

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 27, 1991Hearing Room 357 1:00 p.m.Tapes 63 - 64

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 Rep. Bill Markham

STAFF PRESENT: Greg Chaimov, Committee Counsel Kathy Neely, Committee Assistant MEASURES CONSIDERED: HB 2219 PH (Assaulting Public Safety Officer) HB 2833 PH (Tax on Controlled Substances) HB 2584 WS (Roadblocks)

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TAPE 63, SIDE A

003 REPRESENTATIVE MILLER, CHAIR: Calls the meeting to order at 1:22 p.m.

WORK SESSION ON HB 2584 Witnesses:David Frohnmeyer, Attorney General James H. Stevenson, Oregon State Police

012 GREG CHAIMOV: This is the sobriety checkpoint bill. It authorizes roadblocks and suspension of licenses. Discusses amendments (EXHIBIT A).

024 DAVID FROHNMEYER, OREGON ATTORNEY GENERAL: (EXHIBIT B) Object is to deter drunk drivers from being on the highway. It is a simple way to cure any constitutional problems that may arise from the use of sobriety checkpoints by police agencies. Driving is a privilege. *Nelson v. Lane County: Oregon Supreme Court determined roadblocks, where criminal sanctions were attached, violated Article I, Section 9 of the Oregon Constitution, the search and seizure provisions. Made it clear, however, that if criminal penalties were removed it would satisfy any constitutional problems. *Satisfy Oregon Constitution by introducing a measure that provides for carefully controlled, highly publicized, truly random roadblocks and that the sanctions are only civil. *This is a tool of deterrence.

067 REP. JOHNSON: Is there a sunset in the bill?

FROHNMEYER: No intention to sunset this but it does not mandate the use of the checkpoints.

076 REP. JOHNSON: Is there anything to regulate the number and frequency

of roadblocks?

FROHNMEYER: No. States reasons for selective use: 1. Requires investment of police resources. 2. To be effective, need a fairly high degree of publicity. 3. Requires devotion of manpower.

090 REP. JOHNSON: Paragraph 2 on page 1 discussing advance warning signs, is that the publicity?

094 FROHNMEYER: That is the only section that speaks specifically to it.

101 CHAIR MILLER: Discusses proposed amendments (EXHIBIT A) on page 1 states "law enforcement agency shall notify public of location of a roadblock".

113 FROHNMEYER: The maximum deterrent affect is obtained by the widest possible publicity.

126 JAMES H. STEVENSON, CAPTAIN, PATROL DIVISION, OREGON STATE POLICE: (EXHIBIT C) *State police is very supportive. Feels that roadblocks are a great step. *Draws attention to Section 6 dealing with refusal or failure of a standard test, an officer can take driver to a facility to take the breath test. Would like to see some language inserted that failure to accompany the officer would be a misdemeanor or mandatory civil sanction. *Section 7 provides for impoundment of vehicle for 24 hours. Concern is availability of vehicle to others in the family. Would like to have it as currently law is, release of vehicle to responsible party at scene. *Section 8 requires an officer to take person to treatment facility. There are only 14 sanctioned de-tox facilities. *Sections 23, 24 and 28 deal with requirement for hearings and sale of vehicles. Most police agencies do not have the manpower, should be the responsibility of an agency presently authorized to do that.

165 CHAIR MILLER: Recesses work session on HB 2584.

(Tape 63, Side A) PUBLIC HEARING ON HB 2219 Witnesses: Jack Pompei, OSHA

171 CHAIR MILLER: HB 2219's relating clause includes use of children in a crime. Discussed proposed amendments (EXHIBIT D).

REP. MASON: Is there any intent of keeping the original bill as it is?

CHAIR MILLER: No.

223 JACK POMPAI, OSHA: Asks the committee to assist OSHA to protect the OSHA investigators from the brutality of physical harm.

235 CHAIR MILLER: Is there a special problem with OSHA workers?

POMPAI: There are many instances of attacks on OSHA compliance officers. Recently the Clackamas County DA found a logging individual guilty of assaulting a female compliance officer. *Rational for bill was to not have to depend on DAs to take or not the case. *This is a federally mandated law that requires compliance officers to go into the field.

CHAIR MILLER: Closes hearing on HB 2219.

(Tape 63, Side A) WORK SESSION ON HB 2219

263 CHAIR MILLER: Asks Counsel describe the amendments proposed.
(EXHIBIT D)

270 GREG CHAIMOV: Comments on HB 2582 A-engrossed (EXHIBIT E) which passed the House last week. HB 2582 enhances the penalties for using minors in commission of controlled substance felonies. The proposed amendments (EXHIBIT D) track that language closely.

287 REP. MASON: Is there some way to narrow it down. Comments on criminal code regarding theft of services. Expands with an example. Point being to limit concept to more "heinous felonies".

329 REP. CLARK: Seems language could be crafted to get at that concern by saying "the child has to be included in the offense, almost as an element of the crime".

REP. MASON: What if the crime includes a minor close to the age of 18?

REP. CLARK: That would be a different situation.

349 REP. MASON: Need to be more specific on the crime.

368 REP. SUNSERI: What is the adult teaching the child when using the child in the commission of a crime?

385 REP. PARKS: Trouble with the language "for the first conviction for the felony - 10 years". Is the intention using a child in that felony?

GREG CHAIMOV: Correct.

REP. PARKS: Helpful to clarify that. Comments on misdemeanors and felonies.

405 ROSS SHEPERD, OCDLA: Comments on common fact situation, that is a 17 and 18 year old joy riding. The 18 year old will be subject to mandatory minimum sentence of 10 years. *Suggests limiting to violent felonies or crimes other than property crimes, to get away from the theft of services.

424 REP. BRIAN: Comments on that direction to eliminate the gray area.

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019 REP. BAUM: Concern is the mandatory gun minimum in state which is 5 years. Treating it more serious if use a minor in commission of crime so that first conviction will be 10 years. Reduce it closer to existing minimums, like 5 years.

030 MOTION:REP. PARKS: Moves the proposed amendments.

CHAIR MILLER: Rep. Parks moves the amendments. Hearing no objections, so adopted. Closes work session on HB 2219.

(Tape 64, Side A) PUBLIC HEARING ON HB 2833 Witnesses: Rep. Bill Markham Jon Zimmer Barry Stull Fred Orther Steve Little, Dept. of Revenue

045 GREG CHAIMOV: HB 2833 taxes controlled substances. Includes doubling

tax for a dealer of illegal drugs. Class C Felony if taxes are not paid. Dept. of Revenue has authority to investigate whether people have paid taxes.

061 REP. MASON: Comments HB 2833 has all kinds of revenue implications. Treating as revenue bill gets away from the criminal aspect.

071 REP. BAUM: When would this be used?

081 REP. BAUMAN: Sounds like this would be changing the forfeited assets to the Dept. of Revenue from the local law enforcement agencies.

089 REP. BRIAN: If an individual was caught in the possession of a large quantity of drugs, the way to get at the assets would be a huge possession tax. Cannot make the tie between the drug money and the assets.

107 JON ZIMMER, CITIZEN: Opposed to the bill. It is an additional punitive penalty on top of the ones in place for controlled substances.

130 REP. BAUMAN: Under section 6, increased dealing of a controlled substance without appropriate stamps to a class C felony.

139 REP. PARKS: Isn't it just an additional punitive measure?

151 REP. BAUM: How do they get the stamps?

156 CHAIR MILLER: In order to get the stamp, have to reveal the activity.

REP. BAUM: It's a rock and a hard place.

158 REP. BAUMAN: Are there any other activities that are both illegal and taxed? Taxing an activity makes the government a participant in the activity.

169 REP. PARKS: What is the difference between that and a liquor violation?

REP. BRIAN: If distributing liquor without an Oregon Seal, would be illegal.

CHAIR MILLER: Distinction is the activity is unlawful, is there a special tax beyond that which is failure to report the income.

REP. BAUMAN: This is a question for Counsel.

191 GREG CHAIMOV: Did not find any other activities that are both illegal and taxed. Rep. Parks is correct that it is illegal to produce alcohol at home and for not paying the taxes.

REP. BAUMAN: Selling the alcohol without paying the tax for the business transaction is.

203 REP. PARKS: Discusses alcohol production for self consumption.

215 REP. BAUMAN: There are no analogies for this bill regarding illegal activities.

225 CHAIR MILLER: Don't think the sponsors are intending to suggest it

become a legal activity, but setting one more trap.

231 REP. JOHNSON: Did not intend to legalize these drugs. The wording on lines 23 and 24 of HB 2833 is ambiguous and could give a reason to argue for legalization.

245 GREG CHAIMOV: Dealer is defined in Section 1 as someone who manufacturers, delivers, or possesses the controlled substance in violation of the laws. That is assumed.

REP. JOHNSON: This could be argued as ambiguous and contradictory language.

253 REP. MASON: Who would issue the stamp? Would the Dept. of Revenue? Is there even the ability to issue one?

CHAIR MILLER: No.

REP. JOHNSON: Suggests adding a sentence at the end of the bill "nothing contained herein shall be construed as rendering legal any activities which are otherwise illegal under the drug laws of Oregon".

CHAIR MILLER: Ought to hear from the Sponsor. Recesses at 2:10 p.m. Convenes at 2:22 p.m.

304 REPRESENTATIVE BILL MARKHAM: (EXHIBIT F) Several states have put this law into practice such as Louisiana. *Attempting to put in law another tool to get at the drug abuser and dealers. *Not in favor of legalizing drugs.

330 CHAIR MILLER: Question is would a stamp be available?

REP. MARKHAM: The stamps are really quite expensive.

CHAIR MILLER: Section 5.

REP. MARKHAM: The numbers can be changed.

CHAIR MILLER: In Section 1, there is a blank on line 8.

REP. MARKHAM: Did not have a figure in mind.

403 BARRY STULL, CITIZEN: Discusses the prohibition against drugs.

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016 REP. SUNSERI: Asks specifically on the Constitutional problems.

STULL: There is a problem with taxing an illegal substance. The state cannot make something illegal and profit from it.

037 FRED ORTHER: Discusses the effects of what this tax would be. The price of marijuana would go up but heroin would stay low causing it to be more desirable.

067 CHAIR MILLER: The tax would be for both marijuana and other controlled substances.

073 REP. MARKHAM: Does the word controlled substance include heroin and cocaine?

072 GREG CHAIMOV: Yes it does.

083 STEVE LITTLE, DEPARTMENT OF REVENUE: There are other states that have bills like this. Other than those mentioned, Arizona is similar and administer it by taking information from police reports, establishing an assessment from that and proceeding. *Intention to administer the bill as written in passed.

094 CHAIR MILLER: Under the bill, that stamp would be available. Have very many people come in, to the other states, and requested a stamp?

LITTLE: Popular with stamp collectors but none sold for the intended purpose. *Have to keep stamp purchases confidential.

REP. BAUMAN: "Good little money maker to sell stamps".

114 REP. MARKHAM: Asks for insight research in the three states. Has it accomplished anything?

119 LITTLE: Not certain. Would be happy to make some quick inquires and bring that information back.

124 CHAIR MILLER: Closes hearing. Reopens work session on HB 2584.

(Tape 63, Side B) WORK SESSION ON HB 2584

129 GREG CHAIMOV: Discusses proposed amendments (EXHIBIT B).

164 REP. PARKS: Three public places would include the court house and any other place that would give a good notice. City hall, telephone pole.

168 GREG CHAIMOV: Language in the proposed amendment, posting notice at the court house and two other places customarily used for posting public notice is found in other parts of ORS.

194 MOTION:REP. BAUM: On page 1 of amendments, "language may not authorize". Suggests adopting language on line 8 through line 10 "procedures required by this section authorizes a police officer to ask whether the driver has recently consumed alcohol or controlled substances but does not authorize the officer to ask for the operators name or produce a driver's license until the police officer has reasonable ground to believe the operator has consumed alcohol or a controlled substance."

REP. MILLER: Hearing no objections to the proposed amendment, so adopted.

MOTION:REP. BAUM: Add radio on line 18. *Discusses publicity this will create.

256 CHAIR MILLER: Comments on radio and TV.

264 REP. BRIAN: On line 19, the phrase "within the jurisdiction" is that intended to mean all those physically located or serving and broadcasting into the jurisdiction?

CHAIR MILLER: Physically within the jurisdiction.

REP. BRIAN: Discusses physically located.

REP. BAUM: Don't have to give it to any radio stations not in jurisdiction.

291 CHAIR MILLER: Work towards reasonable notice to people impacted by the roadblock.

303 REP. BAUMAN: The major impact of this is getting the publicity out about enforcement. Have problem with the actual roadblock.

329 REP. JOHNSON: Comments on saturation patrol. *Raises technical point regarding a press release to media. Media does not have to post it because the statute has been complied with by giving the release.

374 CHAIR MILLER: Comments on traffic reporters reporting roadblocks.

381 REP. BRIAN: Interested in timeliness of notice, like delivered at least 48 hours before establishing the block. What will happen with a weekly newspaper?

CHAIR MILLER: Would not fulfil the obligation if given to that type of paper who cannot notice the public within 48 hours.

411 REP. BAUMAN: Agrees with the educational component. What is consequence for agency that conducts a roadblock and stops motorists and finds the next day that they did not comply with the notice provision? Is there liability?

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013 GREG CHAIMOV: The attempted suspensions of any licenses would not be valid. *There is a provision in the bill that provides good faith impoundment of cars, cannot be held civilly or criminally liable. *Could be a claim by "innocent people" that they were inconvenienced by stopping at an illegal roadblock.

028 REP. BAUMAN: Civil matter that all stopped are innocent at first.

035 CHAIR MILLER: Asks witnesses regarding the "30 second idea". Is that sufficient?

JAMES STEVENSON: Comments on officer using 30 seconds. It will become an issue. *With regards to making an evaluation on whether the person was drinking, could be done within 30 seconds but the field sobriety test will take longer.

056 CHAIR MILLER: Explains that the amendments speak to the initial interrogation and evaluation. Does not assume the field sobriety.

STEVENSON: It can be done in 30 seconds but there would be a problem in trying to keep track of that time.

OFFICER RYDER: Comments on attention tests, getting the driver's license is one of them which has been eliminated.

073 CHAIR MILLER: Comments on Rep. Baum's amendment regarding what can initially be done. May be inappropriate to have further tests.

REP. BAUM: The major determination is the smell of alcohol. Trying to

narrowly craft this to avoid objections of constitutional requirements.
*Interested in protecting those not under influence. *Deterrent effect
is the publicity.

109 STEVENSON: Discusses previous checkpoints. The average time
detained if no action was taken, was 1 minute.

113 REP. MANNIX: Expresses concern about limiting what can be asked for
to exclude driver's license. There is an interest to check for licenses
and even insurance.

124 CHAIR MILLER: The committee is seeking to find the comfort level.

RAYDER: Suggests not having any time limitation but make it read "the
officer can take the time necessary to smell for the odor of an
alcoholic beverage and ask the person 'have you been drinking or taking
a controlled substance?'" This gets rid of time limitation.

135 CHAIR MILLER: With respect to turning around 1/4 of mile prior to
the block, is that reasonable distance to observe that activity?

STEVENSON; That is an adequate distance.

143 REP. BAUMAN: How many feet is that?

RAIDER: Approximately 1,100 feet.

REP. BAUMAN: Serious about the new crime of evading a roadblock if
someone is within 1,100 feet? 400 yards? *Concern about new crime charge
regarding judging the distance.

166 RAIDER: Discusses the workings of the roadblocks and the signs
noticing and warning people. Don't perceive that being a particular
problem.

STEVENSON: Suggests the first sign be 1/4 mile away.

180 REP. MANNIX: Should have some specific procedures regarding all of
this.

CHAIR MILLER: Asks about legal U turns.

191 STEVENSON: There is a specific law that deals with where a U turn
can be made.

194 REP. SUNSERI: Comments on the signs regarding someone proceeding to
the roadblock.

204 CHAIR MILLER: Closes work session on HB 2584. Adjourns the meeting
at 3:10 p.m.

Submitted by: Reviewed by:

Kathy Neely, Assistant David Harrell, Office Manager

EXHIBIT LOG:

A - Memorandum on HB 2584 - Greg Chaimov - 6 pages
B - Testimony on HB 2584 - David Frohnmeier - 2 pages

C - Testimony on HB 2584 - James Stevenson - 5 pages
D - Amendments to HB 2219 - 2 pages E - Material for HB 2219
- Greg Chaimov - 1 page F - Material for HB 2833 - Rep. Markham -
1 page