

HOUSE COMMITTEE ON JUDICIARY CIVIL LAW AND JUDICIAL ADMINISTRATION March
7, 1991 Hearing Room 357 1:00 p.m. Tapes 45 -48 MEMBERS

PRESENT: Rep. Ray Baum, Chair Rep. Marie Bell Rep. Tom Brian Rep.
Kelly Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix Rep.
Randy Miller MEMBERS EXCUSED: Rep. Tom Brian VISITING MEMBER: Rep.
Judy Bauman STA" PRESENT: Greg Chaimov, Committee Counsel Karen
Edwards, Committee Assistant MEASURES *All Bills Relate to Civil
Forfeiture* CONSIDERED: HB 2028 - Allows claimant in civil forfeiture
hearing to seek expedited hearing - PH/VVS HB 2037 - Releasing seized
property - PH HB 2038 - Paying and towing storage charges on seized
property - PH/WS HB 2032 - Using proceeds of forfeited property - PH/VVS
HB 2022 - Excluding violations from asset forfeiture - PH/WS HB 2033 -
District Attorneys as forfeiture counsel - PH/VVS HB 2031 - Requiring
reports to the Asset Forfeiture Oversight Advisory Committee - PH HB
2733 - Repeals sunset on controlled substance forfeiture law - PH

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 45, SIDE A

004 REPRESENTATIVE RAY BAUM, CHAIR: Calls the meeting to order at 1:15
p.m.

HB 2028 - PUBLIC HEARING Witnesses: Rep. Ted Calouri, District 7 David
Fidanque, ACLU of Oregon Jenny Cooke, Oregon Criminal Defense Lawyers
Association Bob Lane, Lane County District Attorneys Office

018 REPRESENTATIVE TED CALOURI, DISTRICT 7: Testifies on behalf of HB
2028, HB 2022, HB 2037, HB 2038, HB 2033, HB 2031, and HB 2032. House
Committee on Judiciary March 7, 1991 - Page 2

168 GREG CHAIMOV, COUNSEL: Summarizes HB 2028 and discusses proposed
amendments (EXHIBIT A). 202 DAVID FIDANQUE, ACLU OF OREGON: Testifies
on HB 2028. This process gives immense power to the government against
the property of individuals. 299REP. KELLY CLARK: What types of
affirmative defenses come up? FIDANQUE: One example would be a person
driving on interstate five who gets stopped by a state trooper. The
trooper asks to look in the trunk of the vehicle and finds money that is
. assumed to be drug money and seizes it. REP. CLARK: At the
proceeding, what affirmative defense would be raised?

FIDANQUE: The person could show evidence that the money was not obtained
from the sale of drugs.

REP. CLARK: The expedited hearing takes place within 15 days after
service of the petition, if requested?

FIDANQUE: Right. 348 JENNY COOKE, OREGON
CRIMINALDEFENSELAWYERSASSOCIATION (OCDLA): Testifies in opposition to HB
2028.

REP. CLARK: What does the government have to come forward with in an
expedited hearing?

COOKE: The way the amendments of HB 2028 read, the government does not
have to provide proof in any way.

TAPE 46, SIDE A

002 REP. CLARK: The term affirmative defense may need to be changed.

REP. MANNIX: For the purposes of judicial or legislative prudence, the phrase used refers to the affirmative defenses that are set forth in the statute.

COOKE: The idea of the Forfeiture Oversight Advisory Committee was to have the claimant or receiver left in control of the property. This would prevent the property from being subject to premature forfeiture.

FIDANQUE: The committee did intend to allow individuals to try and prove affirmative defenses early in the process if they thought it would be feasible.

044 REP. MANNIX: Discusses Section three, subsection three of HB 2028. We are expediting the opportunity for the person who is challenging the forfeiture to show affirmative defense to have the property returned. House Committee on Judiciary March 7, 1991 - Page 3

FIDANQUE: If you are going to leave that provision in HB 2028, section four should be left in as well to provide another available option.

COOKE: The Oregon Criminal Defense Lawyers Association would also like to have section four remain in HB 2028.

BOB LANE, LANE COUNTY DISTRICT ATTORNEYS OFFICE: My impression was section three gave individuals the opportunity to litigate their potential defense then it would be over. To have the individual relitigate the defense would change the character of the contested forfeiture case.

101 REP. MANNIX: Refers to section three, subsection two of HB 2028. Why can't the forfeiture issue be raised at a later date?

LANE: My thought would be if the statute is intended to be worded a certain way that should be indicated.

REP. JUDY BAUMAN: Would there be another hearing on the forfeiture issue following the expedited hearing?

COOKE: Only if the forfeiture Counsel chose to proceed.

REP. BAUMAN: It would seem hard to prepare a case within 15 days. 148
COOKE: My understanding is the only issue to be addressed at the hearing where no warrant was issued is probable cause.

REP. BAUMAN: It seems to me that you might not achieve a full affirmative defense within 15 days. COOKE: Refers to section two, subsection one of HB 2028. This addresses the concern of the 15 days.

LANE: HB 2028 does not repeal ORS c.791 regarding the probable cause hearing. In theory the claimant could have a hearing on probable cause and a hearing on their affirmative defense within the 15 days.

Tape 46, Side A HB 2037 & HB 2038 - PUBLIC HEARING Witnesses: Frank Brawner, Oregon Bankers Association Ken Sherman, Oregon Bankers Association

212 CHAIMOV: Discusses HB 2037 (EXHIBIT B). HB 2037 is related to HB 2038. Mr. Shepard from the Department of Justice has provided some amendments, suggesting the department of Justice has provided some amendments, suggesting the language from HB 2037 be placed into HB 2038 (EXHIBIT C). The adoption of HB 2037 may not become necessary. FRANK BRAUNER, OREGON BANKERS ASSOCIATION: Interested in HB 2037. It House Committee on Judiciary March 7, 1991 - Page 4

deals with the opportunity for a third party to receive seized property.

KEN SHERMAN, OREGON BANKERS ASSOCIATION: The existing law does not allow an agency to release seized property to anyone except the party from whom it was seized. HB 2037 will allow and facilitate notification of release to all interested parties.

260 REP. CLARK: The forfeiting agency is ready to release the property to a bank. What happens when another party who was notified shows interest?

SHERMAN: The agency would want some guidance from a court and would suggest that the parties go to court to resolve the matter.

BRAUNER: The problem we were trying to address in HB 2038 is the growing towing and storage costs that are being incurred by financial institutions.

SHERMAN: Discusses HB 2038 and recommended changes: > Wants to change the language on page one, lines 19-21. The intent is to provide the court the necessary flexibility to deal with multiple security interests and liens. > Page two, lines 2-10, the agency should decide within the 15 days what procedures it will take.

396 REP. CLARK: An agency comes along, seizes my vehicle, goes through the process and loses the forfeiture action. Who pays the incurred costs?

SHERMAN: To my knowledge the government pays those costs.

REP. CLARK: You are going to give the agency 15 days to decide whether or not forfeiture will take place. If they decide not to pursue forfeiture, the agency pays the costs relating to storage and towing of the property. After that, there is no liability?

SHERMAN: That is the only liability we are concerned with.

TAPE 45, SIDE A

BRAUNER: In Mr. Shepard's amendments (EXEUBIT C) the 15 days is moved to 30 days. We will accept the 30 days and feel the agency should make a decision as soon as possible as to whether or not they are going to forfeit the property.

021 REP. CLARK: Under current law, the agency can hold the property for a greater period of time while they decide whether or not to go through forfeiture?

SHERMAN: The existing statute does not set any time limit.

REP. ROD JOHNSON: Refers to written testimony from Paul C. Elsner, City of Portland on HB 2038 (EXHIBIT D).

REP. CLARK: Explain how lending institutions lose money? House Committee on Judiciary March 7, 1991 - Page 5

SHERMAN: A vehicle is seized, towed and stored. The agency at some point may decide they are not going to proceed with forfeiture and abandon the vehicle. Under the existing law there is no ability for lending institutions to retrieve the vehicle without paying the towing and storage costs.

BRAWNER: This can also affect a contract or private party holder.

SHERMAN: Explains process if the forfeiture has a judgement rendered. Refers to Page four, Line 33 of HB 2038.

116 CHAIMOV: Under what circumstances would a court not direct the foreclosure of security interests?

SHERMAN: Where it finds that security interests are not in default.

174 REP. JIM EDMUNSON: Why don't we follow replevin rules when the owner of the property is claiming the government has seized their property unlawfully?

SHERMAN: There is no good answer to your question. Tape 45, Side B HB 2032 - PUBLIC HEARING Witnesses: Rick Lewis, Bandon Police Department David Fidanque, ACLU of Oregon Vic Mann, City of Eugene Sandra Arp, League of Oregon Cities

291 RICK LEWIS, BANDON POLICE DEPARTMENT: Reads written testimony in support of HB 2032 (EXHIBIT E). REP. CLARK: What other types of services are cities and other political subdivisions operating with the funds from forfeiture procedures? LEWIS: Several cities use the money for drug enforcement. The money generally goes into the cities general fund. REP. MANNIX: In order to take advantage of the federal forfeiture programs, we had to set up a program where the money was being used for law enforcement purposes. Will this endanger the current provision of cities to use the money as they wish? LEWIS: Not to my knowledge. 385 DAVID FIDANQUE, ACLU OF OREGON: Strongly opposes HB 2032. Feels to have LU OF OREGON: Strongly opposes HB 2032. Feels to have proceeds of civil forfeitures given to law enforcement purposes creates conflicts of interests proceeds of civil forfeitures given to law enforcement purposes creates conflicts of interests among the agencies that are involved in the decision making of seizing property. House Committee on Judiciary March 7, 1991 - Page 6

TAPE 46, SIDE B

001 VIC MANN, CITY OF EUGENE: Reads written testimony (EXHIBIT F).

REP. EDMUNSON: What is your position on the policy question of should cities be treated the same as counties?

MANN: We would argue that we need separate treatment. We do not provide the same services.

070 REP. MANNIX: If we change the language to state the forfeiture proceeds of political subdivisions shall be used for "law enforcement purposes", would that take care of your secondary goal?

MANN: The language could include "law enforcement related..

SANDRA ARP, LEAGUE OF OREGON CITIES: If the money were to be dedicated to law enforcement, the cities without law enforcement agencies would not benefit from these funds.

REP. MARIE BELL: In allowing the cities to use the money for other purposes, aren't we limiting the availability of funds to cities to fight crime as it grows?

MANN: The opposite may be the result. A number of cities have placed restrictions on expenditures due to the unpredictability of forfeiture proceeds.

174 BELL: People are very tired of seeing money being taken away from law enforcement services.

Tape 46, Side B HB 2032 WORK SESSION

MOTION: REP. Mannix moves that HB 2032 is amended on page one, line 17 to include "shall be used for public safety or law enforcement related purposes, or criminal justice services including but not limited to crime prevention and intervention, enforcement and prosecution of the criminal and juvenile laws, corrections facilities and programs and drug treatment and drug education programs". VOTE: Hearing no objection, Chair Baum so moves.

MOTION: Rep. Mannix moves HB 2032 to the full committee with a "due pass" recommendation.

DISCUSSION TO THE MOTION:

218 CHAIMOV: HB 2032 (EXHIBIT G) came to the committee with a subsequent referral to the Ways and Means committee. We also received a no fiscal impact statement from Legislative fiscal. House Committee on Judiciary March 7, 1991 - Page 7

MOTION: Rep. Mannix asks that a referral to the full committee include a requested recommendation of the referral to the Ways and Means committee be canceled.

VOTE: Hearing no objection, Chair Baum so moves. REP. EDMUNSON: Are any of the forfeiture proceeds subject to Ballot Measure Five?

CHAIMOV: Does not know.

REP. JOHNSON: Refers to testimony written from Rick Lewis (EXEIIIBIT E). Were the funds intended to be used for drug education and enforcement efforts? REP. MANNIX: HB 2032 allows us to revisit that issue and decide if the cities should use the forfeiture money for law enforcement related purposes.

VOTE: In a roll call vote, the motion carries with all members present voting AYE.

Tape 46, Side B HB 2022 - PUBUC HEARING Witnesses: David Fidanque, ACLU of Oregon

331 CHAIMOV: Discusses HB 2022 (EXHIBIT H). DAVID EIDANQUE, ACLU OF OREGON: This remedy of forfeiture should only be available for offenses

which would otherwise qualify as misdemeanor or felony crimes.

REP. CLARK: If HB 2623 becomes law, how would that affect HB 2022?

FIDANQUE: Property could be subjected to forfeiture if possession of a controlled substance was associated with the property.

435 REP. CLARK: What is the violation of the controlled substance statute that is neither a misdemeanor nor felony if HB 2623 were to become law?

FIDANQUE: Unable to answer the question.

REP. CLARK: Under the current state of the law, HB 2022 is appropriate?

FIDANQUE: Absolutely.

TAPE 47, SIDE A HB 2022 WORK SESSION

MOTION: REP. Mannix moves HB 2022 to the full committee with a "due pass" recommendation.

VOTE: In a roll call vote, the motion carries with all members present voting AYE.

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Tape 47, Side A HB 2033 - PUBLIC HEARING Witnesses: David Fidanque, ACLU of Oregon Pete Shepard, Department of Justice Bob Lane, Lane County District Attorneys Office

046 CHAIMOV: Discusses HB 2033 (EXHIBIT I).

DAVID FIDANQUE, ACLU OF OREGON: Language written into HB 2033 allows District Attorneys to handle civil forfeiture cases and take part in negotiated settlements of forfeiture cases and criminal prosecutions as long as those negotiations were initiated by either the defendant, claimant or their attorney. PETE SHEPARD, DEPARTMENT OF JUSTICE: Discusses proposed amendment dated 3/6/91 (EXHIBIT J). 093 BOB LANE, LANE COUNTY DISTRICT ATTORNEY'S OFFICE: In support of the first section of HB 2033. Opposes second section of HB 2033.

Tape 47, Side A HB 2031 - PUBLIC HEARING Witnesses: David Fidanque, ACLU of Oregon

146 CHAIMOV: Discusses HB 2031 (EXHIBIT K).

DAVID FIDANQUE, ACLU OF OREGON: Supports HB 2031.

REP. EDMUNSON: Do you have a problem with governments not reporting?

FIDANQUE: Local governments recognized it was in their best interest to have this information compiled in a comprehensive manner.

Tape 47, Side A HB 2033 WORK SESSION

MOTION: Rep. Mannix moves the Department of Justice proposed amendment dated 3/6/91 to HB 2033.

VOTE: Hearing no objection, Chair Miller so moves.

MOTION: Rep. Mannix moves HB 2033 to the full committee with a "due pass" recommendation.

VOTE: In a roll call vote, the motion carries with all members present voting AYE.

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Tape 47, Side A HB 2031 - WORK SESSION

261 MOTION: Rep. Edmunson moves HB 2031 to the full committee with a "due pass" recommendation

VOTE: In a roll call vote, the motion carries with all members present voting AYE.

Tape 47, Side A HB 2028 - WORK SESSION Witnesses: Pete Shepard, Department of Justice

288 PETE SHEPARD, DEPARTMENT OF JUSTICE: Supports amendments to HB 2028 (EXHIBIT A).

REP. MANNIX: What is your feeling about removing the wording of barring a person from subsequent assertions of the affirmative defense?

SHEPARD: If the Department of Justice amendments are adopted by the committee, there would be no objection in deleting that wording.

REP. MANNIX: Reads from HB 2028 starting on page one, line 27. The seized property is not returned?

SHEPARD: Under HB 2028 as printed, that is correct.

370 REP. BAUM: What happens under HB 2028 if a situation arises where there is no probable cause? SHEPARD: Evidence that has been unlawfully seized cannot be used to support the forfeiture case.

TAPE 48, SIDE A HB 2028 WORK SESSION

040 MOTION: Rep. Mannix moves HB 2028-1 amendments to HB 2028.

VOTE: In a roll call vote, the motion carries with all members present voting AYE.

MOTION: Rep. Mannix moves to amend HB 2028 to delete lines seven through nine.

VOTE: Hearing no objection, Chair Baum so moves.

MOTION: Rep. Mannix moves HB 2028 to the full committee with a "due pass" recommendation.

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DISCUSSION TO THE MOTION:

REP. EDMUNSON: Will not support HB 2028 without the inclusion of section four

REP. MANNIX: Withdraws the motion.

Tape 48, Side A HB 2733 - PUBLIC HEARING Witnesses: Rep. Liz VanLeeuwen, District 37 David Fidanque, ACLU of Oregon Jenny Cooke, Oregon Criminal Defense Lawyers Association Frank Brawner, Oregon Bankers Association

109 REPRESENTATIVE LIZ VANLEEUVEN, DISTRICT 37: Supports HB 2733.

DAVID FIDANQUE, ACLU OF OREGON: Opposes HB 2733.

163 JENNY COOKE, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Strongly opposes HB 2733.

FRANK BRAUNER, OREGON BANKERS ASSOCIATION: Opposes HB 2733.

REP. EDMUNSON: What would your position be if the sunset was amended to 1995?

BRAWNER: That would be better than repeal.

Tape 48, Side A HB 2028 - WORK SESSION Witnesses: Pete Shepard, Department of Justice Jenny Cooke, Oregon Criminal Defense Lawyers Association David Fidanque, ACLU of Oregon

240 REP. CLARK: The affirmative defense language bars a person from an issue at a later date and section four has been removed, correct?

CHAIMOV: Correct.

REP. CLARK: Is there a provision for a receiver to be appointed?

CHAIMOV: Yes. That is part of the HB 2028-1 amendments that have been moved into the bill.

REP. CLARK: Cannot support HB 2028 in its present form.

PETE SHEPARD, DEPARTMENT OF JUSTICE: Would like to work on language to amend

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section four of HB 2028.

358 JENNY COOKE, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Opposes section four of HB 2028. DAVID FIDANQUE, ACLU OF OREGON: Would like to work on language to amend section four of HB 2028. REP. EDMUNSON: Would like to work on an amendment to section four of HB 2028. TAPE 47, SIDE B HB 2733 - PUBLIC HEARING Witnesses: Pete Shepard, Department of Justice 039 PETE SHEPARD, DEPARTMENT OF JUSTICE:Discusses and supports HB 2733 (EXHIBIT L). CHAIR BAUM closes hearing and adjourns meeting.

Submitted by: Reviewed by:

Karen Edwards Greg Chaimov Assistant Committee Counsel

EXHIBIT LOG: A -Amendments to HB 2028 - Staff- 1 page B - Staff Measure Summary on HB 2037 - Staff - 1 page C - Amendments to HB 2038/Staff Measure Summary on HB 2038 - Staff- 4 pages D - Testimony on HB 2038 - Staff- 6 pages E - Testimony on HB 2032 - Rick Lewis - 5 pages F - Testimony on HB 2032 - Vic Mann - 1 page G - Staff Summary Measure on HB 2032 - Staff - 1 page H- Staff Measure Summary on HB 2022 - Staff - 4 pages mmary on HB 2022 - Staff - 4 pages I - Staff Measure Summary on HB 2033 - Staff - 4 pages J - Amendment to HB 2033 - Staff- 1 page K - Staff Measure Summary on HB 2031 - Staff - 1 page L - Staff Measure Summary on HB 2733 - Staff - 1 page