

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 CRIME AND CORRECTIONS

March 13, 1991 Hearing Room 357 1:00 p.m. Tapes 47 - 50

MEMBERS PRESENT: Rep. Randy Miller, Chair Rep. Ray Baum Rep. Judy Bauman Rep. Tom Brian Rep. Rod Johnson Rep. Tom Mason Rep. Del Parks Rep. Ron Sunseri

VISITING MEMBER: Rep. Kelly Clark Rep. Kevin Mannix

STAFF PRESENT: Greg Chaimov, Committee Counsel Kathy Neely, Committee Assistant MEASURES CONSIDERED: HB 2586 PH (Drug/Alcohol Evaluation) HB 2623 PH (Recriminalization of Marijuana) HB 2580 PH (Manufacturing Controlled Substances)

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TAPE 47, SIDE A

004 REPRESENTATIVE MILLER, CHAIR: Calls the meeting to order at 1:24 p.m.

WORK SESSION ON HB 2580

016 CHAIR MILLER: Discusses why bill is before the committee. Moves the addition of the amendments to the bill (EXHIBIT A).

032 REP. MASON: Discusses the amendments.

CHAIR MILLER: This amendment would say less than 1 ounce in the drug free zone.

049 REP. JOHNSON: The language does not necessarily restrict to the drug free zone.

CHAIR MILLER: As incorporated with HB 2580.

REP. JOHNSON: This just says "notwithstanding section 2" and then states that the possession is a class c misdemeanor.

CHAIR MILLER: The intention is to tie it to the drug free zone. Any objections? Hearing none, so adopted.

MOTION: REP. PARKS: Moves HB 2580 as amended to the full committee with a do pass recommendation. 060 CHAIR MILLER: Rep. Parks moves HB 2580 as amended to full committee.

061 REP. MASON: Supports the bill but with reserve to change vote on the Floor.

VOTE: 6 - 0 HB 2580 to House floor AYE: Baum, Johnson, Mason, Parks, Sunseri, Miller NO: 0 EXCUSED: Bauman, Brian

CHAIR MILLER: HB 2580 is passed to full committee.

(Tape 47, Side A) PUBLIC HEARING ON 2586 Witnesses: Rosanna Creighton, Executive Director, CFDFO Senator Paul Phillips Fred Avera, Polk DA and OCAA Ross Sheperd, OCLDA Kathleen Gardipee, City of Eugene Anthony Taylor, A&T Consulting Barry Stull, Citizen Senator Paul Phillips, District 4

085 GREG CHAIMOV: HB 2586 requires evaluation and treatment of alcohol and drug dependent criminals. Page 1, line 4 needs to be narrowed as to what kind of offense, i.e. infraction, misdemeanor, or felony.

114 SENATOR PAUL PHILLIPS, DISTRICT 4: Regarding HB 2586, there will be amendment about availability of funds. This deals with treatment of dependent inmates. *HB 2584: briefly comments on last session's bill regarding roadblocks. HB 258 4 focuses on a constitutionally sound roadblock as a legal law enforcement tool.

150 CHAIR MILLER: Comments on a recent Supreme Court case out of Michigan that deals with roadblocks. Referring to HB 2584, does the bill incorporate those parameters?

PHILLIPS: Understand it does.

169 ROSANNA CREIGHTON, EXECUTIVE DIRECTOR OF CFDFO: (EXHIBIT B) *Makes treatment of alcohol\drug dependency part of sentencing order of convicted criminals. *Necessary for a formal evaluation of dependence and treatment. *HB 2586 will be costly. *Discusses concern of probation officers regarding their protection and the increased violence. *Funding issue: Section 3, line 19, put in the wording "to the extend the funding is available". The source offered is HB 2587 which will take the current system of using alcohol taxes for treatment programs and proposes an increase. All these monies will be dedicated to treatment programs.

237 REP. MASON: Would like more information about the funding.

CREIGHTON: HB 2587, not before committee today, takes current system of using alcohol taxes for treatment programs and asks for an increase. *All increased funding would go specifically to alcohol\drug treatment and prevention programs. *Current allocation would remain the same, just the increased revenue would be targeted.

265 REP. CLARK: HB 2586 would require all convicted of any criminal offense to be evaluated for dependency?

CREIGHTON: The DA Association can answer question better.

275 FRED AVERA, POLK COUNTY DA, ODAA: (EXHIBIT C) Have proposed amendments. *Concern over expense. *HB 2586 may require testing in cases where it is not necessary.

297 ROSS SHEPARD, OCDLA: May be in possible agreement with the amendments.

312 REP. BAUM: The current draft would apply to everyone including cities and counties.

324 AVERA: Comments on possible solutions to funding problem brought by the CFDFO. DA's amendments cut out a number of the evaluations that would be done which would help with the expense.

331 REP. BAUM: Only limitation is "to the extent funds are available".

AVERA: Have not considered the impact on municipal courts. As drafted it would apply to those municipal courts. Might want to exempt. Discusses Dept. of Corrections and treatment for people on probation.

359 REP. BAUM: Aren't some of those probation officers county employees?

AVERA: Yes.

REP. BAUM: HB 2586 states the person has to be sentenced to prison.

367 AVERA: Discusses amendments proposed (EXHIBIT C). *Change the word "shall" to "may" in Section 1, line 5, making it discretionary with the court.

382 REP. BRIAN: Doesn't the court currently have the discretion to order an evaluation?

AVERA: Believes they do. Some courts, however, don't feel they have the authority. Discusses a court ordering an evaluation.

401 REP. BRIAN: What does the "may" do?

AVERA: Makes it discretionary. *Delete the phrase "but prior to sentencing," in Section 1. *Discusses a new Section 2 that would allow a court to make the finding that a person was drug or alcohol dependent based on evidence brought before the court. *Suggests adding a new mandatory provision of probation when the court finds the defendant to be drug or alcohol dependent under Subsection 2, the court shall require the defendant to enroll and participate in the program. *If court orders defendant to submit to an evaluation, it shall be a required part of probation. *This would eliminate evaluations in cases that are not necessary. Would require evaluation or finding in case of probationers. *Discusses LC 3161 submitted by the Oregon District Attorneys Association. It deals with same subject matter as HB 2586. *Discusses conditions of probation: 1) general and 2) discretionary provisions. *This is an expensive process.

TAPE 48, SIDE A

089 ROSS SHEPERD, OCDLA: Suggests on page 1, line of the DA's amendments that the word "criminal offense" be deleted and the word "crime" be inserted so it includes felonies and misdemeanors. *Suggests in district court cases that mandatory participation will be hard to track so in paragraph 7 change the word "shall" to "may" and in the third line of paragraph 8, retain the word "may".

200 REP. CLARK: Under ODAA amendments, does the court have to make any connection between the offense the person was convicted for and the evaluation?

110 AVERA: No. Most cases will have an evaluation unless it is obviously

inappropriate. No defining nexus between the crime and the evaluation.

REP. CLARK: What does the evaluation consist of?

AVERA: Up to the Corrections Division. Most are in questionnaire form.

119 REP. PARKS: What would be the stipulation percentage?

AVERA: If dealing with dependant defendant would be well over 50%, not all are dependent.

SHEPERD: Correct

127 REP. JOHNSON: Regarding the ODAA's LC 3161, it takes away requirement that probation officer have "reasonable grounds to believe the results will disclose evidence of a violation". But this program would be designed to get treatment to those the officer believes need it.

AVERA: LC 3161 requires that condition be in every probation order unless the court makes a finding to rule it out, and would allow officer to request a random testing based on suspicion

140 CHAIR MILLER: Is witness asking the committee to incorporate the amendments and the LC draft?

AVERA: Offers LC 3161 as something that will be before the committee soon and if committee wishes to incorporate it in, can do so.

151 REP. JOHNSON: The phrase in Section 3, "to the extend funds are available", it is not in Section 1 because the word "shall" would be changed to "may".

AVERA: That helps the concern about the language.

166 REP. BAUMAN: Concern about the funding. Assuming this program will not be implemented if there is no funding source. Suggests waiting until funding bill Rosanna Creighton discussed, HB 2587, is dealt with. *Believes HB 2586 is worth the effort of discussion but if the funding bill does not make it out, this will not be implemented.

187 CHAIR MILLER: That was the reason it was subject to available funding.

192 REP. BAUMAN: The evaluations will be costly.

207 KATHLEEN GARDIPEE, CITY OF EUGENE, OREGON: (EXHIBIT D) The city supports

the ideas of this bill. *The City is unclear on if this will effect the municipal and justice level courts. If it does, there are concerns. *Fails to address payment for evaluations; implies the evaluation would apply to convictions on all criminal cases; there would be a financial impact to the City of Eugene in excess of \$325,000; if municipal court cases are included evaluation would be done for shoplifting, reckless driving, etc.; and substantially impact the processing. *HB 2586 would substantially effect the probationary case load and create an onerous burden on the City. *City of Eugene is looking for an exemption from this bill.

244 CHAIR MILLER: If the ODAA amendments were adopted, to make it discretionary, the City's objections would be taken care of.

GARDIPEE: Correct, likes the ODAA amendments (EXHIBIT C).

252 REP. JOHNSON: Mr. Sheperd proposed changing criminal offense to crime, will that satisfy the questions regarding failure to appear on a dog at large citation, etc.?

GARDIPEE: Yes.

263 ANTHONY TAYLOR, CONSULTANT: In light of the cost, agrees with the discretionary language. Comments on who will end up paying for evaluations. *Currently, convictions sent to the state system are run through a drug and alcohol dependency screening. Discusses the CornerStone Program costing \$1,500 per month per inmate. *Currently need about \$3.2 million to run dependency treatment and evaluation programs. *Believes this is too costly for the state to implement.

315 REP. BAUMAN: Is \$1,500 per month the total cost for inmate in the Cornerstone Program? Not just the increment in addition to keeping them at the penitentiary? That is the total cost.

TAYLOR: Correct. Comments on additional cost of outpatient treatment when released and the initial interview level.

331 REP. BAUMAN: What is the average cost per day to house an inmate?

TAYLOR: \$89.95 per day.

335 REP. PARKS: Is witness for or against the bill?

TAYLOR: Understands need for rehabilitation, but in light of costs, don't support it.

347 REP. BAUMAN: The \$1,500 is additional cost to the system. Above the amount just to be incarcerated at the prison. It is \$4,100 per month if in both OSP and the program.

351 BARRY STULL, PRIVATE CITIZEN: Discusses personal experience in Multnomah County jail and home neighborhood and Oldtown Portland regarding drug transactions. *Does not support treatment for those incarcerated and dependent. *Suggests looking at regulation and legalization.

TAPE 47, SIDE B

015 CHAIR MILLER: Closes hearing on HB 2586.

(Tape 47, Side B) WORK SESSION ON HB 2586

021 REP. JOHNSON: Believes proposed ODAA amendments (EXHIBIT C) are good but problem with HB 2586 is funding. Discusses amendment regarding requirement of court to use this process.

033 CHAIR MILLER: Comments on available funds and what may happen in 1993. Should be flexible with this.

045 REP. PARKS: Would like to hold working on HB 2586 until the Family Subcommittee has met on a bill regarding drug testing for pregnant women

because funding ideas for that bill may apply to HB 2586.

051 REP. BAUMAN: Likes Rep. Parks' suggestion. Should do the revenue piece first and then the concept of HB 2586.

057 REP. BAUM: The "may" language in the amendments is critical to Section 1. Comments on having everyone required to be tested and how that may not be appropriate. Supports waiting.

068 CHAIR MILLER: Can work on amendments and get the revenue figures.

076 REP. BAUM: What is the purpose of adding under paragraph 8, the word "shall" on the ODAA amendments.

079 GREG CHAIMOV: Believes the court already has discretion as a condition of probation to order treatment and the "shall" would be necessary to effect change in current law.

085 FRED AVERA, ODAA: Put the "shall" back in to paragraph 8 (EXHIBIT C) at request of Citizens for a Drug Free Oregon. Counsel is correct regarding effect on policy change.

092 REP. BAUM: What about the criminal without a drug problem?

AVERA: The evaluation would show no problem.

REP. BAUM: Why send to evaluation?

098 AVERA: Agrees with idea of the amendments but they were not drafted from ODAA. They were put there by the Citizens for Drug free Oregon. *Back to question, don't know if they are dependent until the evaluation is done.

REP. BAUM: Likes the "may" language.

107 MOTION:REP. BAUMAN: Moves the ODAA's amendments (EXHIBIT C) to HB 2586 with the following changes: in paragraph 7, line 4 change "shall" to "may"; paragraph 8, line 3 restore the "may"; and on line 4, page 1 of the bill as printed, delete "criminal offense" and insert "crime".

113 CHAIR MILLER: Rep. Bauman moves the ODAA amendments with noted changes to HB 2586. Further discussion?

119 REP. JOHNSON: Friendly inquiry, one more "shall" in paragraph 8, line 4, was that intended to remain?

REP. BAUMAN: Would like that "shall" to remain.

127 CHAIR MILLER: Any objections to Rep. Bauman's motion? Hearing none, so adopted.

130 MOTION:REP. BAUMAN: Moves to send HB 2586 as amended to the subcommittee that is considering the funding source for the treatment of drug affected women and have it considered with that funding.

138 CHAIR MILLER: The intention would be to direct this to full committee and not having it up until develop the revenue figures. If the figures are a problem, will bring it back to this subcommittee.

148 MOTION:REP. BAUMAN: Withdraws previous motion and moves HB 2586 as

amended to the full committee with do pass recommendation.

CHAIR MILLER: Rep. Bauman moves HB 2586 to full committee with a do pass recommendation.

VOTE: 6-0 Motion passes AYE: Baum, Bauman, Johnson, Parks, Sunseri, Miller NO: 0 EXCUSED: Brian, Mason

CHAIR MILLER: HB 2586 as amended is passed to the full committee. Rep. Bauman will carry.

(Tape 47, Side B) PUBLIC HEARING ON HB 2623 Witnesses: Rosanna Creighton, Executive Director, CFDFO Doug Hoffman, OCPA Bob Fauvre, LPLC John MacEntee, Church of Caring People Dave Morthland, CFDFO Anthony Taylor, Consultant Moses White, Church of Caring People Jim Green Sandee Burbank, Citizen Kris Tribys, Citizen Barry Stull, Citizen Fred Oerther Jon Zimmer

167 GREG CHAIMOV: HB 2623 recriminalizes possession and delivery of small amount of marijuana. Discusses current law for possession of less than 1 ounce as punishable by fine between \$500 and \$1,000. Delivery for no consideration of 5 grams is a violation punishable by a fine of \$500 to \$1,000. This changes it to a class C misdemeanor. (EXHIBIT G) Discusses letter from State Court Administrator regarding fiscal impact. (EXHIBIT H).

195 ROSANNA CREIGHTON, EXECUTIVE DIRECTOR, CFDFO: (EXHIBIT I) *Marijuana is the number one drug problem in Oregon. *Marijuana is the number one cash crop in Oregon *Discusses what would be a class C misdemeanor, the level of crime as illegally dumping garbage, or shoplifting. *Oregon became the first state in the country to de-criminalize marijuana in 1973. *Discusses sinsemilla as a potent variety of marijuana. *Time for user accountability. *The current law is not working because it is a low priority and not a criminal offense.

384 DOUG HOFFMAN, TROUPER WITH THE OREGON STATE POLICE, OREGON COUNCIL OF POLICE ASSOCIATIONS: Discusses the Council. *Re-criminalizing marijuana is not the answer to the drug problem but helps with the education and programs on drug abuse. *It assists the enforcement officer in dealing with search and seizure laws. *Supports HB 2623.

413 REP. CLARK: Would like an expansion on statement of search and seizure.

HOFFMAN: Difference is classification of the crime. With a violation, probable cause does not exist, so no search and seizure exists in violation situations.

TAPE 48, SIDE B

015 BOB FAUVER, CHAIR MAN OF THE LIBERTARIAN PARTY OF LANE COUNTY: (EXHIBIT J) Offers testimony in opposition to HB 2623. *The cost involved with HB 2623 is not justified at the present time. *HB 2623 will not prevent people from pushing marijuana on children. *Comments on marijuana as a gateway drug and compares to alcohol use. *Suggests more effective drug war tactics.

073 JOHN MACENTEE, CHURCH OF CARING PEOPLE: Comments on the US's incarceration rate. *Comments on what will happen by making criminals out of a sections of the US population. *This will cause fear and more

repression.

124 MOSES WHITE, CHURCH OF CARING PEOPLE: Represents a large number of people who consider marijuana use as part of religious ceremony. *Comments on the book Emperor Wears No Clothes regarding hemp. *Should other decide how all should live their lives?

263 SANDEE BURBANK, CITIZEN: (EXHIBIT K) Offers testimony against HB 2623. *Comments on Mothers Against Misuse and Abuse regarding looking at substance abuse. Most of the problems came from abuse of alcohol. *Comments on citizen's jail task force and experience with not enough jail cells to hold the amount of offenders brought in. Jail space is very inadequate for the problems currently have in the county. *Wasco County does not have room to deal with the criminals this law will create. *Discusses a seminary put on by Kaiser Permanente called "Response to the Global Challenge of Substance Abuse". *Asks the committee to deal with the legal drugs and get treatment for abuse of those.

270 KRIS TRIBYS, CITIZEN: Gives personal history. Offers testimony against HB 2623. *Explains what hemp is and what it can produce. *Re-criminalizing will cause the price to go up so much that the drugs of choice will be the less expensive crack. *Suggests incorporating this into the Wine industry as far as growing and potency.

406 FRED OERTHER, CITIZEN: (EXHIBIT M) Opposes HB 2623. *Comments on the potency of marijuana as going up each election year as a political ploy. *Real gateway to drug abuse or any other bad behavior patterns is child abuse. *No known medical problems from use of marijuana. *Comments on over the counter drugs that can be abuse.

TAPE 49, SIDE A

030 JON ZIMMER, PRIVATE CITIZEN: Opposes HB 2623. *This bill does not seen out a good message. There is a lot of hypocritical things going on with regard to this bill. *Comments and discusses the drug war in the US.

JIM GREEN, CITIZEN: (EXHIBIT N) Comments on written testimony. *Presents own opinions on the issue of legalizing and re-criminalizing marijuana. *Opposes criminalization of marijuana..

DAVID MORTHLAND, CFDFO: Testifies in favor of the HB 2623. *Emphasizes the potency issue as being 28% stronger. *Not enough emphasis is given to the deterrent effect. A number of people who are currently using it will discontinue use. When the drunk driving laws were strengthened, it changed the behavior of a lot of people who do drink. *Marijuana stays in the system a lot longer than alcohol. *Comments on study done with airline pilots and use of marijuana. *In dealing with any drug, it also requires education and rehabilitation. There must be consequences on continued use of this drug.

BARRY STULL, CITIZEN: (EXHIBIT O) Testifies against HB 2623. *Comments on past use of hemp. Discusses that the covered wagons in the state seal were covered with material made from hemp. *Marijuana problem became a problem after the hemp harvesting machines had been invented. Discusses article in High Times magazine, April, 1991. *Marijuana is a scapegoat. *Asks the committee to read the information presented.

CHAIR MILLER: Closes the hearing of HB 2623. Will not get to HB 2584

this meeting. Adjourns at 3:45 p.m.

Submitted by: Reviewed by:

Kathy Neely, Assistant David Harrell, Office Manager

EXHIBIT LOG:

A - Amendments to HB 2580 - 1 page B- Testimony on HB 2586
- Rosanna Creighton - 5 pages C - Testimony and Amendments to HB
2586 - Fred Avera - 5 pages D - Testimony on HB 2586 - Kathleen
Gardipee - 2 pages E - Testimony on HB 2586 - Barbara McGuire - 7
pages F - Testimony on HB 2586 - League of Oregon Cities - 1 page
G - Memorandum on HB 2623 - Greg Chaimov - 3 pages
H - Testimony on HB 2623 - Greg Chaimov - 4 pages
I - Testimony on HB 2623 - Rosanna Creighton - 5 pages
J - Testimony on HB 2623 - Bob Favre - 2 pages K - Material
for HB 2623 - Sandee Burbank - 11 pages L - Material for HB 2623 -
Sandee Burbank - 18 pages M - Material for HB 2623 - Fred Oerther
- 15 pages N - Testimony on HB 2623 - Jim Greene - 7 pages
O - Material for HB 2623 - Barry Stull - 52 pages