

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL
ADMINISTRATION

January 19, 1995 Hearing Room 357
9:00 AM Tapes 1-4

MEMBERS PRESENT:

Rep. Del Parks, Chair
Rep. Bryan Johnston, Vice-Chair
Rep. Kate Brown
Rep. Chuck Carpenter
Rep. Lisa Naito
Rep. Eileen Qutub
Rep. Bob Tiernan

STAFF PRESENT:

Milt Jones, Committee Counsel
Sarah May, Committee Assistant

MEASURES HEARD:

HB -2070 Requires person whose driving privileges are suspended for failing
or refusing breath test to complete treatment program as condition of
eligibility for hardship permit or license reinstatement.
HB 2072 - Deletes 30-day waiting period and imposes immediate suspension of
driving privileges on persons who refuse or fail breath test for blood
alcohol content.
HB 2073- Requires that person applying for driving while under the
influence of intoxicants diversion agree to stipulated facts trial if
person violates diversion agreement.

These minutes contain materials which paraphrase and/or summarize
statements made during this session. Only text enclosed in quotation marks
report a speaker's exact words. For complete contents of the proceedings,
please refer to the tapes.

TAPE 1, SIDE A

005 CHAIR PARKS: Opens meeting at 9:10 A.M.

 Opens PUBLIC HEARING ON HB 2070, 2072-2076

037 MILT JONES, COMMITTEE COUNSEL: Talks about each of the HB . They are
from the Interim Task Force on Alcohol and Drug Abuse Programs.

 -Discusses HB 2070 - Requires person whose driving privileges are suspended
for failing or refusing breath test to complete treatment program as

condition of eligibility for hardship permit or license reinstatement.

-Discusses HB 2072 - Deletes 30-day waiting period and imposes immediate suspension of driving privileges on persons who refuse or fail breath test for blood alcohol content.

-Discusses HB 2073 - Requires that person applying for driving while under the influence of intoxicants diversion agree to stipulated facts trial if person violates diversion agreement.

-Discusses HB 2074 - Increase period of suspension of driving privileges on first conviction of driving while under the influence of intoxicants to three years.

-Discusses HB 2075 - Authorizes forfeiture of vehicles on conviction of driving while under the influence of intoxicants of person who has prior conviction or diversion.

-Discusses HB 2076 - Authorizes establishment of driving while under the influence of intoxicants department in courts with jurisdiction over driving while under the influence of intoxicants.

059 CHAIR PARKS: Asks on HB 2072 about the 30 day waiting period?

066 JONES: Believes that it is an immediate suspension in every case.

068 CHAIR PARKS: Is there now a 30 day suspension or a 30 day delay in the suspension? Is this an automatic suspension or only if there is a hearing which is asked for by the driver?

072 JONES: The 30 day period is made available for requesting a hearing.

077 JONES: Discusses the complexity of Oregon's DUII laws from when someone is pulled over to the court hearing.

090 REP. BILL FISHER, DISTRICT 45: Testifies in support of HB 2070, 2072-2076 . Discusses that he was the Chairman for the Alcohol and Drug Abuse Task Force during the interim. Wanted to find how money was being spent in alcohol and drug rehab programs and if they were effective programs. Bills designed to cut down on legal problems.

150 REP. NAITO, DISTRICT 15: Testifies in support of HB 2070, 2072-2076. Discusses Task Force operations.

202 CHAIR PARKS: Discusses memo on HB 2072 the draft for immediately taking away drivers license. Can't assure that the draft is constitutional. Has concerns on due process about this bill.

224 REP. FISHER: Recognizes that there are drafting problems with this bill and wants to turn it over to this committee to help.

243 REP. NAITO: Discusses implications of bill. The bills are important, but we do not want to violate rights of people.

254 CHAIR PARKS: Did the issue come up about rural communities where the people wait 6 to 9 months to get into the program? It is a resource issue more than the offender's willingness to get involved in a program.

268 REP. FISHER: We did and did not discuss this point. Sites HB 2070 that says the program can be done in drug court program in any district.

281 CHAIR PARKS: Not talking about those who can afford to come to Portland and take the program, but those rural low paying jobbed people who want to take the program right away, but have to wait many months.

288 REP. FISHER: We do have one bill that provides for courts to hold these programs in their own jurisdictions, which could be an immediate response.

293 REP. BROWN: Discussing HB 2070, my concern is the hardship area about the permit that allows people to drive back and forth to work. Can we delete the hardship piece so that people can continue to work but not get their license back until they complete the treatment program?

310 REP. FISHER: When someone has endangered or taken someone else's life, there is a process that doesn't do justice to victim or potential victim. We are too worried about charging someone for their actions. For someone to have to take their spouse or child to this treatment program for a few weeks might not be that great of a hardship. We want people to take responsibilities for their own actions.

348 REP. NAITO: I believe there are some differences between the rural and suburban areas.

356 REP. TIERNAN: I think one of the problems is that people continue to drive even when their license is suspended. Did your committee look at further sanctions to deter people who are getting DUII but are continuing to drive because there are no consequences to it?

373 REP. FISHER: We did not discuss that area but would not have a problem if you wanted to change the language in some of these bills to answer that problem.

393 REP. NAITO: We did try to address one of the problems of forfeiture on HB 2076. I believe anyone would be open to enhancing criminal penalties for driving under the influence.

403 REP. TIERNAN: Discusses that Channel 8 did a series following a criminal case through a hearing where he promised not to drive again, but then did so right afterwards to a bar.

411 CHAIR PARKS: The chair is having an amendment drawn to HB 2075 that states 'the use of forfeiture option when someone is driving with a suspended license by reason of a DUII'. The problem is different than it was 20 years ago. There is some due process issues and some fairness issues that need to be discussed. We will discuss the term "proportionality".

477 MILT JONES, COMMITTEE COUNSEL: Explains "proportionality" - criminal sanctions cannot be disproportionate to their crimes. Forfeiture has been found to be part of punishment instead of a civil matter, when this occurs it is contrary to the constitution.

TAPE 2, SIDE A

036 RICHARD KUEHMICHEL, OREGON STATE POLICE - PATROL SERVICE DIVISION: Testifies and submits written testimony in support of HB 2070, 2072-2076. (EXHIBITS A-F)

066 CHAIR PARKS: Asks if it is a problem for people to get into a treatment

program immediately?

068 FRED AVERA, POLK COUNTY DISTRICT ATTORNEY'S OFFICE: Testifies in support of HB 2070 and HB 2073. There is a delay, there are never enough treatment programs. It is a problem particularly if the driver speaks another language.

075 CHAIR PARKS: As an officer, have you been in small communities as a patrolman?

077 KUEHMICHEL: I worked in Klamath Falls for 11 years.

078 CHAIR PARKS: Is there a delay problem for these people, assuming that they are motivated to get into a program?

080 KUEHMICHEL: When I was in Klamath Falls, I gave classes for those people who had been arrested for driving under the influence of an intoxicant. It seemed that they had easy access to these classes, I gave one almost every week or when ever I was asked.

090 CHAIR PARKS: Asks about the three levels, depending on how bad your problem is?

096 KUEHMICHEL: Doesn't know.

097 REP. BROWN: Agrees with Rep. Parks question, believes that is the situation.

098 CHAIR PARKS: You only dealt with the level one people for the program?

102 KUEHMICHEL: I was just part of the whole curriculum., not any certain level.

104 CHAIR PARKS: Is the requirement rather than that a person complete the course, but that a person is in the course and is doing what they are supposed to?

109 KUEHMICHEL: I can only draw off of my personal experience. When I was there I would teach about 25 -30 people. There were about 2 or 3 people that wouldn't listen to me, but for the large number of them it was a definite benefit.

116 CHAIR PARKS: Some of the people that go to the class don't get any education out of it at all. They are only doing it to keep their licenses.

Discusses case of rural community family who could lose everything, i.e. job if they lose their license, shows some concern there. Is it almost as good to say 'If you are in the program, we will not take the license away, but give you a chance to complete the course'? Do you agree with that?

135 KUEHMICHEL: I don't know.

131 AVERA: My philosophy on corrections is that if you are doing what you are supposed to be doing, you are going to get something for it, like a limited access to your drivers license. That is why I like the concept of this bill, that says if you complete this program, you are going to get something back.

143 REP. BROWN: It was my understanding that the license comes back regardless of how you are doing in the program, it is just a matter of

time. Is that time period 90 days?

146 JONES: It depends upon the prior driving record.

153 REP. BROWN: Right now they get the license back whether they are doing what they are supposed to or not. What would happen if we say 'If you complete the treatment program, this will allow them to have a hardship permit. Wouldn't that be a bigger incentive?

160 AVERA: Are you saying that they would get the hardship work permit right away and then work their way back into a general drivers license? You are rewarding behavior, and that is a good thing to do.

168 KUEHMICHEL: Testifies on HB 2072. Prior to this meeting we learned some information from the Dept. of Motor Vehicles, we'd like to examine this further before deciding our position on HB 2072.

173 CHAIR PARKS: Is that because of constitutional problems or another problems?

175 KUEHMICHEL: Constitutional problems are our concern. Testifies on HB 2073 and explains bill.

191 JEAN KUNKLE, OREGON DISTRICT ATTORNEY'S ASSOCIATION: Testifies in support of HB 2073. That is not how the bill works, explains.

192 CHAIR PARKS: Does the DA even appear at the diversion in your county?

193 KUNKLE: When a person comes in to be arraigned on a DUII charge, they are told what they are charged for and the judge asks them how they would like to proceed. They can talk to an attorney, make a plea at that time, or they can ask to be in the diversion program. If they want the diversion program, they fill out paper work, take it to court clerk, and they are in the diversion program. They do not need to enter a plea, but as stated in paper work, waive their rights for a speedy trial.

204 REP. BROWN: If someone goes into diversion they are not entitled to, nor are they required to attend counseling?

206 KUNKLE: If they want to talk to counsel and consult with an attorney, the court will appoint them counsel.

209 REP. BROWN: If they make the decision to go into diversion, then they lose their right for counsel?

215 KUNKLE: They do not have an attorney throughout the time that they are in the diversion process.

219 REP. JOHNSTON: This might mandate the necessity of counsel in every diversion agreement. Assuming that the stipulated facts would be enough to convict, then they would be pleading guilty which would in effect open them up to the imposition of a jail sentence, and since they have the potential for receiving jail time, it would be a requirement that they have counsel.

230 AVERA: I think now anyone who appears before the court, who is being arraigned on a DUII, has right to court appointed counsel if they are indigent. In most cases, if they are diversion eligible, they are going to

take the diversion. A lot of those people don't request an attorney, but are entitled to one. A good argument can be made that as part of that diversion they are going to be required to either plead guilty or make waivers and stipulations, then more people would likely request an attorney

than do now. There is a cost issue. It is speculative on how many more people would request an attorney. That isn't necessarily a bad thing, cites example. There would be a cost involved in indigent defense, but a significant number of people fail these programs. They then get an attorney and come back for a trial for an incident that could have happened years ago.

261 CHAIR PARKS: We recognize the issue and we will determine through legislative fiscal analysis what this is going to cost. Cites situation.

278 AVERA: The judges are going to have to document and verify a knowing waiver of counsel if the person wants to wave counsel.

286 KUNKLE: Everyone that comes in is told of their rights. They even help them decided if they want to take advantage of the diversion program.

290 CHAIR PARKS: (asks inaudible question)

292 KUNKLE: We used to use it more than we do now. The judges that used to use it the most have been promoted to circuit court.

295 CHAIR PARKS: This fits that program?

302 KUNKLE: That's not my impression of how this would work. The courts in Marion county treat diversion eligible defendants the same as they do any other person they charge or DUII defendants that aren't eligible for diversion.

308 CHAIR PARKS: I'm not saying that you are doing it that way, I'm saying that you could do it the way they do in Lane county - STOP program. Why wouldn't that work for this? Why couldn't they have this program in mass all at once, even if that meant letting them out the next day on citations to return, and then have one public defender there and spend time processing the defendants all at once?

323 KUNKLE: You could do it that way, we just never have.

325 REP. NAITO: That is what the Task Force predicted would happen. Cites example of drug court concept with a low cost judge who is there the whole day on retainer.

339 AVERA: I'm not that familiar with the STOP program. My county has one judge and he does process everyone at one time.

345 KUEHMICHEL: Testifies in support of HB 2074.

355 CHAIR PARKS: How many more people would we have to process if they were driving while suspend if we have a rule like this? Quite a few.

359 REP. JOHNSTON: Do we have research that says lengthening the period of suspension will have the desired effect on these people?

364 KUEHMICHEL: I'm not aware of any research of this type. There are some studies where states with adopted administrative suspensions realize a reduction in alcohol related fatalities and accidents.

376 REP. JOHNSTON: Administrative suspensions beyond one year, in those states that you make reference to?

379 KUEHMICHEL: Yes, one study showed the states that have enacted this rule have had a reduction in their alcohol related fatal accidents.

394 REP. NAITO: Have there been any comparisons done between some of the European countries where some of the DUII suspensions are ten years, and the rates in the United States?

399 KUEHMICHEL: Yes, there has been, but I do not know the specific information it cited.

403 REP. CARPENTER: What is the punishment if your license is suspended but you get another DUII?

407 AVERA: Explains punishments.

434 REP. CARPENTER: Asks about option of making second time violation penalties more severe.

456 AVERA: Discusses sanction for the felony of driving while suspended. The second conviction for DUII is still a Class A misdemeanor and not subject to the guidelines.

465 REP. CARPENTER: Eventually they can go back and sit behind the wheel again even if they are convicted a second time. I think that if they are caught a second time they should never get behind the wheel of a car again.

TAPE 1, SIDE B

029 KUEHMICHEL: Testifies in support of HB 2075.

036 CHAIR PARKS: What percentage of cars are you forfeiting now?

043 KUEHMICHEL: I can't quote the exact percentage. From my own experience, about one-half of the cars were worth forfeiting.

048 CHAIR PARKS: There are no guidelines about forfeiting that the state police follow?

051 KUEHMICHEL: It costs so much to create a forfeiture that unless a car looked worth at least one thousand dollars, it would cost more to create a forfeiture than get the car.

057 CHAIR PARKS: Is it invalid of the Oregon constitution to give discretion to either a police officer or a court in leveling a penalty like that?

062 AVERA: There would need to be some guidelines for the police officers to follow.

065 CHAIR PARKS: Do you think you could accomplish forfeiture and guidelines in one bill?

069 AVERA: It is possible.

076 REP. TIERNAN: Discusses the severity of a DUII on a military base. We need some stronger penalties as a deterrent. Discusses hardship permit isn't adequate.

093 REP. QUTUB: Agrees with Rep. Tiernan and Rep. Carpenter on the deterrent premise.

101 REP. CARPENTER: Discusses the impact of a fatal accident and not only the monetary costs but other costs, i.e. emotional, etc.

114 CHAIR PARKS: What is the penalty in the military for a DUII?

115 REP. TIERNAN: The loss of driving privileges for one year, brought to court-martial, possibility of loss of rank, possibility of never getting another promotion.

132 REP. NAITO: Discusses the Task Force recognition of forfeiture laws and their possible implementations for this bill.

148 CHAIR PARKS: We need to look at the possibility of using the same system that we already have, but adding drunk drivers to it and having one understandable system from the creditors point of view.

162 KUEHMICHEL: Testifies in support of HB 2076.

165 CHAIR PARKS: Why do we need a specialized court system?

167 KUEHMICHEL: The laws and treatment are getting complicated enough that a specialized court would be able to delegate to a specific person or system, so that the completion of the punishment will be carried out.

181 CHAIR PARKS: Discusses the specialized court systems for many issues. Why can't this be part of court management where it will be up to the presiding judge to delegate it to a system where the county will uphold the legislation?

208 REP. JOHNSTON: I'd be interested to know how the DA thinks HB 2076 would impact Polk and Marion county.

212 KUNKLE: The impact of this bill would be that one judge would only be handling DUII cases. I think the only advantage is that a small group of people monitoring them on the diversion program or convictions and there might be more consistency.

232 CHAIR PARKS: It was stated that 50 percent of all traffic accidents are alcohol related crimes. Would you agree that 50 percent of other related general crimes are due to drugs or alcohol in some way?

245 AVERA: Fifty percent would be a low percentage.

259 DAVID FIDANQUE, ACLU: Testifies in opposition to HB 's 2070, 2072-2075.

353 REP. TIERNAN: Please let us know when you are referring to State or

Federal constitution.

357 FIDANQUE: Cites case. Would be State constitution.

345 REP. BROWN: Would the problem with this bill be resolved if we made the assumption that people were convicted first or put in a diversion program and then required them to complete the treatment program first before they got their license back? Is your concern the breathalyzer test?

380 FIDANQUE: The breathalyzer is our major concern with HB 2070. Discusses breathalyzer statutes when used by police department.

401 REP. BROWN: If we require someone to complete a treatment program before they get their license back, we take care of that constitutional issue.

408 REP. JOHNSTON: Are you suggesting that HB 2070 does away with the probable cause?

411 FIDANQUE: No, by layering another penalty on top of the penalties that already stand, you may be jeopardizing the constitutionality of HB 2070.

421 REP. JOHNSTON: What is the other penalty?

423 FIDANQUE: It is the requirement to complete the testing program for refusing to submit to a breathalyzer test. Discusses the defendants options. Discusses and testifies in opposition to HB 2072.

TAPE 2, SIDE B

024 REP. JOHNSTON: How do you think this can be remedied?

026 FIDANQUE: Discusses ORS 813.110 (EXHIBIT O). Discusses where problems could occur.

051 REP. TIERNAN: You think the 30 day waiting period is unconstitutional?

055 FIDANQUE: I can't tell you that it would be unconstitutional, but I think that there would be a due process problem with an immediate suspension based on the exercise of discretion of the police officer unless you have the opportunity for a quick hearing.

065 REP. TIERNAN: There would be no discretion, you would simply lose your license.

066 FIDANQUE: The discretion comes before that.

071 REP. JOHNSTON: There are two options to cure people of driving when they shouldn't be driving. One would be the immediate suspension. The other would be to not issue a permit to someone who has demonstrated that they might drink and drive again in the next 30 days.

076 REP. CARPENTER: Asks about the possibility of losing any other type of license because of a certain action.

087 FIDANQUE: Gives building inspector example.

089 REP. CARPENTER: How is that different than a person who has the

privilege of driving a car but has violated that right?

092 REP. JOHNSTON: That is a due process issue.

094 REP. NAITO: The proposal that Mr. Fidanque gave doesn't accomplish what we want this bill to. Gives example.

109 FIDANQUE: Testifies in opposition to HB 2073. Discusses diversion issues. Testifies in opposition to HB 2075. Discusses civil and criminal forfeitures.

196 REP. NAITO: It was our intention on the Task Force to have a criminal forfeiture proceeding in this bill.

200 FIDANQUE: We support the concept of applying criminal forfeitures as part of the sentencing process, explains. The problem with this bill is that it doesn't include the procedural safeguards for innocent owners and security interest holders that are included in the civil forfeiture statute. Were those included here, we would not oppose this bill.

215 REP. NAITO: Asks Fidanque to work with committee on language that would protect the individual owners.

220 FIDANQUE: We would be interested in coming up with a criminal forfeiture process that included the safeguards of the current civil forfeiture statute for innocent property owners.

238 REP. NAITO: You don't see any problem with giving the judges the tools to be discretionary?

241 FIDANQUE: No. Explains.

258 REP. BROWN: Raises question and concern of very old conviction and how that would fit into HB 2075?

264 FIDANQUE: Judges would take that into account. That is why we support forfeiture being discretionary rather than mandatory.

278 RUSS SPENCER, OREGON SHERIFFS: Testifies in support of HB 2070, 2072. Takes no position on HB 2073 - 2076.

291 NAITO: References that there will be a drug part added into HB 2075.

296 SPENCER: Continues with testimony and sites a bill that the Oregon State Police are sponsoring.

373 NAITO: What is the best deterrent effect on people? Do you believe in that?

376 SPENCER: I agree that there is a deterrent, but the capacity to remember that deterrent when someone is not sober is not great. We need to be realistic on our ability to impact the problem through those deterrents.

430 FRANK BRAWNER, OREGON BANKERS ASSOCIATION: Testifies and submits written statement in support of HB 2075. (EXHIBIT G)

TAPE 3, SIDE A

038 REP JOHNSTON: Cites two ways to add parts to HB 2075.

043 BRAWNER: Continues with testimony.

051 REP. JOHNSTON: The notice is designed to allow the security holder to make the decision to take the car.

052 BRAWNER: Cites drug forfeiture example. Cites example of letting someone with previous DUII borrow a car.

076 WANDA WAHUS, EXEC. DIRECTOR OREGON INDEPENDENT AUTO DEALERS ASSOC.: Testifies in support of HB 2075.

082 RON TERRY, OREGON INDEPENDENT AUTO DEALERS ASSOC.: Testifies in support of HB 2075 with proposed amendments, cites (EXHIBIT H).

128 REP. JOHNSTON: If a car is under an applicable forfeiture law now, do you pay towing and storage?

133 TERRY: Yes.

138 AL ELKINS, OREGON TOW TRUCK ASSOC.: Testifies and submits written testimony in support of HB 2075 with amendments. (EXHIBIT I)

162 JIM ARNESON, OREGON CRIMINAL DEFENSE LAWYERS ASSOC.: Testifies and submits written testimony in opposition to HB 2070- 2075. (EXHIBIT J) No opinion on HB 2076.

364 REP. BROWN: Cites practicality with HB 2076, that it might make the alcohol program like the STOP program.

379 ARNESON: My assumption is that it would involve more court appointed time. Not familiar with STOP program.

394 JEFF KUSHNER, OFFICE OF ALCOHOL AND DRUG ABUSE PROGRAMS: Testifies and submits written testimony in support of HB 2076. (EXHIBIT K)

436 REP. NAITO: What would stop the court from proceeding with the DUII court now?

442 KUSHNER: There are some things that need to be changed that would allow the court to pursue a drug court as a means for processing offenders, explains.

460 BOB MILLER, OFFICE OF ALCOHOL AND DRUG ABUSE PROGRAMS: Testifies and submits written testimony in support of HB 2076. (EXHIBIT K)

TAPE 4, SIDE A

046 REP BROWN: Do you agree that there are not enough treatment programs?

049 KUSHNER: The problem results from the extensive processing that goes on. Explains actions of drug court.

057 REP. BROWN: In other parts of the state the treatment programs aren't available?

058 KUSHNER: In the rural areas, an education program cannot be run for individual people, explains.

069 REP. NAITO: The greatest delays were in the court system and not the treatment programs.

075 REP. JOHNSTON: Is there a requisite county size to implement such a program?

077 KUSHNER: Doesn't know. Explains that they are going to have a drug court conference that will have small counties represented.

089 MILLER: Continues with testimony.

100 MEETING ADJOURNED AT 11:36 AM

Submitted by, Reviewed by,

Sarah May Debby Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

- A. Testimony on HB 2070, 2072-2076-Richard Kuehmicel - 3 pages
- B. Testimony on HB 2070 - Richard Kuehmicel - 2 pages
- C. Testimony on HB 2073 - Richard Kuehmicel - 2 pages
- D. Testimony on HB 2074 - Richard Kuehmicel - 2 pages
- E. Testimony on HB 2075 - Richard Kuehmicel - 2 pages
- F. Testimony on HB 2076 - Richard Kuehmicel - 2 pages
- G. Proposed Amendments to HB 2075 - Frank Brawner - 6 pages
- H. Proposed Amendments to HB 2075 - Ron Terry - 1 page
- I. Testimony on HB 2075 - Al Elkins - 1 page
- J. Testimony on HB 2070-2075 - Jim Arneson - 2 pages
- K. Testimony on HB 2076 - Jeff Kushner - 2 pages
- L. Testimony on HB 2070 - Kelly Taylor - 1 page
- M. Testimony on HB 2072 - Kelly Taylor - 2 pages
- N. Testimony on HB 2072 - Kelly Taylor - 1 page
- O. ORS Statutes pertaining to HB 2070 - Staff - 1 page
- P. Testimony on HB 2076 - Staff - 24 pages
- Q. Testimony on HB 2076 - Staff - 23 pages