

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.

Measures Heard HB 2199 (Public) HB 2200 (Public) HB 2201 (Public) HB 2202 (Public) HB 2203 (Public)

HOUSE COMMITTEE ON JUDICIARY CRIME AND CORRECTIONS

January 16, 1991 Hearing Room 357 1:00 p.m. Tapes 1 - 3

MEMBERS PRESENT: Rep. Randy Miller, Chair Rep. Ray Baum Rep. Judy Bauman Rep. Tom Brian Rep. Rod Johnson Rep. Tom Mason Rep. Del Parks Rep. Ron Sunseri

STAFF PRESENT: Holly Robinson, Committee Counsel Kathy Neely, Committee Assistant

WITNESSES: Scott Taylor, Department of Corrections (HB 2199/2200) Denis Dowd, Department of Corrections (HB 2199) Jef Van Valkenburgh, Department of Corrections (HB 2200) Dave Cowley, Department of Corrections (HB 2201/2202) John Foote, Department of Corrections (HB 2203)

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TAPE 1, SIDE A

006 REPRESENTATIVE MILLER, CHAIR: Calls the subcommittee meeting to order at 1:00 p.m.

023 REP. BAUM: Questions agenda regarding HB 2193.

026 REP. MILLER: That bill has been dropped at the request of the sponsor for today.

027 REP. MILLER: Calls the public hearing on HB 2199 to begin.

PUBLIC HEARING ON HB 2199

030 SCOTT TAYLOR, DEPARTMENT OF CORRECTIONS: Waiting for Denis Dowd to begin.

058 CHAIR MILLER: Reviews agenda for the benefit of the committee. Four of the measures on the agenda have a fiscal impact but unable to determine the impact therefore there will be a delay in moving some measures. HB 2202 does not have a fiscal impact and may go into work session. Mr. Taylor do you prefer to proceed or to move on to another bill?

060 SCOTT TAYLOR: Prefers to move onto another bill until Mr. Dowd joins the meeting

062 CHAIR MILLER: Adjourns the hearing on HB 2199 and opens the hearing on HB 2200.

PUBLIC HEARING HOUSE BILL 2200

064 SCOTT TAYLOR: Introduces himself and Jef Van Valkenburgh, legal counsel to the Department. The Department of Corrections supports HB 2200. See Exhibit A for written testimony. Have two minor amendments to propose and one deletion. The two minor deletions would be on page 1, line 6, after "parole" delete the "or" and insert "and", refer to them as parole and probation officers. The same on page 1, line 18, delete the "or" and insert "and". The amendment is on page 1, line 5, delete "forfeited goods".

110 REP. BAUM: How are attorneys noticed? Elaborate on what kind of notice and who it is going to go to. What is the minimum due process?

117 JEF VAN VALKENBURGH, GENERAL COUNSEL, DEPARTMENT OF CORRECTIONS: The Department of Justice takes no position on the bill. With respect Rep. Baum's question, this bill was not intended to address the legal requirements of forfeited goods or criminal procedure. The minimum due process levels include petition, hearing, and written notice procedure with a petition as set out in the bill served on the Department, is sufficient to meet the requirements.

130 REP. BAUM: Questions the due process, and asks for clarification between the civil forfeiture and what is proposed.

149 JEF VAN VALKENBURGH: The bill gives express authority to the Department to dispose of items they seize as an incident to an arrest or parole violation that was suspected or fruits of crimes. This does not expand the authority to conduct these searches, it would allow authority to dispose of items seized and a hearing for a contested right of ownership. Primarily, dangerous weapons will be turned over to law enforcement.

161 REP. BAUM The criminal is going to get a notice?

164 JEF VAN VALKENBURGH: The suspected violator will get a notice of the things actually seized.

167 CHAIR MILLER With respect to the goods seized, is there any connection between the arrest and the particular goods that are seized?

171 JEF VAN VALKENBURGH: Do not understand the question.

173 CHAIR MILLER: Clarifies with an example. Where is the relationship between the things seized and the violation alleged?

179 SCOTT TAYLOR: The release from the Parole Board indicates what things they can or cannot do and discusses an example where they would seize an item in violation of the release and they determine if the violator owns it. This is how we end up with the items and no way of disposing of them.

190 CHAIR MILLER: Are you satisfied that this language limits the things you can take or do you have rules that do that?

197 JEF VAN VALKENBURGH: Understands there are rules. This does not affect their existing authority in their execution of duty.

203 CHAIR MILLER: Section 3, line 28, page 1, talks about "after actual notice of any seizure or at such later date as the Department of Corrections in its discretion may allow:" this does not seem to be a very hard date.

209 JEF VAN VALKENBURGH: Since the Board may not get a hearing for some time, the Department wanted the discretion to keep the goods and not deal with deposition of the property until after the hearing. The Board has 6 months by statute to conduct some of the hearings.

219 REP. PARKS: On line 20 you say that the Department may release the property if it has proved to the satisfaction of the Department and asks for clarification.

227 JEF VAN VALKENBURGH: This section is intended to apply to contested claim of rights. With the additional due process hearing in Section 5 a hearing will be held and that takes care of most of the concerns with respect to deposition.

241 REP. PARKS: Gives and discusses an example of when a claim of right is made and when a parole officer makes a determination. The law is to protect the people who are in conflict with the government, to protect the rights of innocent people. There would not be any monetary impact since the Department is not going to sell items like guns but merely destroy them, right?

274 JEF VAN VALKENBURGH: There is authority in the bill to sell, destroy, or otherwise dispose of items at the discretion of the Department

277 REP. PARKS: Why would you be taking a valuable article that you could sell? There would not seem to be any justification for taking something that is saleable because the only right you have is if it was contraband or if it was stolen property.

285 JEF VAN VALKENBURGH: Understands that some of the weapons seized were quite valuable.

287 REP. PARKS: Can the Department now sell weapons seized?

290 SCOTT TAYLOR: We don't sell weapons seized at this point. We have not been involved in that.

292 REP. PARKS: It used to be that you could not sell a weapon, but had to render it inoperable. Has that changed?

294 SCOTT TAYLOR: All the weapons seized are cut up or rendered inoperable. States an example to clarify.

309 REP. BAUMAN: Unclear regarding the example of a parolee having drugs. Would the parolee be charged with a separate crime? Wouldn't that fall within the structure we have now?

324 JEF VAN VALKENBURGH: It appears that certain violations are equated with new criminal activity and could be charged as a crime. The Department has no authority as a charging body to determine if a crime should be charged. There may be times when it would lead to the revocation of parole and not lead to being charged with a new crime.

336 SCOTT TAYLOR: The majority of drug paraphernalia found is very small but we do occasionally come across very valuable equipment.

342 REP. BAUMAN: Under the current structure you would not be able to confiscate that property?

347 SCOTT TAYLOR: We would be able to confiscate the property but have no way to get rid of it. The court is the releasing authority and has the ability to dispose of that property. The parole board has property they cannot get rid of.

352 REP. BAUMAN: If these were fruits of crime, the Department may hold and safeguard the things seized until directed by appropriate law enforcement officials. (quote from the HB 2200, lines 22 down). That whole structure for disposition would get you there wouldn't it?

369 SCOTT TAYLOR: Not sure. The problem is dealing with local law enforcement officials and how willing they are to be involved in the collection and holding of property. There are agreements with a variety of sheriff departments but some are not as willing.

376 REP. BAUMAN: Would this have a fiscal impact in terms of creating space to store?

379 SCOTT TAYLOR: In most offices it would require more of a policy for the Department to establish, to make sure there are secure places.

385 REP. SUNSERI: What would be confiscated that would necessitate selling?. What needs disposal that could be listed?

394 JEF VAN VALKENBURGH: This would give the Department the same authority as law enforcement agencies in forfeiture sales in which some of the things sold are weapons. This would do nothing more than give the Department the same sort of authority. It is rare to have a contested claim.

414 SCOTT TAYLOR: When this was drafted, it was not envisioned as being a cash resource. The purpose was to give the Department a way of destroying the property already seized.

TAPE 2, SIDE A

015 REP. JOHNSON: What is the current procedure for a parolee who has something seized, is there an established procedure for him to get that stuff back?

016 SCOTT TAYLOR: When property is taken a receipt is given and there is the ability to file a grievance that the property taken was not theirs or they have legal right to it. Even upon determination that the property may not be needed any more or should go back, we have no way of releasing it.

023 REP. JOHNSON: You cannot release it back to the person from whom it was seized?

SCOTT TAYLOR: We have taken it as a violation of the conduct.

REP. JOHNSON: In order to get the goods back, the parolee must be found not in violation. Is that correct?

028 SCOTT TAYLOR: Yes, you would have to determine that the property seized was not a violation or that it was not rightfully theirs.

033 REP. JOHNSON: There are two situations where the property should be returned. 1) It was not the parolees in the first place. 2) The

parolee owned the item but was later found not to be in violation of parole for having owned the item. Is it true that what you are trying to do is address the other situation where it was a parolee in violation and now you want the ability to get rid of the stuff?

039 SCOTT TAYLOR: Yes.

040 REP. JOHNSON: This rule will not enlarge your ability to take and seize any item over and above what is already in your power to seize?

042 SCOTT TAYLOR: Correct.

044 JEF VAN VALKENBURGH: Section 4 of the bill sets out grounds for a petition of return or restoration of the seized items and specifically includes situations where the items seized would be returned upon determination by the Department or by the State Board of Parole that they are no longer needed for evidence.

051 REP. BAUM: What were you reading from there?

052 JEF VAN VALKENBURGH: Section 4 of the Bill on page 2, subsection 3.

055 REP. BAUM: The question is, we are after the seizure of items that would be limited to items which were possessed by the violator which violated the conditions of his parole.

057 JEF VAN VALKENBURGH: That or fruits of a crime or suspected new criminal activity which would itself be a violation of the condition of parole.

059 REP. BAUM: It would still follow the same definition. If you don't tie it down to violations of parole, specifically possession of firearms, the most viable commodity, we should define what objects are being seized up front, not at the end of the Bill. The notice requirements are a little vague.

082 JEF VAN VALKENBURGH: The only time that due process procedures would kick in is if someone makes a claim of right. You have no right to a hearing unless you request.

084 REP. BAUM: The state has to be notified that they have a right to it now because you have determined that you do not need it as evidence of a crime.

JEF VAN VALKENBURGH: The bill presently has a notice of the seizure and not a notice of the disposition if there is no claim of right.

088 REP. BAUM: Notice of the seizure would tell you what to do to exercise the claim of right.

089 JEF VAN VALKENBURGH: The Department is going to develop a form of notice of rights which would be handed to the suspected violator setting out procedures for making a request for claim of right at the time of seizure.

093 REP. BAUM: Where is that provided for in the Bill?

094 JEF VAN VALKENBURGH: Page 1, Section 2, Subsection 1 provides for the written list of things seized but does not provide for furnishing a copy of the notice of rights. That is something the Department intended to do.

099 REP. BAUM: It was just left out?

100 JEF VAN VALKENBURGH: I did not include it in the draft of the bill.

101 REP. BRIAN: These objects were seized because of a suspected parole violation or crime. Is this material usually handed over to the police?

106 SCOTT TAYLOR: We notice the local authorities on what we found and they make a determination whether they wish to proceed with the prosecution of a new crime or for the Department to carry on with normal violation processes.

110 REP. BRIAN: Is there a level of activity where the Department detects a crime but is sufficient only for a parole violation. Is that what we are getting at?

114 SCOTT TAYLOR: That happens when we find criminal activity and they determine not to prosecute but it is sufficient information for a parole violation. We would then use that evidence.

119 REP. BRIAN: When prosecution is taken over, all the seized goods go through the normal channels or does the Department of Corrections keep some of them?

121 SCOTT TAYLOR: We would use the evidence in our own hearing and make it available to them for prosecution.

124 REP. BRIAN: Your seizing and custody of the property is much like the police department. What you want is to extend the process to the Department?

129 SCOTT TAYLOR: Particularly to parolees and post prison sentences.

130 REP. BRIAN: What are clear proceeds in line 16?

134 JEF VAN VALKENBURGH: The wording is from Oregon statutes, in the arrest statutes.

125 REP. BRIAN: Why would clear or net proceeds be credited to the Department instead of the general funds. What was the purpose?

139 JEF VAN VALKENBURGH: To defray costs. They did not expect this to be a money maker.

144 REP. BRIAN: Line 15 says that clear proceeds shall be deposited and credited to the Department. Why would net proceeds go to the DOC?

148 JEF VAN VALKENBURGH: In ORS 133.623, the clear proceed under similar language goes to the common school fund. We just substituted the Department of Corrections.

155 REP. BRIAN: Any objections to that going to the general fund?

159 SCOTT TAYLOR: That was not the intent. The objective was to get rid of property not where the money might go.

167 HOLLY ROBINSON: Clarification: In Section 1 the term "suspected parole" and "post-prison violator and violator" is a term of art or the same as alleged? Is the intention then that these people are going out to make an arrest because they have grounds to believe that the person is in violation?

173 JEF VAN VALKENBURGH: Suspected rather than alleged because there may not be a written instrument alleging a violation. There are routine searches which occur where they may discover a violation.

177 HOLLY ROBINSON: Is that why they were there in the first place?

178 JEF VAN VALKENBURGH: They were there in the execution of their duties in performing routine home searches. In the second case, they can be there based on information to verify grounds for revocation hearing.

183 HOLLY ROBINSON: This procedure would be used in situations arising out of a home visit as well as going for the purpose of an arrest?

186 JEF VAN VALKENBURGH: That is my understanding.

SCOTT TAYLOR: We do both.

188 HOLLY ROBINSON: This is intended to cover both?

JEF VAN VALKENBURGH: Yes.

189 CHAIR MILLER: Anything further on HB 2200? Closes hearing on HB 2200 and opens the hearing on HB 2199.

PUBLIC HEARING ON HB 2199

200 DENIS DOWD: Introduces himself and offers testimony in support of HB 219 9. See Exhibit B.

241 REP. BAUM: Questions an example where an inmate tests positive and refers to administrative rules set out by the Health Division. Is that what is meant when referring to Chapter 438?

249 SCOTT TAYLOR: I believe so. Each of the field tests is a laboratory in itself and ORS requires us to have the laboratory director and do those sorts of things as a screening tool rather than sending it to the State Hospital.

260 REP. BAUM: The administrative rules require that the lab be licensed and that there be confirmatory testing on the samples.

267 DENIS DOWD: They do original testing and spectrographic reconfirmation.

269 REP. BAUM: Defense attorneys need to precisely follow those administrative rules to the T. Is this bill intended to circumvent that argument or application of those rules to specific testing samples?

275 SCOTT TAYLOR: The primary utilization is that the field testing kit gives an immediate screen. We would not take any action until we go through appropriate lab testing and confirmation. We find with immediate response that people begin to work with the Department.

290 REP. BAUM: Are the field test kits accurate?

293 SCOTT TAYLOR: They are used extensively in other states and are felt to be valid.

298 REP. BAUM: The point is that these little kits are not intended to be used the same as a breathalyzer.

304 SCOTT TAYLOR: Right. These are intended as a screen for the presence of a drug. Then it is sent in for a full test to confirm.

309 REP. BAUM: Can this be used as evidence in a criminal prosecution?

312 SCOTT TAYLOR: It could certainly be an element as to why we would bother to send in the test for further confirmation and why we made the assumption that it warranted further confirmation.

321 REP. MASON: In most probation agreements the person subject to it waived all his rights. This test does not have evidentiary value and should be noted for the record that it does not have any evidentiary value and all it does is supply the information necessary. Would you like an amendment to charge them the \$1.75 for the test?

343 SCOTT TAYLOR: In the field it is a condition they pay for tests.

348 REP. MASON: Is that already in the agreement?

SCOTT TAYLOR: It is in a number of probation agreements.

350 REP. MASON: This is a very simple bill and I don't see any more problems with probable cause and search.

358 CHAIR MILLER: Is there any reason to define what a field test is?

365 REP. MASON: If it were evidence like a breathalyzer, but it is not.

370 REP. JOHNSON: Would you object to language that specifically suggests the field tests cannot be used as evidence and that no disciplinary action be taken against these people until the confirmatory tests or based solely on these tests.

387 DENIS DOWD: I don't know if this would be the place to put it but that's the way it is now. No objections to it.

392 REP. JOHNSON: If you would solve the problem of accuracy by not using it until there is something more accurate then I do not see a problem.

400 REP. PARKS: These kits are small, right? How many laboratory tests confirm drug usage when drug usage was ruled out by using the field test? Do you know the percentage or a number?

410 DENIS DOWD: It varies depending on the skill of the staff members doing the field test. A relatively small portion, a 3 1/2 to 4% positive rate.

TAPE 1 SIDE B

012 CHAIR MILLER: Any more questions? Public hearing closed on HB 2199.

PUBLIC HEARING ON HB 2201

024 DAVE COWLEY, ADMINISTRATIVE FISCAL SERVICES DIVISION, DEPARTMENT OF CORRECTIONS: Introduces himself and testifies on behalf of HB 2201. See Exhibit C for written testimony.

059 REP. BAUMAN: What is the average cost of care throughout the correction system? Is there a daily figure?

061 DAVE COWLEY: Currently the daily rate is \$43.10 which is an average for all institutions. Applying an inflation factor for 91-93, we anticipate it will increase to \$47.19 per day.

067 REP. SUNSERI: Is there a formula to figure out how much of the inmate's earned pay will go to his care?

069 DAVE COWLEY: Have not developed a formula. Needs to look at the funds required to support dependents, restitution requirements, fines, and court costs. The remainder would be available. Also taken into consideration is providing sufficient funds in the inmates trust account to buy canteen items.

082 REP. PARKS: That is a regulation you are going to make in the future?

083 DAVE COWLEY: Correct. The bill provides that the Department develops a plan that would be filed as an administrative rule laying out the process and the steps in making the determination.

087 REP. PARKS: Likes the idea but would not vote for it. Would like the adoption of a standard already in use.

093 CHAIR MILLER: We had made a request for a fiscal impact statement and have not received one which precludes going forward. There was a similar proposal a few years ago and it generated a fiscal impact of approximately \$64,000.

099 DAVE COWLEY: Currently working on the fiscal impact statement. The fiscal impact statement for the 1989 assembly we did not have any inmates that were being paid the prevailing wage. I did do a rough calculation, for an example, if 50% of these inmates earnings were available to offset the cost of their care that would generate \$300,000 a biennium. Still working on the administrative costs.

116 REP. JOHNSON: After an inmate is released would there be some debt that he would continue to be responsible for?

119 DAVE COWLEY: In structuring this bill we wrote it specifically so that it only applies to the inmate while they are incarcerated.

126 REP. JOHNSON: Is there a limit on what percentage of the inmate's income could be applied to these debts?

129 DAVE COWLEY: No. The determination would be the other obligations existing, accounting for taxes as well as inmate's canteen. It would be a dollar calculation and a net amount available to be applied to cost of care. Not an arbitrary 50%.

138 REP. JOHNSON: Has there been consideration given to the impact on the inmates' incentive to work?

143 DAVE COWLEY: The inmate would be allowed to retain the funds for their canteen. There is a ready supply of those who want to work and are willing to.

151 REP. JOHNSON: The motivation is to get out and work, not necessarily money.

154 DAVE COWLEY: That is correct.

158 HOLLY ROBINSON: There were some constitutional issues raised about

making the provisions retroactive in terms of payment. This does not make it retroactive, it also does not clearly designate that it cannot be applied retroactive. What is the Department's intent?

165 DAVE COWLEY: The billing liability would begin with the effective date of the bill, not retroactively.

169 REP. SUNSERI: I think this is a fantastic idea. Is there some way to get an amendment with a formula in it or how you plan to operate this?

173 DAVE COWLEY: Mr. Dowd has consented to develop a more detailed process for making this assessment.

179 CHAIR MILLER: That would be appreciated because the sense of the committee is favorable to the idea. Closes the hearing on HB 2201.

#### PUBLIC HEARING ON HB 2202

188 DAVE COWLEY: Offers testimony on HB 2202, see Exhibit D.

217 REP. SUNSERI: Are you already budgeted for inmate activities and if so, what would you do with that budget information?

219 DAVE COWLEY: The inmate welfare fund currently exists. These revenues are deposited in the inmate welfare fund pursuant to ORS 179.510. We also have an inmate activities program and budget that augments the budget for the institution's activity programs.

227 REP. BAUM: How much money?

228 DAVE COWLEY: In 1990 there was deposited for the inmate welfare fund at the Oregon State Penitentiary \$223,000, generated from these sources of revenue. At the Oregon State Correctional Institution there was deposited \$68,000 and at the Santiam Correctional Institution there was deposited \$60,000

239 REP. BAUM: How much of a penalty?

241 DAVE COWLEY: Do not have the figures now.

242 REP. BAUM: What about the other institutions?

244 DAVE COWLEY: Do not have those figures.

245 CHAIR MILLER: Do you have any breakdowns from various sources on how you got to the totals?

247 DAVE COWLEY: At the Oregon State Penitentiary, for example, the telephone revenues accounted for \$128,000 of the total that was generated. Vending machines generated about \$70,000, confiscated funds was \$599, there was interest accrued to the account of \$47,000 and the profits from the canteen ran at \$20,000 for 1990. REP. BRIAN: Is the proposal basically to codified existing practice?

268 DAVE COWLEY: Correct.

278 REP. BRIAN: Are these funds part of or subject to the interim investigations? Is this a response to formalize that process?

282 DAVE COWLEY: In their review of the inmate trust program, the audits division looked at the statutes and indicated that the Department should seek legislation to clarify that the revenue were being deposited

in the inmate welfare fund pursuant to ORS 179.510.

289 REP. BRIAN: Without this legislation, what would you propose be done with these funds?

290 DAVE COWLEY: The auditors recommended that we clarify legislative intent. There was some discussion on their part as treating these as miscellaneous revenues.

301 CHAIR MILLER: Can some of these funds be used for the literacy screening?

308 REP. BAUMAN: We just considered a bill to pay for the cost of inmate care. I do not want to send out to constituents that the income from machines and programs are buying exercise equipment, supplies and services. Expresses feelings about the program and current budget cutting.

357 DAVE COWLEY: Has Denis Dowd discuss the issue.

380 DENIS DOWD: The issue raised is a good one. The statute is relatively specific on what those funds can be used for. What has happened traditionally is all inmate recreational funding comes from this fund because that has been the way the institution has developed expenditures.

399 REP. BRIAN: Would like to see the budget and some detail on revenue, historical expenses, and projections.

TAPE 2, SIDE B

014 REP. JOHNSON: Are there any constitutional requirement that these kinds of activities be provided to inmates?

018 DENIS DOWD: Not aware of any constitutional requirements.

019 REP. JOHNSON: So we can provide a prison that has no recreational opportunities as constitutionally okay?

021 DENIS DOWD: That is a legal question, but to the best of my knowledge, yes.

023 REP. BAUMAN: Endorses Representative Brian's approach on adding budget detail.

028 CHAIR MILLER: We will reschedule this to have time to gather information requested,

032 REP. BAUMAN: There are other institutions such as foster homes and Donald E. Long Home were there are few exercise programs.

039 CHAIR MILLER: Further comments on HB 2202? Closes hearing on HB 2202.

PUBLIC HEARING ON HB 2203

045 JOHN FOOTE, INSPECTOR GENERAL FOR THE DEPARTMENT OF CORRECTIONS: Gives an overview of office and explains the four basic functions: 1) internal affairs; 2) auditing function; 3) rule making function; and 4) inspection branch. Provides testimony, Exhibit E, and states that the statute was misnamed. It should be noted that ORS 162.135, being proposed for change, affects ORS 162.185.

089 REP. MASON: Under ORS 162.185, the supply and contraband statute, "a person commits the crime of supplying contraband if (a) the apparent person knowingly introduces any contraband into a correctional facility, juvenile facility, or state hospital." Just bringing it in is sufficient under that statute isn't it?

096 JOHN FOOTE: Yes.

097 REP. MASON: Worried about what is on line 9, because as an attorney, I bring money, in my pocket, to the prison. Can you address that?

104 JOHN FOOTE: That had not occurred to me. Perhaps we need to eliminate that or make it applicable to inmates only.

110 REP. MASON: The money thing bothers me. I do see the purpose of not wanting money coming in.

120 CHAIR MILLER: Thank you Mr. Foote. Closes public hearing on HB 2203.

WORK SESSION ON HB 2199

129 HOLLY ROBINSON: Summarizes the bill and reviews the testimony.

CHAIR MILLER: Any comments.

144 HOLLY ROBINSON: This amendment would not go any where in the criminal code but be part of the statutes that deal with licensing and regulations.

158 REP. BAUMAN: Questions the written testimony of Denis Dowd. At the end of the first page it states no disciplinary action is taken against an inmate offender until completion of the confirmatory testing. An inmate offender under field supervision would be taken into custody.

168 REP. MASON: Does Rep. Johnson have an amendment to the bill?

170 REP. JOHNSON: The focus is we don't want these field tests being used for anything other than the stated purpose. It would be appropriate to add at the end of paragraph 1E a phrase like "provided that the results of any such field tests shall not be used either (1) as evidence in any court of law or (2) for the purpose of discipline of any such inmate" or however the appropriate language would need to flow. They agreed it was language they could live with because it conforms to their intent. It would clean up concerns about misuse of these test. I move this be amended to contain language to that effect.

186 CHAIR MILLER: Rep. Johnson has moved that language to the effect these field tests are to be used for limited purposes and not introduced into evidence at criminal trials and only as a first step in leading to a further test.

194 REP. JOHNSON: The two evils we are trying to prevent are inaccurate tests being used as evidence or inmates being disciplined based on inaccurate tests.

199 REP. PARKS: Comments on accuracy of tests.

208 REP. MASON: Suggests to accept Rep. Johnson's amendment with the

proviso that counsel check with Legislative Counsel vis a vie the relating clause and if the relating clause will accept the amendment, then the bill would go with the amendment. If not we would rely on legislative intent. There would be no amendment into the full committee now.

224 REP. JOHNSON: If it cannot fit in the relating clause then we are trying to do something we cannot do.

228 CHAIR MILLER: There may be difficulties with the relating clause. The intention is quite clear as to the field test. Suggests adoption of the bill as is and between now and the time it comes up in full committee have counsel study it and in full committee state the concerns.

242 REP. MASON: Always have the option of noticing the subcommittee at the same time to meet quickly.

248 REP. JOHNSON: While referring to these test as inaccurate, I adopted the statutory definition which is implied in the statute.

257 CHAIR MILLER: Is there a motion on this bill? Rep. Mason moves HB 219 9 to the full committee with a do pass recommendation.

260 COMMITTEE ASSISTANT: Roll Call:

Rep. Baum: Aye Rep. Bauman: Aye Rep. Brian: Aye Rep. Johnson: Nay  
Rep. Mason: Aye Rep. Parks: Aye Rep. Sunseri: Aye Chairman Miller: Aye

279 CHAIR MILLER: HB 2199 is moved to the full committee.

WORK SESSION ON HB 2203

286 REP. MASON: Regarding HB 2203, the only way to solve the money problem is to pull money out of the list.

297 JOHN FOOTE: No objections.

301 REP. BRIAN: The point is you don't want inmates obtaining money.

302 JOHN FOOTE: Money has the same effect as all contraband.

303 REP. BRIAN: We could leave money in as it applies to inmates.

309 JOHN FOOTE: If it could fit within the statute that would be great. Money is under the definition of contraband generally.

315 CHAIR MILLER: Do you have any idea of the fiscal impact on this bill?

317 JOHN FOOTE: It is being prepared but do not think it will have any effect on the Department but some impact on local DAs.

330 REP. BAUM: Marijuana is being seized and disposed of.

333 JOHN FOOTE: Yes and the inmate is disciplined unless there is conspiracy to deliver and distribute it within the institution.

343 REP. BAUMAN: Comments on a recent news paper article regarding how drug free the prisons are.

350 JOHN FOOTE: You are referring to our random urinalysis test and

last month it was 3.9%, testing over 500 inmates.

353 REP. BAUMAN: This is not a big problem, you just need a tool.

358 REP. MASON: Moves the deletion on line 9 of the words "(c) money" leaving the word "or" in.

367 CHAIR MILLER: Rep. Mason moves essentially for the deletion of the word "money" on line 9(c), page 1 of the Bill, is there discussion.

371 REP. MASON: Mr. Foote, if this comes out of subcommittee and on the floor, you can bring it up in the Senate.

371 CHAIR MILLER: The amendment is adopted. Is there motion on HB 2203?

REP. MASON: Recommends a do pass as amended to full committee.

401 REP. MILLER: Roll call on the bill as amended.

COMMITTEE ASSISTANT: Roll call:

Rep. Baum: Aye Rep. Bauman: Aye Rep. Brian: Aye Rep. Johnson: Aye  
Rep. Mason: Aye Rep. Parks: Aye Rep. Sunseri: Aye Chairman Miller: Aye

CHAIR MILLER: HB 2203 is passed to the full committee. Asks Rep. Mason to carry HB 220 3 before the full committee. Asks Rep. Baum to carry HB 2199.

424 CHAIR MILLER: That is all at this time. Is there further business to come before the subcommittee? We are going to schedule a tour of a penitentiary to determine the extent of the use of those resources discussed earlier and will be notified of the date.

TAPE 3, SIDE A

015 CHAIR MILLER: Adjourns the meeting at 2:50 p.m.

Submitted by: Reviewed by:

Kathy Neely David Harrell Assistant Office Manager

EXHIBIT LOG:

A - Testimony on HB 2200 - Scott Taylor - 1 page  
B - Testimony on HB 2199 - Denis Dowd - 2 pages  
C - Testimony on HB 2201 - Dave Cowley - 2 pages D - Testimony  
on HB 2202 - Dave Cowley - 2 pages E - Testimony on HB 2203 - John  
Foote - 9 pages