all local ordinances across the state.
133	Rep. Prozanski	Indicates that Mr. Brawner is requesting that ORS 809.716 be amended.
140	Chair Minnis	Expresses frustration that the amendments are being proposed so late in the process.
142	Brawner	Expresses support for the bill.
146	Rep. Sunseri	Indicates that there is a discrimination concern based on equity in a vehicle.

151	Brawner	States that has been a problem with civil forfeiture and impoundment since the beginning.
155	Merina	States that there is nothing in the bill about forfeiture.
161	Rep. Prozanski	MOTION: Moves SB 780 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 7-0
		AYE: In a roll call vote, all members present vote Aye.
170	Chair Minnis	The motion CARRIES. REP. BOWMAN will lead discussion on the floor.
173	Chair Minnis	Closes the work session on SB 780 and opens a public hearing on HB 2997.
<u>HB 2997 - PUBLIC HEARING</u>		
178	Sergeant Curt Curtis	Oregon State Police. Expresses support for HB 2997. Explains that the proposed legislation would allow the State Police to recover costs associated with responding to false alarms. Provides statistics about false alarms. (EXHIBIT E and F)
192	Rep. Bowman	Asks how much will be charged for false alarms.
193	Curtis	The amount has not been determined. Estimates that there is an average of one hour per officer for each false alarm and then clerical time.
208	Rep. Bowman	Asks for an estimate of costs.
210	Curtis	Based on the salary of a second year trooper, it would be about \$100.
213	Rep. Courtney	Asks when a false alarm would not be charged.
216	Curtis	That would be based on alarm circumstances and whether or not the State Police had an agreement to respond.
222	Rep. Courtney	Explains that the bill is discretionary and wanted to know who would be discriminated against.
225	Curtis	Indicates that administrative rules would clear up the questions, but they haven't been adopted.
239	Rep. Wells	Asks if alarm systems are leased or if they are always owned.
240	Curtis	Does not know if there are lease agreements. Suggests that there might be some companies that rent alarms.
246	Rep. Wells	Asks what part renters and sellers will play in having to reimburse costs of a false alarm.
251	Curtis	Does not know.
253	Rep. Prozanski	Explains that the bill is based on Eugene City ordinances. Suggests that an amendment include language related to leasee.
		Indicates that there are two different alarm systems. Asks if there is

279	Rep. Wells	differentiation between the two systems. Asks if there is a requirement that State Police respond to private alarm systems.
296	Rep. Prozanski	Indicates that the bill was drafted based on relationships between the alarm and alarm companies.
309	Rep. Wells	Suggest that there should be an agreement between the police and the alarm company about who will respond to a call.
313	Rep. Prozanski	Indicates that does not occur.
318	Chair Minnis	Closes the public hearing on HB 2997 and opens a work session on SB 614.
<u>SB 614 WORK SESSION</u>		
335	Rep. Sunseri	MOTION: Moves SB 614 to the floor with a DO PASS recommendation.
343	Rep. Wells	Indicates that previous testimony on the bill must have included an amendment.
350	Rep. Shetterly	Indicates that section 5 deals with the statute of limitations. Explains what additions will be made to the statute of limitations.
357	Rep. Prozanski	Expresses concerns about penalties for individuals under the age of 18. Suggests that the defendant be 18 years or older or the language be tightened related to young people.
387	Rep. Sunseri	Expresses opposition to the proposed changes. Crimes that are committed, are committed.
398	Rep. Bowman	Indicates that there were issues raised during previous testimony that criteria for neglect were different.
<u>TAPE 125, A</u>		
007	Chair Minnis	Suggests that the record clearly states that neglect in this bill is similar to the definition in section two.
011	Rep. Shetterly	Appreciates compelling testimony, and expresses opposition to the death penalty and will therefore vote no on the bill.
		VOTE: 4-3 AYE: 4 - Courtney, Sunseri, Wells, Minnis NAY: 3 - Bowman, Prozanski, Shetterly
	Chair Minnis	The motion CARRIES. REP. SUNSERI will lead discussion on the floor.
033	Chair Minnis	Adjourns at 3:10 p.m.

Transcribed by, Reviewed by,

Marjorie Taylor, Sarah Watson,

Administrative Support Office Manager

EXHIBIT SUMMARY

A - SB 614, Written testimony, Bob Kouns, 3 pp.

B - SB 780, Written testimony, Sgt. Mark Cotter, 2 pp.

C - SB 780, Written testimony, Chief Pat Merina, 3 pp.

D - SB 780, Written testimony, Frank Brawner, 1 p.

E - HB 2997, Written testimony, Curt Curtis, 2 pp.

F - HB 2997, -1 amendments, Legislative Counsel, 1 p.