

SENATE COMMITTEE ON  
JUDICIARY

July 2, 1993           Hearing Room C  
1:00 p.m.   Tapes 207 - 208

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

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

ISSUES DISCUSSED: Executive Appointment to the State Board of Parole &  
Post

Prison Supervision.

Possible Reconsideration & Work Session on HB 2349, HB 2916  
Public Hearing & Work Session on HB 3076

Work Session on HB 2254, HB 2759, HB 3071, HB 2477,  
HB

2228

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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 207, SIDE A

003 CHAIR SPRINGER: Opens the hearing. (1:50 p.m.)

EXECUTIVE APPOINTMENT

State Board of Parole & Post Prison Supervision: Marva Fabien

011 MARVA FABIEN: Comments on academic background and interest in  
the  
board.

\_ See informative material submitted, (EXHIBIT A).

CHAIR SPRINGER: Do you have background in criminal law?

FABIEN: I had a general practice in Gladstone for about two years and  
I  
did some criminal law.

CHAIR SPRINGER: Have you observed board?

FABIEN: Yes; I sat in on hearings one morning.

032 MOTION: SEN. HAMBY MOVES THAT THE COMMITTEE  
RECOMMEND  
CONFIRMATION OF THE GOVERNOR'S APPOINTMENT TO MARVA C. FABIEN  
TO SERVE AN UNEXPIRED FOUR YEAR TERM, BEGINNING AUGUST 2,  
199 9,  
ENDING JUNE 30, 1995, ON THE STATE BOARD OF PAROLE AND POST  
PRISON SUPERVISION.  
VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES UNANIMOUSLY.  
MEMBERS EXCUSED: SEN. SHOEMAKER & WEBBER.

HB 2349: Relating to abuse prevention

BILL TAYLOR, COMMITTEE COUNSEL: Reviews HB 2349; we need to look at  
possible reconsideration and adoption of conflict amendments.

\_ Reviews (-A7) amendments, (EXHIBIT B).

070 MOTION: CHAIR SPRINGER MOVES THAT THE (-A7) AMENDMENTS  
BE  
ADOPTED.

VOTE: HEARING NO OBJECTION THE MOTION CARRIES.

072 MOTION: CHAIR SPRINGER MOVES THAT HB 2349-A AS AMENDED BE  
SENT  
TO THE FLOOR WITH A DO PASS RECOMMENDATION.

075

VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES. MEMBERS  
EXCUSED:  
SHOEMAKER & WEBBER.

HB 3076: Defines "other business form."

WITNESSES:

TIM ROTE, OREGON SOCIETY OF CERTIFIED PUBLIC ACCOUNTANT'S, (CPA'S)  
JUDY DAUBLE, OREGON SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS'S, (CPA'S)

086 TIM ROTE, OREGON SOCIETY OF CERTIFIED PUBLIC ACCOUNTANT'S,  
(CPA'S),  
CHAIRMAN, LEGISLATIVE POLICY COMMITTEE:

090 JUDY DAUBLE, OREGON SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS'S,  
(CPA'S):  
Submits and reviews written testimony in support of HB 3076, (EXHIBIT  
C).

138 CHAIR SPRINGER: Has the Board of Accountancy taken a position?

DAUBLE: I am unaware.

KAREN QUIGLEY, COMMITTEE COUNSEL: They indicate they are fine with  
the

bill.

153 SEN. RASMUSSEN: What does this do with respect to liability concerns and insurance coverage?

ROTE: The bill models SB 288 which would put a cap of \$300,000 per year

per share holder on other available forms of doing business for us.  
SEN. RASMUSSEN: That is the area of insurance limits available?

ROTE: There are larger amounts available, but that is an easily insurable amount.

169 MOTION: SEN. RASMUSSEN MOVES HB 3076-A BE SENT TO THE FLOOR WITH A DO PASS RECOMMENDATION.

174 VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES. MEMBERS EXCUSED: SHOEMAKER & WEBBER

HB 2228: Modifies notice requirements regarding inmate release.  
WITNESS: DENNIS DOWD, ASSISTANT DIRECTOR, INSTITUTION BRANCH, DEPARTMENT OF CORRECTIONS

BILL TAYLOR, COMMITTEE COUNSEL: Reviews bill and (-A3) amendments, (EXHIBIT D).

188 DENNIS DOWD, ASSISTANT DIRECTOR, INSTITUTION BRANCH, DEPARTMENT OF CORRECTIONS: We continue to support the bill; we don't oppose the most recent amendments.

233 MOTION: CHAIR SPRINGER MOVES THAT THE (-A3) AMENDMENTS BE ADOPTED.

VOTE: HEARING NO OBJECTION THE MOTION CARRIES.

239 MOTION: CHAIR SPRINGER MOVES THAT HB 2228 AS AMENDED BE SENT TO THE FLOOR WITH A DO PASS RECOMMENDATION.

243 VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES. MEMBERS EXCUSED: SEN. SHOEMAKER & WEBBER.

HB 2254: Defines terms in murder statute.  
WITNESSES: FRED AVERA, POLK COUNTY DISTRICT ATTORNEY  
ROSS SHEPARD, ODCLA

252 BILL TAYLOR, COMMITTEE COUNSEL: Reviews the bill and (-A5) amendments with additional amendments, (EXHIBIT E).

257 FRED AVERA, POLK COUNTY DISTRICT ATTORNEY: Describes changes made  
to  
last page of (-A5) amendments, see Exhibit E.

287 CHAIR SPRINGER: What is the standard of appeal?

AVERA: The Court of Appeals would be able to review, but on the  
ultimate decision, it would be a tough scope of review for a defendant  
to overcome.

303 ROSS SHEPARD, OCDLA: Testifies in support of the language; my  
concerns  
are that this is too broad.

\_ Perhaps the committee could consider deleting, on line twenty, "a  
crime punishable as a class C felony" and insert the worst of the  
class  
C felonies and have the statute apply to those crimes.

CHAIR SPRINGER: That is one category of defense?

SHEPARD: Yes, the Class C Homicide.

\_ Senator Webber arrives.

369 MOTION: CHAIR SPRINGER MOVES THAT THE (-A5) AMENDMENTS  
AS  
AMENDED BY AVERA/SHEPARD BE ADOPTED.

VOTE: HEARING NO OBJECTION THE MOTION CARRIES.

388 MOTION: CHAIR SPRINGER THAT HB 2254 AS AMENDED BE SENT TO  
THE  
FLOOR WITH A DO PASS RECOMMENDATION.

\_ Sen. Shoemaker arrives.

425 VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES UNANIMOUSLY.

HB 2916: Repeals immunity of owners and operators of aircraft and  
watercraft  
for injury, death or loss to guest passengers.

437 KAREN QUIGLEY, COMMITTEE COUNSEL: If the committee cares to this  
would  
be a motion to reconsider.

440 MOTION: SEN. RASMUSSEN MOVES TO RECONSIDER HB 2916.

VOTE: HEARING NO OBJECTION THE MOTION CARRIES.

MOTION: SEN. RASMUSSEN MOVES THAT HB 2916 BE SENT TO THE  
FLOOR  
WITH A DO PASS RECOMMENDATION.

451 VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES. MEMBERS  
VOTING

NO: SEN. HAMBY & SMITH

HB 3071: Expands prohibition against possessing firearms by felon,  
person

under 18 years of age or person who was committed.

WITNESSES:

LT. MIKE DAIMLER, OREGON STATE POLICE, ID SECTION

FRED AVERA, POLK COUNTY DISTRICT ATTORNEY, OREGON DISTRICT  
ATTORNEY'S  
ASSOCIATION

490 BILL TAYLOR, COMMITTEE COUNSEL: Reviews bill and (-A8)  
amendments,  
(EXHIBIT F).

TAPE 208, SIDE A

\_ Continues describing bill and amendments.

068 LT. MIKE DAIMLER, OREGON STATE POLICE, ID SECTION: The amendment we  
are  
pushing for is on page three of the A-Engrossed bill, line two.

\_ The language we want removed speaks to the informal process of the  
court.

\_ We do want to amend the bill on page eight, line thirteen to include  
"and ORS 166.293".

088 FRED AVERA, POLK COUNTY DISTRICT ATTORNEY, OREGON DISTRICT  
ATTORNEY'S

ASSOCIATION: Reviews concerns in (-A8) amendments.

\_ On page one, line twenty two; the language "about the person" is  
confusing; we have proposed to change "about" to "to", meaning readily  
available "to the person".

\_ There are concerns with the new section thirteen in the (-A8)  
amendments and the definition of "fire arm"; we proposed language in  
the  
(-A8) amendments to correct that.

126 CHAIR SPRINGER: That would exclude a pellet gun?

AVERA: Correct, they are currently excepted.

134 DAIMLER: I think powder covers it; that does exclude air rifles  
and  
CO2 type pistols.

CHAIR SPRINGER: Is a starting pistol excluded?

DAIMLER: That doesn't fire a projectile.

SEN. RASMUSSEN: Notes confusion; could you explain the reason for the

bill.

DAIMLER: It is a house-cleaning bill.

165 SEN. RASMUSSEN: Is the difference between antique and a standard  
weapon  
is we remove "smokeless"?

AVERA: There is some debate on that; we agree on the underlying policy  
that convicted felons shouldn't be permitted to carry things that  
shoot  
lead at people and that this language closes that loop hole.

SEN. RASMUSSEN: What is it about antique weapons and felons that makes  
it controversial?

AVERA: It's not controversial; when you get into black powder weapons  
there is difference of opinion.

191 SEN. RASMUSSEN: Is there a difference in who can or cannot possess  
an  
antique fire arm?

AVERA: ORS 166.460 addresses the issue; reviews agreement on the House  
side.

\_ With the (-A8) amendments the reason for the disagreement  
disappears.

232 DAIMLER: The antique fire arm definition came about due to federal  
law.

SEN. RASMUSSEN: That doesn't include antique fire arms for the  
purposes  
you discussed?

DAIMLER: It would at that time, because the antiques also use a powder  
propellent.

250 SEN. RASMUSSEN: We are eliminating informal procedures in the (-A8)?

TAYLOR: That is correct, page one of the amendments; page three in the  
bill itself.

\_ Reviews amendments.

DAIMLER: We want to support the bill without further amendments, other  
than those discussed.

286 SEN. HAMBY: Is there a concern to look at firearms that are  
disguised?

DAIMLER: Yes, we are very concerned.

303 SEN. HAMBY: Would you object for that information being forwarded  
to  
the legislature?

\_ We could request the number of offenses?

DAIMLER: Yes, information can be compiled.

368 DAIMLER: The law enforcement data system, (LEDS), does list  
concealed  
handgun license holders in the state and that is updated by local  
sheriffs.

430 KINGSLEY CLICK, ASSISTANT STATE COURT ADMINISTRATOR: Submits  
and  
reviews written testimony with proposed amendments, (EXHIBIT G).

500 CHAIR SPRINGER: Have you reviewed the amendments with the state  
police?

TAPE 207, SIDE B

037 CLICK: No.

CHAIR SPRINGER: If we adopt the (-A8) amendments, is that a problem?

CLICK: No; our amendments address the (-A8).

CHAIR SPRINGER: Your amendments are compatible with the (-A8)  
amendments?

CLICK: Yes.

048 RON HARDER, EXECUTIVE DIRECTOR, OREGON SPORTSMAN'S DEFENSE FUND:  
With  
the recent testimony we have made one minor amendment; we've extended  
the amount of time that we can leave these things hanging and raised  
the  
price about four times.

CHAIR SPRINGER: Are you opposed to (-A8) amendments?

HARDER: Yes, the portion of them discussed by the last witness, to  
remove the informal proceedings.

\_ Continues review of concerns; if we are addressing felons in  
possession only, with the removal of the word "smokeless", then we  
would  
support that.

\_ Continues review of concerns.

078 JON NICHOLS, OREGON STATE SHOOTING ASSOCIATION: Testifies in support  
of

the bill.

\_ We have no objections to (-A8); we are uncomfortable with taking out the informal procedure, but if it is unconstitutional it won't make a difference.

\_ Opposed to (-A5) through (-A7).

104 SEN. RASMUSSEN: What does counsel say about eliminating the informal proceedings?

TAYLOR: My statement about constitutionality went to if the legislature could say who could appear before the court.

\_ The issue of "informal" is confusing; I don't know what it means.

120 SEN. SHOEMAKER: Could we move the bill out with the law enforcement community amendments and let this be resolved in a conference committee?

CHAIR SPRINGER: For purposes of moving the bill, I concur.

131 MOTION: CHAIR SPRINGER MOVES THAT THE (-A8) AMENDMENTS, WITH ADDITIONAL AMENDMENTS FROM THE STATE COURT ADMINISTRATOR, BE ADOPTED.

141 MOTION: CHAIR SPRINGER MOVES THAT THE (-A8) AMENDMENTS BE ADOPTED.

145 VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES. MEMBERS VOTING

NO: SEN. RASMUSSEN & SMITH

148 MOTION: CHAIR SPRINGER MOVES THAT THE STATE COURT ADMINISTRATOR AMENDMENTS, CONTAINED IN THE LETTER DATED JUNE 30, BE ADOPTED.

151 VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES. MEMBERS VOTING

NO: SEN. RASMUSSEN & SMITH

SEN. HAMBY: I'd like the committee to know what Mr. Harder has done on the gun bill in the House; the most recent amendment demands that there be intent to use.

\_ I will vote to support the bill, but want the right to pull it back.

225 MOTION: CHAIR SPRINGER MOVES THAT HB 3071-A AS AMENDED BE SENT



TO THE FLOOR WITH A DO PASS RECOMMENDATION.

232 VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES UNANIMOUSLY.

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:

ROSS SHEPARD, OCDLA

REP. PETER COURTNEY, HOUSE DISTRICT 33

JOANNE FULLER, DEPARTMENT OF CORRECTIONS, COMMUNITY CORRECTIONS BRANCH

JANET ARENZ, ACLU

EMILY CEDARLEAF, MULTI-FAMILY HOUSING COUNCIL

KEVIN HANWAY, METRO MULTI-FAMILY HOUSING ASSOCIATION

238 BILL TAYLOR, COMMITTEE COUNSEL: Reviews bill and (-A9) amendments, (EXHIBIT H).

SEN. SHOEMAKER: Reviews the (-A9) amendments; rather than have a blanket rule about who will be subject to this notice, we would require that a parole or probation department or board, or the psychiatric review board, make a determination that the person presents a risk to the public.

\_ The (-A9) include, in the category of who is subject, people convicted of public indecency, whether they be adult or juvenile and persons who have committed a sex crime, be they adult or juvenile.

290 SEN. HAMBY: Notes change to (-A9) amendments on line nineteen; the public indecency issue is questionable, as to if it presents a risk to the public.

311 ROSS SHEPARD, OCDLA: Rape, sodomy, sexual penetration and sex abuse are the first four; we all agree on those four.

SEN. HAMBY: My preference was to include incest with children under the age of fourteen, Sen. Shoemaker wasn't inclined to do so.

335 REPRESENTATIVE COURTNEY, HOUSE DISTRICT : I can probably live with this if public indecency is taken out.

\_ This is meant to address those who have indicated a tendency to continue on with more serious abuses.

\_ Public indecency indicates more dangerous behavior is possible.

370 REP. COURTNEY: The notebook is gone and I'm sorry to see that; there  
is some reference to Parole Board as opposed to the Department of  
Corrections?

SEN. SHOEMAKER: The notebook is not gone.

REP. COURTNEY: I have not had a chance to review bill well.

TAYLOR: The term "notebook" is gone, but the process of getting the  
information out remains.

390 REP. COURTNEY: Explains the concept of the "notebook".

\_ Withdraws previous comments about notebook; it is correct to say  
that the process talked about has remained in tact.

413 JOANNE FULLER, DEPARTMENT OF CORRECTIONS, COMMUNITY CORRECTIONS  
BRANCH:

Testifies in support of the bill.

\_ On line nineteen, inserting "parole board"; we would suggest  
"Department of Corrections or Community Corrections Agency".

444 SEN. WEBBER: Who is responsible for decisions; I believe the  
Parole Board should be responsible.

SHEPARD: There will be some of these people on probation and some  
agency will have to make a decision.

SEN. WEBBER: The board can make decision; I don't want the field,  
department of corrections or county parole and probation people doing  
this, I will not support that.

SHEPARD: I think it should be the Parole Board on all these cases.

480 REP. COURTNEY: The problem is that they won't be supportive of this  
on the House side.

TAPE 208, SIDE B

042 FULLER: We need to talk to the parole board; the intent was never  
to have field officers make these decisions.

SEN. WEBBER: I don't care what the Parole Board wants to do; I care  
about a workable policy.

COURTNEY: The original bill had the Chairperson of State Board of

Parole responsible.

070 SEN. HAMBY: What about judicial discretion regarding a parolee?

SEN. WEBBER: I just don't want the person out in the field making those choices.

088 JANET ARENZ, ACLU: Testifies with concerns on the (-A9) amendments.

\_ We are concerned with juveniles being included, particularly since section three is still included.

(-A7) \_ We have some concerns about public indecency being included; the were our amendments, I'm commenting on the (-A9).

\_ We feel strongly about taking addresses out; some juveniles are placed in foster homes and I'm concerned that foster families won't want to participate if they can be putting their own families at risk.

140 SEN. HAMBY: Expresses second thoughts about address concerns.

\_ What about the general paranoia this creates?

ARENZ: Suggests only including information about the general area.

165 EMILY CEDARLEAF, MULTI-FAMILY HOUSING COUNCIL: I'm concerned about what happens in such a case concerning liability, notification, etc., (referring to the case from Beaverton area).

\_ I'm not opposed to the bill, but concerned given case and Supreme Court rulings.

TAYLOR: So the sponsor of the bill is saying that if the message is left with the on sight manager or the owner of the property, they have no duty, under this bill, to notify anyone else?

CHAIR SPRINGER: Does this case turn on a statutory responsibility or common law responsibility?

216 SEN. RASMUSSEN: I think we are creating a duty and new liability responsibilities.

SEN. SHOEMAKER: We were intending section four of the (-A9) amendments would cover that.

SEN. RASMUSSEN: To me that gets half-way there.

258 KEVIN HANWAY, METRO MULTI-FAMILY HOUSING ASSOCIATION: Emily has  
laid out our concerns, (referring to Cedarleaf).

CHAIR SPRINGER: I will ask that if we include juveniles, that we  
include who will make the decision that the juvenile will be subject  
to this notification.

305 CHAIR SPRINGER: We are adjourned hearing. (3:35 p.m.)

Transcribed by, Reviewed by,

Kimberly Burt Bill Taylor  
Committee Assistant Committee Counsel

EXHIBIT SUMMARY:

- A - EXA: Background and informative materials submitted by staff, pp 9
- B - HB 2349: Proposed amendments submitted by staff, pp 3
- C - HB 3076: Written testimony submitted by Dauble, pp 5
- D - HB 2228: Proposed amendments submitted by staff, pp 1
- E - HB 2254: Proposed amendments submitted by staff, pp 6
- F - HB 3071: Proposed amendments submitted by staff, pp 3
- G - HB 3071: Written testimony submitted by Click, pp 4
- H - HB 2759: Proposed amendments submitted by staff, pp 3
- I - HB 2759: Proposed amendments submitted by staff, pp 3