

House Committee on Judiciary Subcommittee on Crime & Corrections March
19, 1991 - Page

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statements made during this session. Only text enclosed in quotation
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report a speaker's exact words. For complete contents of the
proceedings, please refer to the tapes.

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

March 19, 1991Hearing Room 357 1:00 p.m.Tapes 55 - 58

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

MEMBER EXCUSED: Rep. Bauman

STAFF PRESENT: Greg Chaimov, Committee Counsel Holly Robinson,
Committee Counsel Jeff Steve, Committee Assistant

MEASURES HEARD:HB 2584 - Road Block (PH/WS) HB 3167 - Assault of a Bus
Driver (PH/WS) HB 2018 - Assault By More Than One Person (PH/WS) SB 371
- Arrest and Detention of Post Prison Violators (PH/WS) HB 2200 -
Disposal of Seized Property (WS) HB 2584 - Authorizing Sobriety
Checkpoint Roadblocks (PH/WS) HB 2623 - Recriminalizing Marijuana
(PH/WS)

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proceedings, please refer to the tapes.

TAPE 55, SIDE A

004 CHAIR MILLER: Opens Subcommittee on Criminal Law and Corrections at
1:03 p.m.

HB 2584 - ROAD BLOCK - PUBLIC HEARING Witnesses:Representative Mike
Burton, District 17 Representative Bill Markham, District 16

027 GREG CHAIMOV: Summarizes HB 2584. Authorizes law enforcement
agencies to set up roadblocks to check motorist's sobriety. Creates the
offense of evading a roadblock (a Class A traffic infraction, punishable
by a fine of not more than \$500.)

044 REP. MIKE BURTON: Testifies in favor of HB 2584. The intent is to
try to get people who are intoxicated off the road. Road blocks are
effective in deterring people from driving while intoxicated. This
would not take up additional jail space.

079 REP. BILL MARKHAM: Testifies in favor of HB 2584.

HB 3167 - ASSAULT OF A BUS DRIVER - PUBLIC HEARING Witnesses:Wallace Feist, Amalgamated Transit Union Debbie Amundson, Amalgamated Transit Union Jim Markee, Amalgamated Transit Union

136 HOLLY ROBINSON: Summarizes provisions of HB 3167. Enhances crime of recklessly assaulting a person who is in control of or operating a public transit vehicle to a Class C. felony.

147 WALLACE FEIST, AMALGAMATED TRANSIT UNION: Testifies in favor of HB 316 7.

159 DEBBIE AMUNDSON, AMALGAMATED TRANSIT UNION: During the first five years

of her employment with Tri Met she experienced numerous situations where her safety was threatened. In September of 1985 she was sexually and physically assaulted on her bus. She was subsequently attacked while driving.

181 REP. SUNSERI: Do these assaults happen a lot?

184 FEIST: The tracking mechanism that most parties use is not accurate. There are no accurate numbers.

193 REP. BRIAN: What did we do last session with respect to mass transit drivers?

197 FEIST: We introduced similar legislation to make this a Class C felony. Believes that it was ultimately vetoed by the governor at that time.

204 JIM MARKEE, AMALGAMATED TRANSIT UNION: The Transit Union introduced this piece of legislation.

216 CHAIR MILLER: Is "public transit vehicle" defined in the statutes?

219 MARKEE: Believes that a "transit vehicle" is defined in the mass transit section of the statutes. (It is not defined under ORS 184.675 pertaining to definitions under Public Transportation Division.)

224 REP. MASON: You have defined the offense as "recklessly causes physical injury while the person is in control of a transit vehicle". The rest of the statute speaks of either serious physical injury using a deadly weapon, serious physical injury under circumstances manifesting extreme indifference, or physical injury by deadly weapon under circumstances manifesting extreme indifference to the value of human life. What is the difference?

239 ROBINSON: One is primarily serious injury while the other is serious physical injury. The prosecutorial burden for serious physical injury is greater. The person must be practically in the hospital. The difference is the amount of injury that is required to bump it up from an Assault 3 to an Assault 4.

248 MARKEE: The danger on the buses is so great that any physical injury regardless of the seriousness of that injury should be treated as a felony in these cases.

256 CHAIR MILLER: When you talk about "the person is in control of or operating" how far does that extend? Would supervisory personnel also be included?

266 MARKEE: It would extend to the driver any time that he or she is on duty whether or not they are actually on the bus and physically driving it. The reason we used the language "or in control" was so that we did not allow someone to raise the defense that this person wasn't actually behind the driver's wheel at the time.

279 CHAIR MILLER: Do you need to be behind the wheel at the time of the assault? Perhaps from time to time the bus driver will be out of his seat trying to get a person to settle down. Is the bus driver still "in control"?

288 MARKEE: If the words "in control" were not used, and the words "while operating the bus" were, the driver would have to be behind the wheel.

HB 3167 - ASSAULT OF A BUS DRIVER - WORK SESSION

300 HOLLY ROBINSON: Refers to ORS 165.115 (Interfering with public transportation). Encourages the use of consistent language. See EXHIBIT A.

330 REP. MASON: Reads from ORS 164.365. It says it is Criminal Mischief in the First Degree, but further it says "with the properties of public telecommunications utility or public transportation facility using direct service to the public". Interestingly, they have the same difficulties. If the driver is not operating the vehicle then it does not make sense that we make it a Class C felony.

387 CHAIR MILLER: Understands that the supervisor was not included in the class of protected persons. It was the operator of the bus that the definition addresses whether or not the driver was actually in the driver's seat.

403 REP. MASON: The gravamen of HB 3167 is the fact that the operator is driving the bus and other people's lives are at stake. The question that needs to be addressed is whether the felony should extend to those situations when the operator of the transit vehicle has stopped the vehicle and is up from the driver's seat.

TAPE 56, SIDE A

005 REP. BRIAN: Perhaps it would help to say, "recklessly causes physical injury to an operator of public transportation while such person is in control of or operating the vehicle". This narrows the scope to "operators who are on the bus" whether the bus is stopped, moving, or whether the operator is in the driver's seat or not.

014 REP. BAUM: Agrees. The public needs to be protected.

021 REP. JOHNSON: What is the current penalty if a person is not driving a public vehicle and is hit in the head by another?

023 ROBINSON: Depends on what you hit the person with and how bad the injury is.

035 REP. JOHNSON: Assuming that HB 3167 does not pass, then most any

assault of the kind we are talking about would be a Class A misdemeanor.

040 REP. PARKS: Would this cover a cab driver?

043 ROBINSON: Because "public transit vehicle" is not defined, the answer is possibly.

046 REP. PARKS: Agrees with Rep. Mason. There is a logical distinction to be made between those persons "in control" and those persons on or near the bus.

054 REP. MASON: What about "inside the vehicle"? Draws the line once a person is off the bus.

061 REP. BAUM: Recommends adding the words "recklessly causes physical injury to another while such person is on a public transit vehicle and is in control of or operating a public transit vehicle" on line 12. Then define "public transit vehicle" as "any vehicle that is operated by or under contract with any public body in order to provide public transportation".

069 CHAIR MILLER: Does public vehicle include airport carriers?

077 ROBINSON: It would depend on whether or not the vehicle was operated by a public or private corporation.

080 CHAIR MILLER: Are we trying to afford protection to the bus driver and the public from greater injury during the time of operation?

091 REP. JOHNSON: Restrict this to moving vehicle. Concerned about expanding criminal laws. Understands that HB 3167 is addressed to those situations where an assault can result in injury to other persons.

HB 2018 - ASSAULT BY MORE THAN ONE PERSON - PUBLIC HEARING
Witnesses: Terry Ann Leggert, Department of Justice

142 ROBINSON: Summarizes HB 2018. Allows a party to an assault to be charged with Assault III, rather than Assault IV, a Class A misdemeanor.

145 TERRY ANN LEGGERT, DEPARTMENT OF JUSTICE: (EXHIBIT B) Reads Exhibit B.

166 REP. MASON: Can you give examples of "serious physical injury"?

171 LEGGERT: In one case the Court of Appeals held that a bullet lodged in a person's head was not a serious injury because there was no protracted impairment of the person's condition and it was not life threatening. Look at the definition of "serious physical injury" in Exhibit B.

185 REP. MASON: This definition may be modified to broaden it for purposes of HB 2018.

206 REP. BRIAN: This bill is trying to say that in two situations where the physical injury is identical, where the crime is perpetrated by one person, it would be a Class A misdemeanor. If the same degree of assault occurred from two people, that would be the aggravating factor.

214 LEGGERT: Correct. This parallels the robbery statutes right now. It is Robbery in the Third Degree when a person commits a robbery by

themselves. It is Robbery in the Second Degree if a person commits a robbery with a second person. Suggests adding, after the word "person", the words "actually present".

224 REP. BRIAN: If the outcome of this is the same, what is the rationale behind adding value to the number of persons involved?

235 LEGGERT: Impact on the victim is much more severe if the person is assaulted by more than one assailant. The chances of a person sustaining more injury rises with more assailants.

262 REP. JOHNSON: You have the word "aided" here. Understands that at least two people are involved in this.

274 REP. BRIAN: Would aided include a lookout?

277 LEGGERT: Tried to parrot the language of the robbery statutes. The intent is to include those people who are "actively participating".

296 CHAIR MILLER: How many cases do you think will be prosecuted under this new law?

299 LEGGERT: Perhaps 20 to 30 per year in the Portland area.

HB 2018 - ASSAULT BY MORE THAN ONE PERSON - WORK SESSION

332 REP. BAUM: We have an "aiding and abetting" statute here. What we are trying to do is carve out a new Class C felony where a gang (two or more persons) picks on a person, but they don't hurt him very badly, just cause the physical injury that Rep. Mason was talking about.

352 REP. MASON: Physical injury means "impairment of physical condition or substantial pain". If you slug another person hard it would fit that definition.

372 REP. BAUM: We are trying to combat the fear people have of facing more than one assailant.

391 REP. BRIAN: The issue is how much value we are going to assign to the presence of other persons even though the injury may be the same. Should extra persons be an aggravating factor even though the injury is the same?

TAPE 55, SIDE B

009 MOTION: REP. MASON: Moves to amend line 12 to read "while being aided by another person, actually present, intentionally and knowingly causes physical injury to another".

035 VOTE: Without objection, motion passes.

036 REP. BRIAN: Does the phrase "another person" include "persons"?

039 CHAIR MILLER: Yes.

040 REP. SUNSERI: Concerned about the situation where you have a person holding someone's jacket while they fight. Will this definition of "aided" broaden things too far?

047 REP. MASON: Recalls situation recently in Los Angeles where 11

police officers stood around and watched other policemen beat up a young man.

052 REP. SUNSERI: That is a different situation where there is a duty to do something.

058 LEGGERT: The difference is the people who are standing and watching are not aiding the person who is committing the assault and would not be covered by the statute and they would not be covered under the "aiding and abetting" statute either. This goes for a person who is holding a jacket of an assailant.

072 REP. MASON: What if a person serves as a barrier to the victim's escape?

074 LEGGERT: That would be covered.

076 REP. MASON: What if you engaged in pursuing the victim?

077 LEGGERT: That would also be covered.

086 MOTION: REP. MASON: Moves HB 2018 as amended to the full committee with a do pass recommendation.

092 VOTE 6-0 Motion passes.

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

SB 371 - ARREST AND DETENTION OF POST-PRISON VIOLATORS - PUBLIC HEARING
Witnesses: Vern Faatz, Board of Parole

085 ROBINSON: Summarizes provisions of SB 371.

109 VERN FAATZ, PAROLE BOARD: (EXHIBIT C) Reads Exhibit C.

SB 371 - ARREST AND DETENTION OF POST-PRISON VIOLATORS - WORK SESSION

134 MOTION: REP. BRIAN: Moves SB 371 A-Engrossed to full committee with a do pass recommendation.

14VOTE: 6-0 Motion passes

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

HB 2200 - DISPOSAL OF SEIZED PROPERTY - WORK SESSION
Witnesses: Jeff Van Valkenburg, Department of Justice

149 ROBINSON: Summarizes provisions of HB 2200.

165 JEFF VAN VALKENBURG, DEPARTMENT OF JUSTICE: (EXHIBIT D) Refers to proposed amendments to HB 2200 submitted by the Department of Justice. See Exhibit D. The proposed amendments would take out the definition of "forfeited goods" which was never intended to be in HB 2200 and insert "things otherwise criminally possessed or possessed in violation of parole or post-prison supervision conditions". The final amendment that the Department is proposing deals with the disposition of any net proceeds which may come from a sale of such items. The proceeds would go to the General Fund.

190 REP. BRIAN: In line 15 of HB 2200 where it talks about the "clear proceeds", is that phrase used in other recovery areas in the statutes providing for a clearer definition?

195 VAN VALKENBURG: That language comes from ORS 133.623 which are the existing disposition statutes contained in the Arrest Section in the Criminal Code.

199 REP. BRIAN: Are "clear proceeds" calculated after any reasonable costs are taken out?

203 VAN VALKENBURG: It is inherent in the phrase. Anticipates the Department is going to contract with the Department of General Services to perform that function when they actually want to dispose of property.

209 REP. SUNSERI: Is there a definition of "dispose"?

213 VAN VALKENBURG: Section 2 (2) of HB 2200 states "may order the sale, destruction or other disposition". It leaves it up to the Department what proper disposition is.

218 REP. SUNSERI: What prevents confiscation of unnecessary items being sold?

223 VAN VALKENBURG: The primary function that the Department of Corrections performs is when the parole officers go out, find a violation and seize property, that property will be held for local law enforcement or be held for the Parole Board to make a determination whether or not a condition was violated.

When that is through and local law enforcement does not need it for criminal prosecution the hearings officer at the Department of Corrections will make a determination of where and how the property will be disposed of.

Section 1 of HB 2200 discusses the types of goods which are seized and these are drugs, paraphernalia, etc.

243 REP. SUNSERI: Has talked with people who have been visited by Corrections officers and had items taken that had nothing to do with any crime. Many of the items taken were never returned.

253 VAN VALKENBURG: Understands that HB 2200 allows several procedures for return of goods. See Section 2(3) line 18, page 1. See Section 4(3) line 13, page 2. See Section 5(1) line 20, page 2.

274 ROBINSON: By taking out the language "forfeited goods" and inserting "things otherwise criminally possessed or possessed in violation of post-prison supervision" that significantly narrows the chances of abuse.

284 REP. BAUM: In (2), line 9 it says, "make a written list of things seized and furnish a copy to the suspected parole ... violator." Did the Committee talk about the right to challenge the seizure of the listed goods?

303 VAN VALKENBURG: That would not be a problem at all.

310 REP. BAUM: We can put some rights to contest the seizure.

320 MOTION: REP. BAUM: Moves adoption of proposed amendments. See Exhibit D. With further amendment on line 9 after the word "seized" insert "and rights to contest seizure".

333 VOTE: No objection. Motion passes.

335 MOTION: REP. BAUM: Moves HB 2200 as amended to full committee with a do pass recommendation.

345 VOTE: 6-0 Motion passes.

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

HB 2584 - AUTHORIZING SOBRIETY CHECKPOINTS - PUBLIC HEARING

Witnesses: Roseanna Creighton, Citizens for Drug Free Oregon Barbara Stoeffler, MADD Peter Higgins, Department of Justice Anthony DeLorenzo, Motor Vehicles Division Claire Ann Crawford, Libertarian Party David Fidanque, ACLU Jerry Cooper, Governor's Advisory Committee on Drunk Driving Anthony Taylor Brian Reilly, Salem Police Chief Jeff Kushner, Office of Alcohol and Drug Abuse

381 ROSEANNA CREIGHTON: (EXHIBIT E) Reads Exhibit E.

TAPE 56, SIDE B

013 BARBARA STOEFFLER, MADD: (EXHIBIT F) Reads Exhibit F.

059 PETER HIGGINS, ASSISTANT ATTORNEY GENERAL: (EXHIBIT G) Reads Exhibit G.

065 REP. BAUM: Under Section 7 (a), line 33, page 2, what happens if a person is pulled over, an officer picks up signs of intoxication, and the person either flunks the breathalyzer or refuses to take the test and the car is impounded? What is the procedure for dealing with that situation in real life? How are you going to get folks home?

080 HIGGINS: The officer is required to take the person to the closest police station. He will not be stranded out in the middle of nowhere.

086 REP. BAUM: There are some notice provisions in the statutes that require that there be some advance warning of upcoming roadblocks on the highway. What kind of notice are we talking about?

095 HIGGINS: Notice is to be established by the police on preestablished guidelines. Notice is usually given a quarter or half mile before the roadblock.

100 REP. BAUM: What happens if a person sees notice cones and does a U turn?

103 HIGGINS: Under HB 2484 police might be able to stop the person on grounds that he was evading the road block. Not sure.

116 REP. BAUM: Section 5 states that "...the operator does not stop at the roadblock when asked or signaled to do so". If the person does a U turn it is hard to imagine there is no law that would allow police to go after him.

128 HIGGINS: Most legislation is developed by courts on a case by case basis depending upon specific facts. If the officer stopped a person under those circumstances, case law would be developed as to whether that was good or not. Not sure you can draw legislation that would take into account all the fact scenarios.

135 REP. BAUM: What is the purpose of the public policy?

139 HIGGINS: We are talking about safety more than anything else. Also talking about the fear that exists with respect to what the Supreme Court has decided in the past regarding "intrusive" police procedures. The intrusion is a subjective analysis on the part of the police officer.

159 ANTHONY DeLORENZO, MOTOR VEHICLES DIVISION: (EXHIBIT H) Reads Exhibit H.

183 CLAIRE ANN CRAWFORD, LIBERTARIAN PARTY: Concerned about how far the intrusion that HB 2584 allows would go. This intrusion is a further move toward the police state.

207 DAVID FIDANQUE, AMERICAN CIVIL LIBERTIES UNION: Questions the underlying assumption of the perceived effectiveness of sobriety checkpoints. Talks about the Oregon Supreme Court case that gave rise to this legislation. Details facts of the case, Linden Nelson v. Lane County. Road blocks are not the best method to use. The evidence is clear that saturation patrols are a much more effective way of catching drunk drivers. If you use regular patrols or saturation patrols on the highways, you can suspend the drivers license of drivers and also convict them under the criminal laws of the state. That is the appropriate way to deal with drunk drivers.

262 REP. CLARK: Are you saying that this may be constitutional, but is not good policy?

264 FIDANQUE: Yes.

265 REP. CLARK: Do you have information about the relative expense of saturation patrols versus checkpoints?

268 FIDANQUE: No. The Springfield Police Department made a policy decision a number of years ago to use saturation patrols rather than road blocks at the time road blocks could still be done. It was their opinion that saturation patrols were more cost effective in getting drunk drivers off the road.

278 REP. CLARK: You do raise a civil liberties concern.

287 FIDANQUE: Yes.

290 REP. CLARK: Let us assume this law would be constitutional. How is a sobriety check point more intrusive of civil liberties than other types of checkpoint systems, such as airports?

299 FIDANQUE: The ACLU opposes airport security checks. If people have not given external evidence they are violating the law they should be free to move from place to place without being stopped and interrogated. In the case of people driving under the influence of alcohol there are more than enough instances of people driving while under the influence to keep police officers busy.

327 REP. CLARK: What is to stop the idea of road blocks from being expanded to include checking for other things besides alcohol, such as other criminal evidence?

335 FIDANQUE: Once you have a valid stop, if a police officer finds evidence of criminal activity the officer is free to move on from there.

347 JERRY COOPER, GOVERNOR'S ADVISORY COMMITTEE ON DRUNK DRIVING: The committee is very much in favor of road blocks. However, HB 2584 may not be the best approach because there may not be the deterrent effect because police may not use this tool due to economic reasons. Police want to make arrests. They will not be too active in setting up road blocks if they can't make arrests.

389 REP. MASON: The last time we had this bill before us we had the discussion that these road blocks were not even run by the police, but by DMV as an administrative inspection with no criminality attached. Likes the idea of making this merely a civil inspection.

TAPE 57, SIDE A

006 COOPER: Has heard from sources around the state that police departments do not have the resources to handle these situations.

030 REP. BAUM: You are thinking that this will not be used. Can imagine that this type of road block will only be used at special events and large gatherings.

044 COOPER: Is still convinced that road blocks act as deterrents.

053 REP. BAUM: Once the message gets out, particularly in an environment such as a large event, can see road blocks driving the number of incidents down.

056 COOPER: The question is whether suspension of your license, being detoxed, and 24 hour impoundment of your vehicle is going to be enough to create a deterrent effect, or is it the threat of also being apprehended and arrested and taken to jail.

063 REP. MASON: Do you think that limiting the situation of a road block to civil penalties is going to cause a deterrent effect?

065 REP. PARKS: Would the police announce the precise street location?

067 COOPER: They generally announce that the road block will be at a specified place.

070 REP. PARKS: The State Police in Klamath Falls told me there is absolutely no difference if the Department announces the exact intersection or if no public notice is given.

078 ANTHONY TAYLOR: Raises constitutional issue of stop and search procedures. When you pull someone over, such as at a road block, there is a presumption of guilt instead of innocence.

100 CHAIR MILLER: Do you object to metal detectors at airports?

102 TAYLOR: Yes.

106 BRIAN REILLY, SALEM POLICE CHIEF: Supports the use of roadblocks. However, has problems with HB 2584. Is concerned with what the police officer is going to do with the people that have their cars confiscated and are brought in for detoxification. Does not know how the police would use this legislation practically. Would prefer the option of the officer's ability to arrest.

119 REP. BRIAN: Do your officers currently have the ability to arrest at roadblocks?

121 REILLY: No, except for DUII.

123 REP. BRIAN: You understand the constitutional limitations under which the Committee can work. We are trying to find something that is better than nothing. This does not require police departments to set up roadblocks, but allows them to if they decide to.

128 REILLY: Realizes that.

132 REP. BRIAN: Would the Oregon Chiefs of Police oppose HB 2584 or state that they are not comfortable with its limitations?

136 REILLY: Will not oppose HB 2584.

140 JEFF KUSHNER, OFFICE OF ALCOHOL AND DRUG ABUSE: Recalls that the Office

funds 14 non-hospital detoxification programs around the state. There would be accessibility to these programs if HB 2584 passed.

157 REP. BAUM: To Mr. Higgins: HB 2584 does not discuss other conduct or crimes that may be discovered once the person is stopped. How far can the police go in this stop and search?

169 HIGGINS: Recollects that HB 2584 provides that not only are there no DUII arrests, but any evidence garnered from these road blocks can not be used to prosecute for DWS also. The intention is to prevent these roadblocks from being used as pretext stops. However, evidence of other crimes may be used and will not be suppressed.

184 REP. BAUM: Would like to see this as black and white. Raises the concern that this administrative stop is going to lead to criminal charges. Wants to point out for the record that this is just an administrative stop. The only thing that is going to happen is that their license will be suspended and their car impounded. Does not want to see this as a fish net to see what other criminal activity can be found.

204 REP. BRIAN: Is concerned about constitutionality and policy issue.

213 HIGGINS: Under the federal constitution, there is no problem. There is no problem unless the roadblock is being used as a pretext.

229 REP. BAUM: Section 9(2), page 16 states "except as provided in (1) the presence of a roadblock does not prohibit law enforcement officers from making an arrest otherwise authorized by law, nor does it prohibit seizure of evidence of crimes if such seizure is otherwise authorized by law". the evidence can not be used in a subsequent prosecution for driving while suspended or revoked. However, if you catch somebody for some other crime they can be charged with it.

257 REP. MASON: The magic words are "plain view doctrine". If the car is stopped and a police officer can "in plain view" see incriminating evidence, then it is all right.

279 REP. BAUM: Need to have the intent of HB 2584 on the record.

310 HIGGINS: As he reads HB 2584 the intent is you won't be stopped and asked for your license unless there is some indicia of intoxication to begin with.

317 REP. BAUM: Do you have to give your name?

321 HIGGINS: If you are stopped and asked for your name, length of detention would be evaluated under the individual circumstances.

325 REP. BAUM: Once there is probable cause for the alcohol, the police may pull the person out of the car then their name will be run and any arrest warrants will come up and the person will be subject to those arrest warrants. Is that right?

330 HIGGINS: Once there is the symptom of intoxication, such as the odor of alcohol, the person would be asked to do a field sobriety test. The refusal to do the field sobriety test or failing the test would constitute reasonable grounds to ask the person to take a breath test under HB 2584. It is a progressive concept.

HB 2584 - AUTHORIZING SOBRIETY CHECKPOINTS - WORK SESSION

350 REP. MASON: Testimony of Mr. Cooper bothered him when he said that despite the fact that it is a nice bill, the police officers won't use it. Were any fines put into this?

379 REP. JOHNSON: If we pass HB 2584 we have to live with the fact that the police departments around the state may use this on the road every night and every day for the rest of our lives. Has real problems with HB 2584.

393 REP. BRIAN: If the stop occurs can police ask for driver licenses if there are no symptoms?

395 REP. BAUM: No.

TAPE 58, SIDE A

007 REP. PARKS: HB 2584 appears to be created loosely on purpose. Concerns him. There are some 4th Amendment concerns that need to be addressed.

037 CHAIR MILLER: Recesses Subcommittee at 3:26 p.m.

Reconvenes at 3:35 p.m.

HB 2623 - RECRIMINALIZING MARIJUANA - PUBLIC HEARING Witnesses: Claire Ann Crawford, Libertarian Party Verol E. Tarno, Oregon Sheriffs Association Randy Price Anthony Taylor Ralph Welch Jeffrey Kushner, Department of Human Resources Fred Oerther

045 CHAIMOV: Summarizes HB 2623.

063 CLAIRE ANN CRAWFORD: The matter of drug use should not be legislated.

087 CHAIR MILLER: Would that protection extend to the use of cocaine?

093 CRAWFORD: Any private use of alcohol or drugs should not be regulated by the state unless that use affects other people. What people do in their own home should not be legislated.

102 VEROL E. TARNO, OREGON STATE SHERIFFS ASSOCIATION: (EXHIBIT I). Is concerned about the double standard that exists with respect to this area. Possession of small amounts of marijuana is no crime. This sends mixed messages to kids. It is very frustrating to come across a group of kids who are dealing marijuana and not be able to do anything about it. Give law enforcement the tools they need.

144 REP. BAUM: Would you like possession of small amounts of marijuana a Class A misdemeanor to enable police officers to search further?

146 TARNO: You can't use the search and seizure aspect behind probable cause for a Class C misdemeanor.

171 REP. JOHNSON: One of the key features of HB 2623 is the right of police officers to carry on an investigation. If they do not have this ability under HB 2623 then sees it hard to vote on it.

184 RANDY PRINCE: Reads from written statement.

386 REP. JOHNSON: How do you relate a population's vote not to legalize marijuana with their feelings about recriminalizing marijuana?

398 PRINCE: Thinks that less than 70% of the 30% of the people who would vote against legalizing marijuana would vote to recriminalize marijuana.

TAPE 57, SIDE B

011 ANTHONY TAYLOR: (EXHIBIT J) Reads Exhibit J.

075 RALPH WELCH: Tolerance is something to embrace. Smoking marijuana in this state has been going on for some 20 years or more. Its use is deeply rooted in Oregon. Sees that taking liberties away from people for smoking small amounts of marijuana is ludicrous.

186 REP. SUNSERI: Remembers the use of marijuana in Vietnam. Advocates making the law on alcohol stricter. When use of marijuana affects other people's rights then it should be curtailed.

209 WELCH: Use and abuse should be distinguished.

241 JEFFREY N. KUSHNER, DEPARTMENT OF HUMAN RESOURCES: (EXHIBIT K) Reads Exhibit K.

315 FRED OERTHER: Testifies against HB 2623. Thinks all of this is frivolous. Everyone has a right to privacy. You are going a long way to increase the profits of illegal trafficking of marijuana.

380 REP. JOHNSON: Tally results from last election concerning recriminalization of marijuana. His County voted against legalizing marijuana 3.17 to 1. Thinks that he is representing the people of his

district and not himself.

394 OERTHER: In 1986, 26% of the voters who chose to vote wanted to decriminalize marijuana. That is significant.

TAPE 58, SIDE B

HB 2623 - RECRIMINALIZING MARIJUANA - WORK SESSION

071 MOTION: REP. BAUM: Moves to add (k) to HB 2623 amending ORS 133.310 which would read "Manufacture, delivery, or possession of a controlled substance under ORS 475 .992 to 475.999". The purpose of that would be to allow an officer to arrest without a warrant anyone who is found manufacturing, delivering, or possessing a controlled substance as listed under those provisions. This would clarify any concern about the Class C misdemeanor.

Discussion of the motion.

081 REP. MASON: That does not address Rep. Johnson's concern.

084 REP. JOHNSON: If we want to recriminalize marijuana we do it partly because we want to give police the authority to search.

089 VOTE: Without objection, amendment is adopted.

102 CHAIMOV: The Committee should delete Sections 5, 6, 7, and 8 and in Section 9 insert "and 475 .295 are" and add the word "is".

120 MOTION: REP. BAUM: Moves suggestions made by Chaimov.

126 VOTE: Without objection, amendment is adopted.

128 MOTION: REP. BAUM: Moves HB 2623 as amended to the full committee with a do pass recommendation.

135 VOTE: 6-0 motion passes.

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

146 CHAIR MILLER: Adjourns Subcommittee on Criminal Law and Corrections at 4:43 p.m.

Submitted by, Reviewed by,

J. Kennedy Steve, Pat Zwick, Assistant Office Manager

EXHIBIT LOG:

A:HB 3167 Written Material - Holly Robinson - 1 page B:HB 2018 Testimony - Terry Ann Leggert - 2 pages C:SB 371 Testimony - Vern Faatz - 2 pages D:HB 2200 Amendment - Jeff Van Valkenburg - 1 page E:HB 2584 Testimony - Roseanna Creighton - 4 pages F:HB 2584 Testimony - Barbara Stoeffler - 2 pages G:HB 2584 Testimony - Peter Higgins - 2 pages H:HB 2584 Testimony - Anthony DeLorenzo - 2 pages I:HB 2623 Testimony - Verol E. Tarno - 27 pages J:HB 2623 Testimony - Anthony Taylor - 5 pages K:HB 2623 Testimony - Jeffrey N. Kushner - 3 pages