

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

April 24, 1991Hearing Room 357 1:00 p.m.Tapes 65, 91 - 92

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

STAFF PRESENT: Greg Chaimov, Committee Counsel Holly Robinson, Committee Counsel Kathy Neely, Committee Assistant MEASURES CONSIDERED: SB 638 PH (Firearms) SB 620 PH (Criminal Procedure) HB 2219 WS (Crime) HB 2584 WS (Vehicles)

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TAPE 65, SIDE A

003 REPRESENTATIVE MILLER, CHAIR: Calls the meeting to order at 1:30 p.m.

SB 620 - PUBLIC HEARING Witness:Hardy Myers, Criminal Justice Council David Factor, Criminal Justice Council Erik Wasmann, Department of Justice, ODAA

013 GREG CHAIMOV: SB 620 authorizes the court to put criminals in jail as a special condition of probation for misdemeanors committed after November 1, 1989. *Memorandum from Senate Judiciary Counsel discussing whether it is constitutional to have the bill apply to misdemeanors after November 1, 1989. (EXHIBIT A)

038 HARDY MYER, CRIMINAL JUSTICE COUNCIL: (EXHIBIT B) Concerns with Counsel's discussion on SB 620.

044 DAVID FOSTER, CRIMINAL JUSTICE COUNCIL: In Section of SB 620 it amends ORS 137 .540(4) and changes "shall" to "may" to clarify that revocation of probation is discretionary to the sentencing judge rather than mandatory.

047 ERIK WASMANN, DEPARTMENT OF JUSTICE, ODAA: (EXHIBIT C) Supports SB 620 which needs "hasty action". It is dealt with every day in courts.

CHAIR MILLER: Closes public hearing.

SB 620 WORK SESSION

060 MOTION:REP. BAUM: Moves SB 620 to the full committee with a do pass recommendation.

CHAIR MILLER: Rep. Baum moves SB 620 to the full committee with a do pass recommendation.

VOTE: 7-0 Motion passes. AYE: Baum, Bauman, Johnson, Mason, Parks, Sunseri, Miller NO: 0 EXCUSED: Brian

CHAIR MILLER: SB 620 is passed to the full committee. Rep. Parks will carry.

(Tape 65, Side A) HB 2219 - WORK SESSION

077 GREG CHAIMOV: HB 2219 as amended enhances penalties for using children to commit felonies. *Discusses memorandum from research assistant listing class C felonies. (EXHIBIT D) *Discusses the hand engrossed amendments to HB 2219 (EXHIBIT E). Amendments (EXHIBIT F)

089 CHAIR MILLER: Including the class A and class B narrows the bill so there will, hopefully, be much objection.

096 REP. MASON: Is there a list of class Bs?

CHAIR MILLER: Just class Cs.

REP. MASON: Know what will not be included but not what will be included?

CHAIR MILLER: It will be all Class As and Bs.

REP. MASON: There are Cs in front of the committee but not As and Bs.

104 REP. PARKS: HB 2219 on the agenda states it is about occupational health safety.

CHAIR MILLER: It use to deal with that but at a prior hearing it was amended to this.

114 REP. BAUM: The class Bs are normally drug crimes, assault 2 that should be included. There may be some Class Bs that are not as "common" that should also be included.

139 CHAIR MILLER: Question about looking into adding more to the list.

REP. MASON: Finds unlawful possession of a machine gun should be added that is a class B.

147 REP. BAUMAN: Would like to see the prison bed impact statement at same time the list of the Class Bs are brought before the committee. Has an inclination that the bill should go to Ways and Means anticipating it will have a considerable prison bed impact.

162 CHAIR MILLER: Adjourns work session on HB 2219.

(Tape 65, Side A) SB 638 - PUBLIC HEARING Witnesses:Jackie Bloom, City of Portland, Jim McIntyre, Multnomah County DA John Linze Lee Erickson

182 HOLLY ROBINSON: SB 638 A-eng creates a new crime of unlawful use of a weapon by discharging it from a vehicle on a public right away or

public place in direction of a person, building, or vehicle. Contains an section of exemptions. It modifies 166 .630 to conform with new requirements.

203 JACKIE BLOOM, CITY OF PORTLAND: The City of Portland and the Multnomah DAs introduced this because of the drive by shooting problem in the metro area. *SB 638 passed the Senate unanimously.

225 JIM MCINTYRE, MULTNOMAH COUNTY DA, SENIOR DEPUTY DA: SB 638 addresses a growing problem that is now into the outlying counties as gang activity increases. *Many times there is evidence of a drive by shooting but the "victims of the shooting" are unwilling to participate in the prosecution. *Discusses "dangerous weapon" definition because the weapon used might not be a firearm but dart guns or cross bows.

264 REP. MASON: Are cross bows and darts needed?

MCINTYRE: Yes. Definition of dangerous weapon is "any instrument or article under the circumstances which is used and is readily capable of causing death or serious physical injury".

295 REP. MASON: How far will this definition go?

MCINTYRE: Oregon Court of Appeals has held that any number of different instrument can be defined as dangerous weapons and it hinges upon the circumstances it is used.

309 REP. MASON: Definition can be so broad just about anything might be included under it.

MCINTYRE: Difference is that this is limited by statute: *Requires discharge of the weapon. A weapon that has an identifiable range. *Have to take circumstances in determining if it is capable of causing death or serious injury.

339 REP. JOHNSON: Rep. Mason is raising a good point. Curious why the definition in the bill don't correspond. Why are there no parallel definitions?

MCINTYRE: The definitions in line 23 have been previously defined by the court.

REP. JOHNSON: The phrase "or a dangerous weapon" is not included in line 23.

MCINTYRE: Dealing with two separate and distinct statutes. *One deals with violation not the misdemeanor or felony offense of discharging specific weapons. Not addressed in the criminal conduct addressing in amending 166.220

397 HOLLY ROBINSON: One of the issues is significant overlap currently between Sections 1 and 2 of the bill. *Discusses what the Senate did when amending.

418 REP. JOHNSON: In order to avoid uncertainties of what the bill means, what is wrong with putting a list on line 9 similar to the one on line 23?

TAPE 91, SIDE A

015 MCINTYRE: The definition of "dangerous weapon" is a legislative definition. *The list on line 23 is firearms and does not address some of the more unique weapons. *The reason the enacted definition is acceptable because of the possibility of future weapons.

REP. JOHNSON: Is the intent of using "discharge" to limit the types of weapons?

MCINTYRE: Yes. There is the limiting of discharge and of range.

044 JOHN LINZE, NATIONAL RIFLE ASSOCIATION AS STATE LIAISON FOR OREGON: (EXHIBIT G) Supports the "drive by shooting bill". *Should differentiate between acts of driving by and discharging weapon from a vehicle against a building vs. against a person or a group of people.

059 REP. JOHNSON: On line 10 of SB 638 "from a vehicle or upon a public right of way". Asks about the definition of "public right of way" Understands it to include logging roads.

LINZE: Understands intent is to deal with criminal activity in "more urban" areas of the state.

075 REP. JOHNSON: Should the population figure be reinstated?

078 LINZE: The problem there would be discharging a firearm in a population center under 15,000 against a building, would not be a felony to the same extent as if in a center larger than 15,000.

088 REP. JOHNSON: Asks about the distinction between within city limits and outside city limits.

LINZE: With the offense described in the bill, don't see a distinction there.

099 LEE ERICKSON, OREGON STATE POLICE: Support the bill. Interested in the random acts of violence directed at people, vehicles, and buildings with firearms within or outside the city.

108 CHAIR MILLER: Closes hearing on SB 638.

(Tape 91, Side A) SB 638 - WORK SESSION

111 REP. MASON: Believes the Court of Appeals has expanded the definition of "dangerous weapon" so broadly, that it has no real substance to it, it can be anything.

MOTION: REP. MASON: Moves to amend, on line 9, to delete "or a dangerous weapon".

136 CHAIR MILLER: What would be lost by adopting that amendment?

142 MCINTYRE: There would be the lose of use of certain weapons that cause serious injury.

REP. BAUMAN: What would they be charged with then?

MCINTYRE: Discusses Portland case regarding 2 teenagers using a "blow dart" as a dangerous weapon. There were 8 counts of assault in the 2nd degree. There were about 13 specifically identified incidents or victims. *This case would not be covered by that amendment. *Discusses

weapons that would be missing with that amendment.

192 REP. MASON: Discusses felony classes.

193 MCINTYRE: There is the assumption that there is a victim that will testify and able to establish physical injury of some kind. *Understands the definition of dangerous weapon as having a burden of proof that needs to be filled before it can be used.

REP. MASON: Discusses situation with blow gun, as a dangerous weapon, being discharged at a building or structure and Class C felonies.

MCINTYRE: That would be precluded from becoming a Class C felony. *Comments on definition of a structure. *The bill's intent is to hold someone strictly liable for the discharge of a weapon at a structure or building which may contain human life.

REP. MASON: So there needs to be someone in the building?

MCINTYRE: Not required. The language of the bill states that if discharges a firearm or dangerous weapon at a building they can be held responsible. It puts the burden on them because there is the presumption that the activity will endanger human life.

266 CHAIR MILLER: Rep. Mason moves removing language on line 9, "or a dangerous weapon".

REP. SUNSERI: Comments on "relates to dangerous or deadly weapon" on line 7 identifies it.

277 HOLLY ROBINSON: The problem identifying is this should be put in a different place in the statutes. *If Rep. Mason's motion passes, it may be appropriate to rename the sections and make it consistent.

299 REP. JOHNSON: Friendly amendment. Agrees with Rep. Mason's comments but it would not hurt to at least name some of the more common categories of nonfirearms that can be lethal like cross bows, bow and arrow.

REP. MASON: Accepts as friendly amendment. Objected to the perversion of the term "dangerous weapon" by the Court of Appeals.

REP. JOHNSON: Is firearm defined? Doesn't it include all the "normal guns"?

315 HOLLY ROBINSON: The definition in 166.210 of the criminal code. Cross bows would not be included in that definition.

REP. JOHNSON: What about saying "discharges a firearm as defined in ORS 166 .210(2)".

HOLLY ROBINSON: Don't need to do that.

REP. JOHNSON: Amendment would read "discharges a firearm, bow and arrow, cross bow ..."

REP. MASON: The categories enumerated in the violation section should be included.

REP. JOHNSON: Put in air rifle and the others listed.

397 MCINTYRE: Very good idea.

343 CHAIR MILLER: Need to get the list figured out: firearm, bow and arrow, cross bow, air rifle, etc.

349 MCINTYRE: Could say "explosive devices".

REP. MASON: When explosives are included there are too many state and federal statutes that will come into play.

359 REP. BAUM: There is a definition for destructive devices in the statutes. Discusses that definition.

385 MCINTYRE: Could take that definition and insert it into this bill.

REP. BAUM: The statute is 166.382.

TAPE 65, SIDE B

007 HOLLY ROBINSON: Comments on list of devices for the friendly amendment. Line 9 would read: A firearm, bow and arrow, cross bow, blow gun, air rifle, or explosive devices.

013 REP. JOHNSON: What about "lethal"?

020 REP. BAUM: How about destructive devices as defined in ORS 166.283(1)?

021 REP. JOHNSON: Fine. Comments on the sections that need to be included from ORS. Should state ORS 166.283.

030 CHAIR MILLER: Asks the committee to conceptually agree to the list of additional dangerous weapons. Hearing no objection, so adopted.

047 HOLLY ROBINSON: Discusses hand engrossed amendments to HB 2577 related to SB 638 (EXHIBIT J). *Definition of "public places" is defined in the letter from the National Rifle Association (EXHIBIT G). *SB 638 deals with the issue of unlawful discharge of a firearm on a statewide basis. *There is a inconsistency in SB 638 between the sections of the bill.

080 MOTION:REP. BAUM: Moves to take sections 1 and 2 of HB 2577 and add it to SB 638 with some changes. *Section 2, of HB 2577, the definition would read: The cities and counties may regulate, restrict, or prohibit the possession of loaded firearms in public buildings as defined in ORS 166.360 as well as city, county, or state parks where hunting is prohibited by the State Department of Fish and Wildlife, and city or county streets, playgrounds, in any other city or county recreational facility."

099 LINZE: The current definitional section, 161.015, is so broad in the definition of public places that it could be applied to private apartment complexes and businesses. *The definition offered by the National Rifle Association (EXHIBIT G) is a start in combining the definition under 166.360, public buildings, and part of the public places definition, 161.015. *Addresses the concerns the counties may have about a loaded firearm in a public place.

149 REP. CLARK: If use the current public places definition, it is too

broad. *Key language in the amendment is "city and county streets".

163 REP. BRIAN: Does "city or county street" mean "right of way"?

LINZE: A public access way that is owned, controlled, and operated by the city or county vs. a private road. It would include a sidewalk.

164 REP. JOHNSON: Comments on the definition of public buildings in 166.360, regarding section 1 defining capitol building and the definition of public building. Capitol building should be included in definition of public building.

LINZE: Reads the statute to include capitol building definition.

189 REP. JOHNSON: Asks about city or county streets. Would not like to leave county streets in this definition.

198 HOLLY ROBINSON: What about state recreational facilities? Is there a reason for the distinction?

LINZE: Oversight. They can be amended into the definition.

209 HOLLY ROBINSON: Trying to figure out if state parks needed to be in and who would regulate them in city and county jurisdictions. There needs to be a parallel structure somehow.

215 MOTION:REP. BAUM: Moves the adoption of the HB 2577-6 amendments, line 4 through 21 and add the definition as provided by the NRA to Section 2, lines 16 and 17.

CHAIR MILLER: Rep. Baum moves to amend SB 638 with a portion of the HB 257 7-6 (EXHIBIT J) amendments and add the NRA public places definition in to Section 2.

234 REP. BRIAN: Is that where "for private security" was added?

REP. BAUM: Have not done that yet.

CHAIR MILLER: Hearing no objection, so adopted.

244 MOTION:REP. BAUM: Moves the following amendments to be discussed by staff.

HOLLY ROBINSON: In Section 3, Sub 2c, d, and e in the HB 2577-6 amendments should be added into SB 638 after line 19.

REP. BAUM: So moved.

REP. BRIAN: Comments on public lands.

263 REP. BAUM: Discusses definition of public lands previously adopted.

REP. SUNSERI: If there is a permit to carry a concealed weapon and discharge it in the city, is that a violation of this statute?

295 ROBINSON: If discharged is lawful hunting, private shooting galleries, or other places designated for target shooting as indicated in SB 638, would not be in violation. *Concealed weapon's license does not make holder exempt from discharge laws.

298 REP. SUNSERI: In order to harmonize with the constitution, shouldn't "for the purpose of self defense" be in there.

300 ROBINSON: That is there on line 16 of SB 638.

305 REP. BRIAN: Regarding people who possess real property, does that mean ownership? Can the owner of the property discharge a firearm on that property? *Does this mean the owner of the property can discharge the firearm?

325 ROBINSON: Understands if it is lawfully discharged but target is included in another offense, that would take precedence. This is solely the act of discharge. *In terms of real property, understands this to mean that the owner can go shoot anywhere.

337 REP. BRIAN: If the property owner is shooting tin cans on own property with a weapon, it is exempt from any regulation. Is that the intent?

353 REP. BAUM: HB 2577 was trying to deal with the unincorporated county areas. Property ownership language is appropriate where the property is outside the city but still within the urban growth patterns. *Trying to put preemption language into SB 638. But the problem is having a general discharge ordinance that applies everywhere.

368 REP. BRIAN: Comments on densely populated unincorporated areas in the urban growth pattern of House District.

389 REP. CLARK: On line 29 of HB 2577 there is the definition of law enforcement officer which is not included in ORS 181.610 where as ORS 161.015(4) does. Should have this definition in ORS 161.101(5).

404 MOTION, REP. BAUM: So moved.

406 CHAIR MILLER: Rep. Baum moves on line 19, delete 181.610 and insert 161 .015(4). No objection. Motion passes.

TAPE 91, SIDE B

006 MOTION, REP. BAUM: Moves Subparagraph C and D of Section 3 of HB 257 7-6 amendments be removed and re-inserted as Sections E and F after line 19 on SB 638 and take out line 17 "by person engaged in lawful hunting".

CHAIR MILLER: Rep. Baum moves the above language.

024 REP. JOHNSON: Friendly amendment to conform with the wording of SB 638, add "by" in front of "persons" in C and D that are being inserting.

027 REP. BAUMAN: Interested in what constitutes endangering adjacent persons or property.

038 REP. BAUM: Did not move that.

REP. BAUMAN: Did with public lands. What is adjacent and what is endangered?

REP. BAUM: Discusses public lands.

047 HOLLY ROBINSON: SB 638 uses the phrase "within the range of the

weapon". If that were used in this section, it may clarify it.

051 REP. BAUMAN: Concern is the other users who are not always there may come within the range and be adjacent and endangered.

055 REP. BAUM: Accepts "within range of the weapon".

058 CHAIR MILLER: No objection. Motion passes.

062 MOTION, REP. JOHNSON: Moves on line 9, SB 638, add "in the city limits of any city" before the words "from a vehicle". *Would read "Discharges a firearm, bow and arrow, cross bow, air rifle ... within the city limits of any city from a vehicle or upon a public right of way" *Understands the bill to be for drive by shooting in the city.

079 REP. BRIAN: Does not say discharging generally but "at or in the direction of ...".

083 HOLLY ROBINSON: The "or" makes it so it can be out of a vehicle or on a right of way. Not tied to shooting in direction of someone. *If take out all of the superfluous language it would read "discharged a firearm at or in the direction of". *Believes it is from a vehicle, or a right of way, or in a public place at or in the direction....

109 REP. BAUMAN: Suggests an amendment that there be a B and a C. *B be "discharges a firearm from a vehicle at or in the direction of any person, building, structure or vehicle within the range of the weapon without having legal authority for such discharge." *C be "discharges a firearm upon a public right of way or in a public place as defined in ORS 161 .015." *Suggests separating the two targets because it is not clear.

125 REP. JOHNSON: The first is shooting from and the other list is shooting at.

REP. BAUMAN: Can they be separate.

REP. JOHNSON: Have to have both interconnecting.

133 REP. MASON: "Discharges a firearm . . . from a vehicle, upon a public right of way, in a public place as defined in ORS 161.015 at, or in the direction of, any person, building, structure, etc."

141 REP. JOHNSON: Need an "or" between "way," and "in a".

145 REP. MASON: Correct. Restates the amendment with an "or" before "in a".

CHAIR MILLER: Is there a motion?

REP. MASON: Moves the above language.

CHAIR MILLER: Rep. Mason moves the language effecting lines 9 through 12.

REP. BRIAN: Clarifies the intent as shooting from a public right away at a game animal, tree, etc. there is a violation but if it is at a person, building, structure, or vehicle, it is more serious problem.

CHAIR MILLER: Hearing no objection, so adopted.

MOTION:REP. JOHNSON: Moves to insert on line 9 before the word "from" add "within the city limits of any city".

173 CHAIR MILLER: Rep. Johnson moves to add the phrase "within the city limits of any city".

176 REP. BRIAN: The class C offense is only when shooting at a person, structure, or building, not sure what the concern is with that. Opens up problem with heavily populated unincorporated areas.

183 REP. JOHNSON: Isn't there a statute making shooting at a person illegal?

193 REP. BRIAN: Comments on why the population cap was put in last session. *Trying to get at the drive by shooting issue with this period.

204 REP. SUNSERI: Objects to the amendment because Gresham has a large unincorporated area that MAX goes through has the beginnings of gang activity. *This would allow the heavily populated unincorporated area between Gresham and Portland to be dangerous.

212 CHAIR MILLER: This bill will be back before the next subcommittee meeting. Asks Rep. Johnson if the motion could be discussed at that time.

MOTION:REP. JOHNSON: Further moves on 11 to add the words "or any occupied" before the first word in the sentence. Should shooting an empty barn be a class C felony?

229 CHAIR MILLER: Rep. Johnson moves to add on line 11 "or any occupied" before "building".

REP. BRIAN: "How do you know?"

REP. JOHNSON: It would be found out after the fact.

REP. BRIAN: Would not want someone to shoot at home if not occupied.

REP. BAUM: That would be criminal mischief 1.

239 CHAIR MILLER: Calls for the vote on Rep. Johnson's proposed amendment.

VOTE: 5-3 Motion passes. AYE: Baum, Bauman, Johnson, Mason, Parks, Miller NO: Brian, Sunseri, Bauman EXCUSED:

CHAIR MILLER: Motion passes.

REP. BAUMAN: Changes vote to "NAY".

CHAIR MILLER: Motion still passes.

260 HOLLY ROBINSON: Section 2 of SB 638 needs to be worked on in light of committee actions taken.

MOTION:REP. BAUM: Moves to delete in Section 2 the word "upon" and "or" in line 24.

CHAIR MILLER: Rep. Baum moves deleting the words "upon" and "or".

*Hearing no objection, so adopted.

REP. BRIAN: Had conceptually discussed adding private security companies in HB 2577. Asks what the conscience was on it.

289 REP. BAUM: On line 13 of HB 2577-6 amendments (EXHIBIT J).

295 REP. BRIAN: If not added, then it is prohibited from going after independently. Should add it so that cities and counties can regulate, for example, shopping mall security guards.

301 CHAIR MILLER: Could have that drafted up as a proposed amendment for next meeting.

312 REP. BRIAN: Asks about the language.

REP. BAUM: "Or private security agencies".

MOTION;REP. BRIAN: Moves that as an addition to line 13. *After the words "law enforcement agencies" add "or private security agencies".

317 REP. BAUM: Concerns have been raised about uniformity between counties and cities.

REP. BRIAN: If it will cause a problem, will not move it. Can have it just drafted.

327 CHAIR MILLER: That language will be drafted for next hearing on this. Closes work session on SB 638.

(Tape 91, Side B) HB 2584 - WORK SESSION

341 GREG CHAIMOV: Discusses testimony and concerns about HB 2584 from last hearing. *Comments on the proposed amendments to HB 2584 (EXHIBIT K).

360 REP. MANNIX: The amendments (EXHIBIT K) address concerns presented by the State Police, the AG's office, and members of committee. *Comments on the amendments point by point. *Explains technical changes that should be made.

TAPE 92, SIDE A

030 REP. MASON: Uncomfortable about amendments.

REP. MANNIX: All sanctions are civil.

048 REP. MASON: There may not be enough votes to get the bill through.

053 MOTION;REP. BRIAN: Moves the amendments (EXHIBIT K) to the bill as proposed by Rep. Mannix.

CHAIR MILLER: Rep. Brian moves the amendments as proposed by Rep. Mannix with the technical changes. Hearing no objection, so adopted.

059 MOTION;REP. BRIAN Moves HB 2584 as amended to the full committee with a do pass recommendation.

CHAIR MILLER: Rep. Brian moves HB 2584 as amended to the full committee. *Would like further discussion regarding the bill.

065 REP. MANNIX: Understands committee position on the bill.

CHAIR MILLER: Rep. Brian has moved the bill to the full committee.

079 REP. BRIAN: Withdraws the motion.

CHAIR MILLER: Need more time to work on the bill. *Adjourns at 3:30 p.m.

Submitted by: Reviewed by:

Kathy Neely, Assistant David Harrell, Office Manager

EXHIBIT LOG:

A - Memorandum on SB 620 - Ingrid Swenson - 2 pages
B - Testimony on SB 620 - Hardy Myers - 1 page C - Testimony
on SB 620 - E. Wasmann - 2 pages D - Memorandum on HB 2219 - Lydia
Grimm - 4 pages E - Amendments to HB 2219 - 2 pages
F - Amendments to HB 2219 - 2 pages G - Material on SB 638 -
John Lenzi - 1 page H - Memorandum on SB 638 - Holly Robinson - 1
page I - Testimony on SB 638 - David Whitlow - 1 page
J - Material for SB 638 - 1 page K - Amendments on HB 2584 -
9 pages