

HOUSE COMMITTEE ON JUDICIARY CRIME AND CORRECTIONS

March 5, 1991 Hearing Room 357 1:00 p.m. Tapes 40 - 42
MEMBERS PRESENT: Rep. Randy Miller, Chair Rep. Ray Baum Rep. Judy
Bauman Rep. Tom Brian Rep. Rod Johnson Rep. Tom Mason Rep. Del Parks
Rep. Ron Sunseri VISITING MEMBERS: Rep. Peter Courtney Rep. Kelly
Clark Rep. John Minnis Rep. Charles Norris STAFF PRESENT: Holly
Robinson, Committee Counsel Jeff Steve, Committee Assistant MEASURES
HEARD: HB 2198 - Inmates/Rule Hearings, PH/WS HB 2358 - Annual
Rpt/Corrections, PH/WS HB 2443 - Arrests/State Violators, WS HB 2504 -
"Public Place" Defin., WS HB 2505 - Crime/Indecent Exposure, WS HB 2559
- Inmates/Drug Treatment, PH/WS HB 2597 - Urine Testing, WS HB 2603 -
Board of Parole/Members, PH/WS HB 2604 - Board of Parole/Contract, PH/WS

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 40, SIDE A

004 CHAIR MILLER: Opens Subcommittee on Criminal Law and Corrections at
1:00 p.m.

HB 2198 - RULE-MAKING - PUBLIC HEARING Witnesses: Denis Dowd, Oregon
Department of Corrections Vern Faatz, Board of Parole and Post-Prison
Supervision Jerry Vanvalkenburgh, Department of Justice House Committee
on Judiciary March 5, 1991 - Page 2

015 ROBINSON: Summarizes HB 2198 which allows the Department of
Corrections to hold rule making hearings and authorize the submission of
written testimony, only, by inmates rather than allowing oral arguments.

025 DENIS DOWD, ASSISTANT DIRECTOR, INSTITUTIONS BRANCH, OREGON
DEPARTMENT OF CORRECTION (EXHIBIT A): Introduces Jefry Vanvalkenburgh,
Assistant Attorney General and Legal Counsel for the Department; Vern
Faatz, Chairman, State Board of Parole and Post-Prison Supervision; and
Dave Shumacher, Rules Coordinator, Department of Corrections. We're
testifying in support of HB 2198 as requested by the Department of
Corrections and the Board of Parole and Post-Prison Supervision. (Reads
from written testimony.) HB 2198 would allow the Department or the Board
to limit inmate participation in the adoption, amendment or repeal of
any rule to the submission of written testimony. 040 Inmates in the
Department of Corrections have routinely organized and abused the
process of oral hearings by requesting a hearing on every rule proposed
for adoption. With 13 Department locations around the state, this
requires a great deal of staff time and money. Inmates submit written
testimony at these hearings. Passage of HB 2198 would allow inmates to
continue to provide testimony on rules that would impact them while
reducing staff and expenditures. 054 VERN FAATZ, CHAIRMAN, BOARD OF
PAROLE AND POST-PRISON SUPERVISION: Our experience is going to the
penitentiary every time we make even minor changes in the rules. Under
the old system in effect before sentencing guidelines came into effect
in 1989, it was the Board that determined how long prisoners spent in
the institutions for their various crimes. They were very eager to have
input into those rules that helped guide us in that decision-making
process. Our experience with the written testimony has been relatively
positive because it was better input when people had to write it down
and submit it than when we send people out there to listen to testimony.
Currently, it's only people at the state penitentiaries who are

requesting hearings on proposed changes in the rules. If it's necessary for the Board to provide similar opportunities for inmates at other institutions, I don't know how we're going to do it. We don't have the staff or funding that will allow us to make the overnight trips and put staff out in the field for extended periods of time.

070 JEFREY VANVALKENBURGH, DEPARTMENT OF JUSTICE (ON BEHALF OF THE DEPARTMENT OF CORRECTIONS): The Department of Justice supports HB 2198 for the same reasons stated. 074CHAIR MILLER: Are there some inmate

rights, or alleged rights, in this process that are being diminished?
080 VANVALKENBURGH: The only right the inmates have is that provided by statute. No constitutional provision requires that these oral hearings be given. HB 219 8 would amend the statute to allow both the Department of Corrections and the Board of Parole and Post-Prison Supervision to limit to written testimony the submission by the inmates. It doesn't delimit all their participation-just to the written form. Nothing would preclude that legally. House Committee on Judiciary March 5, 1991 - Page 3 HB 2198 - WORK SESSION

090 REP. MASON: Moves HB 2198 to the Full Committee with a "do pass" recommendation. 095 VOTE: 5-0

AYE: Baum, Johnson, Mason, Parks, Miller NO: None EXCUSED: Bauman, Brian, Sunseri

Motion passes. Representative Mason to carry.

HB 2603 - PUBLIC HEARING Witnesses: Vern Faatz, Board of Parole and Post-Prison Supervision Cindy Burgess, Board of Parole

115 ROBINSON: Summarizes HB 2603 changes the number of members of the Board of Parole and Post-Prison Supervision. Refers committee members to a copy of HB 2603, marked Hand Engrossed, dated March 4, 1991 (EXHIBIT H) which reflects the amendments requested by the Board of Parole and Post-Prison Supervision. 129 VERN FAATZ, CHAIR, BOARD OF PAROLE AND POST-PRISON SUPERVISION (EXHIBIT B): HB 2603 basically changes the number of members from five to four. Proposed this to former Governor Neil Goldschmidt but with the advent of Measure 5 and budget reductions and the changing workload that grows from sentencing guidelines, it seems appropriate to implement this change at this time. The proposition is that we go from five to four members effective July 1 of this year, and from four to three members effective July 1 of 1992, thus reducing two members through the biennium. This will save about \$225,000. In addition, HB 2603 has some language changes that are necessary to allow us to make decisions without a vote, for example, of all four members but rather a unanimous vote or a quorum, or a majority of the Board. We're proposing to change that part of the language to allow for more flexibility and ease of decision-making. 152 REP. MASON: Do you have a vacancy right now? 154FAATZ: Mr. Robinson has gone to the bench and we're working with four members right now. 155 REP. MASON: What will happen in July? 157FAATZ: We propose to stay at four members--Ways and Means will make that decision. In July 1992, we'll go to three members by way of one person rotating off the Board.

163 REP. JOHNSON: Is the only reason the Board couldn't immediately go from five to three members due to those already serving their terms? . These minute. contain materials which paraphrase ens/or summarize ~ta ements made during tbir ~uon. Only text enclosed in quot tion marlcs report · speaker's exact words. For complete conbnta of the proceedingc, plea~e refer to the t pee. House Committee on Judiciary March 5, 1991 - Page 4

165 FMTZ: No. It's a workload issue which is significant, even though we have sentencing guidelines. We still have a number of people who were sentenced under the old system and are now coming to the Board for their hearings in which we set the prison term. We're doing close to 400 per month in addition to our regular hearing workload. This is in addition to the activity of the issuance of arrest warrants for parolees who violate the conditions of parole and irrevocable decisions we make.

175 ROBINSON: Given the fact that the Board is now at four members, is there still a necessity for the emergency clause in your proposed amendments?

180 FMTZ: Defers to Mrs. Burgess.

184 CINDY BURGESS, RULES COORDINATOR, BOARD OF PAROLE: The emergency clause is necessary because the current statute requires the governor to immediately appoint another member when there's a vacancy--and it requires five members. There is a vacancy now. 193 REP. JOHNSON: Refers to proposed amendments, Page 4, concerning added language that takes aggravated murder sentences out of the paroled hearing process. What was that insertion for?

196 FAATZ: There are three categories for aggravated murder: aggravated murder with the death penalty (the Board has no function with that); aggravated murder without parole (the Board has no function with that); and then aggravated murder with parole. The Board has no real up front prison term setting responsibility. We have, at the end of 20 years, a requirement of a review and consideration of parole, if it's determined the person can be rehabilitated at a future date. (Refers to EXHIBIT H, Page 8, line 4.) Discusses Board time line requirements for setting prison terms.

226 ROBINSON: Explain the proposal for a one-person panel and how that would result in a nonunanimous decision and the review process.

231 FAATZ: That simply provides for the possibility of an oversight by the Board and would give an opportunity to review the work of the panel member to ensure the decisions are consistent with rules and policies of the Board.

238 ROBINSON: This gives you the opportunity to have a one-person panel. If there's a one-person panel there's no dispute.

247 BURGESS: The requirement is that one person could hear the case, but that one person alone could not make the decision. There would have to be another Board member who would look at it to make the final decision. This just provides more flexibility in scheduling hearings. (Refers to EXHIBIT H, Page 2, lines 12-13.)

HB 2604 - PUBLIC HEARING

Witnesses: Vern Faatz, Board of Parole and Post-Prison Supervision
Cindy Burgess, Board of Parole

These minutes contain materials which paraphrase and/or summarize the speaker's report made during this hearing. 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
March 5, 1991 - Page 5

278 VERN FAATZ, CHAIRMAN, BOARD OF PAROLE AND POST-PRISON SUPERVISION (EXHIBIT C): Explains that HB 2604 would give the Board of Parole and Post-Prison Supervision the flexibility to develop contracts with supervising authorities and to give them some of the authority now held by the Board for violations of parole and post-prison supervision (reads from EXHIBIT C). For example, these authorities could site to hearings, and make certain decisions about placement of offenders under electronic surveillance. This would allow us to work with local authorities to provide short term sanctions for minor violations rather than putting these violators back in the institution. 355 REP. SUNSERI: Who would make the determination concerning the length of incarceration for a given infraction? 359 FAATZ: We currently have contracts with two counties, on a trial basis, in which the county authority has made the decision and has negotiated with the Board in agreement around the management of an offender. For example, in the Drop Program, we have a two-day sanction for a dirty UA; a 10-day sanction for the second dirty UA; and up to 30 days (requires a hearing before the Board) for the third or additional dirty UA. That's a uniform program we would implement in those counties with available resources. 383 REP. SUNSERI: Concerned that the people imposing this are Board members who are appointed rather than someone who's been contracted who has no appointment or official capacity other than being part of the contract. 388 FAATZ: The people in the community who would be imposing any kind of a sanction would be the supervising authority; i.e. the local community corrections agency under the authority of the Board of County Commissioners. 396 REP. JOHNSON: Where is reference to that language in HB 2604?

400 CINDY BURGESS, RULES COORDINATOR, BOARD OF PAROLE: Refers the committee to EXHIBIT I, Page 2, Section 3, lines 21-24, which amends ORS 144.106.

TAPE 41, SIDE A

004 REP. JOHNSON: The A-Engrossed version of HB 2604 has almost all the bill crossed off. Was that your intent?

006 FAATZ: Yes.

HB 2603 - WORK SESSION

021 REP. MASON: Moves the amendments to HB 2603 described as hand-engrossed, dated March 4, 1991, be adopted. There being no objection, it is so ordered. 035 REP. MASON: Moves HB 2603 to the Full Committee with a "do pass" recommendation as amended. ,. House Committee on Judiciary March 5, 1991 - Page 6

037 VOTE: 8-0

YES: Baum, Bauman, Brian, Johnson, Mason, Parks, Sunseri, Miller NO: None EXCUSED: None

Motion passes. Representative Mason to carry.

HB 2604 - WORK SESSION

050 REP. BRIAN: Moves the amendments to HB 2604 described as A-hand-engrossed, dated March 4, 1991, be adopted. There being no objection, it is so ordered. 052 REP. BRIAN: Moves HB 2604 to the

Full Committee with a "do pass" recommendation as amended. 054 VOTE:
8-0

AYE: Baum, Bauman, Brian, Johnson, Mason, Parks, Sunseri, Miller NO:
None EXCUSED: None

Motion passes. Representative Brian to carry.

HB 2559 - PUBLIC HEARING

Witnesses: Denis Dowd, Oregon Department of Corrections Gary Field,
Oregon Department of Corrections

065 ROBINSON: Explains HB 2559 would allow the Department of
Corrections to authorize the release of individuals who are on work
release status to participate in drug and alcohol treatment programs.
080 DENIS DOWD, ASSISTANT DIRECTOR FOR INSTITUTIONS, DEPARTMENT OF
CORRECTIONS (EXHIBIT D): The Department of Corrections supports HB 2559
and proposes an amendment to the bill. - HB 2559 would allow inmates to
leave a work release facility unescorted to participate in alcohol and
drug abuse treatment programs. The Department submits a bill amendment
to Section 1, Subsection (d) which would also allow inmates to leave
work release facilities without escort to participate in specific
treatments and develop appropriate living arrangements and contacts
prior to release. Neither such departures is authorized under current
statutes. Currently, inmates involved in these programs must participate
in in-house programs or be escorted outside the institutions. Neither of
these options are very effective in providing the necessary transition
and are expensive. The added risk these programs would present to the
community would be negligible at no additional cost to the state.

These minutes contain materials which paraphrase and/or summarize
statements made during this session. Only text enclosed in quotation
marks is the reporter's exact words. For complete contents of the
proceedings, please refer to the tapes. House Committee on Judiciary
March 5, 1991 - Page 7

101 GARY FIELD, ALCOHOL AND DRUG SERVICES MANAGER, DEPARTMENT OF
CORRECTIONS: Concerned that our intensive residential treatment programs
operating as work release facilities need to be able to issue short-term
passes for independent living skill development as part of their ongoing
transition work with inmates. That's what's behind our amendment as
noted in EXHIBIT D. 111 REP. JOHNSON: Mr. Dowd said this program
would pose no threat to public safety. What are your thoughts about this
relative to public safety? 113 FIELD: We're talking about a very select
group of inmates who are already in work release status. Certainly,
there is some additional risk any time we have inmates out in the
community. We're asking you to weigh the short-term risk of inmates out
in the community under supervision versus the long-term benefit of
reduced crime. The sentencing guidelines have put a block in the way of
our intensive treatment programs doing their job which is that
transitional work.

125 CHAIR MILLER: Representative Norris told me it was his
understanding there was some agreement between the Eastern Oregon
Corrections Institution and the City of Pendleton regarding the release
of inmates. He was wondering if this bill would violate the terms of
that agreement?

132 DOWD: There is a written agreement between the City of Pendleton and the correctional facility there that no inmates assigned to that institution be released into the community for specific programs. There is no work release program at that institution so this bill should not have any impact on that agreement.

139 CHAIR MILLER: If you were to establish such programs in that area, how would you fit the establishment of those programs versus the agreement with the city versus the statutory authority to enter into these programs?

143 DOWD: First, that's not the kind of facility we would put a work release program in--that's a medium security facility. The agreement with the city also has a clause at the end of the agreement that allows both parties to renegotiate on the off chance that that would ever become an issue. Can't see that becoming an issue.

150 REP. BRIAN: What is a short period of time--are any of these overnight ventures?

153 DOWD: We anticipate they would be three to eight hours maximum. They would not be overnight.

157 REP. BRIAN: The sentencing guidelines addressed concerns about early releases and weekend releases which were causing problems. Wondering if this language leaves it open-ended subject to misinterpretation and maybe we should specify a time limit.

166 DOWD: Certainly does leave it open and it might be advantageous to consider a time limit. The restrictions on work release are relatively strict but we could set the rules strictly enough to cover that. House Committee on Judiciary March 5, 1991 - Page 8

170 REP. BRIAN: Maybe we should consider identifying a reasonable time limit and insert it in the bill. What kind of time limit would work with the program? - 177 DOWD: The original proposal recommended by Mr. Field that we mod)ified was a leave of up to three hours per week during the last 180 days of incarceration and up to six hours per week for the last 90 days.

184 ROBINSON: Is that for rule changes or for the original bill?

187 DOWD: That was originally proposed by Mr. Field to be in the bill.

HB 2358 - WORK SESSION

203 REPRESENTATIVE PETER COURTNEY, DISTRICT 33: Explains that HB 2358 comes from the Joint Interim Judiciary Committee and resulted from an intensive investigation of the Department of Corrections concerning allegations of fraud, mismanagement, poor bookkeeping, and poor employee morale. Also, believe the Franke investigation was also part of this. One of the tasks given to the Joint Interim Judiciary Committee was to look into these allegations. The Committee allowed the creation of an Inspector General position which was requested at interim and that the Corrections Ombudsman position be brought back to help with internal monitoring. 245 The Department of Corrections has become a huge department in terms of the number of facilities statewide, the number of inmates, as well as its number of employees. It's always hard to manage an organization that big. There's also a bill involving an annual audit because we asked that an audit be done (which had been started by the

Secretary of State's Office). That audit revealed some major problems with bookkeeping. Refers to Representatives Miller and Mason's involvement as members of the Committee. Not sure we found a lot in the area of corruption or mismanagement but think we found problems with bookkeeping. Also, found some problems with employee morale. 260The Committee stayed away from the Franke investigation and we should have but we did have major changes being made and adopted by administrative rule as well as executive direction by Fred Pearce and his people. Think it was a pretty good exercise. But thought we should put a little more teeth in the ombudsman's law because currently, the law reads that if there's a law on the books that is unfair or requiring actions on the part of the ombudsman as well as others that maybe needs changing, then the ombudsman should come back to the state legislature. But that's it; it doesn't require them to come back to us to let us know what they're finding out on an ongoing way. The Committee thought maybe we should have this ombudsman person come back to the legislature at least once a year with an annual report as to its activities, findings, and any changes or investigations it's making. Frankly, don't know if we'll have an ombudsman person with the budget situation. The funding for that position is at stake and the staffing for it may be cut back. 292

CHAIR MILLER: Any idea of the fiscal impact for this position? 293

REP. COURTNEY: Don't know. - . House Committee on Judiciary March 5, 1991 - Page 9

315 REP. BRIAN: Does the ombudsman currently report to his supervisor? Isn't he already printing up a report?

322 REP. COURTNEY: Think there may be some kind of report to the Governor's Office that's required but not sure.

330 REP. BRIAN: If a report is already being made to the Corrections Director, copies would be available to interested parties.

340 RhP. COURTNEY: Technically, this person doesn't have a boss. That's why there's an ombudsman person who is free floating, unconnected, and disjointed--to encourage their constituency to come forward and feel free to reveal things to them. In some ways, this person operates on their own. Doesn't see that there's any reporting going on at this time.

360 REP. BRIAN: ORS 423.435 refers to the ombudsman and reporting. Agrees the ombudsman should report to someone but suggests maybe there's a way to simplify the task. 369 REP. COURTNEY: They are appointed and serve at the pleasure of the Governor. That language is in the bill but don't know whether that means they automatically have to report their findings to the Governor. Not trying to create another paper situation but the bill was made in response to the magnitude of the Department of Corrections and allegations made during the interim. Even though the report goes to the Speaker and President of each house, want to be sure the report gets to this kind of committee. This is the committee (Judiciary) the report should go to on an interim basis as well as every session because it deals with the Department of Corrections with the exception of funding. 395 CHAIR MILLER: Did the interim committee have any problem getting the kind of information that would be embodied in this report by simply asking for it?

TAPE 40, SIDE B

004 REP. COURTNEY: That Department was under investigation by the Interim Judiciary Committee. In that atmosphere, at the time they were very forthcoming because it was a high profile media event. At other

times because of that atmosphere, they were overly sensitive to revealing certain kinds of information or directly answering questions. Sometimes had a feeling that if we didn't ask just the right question, they weren't going to volunteer information that the Committee should have had.

024 CHAIR MILLER: Looking at the proposed language, don't know the specifics you're asking for that would be in the annual report. If someone didn't want to be fully forthcoming, this report doesn't require them to say any more than they said during the interim--and maybe they told you more then because you asked. Refers to HB 2358, lines 22-29.

028 REP. COURTNEY: The sentence on lines 24-26 describes what we're talking about but maybe it's not comprehensive enough. We didn't want to go overboard and have the ombudsman bring in volumes of paper as Representative Brian alluded to. That would be a waste of the taxpayers' money and yet we wanted to send a signal that we're serious about this annual report. We want House Committee on Judiciary March 5, 1991 - Page 10

to know what the Department has been doing, including things that might be embarrassing such as that which the media got a hold of that created some unpleasantness.

038 CHAIR MILLER: Suggests that maybe the Department could anticipate this Committee meeting in the interim and provide a summary of all investigations and findings as a regular course of interim business rather than producing some formal document distributed to a lot of members who may or may not ever read it. Maybe there's enough merit in that idea. Also, the consideration that in the interim, we don't have a lot of authority short of a special session.

050 REP. COURTNEY: There were three ombudsmen that we worked with during the investigation. They were able to discover certain things through their investigation and their dealings with the inmates that Fred Pearce, the Inspector General, and the State Police couldn't. This was good and some of it was very sensitive information that we needed to know. When you put something like this in the law, you're saying something about the importance of the position, the relationship of that position to this committee, and the seriousness of where we're at with the Department of Corrections right now. There's another bill coming before this committee involving an annual audit and there were serious, serious bookkeeping problems in the Department of Corrections. There needs to be a good, sound track record to exist for a certain period of time before you sunset some of this emergency type of language which ordinarily wouldn't be considered excepting for the crisis at hand.

068 REP. MASON: Trying to place this in relationship to the Inspector General and remember extensive discussion about the role of the ombudsman and that of the Inspector General. Remembers we wanted someone to have relative independence of the Department of Corrections. The Inspector General was to a great extent concerned with drug abuse and the Department of Corrections. Thinks this bill merits some consideration--might want to set it aside for additional information.

093 REP. COURTNEY: Thinks Fred Pearce has done a remarkable job at the Department of Corrections but also thinks a report from an individual independent of the Department will make for a more interesting report.

110 REP. BAUMAN: Refers to language being corrected to read,

"ombudsperson" instead of "ombudsman"

HB 2358 - WORK SESSION

138 REP. MASON: Hope we don't approach this bill as a knee jerk piece of legislation. This is merely a way to give the ombudsperson the duty and the right to submit a report to the legislature which is well worth it.

150 CHAIR MILLER: The annual report may or may not make sense. Given the fact we're here every other year, should we require the report to be developed at the beginning of each regularly scheduled legislative session?

160 REP. BAUMAN: When was the position created by the Governor?

162 CHAIR MILLER: 1977. House Committee on Judiciary March 5, 1991 - Page 11

167 REP. MASON: Moves the amendment to HB 2358 that would cause the report to be issued January 1 of each odd-numbered year, at line 22 of the bill. 176 REP. BAUMAN: Moves that all references to "ombudsman." be changed to "ombudsperson." 193 CHAIR MILLER: Discusses origin of ombudsman.

There being no objection to the amendments, they are so ordered.

213 REP. MASON: Moves HB 2358 as amended to the Full Committee with a "do pass" recommendation. 216 VOTE: 8-0

AYE: Baum, Bauman, Brian, Johnson, Mason, Parks, Sunseri, Miller NO: None EXCUSED: None

Motion passes. Representative Courtney to carry.

HB 2559 - WORK SESSION

234 REP. MASON: Moves to amend HB 2559 by inserting the following sentence immediately after line 12 (c) to read: "(d) Participating in mental health programs." There being no objection to the amendment, it is adopted. 255 REP. BRIAN: Moves to amend HB 2559 by inserting the following sentence immediately after line 12 (d) to read: "(e) Specific treatment to develop independent living skills." There being no objection to the amendment, it is adopted. 264 REP. BRIAN: Likes the idea of limiting hours of inmate leave. Specifically, up to three hours per week during the period from 91 days to 180 days preceding the inmate's release, and up to six hours per week, 90 days preceding the inmate's release. This would relate to Section 1, Subsections (c), (d), and (e) only, because the other would extend beyond that. 282 CHAIR MILLER: Is there any additional record keeping costs to be saved by making sure inmates fit within the three hours or six hours? If there is, does it matter? 289 REP. BRIAN: If the system knew that these people have a maximum of three hours or six hours to return, the rule would work. This would avoid the problem we had prior to sentencing guidelines wherein the system was very loose in this regard. 302 REP. BAUMAN: Has concern about the treatment usefulness if we're inflexible about whether someone meets the time/served criteria. 316 CHAIR M11 1 hR: What were your reasons for taking this language out of the bill? House Committee on Judiciary March 5, 1991 - Page 12

321 DOWD: We took it out of the proposal because it complicated the issue. We're not sure how many hours some of the programs would take. We have a relatively strict and specific work release administrative rule that this would be added into as we developed the additional program. We intentionally left it without a time limit. 336 FIELD: I talked to the directors of our programs for input. We looked at the same concern as Representative Brian about legislative intent. Also suggested in original proposal that authorized leave to attend pre-employment volunteer work be added as part of an individual treatment plan. Many of the people in these programs have lost or never had realistic vocational skills that would allow us to put them into entry level positions immediately "we have to work up to that. Would like an allowance for volunteer work to be added in addition to the three/six hour limitations noted. 362 REP. BRIAN: Concerning legislative intent, want to be clear on leave policy that we're not rolling back the clock. 374 CHAIR MILLER: When you developed the scheme for the three/six limitations, did you feel it was a good number? 384 FIELD: We took a very conservative approach on that. 389 CHAIR MILLER: Does the further amendment dealing with mental health program participation have your approval? 394 DOWD: That certainly has our approval and appreciation. 395 REP. MASON: Moves HB 2559 as amended to the Full Committee with a "do pass" recommendation. 403 DOWD: Clarifies for committee that leave time would be no more than eight hours maximum for the pass. 418 VOTE: 8-0

AYE: Baum, Bauman, Brian, Johnson, Mason, Parks, Sunseri, Miller NO: None EXCUSED: None

Motion passes. Rep. Brian to carry.

TAPE 41, SIDE B

018 REPRESENTATIVE CHARLES NORRIS, DISTRICT 57: Notes that the Eastern Oregon Correctional Institution is in his district. Raises concern about an agreement between the City of Pendleton and the Eastern Oregon Correctional Institution (EOCI) that says there would be no prisoners outside the parameter fence for any reason outside of emergency medical treatment. Wants to make sure this pre-existing agreement was dealt with and considered.

House Committee on Judiciary March 5, 1991 - Page 13

030 CHAIR MILLER - : Heard testimony that none of the programs described under HB 2559 will exist in Pendleton or the nearby area. Also, it's not foreseeable that any inmates in the Eastern Oregon Correctional Institution would therefore be transferred out of the institution. There wouldn't be any perspective violation of the terms of the agreement with the City of Pendleton. 035 REP. NORRIS: So whatever amendments or action the committee has taken would leave that agreement in tact. 037 CHAIR MILLER: A couple more programs were added in but none of them are anticipated to be started anywhere near Pendleton. So no inmates will be going outside of the facilities at EOICI. 040 REP. NORRIS: Our concern was that that agreement be honored and apparently the committee has done so. 041 REP. BAUM: Understands that those programs only apply to minimum security. EOICI is a medium security facility. 042 REP. NORRIS: Offers a copy of the City of Pendleton's agreement with EOICI to committee members. 045 CHAIR MILLER: Concerns have been established and addressed on the record. Asks Representative Norris to participate in the floor discussion, if the

bill makes it to the floor.

HB 2505 - WORK SESSION

056 ROBINSON: Explains HB 2504 and HB 2505 were initially heard to get at the issue of indecent exposure in what are quasi-public locations. The two bills can stand alone. There were some problems raised with HB 2504 in terms of expanding the definition of a public place to include work site. Recommended that HB 2505 which creates a new crime of indecent exposure would accomplish what the proponents want in HB 2504. 071 ROBINSON: Notes that both bills are not needed. Trying to expand the definition of work place became very problematic. HB 2505 does not include preferential treatment for minors-- the bill does not distinguish between victims over and under the age of 18. In the Criminal Codes, statutes dealing with sex offenses considers children unable to consent to most things. HB 2505 would treat children and adults similarly. 091 REP. JOHNSON: Is the committee going forward with HB 2505 instead of HB 250 4? Moves that the committee go forward with HB 2505. 109 REP. MASON: HB 2505 as written has some problems, . . . (tape inaudible). Gives examples of possible situations that would pose a crime but don't deserve sanctions by society. 130REP. PARKS: Agrees. 148 REP. BAUMAN: The specific circumstance brought to us was job site. Don't recall other places of concern. Remembers concern was that a jobsite is not a public place where this

These minutes contain materials which paraphrase and/or currnarnarize rtaternerd made during this sess~on. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedingc, please refer to the tapea. House Committee on Judiciary March 5, 1991 - Page 14

activity could happen and have the same impact on the victim as criminal behavior might have. Therefore, we should make it criminal. Approaches so far have targeted way beyond job site. Don't have draft in mind but seems there are other regulations imposed on job sites. Maybe we should look to other ways the state has an interest in job site regulation and discourage this behavior through that means.

168 CHAIR MILLER: Is there some sort of recourse for the offended party to go to the people who were responsible for that area (job site) and let them know the conduct is not permissible?

190 REP. MASON: On the civil side, yes.

HB 2597 - WORK SESSION

195 ROBINSON: Summarizes HB 2597 which revises the implied consent law to allow individuals under arrest for driving under the influence to provide a urine sample for the purpose of determining the presence of controlled substances. Notes amendments have been drawn up regarding issues raised; one issue has to do with the analysis being conducted by clinical laboratories; the other issue is concerned with consecutive suspensions based on both a refused urinalysis and flunked breath test. There's a minor fiscal impact of \$15,000. 214 REP. MASON: Moves to adopt the HB 2597-1 Amendments, dated 3/4/91 (EXHIBIT E).

There being no objection, the amendments are adopted.

221 REP. MASON: Moves HB 2597 as amended to the Full Committee with a "do pass" recommendation. 225 REP. JOHNSON: Motions to amend HB 2597,

Page 8, line 31 and line 35 from "one year" to "120 days". 265 LT.
TOM RADER, OREGON STATE POLICE: Refers to Page 8, line 31 concerning the one year suspension. That is existing language right now. The proposed 120 days would lower the amount of time they would have to wait.

275 REP. JOHNSON: Are Paragraphs (3) and (4) dealing with the same thing--the only difference being one is a breath test taken but failed, and the other is a refusal of a breath test at all? 280 RADER: That's correct. In Paragraph (2) for a period of 30 days after the beginning of the suspension because a breath test disclosed the level was a .08 or higher. That's for taking the breath test--the person has one year for refusing the breath test. 287 REP. JOHNSON: Let's walk through these first four paragraphs under Section 9. Paragraph (1) says if you refuse to take a breath test and it's your first offense (don't have a record of drunk driving), you're suspended for 90 days for refusing to take a test. 295 RADER: This pertains not necessarily to the suspension periods but to the length of time after the person has refused the test as to when they are eligible for a hardship permit. House Committee on Judiciary March 5, 1991 - Page 15

300 REP. JOHNSON: Understand that distinction but regarding how long a person has to wait before he can apply for a license to drive back and forth to work-Paragraph (1) is if you refuse a test and don't have a record, you're automatically suspended for 90 days before you can get a work permit. (RADER agrees.) Paragraph (2) refers to the same circumstances but if the person takes the test and fails, the person only has to wait 30 days to apply to take the test. (RADER agrees.)

The next two paragraphs have the same dual approach except now we're talking about people who aren't clean (have records). (RADER agrees.) Paragraph (3) is where a person takes the test and fails and must wait one year to get a work permit. (RADER agrees.) Paragraph (4) is where the person refuses to take the test and is subject to the same penalty-one year. The concept in the first two paragraphs is to encourage people to blow-that's why they're given 30 days versus 90 days in the first instance. To keep that same ratio in the same circumstances, we need to change Paragraph (3) to 120 days as opposed to one year so people have the same encouragement if they have a record as if they didn't have a record.

335 REP. MASON: There are two categories of people; those without convictions and those with convictions. If you don't have any conviction and refuse to blow, it's 90 days suspension. If you blow, it's 30 days suspension. Next category: You have a record and you refuse to blow, it's a one year suspension. To bring the ratio into symmetry, if you blow and fail, then it's a 120-day suspension.

366 REP. BAUM: Talks about three-year suspension on a second conviction.

376 REP. JOHNSON: This is a separate consideration from what happens when you're convicted a second time.

393 ROBINSON: This is the suspension of the initial period. What's confusing is that Representative Johnson is talking about bringing it back in line, in fact, what he's proposing is a change to the current statute. The bill didn't change the numbers and the committee is not being asked to do so. Representative Johnson is pointing out that there's an anomaly that currently exists that he wants changed.

404 REP. JOHNSON: It's current statute that we're changing back to the

way it should have been written in the first place if we're going to have the same incentives built into both circumstances.

TAPE 42, SIDE A

005 REP. CLARK: Understands that the way the bill is crafted now, regardless of how you fair on the breath test, this would give law enforcement the authority to require that you submit to the urine test. Doesn't understand that provision because it seems that if you take the breath test and fail it (you're above the limit), law enforcement has what they need. They have a DUUI conviction. Questions then whether law enforcement has probable cause for the drugs. Not sure where the separate probable cause is for the urine test.

021 ROBINSON: Doesn't know that law enforcement would need a separate probable cause in order to obtain evidentiary evidence as opposed to other kinds of evidence. The crime is driving under the influence of intoxicants as broadly defined. Not sure there would be a need for a separate

These minutes contain materials which paraphrase and/or summarize ~
elements made during this session. Only text enclosed in quotation marks
report ~ speaker's ~ exact words. For complete contents of the proceedings,
please refer to the tapes. . . House Committee on Judiciary March
5, 1991 - Page 16

probable cause to do the separate testing.

032 REP. CLARK: Asks Lt. Rader what is the purpose for having the urine test if someone fails the breath test? If you have a conviction on DUUI, why the additional step?

033 RADER: As I previously testified, we now are seeing a frequency of driving under the influence of drugs. When you arrest someone, you do so for driving under the influence of intoxicants. The officer may not know which one the person is under the influence of. We have been providing training to officers to make them more effective in identifying persons under the influence of a controlled substance. When we take them into the facility to administer the breath test, perhaps you have to get a urine test first because they can't wait. And perhaps it's the urine test that you want to establish your reasonable cause to believe that they're under the influence of a drug. In many cases, it's under the influence of alcohol and some other type of controlled substances. This will provide information to medical providers to treat these people under the diversion program. Most of these people are currently being treated for alcohol when in fact it may be a drug problem. This also helps us to provide needed and proper information to the courts.

065 Concerning the suspension periods, they have been in the law for a long time. Not familiar with references to hardship permit. The idea of the urine sample was that if they refuse the urine sample, they would be suspended. If they refuse to provide a urine sample or a breath test at the same time, or took a breath test and were .08, that the waiting periods for the eligibility of that hardship permit would fall in line with or be consecutive rather than run concurrent. Concerning the changes made here, there was no intent on our part to change the rest of the bill because it appeared to be appropriate.

075 REP. MASON: Almost at the point where would want to see a chart on suspensions. (Tape inaudible.)

080 BARBARA STOEFFLER, CHAIR, OREGON 1\IADD LEGISLATIVE COMMITTEE (EXHIBIT E): Advises Representative Mason that there is a chart which gives an exact replication of what those suspension periods are.

095 REP. JOHNSON: We have an excellent opportunity with this bill to correct a previous mistake.

099 CHAIR MILLER: Suggests the subcommittee look at the chart and if what's being conceptually proposed is agreeable, the bill can come before the subcommittee and enact it on this side of the building.

108 REP. BAUM: Discusses hypothetical client cases in relation to breathalyzer tests. Wants to make sure that if the subcommittee revisits this concept, that law enforcement is behind it as a way to encourage people to blow--because that's the best evidence you have in court against a defendant.

122 RADER: I will get in touch with the Motor Vehicles people and we will talk with Representatives Johnson and Baum and clarify this.

125 REP. BAUMAN: Prefers that the subcommittee wait on HB 2597 and come back to it later. House Committee on Judiciary March 5, 1991 - Page 17

The concern raised by Representative Clark is troubling. Also has concern about the availability of use of that evidence for other criminal procedures or other prosecutions. Don't know what additional forms of drug tests are available; i.e. possible saliva tests.

150 CHAIR MILLER: Think the subcommittee had a pretty full discussion. If the balance of this subcommittee is uncomfortable with that, it doesn't need to be brought up again just to be beaten in full committee.

158 REP. BAUMAN: Is the result of the urine tests available as a basis for a warrant?

163 REP. BAUM: Think the testimony was that the possession of drugs does not extend to any evidence that would be obtained by urinalysis.

165 RADER: That's correct. A Supreme Court decision was that this cannot even be used for possession of any type of controlled substance. This would only be used for the DUII charge.

168 REP. BRIAN: Including not raising cause for search because it's under the implied consent law.

170 REP. BAUMAN: Should the law change to include a positive test result as evidence of possession by ingestion, the implied consent law would be a shield to using this particular information in a prosecution for possession? Is that also the intent of the drafters?

177 RADER: No, it is not our intent to use it for other purposes. It's not a shield for prosecution in other cases.

191 REP. BAUMAN: If the law were to establish that a positive test result for ingestion of a controlled substance were to constitute evidence of possession, then it's assumed that a positive test on a urine test under the implied consent law would be evidence in that case as well--whether that is the intent at this point or not? (Not referring

to this bill but another one.) Withdraws hypothetical question.

207 REP. PARKS: Understands HB 2597 to mean there's a penalty for refusal. It doesn't give way to any other sanctions but it can be used as some kind of evidence in a prosecution for driving under the influence. 214 REP. BAUM: It's also stacking the suspension periods.

216 ROBINSON: The bill would read that if a person had two refusals, the suspensions would run consecutively, not concurrently.

221 REP. MASON: Moves HB 2597 as amended to the Full Committee with a "do pass" recommendation. 230 VOTE: 7-1

AYE: Baum, Brian, Johnson, Mason, Parks, Sunseri, Miller NO: Bauman
EXCUSED: None House Committee on Judiciary March 5, 1991 - Page 18

Motion passes. HB 2443 - WORK SESSION

237 CHAIR MILLER: Notes that the subcommittee does not have the required majority to move HB 2443 forward. Entertains discussion by the subcommittee.

240 RFP. BRIAN: There's a problem with this bill because there are mixed circumstances regarding training. Refers to a Memo from the Department of State Police wherein members of the law enforcement committee unanimously support the bill while other comments from that group denoted reservations about the bill. Sees problems with training and the bill's affect on coordination of efforts between federal and state/local officers.

280 REPRESENTATIVE JOHN MINNIS, DISTRICT 20: Respects the wishes of the Chair and will try to come up with any additional information necessary at some future date.

310 JERRY FRESHOUR, BOARD OF POLICE STANDARDS AND TRAINING: Thought that the training recommendation by BPST had been worked out. It was just a matter of amending the legislation to cover that training. The federal agencies, as a whole, don't have a particular problem with that. In reading Mr. Bennett's letter, basically they would review the training that individual agents had had and then recommend any additional training to supplement their training dealing with Oregon law. It would just be a matter of amending the legislation to cover that requirement.

318 REP. BRIAN: The training issue sounds like it can be worked out. Maybe time should be allowed to let the parties discuss it.

320 CHAIR MILLER: Are not intending to dismiss it altogether. Adjourns Subcommittee on Criminal Law and Corrections at 3:25 p.m.

Transcribed by: Harrell Reviewed by: Holly Blanchard David

EXHIBIT LOG:

A - Written testimony, Denis Dowd, Dept. of Corrections, 2 pages B - Written testimony, Vern Faatz, Board of Parole and Post-Prison Supervision, 2 pages C - Written testimony, Vern Faatz, Board of Parole and Post-Prison Supervision, 2 pages D - Written testimony, Denis Dowd, Dept. of Corrections, 2 pages E - Proposed Amendments to HB 2597, Holly Robinson, Committee Counsel, dated 3/4/91, 2 pages . . . House Committee on Judiciary March 5, 1991 - Page 19 F - Written testimony,

Barbara StoeMer, MADD, 1 page G - Written testimony only, Lt. Vic Mann, Dept. of Public Safety, 1 page H - Proposed Amendments to HB 2603, Holly Robinson, Committee Counsel, dated 314191, 6 pages I - Proposed Amendments to HB 2604, Holly Robinson, Committee Counsel, dated 314191, 7 pages

_____. 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.