

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

January 29, 1991 Hearing Room 357 1:00 p.m. Tapes 7- 10
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 MEMBERS: Rep. Kevin Mannix Rep. Kelly Clark
STAFF PRESENT: Greg Chaimov, Committee Counsel Holly Robinson,
Committee Counsel . Jeff Steve, Committee Assistant

MEASURES HEARD: HB 2196 - Residency For Release Of Parolees (PH/WS)
HB 2194 - Corrections Officers' Powers (PH/WS) HB 2195 - Supervision
Fees (PH) HB 2201 - Reimbursement For Care Of Inmates (PH/WS) HB 2202 -
Revenues For Inmate Care (WS) WITNESSES: Elyse Clawson, Department of
Corrections (HB 2195 and HB 2196) Cindy Burgess, State Board of Parole
(HB 2196J Fred Pearce, Department of Corrections (HB 2194, HB 2195, HB
2201, HB 2202) Mary Botkin, AFSCME (HB 2194) Bob Keyser, Federation of
Oregon Parole and Probation Officers (HB 2195) Dave Caulley, Department
of Corrections (HB 2202)

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 7, SIDE A

004 CHAIR MILLER: Calls meeting to order at 1:00 P.M. Rep. Baum calls
meeting to order.

HB 2196 - ESTABLISHING RESIDENCY FOR RELEASE OF PAROLEES - PUBLIC
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010 ROBINSON: Summarizes HB 2196. -Briefly discusses HB 2196 which
mod)ifies the method of establishing residency for release of parolees.
Notes that Rep. Kevin Mannix was the sponsor of the initial legislation
and is here today as a very interested party. 031 ELYSE CLAWSON,
DEPARTMENT OF CORRECTIONS: EXHIBIT A The Department of Corrections
supports HB 2196. The proposed language changes in HB 2196 would enable
the Department to carry out the intent of the original legislation which
was to release parolees to the county where they resided when they were
committed to prison. Essentially, the current statute provides a list of
records to be used in rank order to determine which county the parolee
should be paroled to. Noted most parolees have not kept their licenses
or their addresses on those licenses current which has caused a problem
for the Department. Not only is the release of the parolee not
necessarily resulting in meeting the intent of the law, but parolees are
actually being sent to counties where they have not resided for years.
The Department needs the most current information available to ensure
that intent of legislation is followed; also includes Department's
records. The Department urges a "do pass. on this legislation.

050 CHAIR MILLER: The list [of records] in HB 2196 then is just
simply among some of those items you may consider? 054 CLAWSON: Yes.
Currently you go down each one of those in order and whichever one you
come to first has been the one that we've used as residency. For
instance, an Oregon driver's license is the first one in the order. If
we have old addresses or invalid driver's licenses, that's not always
resulting in the parolee going back to their actual residence.

062 CINDY BURGESS, OREGON BOARD OF PAROLE: The Board of Parole
supports HB 219 6 and urges a "do pass" recommendation.

HB 2196 - RESIDENCY - WORK SESSION

081 MOTION, REP. BRIAN:: Moves HB 2196 to the Full Committee with a "do pass" recommendation. DISCUSSION ON THE MOTION 082 REP. MANNIX: Supports HB 2196 and appreciates efforts of Dept. of Corrections and the Board of Parole concerning implementation. Monthly reports from them indicates no community has received a disproportionate number of releasees. They've kept statistical information monthly and have made an extraordinary effort to make sure that the bill is implemented but they did run into this glitch with the addresses and this does give them some more flexibility on documentation. 090 REP. MASON: This is unrelated but when we think about this topic of where people go when they're released, when we put together our latest economic development scheme for Eastern Oregon, that we make part of the deal with Connecticut or whoever it is that we're going to sell these beds to, not limited to the United States--that we make sure that airline or bus tickets, or train tickets home are paid for up front.

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- 101 REP. BAUM: Comments about locations.

111 VOTE: 8 0 Motion passes. Rep. Mannix to carry.

Aye: Baum, Bauman, Brian, Johnson, Mason, Parks, Sunseri, Miller No: 0

HB 2194 - POWERS OF CORRECTIONS OFFICERS - PUBLIC HEARING

119 FRED PEARCE, DEPARTMENT OF CORRECTIONS: HB 2194 is submitted by the Department and would authorize the Director of the Department to designate specific corrections or corrections officers on specific assignments as peace officers with the powers and authority of peace officers for the sole purpose of preventing, pursuing, searching for, or recapturing inmate escapees and only until such activities can be assumed by the law enforcement agency having general jurisdiction. Current statutes ORS 423.010 - ORS 423.075 do not provide this authority. Referred to verbal advice from a previous Attorney General counsel to the Department of Corrections that said corrections officers had no authority to pursue and apprehend escaping inmates beyond the Department of Corrections property surrounding the facility. Noted that when he took over as Director, he (Pearce) discovered this, requested and received a letter of opinion from the Department's general counsel which stated that the corrections officers could pursue escaping inmates, as long as they had constructive custody of the inmate--essentially if they could continue to see the inmate(s), or for at least a short period of time, they did not lose sight of the inmate--up to 15-20 minutes. They also recommended that we come before the legislative session to clarify that authority. Noted HB 2194 is intended for corrections officers to continue inmate escape intervention beyond the current physical boundaries, enhancing the likelihood of successful escape prevention and increasing the security and safety of the public. This proposed bill is not intended to give general law enforcement status to corrections--it would give them that status only as specified by the Director of the Department of Corrections only as they are involved in escape prevention intervention and only until the responsibility for escape prevention intervention is assumed by the appropriate law enforcement agency. There would be no direct cost increases to the taxpayer for the passage of bill and recommends a "do pass..

149 REP. SUNSERI: Are the corrections officers allowed to carry weapons in the event that there's an escape?

151 PEARCE: Yes, they are.

153 REP. MASON: Referred to a Tennessee case and the use of deadly force to prevent escapes. Our statutes would not allow one of your corrections officers to use deadly force to stop an inmate from going over a wall or through a fence, if that inmate had not threatened any force. (Read ORS 161 .239 involving the use of deadly force.) The irony is that a prisoner going over a wall or through a fence who had not threatened the use of force could not be stopped by the use of deadly force. There is a Tennessee case that may maintain that you cannot use deadly force to stop a prisoner. Would maintain you could. Wants the committee to consider an amendment to this bill which would allow deadly force to be used in an escape in which force itself is not being used.
193 CHAIR MILLER: How would ORS 161.265 be mixed in with what was just stated? (Read the

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statute.) 201 REP. MASON: That may take care of it. 203 REP. BAUMAN: Can you tell us what it is you get, if we pass this, that you don't have now? 206 PEARCE: Right now we do not have explicit authority by statute to chase and retrieve an escaping prisoner off the premises. What we're doing essentially based on an Attorney General's opinion is the constructive custody theory that you don't have to have physical possession of the inmate in order to do that. But that's somewhat tenuous and they recommend that we have specific authority to do it. 214 REP. BAUMAN: So now you could shoot them going over the wall. 216 PEARCE: We could anyway. What you read was my understanding of our authority to use deadly force when escaping. 218 CHAIR MILLER: Would this statute be read to simply allow the use of force, including deadly force, to prevent the escape and perhaps your bill allows someone to be involved in the apprehension after the escape. 226 PEARCE: That's correct. 228 REP. BRIAN: This is basically a "hot pursuit" type of bill where you're going beyond the grounds. Being a separate section, deadly force would not apply since they've already escaped from the correctional facility other than to the extent as in Section 11. 237 PEARCE: That's correct and that's the intent pending the arrival and assuming that a search for the escapee ensued we would then have statutory authority to do that. Up until a short time ago, the officers would not chase beyond the property because that was a directive of a previous administration. 242 REP. BRIAN: Interesting that a person who has not threatened dangerous or deadly force in escaping and a guard can use deadly force against them. That's a use of deadly force that police officers don't have because once eminent danger passes, you can't use deadly force whereas a guard seeing someone crawling over a wall could. 250 PEARCE: That's correct. 256 REP. BRIAN: You wouldn't know if that person attempting escape had used deadly force on another employe. 258 PEARCE: That's right. All you're seeing is someone leaving the facility and we would use deadly force if that was our only alternative. 260 REP. JOHNSON: Paragraphs 2(b), 2(c), and 2(d) of HB 2194 all refer to the phrase, "If the inmate is in the act of escaping from a correctional facility.. Can you define "act of escaping" for clarity? House Committee on Judiciary January 29, 1991 - Page S

271 PEARCE: "Escape" is defined in another statute (not with him). The act of "escape. is defined. Agrees to work with committee to develop a workable definition.

279 REP. MASON: Why are these inmates, after going free, immune from the acts of correctional officers? It's almost as if once they get out, the correctional officer would run into them somewhere and yet have no further authority. Why should we protect the escapee? 299 PEARCE: I don't think we should. At this point in time, I am not asking for authority to make all corrections officers peace officers.

312 REP. MASON: Hypothetically, a corrections officer is at a 7/Eleven. He looks across the counter and there's an inmate who's gotten a job and suddenly the officer has run into him. Under the way the bill reads, the officer would have no authority at that moment to do anything with the inmate. He'd have to go get a peace officer. He couldn't pursue him, search or recapture the inmate. If there's an escapee who's out and there's a corrections officer in his presence, the corrections officer should have a free hand to do what has to be done.

329 PEARCE: The only authority at that point in time would be that of a private citizen. 332 REP. CLARK: The corrections officers currently get quite a different set of training than general peace officers, is that correct?

339 PEARCE: They go through the five-week corrections officer's training at BPST which is new and is more extensive than we've given in the past, plus an additional three weeks of training that we do in the Department. Police officers go through eight weeks of training. I have no objection to modifying HB 2194 to encompass Rep. Mason's amendments because they would not give a police officer authority over all citizens.

360 ROBINSON: Noted definition of "escape" at ORS 162.135, Sub. 4 which says "escape means the unlawful departure of a person from custody or a correctional facility, etc." It's my understanding in reading the bill that the intent of the Department is to use this definition and the act of escaping is defined by this statute. It may be possible to either use the term or clarify it in there. Read definition of "escape."

384 REP. BAUMAN: In statistics that come forth occasionally regarding "escape, . it does include not just the "over the wall" kind of escape, but failures to report. 391 PEARCE: That's correct. There are levels, degrees of escape. 392 REP. BAUMAN: Refers to Rep. Mason's comments and levels of escape.

TAPE 8, SIDE A

003 PEARCE: Technically, if you walk away from a place or you fail to return, those are escapes, but they are not escape in the first degree.

005 REP. SUNSERI: It seems from the definition that unlawful absence is included in escaping, so in the scenario that Rep. Mason proposed of the person who's in the 7/Eleven store, wouldn't

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- the corrections officer have the right to apprehend the person there if they're unlawfully absent?

008 PEARCE: No. Only to the degree that they would as a private

citizen.

011 REP. SUNSERI: We're giving you and the corrections officers the widest latitude, so if you're comfortable with adding something to this bill to encompass that we can.

013 ROBINSON: The definition of "escape" says it means the unlawful departure of a person from custody. There are two different offenses. There's "unlawful departure" and there's also "escape." Because there is a distinction, escape in the first or second degree, besides being the fact that you're escaping from custody, there seems to be an element of force. "Unauthorized departure," which is the words that are used in the definition of escape is a Class A misdemeanor. It seems like unauthorized departure plus force or threat of force becomes escape. That's one of the distinctions that the committee might want to consider.

023 REP. JOHNSON: The definition of escape is stated to apply only to ORS 162.135 - ORS 162.205, which is the area that has these degrees of escape; i.e. escape in the first degree, escape in the second degree. In another chapter, there is a statute that gives your officers the right to shoot somebody when they try to escape, ORS 161.265. No where in ORS 161 is there found a definition of escape nor a reference to this other definition in another chapter of the ORS. Substantively, Mr. Pearce envisions this authority being such that it would give his corrections officers the right to pursue more or less until the regular state police, or whoever, can get involved in the act, correct? 034 PEARCE: That's correct. Officers have, in fact, taken vehicles and chased down inmates in the past. 038 REP. JOHNSON: Doesn't think this definition of escape really captures what we need it to capture to correspond with the statute we're dealing with to give the Department what it needs. Realizes it probably should be saved for a work session but it's important to get testimony from the Department concerning their vision of what's needed for this expanded quote "escape 047 REP. BRIAN: The bill as presented covers this hot pursuit and search. Recent discussion has covered a whole different thing where the trail is cold, it's two or three days later, one of your employees bumps into him (inmate) working at the 7/Eleven is the example given. Do you really want your people, probably off duty in that circumstance, trying to effect an arrest, unarmed in civilian mode versus calling the police? Of course, they still have the option of a citizen's arrest. 056 PEARCE: What occurs now is they spot somebody they know is an escapee or has failed to return, and they contact in some manner the police agencies and take them into custody. That's generally what happens. I am not interested in the employees of the Department of Corrections acting as citizens and becoming involved in citizen arrests, unless it's absolutely necessary because that puts themselves at risk financially and otherwise if they take some action that they're not covered for because they're not designated as peace officers. And I don't think that very often they would make a personal arrest under those circumstances.

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070 REP. MASON: Need to differentiate between giving the correctional officer the authority and the protection that goes along with the authority versus a duty.

087 ROBINSON: The bill (statute) as it came to us is a statute that stands alone. For some reason, it was not added onto ORS 161.265.

Because the language in terms of granting authority is really not defined as to how it would be done, has some concerns about how these two (statutes) would work together, given the fact that there is already a statute in place. How will you grant authority and how will that process work? 098 PEARCE: Concerning where it fits, Legislative Counsel determined where it was to go. The Attorney General assisted us in crafting the language and sending it to Legislative Counsel. As far as how we would do it—we would designate people who have a responsibility in the institutions to keep the people in the institutions as peace officers for this purpose. It would essentially be a blanket designation. Doesn't mean everybody who is a corrections officer in every instance would have the designation as envisioned here. If it's envisioned as Rep. Mason is considering, we probably would designate all corrections officers for that purpose. 114 MARY BOTKIN, AFSCME: Offers support for HB 2194. Thinks HB 2194 offers some correction in the statutes that has not existed before. The officers are very frustrated concerning their inability to pursue and apprehend escaping felons due to a policy from the Department of Corrections. Prior to Mr. Pearce's direction at the Department, the officers were required to call the state police and issue an APB rather than simply going after the escaping felon. I think that this makes some sense. The idea of some sort of limited peace officer status makes some sense because the duty authority, and most important, the protection that offers does provide a reasonable alternative to what they face now. Referred to 7/Eleven example given by Mr. Pearce.

HB 2194 - POWERS OF CORRECTIONS OFFICERS - WORK SESSION

160 REP. SUNSERI: Raises the question concerning if corrections officer is unarmed and encounters an escapee, for example, at a 7 Eleven store, is it just a matter of who's biggest (in terms of trying to apprehend the escape)? Maybe the privilege of carrying firearms to corrections officers should be extended. 170 MOTION, REP. MASON: Moves that on line 10, page 1 of the printed Bill the words, "is in the act of escaping. be deleted; the same words be deleted in lines 11 and 12. Replace those deleted words with, "has escaped or unlawfully departed." Believes that would be sufficient. DISCUSSION ON THE MOTION 190 REP. MASON: The purpose of this is to give the correctional officer the authority not only as originally requested by the Department, but also to give the corrections officer the authority should he or she run into an escapee. This does not imply a duty of the corrections officer to try to apprehend an escapee in some type of inadvertent encounter. Don't want to get into guns here. The implications of that ("guns") are absolutely monumental. This does not impose any duty upon the correctional officer should he or she try to apprehend an escapee, but it gives them the authority, and even more importantly, the immunity that a peace officer would have should

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- an apprehension be attempted. It's really a further protection of that corrections officer. 219 CHAIR MILLER: Notes Rep. Mason's motion leaps from the attempt inside the walls (the person starting to take off) to "it's already done.. Wonders if there's something we haven't covered in the act of escaping. 227 REP. MASON: Articulated a very appropriate and friendly amendment. Perhaps the motion should read, "is in the act of escaping or has escaped or has unlawfully departed.. Wants to replace deleted language with this language. . 235 REP. BAUMAN: Curious as to how many escapees there are who are on escaped status.

(Question directed to Mr. Pearce). 42 PEARCE: Out of 273 that escaped last year, we got 197 of them back. They're not all from correctional facilities. They either walked away from a job site, work camp or correctional facility. 254 REP. PARKS:: Can't believe the Department of Corrections really wants the authority the committee is talking about for corrections officers. Do you really want these people (corrections officers) out in the public, seeing an escapee, and taking it upon themselves to try to capture the escapee? 259 PEARCE: It's not their duty to do that (as indicated by Rep. Mason). They do it now. They either hold them for the police or they get the police, but they do it at some legal peril. They are very professional. They are going to do something if they see somebody they know is an escapee. I certainly support the amendment that gives them that legal protection if they do take that (action). I don't think this is going to induce anyone else to do something they would not otherwise have done, but it very well may protect them in the event that something goes array and someone gets hurt. 272 REP. PARKS: Wants them to have a tightly drawn statute; thinks it's justified. Wants police officers to have this authority but the amendment goes way beyond that and doesn't think it's good public policy. 296 CHAIR MILLER: If a corrections officer saw an identified inmate who has escaped and is in public with customers present, what would be the procedure? Taking into consideration, Rep. Parks' concerns. 310 PEARCE: Generally, the officer would leave the premises, try to keep it on observation, and call for an on-duty law enforcement agency and attempt to restrain the person from leaving if that's a last resort. It also depends on what they're wanted for, what kind of person they are, and also could be someone they know. Generally, a police officer won't apprehend the person until they come out of the premises. You don't want hostages or a problem around a lot of people. I'm convinced our officers have the same reasoning that they wouldn't do that either. Our officers do periodically spot people and call the local authorities and get a response. That's not to say they wouldn't take some personal action, if that's what it took. ! 332 CHAIR MILLER: Rep. Parks' concerns are well taken. Are you concerned that our embracing House Committee on Justice January 29, 1991- Page 9

an expanded authority to what you asked for is something you can support? 347 PEARCE: I can support it, yes. It really is more of a liability issue than an authority issue (refers to Mary Botkin's testimony). Without the authority and it gets into something with a felon, your liability starts right then. 360 REP. BAUMAN: My concern is corrections officers have the right to time off and a private life. The flip side of the liability issue is what if the corrections officer goes into a 7/Seven with their family, for example, on the way to an outing, and recognizes someone who hasn't shown up for a long time, and does nothing? The person (escapee) then holds up the 7/Seven and the clerk is injured. Are you really imposing a duty on corrections staff which is with them 24 hours a day? 391 PEARCE: I believe that a corrections officer who failed to take some action in that case could conceivably be subject to some disciplinary action. That does not mean that they have to take any physical action. If they see an escapee, and are off duty, and don't notify someone that they have, I would consider taking some kind of disciplinary action. There is a big difference between them whaling in with both fists and getting in their car and driving off without notifying anyone what they have seen. In my judgment, there is a duty to do something but not necessarily take and apprehend that person. TAPE 7, SIDE B 004 REP. BAUMAN: What if people in the store, for example, become involved in cross fire? 007 PEARCE: If the corrections officers have the peace officer status, and assuming they're armed (which we would not authorize), then they would still be protected, if

they were legally armed at the time. This gets complex. 011 REP.
BAUMAN: The point being, you would like them to have full-time authority
to act as a peace officer with regard to any level of escape, which is
what the amended bill does? 014 PEARCE: The limited peace officer
status that we are requesting in this bill. 016 REP. JOHNSON: How do
you correlate the existing authority to use deadly force with this bill?
Will existing authority to use force follow these officers as they're
chasing an escapee? 019 PEARCE: If they're escaping from a facility at
that time, yes. 020 REP. JOHNSON: Because the existing authority that
you have says that it really believes it necessary to prevent the escape
of a prisoner. So, after he's outside the wall, even though you can
chase him and keep track of him, . . . 023 PEARCE: That's still in the
act of preventing the-escape, that's why I was having some trouble
taking out the words, "is in the act of escaping." It needs to be there
to give the continuing authority while making that search and chase. 027
REP. JOHNSON: This proposed bill doesn't use the words "deadly force."
Referred to Section

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1 concerning the granting to individual corrections officers all the
powers and authority of a peace officer over inmates. Could a peace
officer shoot an escapee he saw running through a gate?

030 PEARCE: If a peace officer has knowledge that he is escaping from a
correctional institution-it isn't just a corrections officer.
Understands statute on escape from a correctional facility to be that
deadly force can be used to prevent the escape.

038 REP. JOHNSON: Reads "act of escaping language for appropriate use
as stated in statute. , 048 PEARCE: The language works, but the 24-hour
notice goes beyond what the Department envisioned. Once the local law
enforcement officials assume jurisdiction on the scene, we may assist
them, but I'm not asking for 24 hours. I would not oppose 24 hours. My
interest is in order to actually go forward with a search, if we want
to, that we can make a search and protect the officers.

056 REP. MASON: (Restates motion) by reading line 10: "Pursue an inmate
if the inmate is in the act of escaping or has escaped or unlawfully
departed,. and that's the language that would be added after "escaping."
So the language that would be added after "escaping" would be "or has
escaped or unlawfully departed." We're going to leave in the "act of
escaping. language and merely add the language, "or has escaped or
unlawfully departed" and continue on with the existing language "from a
correctional facility." 068 REP. PARKS: Don't have the statutes
before me but seems it would cover the 7/Seven example; i.e. If the
officer says, "stay here" and the escapee leaves, the officer could
shoot him, right or wrong? 073 REP. MASON: You have to go back to the
deadly force permission. Referred to ORS 165.265 which says "a guard or
other peace officer in a correctional facility as termed . . . is
just) fied using physical force including escape when 076 REP. PARKS: It
also says "to prevent the escapeThis is past the escape.

079 REP. MASON: The chair is right that you have to be in the
correctional facility and preventing the escape from the correctional
facility, so this bill does not give the correctional officer/peace
officer right to use any deadly force. However, should there be some
situation in the interaction in which a peace officer would be just) fied
in the use of some type of force, the correctional officer would also

have that justification because he is tantamount to a peace officer in the altercation. This bill does not impose a duty upon correctional officers who inadvertently run into escapees to do anything. It authorizes them, should they see fit, and gives them the liability protection that a peace officer would have in that situation. 100 REP. BAUMAN: Mr. Pearce came to us with a request. We have carried the issue to a different venue. The hypothetical situation was not brought to us by Mr. Pearce, the committee created it. Requests the committee to back off from the hypothetical situation and that this proposal be narrowly focused to address real life.

130 PEARCE: That was our intent when we brought the bill before the committee. House Committee on Judiciary~ January 29, 1991- Page 11

131 REP. BAUMAN: Thought that it was and we should stay with the original request.

138 REP. SUNSERI: Mr. Pearce, do you think these small changes that Rep. Mason has made are inappropriate to what you wanted to accomplish?
140 PEARCE: It certainly accomplishes what we wanted and a little more.
144 REP. MASON: In regard to Rep. Bauman's concerns, Mr. Pearce did relate that there are incidences where this has occurred. More importantly, Ms. Botkin related that there are incidents where this occurs. All but the hypothetical came out of my imagination, it is appropriate and reflects the reality of what Ms. Botkin related to us. I think the amendment is a practical amendment and is agreed upon between the Department of Corrections and the representative of the corrections officers. 164 VOTE: 6-2 Motion passes. Aye: Baum, Brian, Johnson, Mason, Sunseri, Miller No: Bauman, Parks 167 MOTION, REP. JOHNSON: Believes there are a couple of other amendments that would be appropriate. A technical one refers to the phrase in the "deadly force" paragraph which defines correctional facility as those facilities defined in another statute. "Correctional facility" is used several times and no where is that phrase defined. Reads paragraph 6 of ORS 162.135 referring to "correctional facilities." DISCUSSION ON THE MOTION
180 REP. BAUM: Wants to make sure a distinction is made concerning prisons and county jails. 188 REP. MASON: The definition of "correctional facility" Rep. Johnson put out is very appropriate and thinks his amendment is apt but the bill refers to the Director of the Dept. of Corrections who does not have under his authority county corrections officers. So, even though they (county jails) are correctional facilities, it would take a separate bill to give those local corrections officers the same authority. That may or may not be appropriate but it's not an issue here. 195 ROBINSON: There is probably some place in the statutes where the correctional facilities that are run by the Dept. of Corrections are listed separately. That might be the better site than the site that's coming out of the "escape" section. 207 REP. JOHNSON: Restates motion to say, "As used in this section, "correctional facility" shall be those facilities under the authority of the Director of the Dept. of Corrections 217 REP. BAUMAN: Do we need any input from the Oregon State Police on how they currently conduct apprehension of felons? 228 CHAIR MILLER: No objection to Johnson amendment. It is adopted. House Committee on Judiciary January 29, 1991- P - e 12

234 REP. BRIAN: The use of deadly force with regard to an escape from a correctional facility is a special authority related to escape specifically and wouldn't want that application of deadly force authority to be available in a delayed contact situation. Would the bill as amended with that special authority for the application of deadly

force be applicable in the delayed contact situation? There are some clear and strict rules about when to use deadly force. The statutes make an exception with regard to escape. But once the escapee is off the grounds (say a week later), and contact is made, it would seem that the normal and ordinary peace officer's deadly force application should apply-not the corrections or escape-type of deadly force application.

253 REP. MASON: The normal and ordinary peace officers authority to use deadly force applies in the inadvertent contact situation because the correctional officer/peace officer's use of deadly force (ORS 161.265) only applies to prevent an escape and when in the correctional facility. However, peace officers always have with them certain deadly force provisions under ORS 161.239. Gives examples.

278 REP. BRIAN: Discusses hot pursuit issue-out of the corrections facility but it's hot pursuit then deadly force authority would still be present for the corrections officer. 283REP. JOHNSON: Refers to different statutes. 299 PEARCE: The escape statute that is relative to, in the act of or to prevent an escape, would in fact occur not just till the escapee got to the fence, but in fact, while he was in the act of escaping from that institution. It does not appear to relate to what happens at the 7/Seven (example) 24 hours later, or perhaps even an hour later if you've lost sight of him. The important words are "to prevent the escape 319 CHAIR MILLER: In light of the amendments, would like to hold this over for another work session. 324 REP. MASON: Withdraws his motion to the poll. HB 2195 - COLLECTION OF SUPERVISION FEES - PUBLIC HEARING

346 ELYSE CLAWSON, DEPARTMENT OF CORRECTIONS: EXHIBIT B Supports HB 219 5 -Current statute creates a barrier for collecting of supervision fees from offenders. -Current statute prohibits the Department from requiring Parole Officers (PO's) to collect those fees. -Problems arise in rural areas or in the evenings when clerical staff are not normally available. -The Department requests that it be allowed to manage its statutory responsibilities so that a reasonable process (for collecting these fees) can be established. 382 REP. BRIAN: Are the payments ever in cash or are they always fees paid by a cashier's check, or check? 387 CLAWSON: Occasionally the fees are paid in cash. 389 REP. BRIAN: Do they have to be issued or is that customary?

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398 CLAWSON: Yes, we issue receipts and for those probation officers who are voluntarily collecting now because of the circumstances I outlined, they would carry a receipt book and then they would have to record that when they bring it back to the office.

TAPE 8, SIDE B

005 REP. BAUM: On the issue of security as it relates to cash exchanging hands between a parolee and the probation officer, any concerns there, putting people in the way of temptation? 007 CLAWSON: I recognize your concern. I believe we're talking about pretty limited areas. In most places around the state and through most of our supervision fees, they are actually collected by our clerical staff and handled in a log there. So we're talking about relatively few circumstances but we have them where we need to be able to have a probation officer actually collect the fee. I don't believe there's a major security problem.

015 BOB KEYSER, FEDERATION OF OREGON PAROLE AND PROBATION OFFICERS (FOPPO): The FOPPO is opposed to HB 2195. They do not want to be responsible for collecting fees, especially the argument Rep. Brian just mentioned concerning collecting cash fees. They don't want to be responsible for those since they are not bonded and would rather they be handled in some other manner. 025 REP. BAUM: What do you suggest as a solution to the problem? 026 KEYSER: Through clerks in their offices, however it's being handled now. 028 REP. BRIAN: Bothersome that this is a condition of parole or probation put upon the parolee or probationer. It seems like the burden ought to shift in that direction rather than back onto the PO's. So, they have to get a cashier's check and mail it in. Can't they be a little responsible- the fee is due. Why shift this burden to the PO? What happens if the PO inadvertently loses the money or it's stolen from him? I'd rather put the burden on the parolee. 040 KEYSER: Police officers don't collect fines for traffic infractions. Those are done through another process; It's the same thing that parole officers feel like they should not have to be in a position of assessing these fees for their services. 043 REP. MASON: Parole and probation officers are an incredibly honorable group of men and women as are police officers, but your point about separating cash might hit a responsive cord from them. Wants Mr. Pearce to comment about any concerns about cash passing through their hands. Are we asking for a lot of trouble? 056 PEARCE: No. I don't think so. My position on this, as Elyse has indicated, is that this is a condition on probation or parole, the same as anything else. For the law to say that the Department cannot require a parole and probation officer to enforce this condition is somewhat ridiculous. Doesn't believe there's any difference in cash being handed to a clerk and getting a receipt and the cash, or money order, check, or whatever being handed to a parole or probation officer and getting a receipt. Either they're honest or they're not honest. 067 REP. MASON: The clerks do not have their life in their hands. Gives example of a probation House Committee on Judiciary January 29, 1991 Page 14

officer who has control of his (parolee) life. And now we've interjected into that-money. Gives example of no potential for the clerk to sanction the parolee because the clerk doesn't have control of his life but the probation or parole officer does. There could be some type of abuse of that authority. Does that bother you at all? 080 PEARCE: No, it doesn't. Again, either the parole or probation officer is a crook and does something like that, or they're not. And I don't believe we have crooks working for us. 084 REP. BRIAN: Mr. Pearce, if this is a condition of probation or parole, it's not the probationer or parolee's responsibility to get it in? Why not mail it, why not take it in? It's their burden, it's a condition of their parole. 088 PEARCE: We're not requiring the parole officer to go and pick up the cash every time. If this passes, I would issue directives that it's their responsibility to see that those are paid. In some places in the state, it is more practical and currently parole officers will bring it in. It isn't any different than any other condition in which a parole officer or probation officer is required to see that they abide by the conditions of that parole or probation. 098 REP. BRIAN: Can see where parole officer would direct and counsel the parolee concerning getting the money in but without getting into the role of the banker. 104 REP. PARKS: As a practical matter, what currently happens? Do they not collect the money, is that what's happening?

106 CLAWSON: Primarily these fees are brought into the office. They're informed that this is one of their conditions of probation and when the

officer sees them in the office, he directs them to the clerk and they pay the fee. Currently, in some areas of the state, a small group of probation officers are voluntarily collecting it because those offenders are unable to come into the office. This is a very small group of people. All this is doing is allowing us to continue that practice rather than requesting a volunteer to do it. 118 REP. PARKS: Your telling the parole officers, "You're responsible to see that they pay the money or you turn them in as not having complied with all the terms of their probation." Some officers are voluntarily complying with that requirement by collecting the money and turning it in to the secretary. After this is passed, it will just give them a legal basis to do it and it really wouldn't change or put the burden on the parole officer to collect the money because he's already got the responsibility to see that it's collected. If he doesn't want to collect the money, he could tell the parolee to send in the money. Is that a fair statement? 131 PEARCE: Yes. 132 REP. PARKS: Would you agree with the observation that if a parole officer is a crook, he's got enough control over somebody's life that he can extort money out of them whether he's collecting a fee or not? 138 PEARCE: That's correct. 139 REP. BAUM: Closes Public Hearing on HB 2195. House Committee on Judictaq January 29, 1991- Page 15

HB 2201 - REIMBURSEMENT FOR THE CARE OF INMATES - PUBLIC HEARING

146 ROBINSON: Explains HB 2201 which allows Department of Corrections to request reimbursements from inmates for cost of care. 154 FRED PEARCE, DEPARTMENT OF CORRECTIONS: -We already have statutory authority under the Prison Industry Statutes. -Talking about 60 people currently in that situation out of 6,300 in custody. -Intent is to recover from those who have the ability to pay, some of, or all of their cost of care, regardless if it's their earned or unearned income -Statute not intended to try to take funds from those making \$.25 to \$3.00 a day in prison jobs or prison industry jobs that pay the minimum referred to. -Some sentenced people who have assets that we believe should pay for their cost of care or a portion of it. 194 REP. BRIAN: Is the Department made aware of passive and unearned income of inmates?

198 PEARCE: Not necessarily, we are not.

199 REP. BRIAN: But if you're aware of it, you'd tap it under this provision? 200 PEARCE: Yes, we would. 202 REP. BAUM: How is the issue of family support going to be determined? 214 PEARCE: A suggestion was made that we use the current statutes relative to family support used by the courts in determining child support and family support. 217 REP. BAUM: Is that a problem with your Department adopting that?

218 PEARCE: No. The intent would be to include that in the adoption of rules.

224 REP. PARKS: This is satisfactory but some questions are left unanswered such as do the exemptions apply, etc. The committee should use the child support guidelines. 240 REP. BAUMAN: Are we clear on any constitutional issue in consideration of the expose facto fine or any kind of forfeiture for cost of care?

248 PEARCE: The Attorney General helped draft it. 250 ROBINSON: This question was raised last session and referred to memo drafted last session concerrung the issue and can provide it. Referred to Page 2 of bill, lines 7, 8 and 9 regarding factors Department would consider.

Refers to priority of things to be considered. 268 PEARCE: That is the priority as listed in the statute; however, would consider the Department of Corrections fines and specific debts to the Department that are owed. 280 ROBINSON: The list in the statute is not prioritized so work sheet has prioritized it. . These minutes contain materi b which par phrase and/or aummarize statements m dc during this soasion. Only text enclosed in quotation marks repon a speaker's exact words. For complete contents of the proceetu~p, pleaae refer to the tapes. . . . House Committee on Judiciary January 29, 1991- Page 16 - 281 PEARCE: Yes. Sorry, misunderstood.

HB 2201 - REIMBURSEMENT FOR CARE OF INMATES - WORK SESSION

300 - MOTION, Rh P. BRLAN: Moves HB 2201 to Full Committee with a "do pass" recommendation.

VOTE: 7-0 Motion passes.

Aye: Baum, Bauman, Brian, Johnson, Parks, Sunseri, Miller No: 0 Excused: Mason

HB 2202 - REVENUES FOR INMATE ACTIVITIES - WORK SESSION

311 FRED PEARCE, DEPARTMENT OF CORRECTIONS: EXHIBITS C and D Bill has previously been before the committee. Several questions raised regarding the inmate welfare fund both in amounts and specific questions. See Exhibits C and D. -Total percentage of revenue of the inmate welfare fund to the institutional budget is .0031 percent of total budget. -Considerable amount of money in activities programs that amounts to \$1,660,000 (includes all institutions). -Referred to Secretary of State Audit Report regarding canteen operations. f TAPE 9, SIDE A 004 REP. BAUM: Refers to inmate welfare fund exhibit and \$500,000 balance indicated. See EXHIBIT E Asks if beginning balance (\$264,000) has a history of being an account that always has a substantial amount of money in it?

013 PEARCE: There's always an ending balance.

014 REP. BAUM: This ending balance is a quarter of a million dollars. Now there's \$500,000. Does it grow all the time? 016 PEARCE: There are still expenditures for the rest of the biennium. Department has list of about \$270,000 of expenditures from institutions planned. Gave example of Eastern Oregon institution that's still under construction and inmate welfare funds will be used for the education, visiting, and library sections of that facility. 035 REP. BAUM: What kind of cash carryover did we have in the previous biennium? 038 DAVE CAULLEY, DEPARTMENT OF CORRECTIONS: Don't have those figures but they can be obtained. 040 CHAIR MILLER: In terms of appropriateness, with respect to community standards, the conduct inside the walls and outside the walls should not be very different. Some things were expended that might interest the public. . House Conunittee on Judiciary January 29, 1991Page 17

-The softball program at your Department provides participants with cleated shoes. -The television service indicates cable is offered that includes HB O and Showtime. -Concerned about taxpayers who pay for those items. 090 PEARCE: First, the recreational programs are extremely important. It is for exercise and gives them something to where they otherwise would have nothing to do. The federal courts will require us to provide exercise equipment and exercise time for inmates. Helps to

manage people. State has benefitted considering crowded institutions and the way they were managed. Can't provide enough industries as much as we'd like to. Wasn't aware of clefted shoes. Wasn't in favor of inmates buying TVs for their cells but wasn't at the Department at the time. (TVs) are not something you take away from inmates-keep a place from blowing. Not willing to do that. The inmate welfare fund is used to buy basic cable--wasn't aware of any HB O. Recreational activities have a very important place in our prison systems. We're in the business of managing people put in our custody. 161 CHAIR MILLER: Impression was that in the cells, the basic cable is allowed, however in the larger day rooms they pay for the extra service. 170 PEARCE: That's correct. In the day rooms the inmate welfare funds pay for HB O and Showtime. Movies are also rented out of that fund for some institutions that don't have cable. 178 CHAIR MILLER: Referred to line-up to use the telephones at a facility. Given the amount of money those funds generate for the inmate welfare fund, why aren't there more phones? 185 PEARCE: We're monitoring calls. We're going into a different monitoring system that will monitor every call for intelligence purposes. 190 CHAIR MILLER: Given the money generated, you could almost pay for additional people to monitor these calls and still come out ahead. 193 REP. BRIAN:: This presents an awkward situation because we're not a Ways and Means Committee yet we're being asked to codify some practices which that committee ought to be looking at. Believes these funds are subject to review, prioritization, and budgeting. Doesn't believe it's just inmate money, for example, in that general fund positions are facilitating the process by which these funds are generated. 206 PEARCE: We're monitoring the phone systems but these funds pay for all the canteen operations, including staff. 209 REP. BRIAN: Figures provided are net figures--not gross. 211 PEARCE: Yes, they're the nets. 212 REP. BRIAN: So, we don't know what the gross collection is and what funds are being subtracted from the gross to arrive at these numbers. 214 CAULLEY: The expenses being deducted in the case of the canteen revenues is the staffing costs for the canteens.

These minuter contain materials which p r phrase end/or rummanze statementr made during tbir resslon. Only text enclosed in quotation mule repon a speaker's exact words. Pot complete contentr of the ptoceediq~s, pleare refer to the tapea.

January 29, 199 1- Page 18

220 REP. BRIAN: The information we received showed a gross of \$284,000 out of which was subtracted canteen products. No mention that it always included a subtraction for employee salaries. 225 PEARCE: They are. Apologizes if you received wrong information. Number of errors in the red booklet. 229 REP. BRIAN: Without question, activities are needed but type, volume and costs need to be provided. Doesn't sense any prioritization and collection of figures have been informal. Need to have fund in statute, but Ways and Means should also be looking at it because it's a lot of money. Doesn't feel comfortable with the accounting or priority-setting method. 256 REP. BAUMAN: It's persuasive that federal law requires that you provide a level of recreation. Assumes "level of recreation" is defined in case law? 264 PEARCE: Notes there are various decrees handed down concerning Federal conditions of confinement that address a variety of levels. Has personal experience with one decree. 270 REP. BAUMAN: Not helpful if there aren't any standards to assist with determining-how do you know what's enough, what's too much? 277 PEARCE: You review the various case decisions handed down on conditions of confinement and determine what you think you need to provide. We could do a lot less and not be

hauled into court. The problem is, if we do a lot less we'll have more idle inmates for a lot more time. Feels strongly that this is a badly needed resource to keep inmates busy-keep their minds busy.

- 287 REP. BAUMAN: So there's both federal law and good corrections policy. The issue that exists is the equal protection issue concerning inmate eligibility for levels of recreational activities that may vary at the institutions, depending on the success of the services that generate funds for inmate welfare fund. Uncontrollable variables dictate program to the Dept. of Corrections. 316 PEARCE: There are a number of qualifications as to what an institution provides. Work camps don't require as many kinds or periods of activity for inmates as a maximum security penitentiary, for example, where a lot of inmates don't do anything-not enough jobs for them. 326 REP. BAUMAN: That's not the way the level of funding is determined. 327 PEARCE: That's true. Not prepared to say any inmate goes wanting for recreational activity because of a lack of funding. Several new institutions have no basic funding-had some funding to purchase basic exercise equipment only. Established institutions have a lot of funding. Could face conditions of confinement lawsuit relative to one institution providing less than, or not as varied activity schedule as another institution. Haven't yet. 344 REP. BAUMAN: Is there an exercise room at OWCC? . 349 PEARCE: They have a multi-purpose room at OWCC because the rest of the space in the facility is taken up with beds. 356 REP. BAUMAN: Do they have a softball team?

- Home Committee on Judiciary January 29, 1991- Page 19 - 358 PEARCE: Yes, they do. . 360 REP. BAUMAN: Refers to red book. (EXHIBIT F) My concern is to have an itemized description of expenditures at other institutions relating to inmate welfare funds. Seems there are institutions that are more equal than others concerning entertainment and recreation available. Concerned about life skills that can be taught at the prisons, i.e. GED courses and drug/alcohol programs. Some of this money, for example, goes to AA programs. 389 PEARCE: GED and basic secondary education is available to every inmate now at each major institution. Advanced classes up to a four-year degree at some locations. That's general fund money. 400 REP. BAUMAN: Point out inaccuracies in red book. 407 CAULLEY: The inaccuracy described refers to itemized expenses that don't equal the amount in the pie chart. Doesn't add up. TAPE 10, SLIDE A 004 REP. PARKS: What does it add up to? 005 CAULLEY: Itemized expenditures add up to about \$190,000. But of that money, there is about \$50,000 that's actually the cost to supply the vending machines. Doesn't total \$284,000. 013 REP. BAUMAN: Leads to question concerning canteen financial reports. Were they done (refers to page 16 of red book)? 027 CAULLEY: What the auditors are referring to is that the canteen managers prepare their own financial statement of canteen operating costs and revenues. The auditors simply asked that the central business office standardize that process and review the prepared reports to ensure their accuracy. 033 REP. BAUMAN: Was that done? 035 CAULLEY: It is currently in process. 036 PEARCE: Wants to make it clear that a recent experience with the manager of the canteen has nothing to do with the canteen accounts in which there were missing funds. Asked for this audit to look at what was going on. Lack of sufficient staff has been a problem in the central business office. We are in the process of computerizing and standardizing all the canteens. Will have a central canteen warehouse for purchases, eventually want to have canteen orders bar-coded. Currently issuing inmate ID cards with bar codes. All canteen items are bar-coded. Will eliminate problems tracking inventory. Working on many things to improve business management of accounts and operations. 059 REP. MASON: Do you really need this bill? 063 PEARCE: Yes. House Committee on Judiciary January 29, 1991 Page 20

066 REP. MASON: Which committee do you need the bill from?

070 PEARCE: Need the bill and want to do it legally-whatever is right.

072 REP. MASON: Thinks the bill should be passed out of committee.

081 CHAIR MILLER: Not sure view of audit report is one the Committee has to subscribe to. Thinks Ways and Means would not serve Correction's best interests. 104

REP. BRIAN: Agrees but we're generating about a \$20,000 net after all expenses and investment. Not totally comfortable with what's being done here. Thinks it's not a judiciary issue. Maybe the bill should be loaned to the Agency Reform and

Reorganization Committee for review. 112

REP. PARKS: All concerns voiced are appropriate but think we shouldn't play games with this. Wouldn't have TVs but would never take them out. What's been done in the past has set the tone of that institution. (Talks about a riot that occurred in the 1960's and people living too close to each other.)

Refers to grand jury report. Thinks Mr. Pearce needs the bill and should have it. Can't change the balance that's out there. The very worst thing we can do is upset the balance. If there are concerns, we should hold this bill here for more public consensus. 160

CHAIR MILLER: We are in a work session, not a public hearing. 164

REP. BAUMAN: Talks about state-run system in which all the profits go to pay for softball teams, TVs, cable TV, etc. without the imposition of any tax liability on those profits. Suggests the governing body of the inmate welfare fund look at the rehabilitative impact of sponsoring some other activity outside the institution. An activity that provides assistance to drug-affected babies, or sex-abused children, for example. Plenty of opportunities like that.

218 MOTION, REP. PARKS: Moves HB 2202 to Full Committee with a "do pass" recommendation. 224

MOTION, REP. BAUMAN: Amended with subsequent referral to Ways and Means based on the auditor's report.

DISCUSSION ON THE MOTION 234 REP. BAUM: The bill does not have a subsequent referral. 239

REP. MASON: The bill doesn't appropriate money and opposes motion to send it to Ways and Means. 242

REP. BRIAN: Has a net of over \$1 million moving around with particular written guidelines or priorities. Suggests it be looked at whether now or later but should be done. 256

CHAIR MILLER: Resists sending it to Ways and Means but would be glad to visit with Agency Reorganization Committee members and doesn't think the passage of the bill in this committee precludes that Committee from having interest in this program.

These minutes contain materials which paraphrase and/or summarize items made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete content of the proceedings, please refer to the tapes. House Committee on Judiciary January 29, 1991 Page 21

. 269 REP. BAUMAN: The motion is based on the audit report which states, in their opinion, the funds belong to the State of Oregon. Whether we call it an appropriation or not, there is close to \$1 million which is going around the process. Not much choice here--money points to Ways and Means issue. 286

REP. BAUM: Assumes Ways and Means will see this as part of the big package. 289

REP. MASON: Last thing you want is Ways and Means Corrections Subcommittee to get the impression that it has \$1 million of discretionary money to play with. This bill has a lot of political content and should avoid opening it up to Ways and Means by calling the money general fund dollars. 312

VOTE: C O Motion fails.

Aye: Bauman, Brian No: Baum, Johnson, Mason, Parks, Sunseri, Miller

. 324 MOTION, REP. PARKS: Moves HB 2202 to Full
Committee with "do pass" recommendation. 325 VOTE: 6 0 Motion
passes.

Aye: Baum, Johnson, Mason, Parks, Sunseri, Miller No: Bauman, Brian

345 CHAIR MILLER: Adjourns meeting at 3:45 P.M.

Submitted by: Reviewed by: J. Kennedy Steve,
Assistant David Harrell, Office Manager

EXHIBIT LOG:

A Testimony on HB 2196 - Elyse Clawson - 1 Page B Testimony on HB
2195 - Elyse Clawson - 1 Page C Budget Report for HB 2202 - Fred
Pearce - 1 Page D Audit Report for HB 2202 - Fred Pearce - 3 Pages
E Inmate Welfare Fund for HB 2202 - 1 Page F Report on Inmate
Welfare Expenditures - 20 Pages