

SENATE COMMITTEE ON
JUDICIARY

June 28, 1993 Hearing Room C
1:00 p.m. Tapes 203 - 204
MEMBERS PRESENT: Sen. Dick Springer, Chair
 Sen. Bob Shoemaker, Vice-Chair
 Sen. Jeannette Hamby
 Sen. Karsten Rasmussen
 Sen. Gordon Smith
 Sen. Catherine Webber
STAFF PRESENT: Karen Quigley, Legislative Counsel
 Bill Taylor, Legislative Counsel
 Kate Wrightson, Committee Administrator
 Ellen L. Senecal, Committee Assistant
ISSUES DISCUSSED: HB 2381 - Public Hearing
 HB 2382 - Public Hearing
 HB 2383 - Public Hearing
 HB 2838 - Public Hearing & Work Session
 HB 2286 - Public Hearing
 HB 3071 - Public Hearing
 HB 2854 - Public Hearing

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TAPE 203, SIDE A

003 CHAIR SPRINGER calls the meeting to order at 1:10 p.m. and opens public hearings on three bills relating to forfeiture: HB 2381, HB 1282 and HB 238 3.

PUBLIC HEARINGS

HB 2381 - Extends sunset on asset forfeiture law to December 31, 1997.
HB 2382 - Amends laws relating to forfeiture of property used in or arising out of drug-related activity.
HB 2383 - Amends laws relating to forfeiture of property used in or arising out of drug-related activity.

WITNESSES: Peter Shepherd, Oregon Dept. of Justice
Major Dean Renfro, Oregon State Police
Lt. Wayne MacFarlin, Oregon Association Chiefs of Police
Fred Avera, Oregon District Attorneys Association
John Bradley, Oregon District Attorneys Association and Multnomah County District Attorney's Office
Paul Snider, Association of Oregon Counties
Valerie Paulson, League of Oregon Cities
Russ Spencer, Oregon State Sheriff's' Association
Ed Wilson, Oregon Department of environmental Quality
David Fadanque, ACLU of Oregon
Senate Judiciary Committee June 28, 1993 - Page 2

021 PETER SHEPHERD, Assistant Attorney General, Oregon Department of Justice,
 explains his duties include representing Oregon in cases brought under authority of Oregon
 forfeiture statutes which are initiated by the Oregon State Police and testifies in support of HB
 2381.
067 MAJOR DEAN RENFROW, Oregon State Police, representing the Law Enforcement
 Legislative Committee, submits and reads a prepared statement in support of
HB 2381
 (EXHIBIT B).
085 LT. WAYNE MacFARLIN, Salem Police Department, representing the Oregon Association Chiefs of Police, submits a prepared statement and testifies in support of HB
 2381 (EXHIBIT C).
094 FRED AVERA, Polk County District Attorney, representing the Oregon District

238 3. Attorneys Association, testifies in support of all HB 2381, HB 2382 and HB
107 JOHN BRADLEY, Multnomah County District Attorney's office, representing
the Oregon District Attorneys Association and the Multnomah County District
Attorney's office, testifies in support of HB 2381.
140 CHAIR SPRINGER informs members and witnesses that staff has provided
copies of a recent U. S. Supreme Court decision on forfeiture (EXHIBIT A).
144 MR. SHEPHERD comments on the Supreme Court decision.
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166 SEN. RASMUSSEN asks if there are any civil statutes that would be
analogous to this,
perhaps RICO.
189 MR. RENFRO: The racketeering statute does have a forfeiture provisions
in it and has also been attacked on the eighth amendment argument. We would want to determine
if the opinion has implications on other statutes.
197 MR. BRADLEY: I believe, there has been a split of authority on the
proportionality and there are a number of federal cases. It may be helpful to look at some of
those cases.
205 MR. AVERA: There was a split. The Fourth Circuit held that the eighth
amendment was applicable and all other circuit courts that have addressed the question
have held to the contrary.
212 SEN. WEBBER: On page 3, starting on line 22, there seems to be a
narrowing down of how forfeiture proceeds can be spent, but I am not sure there is.
228 MR. BRADLEY: Most of the language was to rehash the old language except
there was an intent in the house, on page 3, lines 36 to 41; that is where they wanted
to change existing practices.
Discussion continues on expenditure of forfeiture proceeds.

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Senate Judiciary Committee June 28, 1993 - Page 3

307 PAUL SNIDER, Association of Oregon Counties, testifies in support of HB
238 1 and comments on
- Sen. Webber's questions regarding expenditure of forfeiture proceeds for
salaries
- DEQ cleanup fund
355 SEN. HAMBY: It is this committee's understanding that the original staff
for the Health Division to certify a facility as clean is no longer funded. Even though it
is cleaned up and DEQ says it is okay, it is still not off the list.
368 VALERIE PAULSON, League of Oregon Cities, testifies in support of HB
238 1.
396 Discussion is held on the \$250,000 to be allocated for cleanup.
410 RUSS SPENCER, Oregon State Sheriff's Association, explains there are
two separate and distinct programs. DEQ will remove the meth mixtures, hazardous chemicals,
etc. and dispose or store them. The Health Division then comes in and will certify a
private contractor has gone in and removed the toxins from the woodwork, carpet,
etc. so that the building is fit for human habitation. Historically, that has not been
viewed as a law enforcement issue.
442 SEN. WEBBER: Is the Health Division funded for this at this time?
443 MR. SPENCER: To the best of my knowledge it is not in the current Health
Division budget. If we do not include the five percent for DEQ for drug lab
cleanup, then that function will also go away.
451 SEN. WEBBER: How much in the past has gone into drug lab clean out from
the forfeiture

fund?
453 MR. SPENCER: In the past, there has been none; it has been funded by
General Funds.
That money has gone away, hence the necessity for this.

TAPE 204, SIDE A

058 ED WILSON, Department of Environmental Quality, offers to answer
questions.
- clean up cost this biennium will have been about \$430,000 on contracted
services for
removal of chemicals
- there are no General Fund moneys in the budget for cleanup
- the \$1.1 million DEQ had in the 1991-93 biennium has been funding the
program to date;

099 CHAIR SPRINGER requests that staff provide the members with copies of
the report from
the Asset Forfeiture Advisory Committee on the number of forfeitures and
the amount
confiscated in the past.

111 DAVID FADANQUE, Executive Director, American Civil Liberties Union of
Oregon,
testifies that SB 1046 relating to consensual searches should be dealt with
before HB 2381
passes this committee. ACLU's position on civil forfeitures from the
beginning in Oregon

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Senate Judiciary Committee June 28, 1993 - Page 4

Civil forfeitures
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believe the burden
civil in rem
Supreme Court
that there should be a
convincing
from the asset
original HB 2383
the fishing
of a letter
advises that the
introduces Joe Easley
violation
could be forfeited
oversight by law
case where
Branford has prepared a
has been that they are unconstitutional under the Oregon Bill of Rights.
should be dealt with as part of the criminal prosecution. ACLU does not
of proof should be shifted to property owners to prove their innocence in a
proceeding, which is what the civil forfeiture law requires. The U. S.
decision is directly on a point the ACLU has raised over the years, i.e.
requirement for proportionality.
190 ANNABELLE JARAMILLO, Executive Director, Commission on Hispanic Affairs,
requests that provisions of SB 1046 be amended into HB 2381.
207 SEN. HAMBY and MR. FADANQUE discuss "probable cause," "fair and
standards " and " proportionality. "
269 SEN. HAMBY request that staff obtain information on the expenditures
forfeiture account last session.
277 CHAIR SPRINGER announces that some witnesses wish to speak on the
and another group wishes to speak to some proposed amendments.
287 PAUL HANNEMAN, representing the Oregon Salmon Commission, Oregon Trawl
Commission, fishermen's Marketing Association and other organizations in
industry, submits the HB 2383-A2 proposed amendments (EXHIBIT E) and copies
from Judge Branford to Senate President Bill Bradbury (EXHIBIT Ii) and
sponsor of the bill has no objections to the proposed amendments. He
and Judge John Brantford.
325 JOE EASLEY, Administrator, Oregon Trawl Commission, explains that for a
that could carry a maximum fine of \$250, an asset of well over \$1 million
to the state. The fishing industry is heavily regulated with a lot of
enforcement. We want those reasons to be enforced, but when it becomes a
people will lose their livelihood, the industry has a problem. Judge
very good analysis and has come up with the proposed amendments.
353 MICHELLE LONGO EDER, fisherman's wife, Newport, explains she and her

huSB and

attorney for the Oregon

amendments

conviction tor a criminal

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own two fishing vessels, employ seven people and that she is also the
Fishermen's Congress. She urges the committee to adopt the HB 2383-A2
which would only allow seizure of a fishing vessel as a result of a
offense and then only at the discretion of the judge.

386 TOM BRANFORD, District Judge, Newport, reviews a case that was before
his court involving the forfeiture of a vessel and supports the HB 2383-A2
amendments. He adds that in Section 6 (2) of the proposed amendment, the
first clause would preserve the possibility of forfeiture if the conviction
were only for a violation as opposed to a crime and suggests an amendment
at the end of line 16 on page 1: delete "or" and in line 17, delete
"forfeiture of bail for the violation" and insert "a crime".

TAPE 203, SIDE B

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Senate Judiciary Co~tt~ttittee June 28, 1993 Page 5

008 LT. LARRY KRAFT, Oregon State Police, Fish and Wildlife Enforcement:
Testifies in support of HB 2383-A2 amendments and the changes proposed by
Judge Branford.

CHAIR SPRINGER announces that HB 2381, HB 2382 and HB 2383 will be
rescheduled at a later date.

(Tape 203, Side B)

PUBLIC HEARING

HB 2838 - Allows peace officer to provide water to certain impounded or
confined animals
without liability for entry

WITNESSES: Rebecca Owen-Anderson, Oregon Animal Welfare Alliance Ross
Shepard, Oregon Criminal Defense Lawyers Association Fred Avera, Polk
County District Attorney

030 MR. TAYLOR reviews the provisions and history of HB 2838.
036 REBECCA OWEN-ANDERSON, Oregon Animal Welfare Alliance, submits and
paraphrases a prepared statement in support of HB 2838 (EXHIBIT G).
102 CHAIR SPRINGER: What is your understanding of what exigent circumstances
would
mean?
098 MS. ANDERSON: My understanding is it means when the evidence is in
jeopardy of
disappearing--the animal is likely to expire.
106 CHAIR SPRINGER: What kind of record exists to define what 'minimum care'
means?
112 MS. ANDERSON: It is set out in the statute.
145 ROSS SHEPARD, Oregon Criminal Detense Lawyers Association: Testifies in
support of
HB 2838 as written.
152 SEN. SHOEMAKER: Do all police officers know what exigent circumstances
are?
154 MR. SHEPARD: I don't think that's a problem.
159 FRED AVERA, Polk County District Attorney: Part of the training in any
police
department is regarding exigent circumstances. They all know if they can
get a search
warrant, they have to, whether it is a telephone warrant or an in-person
warrant. It is often
difficult to obtain a telephone warrant.
176 SEN. SHOEMAKER: One of the concerns raised earlier in another committee
is this could
be used as a subterfuge for gaining access for other purposes. Is it
correct that if that were to
occur and if there were not exigent circumstances, the contraband would be
suppressed.
181 JUDGE AVERA: It would be suppressed.

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Senate Judiciary Colllllllittee Jltne 28, 1993 - Page 6

185 CHAIR SPRINGER: What happens if there is an animal control officer or veterinarian responding to a request for assistance who wants to assist with the immediate needs of more than just water? Will they be permitted to come onto the property and can they do more than just provide water?
195 MR. SHEPARD: If the veterinarian were there at the behest of the police, he/she would be a government agent and would operate under the same rules. But if he/she were there as a private citizen, I don't think this bill would apply.
A statement FAXed to the committee from Vikki Kittles is hereby made a part of these minutes (EXHIBIT H).
221 CHAIR SPRINGER closes the public hearing and opens a work session on HB 283 8.

(Tape 203, Side B) WORK SESSION - HB 2838

221 MOTION: SEN. SHOEMAKER moves that HB 2838 be sent to the Floor with a DO PASS recommendation.
227 VOTE: In a roll call vote, all members present vote AYE. SEN. G. SMITH is EXCUSED.
231 CHAIR SPRINGER declares the motion PASSED.

(Tape 203, Side B)

PUBLIC HEARING

HB 2286 - Provides that obligee is party to any action to establish, enforce or modify child support obligations

WITNESSES: Larry Thomson, Oregon Department of Justice
David Nebel, Oregon Legal Services
John Ellis, Oregon Department of Justice

234 MR. TAYLOR explains the provisions of HB 2286.
243 LARRY THOMSON, Administrator, Support Enforcement Division, Oregon Department of Justice, submits and paraphrases a prepared statement in support of HB 228 6 (EXHIBIT I).
262 DAVID NEBEL, Oregon Legal Services, submits a prepared statement for Maureen McKnight (EXHIBIT J) and comments that Oregon Legal Services support the bill in its present form.
275 SEN. HAMBY comments that the Department of Justice was of assistance in a bill regarding adoptions that puts Oregon in sync with the Uniform Child Custody Act, SB 295 , and HB 2286 would be an ideal vehicle for SB 225 which is still in a House committee. ~

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Senate Judiciary Colilillittee June 28, 1993 - Page 7

298 CHAIR SPRINGER announces that a work session on HB 2286 will be moved to the end of the agenda for action today if time permits, or it will be rescheduled for that purpose.
305 CHAIR SPRINGER: Was there any concern expressed from the judicial branch about an increase in their work load if another party is added to the proceedings?
308 MR. THOMSON: These are the administrative proceedings and the Oregon Rules of Civil Procedures would govern their proceedings so on a de novo appeal from one of our administrative proceedings, then I believe the obligee would be a party in that proceeding.
313 CHAIR SPRINGER: Is the obligee entitled to counsel?
314 MR. THOMSON: The obligee is entitled to counsel.

324 CHAIR SPRINGER asked if the state's interest and that of the obligee might not always be the same.

328 MR. THOMSON explains the administrative proceedings process.
356 MR. NEBEL responds that he doesn't believe attorneys generally get involved in the administrative procedures process. Legal Aid lawyers do not do this as a general practice.
Discussion continues on the administrative proceedings process.
376 CHAIR SPRINGER: The potential conflict I see, and maybe it doesn't arise in the administrative hearing, is it is not uncommon for a person who is receiving assistance to go on and be off and on again. An arrearage may accumulate, arguably a debt owed the state, and an amount owed the obligee and those amounts could be thousands of dollars each. Who determines the priority if there is a payment order entered pursuant to a judicial or administrative proceeding?
386 MR. THOMSON: The rules of the Department of Human Resources determine that priority; normally the obligee wins.
390 JOHN ELLIS, Support Enforcement Division, Oregon Department of Justice: Usually a dispute about distribution or who has what interest could be determined by a court or, if it was going to be heard by an administrative tribunal, by the hearings officer within Adult and Family Services Division. It is a different tribunal than the one that we are talking about here.
414 CHAIR SPRINGER closes the public hearing on HB 2286 and opens a public hearing on HB 3071.

(Tape 203, Side B)
PUBLIC HEARING

HB 3071- Expands prohibition against possessing firearms by felon, person under 18 years of age or person who was committed

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Senate Judiciary Committee June 28, 1993 - Page 8

WITNESSES: Lt. Clifford Daimler, Oregon State Police Ron Harder, Oregon Sportsmen's Defense Fund Lt. Kathy Fartell, Multnomah Co. Sheriff's Office John Nichols, Oregon State Shooting Association Fred Avera, Oregon District Attorneys Association

428 MR. TAYLOR gives an overview of the bill and the proposed amendments (EXHIBIT K) and questions whether the Legislature has the authority to allow "the appearance of those, on behalf of others, that are not attorneys before the courts of this state."

450 LT. CLIFFORD DAIMLER, Oregon State Police, submits a prepared statement in support of HB 3071 (EXHIBIT M) and adds there are three technical amendments they would like made to the bill.
467 ROD HARDER, Oregon Sportsmen's Defense Fund, submits a letter from John C. Lenz, National Rifle Association of America (EXHIBIT L), and testifies in support of HB 3071. The amendments are technical: on page 8, line 13, after "166.219" insert "166.293". Everyone is in agreement with that amendment.

TAPE 204, SIDE B

MR. DAIMLER: The statute is an addition, and it should read "and 166.293".

010 MR. HARDER: At the bottom of page 10, line 45, an amendment is requested by the

district attorneys. It addresses carrying concealed weapons in vehicles. On
page 11, line 27 adds a new Section 14 which addresses ORS 166.210 with a definition of
"firearm".
039 SGT. KATHY FARRELL, Multnomah County Sheriff's Office, testifies in
support of
HB 3071.
050 JOHN NICHOLS, Oregon State Shooting Association, testifies in support of
HB 3071 with
the technical amendments suggested by Mr. Harder.
062 FRED AVERA, Polk County District Attorney, representing the District
Attorney
Association, submits a prepared statement (EXHIBIT N) and testifies in
support of HB 3071
with the technical amendments proposed by Mr. Harder in lieu of the
association's previously
proposed amendments.
075 Discussions are held on:
- the appeal process when a permit is denied
- premises where concealed weapons are prohibited
- concealed and disguised weapons
293 SEN. HAMBY request that Mr. Harder put on the record information he
received from the
House regarding her thoughts on guns-in-schools legislation into this bill.
300 MR. HARDER: Rep. Brian has indicated a willingness to schedule SB 334

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Senate Judiciary Committee June 28, 1993 - Page 5\

315 CHAIR SPRINGER asks the witnesses for their opinions on the HB 3071-A5
and HB 3071
A6 amendments (EXHIBIT K).
316 MR. NICHOLS: We are opposed to the first one authorizing the carrying of
no more than
one concealed handgun. We are also opposed for the previous reasons--guns
looking like
other things. We don't think there is a problem; it is already covered
under state or federal
law.
335 MR. HARDER: I have discussed the amendment with regard to no more than
one concealed
handgun. A point that was made by several women firearm instructors who
teach self-defense
to women is that they normally teach women to carry one on their person and
one in their
purse. That seems to be a standard that is taught by women instructors. We
would be
opposed to both of the other amendments for reasons previously stated.
344 SEN. SHOEMAKER: If it is true that the -7 amendment is not needed
because a firearm
designed to resemble something other than a firearm is a concealed firearm,
what is the harm
of making that explicit?
348 MR. HARDER: There probably wouldn't be one, but I would like to look at
it more in
depth.
360 MR. NICHOLS: I echo Mr. Harder's sentiments.
370 CHAIR SPRINGER requests that the proponents meet with Mr. Taylor to
review the judicial
review section.

(Tape 204, Side B)

PUBLIC HEARING

HB 2854 - Removes two-year statute of limitation on actions against wife
for expenses of family
and education of children

WITNESSES: Jim Markee, Oregon Collectors Association Mary Plaisance, Oregon
Collectors Association David Nebel, Oregon Legal Services

386 JIM MARKEE, Oregon Collectors Association, introduces Mary Plaisance
and explains that the bill amends the Family Expense Statute, ORS 108.040,
and urges the committee to pass the bill.

396 MARY PLAISANCE, Oregon Collectors Association, submits and summarizes a
prepared

statement in support of HB 2854 (EXHIBIT 0).
 423 DAVID NEBEL, Oregon Legal Services, testifies they supported the bill in
 its present form
 in the House and support it now.
 433 CHAIR SPRINGER announces that the committee needs an opportunity to
 review the bill
 and that it will be rescheduled for a work session soon.

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 Senate Judiciary Committee June 28, 1993 - Page 10

444 CHAIR SPRINGER declares the meeting adjourned.

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 Transcribed and submitted by, Reviewed by, ;
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Annetta Mullins Bill
 Taylor Legal
 Committee Assistant
 Counsel
 EXHIBIT SUMMARY

- A - HB 2381, U. S. Supreme Court Decision, Richard Lyle Austin v. United States, staff, 15 pp
- B - HB 2381, prepared statement, Major Renfro, 2 pp
- C - HB 2381, prepared statement, Wayne McFarlin, 1 p _
- D - NOT USED
- E - HB 2383, HB 2383-A2 amendments, Paul Hanneman, 4 pp-
- F - HB 2383, letter to President Bill Bradbury, Paul Hanneman, 5 pp-
- G - HB 2838, prepared statement, Rebecca Owen-Anderson, 2pp
- H- HB 2838, prepared statement, Vikki Kittles, 8 pp-
- I - HB 2286, prepared statement, Larry Thomson, 3 pp
- J - HB 2286, prepared statement, David Nebel, 2 pp-
- K - B 3071, HB 3071-A5, HB 3071-A6 and HB 3071-A7 amendments, staff, 2 pp-
- L - HB 3071, letter from NRA, Rod Harder' 2 pp
- M - HB 3071, prepared statement, Lt. Daimler, 4 pp
- N - HB 3071, prepared statement, Fred Avera, D.A., 8 pp -
- O - HB 2854, prepared statement, Mary Plaisance, 6 pp_

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