

HOUSE COMMITTEE ON JUDICIARY CRIME AND CORRECTIONS

March 26, 1991                      Hearing Room 357 1:00 p.m.                      Tapes 59 - 62  
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. Bill Markham STAFF  
PRESENT: Holly Robinson, CommiKee Counsel Mary Walling, Committee  
Assistant MEASURES HEARD:                      HB 2845 - Photo Radar (PH/WS) HB 3299 -  
Mobile Tracking Devices (PH/WS) HB 2799 - Traffic Infraction Trials  
(PH/WS) HB 3167 - Assault Of A Bus Driver (WS)

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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 59, SIDE A

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

(Tape 59, Sida A) HB 2845 - PHOTO RADAR - PUBLIC HEARING Witnesses: Rep.  
Bill Markham, District 46 Earl Blumenauer, Commissioner, City of  
Portland Linda Meng, Attorney, City of Portland Dennis Daly, Captain,  
Portland Police Bureau Linda Dartsch, Bureau of Traffic Management, City  
of Portland Virgil Flath Barbara Marquez Molly Brady John Pardon,  
Sheriff, Douglas County House Committee on Judiciary March 26, 1991 -  
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014 ROBINSON: Provides a summary of HB 2845. > HB 2845 authorizes the  
use of photo radar and amends the Oregon Traffic Court to allow two  
things: -1) citations can be issued by mail -2) the citations can be  
based on a combination of a photograph and a radar recording 026REP.  
MARKHAM: Supports 2845. Reads an article from Christian Science Monitor.

> The article describes a device that will assist law enforcement  
agencies in controlling speeders. It is a camera attached to a radar  
gun. When it detects a vehicle going faster than a designated speed, the  
unit takes a picture of the vehicle including the license plate and the  
driver.

> The citation is then mailed to the registered owner. > The device can  
catch 260 speeders an hour compared to fewer than ten with a police  
cruiser.

> Use of the photo radar means fewer police officers needed to control  
speeding. Frees police officer's time because it is not necessary for  
officer to appear in traffic court.

102 EARL BLUMENAUER, COMMISSIONER, CITY OF PORTLAND: Supports HB 2845.  
(EXHIBIT A AND B)

> Seeks clarification on the ability of the City of Portland and other  
municipalities in Oregon to mail citations based on the photo radar  
device. > Traffic safety is a major law enforcement issue. More people  
die in the City of Portland on roads and more property is lost each year  
in traffic accidents than in all the crimes and the homicides put

together. 190 CHAIR MILLER: Seeks clarification of problem of:  
-citation being sent to registered owner and registered owner is not the  
driver -driver has poor driving record so another family member accepts  
citation and pays it 203BLUMENAUER: Photo radar pictures are so clear  
it is possible to tell who the driver is, even at night, and can read  
the license plate numbers. 280 REP. BAUM: Expressed concern that in  
wide open areas of state it could be perceived as a speed trap.  
285 BLUMENAUER: The city is looking for a more cost effective way to  
try and enforce a respect for the law. 302 > Committee could exempt  
the application of this from state highways or the state not use it and  
authority granted to local governments to have it as an option.  
311 REP. MARKHAM: The use of photo radar would be at the discretion  
of the city chief of House Committee on Judiciary March 26, 1991 Page 3  
police, police superintendent, or county sheriff. - > What is needed is  
a law change to allow the mailing of the citation.

328 REP. SUNSERI: Could be very profitable for city governments to use  
photo radar.

360 REP. MARKHAM: Explains it is not a money making device.

> A Texas company provides van, installs expensive camera, provides  
film, develops film, does registration check on vehicle and mails  
citation.

> The company charges \$20 for each citation that results in a  
conviction.

> There is a police officer in the van monitoring the equipment while  
the device is in use.

> City officials expect to about break even with photo radar. Could be a  
money loser if citation amounts do not equal costs.

TAPE 60, SIDE A

046 REP. BRIAN: Concerned by presumption of guilt by virtue of being  
the registered owner of the car.

> Appears to be shifting a burden to innocent citizens that is not done  
in any other criminal type matters. 058 LINDA MENG, ATTORNEY, CITY OF  
PORTLAND: (EXHIBIT C) Traffic infractions are a civil matter and not a  
criminal matter so there are no criminal penalties that apply to an  
infraction like speeding. > It would require the owner, if not the  
person driving the car, to come in and show that he/she was not that  
person. > The owner would not be held liable if not driving the car.

079 REP. BRIAN: If vehicle is a commercial vehicle, i.e. taxicab, who  
gets cited? 083 MENG: A letter is sent to the company informing them  
of the photograph, time, and speed. It would be an informational matter.  
> Believe companies want to know if employees are exceeding speed limit.

095 REP. BRIAN: Concerned over vehicle registrations that are  
inaccurate. 124 BLUMENAUER: Tool to encourage people to do what they  
are supposed to do when they sell vehicles. Innocent parties could deal  
with it in person or by letter.

149 REP. BRIAN: Requests clarification on procedures for owner to  
write letter that he was not in

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Portland and was not driving car that day. 160 MENG: The matter would go to the judge just as would a letter now. > A citation would be issued if there was a clear identifiable photograph that would hold up in court. The expectation is that these would be handled like any other traffic citation. > City anticipates they would make the photographs available at the Police Bureau. Anticipate sending a letter that photos will be available. Owner can come in and look at photos and determination made if owner was driver. 212 REP. BRIAN: What happens if owner does not receive letter? Are citations sent by registered mail? 254 DENNIS DALY, CAPTAIN, PORTLAND POLICE BUREAU: (EXHIBIT D) These devices have been in operation for twenty years in some states and other countries. Rely for answers on other areas that have used this system. > Experience shows that sending registered mail is not necessary. Originally some communities used registered mail. Compliance and response was almost the same as through the regular mail. 367 REP. JOHNSON: How soon after photo taken will owner receive citation? 371 LINDA DARTSCH, ASSISTANT CITY TRAFFIC ENGINEER: (EXHIBIT E) In most other communities the vendors had citations in mail in seven to ten days. 384 > Portland would post signs at all major entrances to city to let people know that photo radar is being used. Also post a sign as leave area that tells drivers they have just been through photo radar area. > Also might be able to have a reader board that would inform driver of the speed his vehicle was traveling. > Equipment is inside a marked police vehicle. Has a large high speed camera manned by a uniformed police officer. Computer inside vehicle records speeds of all vehicular traffic. Shows how much faster cited violater was going than rest of traffic.

TAPE 59, SIDE B

032 BLUMENAUER: Would like to arrange a demonstration by one of the vendors in front of the capitol to show committee how it works.

048 REP. MASON: Is it necessary to have an officer present?

052 MENG: The statute that allows the use of radar says that a citation can be issued on the basis of radio microwaves or other electrical devices if an officer observes the speed or has reasonable cause based on another officer's observation of the speed. . These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks repon a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. House Committee on Judiciary March 26, 1991 - Page 5

> Tried to keep it as much like any other speeding violation as possible. 119 Discussion followed on setting the speed for the photo radar, cost of using device, restrictions on where device could be used and reporting information to insurance companies.

330 DARTSCH: Presently city has a program called speed watch.

> Make available to citizens a hand held radar gun and citizens monitor traffic speed. They send license number and make and model of car to polic bureau. A letter is sent to owner that states his car was observed speeding. Please be a good neigHB or.

TAPE 60, SIDE B

020 VIRGIL FLATH: Submits and summarizes testimony in support of HB 2845. (EXHIBIT E) > Describes speeding problem on SW Bertha Boulevard. Bertha Boulevard is used as an access road to other highways and as a result many drivers travel much faster than the posted 25 miles per hour. 048 BARBARA MARQUEZ: Submits and summarizes testimony in support of HB 2845. (EXHIBIT G) > Describes situation near children's school. Parents took part in operation speed watch and found a large number of speeding vehicles. Not one car was clocked going 20 mph, the designated speed when children are present. Speed watch has no power to enforce speed limit, and that is why parents support use of photo radar. 128 MOLLY BRADY: Submits and summarizes testimony in support of HB 2845. (EXHIBIT H) 166 JOHN PARDON, SHERIFF, DOUGLAS COUNTY: Testifies in support of HB 2845.

(Tape 60, Side B) HB 3299 - MOBILE TRACKING DEVICES PUBLIC HEARING  
Witnesses: Peter D. Sheperd, Department of Justice Pat Nelson, Police Bureau, City of Portland

221 ROBINSON: Sumarizes HB 3299.

> Last session the legislature passed a law which enabled warrants to be issued for mobile tracking devices or "bird dogs." At that time the issuance was limited to felony offenses that were dangerous to life or felony drug activities. This measure would expand it to all felony offenses. 243 PETER D. SHEPHERD, ASSISTANT ATTORNEY GENERAL: Submits testimony on HB 329 9. (EXHIBIT I)

> This bill will expand the categories for which the tracking device can be used. Under HB 3299 the court can issue a search warrant for any felony and allow the police to use the tracking device

These minutes contain materials which paraphrase and/or sununarize 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 March 26, 1991 - Page 6 , in any felony.

> One class of felony that was missing is burglary. In state vs. Campbell the police had attached such a dvice to Mr. Campbell's automobile because he was a suspect in a number of burglaries and they were having difficulty following him. He moved to suppress the evidence that was collected by monitoring where the "bird dog" led the police, and he was successful in that effort. Couldn't be used in Campbell case because police did not have evidence that it was a felony that endangered human life.

350 REP. BAUM: A tracking device is purchased by a car owner and is dormant until car is stolen, then it is given to the police. How would that violate anyone's constitutional rights against search and seizure if the property is stolen to start with and it is the owner that put tracking device on the property?

SHEPHERD: The installation of the device would not constitute any violation of Article 1 Section 9. The question would be whether the monitoring of the device would constitute a violation if conducted without a search warrant.

TAPE 61, SIDE A

035 PATRICK NELSON, PORTLAND POLICE BUREAU: Submits and summarizes testimony in support of HB 3299. (EXHIBIT J)

>Involved in 1988 case and a couple of subsequent rulings after that and also tried to get last legislature to change this law.

> As a result of the decision in State vs. Campbell, the 1989 legislature enacted the law which allowed us to obtain warrants and included in that a long list of felonies. The final enactment of the legislature did not include the mobile tracking devices for investigation of felony property crimes.

> Passage of this bill would allow search warrants to be issued when tracking devices are used in the following cases: -car keys are stolen and thief returns at a later date and steals car -employer who is losing property from employee theft -metal theft from highway guard rails and from utility companies

107 > Discussion followed that preference might be to add specific crimes rather than to change law to include all felonies.

(Tape 61, Side A) HB 3299 - WORK SESSION 278 MOTION: REP. BAUMAN moves to restore the bracketed language on page I of HB 3299.

VOTE: Hearing no objection, the motion carried. House Committee on Judiciary March 26, 1991 - Page 7

MOTION: REP. BAUMAN moves to insert-on page 1, line 25, after ORS 475.992, theft I, burglary I, burglary II, unauthorized use of a motor vehicle.

VOTE: Hearing no objection, the motion carried.

420 MOTION: REP. BRIAN moves HB 3299 as amended to the full committee with a do pass recommendation. VOTE: In a roll call vote, the motion carried with all members present voting aye. Rep. Parks and Sunseri excused.

TAPE 62, SIDE A

HB 3167 - WORK SESSION

023 ROBINSON: Summarizes HB 3167.

> The bill will add operators of public vehicles to list of assault three crimes.

> At previous hearing discussion involved definition of a public transit behicle and what is meant by operator in control of vehicle.

> Three sets of amendments: -HB 3267- 1 (EXHIBIT K) puts operator within the vehicle and defines vehicle -HB 3167-2 (EXHIBIT L) puts operator in the operator's seat in the vehicle and defines vehicle -HB 3167-3 (EXHIBIT M) leaves language of bill the same and defines vehicle

060 MOTION: REP. MASON moves to adopt HB 3167-3 amendments.

VOTE: One objection noted. Hearing no further objections, the amendments

are adopted.

086 MOTION: REP. MASON moves HB 3167 as amended to the full committee with a do pass recommendation. REP. JOHNSON: Opposes bill. Start making felonies out of every group preKy soon everyone will be covered one way or the other. REP. MASON: The language "in control of the vehicle" protects the bus driver when he has stopped the vehicle and is attempting to remove passenger. VOTE: In a roll call vote, the motion carries with Reps. Johnson and Parks voting NAY. Rep. Sunseri excused. (Tape 62, Side A) HB 2799 - TRAFFIC INFRACTION TRIALS - PUBLIC HEARING

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Witnesses: Capt. Jim Stevenson, Oregon State Police Jackie Bloom, City of Portland Officer km Lambert, Portland Police Linda Meng, Deputy Attorney, City of Portland 153 ROBINSON: Summarizes HB 2799. > Significantly revises procedures for traffic infraction trials by allowing trials to be held within seven days of the issuance of the date of the citation, allowing affidavits to be admissible evidence, and deleting the requirement that defendant waive the right to admit affidavit testimony. 164 CAPT. JIM STEVENSON, OREGON STATE POLICE: Submits and summarizes testimony in favor of HB 2799. (EXHIBITS N AND O) > Has been working with the justice courts and district courts that deal with traffic infractions in trying to develop trial by affidavit. Has had some cooperation with some of the courts. > It can cut time and hours police officers are in court. There would be a cost savings over a biennium of \$164,374 in overtime expenditures and savings in time would be the equivalent to 1.20 FTE. 181 REP. JOHNSON: Would the defendants also be able to testify by affidavit? STEVENSON: That is correct. JACKIE BLOOM, CITY OF PORTLAND: Testifies in support of HB 2799. > Has been advised that without express legislative authority, cannot use affidavits in infraction cases. 212 OFFICER JIM LAMBERT, PORTLAND POLICE: Testifies in support of HB 2799.

> The City of Portland, Bureau of Police, is taking the same position as that of Capt. Stevenson with the Oregon State Police. Portland police overtime budget is approximately \$116,000 a year for traffic court alone.

> Officers who are required to make traffic infraction hearings during the day are taken off of the street. They are in court for 30 minutes to 2 hours.

> The largest portion of the officers going to traffic court are afternoon and night relief officers. They write the majority of the citations and they are coming in on overtime. 233 > Discussion ensued regarding whether affidavits would have to be notarized. Instead of word "affidavit" use words "written statement." 258 REP. MASON: Not long ago a person in a traffic citation had the right to a jury trial. Jury

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trial is gone from traffic court infractions. This is one step further and do not get police officer there. 276 LINDA MENG, DEPUTY ATTORNEY, CITY OF PORTLAND: Along with that change has been the change in penalties that attach to traffic infractions. There used to be a potential jail term attached to traffic infractions. No longer even an automatic suspension of license.

> It is purely a civil matter now. Civil judgments are entered routinely on the basis of affidavits in those kinds of cases.

> Penalties have changed and procedures have changed as a result.

336 LAMBERT: For the past three years has been a court coordinator. Twice a week sits and observes in traffic court. > Fifteen to twenty officers and fifteen to twenty defendants a day appear in court. The officer testifies directly from his citation. The judge makes his decision.

> Ninety percent of the time when the defendant is given the opportunity to ask the officer a question, he/she doesn't. There is nothing to ask. The officer's citation gives all the evidence.

> Defendant is hoping that by going to court his fine will be reduced.

376 CHAIR MILLER: Adjourns meeting at 3:45.

Submitted by:      Reviewed by: Mary Walling              Holly Robinson Committee  
Assistant              Committee Counsel

EXHIBIT LOG:

A - Testimony on HB 2845 - Earl Blumenauer - 3 pages B - Testimony on HB 2845 - Earl Blumenauer - 9 pages C - Testimony on HB 2845 - Linda Meng - 3 pages D - Testimony on HB 2845 - Dennis Daly - 2 pages E - Testimony on HB 2845 - Linda Dartsch - 3 pages F - Testimony on HB 2845 - Virgil Flatch - 1 page G - Testimony on HB 2845 - Barbara Marquez - 2 pages H - Testimony on HB 2845 - Molly Brady - 2 pages I - Testimony on HB 3299 - Peter Shepherd - 2 pages J - Testimony on HB 3299 - Patrick Nelson - 10 pages K - Amendment to HB 3167 - Staff - 1 page L - Amendment to HB 3167 - Staff - 1 page . 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.

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M - Amendment to HB 3167 - Staff - 1 page N - Testimony on HB 2799 - Jim Stevenson - 1 page O - Testimony on HB 2799 - Jim Stevenson - 3 pages .