

HOUSE COMMITTEE ON JUDICIARY

March 22, 1993      Hearing Room 357 1:30 p.m.      Tapes 17 - 18

MEMBERS PRESENT:    Rep. Del Parks, Chair Rep. Tom Mason, Vice-Chair Rep. Ken Baker Rep. Tom Brian Rep. Peter Courtney Rep. Jim Edmunson Rep. Veral Tarno Rep. Bob Tiernan

MEMBERS EXCUSED:    Rep. Kate Brown

STAFF PRESENT:            Holly Robinson, Legislative Counsel Carole Souvenir, Legislative Counsel Julie Nolta, Committee Clerk

MEASURES CONSIDERED:            HB 2287 - Relating to support enforcement  
HB 2223 - Relating to evidence HB 2349 - Relating to abuse prevention HB  
2391 - Relating to crime HB 2504 - Relating to crime HB 2618 - Relating  
to illegal drugs HB 2737 - Relating to weapons

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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 17, SIDE A

005      VICE CHAIR MASON:    Opens the meeting at 1:30 p.m.

HB 2287 - WORK SESSION

005      HOLLY ROBINSON, COMMITTEE COUNSEL:    Gives background on the bill. There is a greater fiscal impact. Committee will need to suspend the rules for the purpose of reconsideration.

010      MOTION:    REP. BAKER:    Moves to SUSPEND the rules for the purpose of reconsideration of HB 2287.

VOTE:      Hearing no objections the rules are SUSPENDED. Representatives Park, Brown and Tiernan are excused.

MOTION:    REP. MASON:    Moves HB 2287 TO THE APPROPRIATIONS COMMITTEE with a DO PASS recommendation.

VOTE:      7-0      MOTION PASSES AYE:            Baker, Brian, Courtney,  
Edmunson, Mason, Tarno, Parks NO:            None EXCUSED:    Brown, Tiernan

HB 2349 - WORK SESSION

032 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2349 amends the Abuse Prevention Act. Describes effects of the bill. Both -1 and -2 amendments need to

be adopted. (EXHIBITS A and B)

045 MOTION: REP. COURTNEY: Moves to ADOPT -1 AND -2 AMENDMENTS to HB 234 9.

VOTE: Hearing no objections the amendments are ADOPTED. Representatives Brown and Tiernan are excused.

049 MOTION: REP. COURTNEY: Moves HB 2349 AS AMENDED TO THE FLOOR with a DO PASS recommendation.

054 REP. BAKER: Refers to p. 3 of the -2 amendments. Asks for previous language in reference to "the respondent."

HOLLY ROBINSON, COMMITTEE COUNSEL: It reflects the language in the printed bill.

060 REP. BAKER: They co-habitated?

HOLLY ROBINSON, COMMITTEE COUNSEL: Current law allows persons who have co-habitated within a two year period prior to filing. Bill proposes to delete two year preceding requirement and also extend it to persons who have been intimately involved but never co-habitated.

066 REP. BAKER: Was referring to involuntary sexual relations.

HOLLY ROBINSON, COMMITTEE COUNSEL: This allows an individual to get a restraining order against a person with whom you have not co-habitated.

REP. BAKER: Wanted to make sure we were not losing some of that language.

082 VOTE: 8-0 MOTION PASSES AYE: Baker, Brian, Courtney,  
Edmunson, Mason, Tarno, Tiernan, Parks NO: None EXCUSED: Brown

Rep. Baker to carry to the floor.

HB 2223 - WORK SESSION

091 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2223 will allow lawfully recorded statements made within prisons, jails or other agencies potentially admissible in court if the participants had actual knowledge that the recording was being made. (EXHIBIT C)

098 CHAIR PARKS: Confirms it is a requirement that they have knowledge.

How will they receive the knowledge?

HOLLY ROBINSON, COMMITTEE COUNSEL: Believes a practice will have to be adopted that a recording comes on when the phone is picked up that states that the phone conversation is being recorded and monitored. Current system may have to be modified to include a recording when the second party comes on the line. Signs can be posted.

109 REP. MASON: How did this relate to hearsay?

HOLLY ROBINSON, COMMITTEE COUNSEL: Rules of evidence regarding hearsay will apply.

REP. MASON: How do you get both sides of the conversation in?

117 HOLLY ROBINSON, COMMITTEE COUNSEL: If law enforcement agency wanted to take the statement of a second party as part of the case against the callee, nothing in the statutes prohibits it. This requires that it may be an admission against interest. Nothing limits it to the caller only. There are limited circumstances where this will actually be used.

134 REP. EDMUNSON: Refers to -1 amendments. "The participants" must have actual notice. All parties would have to be given notice, correct?

HOLLY ROBINSON, COMMITTEE COUNSEL: For admissibility it would have to be proved.

142 REP. EDMUNSON: If more than one person were on the other line, then each time another person came on the line, a notice would have to be given.

HOLLY ROBINSON, COMMITTEE COUNSEL: Without the notice, prosecutor would not be able to use the subsequent statement.

148 REP. EDMUNSON: Asks if there was testimony regarding impact on jail staff. There will need to be someone monitoring. Is there a fiscal impact?

158 REP. TARNO: The information is taped. An independent phone system informs the inmate when he makes a call that he is being monitored and

taped. It is not employee intensive.

165 REP. EDMUNSON: If a confession was made by phone, in order to use it, all participants would have to have notice. Would that automatic system be able to make that distinction?

REP. TARNO: No. Intended just for person in custody.

REP. EDMUNSON: What about the participant on the other end?

REP. TARNO: That isn't necessarily used.

180 REP. MASON: The bill doesn't say "inmate" but the "participants."

CHAIR PARKS: If you don't do it by the rules, you don't get to use it.

189 REP. TIERNAN: The conversations are being recorded and monitored by

prison security. The caller is being recorded and the bill principally addresses his statements.

198 HOLLY ROBINSON, COMMITTEE COUNSEL: Explains current law which allows

law enforcement to choose to monitor and record phone conversations. This bill attempts to create a very narrow window whereby overheard conversations can be entered in court and be admissible.

REP. MASON: Correct, except talking about the admissibility in court whereby both participants knew the conversation was being recorded, which is currently not being done.

231 HOLLY ROBINSON, COMMITTEE COUNSEL: In underlying statute there is nothing to prevent the statement made by the "callee" from being admissible.

REP. MASON: Under the bill, the conversation would not be admissible.

HOLLY ROBINSON, COMMITTEE COUNSEL: Unless they had actual notice.

252 REP. BAKER: It is virtually impossible to prosecute the person who receives the call as to their identity or statement. Views the bill as allowing the sheriff to control his jail. Existing technology could run a recorded notice every 30 seconds. Either you will have the concrete

information to prosecute or you will not.

271 CHAIR PARKS: Tells Rep. Tiernan that Crime and Corrections Subcommittee could have framed the bill to say that the participant whom the evidence is sought to be used against had to have actual knowledge. Why did we

say both had to have knowledge?

277 REP. TIERNAN: When it was discussed, we wanted the optimum assuming both participants could be notified. If a third party in the conversation could not be notified, then the rules of evidence would prohibit using that person's statements against them.

287 CHAIR PARKS: Under the laws of Oregon and the United States, to make a lawful recording only one party has to know it is being recorded. The

reality is that tapes are not being monitored but recorded. Would this be a better bill from the perspective of law enforcement if it went back to subcommittee to provide that the contents of the conversation to be

usable against a participant if the prosecution only had to show that

that participant knew it was being recorded, rather than both parties?

309 MOTION: REP. TIERNAN moves that HB 2223 BE REFERRED back to the Subcommittee on Crime and Corrections.

REP. MASON: Refers to caller ID technology and the possibility that it will relate to HB 2223. You will want to know who called in also.

329 REP. COURTNEY: Doesn't think it is possible to pass the bill out of the committee without three or four votes against it. Are we willing to send the bill to the floor with a 5-4 vote?

CHAIR PARKS: Didn't suggest the rereferral because of possible votes or it not passing on the floor. Wants to make it more workable for the people who want to monitor jails.

352 REP. TIERNAN: Asks if full committee can amend the bill by changing "participants" to "participant" on line 6.

CHAIR PARKS: That would change the substance of the bill and would rather refer it to the subcommittee.

VOTE: Hearing no objections, the motion passes. Rep. Brown is excused.

#### HB 2391 - WORK SESSION

370 CAROLE SOUVENIR, COMMITTEE COUNSEL: HB 2391 makes it a Class C felony for businesses to unlawfully record live musical performances and mislabel sound recordings or videotapes. It was referred back from the floor where an issue was raised as to whether or not the crime should be a Class C felony or a Class A misdemeanor. Civil Subcommittee decided to keep the crime as a Class C felony. There have been no amendments.

382 MOTION: REP. BRIAN: Moves HB 2391 TO THE FLOOR with a DO PASS recommendation.

VOTE: 8-0 MOTION PASSES AYE: Baker, Brian, Courtney, Edmunson, Mason, Tarno, Tiernan, Parks NO: None EXCUSED: Brown

Rep. Brian to carry to the floor.

#### HB 2504 - WORK SESSION

396 HOLLY ROBINSON, COMMITTEE COUNSEL: Allows family court departments to be established upon written application and approval of the Chief Justice

of the Supreme Court. -3 amendments need to be adopted. (EXHIBIT D)

407 MOTION: REP. MASON: Moves to ADOPT -3 AMENDMENTS TO HB 2504.

HOLLY ROBINSON, COMMITTEE COUNSEL: A minor change from -2 amendments includes domestic violence and civil commitment cases which were in the original bill.

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

426 MOTION: REP. MASON: Moves HB 2504 AS AMENDED TO THE FLOOR with a DO

PASS recommendation.

REP. TARNO: Asks about the fiscal impact.

HOLLY ROBINSON, COMMITTEE COUNSEL: Believes that circuit courts could set up family courts with no fiscal impact. If county chooses to build new buildings, etc. there may be an impact. It is a procedural bill and there should be no impact on courts or operations unless they choose.

458 REP. BAKER: Believes there is no fiscal impact. Committee is making a policy statement.

478 VOTE: 8-0 MOTION PASSES AYE: Baker, Brian, Courtney, Edmunson, Mason, Tarno, Tiernan, Parks NO: None EXCUSED: Brown

Rep. Parks to carry to the floor

HB 2618 - WORK SESSION

493 CAROLE SOUVENIR, COMMITTEE COUNSEL: HB 2618 creates cause of action for damages resulting in the sale of drugs or alcohol to a minor. -3 amendments need to be adopted.

TAPE 18, SIDE A

028 MOTION: REP. BRIAN: Moves to ADOPT -3 AMENDMENTS TO HB 2618.

045 REP. BAKER: Refers to line 5 of the -3 amendments. Expanding horizons on who will be held responsible for events.

058 REP. EDMUNSON: Not unusual in drug enforcement. Refers to drug house bill where a landlord must take steps to evict or their property could

be declared a nuisance. If there was no knowledge there would be no strict liability. When you do know and fail to act, "trips the lever."

077 REP. BRIAN: Supports Rep. Edmunson's statement. In addition, when cause of action is brought, must prove knowledge and resulting damage.

REP. BAKER: Extent of injuries can overwhelm the liability aspects.

096 VOTE: 7-1 MOTION PASSES AYE: Brian, Courtney, Edmunson, Mason, Tarno, Tiernan,

Parks NO: Baker EXCUSED: Brown

101 MOTION: REP. BRIAN: Moves HB 2618 AS AMENDED TO THE FLOOR with a DO

PASS recommendation.

VOTE: 8-0 MOTION PASSES AYE: Baker, Brian, Courtney, Edmunson, Mason, Tarno, Tiernan, Parks NO: None EXCUSED: Brown

Rep. Edmunson to carry to the floor

HB 2737 - WORK SESSION

111 CAROLE SOUVENIR, COMMITTEE COUNSEL: HB 2737 expands the definition of firearms to all deadly weapons when it involves a concealed weapon during the commission of a crime. 117 MOTION: REP. BRIAN: Moves HB 2737 TO THE FLOOR with a DO PASS recommendation.

CAROLE SOUVENIR, COMMITTEE COUNSEL: Refers to EXHIBIT F. If a weapon other than a firearm is used to commit a crime, that weapon can be returned to the defendant under current law. HB 2737 expands the definition of weapons so that any weapon used during a crime can be forfeited and destroyed or sold.

REP. EDMUNSON: Do not have to meet both requirements to be considered a nuisance. It is a finite list.

155 REP. MASON: Asks for definition of "deadly weapon" under Oregon statute.

CAROLE SOUVENIR, COMMITTEE COUNSEL: Refers to EXHIBIT G.

REP. MASON: Definition of "deadly weapon" has been expanded to include pavement and the side of a bus. Does this mean we destroy the bus?

174 CAROLE SOUVENIR, COMMITTEE COUNSEL: HB 2737 specifically refers to ORS 161.015 and does not expand that definition.

REP. MASON: There is case law behind this.

REP. BRIAN: It is optional to the authority to sell or destroy.

184 REP. EDMUNSON: Refers to subsection 4, lines 29-31 of HB 2737. Chemical substances used in an assault is included in definition of "deadly weapon."

199 REP. TIERNAN: Refers to HB 2737, line 11(b). Strict reading of the bill allows the confiscation of the weapon and car. Doesn't it refer to the weapon in the car or on the person as opposed to the car itself?

233 VOTE: 9-0 MOTION PASSES AYE: Baker, Brian, Courtney,

Edmunson, Mason, Tarno, Tiernan, Parks NO:           None EXCUSED: Brown

Rep. Edmunson to carry to the floor

248     CHAIR PARKS:  Adjourns meeting at 2:15 p.m.

Submitted by:

Reviewed by:

Julie Nolta  
Committee Assistant

Anne May Committee Clerk

EXHIBIT LOG:

A - Proposed Amendments to HB 2349-1 - Legislative Counsel - 2 pages B  
- Proposed Amendments to HB 2349-2 - LC - 14 pages C - Proposed  
Amendments to HB 2223 - LC - 1 page D - Proposed Amendments to HB 2504  
- LC - 3 pages E - Proposed Amendments to HB 2618 - LC - 2 pages F -  
Testimony on HB 2737 - Steve Swanson - 1 page G - ORS regarding HB 2737  
- Committee Counsel - 1 page