

SENATE COMMITTEE ON
JUDICIARY

June 11, 1993 Hearing Room C
1:00 p.m. Tapes 189-190

MEMBERS PRESENT: Sen. Dick Springer, Chair
 Sen. Jeannette Hamby
 Sen. Karsten Rasmussen
 Sen. Bob Shoemaker
 Sen. Gordon Smith
 Sen. Catherine Webber

MEMBERS EXCUSED: Sen.

STAFF PRESENT: Bill Taylor, Committee Counsel
 Kirk Bailey, Committee Assistant

ISSUES DISCUSSED: Public Hearing & Work Session on HB 2352, HB 2368, HB
273 6,
 SB 617
 Work Session on HB 2483, HB 2478, SB 722

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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.

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TAPE 189, SIDE A

003 CHAIR SPRINGER: Opens the hearing at 1:21 pm.

SB 617: Allows mass transit district to offer and pay rewards for
 information leading to arrest and conviction of persons
committing
 acts of violence or vandalism upon or against district property.

WITNESSES:

CHARLES SIMMONS, LANE TRANSIT DISTRICT

008 CHARLES SIMMONS: Submits and reviews written testimony in support
of
 the bill (EXHIBIT B).

030 CHAIR SPRINGER: Why do you need a bill?

 SIMMONS: Need a bill to amend ORS.

034 CHAIR SPRINGER: Did legal counsel tell you that?

SIMMONS: Not sure of history. Told no transit districts are allowed to give rewards for vandalism or anything.

040 CHAIR SPRINGER: What is the pleasure of the committee?

041 SEN. SHOEMAKER: Notes SB 617-1 amendments (EXHIBIT A).

TAYLOR: Amendments were withdrawn.

046 MOTION: SEN. RASMUSSEN: moves SB 617 be sent to the floor with a DO

PASS recommendation.

VOTE: In a roll call vote all members present vote AYE.

052 CHAIR SPRINGER: The motion CARRIES.

SEN. DWYER will lead discussion on the floor.

HB 2368: Creates crime of abuse of corpse in first degree.

WITNESSES:

GARY FISHER, SALEM POLICE DEPARTMENT
KARYLINN HUNTTING-ECHOLS, MARION COUNTY VICTIMS ASSISTANCE
PHIL FORD, BELCREST MEMORIAL PARK
DALE PENN, OREGON DISTRICT ATTORNEY'S ASSOCIATION

070 CHAIR SPRINGER: Inquires as to need for the bill regarding current statutes.
>Specifically, what does increasing the penalty if the behavior is already illegal?

063 GARY FISHER: Submits and reviews written testimony in support of the bill (EXHIBIT C).
>Reviews case in Portland.

105 PHIL FORD: Submits and reviews written testimony in support of the bill (EXHIBIT E).
>In response to Springer's question, a stronger message needs to be sent about the consequences of this type of offense.

125 FISHER: Reviews vandalism case at Belcrest Memorial Park in Salem.

165 KARYLINN HUNTTING-ECHOLS: Submits and reviews written testimony in support of the bill (EXHIBIT D).

234 SEN. WEBBER: Reviews sentencing guidelines on the bill. Expresses belief that the punishment is not sufficient to the crime.
>How do we communicate it is the inappropriate level of punishment?
>Would be wise to repeat language from section 1 in section 2,

otherwise

it could make legitimate practitioners guilty of illegal activity.

268 ECHOLS: Reviewed that provision with counsel. Section could be

misused, but the language would not include pathologists. >Section 1, sub 3 extends to section 2.

294 CHAIR SPRINGER: Notes that any problems should probably be corrected

with specific language to avoid confusion due to reordering in the statutes when they are printed.

313 ECHOLS: Notes Dale Penn's support for the bill.

CHAIR SPRINGER: Suggests reviewing the issue further with Penn.

ECHOLS: Agrees.

324 DAVID FACTOR: Comments generally on Webber's question.

>Crime is currently ranked as crime category 3. History has been for departure sentences including jail time.
>Departures are intended to take into account the unusual.

360 CHAIR SPRINGER: Notes there is often some degree of arbitrariness in

sentencing.
>Holds bill over for further discussion with Penn.

374 SEN. HAMBY: Do we need testimony on the health of the compensation account?

>Are people being rejected because of lack of funds?

CHAIR SPRINGER: Sense is there are people who could be eligible but don't receive service due to lack of funds.

HB 2352: Requires retroactive application of post-conviction relief petition

filing limitation for persons whose convictions and appeals were final before August 5, 1989.

WITNESSES:

ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION
BRENDA PETERSON, DEPARTMENT OF JUSTICE

401 ROSS SHEPARD: Testifies in support of the bill and submits amendments (EXHIBIT F).

TAPE 190, SIDE A

003 SHEPARD: Continues testimony in support of the bill.

>Fiscal impact will save up to \$300,000. Currently \$500,000 is

budgeted
for post conviction relief.

067 BRENDA PETERSON: Testifies in support of the bill and OCDLA amendments.

103 CHAIR SPRINGER: What is the estimate on number of older cases being appealed?

SHEPARD: Discussed in the House, expect it to be very small.

108 PETERSON: Concur.

109 CHAIR SPRINGER: Observes it doesn't come up very often.

SHEPARD: Issues does arise in the driving while suspended felony DWI's.
>Office has done 70-80,000 cases, and no case has ever been returned on post conviction report for new trial.

124 CHAIR SPRINGER: Rep. Mannix wanted to testify?

STAFF NOTE: Unidentified member of Rep. Mannix's staff indicates no testimony is necessary but he can be retrieved from Appropriations committee if the committee desires.

128 CHAIR SPRINGER: Holds bill for further discussion with Rep. Mannix.

HB 2478: Provides that State Board of Parole and Post-Prison Supervision determines whether person sentenced as dangerous offender is no longer dangerous for purposes of determining whether to release person on parole or post-prison supervision.

132 TAYLOR: Reviews bill and SB 2478-3 amendments (EXHIBIT G).

143 ERIC WAUSSMAN, OREGON DISTRICT ATTORNEY'S ASSOCIATION: Testifies in support of the bill.
>Believes SB 112 was better and recommends this be changed into that bill.

169 VERN FAATZ, DEPARTMENT OF CORRECTIONS: Testifies in support of the bill and concurs with Eric Waussman.

173 SUSAN TRIP, OREGON DISTRICT ATTORNEY'S ASSOCIATION: Concur with other witnesses.

181 CHAIR SPRINGER: Has OCDLA been consulted?

TAYLOR: They have reviewed and have no objections.
>Notes need to add emergency clause because of length of session.

191 CHAIR SPRINGER: Has Rep. Courtney been advised?
>Member of Rep. Courtney's staff indicates he has been notified.

197 MOTION: CHAIR SPRINGER: moves to ADOPT HB 2478-A3 amendments,
dated
6/9/93.
VOTE: Hearing no objection, the amendments are ADOPTED.

201 MOTION: CHAIR SPRINGER: moves HB 2478, AS AMENDED, be sent to
the
floor with a DO PASS recommendation.
VOTE: In a roll call vote all members present vote AYE. SEN. RASMUSSEN
is excused.

209 CHAIR SPRINGER: The motion CARRIES.

SEN. WEBBER will lead discussion on the floor.

HB 2352: Requires retroactive application of post-conviction relief
petition
filing limitation for persons whose convictions and appeals were
final before August 5, 1989.

WITNESSES:
REPRESENTATIVE KEVIN MANNIX

219 REP. MANNIX: Testifies in support of the bill.

232 CHAIR SPRINGER: Is two years okay?

REP. MANNIX: Yes.

234 MOTION: CHAIR SPRINGER: moves to ADOPT Oregon Criminal Defense
Lawyers
Association amendments.
VOTE: Hearing no objection, the amendments are ADOPTED.

239 MOTION: SEN. HAMBY: moves HB 2352, AS AMENDED, be sent to the
floor
with a DO PASS recommendation.
VOTE: In a roll call vote all members present vote AYE. SEN. RASMUSSEN
is excused.

246 CHAIR SPRINGER: The motion CARRIES.

SEN. SMITH will lead discussion on the floor.

HB 2368: Creates crime of abuse of corpse in first degree.

259 REP. MANNIX: In response to Sen. Webber's concerns about handling of
a
corpse by a professional being prohibited by the bill, current law

addresses the issue and protects medical professions.

274 SEN. WEBBER: Other than raising to class B felony is there a way
to
make this offense a more serious crime?

REP. MANNIX: Reviewing to see if it is person crime.
>Intent was to include families in the definition of victims.

297 SEN. HAMBY: What is the health of the victims fund?

REP. MANNIX: Notes that the amount allowed is limited. Reviews
monetary limitations on victims assistance fund.

339 DALE PENN, OREGON DISTRICT ATTORNEY'S ASSOCIATION: Testifies in
support
of the bill.
>Reports these crimes are on the increase.
>Notes support from the Cemetery Board.

391 TAYLOR: Is the motivation for these crimes individual fantasy
structure
or satanic cult related?

PENN: There could be multiple motivations in these cases. Salem case
was not cult related, but fantasy related.

418 MOTION: SEN. HAMBY: moves HB 2368 be sent to the floor with a DO
PASS
recommendation.
VOTE: In a roll call vote all members present vote AYE. SEN. RASMUSSEN
is excused.

424 CHAIR SPRINGER: The motion CARRIES.
SEN. WEBBER will lead discussion on the floor.

HB 2483: Provides that certain sex offenders may be sentenced as
dangerous
offenders even though offender is not suffering from severe
personality disorder.

TAPE 189, SIDE B
VERN FAATZ, BOARD OF PAROLE AND POST-PRISON SUPERVISION: Submitted
written testimony only in support of the bill (EXHIBIT K).

002 TAYLOR: Reviews bill and HB 2483-A3 amendments in relation to HB
247 8.
>Reviews existing statute and fiscal impacts from Criminal Justice
Council (EXHIBIT H, I, J & L).

CHAIR SPRINGER: Who prepared the amendments?

TAYLOR: Staff in consultation with Rep. Courtney.

039 ROSS SHEPARD: Testifies in support of the bill and the amendments.

058 CHAIR SPRINGER: Even with amendments the bill needs to go to Ways and Means?

TAYLOR: Correct, it has a prior referral.

SHEPARD: Correct.

062 TAYLOR: The other possibility in the language here, would be "convicted of sex crime as defined in ORS 181.517" and then reference to felony.

068 SEN. HAMBY: Supports "also treated as a felony".

074 MOTION: SEN. HAMBY: moves to ADOPT HB 2483-A3 amendments, dated 6/4/93, with additional conceptual amendments from counsel.

078 SEN. SHOEMAKER: Could that include items 10 and 11, compelling or promoting prostitution? Can those be felonies?

CHAIR SPRINGER: They are felonies.

080 SEN. SHOEMAKER: If its not desired to have those included perhaps they should be deleted?

SEN. HAMBY: I did not realize they were felonies.

CHAIR SPRINGER: Do you want to delete those two then?
>Notes amended motion to delete items 10 and 11.

082 MOTION: SEN. HAMBY: moves to ADOPT HB 2483-A3 amendments, dated 6/4/93, with additional conceptual amendments from counsel and deleting items 10 and 11.

SEN. SHOEMAKER: And we would delete item 12. The amendment would include by reference subsections 1-9 of ORS 181.517, if treated as a felony.

SEN. HAMBY: I thought it would be 1-7?

087 CHAIR SPRINGER: Expresses desire to avoid being too technical and urges compromising at subsections 1-9 and "treated as a felony".

090 MOTION: SEN. HAMBY: moves to ADOPT HB 2483-A3 amendments, dated 6/4/93, with additional conceptual amendments from counsel; deletion of

items 10 and 11; and including references to subsections 1-9 and
"treated as a felony".

VOTE: Hearing no objection, the amendments are ADOPTED.

093 CHAIR SPRINGER: Additional sections need to be deleted?

TAYLOR: Correct, all of sections 3-10,

095 MOTION: CHAIR SPRINGER: moves to ADOPT amendments deleting
sections
3-10.

VOTE: Hearing no objection, the amendments are ADOPTED.

098 MOTION: CHAIR SPRINGER: moves HB 2483, AS AMENDED, be sent to the
Ways
and Means Committee with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. SEN. RASMUSSEN
is excused.

103 CHAIR SPRINGER: The motion CARRIES.

HB 2736: Authorizes police officer to request blood test from
person
arrested for driving while under influence of intoxicants if person
is receiving medical care in health care facility immediately after
accident.

WITNESSES:

RICK GRAZER, OREGON AMERICAN COLLEGE OF EMERGENCY PHYSICIANS
ANN BROWN, OREGON AMERICAN COLLEGE OF EMERGENCY PHYSICIANS
ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION
SUSAN TRIPP, OREGON DISTRICT ATTORNEY'S ASSOCIATION
DALE PENN, OREGON DISTRICT ATTORNEY'S ASSOCIATION
MIKE MCCRACKEN, OREGON MEDICAL ASSOCIATION

117 RICK GRAZER: Testifies in support of the bill.

146 SEN. WEBBER: When blood test is done, does it also indicate
illegal
drugs?

GRAZER: No, Different test.

148 SEN. WEBBER: Can same sample be used?

GRAZER: Generally, it would be different samples.
>Notes 46 other states have this type of legislation.

157 ANN BROWN: Submits and reviews written testimony in support of the
bill
(EXHIBIT M).

173 SEN. SHOEMAKER: Who would draw blood?

BROWN: Usually police have contracts with the hospitals. Hospital lab

technician would be requested to draw the blood.

179 SEN. SHOEMAKER: Could you comment on this approach over SB 722?

GRAZER: Problem with 722 is that it a test conducted for medical reasons to be used for legal reasons.

>Patient is consenting to medical test rather than legal procedure.

>Informed consent would require that we inform patient of the legal

nature of the test which creates a chilling effect on other blood tests conducted for medical reasons.

214 SEN. SHOEMAKER: Is it correct that regarding unconscious patients where consent cannot be obtained that the law allows blood test.

GRAZER: Correct.

218 SEN. SHOEMAKER: SB 722 doesn't add to that?

GRAZER: It does not.

BROWN: HB 2736 would extend that concept to consenting patient.

234 ROSS SHEPARD: Urges committee to turn to SB 722 and accompanying amendments.

242 SEN. SHOEMAKER: Prefers HB 2736. Do OCDLA have concerns about that bill?

246 SHEPARD: Yes. Believes it is not necessary to draw testing of blood into the implied consent notion and the SB 722 amendments address the issue.

>Reviews SB 722-4 amendments (EXHIBIT N).

>Urges committee to hold the bill for one week to allow parties to come to consensus on the issue.

275 CHAIR SPRINGER: Notes committee may want to put this into the House bill due to late timing for a Senate bill if agreement can be reached.

283 SUSAN TRIPP: Testifies in support of the bill.

>Notes ODAA has not had opportunity to adequately review amendments.

315 CHAIR SPRINGER: Do OMA and others want to comment?

STAFF NOTE: Hearing pauses for a moment while committee members and witnesses confer separately on the bill.

335 CHAIR SPRINGER: Sen. Rasmussen asks unanimous consent to be recorded as

an aye vote on HB 2368, HB 2043, HB 2478, HB 2352.
>No objection from committee.

351 MIKE MCCRACKEN: We were prepared to support ACLU amendments to SB
722 .
>Prefers HB 2736.
>ODAA amendments are acceptable.

385 CAROL BONONNO: Notes opposition to the SB 722-4 amendments
in
conjunction with Gerry Cooper, Governor's Advisory Board.

386 CHAIR SPRINGER: He reviewed the -4's?

BONONNO: He reviewed the ACLU amendments. Particularly concerned about
where it deletes current subsection 2(b).

397 CHAIR SPRINGER: You don't have further details about his objections?

BONONNO: He said it would do more harm than good.

405 RASMUSSEN: Suggests holding the bill and allowing him to come
explain
his perspective to the committee.

409 CHAIR SPRINGER: Does the bill contemplate more than one drop of
blood?

GRAZER: Permits whatever the officer orders. It doesn't mandate or
prohibit 2.

423 CHAIR SPRINGER: How does the bill deal with the warrant issue? Does
it
eliminate the need for a warrant if it is implied consent?

SHEPARD: That is correct.

430 CHAIR SPRINGER: Does it effect the entire license suspension issue
if
person refused to allow blood to be drawn?

SHEPARD: Yes. License could be suspended if person refuses to submit
to test.

437 CHAIR SPRINGER: That is troubling.

SHEPARD: Would need to discuss whether my amendments would allow for
forcible withdrawal.

449 SEN. WEBBER: If the choice is between forceful withdrawal
and
suspension, prefer suspension?

455 SHEPARD: Comments that he shouldn't have raised the issue. It can
be
easily remedied if the committee is concerned.

461 CHAIR SPRINGER: If there is a blood test, we would test for more
that
alcohol?

GRAZER: Under the bill now, only alcohol.

467 CHAIR SPRINGER: Under your bill only alcohol, no other substances?

GRAZER: Correct. none.

469 BONONNO: SB 722 doesn't cover them either.

470 SEN. SHOEMAKER: Reviews current statute which states that blood
test
can be taken without consent if the officer has probable cause to
believe the driver was operating under the influence of intoxicants
and
evidence will be found in persons blood. If so, why do we need this
bill?

GRAZER: Clarifies "and". "And" is the key word.

TAPE 190, SIDE B

037 CHAIR SPRINGER: Other questions.

044 BONONNO: HB 2736 is a great bill. Please consider that 46 states
who
have similar statutes still have problems.
>Bill is modelled after legislation in Australia.
>The Surgeon General's Workshop has recommended that this legislation
be
passed.

078 SEN. RASMUSSEN: Notes that he is undecided today. Prefers to
carry
over the bill for further review.
>Questions where we draw the line?

095 GRAZER: Observes there is support for HB 2736, but some feel it
doesn't
go far enough. If that is the case would it be possible to continue
working on the bill?

102 SEN. WEBBER: Expresses belief that HB 2736 goes as far as it can
go.
Concerned about implementation.

116 BONONNO: Comments on the intent of the legislation.

146 CHAIR SPRINGER: Who is missed if HB 2736 is passed?
>Understands that officer must be present and that may not happen in
every case.

SEN. HAMBY: That is correct, especially in life flight situations.

152 BONONNO: There are officers coming into hospitals giving
minor citations when they have been informed that victims alcohol level far
exceeds acceptable levels.
>Comments that officers do not want to draw blood samples.

161 SEN. WEBBER: Observes that they can't.

BONONNO: They could call judge at night and get a warrant.

163 SEN. WEBBER: And by the time they get the warrant the blood
alcohol levels have dissipated.

168 BONONNO: Attended a national conference, where individuals
indicated that laws similar to HB 2736 still left loopholes.

179 SEN. WEBBER: Disagrees and supports HB 2736.

181 SEN. SHOEMAKER: Observes that the committee can revisit the issue in
a couple years if the bill doesn't work.

190 MCCracken: We will continue to work with the advocates of SB 722 as
you suggest.

198 CHAIR SPRINGER: Indicates that the committee appears to have done
all it can for the present.
>Clarifies issue from previous hearing concerning arrest of patients
from different counties involving authorization by telephone.

231 SEN. SHOEMAKER: If that is a problem, it probably deserves
an exception.
>Not appropriate to require law enforcement agency to pay for cost of
medical care for individual.

236 CHAIR SPRINGER: Unaware if that problem is addressed in HB 2736.

GRAZER: OSP can amend if it is a concern.

242 MCCracken: Notes there is a jurisdictional problem in major
state trauma centers.
>Not convinced that cannot be resolved administratively.

250 GRAZER: Financial liability is incurred only if there are no
resources available. If Oregon Health Plan is funded it probably not be an
issue.

258 CHAIR SPRINGER: Holds over for further discussion.

SEN. HAMBY: Indicates support for Carol Bononno's position.

266 CHAIR SPRINGER: Adjourns hearing at 3:03 pm.

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Bill Taylor
Administrator

EXHIBIT LOG:

- A - Amendments to SB 617, Staff, 1 page
- B - Testimony on SB 617, Charles Simmons, 1 page
- C - Testimony on HB 2368, Gary Fisher, 1 page
- D - Testimony on HB 2368, Karylinn Huntting-Echols, 1 page
- E - Testimony on HB 2368, Phil Ford, 1 page
- F - Amendments to HB 2352, Ross Shepard, 1 page
- G - Amendments to HB 2478, Staff, 11 pages
- H - Amendments to HB 2483, Staff, 1 page
- I - Testimony on HB 2483, Criminal Justice Council, 1 page
- J - Testimony on HB 2483, Criminal Justice Council, 1 page
- K - Testimony on HB 2483, David Factor, 2 pages
- L - Testimony on HB 2483, Staff, 1 page
- M - Testimony on HB 2736, Ann Brown, 6 pages
- N - Amendments to SB 722, Ross Shepard, 1 page