

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

February 19, 1991

Hearing Room 357 1:15 p.m.

Tapes 25 - 28

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 MEMBER EXCUSED: Rep. Brian VISITING MEMBER: Rep. Mannix STAFF PRESENT: Holly Robinson, Committee Counsel Jeff Steve, Committee Assistant

MEASURES HEARD: HB 2502 - Unlawful Delivery of Controlled Substance (PH/WS) HB 2543 - Post-prison Supervision (PH/WS) HB 2545 - Child Neglect in First Degree (PH/WS) HB 2542 - Sexual Abuse In First Degree (PH/WS) HB 2546 - Animal Abuse In First Degree (PH) HB 2544 - Gender Neutral Rape (PH/WS)

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TAPE 25, SIDE A

002 CHAIR MILLER: Calls the meeting to order at 1:15 p.m. Discusses the agenda for the meeting.

HB 2502 - CONTROLLED SUBSTANCES - PUBLIC HEARING

Witnesses:

Representative Kevin Mannix, District 32 Lieutenant John Bunnell, Multnomah County Police David Fedanque, American Civil Liberties Union (ACLU) Rosanna Creighton, Citizens For Drug Free Oregon House Committee on Judiciary February 19, 1991 - Page 2 Jim McIntyre, Oregon Sheriff's Association

011 REP. MANNIX, DISTRICT 32: Last session the legislature set up a special standard in regard to law enforcement and drugs. When it came to children and schools the legislature enhanced the penalties for delivery of a controlled substance to a student or minor within 1,000 feet of the real property of a public or private elementary, vocational or secondary school. There will be another bill this session to expand it to colleges and universities. As to location, HB 2502 goes to the fact that certified day care facilities are not protected under the current law. HB 2502 extends these penalties to include delivery of a controlled substance within 1,000 feet of a "day care."

039 LIEUTENANT JOHN BUNNELL, MULTNOMAH COUNTY POLICE: Offers testimony in favor of HB 2502. Commander of Narcotics unit of Multnomah County. Discusses function of unit. Another area is drug abuse resistance education. Send message to kids and parents that we are going to have drug free environments around schools and day care facilities. -Speaks to HB 2545 on child neglect in the first degree. The hardest thing we have to deal with is children in drug houses. Supports HB 2545.

100 DAVID FEDANQUE, AMERICAN CIVIL LIBERTIES UNION: EXHIBIT A Concerned with disproportionate punishment. Currently, the controlled substances statutes prescribe different penalties depending upon where the substance falls in the schedule of controlled substances. The purpose of the proposed amendments See Exhibit A is to apply this enhanced penalty only to "schedule 1 and schedule 2 substances" in situations where those offenses would otherwise have been an A or B felony. Would be more in

line with proportionality and consistent with other statutes on the books. The current statute was amended on Senate side last session concerning delivery of a controlled substance to a student or minor within 1,000 feet of school property. HB 2502 would include home care providers. The ACLU believes that is a very large number of residences. HB 2502 is too wide. Asks for caution.

137 REP. BRIAN Did you say this will include day care facilities.

140 FEDANQUE: HB 2502 will include day care as it is defined in ORS 418.805. "Day care" means "any facility that provides day care to children including a day nursery, nursery school group, home of a family day care provider or similar unit operating under any other name." ORS 418.805. It is clear that family day care providers are included under that definition. . 148 REP. BRIAN: You are not suggesting that it is o.k. to deliver controlled substances to only small day care operations.

155 FEDANQUE: Of course not. The delivery of most dangerous drugs is punishable as either a class A or B felony already. The most reasonable approach would be to add those offenses for which it would be a Class B felony in certain circumstances. Does not think that restricting controlled substance delivery within a 1,000 feet of a day care facility is practical. Assumes that one of the elements of the crime would have to be "the knowledge" that the defendant was within 1,000 feet of a day care facility. This would be difficult. 168 REP. MANNIX: You missed the word "certified." Under 418.810 adds the extra language of "certification." Most mom and pop day cares are not certified. These day care facilities would not be included.

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 19, 1991 - Page 3 178 REP. PARKS: Is "knowledge" an element of the crime? 183 REP. BAUMAN: You would have to "knowingly" deliver the substance. Believes what we are doing is setting up a real sympathetic group of collateral victims of drug use which are at a tender age. The Committee should anticipate that there are other special groups injured by the delivery of controlled substances. Should just enhance the delivery of a controlled substance, period, rather than to have an extra restriction applying to delivery near day care centers. 225 REP. MANNIX: Would like to see enhancement of the law state-wide. However, there are limited resources and that is the reason for taking things incrementally. 242 REP. BAUM: Agrees with Rep. Bauman's point. 259 REP. MANNIX: Suggests the possibility of expanding HB 2502 to include "any delivery of a minor anywhere" is a Class A felony. 264 FEDANQUE: Delivery of a schedule 1 and schedule 2 controlled substance to a minor is already a Class A felony under ORS 475.995. Draws to the Committee's attention what substances fall in those other portions of the schedule. Schedule 3 controlled substances include Tylenol 3 with codeine. HB 2502 as proposed would make it a crime for someone inside their home to take Tylenol with codeine who lived within a 1,000 feet of a day care center. That cannot be the intention of this committee. 281 REP. MANNIX: That assessment is incorrect since HB 2502 applies only to the delivery of a controlled substance "to a minor." 283 FEDANQUE: HB 2502 does not deal with delivery to minors. 287 REP. MANNIX: Yes it does. On line 7 it states "To a student or minor" 289 FEDANQUE: Does that apply to subsection (b) on line 7? 296 REP. MANNIX: You are correct. The Committee can change that. 302 ROSEANNA CREIGHTON, CITIZENS FOR DRUG FREE OREGON: The intent of the law prohibiting the delivery of controlled substances to a minor within 1,000 feet of a school was to ensure that children walking home from

school would not be confronted with this activity. HB 2502 is to strengthen the current law. Asks where marijuana fits into the scheme of things. 330 REP. BAUM: Suggests making all drug delivery an A felony.

357 CREIGHTON: Agrees completely. 367 REP. PARKS: What is the practical effect of HB 2502 on marijuana? HB 2502 - CONTROLLED SUBSTANCES - WORK SESSION 383 REP. MANNIX: Would like to see "student" taken out and leave it simply "minor."

: 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 19, 1991 - Page 4 410 REP. BAUM: Suggests any delivery of a controlled substance in the state to any person should be a Class A felony.

419 CHAIR MILLER: Sees that making any delivery of a controlled substance to any person anywhere in the state may run against creating a special zone of protection for children due to limited resources.

438 REP. MANNIX: A balanced approach would be to take out the restriction on "students or minors" within 1,000 feet and make it delivery to "anyone" within 1,000 feet of a certified day care facility. TAPE 26, SIDE A

043 REP. BAUM: What are we accomplishing with the 1,000 feet requirement if the police already have the ability to make an arrest of a person delivering controlled substances to a minor? The only difference HB 2502 would make would be to give police the added authority to arrest people for delivering marijuana. 066JIM McINTYRE, OREGON STATE SHERIFF'S ASSOCIATION: As to delivery of minors, ORS 475.995, the only schedules that are specifically stated are schedules 1,2, and 5. Marijuana is a schedule 1 drug. LSD is schedule 1. Cocaine and methamphetamine are schedule 2 drugs. Under ORS 475.995 delivery of cocaine, methamphetamine, LSD and heroin would be a Class A felony. Delivery of marijuana to a minor would be a Class A felony regardless of quantity and the defendant is 18 years of age and the person to whom the delivery is made must be at least 3 years younger than the defendant. 096 REP. MANNIX: Is it fair to say that dealers like playgrounds and opens spaces away from roads? 098 McINTYRE: Yes, especially with respect to delivery of marijuana. 106 REP. MANNIX: How would you react to taking out the delivery to student or minor exemption and just say delivery within 1,000 feet of a school or certified day care facility? 110 McINTYRE: That would be a good idea. By stating "student or minor" there is an additional problem of proving how old the buyer is. It is conceivable that you could prosecute a delivery where the buyer is not known, but this is difficult. 118 REP. BAUM: What would that do to the job of law enforcement if we just said "delivery of any controlled substance is a Class A felony?" 132 McINTYRE: It would make a clear statement to drug dealers in the state. The fiscal impact would be incredible. In view of the sentencing guidelines and the room available for housing prisoners the cost would be great. 134 REP. BAUM: When you talk about fiscal impact, none of these Class A felons are going to go to prison. Minors are going to be treated in juvenile court.

~- . 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 19, 1991 - Page 5 139 REP. MASON: The term "delivery" is not synonymous with "sale."

150 CHAIR MILLER: Sees no difference between delivery for consideration and mere delivery. Both should be prohibited.

153 REP. JOHNSON: What drugs are scheduled in schedule 2? 164
McINTYRE: Cocaine, methamphetamine and many others. These are the most common street drugs.

167 REP. JOHNSON: Under 475.992 those schedule 2 drugs if delivered to an adult are Class B felonies? 171 McINTYRE: Yes. 172 REP. BAUM: There are laws on the books that encourage delivery of drugs to minors. Should not make distinctions to the delivery of drugs, period. 178 REP. PARKS: Do not the vast majority of 18 year olds that are picked up taken in on charges of delivery for consideration. 182 REP. MASON: They are, but there is such a thing as constructive delivery. You can be charged by circumstances other than the presence of cash or other consideration. There is a certain level. 188 McINTYRE: The case that Rep. Mason refers to is State v. Boyd. There, the Oregon Court of Appeals addressed the issue of constructive delivery. Under ORS 475.005(8) delivery is defined as "the actual, constructive, or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship." In the Boyd case the Court came up with all the indicia of delivery. 206 REP. PARKS: Concerned that a single sale from an 18 year old to an 18 year old will result in an 18 month prison term. You said it would be probation. Does not understand. 213 REP. MASON: One of the reasons why HB 2390 was phrased in terms of delivery for consideration was to avoid the Boyd situation. Has no problem with the enhanced penalties, but would like them enhanced based upon the real thing -- delivery for consideration. 260 REP. MANNIX: Suggests amending HB 2502 on line 7 delete "to a student or a minor" and on line 10 after the phrase "ORS 418.805" add the words "and ORS 418.810" which adds the definition of what is a certified day care facility. 271 MOTION, REP, BRIAN: Moves those amendments suggested by Rep. Mannix.

DISCUSSION ON THE MOTION

282 REP. MANNLY: This gets back to the intent of the measure and the Chair's idea that any delivery of a controlled substance to any person within this "drug free" zone be restricted to

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protect children. The enhanced penalty within this zone of protection should accomplish this intent. I

284 CHAIR MILLER: Did not hear in the proposed amendment the word "person." Did you add that? I

288 REP. MANNIX: On line 6, assumes that "to deliver a controlled substance" accomplishes this, because under ORS 475.005 "delivery" means "the actual constructive or attempted transfer other than by administering or dispensing from one person to another of a controlled substance whether or not there is an agency relationship." That

definition includes "person." -Suggests stating on line 6 "to deliver a controlled substance to a person: " and insert Rep. Brian's amendments. (Supra at 260)

311 REP. BAUM: There may be other bills to send a stronger message out and he chooses to wait. Supports the amendments. 314
REP. JOHNSON: Is it your intent that if there was a school or day care facility that was unoccupied during the summer months this safe zone would still apply even if children are not present? 339
REP. MANNIX: Yes, because it is still a gathering spot. 340
REP. MASON: Understands HB 2502 and its proposed amendments to add the " 1,000 feet of a certified day care center" and secondly it takes out "a student or minor within a 1,000 feet of a school." 348
VOTE: No objection. Motion passes. 350
MOTION, REP. BRIAN: Moves HB 2502 as amended to Full Committee with a "do pass" recommendation. DISCUSSION ON THE MOTION 354
REP. BAUMAN: The Committee has decided on the policy that this law would apply only to day cares and school buildings? 359
CHAIR MILLER: Yes. 370
VOTE: 8-0 Motion passes.

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

HB 2543 - POST- PRISON SVPERVISION - PUBLIC HEARING

Witnesses:

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Russ Spencer, Oregon Sheriff's Association (OSSA)
Jim McIntyre, OSSA
Stan Robinson, OSSA
Larry McClosky, OSSA
Christie Gustafson, OSSA
Elyse Clawson, Department of Corrections
David Fedanque, American Civil Liberties Union

381 HOLLY ROBINSON: Summarizes HB 2543. Extends the period of time which a person convicted of Rape I, Sodomy I, Sexual Penetration I or II, or Sex Abuse I will serve a term of post-prison supervision o probation.

TAPE 25, SIDE B

007 REP. MANNIX, DISTRICT 32: Testifies in support of HB 2543. 1
029 RUSS SPENCER, OREGON STATE SEIERIFF'S ASSOCIATION: Convened a Task Force made up of Deputy District Attorneys, sheriff's department investigators, legislative personnel and sheriffs to come up with a series of bills to help prosecute these types of cases and help protect the public safety. 040
JIM McIN1TYRE, OREGON STATE SHERIFF'S ASSOCIATION: HB 2543 is intended to supplement the current treatment of sexual offenders and multiple victim pedophiles that have come within the purview of the criminal justice system. Further studies in this area show that these offenses are more prevalent and more damaging than was once believed. It is very difficult to treat those convicted of these crimes. It is the purpose of HB 2543 to extend the maximum period of time that these people can currently be held on probation and under supervision for treatment. Currently the maximum length of time for felony conviction for probation is 5 years. That depends on' whether the crime is a Sex Abuse in the First Degree, a Class C felony or whether it is a Rape in the First Degree, a Class A felony. If the person violates their probation or something occurs during the pendency of their probation that the court supervising the probation thinks it should be

extended then the offender may be ordered to remain under supervision for another year for a total of 6 years. Many of the inpatient sex offender programs run for 2 to 2 1/2 years before they release the patient into the community. Many of the outpatient sex offender programs can run upwards of 3 1/2 years before they consider the patient safe to return to the community. The intent of HB 2543 is to allow the Department of Corrections to retain defendants for supervision beyond the time of the sentencing guidelines, or if a court finds that a person does not warrant long term incarceration, but is in need of very serious treatment and supervision the court upon reviewing all the circumstances pertaining to the defendant and the case can extend the sentence for up to the maximum statutory indeterminate sentence for the offense.

082 REP. PARKS: Where do you find "dangerous offender" in HB 2543?
084 McINTYRE: If so he misspoke. The court would now have the leeway if HB 2543 were passed to take a person who is convicted of Rape in the First Degree and place the person not only on probation for 5 years the court may also extend that probation for up to 20 years.

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 19, 1991 - Page 8 1 093REP. PARKS: On line 10 it says-that "the court shall place the defendant on probation for a - period of 5 years at a minimum and no more than the maximum statutory indeterminate sentence." What is that for these offenses?

097 McINTYRE: The maximum statutory indeterminate sentence for these offenses is 20 years with the exception of Sexual Abuse in the First Degree. 101 ROBINSON: You said that the Court may do this, but on

line 5 it says that the court shall. Do you intend this to be discretionary or mandatory? 106 McINTYRE: Intended that that portion of HB 2543 to be mandatory. Once the court determines that the defendant is to serve a prison term and the Corrections Division pursuant statute will set a post-prison supervision time and now that post-supervision term should be equal to the maximum statutory indeterminate sentence.

117 SPENCER: The Association anticipates that the fiscal impact will not be as great as people might expect. Typically, many of the people subject to this provision will be able to work and pay their own fees.

121 REP. JOHNSON: The crime of Rape in the First Degree, carries a 20 year sentence. If a person was convicted of that could he be sentenced and spend 19 years in prison and then get out and then be required to spend another 20 years under supervision?

126 McINTYRE: It would be equal to the maximum statutory indeterminate sentence. He would have served 19 years and then would be under supervision for the remainder of the maximum sentence allowed, or 1 year.

128 REP. JOHNSON: The wording might be changed to be clearer.

134 McINTYRE: There are a number of statutory enactments that are triggered when anytime any criminal defendant is sentenced. HB 2543 merely addresses one section of those statutes. 145 REP. MANNIX: Representative Johnson's point is well made. 150 STAN ROBINSON, OREGON STATE SHERIFFS ASSOCIATION: There is no cure for the sex offender known today. There are controls that can be set up in probationary situations. Most of these people are controllable under supervision and when there is the responsibility of polygraph and other sanctions to be had during this time they do correct their ways and maintain pretty good lifestyles under supervision. Most of the

individuals that are supervised pay their own way. 198 LARRY McCLOSKEY, OREGON STATE SHERIFF'S ASSOCIATION: Has been involved in sex offender treatment for some time. Involved with polygraph. Statistically sex offenders perform very well while on probation. The concern is after probation. HB 254 3 will ensure that there is supervision for a period of time after probation that should further enhance the treatment of the sex offender. 242 CHRISTIE GUSTAFSON, OREGON STATE SHERIFF'S ASSOCIATION: There is nothing

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 19, 1991 - Page 9 more frustrating than working on a sex crime case involving a repeat offender who has molested children in the past and is your prime suspect. Supports the passage of HB 2543. 262 ELYSE CLAWSON, DEPARTMENT OF CORRECTIONS: EXHIBIT B The Department of Corrections supports the need to expand supervision time of the more serious sex offenders in the community. Those under supervision are required to pay a \$25 supervision fee per month which can be waived or reduced by the court based on their ability to pay. The Department projects its budget over a biennium and subsidizes the budget from whatever is gained by the collection of these fees. -The Department believes that there will be a substantial fiscal impact and the Department could not accommodate this extended supervision given existing resources.

320 CHAIR MILLER: Referring to Exhibit B paragraph 3, it says that the current length of supervision for sex offenders on probation or post-prison supervision is 3 years. Understood that the supervision time was 5 years.

330 CLAWSON: It previously was 5 years under sentencing guidelines. It is now 3 years.

334 CHAIR MILLER: Referring to Exhibit B, paragraph 4, says that the extended supervision time on certain sex offenders will have a long-term fiscal impact on the Department. Is that positive or negative? Is there a possibility that the offenders that you now house will not be reentering the system? If so, how do you calculate that?

345 CLAWSON: That is a possibility. It would be difficult to calculate. In terms of fiscal impact the long term effect will be negative. As time passes there will be substantially more offenders to supervise.

362 CHAIR MILLER: Understood the previous testimony that there were more former offenders who were weren't reoffending. Those who are on supervision perform better in society when on supervision as opposed to going off supervision. 369 CLAWSON: That is a theory that is advanced by treatment professionals and may be accurate. What is difficult is in calculating. 373 CHAIR MILLER: You sound skeptical of that theory.

374 CLAWSON: From the conversation that the Department has had from the people providers that the Department worked -with and the parole information officers who carry sex offender case loads we know that there are a substantial amount of sex offenders that do well while they are under supervision.

383 REP. BRIAN: Under ORS 423.570, the fee is not limited to \$25.

389 CLAWSON: That is correct. What you are asking is, could the Parole

Board increase that fee and then target it toward paying for the sex offender supervision.

396 REP. BRIAN: Can these fees be structured more to help out with the offenders own supervision?

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 19, 1991 - Page 10 TAPE 26, SIDE B 007 CLAWSON: The statute on supervision fees provides a waiver of reducing the \$25 fee or do away with it all together. 015 REP. JOHNSON: The registration option that Ms. Clawson mentioned earlier, understands that that is being dealt with in another bill and currently Oregon has no registration system. 018 CLAWSON: There is a registration system that exists in the statute. There is a bill to amend that statute to expand it. 024 REP. JOHNSON: Assumes registration is cheaper than supervision. 025 CLAWSON: Absolutely.

027 REP. JOHNSON: There has been mention of a couple of times how these people are able to support themselves and pay for some of their supervision costs. Does not see anything in HB 2543 to require that these people pay for their supervision costs. Is this power located some other place?

035 CLAWSON: HB 2543 states that "any costs incurred as a result of this section shall be paid by increased post-prison supervision fees under ORS 423.570. (Line 6-7 of printed HB 2543) 037 REP. JOHNSON: You have not been able to make an estimate of what would be paid? 039 CLAWSON: Currently, the reason why that is difficult to determine how much is paid is because all the data concerning supervision fees is not separated into differing crimes. Would need to see data separated to determine the amount paid and the cost of supervising them. 050 STAN ROBINSON: The situation in a lot of counties who do not have their own calligrapher is that they charge for that particular test. So there are some additional fees the -The registration system does not do any monitoring. 061 McINTYRE: Many of these offenders need to go to the penitentiary and stay there, but there is a great percentage of those that are amenable to treatment. By enacting HB 2543 you will see a reduction in the amount of people going to the penitentiary. 075 CHAIR MILLER: What is your authority if you say that you want a person under supervision for 10 years? Are they restricted to the particular community or are they free to go to another state? 083 McINTYRE: Partly, the decision is up to the parole and probation officer. There is no law in Oregon that requires a person to remain in a given location. 087 REP. BRIAN: What opportunity is there for periodic review? 094 McINTYRE: Currently, beyond the probation there is no review.

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 19, 1991 Page 11 101 REP. BRIAN: Do you think that in some circumstances there is a need for a person to be on supervision for 20 years?

113 STAN ROBINSON: HB 2543 would allow supervision for 20 years. All would depend on the probation court. 119 REP. BRIAN: Do you think it

would be good to create the authority to allow a judge to dismiss the services of the probation officer and end supervision where appropriate?
127 STAN ROBINSON: There is no indication that these people will stop their molestation without supervision. . . 134 McINTYRE: HB 2543

does not modify anything relative to the courts authority to supervise probation. The court may order a number of things in terms of treatment.
156 DAVID FIDANQUE, AMERICAN CIVIL LIBERTIES UNION: EXHIBIT C If this proposal went into effect it would mean that a lot of sex offenders would be supervised. The fiscal impact of this would be a great burden on sex offenders who cannot often times pay for supervision although supervision is very important. 201 REP. PARKS: Does not think that people are interested in treating these people. Is curious how much the program costs. 204 FEDANQUE: It is not very expensive compared with prison, but the resources of these people are limited. Discusses types of supervision. "High supervision" means 3.6 hours of work by a parole or probation officer per month. That is not a lot of contact. If you increase the number of offenders that are under supervision either you have to increase the number of parole and probation officers or an increasing number of offenders are going to get bumped down into the "medium" or "low" category or other types of offenders are going to be bumped down.

HB 2543 - POST-PRISON SUPERVISION OF SEX OFFENDERS - WORK SESSION

235 MOTION, REP. JOHNSON: To correct a potential constitutional deficiency in the statute we need to make sure that the combination of the post-prison supervision and the imprisonment do not exceed the maximum sentence that the person could have been sentenced to in the first place. -On line 6, delete the words "equal to" and insert "which shall continue until the term of post-prison supervision, when added to the term of imprisonment served, equals". 261 VOTE: No objection. Motion passes. 264 MOTION, REP. PARKS: Moves HB 2543 as amended to Full Committee with a "do pass" recommendation. DISCUSSION ON THE MOTION
268 REP. PARKS: Bothers him when the legislature bumps crimes up to A and B. HB 2543 offers a better approach than incarceration at a fraction of the cost.

These minutes consist of 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 content of the proceedings, please refer to the tapes. House Committee on Judiciary February 19, 1991 - Page 12 303 - VOTE: 6 0 Motion passes. Rep. Parks to carry.

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

HB 2545 - CREATES NEW CRIME OF CHILD NEGLECT - PUBLIC HEARING

Witnesses: Jim McIntyre, Oregon State Sheriff's Association (OSSA) Russ Spencer, OSSA Stan Robinson, OSSA Christie Gustafson, OSSA

320 HOLLY ROBINSON: Summarizes HB 2545. Creates new crime of child neglect if a person knowingly leaves a child or allows a child to stay in a structure or vehicle and in the immediate proximity where controlled substances are delivered, manufactured, possessed or consumed. 343 JIM McINTYRE, OREGON SHERIFF'S ASSOCIATION: HB 2545 would amend ORS 163.545 by making child neglect a crime and increases the penalty from a Class A misdemeanor to a Class B felony. HB 2545 is meant to address the situation where there are controlled substances actually being delivered and manufactured.

TAPE 27, SIDE A

006 REP. MASON: You equate this form of child neglect with rape in the First Degree, Assault in the First Degree, Kidnapping in the First Degree and Burglary in the First Degree?

007 McINTYRE: Yes.

008 REP. MASON: The crime of leaving the child in the house would exceed the crime of the drug transaction itself. Is that correct?

010 McINTYRE: Yes. The intent is that society is going to severely sanction individuals and adults who engage in the type of criminal activity that severely endangers the life, health and welfare of their children.

026 REP. MASON: The hypothetical was a marijuana sale in the next room. You want to hold a mother who sells marijuana in the next room liable tantamount to that of kidnapping and rape?

033 McINTYRE: Yes.

034 CHAIR MILLER: If this is the first offense of that particular parent what would the term of incarceration be?

038 McINTYRE: The initial presumptive sentence is 34 to 36 months without any aggravating or mitigating factors. Wants to put it at a category 9 offense because drug trafficking often involves

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052 CHAIR MILLER: Concerned that the punishment you describe that is available may well be appropriate for the crime you are addressing in HB 254 5, but the punishment for the other crimes may be inadequate.

061 REP. BRIAN: How do you define "immediate proximity?"

067 McINTYRE: "In the structure."

068 RUSS SPENCER, OREGON SHERIFF'S ASSOCIATION: Did not want anyone who was in an apartment two floors up to be subject to this act.

072 REP. BRIAN: With that definition though a child sleeping in an upstairs bedroom would be in an "immediate proximity."

073 SPENCER: Correct.

082 STAN ROBINSON, OREGON STATE SHERIFF'S ASSOCIATION: Does see that there are circumstances that go beyond a Class A misdemeanor that are currently on the statutes. These circumstances generally occur when there is a drug operation going on.

099 REP. BRIAN: Would you also define "immediate proximity" as anywhere in the structure?

100 STAN ROBINSON: Yes, because an explosion from a methamphetamine lab would take out not only that structure but other structures as well.

102 REP. BRIAN: Wonders if the Court would define it that way.

106 STAN ROBINSON: Not sure.

109 REP. PARKS: Does the typical situation involve a family unit?

115 STAN ROBINSON: That situation happened a week ago.

119 REP. PARKS: Do you think that HB 2545 will discourage people from having children around where drug operations are going on. 123 STAN ROBINSON: Yes. 131 REP. BAUMAN: Concerned that this is a forfeiture of children bill. If the sentencing guidelines are imposed then the family is broken up and the child suffers. 166 STAN ROBINSON: Certainly the intent of the bill was not to take children away from their parents. 186 McINTYRE: If penalty is an issue shifting the crime category to 7 would drop it below the presumptive penitentiary line and would require that the person have multiple misdemeanors and

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 19, 1991 - Page 14 non-property felonies before they would even be eligible for the penitentiary. They could be put on lengthy supervision. 195CHAIR MILLER: What is your response to deleting lines 9 and 10 of printed HB 2545.

200 McINTYRE: If the Committee wanted to substitute a crime category that would be fine. To allow the Sentencing Guidelines Board to set the crime would cause him some concern.

204 REP. PARKS: What category would it go to?

208 McINTYRE: Cannot say. There are other Class B felonies that are already as low as category 4.

216 ROBINSON: Criminal Mistreatment 1 is Class C felony and is a Category 7 crime; abandonment of a child and placed in immediate danger is a Class C felony and is a Category 7 crime. Suggests that the change would bring it into more of a compliance with these crimes. -To Mr. McIntyre: Given the language that exists in ORS 163.575(1)(d) there is going to be a significant amount of conflict created if the bill is passed as is. How would you deal with the conflict?

235 McINTYRE: Does not believe that a conflict is being created. HB 2545 adds elements and upgrades the crime and limits the age groups to below 16 years of age. 250 REP. BAUMAN: There already are laws against selling drugs which would cause a forfeiture of assets. What would be the benefit of HB 2545 in the situation where a parent is selling drugs at their home. 274STAN ROBINSON: The realization of further consequences if a child is endangered by living in a structure where drugs are sold should be a deterrent. 287 REP. BAUMAN: Isn't that an item of evidence already in juvenile court in your county?

284 STAN ROBINSON: In drug situations it is difficult to deal with custodial issues unless the offender himself is the one in question with the protection of the child. When it is the mother who is not directly involved with the manufacturing then it is not an issue that the police can deal with in terms of protecting the child. 291 REP. BAUMAN: In this circumstance, because the law was not in place, the child remains with the mother. If HB 2545 were passed, the positive outcome would be

that the child would be in foster care and the mother would be incarcerated.

303 STAN ROBINSON: If you considered the change to HB 2545 as discussed above (Tape at 186), it would not necessitate incarceration unless there is a history. It would allow legal custody. 314 REP. BAUMAN: Our objective really is to remove the child and the mother from the house where the drugs are manufactured or stored. 322 STAN ROBINSON: There is no intent to separate child from mother. Wants to emphasize that the endangerment is more serious than a misdemeanor complaint. A probationary consequence. 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 19, 1991 - Page 15 would be longer than a misdemeanor consequence. 334 REP. BAUMAN: Our purpose is not to pass bills with unintended consequences. 342 CHRISTIE GUSTAFSON, OREGON STATE SHERIFF'S ASSOCIATION: We are sending the message to the parents to take responsibility for their children and if you do you may suffer the loss of your children, although it is not the intent. Want parents to think twice before they engage in this kind of activity. 357 REP. MASON: That is not what the bill says. Isn't growing marijuana manufacturing? 368 GUSTAFSON: Yes. 372 REP. MASON: What about the marijuana grower? 375 GUSTAFSON: Yes. 377 REP. MASON: Your view is that if dad grows a marijuana plant in the corner that the mother should take the child and leave the home? 380 GUSTAFSON: Yes. 385 REP. MASON: Is it better to break up the family than to have the child present where marijuana plants are grown? 390 GUSTAFSON: Both parents need to protect the child from the drug and from activities associated with the drug. The mother could move out of the house, or he could take the plant out of the house and he could go through drug rehabilitation. There is a choice. 395 REP. MASON: How is the mother supposed to live. TAPE 28, SIDE A ~

003 CHAIR MILLER: What would your reaction be to deleting in Section 1 of HB 254 5 the words "in the immediate proximity." Immediate proximity seems more restrictive than is desirable. 012 McINTYRE: Suggests adding the words "on the premises." Concerned with protecting the children in the front yard and the property next door. 017 CHAIR MILLER: Suggests having the statute cover areas more than the structure and the vehicle, by saying that one commits this offense when one leaves a child unattended in any area where controlled substances are delivered or manufactured. 023 REP. MANNIX, VISITING: What if it said "allows a child stay in a place where controlled substances are" 028 McINTYRE: That would be acceptable.

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 19, 1991- Page 16 029 REP. BAUMAN: A witness talked about not wanting to include everyone in the apartment building.

033 McINTYRE: Does not want to involve innocent people.

036 REP. BAUMAN: Is "place" adequate to exclude those people?

040 McINTYRE: The most specific and workable term would be "premises or vehicle." "Premises" has a definition within the code.

044 REP. MANNIX: Suggests saying "in any vehicle or on premises."

046 CHAIR MILLER: On line 7, what is the meaning behind "criminally delivered."

049 McINTYRE: By saying "criminally delivered" you are exempting the legal acts of delivery or manufacture. Under ORS 495.005, there are definitions for "legal" and "illegal" activity dealing with delivery or manufacture.

058 REP. MANNIX: If possession of marijuana is not criminalized then it would not apply.

061 REP. MASON: Possession of more than an ounce of marijuana is criminal. The plant in the corner puts you into this.

072 CHAIR MILLER: Is concerned with the critical difference between what is in ORS 163.575 concerning endangerment of a minor, subparagraph (b) "permitting a person under 18 to enter or remain in a place where unlawful activity involving controlled substances is maintained or conducted" versus what Mr. McIntyre proposes. 079 McINTYRE: There is a general proscription against allowing anyone less than 18 to enter or remain in place where unlawful activity involving controlled substances is maintained or conducted. There would now be a specific proscription to allowing any child less than 16 to be in a vehicle or on premises where controlled substances would be delivered or manufactured.

097 ROBINSON: Could you give an example. 102 REP. MANNIX: A Class A misdemeanor is having the child present where controlled substances are being maintained. If it can be proven that the a person criminally delivered or manufactured a controlled substance and the child was under the age of 16 in those premises then the penalty is heightened.

115 CHAIR MILLER: When you suggest an increase in penalty it is very helpful.

123 REP. MASON: State v. Boyd has gutted delivery. Basically, if you have a lot of drugs around that constitutes constructive delivery and Boyd has done away with it, there is not much left to the concept.

137 McINTYRE: The Boyd case follows from a long line of Oregon cases and federal circuit cases. The focus in Boyd is not whether possession in constructive. It was an additional set of criteria

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146 REP. MANNIX: Boyd involves an attempt to deliver and looks at the quantity of drugs present. We are not looking at attempt at delivery, we are talking about actual delivery. 149 McINTYRE: Delivery in Oregon is defined as "attempting, actual and constructive." See ORS 475.990. 152 REP. MANNIX: Boyd is as significant as the next case sitting on the court of appeals. Whereas this is hard law. HB 2545 - CHILD NEGLECT IN FIRST DEGREE - WORK SESSION 161 MOTION, REP. JOHNSON: Moves to amend in line 10, delete the number "9" after category and insert the number "7." 179 VOTE: No objection. Motion passes. 181 REP. MANNIX: Suggests amending HB 2545 on lines 6 and 13. On line 6 delete "in a structure or" and "in the immediate proximity" and make line 6 to read "child to stay in a vehicle or on premises where controlled substances". On line 13, make the same change. 194 MOTION, REP. BAUM: Moves to adopt Rep. Mannix's suggestions. 209 VOTE: No objection. Motion

passes. 212 MOTION, REP. JOHNSON: Moves HB 2545 as amended to Full Committee with a "do pass" recommendation. 213 VOTE: 2-5 Motion fails. AYE: Johnson, Miller NO: Baum, Bauman, Mason, Parks, Sunseri EXCUSED: Brian 232 REP. BAUM: Serves notice of reconsideration on the vote.

242 MOTION, REP. BAUM: Moves for immediate reconsideration of HB 2545. 244 VOTE: No objection. Motion passes. 245 REP. MASON: Would like to adopt a conceptual amendment. Some of the witnesses are concerned that methamphetamine and marijuana is so closely tied. The term manufacture may apply well to methamphetamine but not to marijuana. What other drugs do the witnesses want included? 266 McINTYRE: Having problems with the growing of poppies. : These minutes contain materials which paraphrase and/or summarize datementa de during this session. Only text enclosed in quotation marks repon a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. House Committee on Judiciary February 19, 1991 - Page 18 269 REP. MASON: What other categories?

278 STAN ROBINSON: Suggests excluding the marijuana.

291 REP. MASON: If you can make a difference between marijuana manufacturing with grow lights and having a marijuana plant in the corner then that is acceptable.

315 REP. MANNIX: What is the value of a marijuana plant these days?

327 REP. BAUMAN: Her objection is different than Rep. Mason's. The object of HB 2445 is to move children out of the situation where drugs are manufactured and delivered.

HB 2542 - PUBLIC HEARING Witnesses: ,

Russ Spencer, Oregon State Sheriff's Association Jim McIntyre, OSSA Christie Gustafson, OSSA Stan Robinson, OSSA

375 HOLLY ROBINSON: Summarizes HB 2542.

TAPE 27, SIDE B

002 RUSS SPENCER, OREGON STATE SHERIFF'S ASSOCIATION: Introduction.

008 JIM McINTYRE, OREGON STATE S1 ERIFF'S ASSOCIATION: HB 2546 concerning animal abuse in the First Degree should be included in HB 2542. After section 3 on page 2, line 1 of printed HB 2542 should insert the words "if a person intentionally or knowingly touches or contacts or causes a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying a sexual desire of a person." -HB 2542 moves to amend sexual abuse in ORS 163.415. The reason for that is the offense category for sexual abuse in the first degree is not addressing the problems that we have with long term sexual offenders and multiple victim pedophiles. There have been a number of individuals who have been convicted of sexual abuse in the first degree where their sexual conduct has been to have sexual contact with minors repeatedly. HB 2542 is directed toward people who engage children who are ages 13 and 14 years of age in long term acts of sexual fondling and sexual abuse. 077 RUSS SPENCER: Urges consideration of HB 2546. 083 REP. MASON: The HB 2542 Amendment EXHIBIT D reads "if a person intentionally or knowingly touches or contacts, or causes or allows a person under 18 to touch or contact" The crime would either be a person doing these things or a person

causing a person under 18 to do these things. Is that right?

091 McINTYRE: Yes. House Committee on Judiciary February 19, 1991-
Page 19 093 REP. MASON: Weren't there some bestiality statutes in
existence at one time in this state?

095 REP. MANNIX: The grand reform package of 1983 did away with
those.

104 CHRISTIE GUSTAFSON, OREGON STATE SHERIFF'S ASSOCIATION: Gives two
examples of animal abuse and sex abuse.

133 STAN ROBINSON, OREGON STATE SHERIFF'S ASSOCIATION: Wants to
raise sex abuse in First Degree to B Felony. Right now the mere fact
that sexual intercourse did not take place does not take it out of Class
C felony. Wants to raise sexual abuse with a child under 14 to C Felony.

158 REP. SUNSERI: Suggests raising the age to 16. 159 STAN
ROBINSON: Agrees with Sunseri.

HB 2542 - WORK SESSION

163 MOTION, REP. SUNSERI: Moves to change the age on line 15 from 14
to 16. Likewise on line 30. DISCUSSION ON THE MOTION 171 REP. JOHNSON:
Understands that the Committee is talking about an affirmative defense.
What this amendment is saying is that it is no longer a defense if an 18
year old had a 15 year old girl friend. Objects to the motion.

191 REP. SUNSERI: Thinks it best to protect these people of younger
age. 200 REP. JOHNSON: We are not talking about rape or intercourse we
are talking about sexual contact which includes fondling and heavy
petting. The social structure of high schools in this state would be
shocked to find out that that kind of behavior is a criminal offense.

218 CHAIR MILLER: A majority of those present can cause an amendment to
be adopted, but it will take a majority of the members of the
Subcommittee to send the bill to Full Committee.

242 McINTYRE: What needs to be addressed are the actual defenses
themselves.

252 REP. SUNSERI: The fact is that young girls that have had some sort
of sexual relationship with a senior boyfriend begin to develop problems
themselves. Supports his earlier suggestion.

271 REP. JOHNSON: The age issue is important. Need to be real careful
not to make something like this a crime. This type of behavior is too
prevalent.

285 REP. SUNSERI: Withdraws the motion.

295 MOTION, REP. MASON: Moves to amend the proposed amendments See
Exhibit D Delete "or knowingly touches or contacts, or". I 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 19, 1991 -
Page 20 332 VOTE: No objection. Motion passes.

336 MOTION, REP. MASON: Moves to adopt the amended amendments to HB
2542. 338 VOTE: No objection. Motion passes. 339 MOTION, REP. MASON:
Moves HB 2542 as amended to Full Committee with a "do pass"
recommendation. 342 VOTE: 5-0 Motion passes.

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

HB 2546 - PUBLIC HEARING

368 REP. MANNIX, VISITING: Suggests that since the provisions of HB 2546 have been included in HB 2542 that the Committee defer any further action on this.

HB 2544 - PUBLIC HEARING

Witnesses:

Jim McIntyre, Oregon State Sheriff s Association (OSSA) Stan Robinson, OSSA Christie Gustafson, OSSA Kate Brown, OSSA

390 REP. MASON: This bill was introduced about 12 years ago. Hopes it gets farther this time then last.

400 HOLLY ROBINSON: Summarizes HB 2544. Makes the crime of rape gender neutral.

TAPE 28, SIDE B

029 JIM M - TYRE, MULTNOMAH DISTRICT ATTORNEY'S OFFICE: HB 2544 will remove the sexual reference to the charge of rape. There are an increasing number of female perpetrators engaging in intercourse with young boys. Currently, a male 20 years of age who engages in sexual intercourse with a girl of 12 years of age commits the crime of Rape in the First Degree. If a woman 20 years of age engages in sexual intercourse with a boy of less than 12 then it is sex abuse. There is a great disparity in the law. 053 STAN ROBINSON, OREGON SHERIFF'S ASSOCIATION: Suggests on line 17 changing the word "sister" to "sibling." 083 CHRISTIE GUSTAFSON, MULTNOMAH COUNTY SHERIFF'S DEPARTMENT: Speaks of a 7 year old boy who was sexually abused by his mother. The child's actions resembled those

House Committee on Judiciary February 19, 1991 - Page 21 of an animal. The boy slept with his mother repeatedly and engaged in sexual intercourse frequently.

111 KATE BROWN, WOMEN'S RIGHTS COALITION: The Women's rights coalition is concerned with HB 2544. If this is going to be a crime that is gender neutral it must be truly gender neutral. HB 2544 does not address the situation of rape of males by males or females by females. Suggests amending HB 2544 to provide for this. 131 REP. MANNIX: HB 2544 allows that since it refers to "person." 137 BROWN: Sexual intercourse means whenever penetration occurs. Suggests comprehensive revisions along the Washington State lines. Washington 98.44.010. The word "rape" sends a very power message to members of the society. This is very distinct from "sexual perversion." Rape is a crime of violence, not a sexual crime.

152 REP. MANNIX: Suggests going ahead with HB 2544 now and taking into consideration the Washington scheme later. 160 REP. BAUMAN: Is there any case law that furtheri interprets what sexual intercourse means. 168 REP. MANNIX: ORS 163.305(7) says that sexual intercourse has its ordinary meaning and occurs upon any penetration however slight. 172 BROWN: Understands that because the way "deviant sexual

intercourse" is defined, penetration under "sexual intercourse" requires a penis going into a vagina. 175REP. MASON: "Deviant sexual intercourse" requires contact including the mouth and so forth. The sodomy statutes are almost parallel to rape. Those statutes should take care of male-male sexual abuse. 186 BROWN: Sodomy 1 does not have the same stigma attached to it in our society as rape does. 189 REP. MASON: Disagrees. 196 BROWN: Agrees that the summary caption on HB 2544 read gender neutral rather than that women can commit the crime of rape.

HB 2544 - WORK SESSION

204 MOTION, REP. MASON: Moves that on line 17 delete the word "sister" and insert the word "sibling." 209 VOTE: No objection. Motion passes. 211 MOTION, REP. MASON: Moves HB 2544 as amended to Full Committee with a "do pass" recommendation. 219 VOTE: 7-0 Motion passes. Rep. Mason to carry.

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 19, 1991- Page 22 AYE: Bauman, Baum, Johnson, Mason, Sunseri, Parks, Miller NO: 0 EXCUSED: Brian 232 CHAIR MILLER: Adjourns Subcommittee on Criminal Law and Corrections at 4:50 p.m.

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

EXHIBIT LOG:

A Testimony on HB 2502 - David Fedanque - 1 page B Testimony on HB 2543 - Elyse Clawson - 1 page C Written Material on HB 2543 - David Fedanque - 2 pages D Proposed Amendments to HB 2542 - Holly Robinson - 1 page

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