

SENATE COMMITTEE ON
JUDICIARY

June 23, 1993 Hearing Room
1:00 p.m. Tapes 199-200
MEMBERS PRESENT: Sen. Dick Springer, Chair
 Sen. Bob Shoemaker, Vice-Chair
 Sen. Jeannette Hamby
 Sen. Gordon Smith
 Sen. Catherine Webber
MEMBER EXCUSED: Sen. Karsten Rasmussen
STAFF PRESENT: Bill Taylor, Legislative Counsel
 Kate Wrightson, Committee Administrator
 Ellen L. Senecal, Committee Assistant
ISSUES DISCUSSED: HB 3064 - Public Hearing & Work Session
 HB 2463 - Public Hearing & Work Session
 HB 2759 - Public Hearing

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 199, SIDE A

003 CHAIR SPRINGER calls the meeting to order at 1:15 p.m.

PUBLIC HEARING

HB 3064 A-Eng. - Prohibits certain officials from serving on Board of
Governors of Oregon
State Bar

WITNESSES: Julie Frantz, Oregon State Bar
Elizabeth Harchenko, representing Ted Kulongoski, Attorney General
Chief Justice Wallace Carson

The Preliminary Staff Measure Summary, and Legislative Fiscal Revenue statements are hereby made a part of these minutes (EXHIBIT A).

020 JULIE FRANTZ, President, Oregon State Bar, submits and reads a prepared
statement in
support of HB 3064 with the proposed amendments (EXHIBIT B).
076 ELIZABETH HARCHENKO, Special Counsel to the Attorney General, testifies
in
support of HB 3064 A-Eng.
093 CHIEF JUSTICE WALLACE CARSON, testifies in support of HB 3064 A-Eng.
122 SEN. SHOEMAKER: Would a deputy attorney general be able to serve on the
board?
123 MS. HARCHENKO: We believe that would be an official who would not be
able to serve.
Senate Committee on Judiciary
June 23, 1993 - Page 2
125 SEN. SHOEMAKER: Would every other attorney in the attorney general's
office be able to
serve?
125 MS. HARCHENKO: We believe assistant attorneys general would be able to
serve.
130 SEN. SHOEMAKER: How about hearings officers?
130 MS. HARCHENKO: The belief we are operating on is that the vast majority
of publicly
employed lawyers will be able to serve. It is those people who are vested
with official duties
in the executive department who will not be able to serve. That is a small
and limited group.
138 CHAIR SPRINGER: Would judges be able to serve?

139 MS. FRANTZ: There is a separate statute that prohibits them from serving.

146 CHAIR SPRINGER closes the public hearing on HB 3064 and opens a public hearing on

HB 2463.

(Tape 199, Side A)

PUBLIC HEARING

HB 2463 - Allows count to order production of books, papers or documents prior to trial upon motion by state or defendant in criminal case.

WITNESSES: Ross Shepard, OCDLA

The Preliminary Staff Measure Summary and Legislative Fiscal and Revenue statements are hereby made a part of these minutes (EXHIBIT C).

154 ROSS SHEPARD, OCDLA: This bill is adopted directly from the federal rules of criminal procedure. It allows for the production of documents or exhibits prior to trial. Each side then has a chance to see what is going to be offered and they can be put in proper order. It will facilitate the presentation of evidence and will speed up trials.

168 SEN. SHOEMAKER: Why do we need this bill?

168 MR. SHEPARD: If the prosecutor or defense subpoenas documents or exhibits, they don't show up until the day of trial. The trial may have to be recessed to put the documents in proper order to see what is relevant.

(Tape 199, Side A)

PUBLIC HEARING

HB 2759 - Requires parole and probation office supervising certain sex offenders to notify community within 21 days of offender's release or change of residence in community.

WITNESSES: Dale Penn, Oregon District Attorneys Association
Rep. Peter Courtney, District 33
Janet Cotie, Portland
Julie Wadley, Salem

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Senate Committee on Judiciary June 23, 1993 - Page 3

Rick Wadley, Salem Phyllis Featherstone, Marion Co. Dept. of Corrections
Larry Kramer, Parole and Probation Officer John Stratford, Parole & Probation Officer Yvonne Heinrichs, self Janet Arenz, ACLU

The Preliminary Staff Measure Summary and Legislative Fiscal and Revenue statements are hereby made a part of these minutes (EXHIBIT D).

200 DALE PENN, Oregon District Attorneys Association, test)files in support of HB 2759:

- requires not)fication to neighB ors
- narrows requirement for not)fication to predatory offenders

252 SEN. SHOEMAKER: The bill does not define "the community".

261 MR. PENN: There was an attempt to do that. I think what passed was the concept of

permissive not)fication, allowing parole and probation officials that they can notify.

271 SEN. SHOEMAKER: I read the bill as being mandatory.

284 SEN. HAMBY asks about ancestral exemptions

285 MR. PENN: There was discussion. There were fiscal problems if it were
opened up to all offenders. Another concern was some treatment providers and parole and
probation officials said in many incest situations they did not consider that to be a public
threat, as such.
310 REP. PETER COURTNEY, District 33, submits a prepared statement and
testifies in support of HB 2759 (EXHIBIT E).

TAPE 200, SIDE A

REP. COURTNEY continues his testimony.

027 SEN. HAMBY: We are confused about "community" and you don't use the word
neighborhood.
032 REP. COURTNEY: One thousand feet is in line 25 on page 1.
036 SEN. HAMBY: Why won't you allow a risk assessment scale for incest, or
anyone showing predatory behavior?
041 REP. COURTNEY: Because if a man has abused his little daughter, and you
notify everyone within 1,000 feet, you make the daughter a victim twice.
Discussion continues on incest offenders.

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Senate Committee on Judiciary June 23, 1993 Page 4

080 SEN. HAMBY: There is nothing to prevent a community group from utilizing
and investigating the "notebook" and posting their own.
079 REP. COURTNEY: That is right. That is why we included the notebook.

Discussion is held on the notification process.

135 SEN. SHOEMAKER: Section 7 which relates to those released by the
Psychiatric Security Review Board, which is not a part of the corrections
system, does not have an equivalent of Section 2 in it, yet it also refers
to "the community." Is it intended that "community" under Section 7 be the
same as "community" under Section 1?

144 REP. COURTNEY: Yes. That could be written better.
149 SEN. SHOEMAKER: Section 9 talks about publishing in the newspaper "in
the community in which the office is located." What does "office" mean--is it the parole
and probation office?
152 REP. COURTNEY: It is the parole and probation office which was referred
to before in the bill.
161 SEN. SHOEMAKER: Would it be your intention that it be published in a
newspaper in general circulation in the neighborhood of the released offender.
163 REP. COURTNEY: Yes.
185 CHAIR SPRINGER: What do we mean by "history of predatory behavior" in
Section 2,
line 18?
191 REP. COURTNEY: We may have assumed that in the expertise of those who
deal with sex offenders on a daily basis there is a common understanding of what is meant
by "predatory

behavior. "

197 MR. PENN: It could be defined if the committee wants to do that. There
is a common dictionary definition of "predatory." Everyone's intent is someone going
out to capture victims. That is the concept. I think the dictionary definition would
suffice, but you may want to make it more clear.

207 CHAIR SPRINGER requests that Mr. Penn and Rep. Courtney provide some
suggested language for "predatory behavior."

210 BILL TAYLOR, Committee Counsel: Is it possible to assume that would
include enticing,
i.e. someone enticing a child with an ice cream cone?

215 REP. COURTNEY: I am sure that was the intent of everyone that worked on
this bill. The concept is protection to children.

232 CHAIR SPRINGER: Does the bill deal with further not)fications that would
include new

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Senate Committee on Judiciary June 23, 1993 - Page 5 residents or tenants?

237 REP. COURTNEY: Once a person comes under jurisdiction of this law, they
have 21 days to get the notice out and if they change their residences,
that 21 day standard would be used to get the notice out. Testimony from
the parole and probation officers supported posting on bulletin boards
where it was physically impossible to knock on every apartment door or gain
access to actually give notice. That would be the method used.

280 CHAIR SPRINGER: In Section 7 (3), it says "a person or agency shall not
be civilly liable for fulfilling or failing to fulfill the not)fication requirement...". Does
that apply only
to
Section 7, or the entire bill.

285 REP. COURTNEY: It may apply to just the one. The intent of the House
Judiciary
Committee is that it apply to the bill in the sense that it...these
not)fication requirements
could
become complicated and we didn't want to get into a situation where a
parole or probation
officer was so obsessed with it that that was all they did--they felt they
had to dot every "i"
and cross every "t." We wanted to give some protection along those lines
that if they didn't
hit every single house within the 1,000 or a business that was frequented
by children, that
they therefore were not responsible if a horrible crime resulted from a sex
offender living in
the neighHB orhood. That is why it spoke generally to the bill. It may be
worded in such a
way that it seems to apply only to one section, but I know the intent was
to apply.

302 CHAIR SPRINGER: It was pointed out to me that Section 5 speaks to the
additional
sections. I don't know if there is any reference that would apply to
Section 9--the failure to
publish in the newspaper.

/

309 REP. COURTNEY: I would think it does apply in the sense that one would not be liable if they didn't get it in the newspaper within 21 days, or they made a decision to not put in the newspaper because they didn't know which one would be germane. If there is a tragedy, they would not be able to bring suit against the probation officer. That is what was intended and it

applies also to the newspaper notification.
325 SEN. SHOEMAKER: Was there consideration of a situation where there was improper notification given and the offender sues?
327 REP. COURTNEY: We never talked about it.

420 SEN. SHOEMAKER: Perhaps it should be permissive rather than mandatory for the parole and probation officers.

468 REP. COURTNEY emphatically requests that the notification process not be made permissive.

TAPE 199, SIDE B

030 JANET COTIE, Portland, introduces her son and daughter, and testifies in support of HB 2759 and asks if the provisions of this bill would apply to under-age offenders.

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Senate Committee on Judiciary June 23, 1993 Page 6

109 CHAIR SPRINGER: It does not. Is it an amendment you would like to see?
109 MS. COTIE: It is.

158 JULIE WADLEY, Salem: Explains that her husband is an offender, asks if there is anything in the bill for the offenders who are trying to get treatment and adds that if her husband does not complete the program and chooses to go back to the institution he will not be going to their home.

183 RICK WADLEY, son of an offender, testifies that his friends would not like him if they knew what his dad did.

195 PHYLLIS FEATHERSTONE, Marion County, Parole and Probation, Department of Corrections: Submits and reviews written testimony in support of HB 2759 with proposed amendments (EXHIBIT F).
CHAIR SPRINGER requests that Ms. Featherstone work with Rep. Courtney's office on amendments to the bill.

TAPE 200, SIDE B

010 LARRY KRAMER, Parole and Probation Officer, Clackamas Community Corrections, testifies in support of HB 2759 with an amendment to change "shall" to "may." Also the 21 days and 1,000 feet restrict the officers to specifics where they are not allowed to use their own professional judgement of what part of the population is in judgment.
023 CHAIR SPRINGER requests that Mr. Kramer work with Rep. Courtney's office on

amendments to the bill and asks if the Clackamas County program is sanctioned by a county ordinance or resolution.

023 MR. KRAMER: We requested review by our county counsel three years ago to make a decision on that before it was put in place. Public record information is given to the community.

034 JOHN STRATFORD, Detective, Washington County Sheriff's Office: Testifies in support of HB 2759. It is a good crime prevention bill but there should be something in the bill that states very clearly that I, as an investigator, can use the option of notifying the community or schools in other cases of convicted sex offenders.

070 YVONNE HEINRICHS: Submits a prepared statement (EXHIBIT K) and testifies in opposition to HB 2759. The direction the Legislature should be taking is to make laws where repeat dangerous offenders that cannot be rehabilitated can be and will be kept in prisons or locked up in protective custody for the rest of their lives; they do not belong in our neighborhoods. The bill is unjust for other people who have been convicted as first or second time offenders or who are classified as dangerous offenders.

212 JANET ARENZ, ACLU of Oregon, submits a prepared statement and letters and testifies in opposition to HB 2759 (EXHIBIT G).

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Senate Committee on Judiciary June 23, 1993 Page 7

288 SEN. SHOEMAKER: Maybe a fair way, as fair as you can make it, to get at this may be that when a parole and probation officer believes that a person who is about to be released poses a threat to society, to then petition the court to order that notification be given. There would be a hearing on the matter and the court would sort out the issues of the history of the person. If they decide there is a threat, then provide for notification and how that notification should be given so it is as informative and non-inflammatory as possible. How would you react to that?

307 MS. ARENZ: One of the most cumbersome concerns about this bill is the financial impact. There were a number of considerations raised here today that aren't reflected in the financial statement that was provided. My suggestion is that the financial concerns will be compounded even further with that cumbersome of a process. Prepared statements submitted but not presented on HB 2759 are hereby made a part of these

minutes:

Letter from Byron and Betty Anderson (EXHIBIT H)

Letter from Kris Glassner (EXHIBIT I)

Affidavits of Charles Lyle Mayton, Michael Taylor, Rebecca Taylor and

Kimberly

Norsworthy (EXHIBIT J)

Letter from Mr. & Mrs. Tom Grant (EXHIBIT L)
337 CHAIR SPRINGER closes the public hearing on HB 2759 and opens a work
session on
HB
3064.

(Tape 200, Side B) WORK SESSION - HB 3064 A-ENG.

338 MOTION: CHAIR SPRINGER moves that HB 3064 A-Eng. be sent to the
Floor with a DO PASS recommendation.
339 VOTE: In a roll call vote, all members present vote AYE. SEN.
RASMUSSEN is EXCUSED.
343 CHAIR SPRINGER declares the motion PASSED. CHAIR SPRINGER will lead
discussion on the Floor.

(Tape 200, Side B) WORK SESSION - HB 2463 A-Eng.

348 MOTION: SEN. HAMBY moves that HB 2463 A-Eng be sent to the Floor
with a DO PASS recommendation.
351 VOTE: In a roll call vote, all members present vote AYE. SEN.
RASMUSSEN is EXCUSED.
355 CHAIR SPRINGER declares the motion PASSED. SEN. SMITH will lead
discussion on
the Floor.

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Senate Committee on Judiciary
June 23, 1993 - Page 8

360 CHAIR SPRINGER declares the meeting adjourned.

Transcribed and submitted by, Reviewed by,

Annetta Mullins Bill Taylor
Committee Assistant Committee Counsel

EXHIBIT SUMMARY

A - HB 3064, Preliminary Staff Measure Summary and Legislative Fiscal and
Revenue -
statements, staff, 2 pp
B - HB 3064, prepared statement, Julie Frantz, 3 pp -
C - HB 2463, Preliminary Staff Measure Summary and Legislative Fiscal and
Revenue ~
statements, staff, 2 pp
D - HB 2759, Preliminary Staff Measure Summary and Legislative Fiscal and
Revenue
statements, staff, 4 pp
E - HB 2759, prepared statement, Rep. Courtney, 6 pp -
F - HB 2759, prepared statement, Phyllis Featherstone, 2 pp-
G - HB 2759, prepared statement, Janet Arenz, 6 pp
H - HB 2759, letter, Byron and Betty Anderson, 2 pp -
I - HB 2759, letter, Kris Glassner, 1 p-
J - HB 2759, affidavits, Charles Lyle Mayton, Michael Taylor, Rebecca Taylor
and Kimberly
Norsworthy
K - HB 2759, prepared statement, Yvonne Heinrichs, 3 pp-
L - HB 2759, letter, Mr. & Mrs. Tom Grant, 3 pp -

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