

HOUSE COMMITTEE ON JUDICIARY CRIME AND CORRECTIONS

April 9, 1991 Hearing Room 357 1:00 p.m. Tapes 73 - 76 MEMBERS  
PRESENT: Rep. Randy Miller, Chair Rep. Ray Baum Rep. Judy Bauman Rep.  
Tom Brian Rep. Rod Johnson Rep. Tom Mason Rep. Del Parks Rep. Ron  
Sunseri VISITING MEMBERS: Rep. Kelly Clark, District 27 Rep. Kevin  
Mannix, District 32 STAFF PRESENT: Holly Robinson, Committee Counsel  
Jeff Steve, Committee Assistant

MEASURES HEARD: HB 3005 - Adult Parole and Probation Officers (PH) SB  
214 - Discharge of Parole (PH/WS) SB 216 - Early Release of Inmates For  
Terminal Illness (PH/WS) HB 3159 - Adult Parole and Probation Officers  
(PH/WS) HB 2690 - Accelerated Pleading Program (PH/WS) - These minutes  
contain materials which paraphrase and/or summarize statements made  
during this session. Only text enclosed in quotation marks report a  
speaker's exact words. For complete contents of the proceedings, please  
refer to the tapes.

TAPE 73, SIDE A

004 CHAIR RANDY MILLER: Opens Subcommittee on Criminal Law and  
Corrections at 1:05 p.m.

HB 3005 - ADULT PAROLE AND PROBATION OFFICERS - PUBLIC HEARING

Witnesses:

Representative Kelly Clark, District 27 Representative Kevin Mannix,  
District 32 Alan A. Boruck, Federation of Parole and Probation Officers  
(FOPPO) Tanna M. Reynolds, Department of Corrections Kenneth R. Babick,  
FOPPO Billy Wasson, Marion County Bob Keyser, Oregon Council of Police  
Associations House Committee on Judiciary April 9, 1991 Page 2

James D. Kiely, FOPPO

022 REPRESENTATIVE KELLY CLARK, DISTRICT 27: Summarizes HB 3005.  
Allows parole and probation officers to carry concealed weapons under  
certain circumstances. 045 REPRESENTATIVE KEVIN MANNIX, DISTRICT 32:  
Refers to HB 3005-1 Amendments. EXHIBIT A 061 REP. SUNSERI: Why  
prevent persons who have a concealed weapon permit to carry a firearm in  
a courthouse? 070 REP. MANNIX: Courthouses are often emotionally  
charged areas and the concern is to protect the safety of those  
attending. 087 REP. BAUM: Understands that the judge can, on his own,  
order that no firearms be present in the courtroom at any time.  
100 REP. MANNIX: Would rather that the legislature act on this than  
to have the judge be concerned about overstepping his or her bounds by  
making such an order. 132 ALAN A. BORUCK, CLACKAMAS COUNTY, FEDERATION  
OF OREGON PROBATION AND PAROLE OFFICERS: EXHIBIT B Reads from Exhibit B.  
162 TANNA M. REYNOLDS, DEPARTMENT OF CORRECTIONS: EXHIBIT C Reads  
from Exhibit C written by Elyse Clawson. 199 REP. BRIAN: What has  
happened since last session with regard to research into firearm use?  
208 REYNOLDS: The Department since last session has identified some  
specialized parole and probation officers to be in a tactical  
supervision unit to supervise high risk offenders and one of their  
safety mechanisms is a firearm. There are currently 36 officers in that  
position at this time in the state out of 255 parole and probation  
officers. 219 REP. MASON: Concerned about letting off-duty parole  
officers to carry firearms. Has no problem with parole and probation  
officers on-duty carrying firearms. 252 KENNETH R. BABICK, FEDERATION

OF PAROLE AND PROBATION OFFICERS: The Federation introduced a similar bill all last session. Speaking to Mason's concerns. Has discovered in Portland alone that there are 500 600 dangerous offenders that the Department has class)fied as "red tag offenders." Half of these are being supervised by trained police officers. The other half are being supervised by unarmed, untrained parole and probation officers without weapons. This presents an extremely dangerous situation. 345 CHAIR MILLER: What is the history of violence in those situations where a parole or probation officer finds an escapee in an off duty situation? 354 BABICK: Have not had any parole and probation officers injured during off-duty time. There have been numerous instances of violence while officers are on-duty.

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391 REP. BRIAN: In line 11, it states, ". . . completed a firearms training program taught by a firearms instructor who was trained by BP ,T." That suggests that officers are not necessarily trained by BPST.

TAPE 74, SIDE A

001 BABICK: The reason that that language was put in there is because to require BPST to train all the officers would put an additional cost into their budget. 016 REP. BRIAN: Suggests having the language "complete the firearms training program under the supervision and rules established by BPST." -What corrections division rules would be necessary to ensure safe use and training? 034 BABICK: Under the tactical supervision program the Department has promulgated a rule which specifically enumerates the kinds of weapons that each officer must carry, the kind of training, requalification, etc. 046 REP. BRIAN: As to those parole and probation officers that are not armed are they on or off duty? 054 BABICK: Understands that only the sheriff of the county has the ability to arm people and authorize the concealment of that weapon. HB 3005 would clarify when a parole and probation officer is entitled to carry a concealed weapon. 074 BILLY WASSON, MARION COUNTY DEPARTMENT OF CORRECTIONS: Agrees that there is a statutory problem around parole and probation officers carrying around concealed weapon. Understands that the intent of HB 3005 would allow any parole and probation officer to carry a weapon if they choose either on or off duty. Would like that decision to be made by management and not the individual officer. 115 REP. BRIAN: Your parole and probation officers are not considered peace officers at this time? 122 WASSON: No. 124 REP. BRIAN: In terms of retirement they are not class)fied in the police/firefighter/corrections types of plans? 125 WASSON: For purposes of police and fire retirement they are defined as if they were a police officer or firefighter. 132 REP. BRIAN: Wants to make sure that the definition of police officer would not trigger different compensation programs. 145 REP. BRIAN: Are the departments and the parole and probation officers under binding arbitration now? 150 WASSON: Marion County holds that the parole and probation officers are not entitled to binding arbitration. The Union holds that they are. On a statewide basis, the officers are under ~,

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binding arbitration.

159 BABICK: The Federation of Parole and probation Officers represents all the officers in Yamhill, Clackamas, Marion and Washington counties. All those counties currently use binding arbitration. The passage of HB 3005 would not affect these current programs and policies.

174 ROBINSON: Understands that ORS 161.015 applies only to the criminal code. HB 3005 would only affect activities of parole and probation officers covered under the criminal code. 193 BOB KEYSER, OREGON COUNCIL OF POLICE ASSOCIATIONS: Introduced HB 3005. Parole and probation officers are law enforcement officers in that they supervise the people that commit crimes. Some of these people are very dangerous. Police officers have the authority to carry weapons at all times and this authority should extend to parole and probation officers as well because of the nature of their job. The same requirements for using the weapons will still apply under HB 3005. 274 REP. PARKS: Is this privilege needed when the officers are off-duty? 277 BABICK: The same dangers exist for parole and probation officers off-duty as for police officers off-duty. There are 60-70 bonifide threats against parole and probation officers every year in the state. Right now these officers are not allowed to carry a concealed weapon. 314 REP. MASON: Understands that under the current law it is hard to refuse a permit for a gun to anybody. 330 BABICK: Parole and probation officers are considered peace officers under the law in Clackamas county and therefore the sheriffs will not issue a concealed gun permit. In Marion County, these officers are not considered peace officers. There is some confusion here. 343 REP. PARKS: What kind of training would be required for these parole and probation officers? 356 BABICK: Training and certification will be done by the Board of Police Standards and Training. 389 REP. BAUMAN: Suggests that the request presented by HB 3005 to authorize parole and probation officers to carry concealed weapons is more of a statement of failure of the parole and probation system than anything. The fact that these officers should have to carry weapons only reinforces the argument that the parolee and the person on probation should not be allowed out on the street. Concerned about increasing fire power on the street to deal with these dangerous persons who are on parole or probation.

TAPE 73, SIDE B

041 JAMES D. KIELY, FEDERATION OF PAROLE AND PROBATION OFEICERS: This was originally a safety issue. There is a high degree of officer and parole and probationer contact. These contacts are potentially very dangerous. Supports passage of HB 3005.

108 REP. BRIAN: There is no discussion in HB 3005 concerning management of persons using this privilege. Wants to make sure that there are adequate provisions in place to deal-with this.

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122 KIELY: In the drafting of the policy behind HB 3005 there was

never any opposition to strict parameters concerning management.

135 BABICK: There will be no cost to the Department of Corrections since the officers will purchase their own weapons and pay for training.

SB 214 - DISCHARGE OF PAROLE - PUBLIC HEARING Witnesses:

Vern Faatz, Board of Parole

156 VERN FAATZ, BOARD OF PAROLE: EXHIBIT D Reads from Exhibit D.

SB 214 - DISCHARGE OF PAROLE - WORK SESSION 186 MOTION, REP. PARKS: Moves SB 214 to Full Committee with a "do pass" recommendation.

193 VOTE: 8-0 Motion passes. Rep. Parks to carry AYE: Baum, Bauman, Brian, Johnson, Mason, Parks, Sunseri, Miller NO: 0 EXCUSED:

SB 216 - EARLY RELEASE OF INMATES - PUBLIC HEARING

Witnesses:

Vern Faatz, Board of Parole

200 VERN FAATZ, BOARD OF PAROLE: EXHIBIT E Reads from Exhibit E.

230 CHAIR MILLER: How do you define "terminal?"

238 FAATZ: The people that have been released before for reasons of terminal illness have died within a matter of weeks of leaving the institution.

282 CHAIR MILLER: You conduct a hearing in the process of this release. Are the victims families notified of this hearing and the proposed release? 283 FAATZ: The victim would always be notified of the hearing and would always be able to participate. 287CHAIR MILLER: In past experience do most of the victims participate in these hearings? 290 FAATZ: Does not recall where the victim has requested participation in the hearing.

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296 REP. SUNSERI: What happens if the inmate survives after release. Are there provisions for returning them to prison?

299 FAATZ: There are no provisions. Once the date for departure from the correctional facility is set, they are free to leave.

305 REP. SUNSERI: If a person is terminal and does not want to be released are they forced to leave?

307 FAATZ: Has never been the practice of the Department of Corrections to force removal to avoid payment of health care.

323 REP. BRIAN: The other category under SB 216 is "severe medical condition." Asks for input on rationale behind this.

330 FAATZ: There are some illnesses that cannot be dealt with in the corrections facilities.

337 REP. BRIAN: What is the determining factor in deciding to grant leave for this?

345 FAATZ: It is a consideration of the quality of care needed and the humanitarian issues involved. Releases are rare. The Board will not grant release until there is a physician statement, a recommendation from the physician inside the institution, recommendation for the superintendent and recommendation from the Department of Corrections.

384 HOLLY ROBINSON: Does SB 216 deal only with overriding individual sentences in the gun minimum guidelines or does it also deal with the presentencing guidelines population? 386 FAATZ: The language overrides the gun minimum in the presentencing guidelines population.

SB 216 - EARLY RELEASE OF INMATES - WORK SESSION

460 MOTION, REP. MASON: Moves SB 216 to Full Committee with a "do pass" recommendation. 470 VOTE: 8-0 Motion passes. Rep. Mason. AYE: Baum, Bauman, Brian, Johnson, Mason, Parks, Sunseri, Miller NO: 0 EXCUSED:

TAPE 74, SIDE B

HB 3159 - ADULT PAROLE AND PROBATION OFFICERS - PUBLIC HEARING

Witnesses: Bob Keyser, Oregon Council of Police Associations

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Kenneth R. Babick, Federation of Parole and Probation Officers (FOPPO) James D. Kiely, FOPPO Alan A. Boruck, FOPPO Tanna Reynolds, Department of Corrections Duncan Pearce, Parole and Probation Officer Billy Wasson, Marion County 048 BOB KEYSER, OREGON COUNSEL OF POLICE ASSOCIATIONS: The intent of HB 315 9 is to clear up what parole and probation officers do. Are they peace officers and should they be carrying weapons?

058 KENNETH R. BABICK, ASSOCIATION OF PAROLE AND PROBATION OFFICERS: HB 300 5 and HB 3159 go hand in hand. HB 3159 clarifies that parole and probation officers are peace officers. 092 CHAIR MILLER: Work hours for parole and probation officers are not regular are they? 098 BABICK: Correct. Potentially, duty is 24 hours a day. 101 JIM KIELY, OREGON COUNSEL OF POLICE ASSOCIATIONS: Supports passage.

114 REP. SUNSERI: Which bill do you support more? 115 KIELY: Sees the need for both bills to pass. 146 REP. PARKS: What is the legal effect of the two bills? 148 ROBINSON: In HB 3159 by changing the definition of peace officer probation officers are given greater authority than the ability to carry a weapon. HB 3005 creates a narrow exception to carrying a concealed weapon. Both bills arrive at the same point in granting greater authority to the probation officer, but come from different positions. 214BABICK: The officers are BPST certified officers so it would be incumbent on BPST to authorize and provide the training necessary. 219 KIELY: Parole and probation officers are exempt from the 15 day waiting period of purchase of handguns because of BPST affiliation. 227 REP. JOHNSON: Would making parole and probation

officers peace officers affect your immunity from civil law suits?

232 BABICK: Parole and probation officers have no immunity right now.

250 ROBINSON: To Rep. Johnson. Parole and probation officers have limited liability, not immunity. 264 REP. BAUM: Refers to the ability of the parole and probation officers of their authority to question those under their supervision without issuing Maranda warnings. Concerned that

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designating the officers as peace officers would take away this right. Asks for court precedent to support that right.

288 BABICK: There is adequate case law protecting that. Passage of either HB 300 5 or HB 3159 would not change that. 334 ALAN R. BORUCK, FEDERATION OF PAROLE AND PROBATION OFFICERS: Encourages passage of HB 3159. 358 TANNA M. REYNOLDS, DEPARTMENT OF CORRECTIONS: EXHIBIT F

Reads from Exhibit F. Opposes passage of HB 3159. 411 DUNCAN PEARCE, PAROLE AND PROBATION OFFICER: Supports passage of HB 3159 to define parole and probation officers and peace officers. 446 REP. BAUMAN: What is the difference between a peace officer and a police officer?

447 PEARCE: Police officers deal with the general public and enforce the laws for everybody. Peace officers are responsible for supervising individuals that are placed under their care by the courts or Parole Board. Peace officers are restricted more than police officers.

478 BILLY WASSON, MARION COUNTY DEPARTMENT OF CORRECTIONS: Would like more information on the impact of HB 3159. Is confused by what the bill does.

TAPE 75, SIDE A

050 WASSON: There is a longstanding dispute between management and labor. The issue is control over what the parole and probation officers can do by their own volition. Opposes passage of HB 3159.

074 REP. BRIAN: Is there a middle ground that would leave some prerogative for management in the use of this privilege?

089 WASSON: Since the last session management has tried to balance the safety of its employees with control by management.

HB 3005 - ADULT PAROLE AND PROBATION OFFICERS - WORK SESSION

136 REP. BRIAN: Suggests on line 11 after "program" insert "under the supervision and rules established by BPST" and delete the remainder of lines 11 and 12.

181 VOTE: No objection. Motion passes. 187 MOTION, REP. SUNSERI: Moves HB 3005 as amended to Full Committee with a "do pass" recommendation. DISCUSSION ON THE MOTION

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190 REP. PARKS: Going to support HB 3005. 203 VOTE: 8-0 Motion passes.  
Rep. Sunseri to carry.

AYE: Baum, Bauman, Brian, Johnson, Mason, Parks, Sunseri, Miller NO: 0  
EXCUSED: HB 2690 - ACCELERATED PLEADING PROGRAM - PUBLIC HEARING

Witnesses:

Representative Tom Mason, District 11 Ross Shepard, Oregon Criminal Trial Lawyers' Association Dale Penn, Marion County District Attorney  
230 REPRESENTATIVE TOM MASON, DISTRICT 11: Directs Multnomah County District Attorney to develop a two-year accelerated pleading program for felony and misdemeanor cases and to report to the next Legislature on the effectiveness of the program, including recommendations regarding its continuation. The first appearance on felony cases is basically a wasted appearance. Suggests that the public defender be able to speak with the defendant prior to the first appearance. This would enable the attorney and the defendant to work out a plea bargain. 319 CHAIR MILLER: What kind of input does the accused have in selecting the attorney?

321 REP. MASON: None at all.

322 CHAIR MILLER: At what point is the inquiry made as to whether the accused is indigent? 325 REP. MASON: When the person is first arrested. Designation of indigency can be determined in the beginning instead of waiting until after the first appearance.

394 CHAIR MILLER: Why pick Multnomah County as the place for the pilot project? 403 REP. MASON: Is most familiar with the way the county works. Could be another county or statewide.

426 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS' ASSOCIATION: In Lane County this pleading process is used primarily in misdemeanor and extradition cases. The purpose of the program is to try and solve the legal difficulties at this first appearance. Lane County staffs only the most experienced attorneys to this program. Had to convince the judges to accept the recommendations of defense counsel at this first appearance without further inquiry in order for the streamlining to be effective.

TAPE 76, SIDE A 028 SHEPARD: Able to dispose of on a monthly basis between 12 and 15 percent of these cases at

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first appearances. There must be cooperation of the defense, the judge, and the prosecution for this program to work. Questions the efficacy of making it a statewide program. 094 CHAIR MILLER: This program would apply to felony cases as well as misdemeanor cases? 095 REP. MASON: Could make it just misdemeanor. Mr. Shepard is right you need the cooperation of all parties involved. 111 CHAIR MILLER: Would you expect much support from the judges and DAs in Multnomah County?

112 REP. MASON: Has talked with a number of people in the criminal

prosecution and defense areas and finds support for using this in at least some felony cases. Suggests making the use of the program selective. Refers to Letter Submitted by Chief Justice Peterson. See EXHIBIT G. 129 REP. JOHNSON: If this practice is available under current law, then why haven't other counties done the same thing especially if it is supposed to save money? 137 SHEPARD: There has been mild interest in various counties. 144 REP. JOHNSON: Would the pilot program if successful encourage other counties to follow in the same direction? 148 SHEPARD: Multnomah County is different then the others and it might not. 163 REP. MASON: How long would it take for Lane County to develop a pilot program to extend the procedure into dealing with felony cases? 166 SHEPARD: It would be difficult. Does not know. 181 DALE PENN, MARION COUNTY DISTRICT ATTORNEY: Opposed to HB 3553 which would mandate the program statewide. The way to handle the program is through a pilot program. Mandating this by statute would not work well since you need the cooperation of all the players. It is better to work at building such a program through cooperation. Most of these concerns came out of a task force set up after last session on indigent defense. This process has a history of consideration. HB 3553 - ACCELERATED PLEADING PROGRAM - PUBLIC HEARING 273 CHAIR MILLER: Opens and closes Public Hearing on HB 3553. HB 2690 - ACCELERATED PLEADING PROGRAM - WORK SESSION 282 REP. MASON: Suggests limiting process to misdemeanors and certain felonies. Should be a pilot program. 341 CHAIR MILLER: Adjourns Subcommittee on Criminal Law and Corrections at 3:50 p.m. House Committee on Judiciarg April 9, 1991- Page 11

. Submitted by: Reviewed by: J. Kennedy Steve, Assistant David Harrell, Office Manager

EXHIBITS LOG: A Amendments to HB 3005 - Holly Robinson - 1 page  
B Testimony on HB 3005 - Alan A. Boruck - 1 page C Testimony on  
HB 3005 - Tanna M. Reynolds - 1 page D Testimony on SB 214 - Vern  
Faatz - 1 page ETestimony on SB 216 - Vern Faatz - 1 page  
F Testimony on HB 3159 - Tanna Reynolds - 1 page GTestimony on HB  
2690 - Rep. Tom Mason - 9 pages



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