

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

February 5, 1991 Hearing Room 357 1:00 p.m. Tapes 13- 17 MEMBERS
PRESENT: Rep. Randy Miller, Chair Rep. Ray Baum Rep. Judy Bauman Rep.
Tom Brian Rep. Rod Johnson Rep. Del Parks Rep. Ron Sunseri VISITING
REP. Rep. Clark STAFF PRESENT: Greg Chaimov, Committee Counsel
Holly Robinson, Committee Counsel Jeff Steve, Committee Assistant
MEASURES HEARD: HB 2440 - Aggravated Murder (PH) HB 2393 - Post
Conviction Relief (PH) HB 2390 - Controlled Substances (PHfWS) HB 2137 -
Forgery of Lottery Tickets (PHIWS) HB 2194 - Authority to Corrections
Officers (WS) HB 2384 - Offense of False Information (PHIWS) HB 2385 -
Liability Insurance/Vehicle Operation (PH/WS) HB 2139 - False
Information to Police Officers (PH/WS) HB 2140 - Wildlife and Commercial
Fishing (PH)

These minutes contain materials which paraphrase and/or summarize
statements made during this session. Only text enclosed in quotation
marks report a speaker's exact words. For complete contents of the
proceedings, please refer to the tapes.

TAPE 13, SIDE A

004 CHAIR MILLER: Calls the meeting to order at 1:00 p.m.

HB 2440 - AGGRAVATED MURDER - PUBLIC HEARING: EXHIBITS A.B.C.D.E F. G.
H. 1, J and K.

Witnesses: Rep. Tom Mason Phillip M. Margolin, Attorney Myron Hall,
Coalition To Abolish the Death Penalty Fred Avera, Oregon District
Attorney's Association Norm Frink, Multnomah County District Attorney
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Dale Penn, Marion County District Attorney Steve Williams, Oregon
Criminal Defense Lawyers Association (OCDLA)

029 REP. MASON, APPEARING AS WITNESS: HB 2440 is a rewrite of our
murder and capital punishment statutes. -Discusses history of Oregon
death penalty law. -The general lay public has a good idea what murder
in the first degree is. Murder in the first degree is the most heinous
and is punishable by death. -What the Bill does: Renames "murder in the
first degree." -Limits categories in the first degree. -Premeditation
-Murder for hire -Second murders in one's career -Where victim is a
police officer -Where explosives are used -Maiming and torturing
-Murder while in physical custody -Murder to conceal the identity or
commission of a crime. -If there is a conviction for first degree murder
a separate hearing is held (Wagner hearing) to decide whether or not the
death penalty would be applied. If one were convicted of first degree
murder, go through the Wagner hearing and not be found subject to the
death penalty, one would receive life without the possibility of parole.
-The effects of HB 2440 are: -Will limit the number of death penalty
prosecutions. See EXHIBIT G. -Controversial provisions of HB 2440: -The
authors have included premeditated murder as a category of first degree
murder. Should look at this carefully. -Murder to conceal the identity
of the murderer -Limits the felony murder rule to second degree murder
-Defense of extreme emotional disturbance. It should be allowed in the
aggravated murder and first degree murder cases. 219 REP. JOHNSON: Do
you have any statistics of the kind of case load and costs under the old
system versus the new? 224 REP. MASON: No. We would notice that a
large amount of murders are aggravated murder. Too many murders are

charged as felony murder. 240 REP. BAUM: Where is that in HB 2440?

241 REP. MASON: You have to go to the definition of second degree murder. Page 5, line 16 of HB 2440 gives the definition of felony murder.

247 ROBINSON: On line 17, page 5 what they do is take the felony murder rule and specified because the addition of "second degree" it makes the persons charged murder 2.

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252 REP. MASON: Felony murder has only two penalties, death and life without parole. The intent of HB 2440 was to narrow this category down. The felony murder rule broadens the category too much.

267 REP. BAUM: What we are talking about is to keep the general number of penalties. What is the anticipated effect on the actual use of the death penalty?

275 REP. MASON: The prison impact statement assumes that the number for aggravated murders would equal the number the people convicted for murder in the first degree. Thinks that there would be less murder charges. See Exhibit H The last purpose of the bill is not to fight the death penalty.

316 REP. JOHNSON: What is the rationale for taking murder of a judicial officer out of first degree murder?

322 REP. MASON: These categories did not make as much sense since the scope of people who fall under the umbrella of judicial peace officers is very large.

349 REP. JOHNSON: Was it partly your intention that by adding a category to murder 1 including those murders made with premeditation that you took out the judges and other people? 357 REP. MASON: It was our determination that the deliberate murder deserves the death penalty.

375 PHILLIP M. MARGOLIN, ATTORNEY: -The problem with the current homicide statutes is that it has categories of aggravated murder that are so broad that there is no meaning to it. The homicide scheme should be like a pyramid with the top of the pyramid reserved for the most heinous crimes. -Likes the bill because: -This bill gives a very clear laundry list that would lead to the death penalty -It makes it easier for the jurors to deal with.

TAPE 14, SIDE A

039 MARGOLIN: Some corrections to HB 2440 are needed: -Section 1(a) dealing with premeditation. Does not think that it should be a separate category of murder. Any murder can be argued to be premeditated. What is premeditation? -Section 2(d) dealing with concealment of the crime. For every homicide it can be argued that the murderer committed the crime to conceal the victims identity. This would only widen the crime, not narrow it. -Extreme emotional disturbance should be a defense to any crime where intent is an element. 102 REP. CLARK, VISITING: That is

not the case at all. There is a powerful argument that the person cannot have intended a murder. 106 MARGOLIN: That is what he meant.

127 MYRON HALL, COALITION TO ABOLISH THE DEATH PENALTY: EXHIBIT K.
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-Reads from Exhibit I. Supports HB 2440.

146 CHAIR MILLER: Should we be concerned about your support of HB 2440?

148 HALL: We understand the law. Life is full of compromise even though we still oppose the death penalty.

157 REP. MASON: The provision that Hall is concerned with is not in HB 2440. HB 2440 is not to fight the death penalty. 164 REP. SUNSERI: If the 30 years provision is not in HB 2440 what is the alternative?

166 REP. MASON: If one is convicted with first degree murder the penalty is death or life without parole.

170 FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: -Opposed to the bill because: -To amend the bill now would create a note of uncertainty that would require years of expensive litigation to gain Supreme Court approval and interpretation of the statutes. -Inappropriate policy changes are made in the aggravated murder law by HB 2440. HB 2440 would eliminate from that category correctional officers, parole officers, probation officers, judicial officers, jurors, witnesses, court staff and members of the Board of Parole and post prison supervision. Those categories of persons should remain in the aggravated murder law because those types of persons are "a little bit special." Attacks on these people are attacks on the judicial system.

252 REP. PARKS: Where in the statutes does the knowledge criteria for aggravated murder appear? 255 AVERA: State v. Brown, 310 Or 347 (1990) 259 REP. SUNSERI: Would HB 2440 result in less death penalty sentences?

261 NORM FRINK, MULTNOMAH COUNTY DISTRICT ATTORNEY: -Opposes HB 2440. -The number of people receiving the death penalty would be less. -HB 2440 would decrease the sanctions short of the death penalty. -It places the wheel man in a homicide in the same position as the person committing the murder. -We view this bill, specifically the elimination of the 30 year-minimum-after-twenty from the statute could jeopardize the entire life without parole scheme. -This bill is likely to increase costs because of extended litigation in some areas.

373 DALE PENN, MARION COUNTY DISTRICT ATTORNEY: Of the 24 death penalty verdicts that have been returned in Oregon, 14 were personally committed felony murder situations. HB 2440 would remove the death penalty sanction from 14 of those 24. This is the situation where a person in the course of an aggravated felony, the defendant personally and intentionally commits murder in addition to the major felony. This is a court's nightmare. We will have in one case the ideas and legal concepts of intentional, deliberate and premeditated acts.

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-Gives example of Washington aggravated murder case.

TAPE 13, SIDE B

017 REP. MASON: Under HB 2440 as written that example would be murder in the first degree.

018 PENN: It would not be an aggravated felony murder. The Committee should consider that there is 20 years of case law that HB 2440 would throw out the window. It will take years to sort it out. ' 024 REP.

MASON: In Section 2(d) it states that if "the homicide was committed in an effort to conceal the commission of a crime, or to conceal the identity of the perpetrator of a crime." That seems to cover it.

027 PENN: Was responding specifically to the Oregonian article. See EXHIBIT G. 032 AVERA: Responds to the 30 year minimum sentence.

Negotiation is something that happens in most of these cases and going to trial is rare. Retaining this keeps the options open for negotiations. If you take out the 30 year minimum, there would be a constitutional assault on the true life provision. If that assault succeeds, the only penalty left for aggravated murder would be the death penalty. 045 REP. CLARK: Are you saying that right now the law might be lousy, but at least its settled lousy law? 049 FRINK: Does not

agree at all. Agrees that there have been a number of changes. The statute as is is fundamentally sound and fundamentally explained by the appellate courts. The last thing we need is to launch another major endeavor that will only continue the changes. 058 REP. CLARK: Many of

the changes that you talk about were as a result of different groups coming in testifying and having their names added to the aggravated murder statutes. 061 FRINK: Disagrees. The aggravated murder statute could be expanded to include murders motivated by race or sexual orientation. However, a wholesale revision of the statute would be a detriment. 073 REP. CLARK: Your telling us that the life without possibility of parole provision is currently under constitutional challenge because it conceivably violates Oregon's reformation clause. How - does the death penalty survive that clause?

079 FRINK: The constitutional amendments specifically exempted the death penalty from that clause.

080 REP. PARKS: What other big policy changes are encompassed in HB 2440 in your opinion?

085 AVERA: The addition of premeditation.

087 REP. PARKS: HB 2440 now requires premeditation?

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088 AVERA: HB 2440 would add premeditation as another way to get to felony murder. 089 REP. JOHNSON: If we assume that it is possible to define premeditation as Rep. Mason thinks of the term, would that be helpful?

093 PENN: The talk of the prior history is a little misleading, because

there was a huge review of murder and the entire criminal code which changed in 1971. At that time, premeditation was taken out of the law in Oregon and the concept of intentional murder was replaced. Premeditation can be defined in any way one wants to. Right now we have 20 years dealing with the concept that someone has the conscious objective to kill another human being. Adding "intentionally" to "premeditation" overcomplicates the framework.

106 REP. JOHNSON: As he understands, the previous statute that had "intentional" as an element essentially gets to the same thing as premeditation and that they are interchangeable so why change?

111 PENN: Believes that they are different. However, clearly to convict someone of murder in the state of Oregon the state must prove beyond a reasonable doubt that the person had the conscious objective to kill another human being. If that is not proved then the person is not guilty of murder. 121 REP. JOHNSON: Would not like someone to get out of an aggravated murder situation if they had raped someone on a defense that the death was an accident. 126 REP. MASON: Premeditation came out in 1971. The element of premeditation has always been associated with death penalty first degree murder. The drafters in 1971 thought that if there was no first degree murder you did not need

"premeditation" as an element. In 1978, the death penalty came back. The concept has been in and out of the statutes. 134 PENN: I know that there was an intent to do away with concepts that are difficult for juries to interpret and "intentional" requires conscious objective and that was the intent at least in the criminal code. 140 REP. BAUMAN: Premeditation is difficult. What about a situation where there would be a victim in one of the groups (See Section 1(2)(a) of HB 2440) where the murder would not be premeditated? 158 FRINK: I think that this bill is one in search of a problem. There are very few aggravated murder cases that we prosecute that should not have the full range of penalties available to them. One adjustment that could be made to the aggravated murder statute is where the facts of the case would put it outside the range of death penalty cases. Suggests that the Committee draft a bill that makes it explicit that when a person is charged with aggravated murder and the case is set for trial and the person is not going to plead guilty that the case can be proceeded without the death penalty as an option in the discretion of the District Attorney. 184 REP. BAUMAN: The figures from Polk County are demonstrative of what an incredible plea negotiation tool the charge of aggravated murder. Two comments: .

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. House Committee on Judiciary February 5, 1991 - Page 7) -It is appropriate to leave out these listings of persons by occupation. We need to consider what our rationale is. -Also, what about the case where the murderer said, "If I thought that there was a death penalty I wouldn't have done it." It seems bad to leave school teachers, for example, vulnerable to those people but protect judicial officers.

227 PENN: This was the nature of the discussions in this Committee in 1977. Without cases pending where judges and judicial officers are victims HB 2440 is in search of a problem. 240 REP. BAUM: When was the last time we executed someone in Oregon? 243FRINK: 1961

246 REP. BAUM: The obvious problem here is that the public perceives we have a penalty that never gets inflicted. Are we going to create a

procedural quagmire with this?

258 AVELA: That is our point on the opposition of HB 2440.

264 REP. CLARK: Of all the reasons for opposing HB 2440, that is the weakest argument. If the legislature is only going to be reacting and not provide any leadership role then there is no point in any of us being here. In your view (directed to Mr. Penn) if you were going to start from scratch would you design the system we have currently?

283 PENN: Is comfortable with the concept that if someone has the conscious objective to kill another human being they are guilty of murder. If they have that conscious objective to kill plus an aggravating circumstance plus the state proves beyond a reasonable doubt that it was done deliberately, they are a future threat to society and that there was no provocation by the victim and that the jury believes that the person should die, then the law is a cohesive statute.

313 STEVE WILLIAMS, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: -The OCDLA has no problems except for the premeditation portion of the statute. Anything that subtracts from the Oregon death penalty or aggravated murder statute right now will not subject the statute to an attack that will overturn it. Simply changing the definition from aggravated murder to first degree murder and taking away certain categories for potential death sentences is not going to affect the Oregon Supreme Court's decision upholding our statute under our state constitution. If there is going to be litigation it will be over things that are "added" to the statute. There is a problem with the addition of the premeditation category. If that goes into the statute as an aggravating factor in its current definition there will be litigation.

TAPE 14, SIDE B

002 WILLIAMS: At the stage where the case is remanded from the appellate court because error over penalty, currently the DA has the choice of seeking the full penalty phase or seek a life sentence. The draft that I have eliminates that judgment and requires sentencing if a case is reversed on appeal. the choice should remain.

008 REP. MASON: Understands under current Oregon law, if I decide to kill someone with cool

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and deliberate meditation that that is not aggravated murder. That is the reason for including premeditation in the statute. 030 PENN: HB 2440 does have the potential to increase the number of aggravated murder cases in that area. The problem is that the elements must still be proven. That is not easy. 048 WILLIAMS: Your hypothetical is correct.

050 REP. MASON: Why shouldn't that be a death penalty situation?

054 WILLIAMS: One of the problems is that the death penalty was not enacted at the same time as aggravated murder. If you take away anything from this statute the statute will remain constitutional . 068 REP.

MASON: No one has commented on the fact that the terminology of "murder in the first degree" has a certain amount of currency to it; that the public has an understanding of this. 073PENN: Believes that the Legislature in 1977 tried to identify aggravating circumstances. Is very comfortable with murder and aggravated murder. Is uncomfotable with murder one and murder two. 080 WILLIAMS: Most people he talks with

speak in terms of murder one and murder two.

HB 2393 - POST-CONVICTION RELIEF - PUBLIC HEARING

Witnesses:

Honorable Justice Michael Gillette, Oregon Supreme Court
Brenda Peterson, Department of Justice

108 CHAIMOV: EXHIBIT L Summarizes HB 2393.

119 HONORABLE MICHAEL GILLETTE, OREGON SUPREME COURT: HB 2393 streamlines circumstances surrounding appeals from death penalty decisions. Addresses provisions of HB 2393 dealing with post-conviction relief procedures. -Of concern on HB 2393: -Section 1 recognizes that those who have been convicted of aggravated murder and whose sentences have been affirmed on appeal then have available to them post-conviction relief proceedings. Line 14 on page 1 of HB 2393 provides, "The petition shall provide that the petitioner is raising all issues the petitioner can identify for relief, that no other issues are reasonably ascertainable and that the petitioner waives any other claims for relief." Commentary from counsel suggests that this last phrase means petitioner waives any other claims for relief of which petitioner knows or reasonably could be deemed to know at the time. If that is what you mean it would be helpful to spell that out. -Section 2 (See lines 25-27) pertaining direct appeals to the Supreme Court on judgments for sentence of death is bothersome. In many of the death penalty cases the defendant has been

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convicted not only of aggravated murder but also for other crimes that do not carry the death penalty. In the course of dealing with those convictions the Court often affirms those lesser convictions while reversing the case for new sentencing proceedings. Section 2 of HB 2393 will require the Supreme Court to review convictions for non-death penalty matters. There is a bundle of lesser charges that the Court could do without. 213 REP. PARKS: Why would it be more convenient for this one appellate court to look at all of it? 217 GILLETTE: The case law is settled in the post-conviction release procedures. The Court of Appeals has been administering the post-conviction appeals for years. It makes no sense for the Supreme Court to now take those non-death penalty cases on. -Because this is an appeal it must be handled as an appeal. -A case heard by seven people takes 3 - times as long -The cost is not going to be as much as suggested to you by the handouts. -Please strike the bold language in Section 2, because it would make bad policy. 340 REP. BAUM: All these cases involving death sentences you have seen?

347 GILLETTE: Yes.

348 REP. BAUM: So this would allow a "second bite of the apple." If we are interested in streamlining the process this is not the way to do it.

357 GILLETTE: The assumption that since the Court has already reviewed a case and therefore the Court will be able to handle a case quicker is incorrect. By definition the legal issues that are raised by the

post-conviction proceedings could not have been raised on direct appeal and the Court has no knowledge of these. The legal proceedings concern two entirely different things. -Section 2(3) page 2, line 7. We do not need any help in that area. We already have the power to decide on how we want to conduct appeals.

TAPE 15, SIDE A

055 BRENDA PETERSON, DEPARTMENT OF JUSTICE: -HB 2393-1 amendments the Department agrees with. -Where the Department disagrees with Justice Gillette regarding post-conviction cases. The primary challenge is going to be "ineffective assistance of counsel." That type of claim will not be able to be separated out from the aggravated murder cases and the lesser included convictions. Also, many of the cases will be briefed again contrary to what Justice Gillette has indicated. We cannot necessarily rely on Court of Appeals cases when we are before the Supreme Court. 115 REP. MASON: Why not? It is persuasive precedent in Oregon law.

117 PETERSON: In the past, the Supreme Court has made it clear that simply because the Court of Appeals has decided a case certainly does not mean that the Supreme Court is bound by that. It is not binding authority and is not persuasive either. In death penalty cases any side that loses in the Oregon Court of Appeals will seek review in the Oregon Supreme Court.

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167 REP. MASON: What would you possibly say different to the Supreme Court that you said to the Court of Appeals? 169 PETERSON: The legal position would not change, but as Justice Gillette mentioned the Court of Appeals has seen a great body of cases in this area. There, the Court has established law. It is not the same in the Supreme Court which is not bound by the Court of Appeals. 170 REP. BAUMAN: If you are going to brief everything originally before the Supreme Court the work load will increase. 186 PETERSON: It is a different matter if a case appears before the Supreme Court. Most cases do not require a substantially new brief. New briefs probably will get filed in the Supreme Court because of the fact that the death penalty is so severe. HB 2390 - "SCHEME OR NETWORK" - PUBLIC HEARING

Witnesses:

Ross Shepard, Oregon Criminal Defense Lawyers Association

226 CHAIMOV: EXHIBITS M, N and O. Summarizes HB 2390. 258 ROSS SHEPARD, OCDLA: Proposes amendments to HB 2390. -On line 5, after "merits an enhanced penalty" insert "to crime category 8." -Refine aggravating factors in the following: -Section 2(a) substitutes "substantial amounts of cash" with "\$3,000." -Section 2(c) substitutes "weapons" with "firearms." -Section 2(b) strike it from HB 2390. -Section 2(h) strike it from HB 2390 -Line 22, Section L Suggests changing to "Presence of controlled substances on the premises clearly beyond amounts kept for personal usage." -Addresses issue of first time dealer having a penitentiary sentence suggests linking the delivery of

consideration of heroin, cocaine and me hamphetamine with one of the aggravating factors. If the prosecution can link one of the aggravating factors then the sentence would merit a penitentiary sentence. If the drug offense is not one involving delivery for consideration, suggests that the prosecution have to prove 3 of the aggravating factors.

312 REP. MASON: Believes Shepard's suggestion on line 22, Section L "personal usage. creates difficulty. Would rather see "hard [substantial] quantities." 336SHEPARD: The federal schedule where Mr. Chaimov excerpted information from is too complicated. See EXHIBIT N 339REP. SUNSERI: Section 1(2)(b) is too nebulous. What constitutes "heavy traffic?"

House Committee on Judiciary February 5, 1991 - Page 11 345 SHEPARD: Suggests striking that language as well HB 2137 - FORGERY OF LOTTERY TICKETS - PUBLIC HEARING

Witnesses:

Lieutenant Harold L. Breazeal, Oregon State Police

385 LIEUTENANT HAROLD L. BREAZEAL, OREGON STATE POLICE: Supports HB 213 7. HB 2137 adds "lottery tickets or shares" to the present definition of forgery in the first degree. HB 2137 Section 1(1)(a). Believes that HB 2137 will assist law enforcement officers.

TAPE 16, SIDE A

006 REP. MASON: Any reason for not indicating "Oregon" lottery tickets?

012 BREAZEAL: It is against the law to sell Washington lottery tickets in Oregon. We are only concerned with Oregon lottery tickets.

017 ROBINSON: What is a "lottery share?"

018 BREAZEAL: A lottery share is nothing more than a ticket.

HB 2137 - LOTTERY TICKEIS - WORK SESSION

033 MOTION, REP. MASON: Moves to amend HB 2137 by adding the word "Oregon" before "lottery tickets" on line 7. 045VOTE: No objection. Motion passes. 047 MOTION, REP. MASON: Moves HB 2137 as amended to Full Committee with a "do pass" recommendation. Sunseri to carry 050 VOTE: 6-0 Motion passes. Rep. Sunseri to carry.

AYE: Baum, Johnson, Mason, Parks, Sunseri, Miller NO: 0 EXCUSED:

HB 2390 - "SCHEME OR NETVVORK" - WORK SESSION

Witnesses:

Bob Miller, Oregon State Police

071 CHAIMOV: Recalls that at last meeting on HB 2390 the Committee was uncomfortable simply having the "sale of heroin, cocaine and methamphetamine" as enough to guarantee prison time.

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The draft makes the "sale" of those substances one of many factors to consider.

079 REP. MASON: How much is 250 grams of marijuana?

097 CHAIMOV: The amounts come from the federal system. I picked the lowest amounts that are considered under any level. See EXHIBIT M.

121 REP. MASON: One ounce equals 28.35 grams. Committee discusses further what level of drugs are to be established

169 BOB MILLER, OREGON STATE POLICE: Cocaine and methamphetamine should be in the same category for quantity. A typical user portion of Heroin is called "a paper" which would be 1/10 to 1/5 gram. This is substantially more than a gram of cocaine. A heavy user may have in his or her possession 1/8 ounce of cocaine (8 Ball). Anything larger than 3 1/2 grams is not typically a user amount. Same for methamphetamine. A casual user will make purchases in 1/4 gram and 1/2 gram or 1 gram quantities. -Hashish is not a common drug in Oregon. 50 grams is a lot. Would use the same formula for cocaine and methamphetamine. -Marijuana: The limit would be an ounce or 28.26 grams.

242 REP. MASON: Tries to get discussion back to scheme and network. Is uncomfortable with the marijuana amount.

268 MOTION, REP. BAUM: Under subparagraph L, line 22 and 23 marijuana is 28.5 grams, hashish 3 grams, cocaine 3 grams, heroin 1 gram and methamphetamine 3 grams. DISCUSSION ON THE MOTION 297 REP. JOHNSON: Thinks should have a margin for marijuana to distinguish between a "normal user" and a "drug dealer." 325 REP. PARKS: Accepts Bob Miller's factors. 342 REP. BAUMAN: Suggests changing "or" to an "and" on line 6 of printed HB 239 0 making one of Miller's factors be necessary but not sufficient. 369 REP. PARKS: Suggests "transfer for consideration plus possession." 379 REP. BAUMAN: Suggests on line 21 between K and L reducing the number of factors and change "or" to an "and." 398 MOTION, REP. BAUM: Conceptual amendment. Adds as marijuana 50 grams, hashish 3 grams, cocaine 3 grams, heroin 1 gram, methamphetamine 3 grams. DISCUSSION ON THE MOTION

TAPE 15, SIDE B

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008 REP. PARKS: Understood Bob Miller to say that of those drugs Rep. Baum has given a limit of 3 grams on that 3 1/2 or 4 grams are an amount that a heavy user might have.

012 REP. BAUM: A heavy user may also be a dealer.

020 VOTE: 6-1 Motion passes. AYE: Baum, Bauman, Johnson, Mason, Sunseri, Miller NO: Parks EXCUSED: . 028 REP. JOHNSON: Does cocaine as a general category include "crack?"

029 REP. BAUM: Yes.

030 REP. MASON: We might want to add hashish to that list for "consideration." On line 8, regarding "cash on premises" suggests "premises" to include not only the dwelling, but also "in the possession of the defendant." This would work for "weapons." It would not apply to "packaging materials," drug transactions," "stolen property," "precursor

chemicals," and on line 22 "Presence of substantial quantities of controlled substances. should include "possession." The word "possession" includes anything that is within one's control.

082 REP. BAUM: The question is on the delivery end do we extend it to all drugs that we are after?

092 CHAIMOV: Directs question to Rep. Mason. Still unclear what change was made on "premises" to turn it into "possession." 095 REP. BAUM: The language would be "presence of cash in possession of defendant." 099 REP. MASON: On line 22, should include "in possession of defendant." On line 10, weapons should also be in "possession." On line 18, should state "premises." On line 12, "drug transaction records" should include "possession." 110 REP. JOHNSON: Disagrees with Mason. There are few that should not have "possession" inserted in there. Anything that could be on a person or on the premises both should be there. 118 CHAIR MILLER: Instructs Counsel to provide a clean draft of proposed amendments. 131 CHAIMOV: Is it the Committee's desire to have "in furtherance of a controlled substance" offense come out of the draft or would the factors to be considered still need to be "in furtherance of a controlled substance" offense? 153 REP. BAUMAN: If we limit it to an "in furtherance of a controlled substance" offense we are going to have endless proof problems.

HB 2194 - ESCAPE OF INMATES - WORK SESSION

. House Committee on Judiciary February 5, 1991 - Page 14

173 ROBINSON: Summarizes HB 2194. EXHIBIT P. 207 MOTION, REP. BAUM: Moves HB 2194-1 Amendments. EXHIBIT Q. No objection. Motion passes.

215 MOTION, REP. SUNSERI: Moves HB 2194 as amended to Full Committee with a "do pass" recommendation. 219 VOTE: 7-0 Motion passes. Rep. Johnson to carry.

AYE: Baum, Bauman, Johnson, Mason, Parks, Sunseri, Miller NO: 0 EXCUSED:

HB 2384 AND HB 2385 - FALSE INFORMATION - PUBLIC HEARING

Witnesses:

Richard Mays, Lake Oswego Police Department Karl Krueger, Oregon Motor Vehicles Division Les G. Youngbar, Oregon Police Chiefs Association

233 ROBINSON: Summarizes HB 2384 and HB 2385 273 RICHARD MAYS, LAKE OSWEGO POLICE DEPARTMENT: Testifies in support of HB 2384 and HB 2385. 338 CHAIR MILLER: Does HB 2385 impact the obtaining of a trip permit? 371 KARL KRUEGER, MOTOR VEHICLES DIVISION: People who purchase trip permits do not come under the mandatory insurance law of Oregon. 387 REP. BAUMAN: Is there some requirement that insurance companies notify you of any insurance cancellation? 394 KRUEGER: No. The insurance companies do notify the DMV when their insured is involved in an uninsured accident.

TAPE 16, SIDE B 003 REP. SUNSERI: If the Department pulls someone over and the person lies about insurance and a \$1,000 fine is laid on them can the Department also lay another \$1,000 fine for driving while not insured?

008 MAYS: Yes. 020 LES G. YOUNGBAR, OREGON POLICE CHIEFS ASSOCIATION:
Testifies in support of

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HB 2384 and HB 2385.

045 REP. BAUM: Under HB 2385 what about the fellow who sells his car
to another person and the title has not changed? 061 MAYS: One of the
concerns we had was the language "registered owner." Perhaps it should
be "owner. " 075REP. BAUM: Suggests changing on line 6 after the
word "person" insert the word "knowingly." And change "registered owner"
to "owner." 080 REP. BAUMAN: Should the Committee require insurance
before the department of motor vehicles allows a trip permit? Should the
Committee require that insurance companies to inform the Department of
Motor Vehicles of insured status so that the Department will know.
096 YOUNGBAR: Agrees. 105 REP. BAUMAN: Raises concern about the
innocent seller of a used car. Should we make sellers responsible for
any subsequent accident? 123 CHAIR MILLER: The Transportation
Committee is discussing those issues. 142 REP. SUNSERI: I think
trying to create responsibility on the seller, it may be impossible to
comply with. 154REP. PARKS: Take out "registered" from the
definition and leave it "owner" in HB 2385.

HB 2384 - FALSE INFORMATION - WORK SESSION

170 REP. MASON: Sounds like a misdemeanor clone. Not sure if we need
another misdemeanor.

196 CHAIR MILLER: Would HB 2384 not provide any more accurate
information concerning insurance? 202 REP. BAUMAN: Doubts if a police
officer has the time to go back to their desk and call around to see if
the motorist has insurance. 207 CHAIR MILLER: We have all heard of
this type of activity and it needs to be solved. 214 REP. BAUMAN: The
lying to the officer is inconsequential to lack of liability insurance.
232 REP. SUNSERI: The police have no recourse at the moment. HB 2385
provides some recourse. 238 REP. MASON: So what? No one will go to
jail on this, but some one will get their car taken away. ,

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268 CHAIR- MILLER: The people who want to violate these things tune
into what the law is. Existence of a law may affect the public.

295 REP. BAUMAN: Does not think that the Department should wait until a
person lies to a police officer.

318 MOTION, REP. MASON: Moves HB 2384 to Full Committee with a "do
pass" recommendation. 325 VOTE: 7-0 Motion passes. Rep. Mason to
carry. . AYE: Baum, Bauman, Johnson, Mason, Parks, Sunseri, Miller NO: 0
EXCUSED:

HB 2385 - UNINSURED MOTORISTS - WORK SESSION

355 REP. MASON: To operate a car without insurance is a Class B infraction. If another person drives the car it is a misdemeanor. This makes no sense.

HB 2139 -FALSE INFORMATION/WILDLIFE - PUBLIC HEARING

Witnesses:

Major L. R. Hyder, Oregon State Police Webb Terwilliger, State Marine Board

391 ROBINSON: Summarizes HB 2139.

TAPE 17, SIDE A 016 MAJOR L. R. HYDER, STATE POLICE: EXHIBIT R HB 2139 brings citations for fish and wildlife offenses with those statutes that apply criminal and traffic safety law.

032 REP. PARKS: Are the statutes that affect the Marine Board incorporated in HB 2139?

033 HYDER: No they are not. 036 WEBB TERWILLIGER, STATE MARINE BOARD: EXHIBIT S Suggests modifications to HB 2139. -On line 4 and line 8 insert between "of" and "ORS" the language "ORS 153 .325-153.430 and." This will broaden this to cover both the Fish and Wildlife and commercial fisheries and boating laws of the state. The Oregon State Police and the State Marine Board staff have consulted and concur in the amendment.

060 REP. BAUM: What kind of people are we catching in this net? Are we catching 14 year olds or people fishing for salmon and steelhead?

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062 TERWILLIGER: The people that this applies to are those that borrow another's fishing license, not carrying any other identification and giving false name and address.

HB 2139 - WORK SESSION

072 MOTION, REP. BAUMAN: Moves to adopt Terwilliger amendments to HB 2139.

074 VOTE: No objection. Motion passes HB 2139 - PUBLIC HEARING

097 CHARLES WOOSLEY: EXHIBIT T Reads from Exhibit T 116 MOTION, REP. BAUMAN: Moves HB 2139 as amended to Full Committee with a "do pass" recommendation. 118 VOTE: 7-0 Motion passes. Rep. Parks to carry.

AYE: Baum, Bauman, Johnson, Mason, Parks, Sunseri, Miller NO: 0 EXCUSED:

HB 2140 - REWARD FOR INFORMATION/WILDLIFE - PUBLIC HEARING

132 ROBINSON: Summarizes HB 2140. 146 ROD INGRAM, FISH AND WILDLIFE: EXHIBIT U Reads from Exhibit. 186 REP. PARKS: how important is number 3, page 3, line 8 of HB 2140 which states, "The Commission may

determine additional amounts of damage?" Is reluctant to give an agency that kind of open ended license. 195 KATE BROWN, OREGON FISH AND WILDLIFE: Purpose of that amendment is to give the Department of Fish and Wildlife the authority to charge civil penalties and take into account such things as brood trout and future generations of fish. The value can be increased on fines that can be laid. 210 REP. PARKS: As an owner of the fish, if some one destroyed them I could go to court and I could sue them for whatever the value was. This amendment gives you unlimited authority to place a value without any kind of check. 223 BROWN: The Department intends to utilize the resources of its own in determining the amount that would be laid. 225 REP. PARKS: Where do you get the money for rewards? 230 INGRAM: Those dollars come out of the exiting budget. In the last biennium the Department

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offered rewards on two occasions.

239 REP. BAUM: Who gets the money?

240 INGRAM: The money goes to the Oregon Department of Fish and Wildlife.

245 REP. BAUM: You have been funded totally by license fees from the beginning?

246 INGRAM: On the Wildlife Division side has about \$460,000 in general fund that goes the none game program. Everything else is either federal fund or hunting license dollars. 256 REP. BAUM: Are these fee increases tied to any kind of backfill into the general fund revenue? 259 INGRAM: In terms of the Department's fee increases they are tied to back filling general funds. 262 REP. SUNSERI: How are you going to determine the value of the "critter" that has been violated? 263 BROWN: The values that we look at is with the individual fish. \$125. 279 MAJOR ROY HYDER, STATE POLICE: EXHIBIT V Supports HB 2140. 297 CHARLES W. WOOSLEY: EXHIBIT W -Suggests an amendment to HB 2140. Reads from Exhibit. -Sections 1 and 2: Would require the convicted violator to reimburse the Commission the amount of the reward paid to the informant. 363 CHAIR MILLER: Adjourns Subcommittee on Criminal Law and Corrections at 5:30 p.m. Submitted by: Reviewed by: J. Kennedy Steve, Assistant Manager David Harrell, Office

EXHIBIT LOG:

A Written Material on HB 2440 - Oregon Homicide Law - 23 Pages
B Written Material on HB 2440 - "Murder By Child Abuse" - 12 Pages
C Written Material on HB 2440 - "Homicide, Assault, Kidnapping And Related Offenses - 12 Pages D Written Material on HB 2440 - "Brief Against Death" - 18 Pages E Written Material on HB 2440 - "Capital Punishment In Oregon" - 20 Pages F Written Material on HB 2440 - "Deterrence and the Death Penalty" - 10 Pages

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G Written Material on HB 2440 - Oregonian Article by Fred Leeson - 1
Page H Written Material on HB 2440 - Prison Impact Statement - 1 Page
I Testimony on HB 2440 - Wayne T. Westling - 5 Pages J Written
Material on HB 2440 - "Making Sense of The Mishmash" - 4 Pages
K Testimony on HB 2440 - Myron Hall - 1 Page L Written Material on
HB 2393 - Amendment to ORS 138.550(3) M Written Material on HB 2390 -
Greg Chaimov - 3 Pages N Written Material on HB 2390 - Greg Chaimov -
1 Page O Written Material on HB 2390 - Greg Chaimov - 16 Pages
P Testimony on HB 2194 - Virginia Vanderbilt - 1 Page Q Written
Material on HB 2194 - Proposed Amendments - 1 Page R Testimony on HB
2139 - Major L.R. Hyder - 4 Pages S Testimony on HB 2139 - Webb
Terwilliger - 1 Page T Testimony on HB 2139 - Charles W. Woosley - 1
Page U Testimony on HB 2140 - Rod Ingram - 4 Pages V Testimony on
HB 2140 - Major L.R. Hyder - 2 Pages W Testimony on HB 2140 - Charles
Woosley - 1 Page X Testimony on HB 2140 - Rep. Dave McTeague - 5
Pages

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