

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

April 1, 1993      Hearing Room 357 3:00 p.m.      Tapes 66 - 67

MEMBERS PRESENT:    Rep. Kate Brown Rep. Peter Courtney Rep. Veral Tarno

MEMBER EXCUSED:    Rep. Bob Tiernan, Chair

STAFF PRESENT:      Julie Nolta, Committee Clerk Carole Souvenir,  
Committee Counsel

MEASURES CONSIDERED:      HB 3023 - Relating to parole and probation  
officers HB 3211 - Relating to controlled substances HB 2380 - Relating  
to assistance animals

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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. [--- Unable To Translate  
Graphic ---]

TAPE 66, SIDE A

002      CHAIR COURTNEY:    Calls meeting to order at 3:05 p.m.

HB 2380 - WORK SESSION

Witnesses:      Margaret Eply, Oregon Council of the Blind

005      CAROLE SOUVENIR, COMMITTEE COUNSEL:    HB 2380 establishes measure  
of damages for civil action based upon unprovoked attack upon an  
assistance animal; creates the crime of interference with an assistance  
animal. Prepared and reviews a list of issues. (EXHIBIT A)

Issue 1:    Whether a physically impaired person should receive \$20,000 to  
\$30,000 for the loss of the assistance animal when he or she will not  
pay that much to replace the animal and may not retain legal ownership

of the dog. The language in HB 2380 page 1, line 15 could be changed to  
"replacement cost" instead of "replacement value."

025      REP. BROWN:    Funds should go to the legal owner of the animal.

032      REP. BROWN:    Legally the organization that trained the animal  
maintains ownership of the animal.

039      CAROLE SOUVENIR, COMMITTEE COUNSEL:    If the guide dog school

retains legal ownership of the animal, then the school should get the money. The drafted bill uses "value" instead of "cost."

REP. BROWN: Regardless of who has legal ownership, it makes sense for the money to go to the organization that put the resources into training the animal.

054 REP. TARNO: Would that require the owner who may be out of state to come to Oregon to prosecute the case?

CAROLE SOUVENIR, COMMITTEE COUNSEL: The way the bill is drafted, the physically impaired person is the one who has the right to bring the cause of action, not the legal owner.

REP. TARNO: Where is the incentive for the person to do so if they may not get anything out of it?

063 CHAIR COURTNEY: We need a definition of "owner" in this bill.

CAROLE SOUVENIR, COMMITTEE COUNSEL: Who do you want the owner to be?

072 MARGARET EPLY, OREGON COUNCIL OF THE BLIND: Part of the schools retain ownership of the dogs so they are able to take back the dog in cases of improper use. The cost of the dog to the physically impaired person does not begin to cover the cost of training. The wording should be "either the special partner or school" to include both.

099 REP. BROWN: Seems like the legal owner should have the right to bring action if they want to. If the person happens to be the legal owner, they can as well.

106 CHAIR COURTNEY: Issue 2: Whether service animals, certified therapy

animals and search and rescue animals should be included in HB 2380.

REP. BROWN: Yes, they should all be included.

REP. TARNO: Don't share that opinion. Will be hard enough to define "assistance animal." Should do this first and look at additional animals later.

115 CHAIR COURTNEY: Asks what references to ORS 346.680 are in the bill.

CAROLE SOUVENIR, COMMITTEE COUNSEL: It deals with companion and assistance animals and is defined.

CHAIR COURTNEY: Confirms that "assistance animal" as defined in statute does not include search and rescue animals and that we would have to add that to the definition. What does the definition include now? 134

CAROLE SOUVENIR, COMMITTEE COUNSEL: It includes dog guides, hearing ear dogs and animals that pull wheel chairs, fetch items or do balance work. Animals that are trained to assist physically impaired individuals.

CHAIR COURTNEY: Wants to add these animals. Doesn't know what the chairman wants to do with them.

144 REP. PARKS: Need to move the bill so wants to vote to add them.

REP. TARNO: Concerned about individuals who may have hunting dogs or other dogs alleged to be assistance animals.

REP. PARKS: You have to prove your claim and establish the value.

158 CAROLE SOUVENIR, COMMITTEE COUNSEL: Issue 3: Section 2 of HB 2380 creates strict liability for an owner whose animal attacks an assistance animal. The issue is whether the standard should be a lesser standard

of intentional, reckless or negligent acts of the animal's owner that allowed the animal to attack the assistance animal.

166 REP. BROWN: Would go with a lesser standard.

CHAIR COURTNEY: If I hit the animal, I am in trouble.

CAROLE SOUVENIR, COMMITTEE COUNSEL: Under section 1, it has to be without provocation meaning "intentional." If the owner's animal attacks an animal, the owner is responsible.

186 REP. BROWN: So we have a crime and civil suit.

CAROLE SOUVENIR, COMMITTEE COUNSEL: The crime only goes to a person if a person attacks.

REP. TARNO: Also wants a lesser standard.

REP. PARKS: The standard is different for criminal and civil?

195 CAROLE SOUVENIR, COMMITTEE COUNSEL: Yes, because the criminal standard applies to the person and only if you injure or attempt to injure when

the person knows or reasonable should know.

REP. PARKS: Agrees.

CAROLE SOUVENIR, COMMITTEE COUNSEL: The civil can happen under two circumstances: if a person attacks an assistance animal without provocation, which implies an intentional standard; or if an animal attacks an assistance animal then the owner is responsible for the animal's action.

REP. PARKS: Then it is strict liability for damages. CAROLE SOUVENIR, COMMITTEE COUNSEL: Correct, except the person would have to intend to attack the animal.

209 REP. PARKS: We are discussing making the injured party whole, the person still has the duty to compensate. Strict liability is a good rule.

REP. BROWN: In animal attacks generally are persons held strictly liable for their animals?

223 CAROLE SOUVENIR, COMMITTEE COUNSEL: Other statutes that are attached is right of action by an owner for damaged livestock and interfering with a police animal, which is a criminal statute. (EXHIBIT B)

REP. PARKS: We are talking about the duty of controlling an animal.

REP. BROWN: Agrees.

REP. TARNO: Is willing to go along with the majority.

238 CAROLE SOUVENIR, COMMITTEE COUNSEL: Issue 4: Whether HB 2380 should also allow recovery of damages for the theft of the assistance animal.

REP. BROWN: Is it a crime to steal an assistance animal?

CAROLE SOUVENIR, COMMITTEE COUNSEL: That would already be under the pet theft bill passed in the 1989 legislative session. Would not apply to service animals.

248 CHAIR COURTNEY: Damages can be covered if the animal was injured or killed, so why wouldn't we want to cover damages if it was stolen?

CAROLE SOUVENIR, COMMITTEE COUNSEL: Not only would you have a civil action if the animal was injured or killed, but also if it was stolen and you knew who stole it.

258 CAROLE SOUVENIR, COMMITTEE COUNSEL: Issue 5: Whether HB 2380 should

include costs of temporary replacement assistance services.

REP. BROWN: Yes.

REP. TARNO: Wouldn't that be a court issue?

REP. BROWN: We want the ability there for the court.

267 CAROLE SOUVENIR, COMMITTEE COUNSEL: Under HB 2380 they are specifying what the measure of damages would be and that is not included in the list.

270 CHAIR COURTNEY: Asks Rep. Parks if it his intention to move the bill

without amendments.

REP. PARKS: Can we do this conceptually? 279 CAROLE SOUVENIR, COMMITTEE COUNSEL: Clarifies the intent of the committee regarding the first issue: to make the person who can bring an action to be the legal owner, whether the physically impaired person or the guide dog school.

REP. BROWN: Why not either?

CHAIR COURTNEY: Thought we were going to go with either one.

292 REP. PARKS: Wouldn't this be subject to the real party and interest statute?

CAROLE SOUVENIR, COMMITTEE COUNSEL: The true owner would be the real party and interest.

REP. PARKS: If you leave it at either one then it is a matter for the defense or the defendant to prove the one that brought the suit didn't have the legal right.

305 CAROLE SOUVENIR, COMMITTEE COUNSEL: The legal owner would be able to

bring a cause of action for the replacement value of the animal. If the physically impaired person only has to pay \$200 to get another, can they bring an action for \$20,000?

313 REP. BROWN: Yes, because that is the value of the dog.

REP. PARKS: But it has to be the reasonable value.

CHAIR COURTNEY: Doesn't think they could bring an action or recover, or that a jury would award to the owner.

REP. PARKS: It's not much difference in insurance.

330 CHAIR COURTNEY: But the person using the dog is not out the \$20,000.

REP. PARKS: Discusses issue of subrogation.

CHAIR COURTNEY: Here, the \$20,000 was never paid by the user of the dog. That was paid by the training organization.

CAROLE SOUVENIR, COMMITTEE COUNSEL: So we will leave it at value.

MOTION: REP. TARNO: Moves to ADOPT CONCEPTUAL TO AMENDMENTS HB 238 0.

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

364 MOTION: REP. TARNO: Moves HB 2380 AS CONCEPTUALLY AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

VOTE: 4-0 MOTION PASSES AYE: Brown, Parks, Tarno, Courtney NO: None EXCUSED: Tiernan

HB 3211 - PUBLIC HEARING

(HB 3211 deletes provision requiring court to award attorney fees to prevailing party in drug paraphernalia proceedings.)

Witnesses: Rep. Tom Mason, District 11 John Bradley, Multnomah Co. District Attorneys Office

398 REP. TOM MASON, DISTRICT 11: Testifies in favor of HB 3211.

413 JOHN BRADLEY, MULTNOMAH COUNTY DISTRICT ATTORNEYS OFFICE: Testifies in favor of HB 3211.

483 REP. PARKS: It could cost several thousand dollars to defend a case and that's why you think they shouldn't recover the attorney's fees?

TAPE 67, SIDE A

BRADLEY: This law has not been tested in the appellate courts. Not sure of the cost because of constitutional and cost challenges. It is a chilling issue when proceeding against "head shops."

136 REP. PARKS: How many of these proceedings have you brought in Multnomah County?

BRADLEY: Haven't brought any because of the high standard of proof required by statute and because of the potential of attorneys fees.

040 REP. TARNO: Will this bill make prosecution easier for these types of offenses?

BRADLEY: Would not have the chilling effect that it does currently and would be easier to go forward.

049 REP. BROWN: Asks for an example of a drug paraphernalia case.

BRADLEY: Explains current law requirements for selling drug paraphernalia. As a result of the original bill, several head shops in Portland stopped doing business as they had done before.

REP. BROWN: And you have been reluctant to bring cases because of the risk of attorney's fees? BRADLEY: It is a real problem.

069 CHAIR COURTNEY: Asks Rep. Mason if there are areas of law where this

kind of language appears.

REP. MASON: Not in this area because it is "quasi" criminal. The District Attorneys office thinks in terms of prosecuting cases and are not budgeted to pick up attorneys fees if they lose.

105 REP. TARNO: Asks Rep. Mason if this is a civil matter.

REP. MASON: Yes. The district attorneys office is involved in a civil matter.

114 ROSANNA CREIGHTON, EXECUTIVE DIRECTOR, CITIZENS FOR A DRUG FREE OREGON: Testifies in favor of HB 3211.

CREIGHTON: The bill is a double-edged sword in regards to paying attorney's fees.

HB 3211 - WORK SESSION

164 REP. TARNO: Concerned about using the civil system for criminal matters but it is something we can live with.

168 MOTION: REP. BROWN: Moves HB 3211 TO FULL COMMITTEE with a DO

PASS recommendation.

VOTE: 4-0 MOTION PASSES AYE: Brown, Parks, Tarno, Courtney NO:  
None EXCUSED: Tiernan

HB 3023 - PUBLIC HEARING

(HB 3023 allows a parole and probation officer to carry a firearm for personal safety after the parole and probation officer has completed a training program and a psychological screening.)

Witnesses: Elyse Clawson, Department of Corrections Tamara Holden, Multnomah Co. Dept. of Community Corrections Mike Wilkerson, Marion County Dept. of Corrections Scott Taylor, Dept. of Corrections Larry Smith, Marion County

203 ELYSE CLAWSON, ASSISTANT DIRECTOR, COMMUNITY CORRECTIONS DEPARTMENT OF CORRECTIONS: Submits and reviews written testimony in opposition of HB 3023. (EXHIBIT D)

247 TAMARA HOLDEN, DIRECTOR, MULTNOMAH COUNTY DEPARTMENT OF COMMUNITY CORRECTIONS: Submits and reviews written testimony in opposition to HB 3023. (EXHIBIT E)

276 MIKE WILKERSON, ASSISTANT DIRECTOR, MARION COUNTY DEPARTMENT OF CORRECTIONS: Testifies in opposition to HB 3023.

288 SCOTT TAYLOR, ADMINISTRATOR OF COMMUNITY SUPERVISION; ADMINISTRATOR, TACTICAL SUPERVISION PROGRAM, DEPARTMENT OF CORRECTIONS: Testifies in

opposition to HB 3023.

300 LARRY SMITH, SUPERVISOR OF SPECIALIZED UNITS, MARION COUNTY: Testifies in opposition to HB 3023.

316 CHAIR COURTNEY: Asks Ms. Clawson if parole and probation officers should never be allowed to carry a gun.

CLAWSON: No, officers should be armed under certain circumstances.

CHAIR COURTNEY: That should be left up to the department and its policies. The bill says "may" and is permissive. Do you interpret that to mean it is left up to the individual officer?

CLAWSON: That is accurate and that is what we are concerned about.

330 CHAIR COURTNEY: Confirms that officers are now trained to use firearms. Who does the training?

CLAWSON: Board of Public Safety Standards and Training.

337 REP. TARNO: Does this bill prevent state corrections from setting policies and procedures on the use of firearms?

CLAWSON: That is the advice we have received. That it would allow officers to choose when they want to be armed.

347 REP. BROWN: Asks Ms. Holden about negative experiences that led her to the conclusion this bill was a bad idea.

352 HOLDEN: Discusses negative aspects of mandatory arming. Major policy needs to accompany the arming.

REP. BROWN: Did you have circumstances where an officer was hurt or was prevented from being hurt because he or she was carrying a firearm?

HOLDEN: Describes three minor shooting incidents.

409 CHAIR COURTNEY: The law enforcement officers who do carry guns: is that by law or administrative rule?

CLAWSON: By law. Do not carry just for defense but also offensive use and they have more training than our officers.

421 CHAIR COURTNEY: Are the correctional officers in the tower at the Oregon State Penitentiary armed by rule or law?

CLAWSON: Believes by rule.

433 CHAIR COURTNEY: What if a parole or probations officer gets a concealed weapons permit?

CLAWSON: When we arm an officer, we require them to have a permit. They may not carry the weapon on duty according to department policy.

CHAIR COURTNEY: Even if they felt their job was such that they should have one, you would prohibit them from carrying the gun during working hours?

CLAWSON: Correct.

465 REP. PARKS: Currently have a system to arm your officers. If the bill passes, why wouldn't you use the system you have in place?

473 CLAWSON: Describes the policy under which the department currently arms.

REP. PARKS: Confirms that the people they arm now receive enough psychological training before arming.

TAPE 66, SIDE B

032 REP. PARKS: If other officers wanted a gun, the legislature could pass a requirement that they pass the regular testing. Assumes the department has the right to revoke the use of a gun. This law could be subject to the right to revoke in the same way.

CLAWSON: The difference is we make the decisions as to who is going to be armed. This bill allows anyone who chooses, to be armed rather than having the employer decide.

053 REP. PARKS: All the other issues of training, revocation, and ammunition management could be worked out. The real issue is who will



decide who gets a weapon.

CLAWSON: That is the issue. And there are other cost and management issues that have fiscal implications.

077 REP. BROWN: Seems as if the officers are doing a difficult job. Isn't it worthwhile for the peace of mind of the officers?

CLAWSON: Is also concerned about officer's safety. In talking with other states, Oregon Department of Corrections has not been persuaded that everyone needs to be armed. Procedures and safety equipment are required and have been provided. Some do need to be armed. The question we are getting to is if the work is that dangerous, maybe arming should be required and everyone should have to go through the psychological examination.

101 REP. PARKS: Isn't there a county in the state that chooses to arm all of their officers?

CLAWSON: Clackamas County arms all of their officers.

REP. PARKS: Has Utah abandoned the policy of arming all of their officer?

HOLDEN: They still have mandatory arming of all their probation and parole officers.

REP. PARKS: Asks Ms. Holden when she was in Utah.

HOLDEN: For the last twenty years. The policy was implemented in 1985. Was involved in purchasing the weapons.

REP. PARKS: But they are still doing it today.

HOLDEN: Speaking from personal experience, it became a tremendous cost to the agency in unanticipated ways. Having the officers armed becomes a greater safety issue for them because the offenders don't know who is and isn't armed and will assume everyone is. Professional recommendation is to arm through agency policy.

151 JIM KIELY, PRESIDENT, FEDERATION OF OREGON PAROLE AND PROBATION OFFICERS: Submits and reviews written testimony in favor of HB 3023.

Fiscal impact (EXHIBIT F)

217 REP. PARKS: Asks why some counties can arm and some can't.

KIELY: Clackamas Co. went through a grievance process through their contract on safety article.

REP. PARKS: Confirms that each county has a separate contract.

KIELY: Counties and the state work separately. Discusses history of safety standards and policies.

249 CAROLE SOUVENIR, COMMITTEE COUNSEL: Does the union contract specify that the county or state will pay for that weapon?

KIELY: The union contract is not the proper place to raise this issue.

The legislature is the proper place. CAROLE SOUVENIR, COMMITTEE COUNSEL:  
It is purchased by the state or the county by practice or by  
administrative rule?

KIELY: In Clackamas County they buy their own.

275 WARREN AMREIN, PRESIDENT, CLACKAMAS COUNTY FEDERATION OF OREGON  
PAROLE AND PROBATION OFFICERS: Submits and reviews written testimony in  
support of HB 3023. (EXHIBIT G)

355 REP. BROWN: Can you do the job more effectively with guns? Can  
you develop a better repoire with clients and will it make the make job  
safer?

AMREIN: Dealing with the offender in terms of supervision and  
reformation doesn't change if the officer is armed. It is only a safety  
item. Have problems now with distilled case load and unpredictable  
events.

427 DUNCAN PIERCE, PAROLE AND PROBATION OFFICER, CLACKAMAS COUNTY:  
Testifies in favor of HB 3023.

TAPE 67, SIDE B

001 PIERCE: Continues testimony.

077 REP. BROWN: Asks about parole and probation officer injury  
statistics.

PIERCE: Does not recall any officers being injured in the line of duty  
in the last five years. Can only think of a few in the last 23 years.

AMREIN: Had an offender strike me with an automobile and other minor  
incidents.

096 KIELY: Had two officers held at gun point in Klamath Falls.  
There are significant death threats for which people are armed.

108 AMREIN: Federal parole and probation officers have the option to  
be armed. Decisions in other states have been made to arm after the  
death of an officer.

120 CAROLE SOUVENIR, COMMITTEE COUNSEL: The federal officers are  
armed by statute?

AMREIN: Does not know.

CAROLE SOUVENIR, COMMITTEE COUNSEL: How many states allow their  
officers to be armed by statute?

KIELY: Last research said 33 states.

138 GERALD FORMAN, FEDERATION OF OREGON PAROLE AND PROBATION  
OFFICERS: Testifies in favor of HB 3023. 208 PAULA OATLEY, PAROLE AND  
PROBATION OFFICER, MULTNOMAH CO.: Testifies in favor of HB 3023.

317 REP. PARKS: How many officers are there in the state and how  
many are women?

KIELY: Close to 50/50.

REP. PARKS: And there is no distinction made as to who supervises who.

OATLEY: I have almost exclusively men.

327 REP. PARKS: Asks the group if they have exhausted all possibilities of resolving this issue.

KIELY: We have exhausted all possibilities: labor management, safety committees and there has been very little dialogue on compromise.

REP. PARKS: Asks Ms. Clawson if that is the position of the department also.

CLAWSON: Couldn't speak to that. (Other remarks unintelligible)

352 REP. PARKS: Recommends a working group be appointed consisting of a member of the federation and the Department of Corrections to address the issue.

371 REP. PARKS: Where I live, some police officers choose not to be armed at all. Asks Rep. Tarno about his sheriff's department.

REP. TARNO: It was mandatory arming and it is mandatory in most departments for police officers.

REP. PARKS: Then when a parole officer would have a problem they would have to take a police escort?

REP. TARNO: They would get routine back-up. Asks witnesses if they had grievance filed or union action taken.

396 KIELY: Clackamas County filed a grievance and prevailed. They have different labor clauses.

REP. TARNO: Has there been an Occupational Safety and Health Division ruling on this issue?

KIELY: OSHA said firearms were an industry wide standard accepted throughout the nation as a safety tool.

REP. TARNO: Adjourns meeting at 4:50 p.m.

Submitted by:

Reviewed by:

Julie Nolta  
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Issues considered on HB 2380 - Committee Counsel - 1 page B - Statutes relating to HB 2380 - Committee Counsel - 4 pages C - Proposed amendments to HB 2380 - 1 page D - Testimony on HB 3023 - Oregon Dept.

of Corrections - 2 pages E - Testimony on HB 3023 - Mult. Co. Dept. of  
Community Corrections F - Fiscal Impact Statement for HB 3023 -  
Federation of Oregon Parole and Probation Officers - 1 page G - FOPPO  
Position Paper - FOPPO - 2 pages H - Testimony on HB 3023 - Oregon  
Council of Police Associations - 4 pages I - Testimony on HB 3023 -  
Oregon Council of Police Associations - 3 pages J - Testimony on HB  
3023 - Oregon Council of Police Associations - 30 pages K - Testimony  
on HB 3023 - Oregon Council of Police Associations - 2 pages L -  
Testimony on HB 3023 - Oregon Council of Police Associations - 2 pages