

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 2203 (Public) HB 2369 (Public) HB 2370 (Public) HB 2373 (Public) HB 2374 (Public)

HOUSE COMMITTEE ON JUDICIARY CRIME AND CORRECTIONS

January 23, 1991 Hearing Room 357 1:00 p.m. Tapes 4 - 6

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

VISITING MEMBER: Rep. Kelly Clark

STAFF PRESENT: Greg Chaimov, Committee Counsel Kathy Neely, Committee Assistant

WITNESSES: John Foote, (HB 2203) Bill Linden, Judiciary Dept. (HB 2369, 2370, 2373, 2374) Ross Shepard, OCDLA (HB 2369, 2370) Charlie Williamson, OTLA (HB 2369) John Gervais, (HB 2369) Dave Phillips, Dept. of Revenue (HB 2370) Jim Markee, (HB 2370) Steve Rodeman, OCUL (HB 2374)

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TAPE 4, SIDE A

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

PUBLIC HEARING ON HB 2203

009 CHAIR MILLER: An amendment will be offered by Mr. Foote.

013 GREG CHAIMOV: Reviews the bill and amendment to be proposed.

021 JOHN FOOTE: Provides testimony on amendment. States the definition of money is similar to part 4 of the statute containing the definition of contraband re: the two step process: 1) possessed by an inmate and 2) dangerous. Made money specifically identifiable to an inmate.

030 REP. MASON: Does the definition of corrections facility include halfway house, etc.?

038 JOHN FOOTE: Refers to the definition in the statute. Would go with the same.

047 CHAIR MILLER: Closes hearing and opens work session.

WORK SESSION ON HB 2203

049 REP. MASON: Moves to adopt the amendment, HB 2203-2.

045 CHAIR MILLER: Calls for discussion on the motion, with no objection, it is adopted.

049 REP. MASON: Moves the bill to full committee with a do pass recommendation.

CHAIR MILLER: Calls for discussion on the motion. Calls for roll:

COMMITTEE ASSISTANT: Roll call vote.

Rep. Baum: Aye Rep. Bauman: Aye Rep. Brian: (excused) Rep. Johnson: Aye Rep. Mason: Aye Rep. Parks: Aye Rep. Sunseri: Aye Chair Miller: Aye

CHAIR MILLER: The bill is passed to full committee. Asks Rep. Mason to carry the bill.

PUBLIC HEARING ON HB 2369

061 BILL LINDEN, STATE COURT ADMINISTRATOR: Introduces self and offers testimony on HB 2369. See Exhibit A. States examples.

115 REP. SUNSERI: Questions the law with regard to the Freedom of Information Act?

123 BILL LINDEN: Responds there is specific criteria for the release of information under the federal act and is applied independently with Oregon law. The federal act is intended to get information from the federal government.

128 REP. JOHNSON: Isn't it possible a person could be found by stating a name in voir dire?

149 BILL LINDEN: It is possible. Many courts are adopting systems where jurors are referred to as numbers. Questionnaires are provided to counsel at voir dire with biographical information.

149 REP. JOHNSON: Discusses purpose of the jury system as a safeguard against rigged juries. Is there a danger in releasing this information? How will the jurors be protected?

158 BILL LINDEN: The greater danger is a system where there is free access to addresses and phone numbers. By restricting this access there will be less chance of "ex parte" discussions with jurors.

170 CHAIR MILLER: Comments on exemptions and cautions on adding additional exemptions.

179 BILL LINDEN: Thinks it is a big enough problem. Wants to avoid a security situation. This would be preemptive medicine to assure jurors are not approached. The bill asks for statutory authority.

224 REP. PARKS: Comments on his district's policy of publishing names of grand jurors because of their statutory authority of investigation and that jurors are not being harassed or threatened because of it.

282 BILL LINDEN: Responds that grand juries are special cases and gives examples. Chooses not to make them the exception but to include all types.

305 REP. PARKS: Disagrees and comments on the prison riot. Does not see a problem.

318 BILL LINDEN: Cannot give real life examples and hopes the situation never arises. States grand juries can be separated from petite juries.

342 REP. BAUMAN: Comments on Multnomah County's procedure of giving detailed information before voir dire. Unsure of the danger to jurors.

370 BILL LINDEN: Comments that are jurors are not there by choice. This bill addresses jurors' concerns for safety.

390 CHAIR MILLER: Asks about the exemption of names and addresses and asks what he would argue if on the opposite side. Is there any reason why it should be available?

BILL LINDEN: It would be helpful for lawyers, but does not think it is a good reason to allow the information to be disclosed.

429 ROSS SHEPARD, LANE COUNTY PUBLIC DEFENDER, REPRESENTING OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Offers testimony against the bill and comments on previous testimony. Lawyers would like the information before trial. Directs the committee to Article 1, Section 10 of the Oregon Constitution and quotes that no court shall be secret and justice shall be administered openly. States making this information confidential may lead to Constitutional challenges in the future. Asks to leave as it is.

468 REP. JOHNSON: Would the information need to be available if preemptive challenges were abolished?

ROSS SHEPARD: Yes.

TAPE 5, SIDE A

044 REP. MASON: The bill would include names?

ROSS SHEPARD: Yes. Under Section 2b.

REP. MASON: Can see a Constitutional problem with the names. Addresses are not a problem.

053 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: Introduces self and offers testimony in opposition to the bill. See Exhibit B. States that obtaining the information on a juror in a unfamiliar community is helpful. Discusses the written material given to the committee, which are amendments. These amendments prevent people no interested in the case from getting information.

082 REP. JOHNSON: Refers to paragraph 2a of the bill which states "that the documents listed in subsection 1 may be released upon motion and showing the documents are relevant and necessary to adjudication of the case." Does that address your concern?

086 CHARLES WILLIAMSON: Comments on adjudication and jury selection. Comments on voir dire examination.

(1:35 p.m., Rep. Clark comes in to sit with committee)

092 JOHN GERVAIS, OREGON NEWSPAPER PUBLISHERS ASSOCIATION: Introduces self and offers testimony against the bill and proposed amendments by the Trial Lawyers. Expresses that there is no compelling need and no problem.

110 CHAIR MILLER: Closes the hearing on HB 2369.

PUBLIC HEARING ON HB 2370

121 GREG CHAIMOV: Comments on HB 2370's purpose.

130 BILL LINDEN: Offers testimony in favor of the bill. See Exhibit C for written testimony. Comments on collection and the Revenue Department's responsibility. In Section 2, wants to add that actual collection costs cannot exceed the amount actually collected. The original intent was to give the Department of Revenue authority to collect, assignment authority, and ability to recoup costs.

161 REP. PARKS: Requests explanation of the fiscal impact. What is the proposal for priority payback?

173 BILL LINDEN: There are no statutory guidelines. Restitution is the top of the list. Comments on a bill for a unitary assessment that will be introduced later. The current bill does not tell how the money is assessed when collected but reflects concerns that restitution be at the top. Comments on the fiscal impact statement.

195 REP. PARKS: Thinks it is a good idea. Comments on unitary assessment.

204 BILL LINDEN: Recalls the bill that will be introduced later.

208 REP. PARKS: Asks if a fiscal impact statement requires automatic referral to ways and means.

210 CHAIR MILLER: This one will likely be referred.

219 REP. JOHNSON: Most collection agencies get paid a 50% cut. What would be done when the agency collects the full amount but you only get a portion because of its fee? If the decision is to use the agencies exclusively, and the Department ends up getting less than originally thought, how will it be handled?

236 BILL LINDEN: Discusses current practice of low priority items. States that it is rare to collect 100 % of assessments. The funds are currently disbursed by the trial judge's priority. Under the unitary assessment, the money would be distributed according to the statutory priorities in the bill.

259 REP. JOHNSON: Questions exclusive use of agencies.

261 BILL LINDEN: The Dept. of Revenue has collection techniques that can be utilized. The bill provides for recapture of costs.

268 REP. CLARK: Not clear if this gives the agency authority assign to private collection. Is that the intent?

279 BILL LINDEN: Yes. Section 1, lines 4 to 6 state: "authorized to be assigned for collection". Interprets that it can be assigned to Revenue or others.

293 DAVE PHILLIPS, REGIONAL MANAGER OF COLLECTION DIVISION, DEPARTMENT OF REVENUE: Introduces self and offers testimony on the bill. States the Department has no position on the bill but will comment on current policies and practices. Requests come to the Department to collect debts. The Department has no statutory authority to do so. There are also staffing issues involved. The current statute permissively allows the Department to provide assistance but this bill appears mandatory. It would require the Department to reduce service to other agencies.

332 REP. CLARK: Does the Department have ability to assign it accounts out for collection?

331 DAVE PHILLIPS: Yes. If unable to collect other agencies' accounts, but generally returns them to the assigning agency.

334 REP. BAUM: How much is uncollected?

337 DAVE PHILLIPS: Have not discussed this with the Department of Justice.

340 REP. BAUM: Refers the question to Bill Linden in the audience.

346 REP. BRIAN: If this is mandatory, would the cut backs occur with the fiscal projection?

353 DAVE PHILLIPS: Fiscal impact would not cause the Department to reduce staffing levels.

358 REP. BRIAN: The Department would like some control in its case load.

366 DAVE PHILLIPS: Statute language says the Department may assist. Since the increase in cases from other agencies, the Department has cut back on collection activities. Offers examples.

389 REP. PARKS: Asks how the witness would amend the bill.

398 DAVE PHILLIPS: In Section 2, line 11, where it states the "Department shall collect and disburse to the state agency.", delete "shall". It takes away from the Department's discretion.

406 REP. PARKS: Would you change it to "may assist in the collection"?

DAVE PHILLIPS: That would allow for discretion. Under the general statute, the Department can set criteria on the accounts and have the flexibility to change the criteria.

493 REP. JOHNSON: Quotes the last sentence of the bill, "The Department may deduct from the amount collected the actual collection costs

incurred." Does this mean the Department will not be able to collect enough money to cover costs?

DAVE PHILLIPS: Comments how the program works and what is currently being charged.

446 REP. JOHNSON: It seems the Department can be held harmless from the effort and the costs can be taken off the top of what is brought in. Why can't this be done if the statute authorizes it?

453 DAVE PHILLIPS: Does not know the answer. Comments that the general statute allows the Department to charge actual costs.

461 REP. JOHNSON: Discusses the standard collection procedure. Does the Department have authority in this bill to make discretionary decisions in settling with the debtors?

476 DAVE PHILLIPS: Does not see the authority. In other agency programs, the Department does not make the final decision with the debtor.

TAPE 4, SIDE B

041 REP. JOHNSON: Wouldn't it be better to have the authority to handle it through the Department?

045 DAVE PHILLIPS: Discusses the difficulty of that because the Department is dealing with 90 state agencies.

047 CHAIR MILLER: Calls further witnesses. Asks Mr. Linden to answer Rep. Baum's previous question.

048 BILL LINDEN: Estimates there is approximately \$12 and \$13 million in outstanding accounts receivable. Discusses automated system currently used in some counties.

063 REP. BRIAN: Would the Department have any objection to amending the bill to make the assignment at the Revenue Department's option?

066 BILL LINDEN: No objections. Comments on the Department of Revenue as a collecting agent.

074 ROSS SHEPARD, OCDLA: The organization does not oppose the bill but questions how much money it will raise. Discusses conditions of parole release and payment of fines, assessments, etc. States if a judge can't get the money paid, neither would a private collection agency.

081 REP. PARKS: Comments on a study on collection and the fact some counties make no effort to collect.

098 JIM MARKEE, OREGON COLLECTORS ASSOCIATION: Introduces himself and offers testimony in support of the bill. Comments on the language in lines 8 and 9 which states "the amount collected minus any collection costs shall be credited against the amount due under the judgment." Whatever the agency spends will be added to the judgment. Discusses private sector practice regarding costs.

143 REP. JOHNSON: A standard collection agency contract is 50%?

146 JIM MARKEE: The range is from 20 to 50%.

147 REP. JOHNSON: Would they require 50% with these types of collection cases?

150 JIM MARKEE: Thinks it would be more than 20%. Discusses agencies bidding.

154 REP. PARKS: Comments on deducting agency costs from the collected amount.

159 GREG CHAIMOV: That is a correct understanding.

160 REP. MASON: Wants to consider making criminal fines into judgments of record in the Circuit Court and thus liens against real property in the jurisdiction.

187 JIM MARKEE: Comments on Rep. Mason's idea.

BILL LINDEN: Thinks its a good idea. Comments on line 7 where it discusses actual collection costs incurred. Believes it is unclear.

195 REP. BAUMAN: Isn't there a problem when a judge fines the defendant for a certain amount and then collection costs are added to it after the fact? That would make the judgment more than the ordered amount. Uncomfortable about this.

213 JIM MARKEE: Believes that the judgments will have to be changed to include the collection costs if this is adopted.

217 REP. PARKS: Believes that is correct.

223 REP. BAUM: Suggests an amendment to line 7 after "costs" to insert the words "or the contracted costs" and on line 11 after "Department" insert "may" instead of "shall". If costs are going to be deducted from the amount obtained from the defendant, will there be any constitutional problems because the amount collected will be more than the court order?

242 JIM MARKEE: Responds with an example from the Oregon Collectors Association on collection agencies that developed contracts allowing for the addition of collection costs. Comments on Attorney General's opinion in this situation.

273 REP. CLARK: Questions counsel on what happens in a civil judgment where there is no provision for the collection costs, are they included?

281 REP. BAUM: Garnishment statutes give the right to add to judgment.

283 GREG CHAIMOV: Comments on the practice regarding anticipated collection costs when the judgment was handed down but not now.

REP. CLARK: The garnishment statutes are limited to civil cases.

GREG CHAIMOV: Limited to the expenses of garnishment.

290 REP. BAUMAN: States a prejudice forming because the purpose of a criminal fine is not to enrich the state. It is punishment or rehabilitation. Comments on the state Constitution and adding collection costs would go beyond the purpose of the judgment.

321 REP. SUNSERI: Expresses concern with the bill regarding restitution

and the fact the defendant has no say in having the debt turned over to a collection agency. The only solution is making a judgment a lien.

332 CHAIR MILLER: Calls for further witnesses.

336 BILL LINDEN: Comments that criminal judgments do become liens against real property. Restitution is a judgement in the favor of the state not the individual. Discusses collection costs. Suggests the judgment be considered satisfied by the amount collected and the costs be disbursed. This might eliminate taking money continually.

361 CHAIR MILLER: Closes the hearing on HB 2370.

PUBLIC HEARING ON HB 2373

388 BILL LINDEN: Offers testimony on HB 2373. See Exhibit D for written summary.

TAPE 5, SIDE B

012 REP. MASON: How does this related to DWS?

014 BILL LINDEN: Only effects misdemeanors.

REP. MASON: Would there be fewer suspensions for failure to appear?

BILL LINDEN: Not certain. Discusses probability of fewer future suspensions.

023 REP. MASON: Comments on DWSs. The bill's goal might be to have these resolved with a fine. Finds that attractive and a more efficient use of money and court time.

036 REP. PARKS: Isn't failure to pay a fine grounds for suspension?

037 BILL LINDEN: It can be. Believes this would give judges immediate recourse against defendants as opposed to current method.

044 REP. MASON: Is there a fee to DMV for every suspension?

BILL LINDEN: The fee is now part of the defendants' costs.

REP. CLARK: This is not limited to traffic infractions then?

BILL LINDEN: No, it would apply to other infractions.

REP. CLARK: But not criminal misdemeanors?

BILL LINDEN: No.

054 REP. BAUMAN: Comments on failure to pay fines and procedures for attendance at hearings. Comments on the effect of not having trial.

068 BILL LINDEN: Those affected are the ones who choose not to show up in court or to pay the bail. This accelerates the process

074 REP. BAUMAN: Comments on making progress with this bill by eliminating one stage of waiting in the court's prospective.

BILL LINDEN: Yes, and the time and money involved.

080 CHAIR MILLER: Closes hearing on 2373.

WORK SESSION ON HB 2373

081 REP. MASON: It is a good concept. Moves the bill to full committee with a do pass recommendation.

CHAIR CLARK: Rep. Mason moves HB 2373 to the full committee with a do pass

recommendation, is there further discussion?

096 REP. BRIAN: Comments on references made about the defendant being able to set aside the fine. Asks counsel to show where it is in the bill and discuss any standards for this.

101 GREG CHAIMOV: Not aware that the amendments address that situation.

103 BILL LINDEN: There is nothing specific in the bill but there is a right to petition for the judgment to be set aside for good cause.

109 REP. CLARK: Would this use the standard set out in ORCP?

BILL LINDEN: Believes the ORCP standard would not apply. The lower courts could be moved to set aside the judgment.

118 REP. CLARK: Comments on ORCP regarding civil cases. What are the ground rules for setting it aside?

122 BILL LINDEN: The 1989 legislature offered this practice to traffic infractions and this is just extending it to other infractions.

130 REP. MASON: Comments on Rep. Clark's point. Is still comfortable with the bill. Discusses a conceptual amendment.

136 REP. BAUMAN: Does not like the bill. Discusses concerns with the bill: 1. How much or how many? States that DWS will still exist. 2. Does not feel comfortable enough to move this bill on. Comments that it seems the sentence will be first and the trial is later.

168 REP. BAUM: Comments on who the bill is addressing, not anyone that will get jail time. Thinks it is a good bill.

177 CHAIR MILLER: Calls for the vote on the motion.

REP. MASON: Do you want to include the conceptual amendment?

CHAIR MILLER: Wishes to vote on the bill as it appears and to work on the amendment before it comes to full committee.

190 COMMITTEE ASSISTANT: Roll call vote:

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

CHAIR MILLER: HB 2373 is approved and passed to full committee with a do pass recommendation. Rep. Parks will carry the bill.

203 REP. BAUMAN: Wants to know the projected number of cases impacted.

Comments on cost savings.

212 CHAIR MILLER: Opens hearing on HB 2374.

PUBLIC HEARING ON HB 2374

217 BILL LINDEN: Offers testimony on HB 2374. See Exhibit E for written testimony. Discusses qualifications of indigents in the program. Refers to the letter from the Credit Union League. (Exhibit F). States this bill will expedite the matter.

282 REP. PARKS: Refers to budget regarding indigence verification.

285 BILL LINDEN: Comments on verification programs in all counties. A statewide study indicates the cost spent is paid by avoiding the costs of ineligible defenses. The figures were prepared with the 15% cut required.

307 REP. PARKS: Any compensation to financial institutions?

BILL LINDEN: There are different informal compensation arrangements.

319 REP. JOHNSON: In Sections 5 and 7, the information received during the process of determining indigence is confidential and cannot be used for any other purpose other than seeing if they are entitled to free legal service. Assuming in some cases where a fine will be assessed, shouldn't the information already collected be given to the Department of Revenue or the collecting agency. Comments on cost savings.

337 BILL LINDEN: Comments on financial obligations imposed and the court's obligation to make an independent determination of ability to pay. Prefers not to have the information used because it would be harder to get information without strict controls on how the information will be used.

355 REP. JOHNSON: Comments that Oregon should be able to get information without paying twice.

365 BILL LINDEN: Comments on Rep. Johnson's point and responds with an offer to look into it.

378 REP. JOHNSON: Suggests the information be confidential until convicted then have it turned over to the court to assist in sentencing.

378 REP. BAUMAN: Believes this bill is worth while.

398 CHAIR MILLER: Calls further witnesses to the stand.

401 STEVE RODEMAN, STAFF ATTORNEY FOR OREGON CREDIT UNION LEAGUE: Offers testimony in favor of the bill. Refers to and comments on the November 1, 1990 letter from him to Bill Linden (Exhibit F). Would like some protection built into the bill.

1. In Section 2, lines 14 and 15 regarding authorization for release of the information. Suggests the release certification come from the defendant so there is a signature to use for comparison.

2. On page 1, lines 16 and 17 dealing with reimbursement for actual costs. Suggests setting a flat reimbursement fee.

3. On lines 23 and 24 regarding reasonable time to respond. Wants to define the time.

467 REP. BAUM: Refers to one specific charge in the statute.

TAPE 6, SIDE A

038 STEVE RODEMAN: Uses garnishments for an example.

REP. BAUM: The state would pay that?

044 STEVE RODEMAN: Yes.

REP. BAUM: Comments on the search time for certification.

STEVE RODEMAN: Explains time for search and verification of the record and getting a response prepared and sent. This request goes to a head teller. Discusses the procedure and time line for the search.

051 REP. BAUM: If the financial institution has a signed release from the authorizing person, could a phone call to the teller verify the information?

056 STEVE RODEMAN: If it is sufficient for the State Court Administrator, yes.

058 CHAIR MILLER: Closes hearing on HB 2374. Asks if there is further business before the committee. Adjourns the meeting at 3:10 p.m.

Submitted by: Reviewed by:

Kathy Neely David Harrell Assistant Office Manager

EXHIBIT LOG:

A - Testimony on HB 2369 - William Linden - 10 pages
B - Testimony on HB 2369 - Charles Williamson - 1 page
C - Testimony on HB 2370 - William Linden - 8 pages D
- Testimony on HB 2373 - William Linden - 4 pages E - Testimony on
HB 2374 - William Linden - 10 pages F - Testimony on HB 2374 - Steve
Rodeman - 2 pages