

HOUSE JUDICIARY
SUBCOMMITTEE ON CRIME AND
CORRECTIONS

Hearing Room
Tapes - 2

MEMBERS PRESENT:

Rep. Veral Tarno, Chair
Rep. Floyd Prozanski, Vice-Chair
Rep. Peter Courtney
Rep. Jerry Grisham
Rep. Leslie Lewis
Rep. Bryan Johnston
Rep. Kate Brown
Rep. Lisa Naito

STAFF PRESENT:

Holly Robinson, Committee Counsel
Milt Jones, Committee Counsel
Janet Ellingsworth, Committee Assistant

MEASURES HEARD: Ballot Measure 11
Ballot Measure 17

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 , A

005 CHAIR TARNO: Calls meeting to order at 9:03. Ballot Measure 11 [EXHIBIT
A] and
 17 [EXHIBIT B] to be discussed.

 OPENS the PUBLIC HEARING on Ballot Measure 11.

 Witnesses: Eric Wasman, Assistant Attorney General
 Frank Hall, Director, Department of Corrections

017 FRANK HALL, DIRECTOR, DEPARTMENT OF CORRECTIONS, discusses legal issues
 involved with Ballot Measure 11 and 17.

032 HALL: Submits and explains information pertaining to sentencing
guidelines [EXHIBIT C].

046 REP. BROWN: Could you please describe assault 2 and robbery 2 charges?

055 HALL: Maybe I should ask Mr. Eric Wasman to describe those. He is a lawyer.

065 ERIC WASMAN, ASSISTANT ATTORNEY GENERAL: Explains.

072 HALL: Gives committee a few more examples on Ballot Measure 11 change.

Governors intent to implement Ballot Measure 11.

094 WASMAN: Describes his opinion of how Ballot Measure 11 works in conjunction with the current felony sentencing guidelines. Discussion on sentencing guidelines grid [EXHIBIT D].

153 REP. COURTNEY: Is the committee going to have to change sentencing guidelines with legislative action as a result of Ballot Measure 11?

167 WASMAN: No, I'm not suggesting that.

174 REP. COURTNEY: Just so you know, you might have to talk to Dale Penn on that. That question was asked at transition team meetings, and they both said you do.

179 WASMAN: That is open to debate. Ballot Measure 11 is going to take effect along this grid whether you change the guidelines or not.

182 REP COURTNEY: We need to know that then.

181 CHAIR TARNO: Who would make the decision to impose a higher sanction?

183 WASMAN: Probably lawyers in the course of plea negotiation, because that resolves ninety percent of the cases we have. But,

if the negotiation left the matter up to the judge or if the case went to trial, it certainly would be done by the judge.

189 CHAIR TARNO: Would the local district attorney have the option?

192 WASMAN: Of?

197 CHAIR TARNO: Requesting either one?

198 WASMAN: I don't believe Ballot Measure 11 would leave the attorneys any discretion to negotiate.

201 REP. BROWN: As I read the first section, it says the court may impose a greater sentence if otherwise permitted by law, but may not impose a lower sentence as specified in section two.

211 REP. NAITO: Are you saying that the highest sentence under either one
of these measures, either the ballot measure or the
sentencing guidelines would prevail upon a conviction?

216 WASMAN: Yes.

220 REP. PROZANSKI: The judge would still be mandated by Ballot Measure
11 to give at least
the minimum required.

231 WASMAN: That is the law as I understand it.

233 REP. PROZANSKI: So, basically, sentencing guidelines for mitigating
circumstances, are preempted by Ballot Measure 11.

236 WASMAN: That is correct. Ballot Measure 11 is going to set a floor for
all of these activities.

249 CHAIR TARNO: Rep. Courtney asked a question regarding any kind of a
conflict between
sentencing guidelines and Ballot Measure 11. Would you contact the folks
and confirm the question that he posed to you?

255 WASMAN: Certainly. I would be happy to contact Dale Penn.

259 REP. BROWN: You discussed earlier the habitual offender statute. How
does that overlay with Ballot Measure 11 and the guidelines?

263 WASMAN: As long as the sentence was at least the period set by Ballot
Measure 11, there is
really no conflict.

281 WASMAN: Currently ORS 163.115 provides authority to the court to impose
a ten year minimum sentence and may impose up to an
additional fifteen years of minimum sentence. Ballot
Measure 11 requires a twenty five year minimum.

320 NAITO: Do you have a sheet your working off of?

322 WASMAN: I am working off notes prepared by myself. I would be happy to
provide you with a copy [EXHIBIT E].

324 REP. JOHNSTON: Are there any management studies comparing prisoners,
those with potential for release or potential for reduction in
sentence in terms of the management load its going to put on
you and your department?

326 HALL: I cannot recall any studies of this particular area. But, if
there is no incentive, it makes managing that population much
more difficult.

358 REP. PROZANSKI: Has corrections looked at means of dealing with the
current population that
we have incarcerated under the effects of Ballot Measure 11?

373 HALL: We are giving a lot of thought to all of those issues. In our

planning process, we are looking at classification as the major thing we do as a department.

406 CHAIR TARNO: With the implementation of Ballot Measure 11 kicking in in April, do you anticipate your population levels and your system to start feeling that impact?

411 HALL: I think we are already feeling that impact.

439 CHAIR TARNO: In that respect, in 1993 we had some discussion about fully implementing Snake River. Where are you in that process?

442 HALL: We are ready. We have authorization to open up another 108 beds on April 1.

454 CHAIR TARNO: What is the total capacity potential?

458 HALL: Six hundred fifty. That's a medium security institution.

TAPE 2-A

030 HALL: Continued testimony.

039 CHAIR TARNO: I also understand there is some dialog going on with the counties, regarding using some county spaces.

044 HALL: Yes there is.

048 REP. COURTNEY: You have within the walls of OSP a state of the art segregation unit. It's built to house how many?

052 HALL: It's built to house 200.

054 REP. COURTNEY: How many do you have out there today?

058 HALL: I'm not sure as of today, but last week I think it was 127.

071 REP. COURTNEY: That houses the worst of the worst from all over the system. How long will that be functional before it gets to a situation where we are in trouble in terms of housing people there?

073 HALL: I think we have done a good job in terms of managing that unit.

076 CLOSED the PUBLIC HEARING on Measure 11
OPENS the PUBLIC HEARING on Measure 17

Witnesses: Jef VanValkenburgh, General Counsel for Department of Corrections, Department of Justice.

081 HALL: Ballot Measure 17 says every inmate in the Department of Corrections, in the state corrections system, must be working a 40 hour work week.

130 JEF VANVALKENBURGH, GENERAL COUNSEL FOR DEPARTMENT OF

CORRECTIONS, DEPARTMENT OF JUSTICE: Refers to [EXHIBIT F].
Ballot Measure 17 raises more questions. Highlights issues.

180 VANVALKENBURGH: There are statutes which prohibit contracts with
private persons for inmate labor. Ballot Measure 17, on its face, directs
the corrections director to go out and enter into as many
contracts with private entrepreneurs and enterprise.

207 VANVALKENBURGH: Discusses boot camp program.

221 REP. NAITO: How much space is there at the various facilities to
consider building businesses on site at these locations?

225 HALL: Space is very limited. The only building available is a building
out at Ontario, at the
Snake River Institution. Discusses expanding.

240 REP. NAITO: Besides the existing building space, is there any space to
construct some buildings?

244 HALL: There is space around OSP, outside the walls. We are limited in
what we can do within
the existing space here.

261 REP. NAITO: Talks about concerns of community for a secure facility.

266 HALL: I would share your concern. It is an issue of classification.

282 CHAIR TARNO: Is it safe to say that the classification system is a tool
you use for determining
who is put outside and who is not?

283 HALL: The classification system is critical.

286 CHAIR TARNO: I would assume, then, there is a period of time you're
going to go through a classification process with those inmates once they
reach your institution.

293 HALL: Ballot Measure 17 does not address the classification issue.

297 CHAIR TARNO: So you have the option of determining how soon it is that
a person
goes into the work environment?

298 HALL: We would.

300 VANVALKENBURGH: Subsection 3 of Ballot Measure 17 gives the Department
of
Corrections authority to do the classification process that they need to
make those decisions.

307 CHAIR TARNO: What kind of a time frame are we looking at?

309 HALL: At least four weeks on the front end to evaluate that individual.

310 REP. PROZANSKI: What if you have an inmate that says to heck with you, I'm not going to work. Under Ballot Measure 17, I have only heard of disabled or someone with some kind of physical handicap being exempt from that program. Where does that leave the institution to deal with those type of individuals?

318 HALL: I think it says they have to work. Although that may be a conflict with some federal law or constitution.

322 VANVALKENBURGH: I have the same opinion.

324 HALL: Most inmates want to work. There are exceptions.

334 REP. PROZANSKI: I have heard that some inmates have built up a substantial amount of money while they are in prison. Is there going to be some kind of offset of money that might be made in the private sector to pay for their incarceration, and, or, paying for their families who may be on public assistance while they are in custody?

345 HALL: Currently, if an inmate is in an industries program and if he is making minimum wage, or something better than that, about 80 percent of what he earns comes back to the state in one way or the other.

368 REP. COURTNEY: Since Ballot Measure 17 applies to 11, do we assume anyone convicted under Ballot Measure 11 cannot be put on any kind of work release program outside the walls?

378 HALL: I don't think they would be eligible, but I'm not absolutely positive.

381 VANVALKENBURGH: That's a good assumption.

393 REP. COURTNEY: It's very interesting to me. Everyone who's placed under your supervision has to go to work.

407 HALL: If it's a Ballot Measure 11 case, in the last year of that persons sentence, if that person is eligible for minimum security, if he's a good risk to be in an outside work program under supervision, I would assume he would not be excluded from participating in that program.

423 REP. COURTNEY: Does Ballot Measure 11 make it clear?

428 HALL: Very clear.

431 REP. COURTNEY: On the Ballot Measure 17 issue, what can or cannot be done to them?

I'm not convinced it's that clear.

440 HALL: I do think that everyone that comes in under 11 is subject to the same classification rules as the rest of the population.

458 REP. JOHNSTON: Two questions if I might, both have to do with section eight compensation. Is it your interpretation that indigent defense is not a cost that can be paid from this fund?

467 VANVALKENBURGH: I have not considered that. I don't have an answer for you.

471 REP. JOHNSTON: My second question would be, dealing with section eight as to whether or not that A through E [EXHIBIT F] establishes a priority of spending or if its just a list?

TAPE 1-B

035 VANVALKENBURGH: It is not a higharcy of expenditures and receipts, it's just a list.

040 REP. BROWN: As I read section 8 of Ballot Measure 17, [EXHIBIT B], there is no choice about where that money goes.

048 REP. PROZANSKI: Some of the stories we have heard are of individuals who are incarcerated that have pocketed, or put into accounts, thousands of dollars.

058 REP. BROWN: It's my understanding that we were at least paying off child support, and paying victims restitution out of those bank accounts.

060 CHAIR TARNO: An inmate who is classified as a high security risk is going to pose a higher tort liability risk to the state. When you classify those inmates down to perhaps a rating of a boot camp eligibility rate, that would pose less tort liability to the state?

069 VANVALKENBURGH: Yes, to the extent that the policy was a discretionary decision that the department had the authority to make.

094 REP. NAITO: Can you give us something that outlines the states responsibility?

096 VANVALKENBURGH: I can get you a copy of the Bugler case, if that would be helpful. I have a few more comments that might give you a view of the legal issues.

149 HALL: It's going to be a major problem getting this off the ground.

158 ROBINSON: You have a statement that was brought to you by Steve Marks [EXHIBIT G], who is the Senior Policy Advisor to the Governor.

162 REP. COURTNEY: Are we going to wait until the Department of
Corrections and the Governor's legal counsel or the

Attorney General comes forward perhaps implementing
legislation, or are we going to take the initiative?

170 CHAIR TARNO: I don't know.

174 REP. NAITO: Inaudible.

179 REP. TARNO: I think Peter has some valid points. I'm concerned about
the security risk factor.

183 REP. COURTNEY: We have not heard from judges yet. Discusses sentencing
guidelines.

197 REP. NAITO: We need to put everything in one place so people can just
look at the sentencing guidelines.

204 REP. BROWN: Counsel and I have discussed that. On the back of the
plastic sentencing guidelines [EXHIBIT H], they have

a specific paragraph for determinate sentences, we may want to
add it for Ballot Measure 11 sentences as well. It is cumbersome for
attorneys.

210 REP. PROZANSKI: Judges as well.

213 CHAIR TARNO: Counsel, is there any direction that you can see I ought
to take a look at?

214 ROBINSON: I have heard indirectly that there will be coming sometime,
some implementation legislation. Prison Industries Board.

232 CHAIR TARNO: I would like to hear more from the Governor's policy
advisor on corrections.

234 ROBINSON: They have not met. It is their plan to meet and come up with
a firm list of proposed changes that will be
necessary.

254 CHAIR TARNO: I don't know how long we want to wait to deal with some
legislation that is
very important.

257 REP. NAITO: Recommends committee move forward.

270 REP. COURTNEY: It does not hurt to start with a vehicle. I think we
should take the initiative.

284 REP. LEWIS: In regard to Ballot Measure 11, I feel we should go ahead
and work with the committee bill to dovetail the current

sentencing guidelines.

292 CHAIR TARNO: Asks counsel to contact the Senate side.

297 ROBINSON: That's one reason why this hearing was scheduled for today.

299 CHAIR TARNO: We will go ahead and go forward. You folks in agreement?
Hearing no objections, meeting adjourned at 10:21 A.M.

Submitted by, Reviewed by,

Janet Ellingsworth	Debby Johnson
Committee Assistant	Committee Assistant

EXHIBIT SUMMARY:

- A- Ballot Measure No. 11 - 2 pages - Staff
- B- Ballot Measure No. 17 - 2 pages - Staff
- C- Sentence Comparison - 1 page - Frank Hall
- D- Sentencing Guidelines Grid (Nov. 1 1993) - 1 page - Eric Wasman
- E- Eric Wasman notes - 1 page - Eric Wasman
- F- Department of Justice-Measure 17 - 6 pages - Jef Vanvalkenburgh
- G- Steve Marks Testimony - 1 page - Steve Marks
- H- Sentencing Guidelines Grid - 1 page - Frank Hall