

HOUSE JUDICIARY
SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL ADMINISTRATION

Hearing Room 357
8:30 am Tapes - 63

MEMBERS PRESENT:

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

MEMBER EXCUSED:

Rep. Kate Brown

STAFF PRESENT:

Milt Jones, Committee Counsel
Sarah Watson, Committee Assistant

MEASURES HEARD:

SJR32 - Public Hearing and Work Session
HB 3331 - Public Hearing and Work Session
HB 2749 - Work Session

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 , SIDE A

006 CHAIR PARKS: Calls the meeting to order at 8:40 am

PUBLIC HEARING ON SJR32

007 MILT JONES, COMMITTEE COUNSEL: SJR32 proposes constitutional amendment to declare purpose of society, personal responsibility and accountability and reformation.

Witnesses:

Bob Kouns, Crime Victims United
Dee Dee Kouns, Crime Victims United
Sen. Gordon Smith, District 29
Ted Kulongoski, Attorney General
Craig Campbell, Oregon Association of Chiefs of Police
Randy Hill, Chief of Staff to the Speaker of the House
Steve Kanter, Professional Northwest School of Law
David Fidanque, ACLU
Jim Arneson, Oregon Criminal Defense Lawyers Association
Fred Stewart, Stewart Group Realty
Ray Mathis, Citizens Crime Commission
Bill Becker, Juvenile Justice Practitioner

031 BOB KOUNS, CRIME VICTIM UNITED: Testifies and submits written testimony in support of SJR32. (EXHIBIT A) Reads letter from State Treasurer Jim

Hill. (EXHIBIT B)

170 DEE DEE KOUNS, CRIME VICTIMS UNITED: Testifies in support of SJR32.

(EXHIBIT C)

362 SEN. GORDON SMITH, DISTRICT 29: Testifies in support of SJR32.

392 STEVE DOELL, CRIME VICTIMS UNITED: Testifies in support of SJR32.
Reads letter from Rick O'Dell in support of SJR32. (EXHIBIT D)

TAPE 63, SIDE A

041 TED KULONGOSKI, ATTORNEY GENERAL: Testifies in support of SJR32.

070 REP. NAITO: Do you see these being ranked in an order, or underlying principals that we should look at?

073 KULONGOSKI: I believe that the application of the courts will be one of

balance in the courts. I would hate to stand before the supreme court and argue that someone's sentence was not part of our criminal justice system because it wasn't based upon the principal of reformation. Cites concern that the public does not have confidence nor understand the criminal justice system, an example is Measure 11, 10, and 17. What we will do by letting the public vote for this, is give them the opportunity to agree with the system. If someone was writing the constitution today, this clause would be included. This is a statement of values and principals about what the system should be.

112 REP. JOHNSTON: In amending the constitution, do we need to title the section? Cites article that has title.

126 KULONGOSKI: The proposal itself, does not amend the title. That is the editorial provision of the constitution, it is more of a heading.

137 REP. JOHNSTON: We need to look into that for legal purposes. Discusses

VORP, the Victim Offender Reconciliation Program. One of my concerns is that those programs are designed for gateway offenses. By changing this portion of the constitution, I would not want to prevent us from continuing

these programs.

152 B. KOUNS: That is not the intent of the bill. I don't think there is anything in the bill that would preclude that type of program.

156 REP. JOHNSTON: In mediation, when there is an agreement reached, someone could argue that it violates the intent of this constitutional amendment.

162 B KOUNS: We have judges that use this now, because there isn't a place to go with an offender. The fundamental issue is that the offending child be held responsible and accountable for their actions. I see no conflict between what we are proposing and that type of activity.

182 REP. JOHNSTON: I'm concerned about the VORP programs and if this constitutional amendment would be subject to attack?

187 KULONGOSKI: No, it would not. Cites Oregon's constitution about headings, concerning previous questions.

196 REP. JOHNSTON: There are minds that are not as balanced and reasoned as yours. I fear that the measure that you are advancing could be taken as far more extreme than we want it to be. Why did you take the language "vindictive justice" out?

210 B. KOUNS: The same people that opposed the language then, oppose it now. Explains why they took the language out. We don't want the

philosophic opposers of this to have a reason to find this unconstitutional. We have to have laws in place that do something about the protection of society. There needs to be a balance so that the procedures do not become more important than the outcome of the event.

235 KULONGOSKI: I do not have a problem with adding the phrase that is in section 15, "not of vindictive justice". This is a statement of values for

the criminal justice system. Discusses differences of "not of vindictive justice", and "cruel and unusual punishment". By taking this language out,

it doesn't do anything to the rights of the individual. By including it, it is a statement of values of what the system should be.

269 CHAIR PARKS: Do you recommend that the language be put in the bill?

271 KULONGOSKI: I would say put the language in the bill, but it isn't my bill.

279 REP. JOHNSTON: You would prefer that the bill not be passed with "not of vindictive justice"?

282 B. KOUNS: Yes.

284 REP. JOHNSTON: If there was a substitution of the language of the 8th amendment, "cruel and unusual punishment", would you still not want it included? Discusses protection of the public.

303 B. KOUNS: One of the articles is already about cruel punishment. Discusses vindictive justice and the subjectiveness of the people about it.

That language is a very subjective term.

319 REP. JOHNSTON: The other articles aren't very clear either.

322 B. KOUNS: This bill speaks clearly to personal accountability for our actions.

327 KULONGOSKI: I am not in favor of adding under the federal 8th amendment, "nor cruel and unusual punishment" as a substitution for "not of

vindictive justice. I do not oppose "not of vindictive justice".

346 CRAIG CAMPBELL, OREGON ASSOCIATION OF CHIEF OF POLICE: Testifies in support of SJR32.

374 RANDY HILL, CHIEF OF STAFF TO THE SPEAKER OF THE HOUSE: Testifies in support of SJR32.

431 STEVE KANTER, PROFESSIONAL NORTHWEST SCHOOL OF LAW: Testifies in opposition to SJR32.

TAPE 62, SIDE B

135 DAVID FIDANQUE, ACLU: Testifies in opposition to SJR32.

179 REP. TIERNAN: How does what you just said, have any relevance to the sentencing guidelines in ballot Measure 11?

188 FIDANQUE: When you make a provision to the bill of rights, that will apply to any statute, any time. Our concern is that if this provision is approved, it will apply to the actions of future initiatives that will be approved by the people. Our history shows that there has been time when groups or fears in society have controlled the state. Discusses actions of

people in past that might seem "vindictive".

215 REP. NAITO: The term "vindictive justice" is an absurd phrase.

221 KANTER: We are talking about a prohibition of vindictiveness, of punishment based on a vindictive motive rather than based on utilitarian

motives. Discusses court cases about vindictiveness. What article 1 section 15 prohibits, are laws that are based on a motive of vindictiveness rather than social utility policies.

241 REP. JOHNSTON: You think that the clause provides a governor on unrestrained punishment? I don't think that the clause is the only governor, explains. All of the outcomes, under section 15, would have remained the same.

254 KANTER: One of the important aspects of constitutional interpretation is reading provisions together to bring out the true spirit of the constitution. Gives example of something being "cruel and unusual" but may not be "vindictive justice". There are other cruel and unusual penalties that have and would come up, that would be considered vindictive.

304 REP. TIERNAN: Back in the 1850's, the punishments were very swift and very sure. Back then they based their punishments on the crime and not vindictiveness. Discussed the difference between punishment and vindictive justice.

329 KANTER: I agree. Cites language about vindictiveness. Article 1, section 15, has worked relatively well and I would hate to see it removed.

What is the legal functional problem that is being addressed? If we are doing this to make the people feel better, I suggest that we do it in another way than by changing the civil amendments.

375 JIM ARNESON, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Testifies in opposition to SJR32.

399 FRED STEWART, STEWART GROUP REALTY: Testifies and submits written testimony in support of SJR32. (EXHIBIT E)

TAPE 63, SIDE B

047 RAY MATHIS, CITIZENS CRIME COMMISSION: Testifies in support of SJR32.

069 BILL BECKER, JUVENILE JUSTICE PRACTITIONER: Testifies in support of SJR 32.

WORK SESSION ON HB 2749

108 MILT JONES, COMMITTEE COUNSEL: HB 2749 defines personal information as it relates to inspection of public records. (EXHIBIT F)

116 REP. JOHNSTON: Discusses HB 2749 and the amendments.

144 MILT JONES, COMMITTEE COUNSEL: We are considering the legislation with the -1 amendments and possible conceptual amendments by Rep. Johnston.

148 REP. TIERNAN: The -1 amendments are the clarifications and the -2 amendments are not needed?

149 MILT JONES, COMMITTEE COUNSEL: Correct.

150 MOTION: REP. TIERNAN: Moves to ADOPT HB 2749-1 amendments dated 03/16/95.

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Brown is excused.

163 MOTION: REP. CARPENTER: Moves HB 2749 AS AMENDED be sent to the full committee with a DO PASS recommendation.

VOTE: 6-0 MOTION PASSES
AYE: Carpenter, Johnston, Naito, Qutub, Tiernan, Parks
NO: None
EXCUSED: Brown

WORK SESSION ON SJR32

174 REP. JOHNSTON: Discusses an amendment to SJR32, but explains why he will not propose it.

193 REP. NAITO: I will support the resolution, but I don't believe justice could ever be vindictive. This is a pro-active statement of the goals and the principals that we see justice should be founded upon. I am voting for

this with the belief that these are founding principals and not ranked in any order. Discusses that reformation should still be a high priority.

215 CHAIR PARKS: I don't think I would have approved of this amendment six years ago. I am convinced now that the criminal justice system we have, has and probably will not work in the future. Discusses that this proposal

captures the essence of what needs to be done. Discusses how SJR32 would effect public safety. I think this is a great improvement to the constitution.

250 REP. TIERNAN: What about the title of the section?

254 REP. JOHNSTON: A new title will be inserted.

257 REP. TIERNAN: Should we draft that title now?

259 REP. JOHNSTON: LC will draft it.

267 MOTION: REP. JOHNSTON: Moves SJR32 be sent to the floor with a BE ADOPTED recommendation.

VOTE: 6-0 MOTION PASSES
AYE: Carpenter, Johnston, Naito, Qutub, Tiernan, Parks
NO: None
EXCUSED: Brown

PUBLIC HEARING ON HB 3331

280 MILT JONES, COMMITTEE COUNSEL: HB 3331 makes driving while under the influence of intoxicants felony for person who has three prior convictions of driving while under the influence of intoxicants. (EXHIBIT G)

Witnesses: Rep. Anitra Rasmussen, District 11
Mike Miliucci, Self
Matthew Mettox, Deputy District Attorney for Clackamas County
Jerry Cooper, Governor Advisory Committee on DUII

283 REP. ANITRA RASMUSSEN, DISTRICT 11: Testifies in support of HB 3331.

291 MIKE MILIUCCI, PUBLIC DEFENDER: Testifies and submits written testimony in support of HB 3331. (EXHIBIT H)

321 MATTHEW METTOX, DEPUTY DISTRICT ATTORNEY FOR CLACKAMAS COUNTY: Testifies in support of HB 3331.

345 JERRY COOPER, GOVERNOR ADVISORY COMMITTEE ON DUII: Testifies in support of HB 3331.

375 REP. NAITO: Why were the "three" convictions chosen?

379 MILIUCCI: Explains why this number was chosen.
401 REP. TIERNAN: Does the first time offense include a diversion?
405 MILIUCCI: No, explains.
406 REP. TIERNAN: Discusses how the process works for each offense.
408 MILIUCCI: The other secondary benefit is the impeachable offense benefit. People consistently get on the witness stand and the prosecutor cannot bring up the fact that they have a prior DUII record, explains.
425 REP. TIERNAN: This is actually the person's fourth DUII offense?
429 CHAIR PARKS: If we mess around with the bill at all, we will have to send it to Ways and Means.
434 MILIUCCI: We just want the line drawn somewhere, so that the habitual offender will have an addition that they will become a felon.
438 METTOX: Frequently they don't make it through diversion and they end up with convictions anyway.
442 CHAIR PARKS: Discusses bill that a person has to stipulate the underlying factual basis to qualify for diversion, which will have an effect on this bill as well.

WORK SESSION ON HB 3331

460 CHAIR PARKS: Discusses issues of bill.
468 REP. JOHNSTON: The six months should stay, explains.
473 MOTION: REP. JOHNSTON: Moves HB 3331 be sent to the full committee with a DO PASS recommendation.

VOTE: 6-0 MOTION PASSES
AYE: Carpenter, Johnston, Naito, Qutub, Tiernan, Parks
NO: None
EXCUSED: Brown

487 CHAIR PARKS: Adjourns the hearing at 10:34 am.

Submitted by, Reviewed by,

Sarah Watson Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

A. Testimony on SJR32 - Bob Kouns - 3 pages
B. Testimony on SJR32 - Jim Hill - 1 page
C. Testimony on SJR32 - Dee Dee Kouns - 2 pages
D. Testimony on SJR32 - Steve Doell - 1 page
E. Testimony on SJR32 - Fred Stewart - 1 page
F. Proposed Amendments to HB 2749 - Staff - 1 page
G. Memo on HB 3331 - Staff - 1 page
H. Testimony on HB 3331 - Mike Miliucci - 6 pages
I. Testimony on HB 3331 - MADD - 1 page

