

HOUSE COMMITTEE ON JUDICIARY CRIME AND CORRECTIONS

April 23, 1991 Hearing Room 357 1:00 p.m. Tapes 87 - 90
MEMBERS PRESENT: Rep. Randy Miller, Chair Rep. Ray Baum Rep. Judy
Bauman Rep. Tom Brian Rep. Johnson Rep. Tom Mason Rep. Del Parks MEMBER
EXCUSED: Rep. Sunseri STAFF PRESENT: Holly Robinson, Committee
Counsel Jeff Steve, Committee Assistant MEASURES HEARD: HB 3492 -
Conditions of Probation (PH) SB 214 - Change in Parole System (WS) HB
3448 - Police Community Care Taking Functions (PH) HB 3270 - Hindering
Prosecution (PH) HB 3272 - Notification of Release (PH/WS) HB 2577 -
State Regulation of Firearms (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 87, SIDE A

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

HB 3492 - CONDITIONS OF PROBATION - PUBLIC HEARING

Witnesses:

Fred Avera, Polk County District Attorney Paul Burgett, Coos County
District Attorney

013 HOLLY ROBINSON: Summarizes HB 3492. Makes random urinalysis,
breath or blood tests a general condition of probation rather than a
special condition of probation. Deletes requirement that breath test or
blood test be requested when the officer has reasonable grounds to
believe the results would disclose evidence of a probation violation and
is reasonably related to the nature of the offense or treatment of the
offender. House Committee on Judiciary April 23, 1991 - Page 2

046 FRED AVERA, POLK COUNTY DISTRICT ATTORNEY: EXHIBIT A Reads from
Exhibit A. . 086 PAUL BURGETT, COOS COUNTY DISTRICT ATTORNEY: EXHIBIT B
Refers to Exhibit C.

138 REP. MASON: Although there is a positive correlation between drug
usage and burglaries suggests that those factors are correlated but not
causal. There is a false view that drugs cause crime. The reality is
that those who commit crimes tend to use drugs.

160 BURGETT: Refers to EXHIBIT C. People who are actively addicted to
drugs would typically commit 4 to 6 times as many crimes as when they
are not addicted. 198 AVERA: Does not think that every person who uses
drugs is going to be a criminal. Does not think that every criminal uses
drugs. There is a high correlation. HB 3492 will help address the
problem of those individuals who use drugs and commit crimes.

212 REP. BAUMAN: HB 3492 does not really address the problem.
Addiction is a long term problem. This program will not work unless
treatment is a part of it. Detection is not enough. 240 BURGETT: Many
individuals who go through treatment still do not get out of addiction.
HB 3492 is not an end all to the problem, but it will enable the police
to do a more thorough job.

SB 214 - CHANGE IN PAROLE STATUS - WORK SESSION

Witnesses:

Vern Faatz, Board of Parole

275 HOLLY ROBINSON: Summarizes SB 214. Modifies the language to give the Board of Parole and Post-Prison Supervision discretion to place offenders on inactive parole status based on the parolee's compliance with conditions and general behavior and attitudes while on parole.

323 VERN FAATZ, BOARD OF PAROLE: Those persons that are sentenced under ballot measure 10 are subject to supervision to the expiration date of their sentence. They are subject an active supervision of three years. The question is how you move them from active to inactive status and allow that inactive status to continue to the expiration date. SB 214 attempts to do that. 400MOTION, REP. BRIAN: Moves SB 214 to Full Committee with a "do pass" recommendation. 408 VOTE: 5 - 0 Motion passes. Rep. Parks to carry

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

HB 3492 - CONDITIONS OF PROBATION - PUBLIC HEARING

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Witnesses:

Ross Shepard, OregOn Criminal Trial Lawyers Association

422 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS' ASSOCIATION: Opposes HB 3492. Rather than subjecting every probationer to random urinalysis suggests having the courts carry this out since the courts already have the power to look into the probationer's background and require urinalysis. HB 3492 would allow for an unwarranted intrusion into the probationer's life.

TAPE 88, SIDE A

022 REP. BRIAN: With the judge already having this authority why has that not been working? What is the motive to allowing such broad random testing?

029 AVERA: There are two subsections to HB 3492. Subsection 1 deals with mandatory terms that the court must order or make a specific ffinding. Subsection 2 is discretionary which includes drug testing. The appellate courts have interpreted Subsection 2 to mean that the judge must make a finding that the person's condition relates to the particular crime. If no finding can be made then the judge is powerless to require such testing. 048 REP. BAUMAN: Concerned that the probationer will be subject to a new crime charge based upon the random testing. 052 AVERA: Merely testing positive cannot be used to charge a person with a crime. 058 BURGETT: Currently there is no possession by consumption. 079 CHAIR MILLER: How much will these programs cost? 081 AVERA: Tests run about \$5 a piece. The cost will not be great.

091 REP. BAUMAN: Is it possible that as a result of this there will be defendants who would rather go to jail?

100 AVERA: They are not allowed to decline probation. They could refuse to take the tests. This does not happen very often.

HB 3448 - POLICE COMMUNITY CARETAKING FUNCTIONS - PUBLIC HEARING

Witnesses:

Fred Avera, Polk County District Attorney Ross Shepard, Oregon Criminal Lawyers' Association Doug Hoffman, Oregon Council of Police Associations Vic Mann, Eugene Public Safety 110 HOLLY ROBINSON: Summarizes HB 3448. Gives police authority to perform community

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caretaking functions, including the right to enter or remain on property of another, the right to stop or redirect traffic, or the right to perform other acts which may be conducted by private citizens. Makes evidence discovered while engaged in caretaking functions not subject to suppression, and evidence discovered or seized in violation not subject to suppression if otherwise admissible. 124 FRED AVERA, POLK COUNTY DISTRICT ATTORNEY: EXHIBIT D and E Reads from Exhibit D. Refers to Exhibit E (State of Oregon v. Bridewell) 214 REP. BRIAN: Where do you think that HB 3448 could be overly broad? 216 AVERA: Section 4(a) on line 24. The intent was to overturn Bridewell. The way it is written may be viewed as eliminating the exclusionary rule. This is not the case.

223 REP. BRIAN: Understands that the intent is to say that evidence is admissible but not immune from suppression. 228 AVERA: Yes. The evidence would not be suppressible based upon the lack of a community caretaking function alone. 235 REP. MASON: Is bothered by the notion that citizens can engage in observations and the evidence will be admissible, but the state is barred from that. HB 3448 seems very broad. Is struck by the fact that a civilian could come in to help, see evidence of illegal activity and the evidence could be used, but if police did the same, evidence would be excluded. 254 AVERA: Subsection 2(c) states that a police offica has a right to perform any activity that a private citizen would be privileged to perform under the circumstances then reasonably perceived. -Has no problem with exclusion of evidence for police misconduct. 301 ROBINSON: Suggests the possibility of defining what the "care taking functions" would be and the specific language in HB 3448 addressing evidence that is subsequently discovered. 318 AVERA: Understands that the legislative intent of Section 4(a) intends that not only is the entry for the purpose of given aid and authorize police action, but the seizure of criminally relevant evidence is also authorized. This becomes a legislative authorization of a plane view seizure of evidence. 334 REP. BRIAN: Understands that under Bridewell evidence is not admissible if the police are not authorized to be present doing the caretaking function. If caretaking were authorized under HB 3448 then all the other rules of evidence would come into to play anyway. 345 AVERA: Understands that the police have the authority already to be in there doing caretaking without the statute, but the Supreme Court

in Bridewell disagrees. 370 REP. BAUMAN: Without being able to use of evidence that may be obtained during the course of caretaking functions at trial, police might stop performing caretaking functions in the community. - House Committee on Judiciary April 23, 1991 - Page 5

387 AVERA: Does not assume that. Police will still perform their function anyway.

390 REP. BAUMAN: Perhaps the Chief Justice in his dissent leaped to the conclusion that if evidence obtained collaterally with caretaking were excluded that police would not continue to perform caretaking functions. Understands that that may not be true.

429 AVERA: Yes.

458 REP. BAUMAN: Is this going to be carte blanche for the police to go anywhere? Is concerned that community caretaking will be used as a pretext for investigations.

TAPE 87, SIDE B

025 AVERA: It could be argued that this is going to be a Trojan Horse. This is not the case because HB 3448 limits the conduct to conduct that is reasonable under the circumstances. There are sufficient judicial protections in place to prevent this.

044 REP. MASON: Would this be a warrantless search and the burden of proof be on the state to justify the seizure of evidence?

045 AVERA: Yes.

046 REP. BRIAN: Would the authorization of the caretaking function affect police officer liability? If this is not considered an authorized function now, understands that the police officer could be liable.

074 AVERA: Understands that it won't affect the liability. The language is discretionary to use the function.

080 REP. BRIAN: Understands that under Bridewell caretaking function is not a real function of the police officer and if it is discretionary the judgement of the police officer could subject him or her to liability. HB 344 8 would limit liability by making the function authorized.

087 AVERA: Could be right.

090 ROBINSON: Where is the word "may" in HB 3448?

091 AVERA: Section 1 states that the officer is "authorized."

100 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS' ASSOCIATION: Not necessary that the state codify caretaking functions under Bridewell. If there is an emergency, police may act. Suggests that enacting Sections 3 and 4 would make HB 3448 unconstitutional. The general rule under law is, absent consent, search of one's property can only be done by warrant unless there are exigent circumstances or an emergency. HB 3448 provides for no warrant process. See Exhibit E, note C, page 240. 165 REP. PARKS: Sees that having to obtain a search warrant every time an officer is called into solve a fight concerning alcohol for example would be unreasonable.

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167 SHEPARD: Justice Carson in Bridewell stated that the law might provide for warrantless entry where exigent circumstances exist and there is probable cause.

173 REP. BRIAN: Understands that if evidence of a crime is discovered in response to entry due to exigent circumstances then the evidence cannot and should not be used.

190 SHEPARD: If probable cause that a crime has or is going to be committed exists and the police enter and find evidence then that evidence may be used.

195 REP. BRIAN: If evidence of a crime found in the back seat of a car can be used then why can't evidence discovered in other proper contacts be used as well.

199 SHEPARD: Community caretaking is not within the criminal sphere.

223 REP. BAUMAN: When does a search of a vehicle constitute exigent circumstances?

230 SHEPARD: All the time.

233 REP. BAUMAN: Understands that if the reason for the stop is a caretaking function and the police officer discovers any evidence of a crime then the police officer could not use that evidence.

243 SHEPARD: Yes. That is the law right now.

250 REP. BRIAN: Is it true that if a police officer stops a person on the roadway and the officer discovers a body underneath a tarp that that is not considered evidence?

259 SHEPARD: The officer must articulate the reasons for the stop.

260 REP. MASON: Should get away from cars. Why would evidence be admissible if a civilian went to the scene of an emergency as opposed to a policeman going in?

296 SHEPARD: The state is banned from engaging in that activity without a warrant.

304 AVERA: Does not think that Bridewell is an Article 9, Section 1 case. Understands that Bridewell holds that the court is not going to allow activity unless the legislature has said it is o.k.

332 REP. BAUMAN: Concerned about exigency. How does the search become more legitimate without a warrant if the search is not legitimate in the first place? If there are no exigent circumstances, does not think that one can bootstrap use of discovered evidence.

TAPE 88, SIDE B 037 DOUG HOFFMAN, OREGON COUNCIL OF POLICE ASSOCIATIONS: Supports passage of HB 3448. 060 REP. BRIAN: Is there an awareness of this problem of caretaker discovery of evidence among .

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police officers? 062 HOFFMAN: A majority of the officers would rather call in before making such a judgement on search and seizure. 073 REP. BRIAN: As a police officer going into a community caretaking situation and discovering evidence of criminal activity you would act on that would you not? 002 HOFFMAN: Yes.

109 VIC MANN, EUGENE PUBLIC SAFETY: Supports passage of HB 3448. Needs more clarification in this area of search and seizure during the course of community caretaking situations. HB 3270 - HINDERING PROSECUTION - PUBLIC HEARING

Witnesses:

Doug Hoffman, Oregon Council of Police Associations Vic Mann, Eugene Public Safety 172 HOLLY ROBINSON: Summarizes HB 3270. Expands crime of hindering prosecution by: extending the provisions of current law to all offenses, rather than applying to felony offenses only; adding additional elements to the crime, including giving false information to an officer or refusing to obey a lawful order of a peace officer; and creating different levels of punishment depending on the seriousness of the underlying offense and whether the offense involved the use of possession of a firearm. 186 DOUG HOFFMAN, OREGON COUNCIL OF POLICE ASSOCIATIONS: Supports passage of HB 3270. 240 REP. PARKS: On line 28, page 1 what is meant by the "use of physical force?" 242 HOFFMAN: Assaulting a peace officer in hindering prosecution. 294 REP. PARKS: If a person uses physical force on a police officer by hitting him with a stick because of a traffic violation the person would probably be convicted of assault with a weapon which would be a felony. Would this change it to a misdemeanor? 298 HOFFMAN: There would be two violations. The first would be for hindering prosecution and the second would be for the offense of assaulting a police officer. 304 REP. PARKS: Understands that line 21 speaking to "withholding information" places an affirmative duty to divulge information. 310 HOFFMAN: Yes. 351 CHAIR MILLER: Concerning physical force, what if you are the person apprehended and you

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resist arrest. Would you be subject to this other offense?

365 HOFFMAN: It is possible. 392 VIC MANN, EUGENE PUBLIC SAFETY: Supports passage of HB 3270. Officers are frustrated by intervenors interfering in arrests and inquiries. HB 3270 would help alleviate this problem. TAPE 89, SIDE A 034 REP. PARKS: Wants an example of a lawful order that would not be a crime. 040 MANN: A lawful order would have to be in the context of an offense rather than a refusal to leave a designated area. HB 3272 - NOTIFICATION OF RELEASE - PUBLIC HEARING
Witnesses: Doug Hoffman, Oregon Council of Police Associations Bill Crosby, Multnomah County Corrections Officers Association 068 HOLLY ROBINSON: Requires that police officers or corrections officers who came into contact with an offender during the criminal investigation, trial

or incarceration be notified, if requested, by the State Board of Parole and Post-Prison Supervision, Department of Corrections, and the Psychiatric Security Review Board of the offender's release from custody. 078 DOUG HOFFMAN, OREGON COUNCIL POLICE ASSOCIATIONS: Supports passage of HB 3272. 087 BILL CROSBY, MULTNOMAH COUNTY CORRECTIONS OFFICERS ASSOCIATION: Supports passage of HB 3272. 106 CHAIR MILLER: Would you expect that every officer would want notification of release? 107 HOFFMAN: Would be a rare situation. 136 CHAIR MILLER: Recesses Subcommittee at 3:00 p.m. 138 CHAIR MILLER: Reconvenes Subcommittee at 3:30 p.m. HB 3272 - NOTIFICATION OF RELEASE - WORK SESSION 144 HOLLY ROBINSON: Summarizes HB 3272. 154 MOTION, REP. MASON: Suggests amending on line 7, page 2 of HB 3272 by adding "prosecutors, judges and defense couns 1."

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188 REP. BRIAN: Understands that this applies only to those criminals found to be insane or who have mental disorders.

195 ROBINSON: Yes.

211 CHAIR MILLER: Restates Rep. Brian's request to include all persons being released if one desires notification. 216 VOTE: No objection. Motion passes. 219 MOTION, REP. MASON: Moves HB 3272 as amended to Full Committee with a "do pass" recommendation. 225 VOTE: 6 - 0 Motion passes.

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

HB 2577 - STATE REGULATION OF FIREARMS - WORK SESSION

Witnesses:

John C. Lenzi, National Rifle Association Steven Donnell, Oregon Pro-Gun Civil Rights Lobby

235 HOLLY ROBINSON: Summarizes HB 2577. EXHIBITS F and G.

262 JOHN C. LENZI, NATIONAL RIFLE ASSOCIATION: EXHIBIT H Speaks to Exhibit F (HB 2577 - Amendments) and reads from Exhibit H.

301 REP. BRIAN: One of the issues raised was whether to exempt a person from being prohibited from discharging a firearm within city limits if the person had a hunting license. 311 LENZI: The person is still subject to hunting regulations.

319 REP. BRIAN: What do game laws do? Does this allow hunting in a city park?

331 REP. BAUM: Does not know of any situation where hunting is allowed in city limits.

338 REP. BRIAN: Suggests finding that out.

346 REP. JOHNSON: One game law present in most communities is that you

cannot shoot over a road. That would prohibit shooting within city limits since most cities have roads.

353 LENZI: Attempting to protect a lawful discharge of a firearm in pursuit of game. If a person fires in noncompliance of hunting regulations then charges can be brought against him. -Suggests using an existing standard used in ORS 166.360 to define "public building." Also, - 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 content of the proceedings, please refer to the tapes House Committee on Judiciary April 23, 1991 Page 10

suggests amending ORS 166.360 to include city, county or state park that is not open to hunting or where hunting is restricted." Refers to Exhibit F.

TAPE 90, SIDE B

033 REP. BAUM: Suggests adding "playgrounds" to the definition of places for restricting use of firearms. This would also include places of amusement.

060 LENZI: That would be fine. Concerned about adding too many places that would make the situation an enforcement nightmare.

095 REP. BAUM: Does not see the hunting issue coming up within city limits. Does not know of any incorporated area that allows hunting within these areas. 110 LENZI: HB 2577 does not prohibit counties, cities or municipalities from enacting ordinances prohibiting discharge of firearms within urban growth boundaries. 123 REP. BAUM: Other than the definition of "public place. what other problems with HB 25774 do you have? 126 LENZI: None.

152 REP. BAUM: What is the NRA's position on SB 638?

154 LENZI: SB 638 has to do with firing at a specific object and the NRA has no objection to it.

180 REP. BAUM: Understands that the NRA would like to see both HB 2577 and amendments with respect to preemption passed along with SB 638.

183 LENZI: Yes. 274 REP. BRIAN: To Vic Mann. How does HB 2577 affect private security?

282 VIC MANN: The City of Eugene regulates private security guards. Not clear whether the legislative intent is to continue to provide that the city regulate armed security guards and whether possessing a concealed weapons (CCW) permit would automatically allow the person to be an armed security guard.

320 REP. BAUM: Understands that according to HB 2577 - it allows cities to regulate firearms in public places. 326 MANN: That does not address private security guards. 336 ROBINSON: Does the city of Eugene currently issue concealed weapons licenses to these individuals?

338 MANN: Issue licenses for people to become armed security guards.

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353 REP. BAUM: Suggests adding on line 13 "and private security agencies."

360 MANN: Agrees. 378 LENZI: That would be a good place to put the language. Concerned that regulation would differ from county to county.

455 REP. BAUM: Who proposed the HB 2577-5 Amendments? See Exhibit G.

452 ROBINSON: Rep. Repine. HB 2577-5 raises the issue of antique firearms that operate by the use of black powder. Last session black powder was deleted from the definition of "antique gun." An ex-con was found in possession of such a gun and was very much aware of the loophole in the statute. HB 2577-5 attempts to reinsert "black powder" in the definition of "operable antique guns" prohibiting ex-cons from possession of these guns.

TAPE 89, SIDE B

033 STEVEN DONNELL, OREGON PRO-GUN CIVIL RIGHTS LOBBY: HB 2577-5 Amendments would force individuals who want to purchase antique black powder firearms to go through the same registration procedures for purchasing a conventional weapon and require a 15 day waiting period prior to possession. Suggests that restrictions apply only to ex felons. That way the restriction would not affect the rest of the population.

069 LENZI: The NRA has problems with the inclusion of "black powder" in the definition of a firearm. Unaware of any state that includes black powder within the definition of a firearm. 082 DONNELL: The urban growth boundary restriction would go too far. There are areas in the state within urban growth boundaries that are rural where farmers have a legitimate right to protect their livelihood against predators that come onto the property. 107 CHAIR MILLER: Adjourns Subcommittee on Criminal Law and Corrections at 5:15 p.m. Submitted by:

Reviewed by: J. Kennedy Steve, Assistant David Harrell, Office Manager EXHIBITS LOG: A Testimony on HB 3492 - Fred Avera - 1 page B Written Material on HB 3492 - Paul Burgett - 5 pages C Written Material on HB 3492 - Paul Burgett - 6 pages D Testimony on HB 3448 - Fred Avera - 10 pages E Written Material on HB 3448 - Fred Avera - 28 pages

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F Amendments to HB 2577 - Holly Robinson - 3 pages G Amendments to HB 2577 - Rep. Repine - 2 pages H Testimony on HB 2577 - John C. Lenzi - 6 pages