

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

May 7, 1991Hearing Room 357 2:00 p.m.Tapes 99 - 100

MEMBERS PRESENT:Rep. Randy Miller, Chair Rep. Ray Baum Rep. Judy Bauman Rep. Rod Johnson Rep. Tom Mason Rep. Del Parks Rep. Ron Sunseri

MEMBER EXCUSED: Rep. Tom Brian

STAFF PRESENT: Holly Robinson, Committee Counsel Jeff Steve, Committee Assistant

MEASURES HEARD:HB 2140 - Enforcement of Fish and Wildlife Laws (WS) HB 2784 - Providing Alcohol To A Minor (PH) HB 2788 - Community Service (PH) HB 3154 - Racketeering Act (WS) HB 3270 - Hindering Prosecution (WS) HB 3444 - Genetic Fingerprinting of Sex Offenders (WS) HB 3448 - Police Community Caretaking Functions (WS) HB 3492 - Conditions of Probation (WS) SB 638 - Regulation and Discharge of Firearms (WS) HB 2577 - State Regulation of Firearms (WS)

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TAPE 99, SIDE A

004 CHAIR RANDY MILLER: Opens Subcommittee on Criminal Law and Corrections at 2:50 p.m.

214 0 - ENFORCEMENT OF FISH AND WILDLIFE LAWS - WORK SESSION

Witnesses:

Dale Pearson, Representative McTeague's Office Kaye Brown, Oregon Department of Fish And Wildlife

013 HOLLY ROBINSON: Summarizes HB 2140. Increases maximum reward for information leading to arrests in wildlife cases from \$100 to \$2000.

032 DALE PEARSON, REP. McTEAGUE: EXHIBITS A and B. Reads from Exhibit A.

052 REP. PARKS: What is the value of the fish that the Amendments address?

054 PEARSON: The value in the statute is now \$5. HB 2140 would raise it to \$10. The proposed HB 2140-2 Amendments would raise it to \$25 and would treat all species other than salmon, steelhead or sturgeon at \$25.

093 REP. PARKS: Who gets the fine levied of \$250 for destroying a fish on the "sensitive species" list?

096 PEARSON: The state of Oregon.

121 KAYE BROWN, OREGON DEPARTMENT OF FISH AND WILDLIFE: EXHIBIT C The money that is collected goes to the ODFW and not the state's general fund. HB 2140 will act as a deterrent to destroying fish.

166 REP. PARKS: Understands that the "Sensitive Species" list can be expanded or otherwise modified.

175 BROWN: Yes.

184 REP. PARKS: What is the price for coho salmon?

194 BROWN: The bill calls for \$125 per salmon. That is consistent with current law.

208 REP. PARKS: Understands that since the coho salmon is on the sensitive species list that the fish is now worth \$250.

210 BROWN: Only those species of coho salmon that are on the Sensitive Species list are worth that, not all coho statewide. This extra fine would be applied in few instances.

239 CHAIR MILLER: Concerned about the \$2000 fine.

252 BROWN: The Department does not intend to use that \$2,000 very often.

258 REP. SUNSERI: The department does have the discretion to use it.

265 REP. JOHNSON: Where is the Sensitive Species list published?

267 BROWN: It is an in-house document.

270 REP. JOHNSON: What sense is there in creating a law prohibiting fishing of a sensitive species when the species has not been published allowing for adequate public notice?

274 BROWN: That is a good question.

277 REP. JOHNSON: Page 3, section 3 suggests that the Commission be given power by rule to change any future additional amounts or damages for future generations of wildlife lost. Why should we trust the Commission with that kind of power?

283 BROWN: This would apply in cases where there has occurred a large loss of fish, such as due to an oil spill. It would not be just to charge \$125 per fish destroyed. Another instance may be where a group of brood fish have been destroyed. Here the Commission may calculate the

number of potential fish.

321 REP. JOHNSON: There is nothing that would limit the Commission's power?

323 BROWN: No. HB 2140 does require the Commission to adopt rules to set out the procedure for that, but the Commission must carry out this in a public process.

330 REP. PARKS: Suits are for "actual damages" is that correct?

334 BROWN: In terms of the destruction of brood trout the amount is calculated on the number that would have been brood and assessing the damages against the person who took the brood trout.

337 REP. PARKS: Is it a fine or civil proceeding?

342 BROWN: First, the Commission awaits the decision of the court whether the person is guilty of taking the fish. After conviction then the Commission sends out a letter demanding a fine. If the person does not respond then the sheriff is sent out to serve a warrant for court proceedings.

HB 2784 - PROVIDING ALCOHOL TO A MINOR - PUBLIC HEARING

Witnesses:

Fred Avera, Polk County District Attorney

400 HOLLY ROBINSON: Summarizes HB 2784. Increases penalties for persons who provide alcohol to a minor when the minor suffers serious physical injury or death as a result of the violation.

TAPE 100, SIDE A

012 REP. BAUM: HB 2784 came about as a result of an instance that occurred last year where a minor was killed as a result of providing alcohol.

024 REP. MASON: Understands that this does not apply to licensed dispensers. Why?

032 REP. BAUM: The instance in question did not deal with this.

038 REP. MASON: Does not see the difference.

042 REP. BAUM: Does not know of any liquor dispensers that knowingly sell alcohol to minors. There should be strong sanctions for this for those who do knowingly sell alcohol.

063 REP. MASON: Wants to see dispensers of alcohol included.

068 FRED AVERA, POLK COUNTY: Supports HB 2784. Understands that HB 2784 does not cover the situation if the minor goes out and kills a third party.

HB 2788 - COMMUNITY SERVICE - PUBLIC HEARING

Witnesses:

Ross Shepard, Oregon Criminal Defense Lawyers' Association

115 HOLLY ROBINSON: Summarizes HB 2788. Deletes requirement that an offender consent to community service ordered by a judge as part of the offender's sentence.

119 REP. BAUM: Speaks to bill.

132 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Reads from State Constitution concerning involuntary servitude.

HB 2788 - COMMUNITY SERVICE - WORK SESSION

177 HOLLY ROBINSON: One can be sentenced to community service on offenses that do not have incarceration provisions, such as for violations of traffic offenses.

234 MOTION, REP. JOHNSON: Moves HB 2788 to Full Committee with a "do pass" recommendation.

DISCUSSION ON THE MOTION

241 REP. BAUM: Suggests deleting "or fine and probation" on line 6 after "incarceration".

315 MOTION, REP. BAUM: Moves to insert conceptual amendment that the court can require community service as an option to when the offender is convicted of a crime that entails incarceration. Friendly amendment to Rep. Johnson.

321 MOTION, REP. JOHNSON: Moves HB 2788 as amended to Full Committee with a "do pass" recommendation.

335 VOTE: 7 - 0 Motion passes.

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

HB 3154 - RACKETEERING ACTIVITY - WORK SESSION

Witnesses:

Brian Boe, National Institute of Independent Insurers

351 HOLLY ROBINSON: Summarizes HB 3154. Adds to Oregon racketeering statutes (ORICO) the offenses of possession of stolen vehicles, trafficking in stolen vehicles, and trafficking in vehicles with destroyed or altered identification.

371 MOTION, REP. BAUMAN: Moves HB 3154 to Full Committee with a "do pass" recommendation.

DISCUSSION ON THE MOTION

399 REP. BAUMAN: Understands that HB 3154 influences the ability of courts to prosecute insurance fraud.

TAPE 99, SIDE B

002 ROBINSON: Yes. If a person commits these crimes in a pattern and

has multiple instances of possession of stolen vehicles then the person may be prosecuted under ORICO as well.

006 REP. BAUMAN: Wants to know more about "chop shop" activities where people steal cars and then disassemble them, sell the parts, or rebuild another car.

010 BRIAN BOE, NATIONAL INSTITUTE FOR INDEPENDENT INSURERS: This does happen although it is a complicated criminal enterprise.

047 VOTE: 6 - 0 Motion passes.

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

HB 3270 - HINDERING PROSECUTION - WORK SESSION

052 HOLLY ROBINSON: Summarizes HB 3270. Creates new crimes of Hindering Prosecution of a Traffic Violations.

062 MOTION, REP. SUNSERI: Moves HB 3270 to Full Committee with a "do pass" recommendation.

076 VOTE: 2 - 4 Motion fails.

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

106 MOTION, REP. BAUM: Moves to reconsider vote.

109 VOTE: No objection. Motion passes.

HB 3444 - GENETIC FINGERPRINTS OF SEX OFFENDERS - WORK SESSION

117 HOLLY ROBINSON: Summarizes HB 3444. EXHIBIT D (Amendments form DOJ)

132 MOTION, REP. PARKS: Moves adoption of Department of Justice Amendments. See Exhibit D.

137 VOTE: No objection. Motion passes.

145 MOTION, REP. PARKS: Moves HB 3444 to Full Committee with a "do pass" recommendation and subsequent referral to Ways and Means.

156 VOTE: 6 - 0 Motion passes

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

HB 3448 - POLICE COMMUNITY CARETAKING FUNCTIONS - WORK SESSION

Witnesses:

Fred Avera, Polk County District Attorney Ross Shepard, Oregon Criminal Defense Lawyers' Association

170 HOLLY ROBINSON: Summarizes HB 3448.

183 MOTION, REP. PARKS: Moves to delete Section 1 (4) (a) and (b). Does

not think that the Committee should authorize greater admissibility than if the evidence was seized with a search warrant. This would make the evidence available to the police on the same basis as other evidence.

204 REP. BAUM: Thinks that this amendment would do away with the primary purpose of HB 344 8.

207 REP. MASON: Suggests that evidence seized without a warrant during a community caretaking function requires the burden to be on the state to prove that there was an emergency situation.

220 REP. PARKS: Withdraws motion.

221 MOTION, REP. MASON: Moves conceptual amendment to include a parallel provision to the warrantless search portion of the ORS stating that evidence seized in a community caretaking function is an exception to the warrant requirement and the burden is on the state to prove that it was a legitimate caretaking function.

232 FRED AVERA, POLK COUNTY DISTRICT ATTORNEY: The burden is on the state in any warrantless procedure despite this.

252 REP. MASON: Suggests deleting Section 4 and insert burden of proof.

264 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS' ASSOCIATION: Agrees with the deletion of Subsection 4.

279 VOTE: No objection. Motion passes.

283 MOTION, REP. MASON: Moves HB 3448 as amended to Full Committee with a "do pass" recommendation.

293 VOTE: 6 - 0 Motion passes.

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

#### HB 3492 - CONDITIONS OF PROBATION - WORK SESSION

295 HOLLY ROBINSON: Summarizes HB 3492. Makes random urinalysis, breath or blood tests a general condition of probation rather than a special condition of probation.

299 MOTION, REP. PARKS: Moves HB 3492 to Full Committee with a "do pass" recommendation.

308 VOTE: 6 - 0 Motion passes. Rep. Parks to carry.

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

#### SB 638 - REGULATION AND DISCHARGE OF FIREARMS - WORK SESSION

312 HOLLY ROBINSON: Summarizes SB 638.

318 MOTION, REP. SUNSERI: Moves to suspend rules and move into work session on HB 257 7.

324 VOTE: No objection. Motion passes.

HB 2577 - STATE REGULATION OF FIREARMS - WORK SESSION

329 MOTION, REP. BAUM: Moves to insert Sections 1 and 2 of SB 638-A6 Amendments into HB 2577.

342 VOTE: No objection. Motion passes.

345 MOTION, REP. BAUM: Moves HB 2577 as amended to Full Committee with a "do pass" recommendation.

353 VOTE: 6 - 0 Motion passes.

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

360 CHAIR MILLER: Adjourns Subcommittee at 4:10 p.m.

Submitted by:

Reviewed by:

J. Kennedy Steve, Assistant

Pat Zwick, Office Manager

EXHIBITS LOG:

ATestimony on HB 2140 - Dale Pearson - 2 pages BAmendments to HB 2140 - Dale Pearson - 2 pages CAmendments to HB 2140 - Kaye Brown - 1 page DAmendments to HB 3444 - Robinson - 1 page ETestimony on HB 3444 - Robinson - 19 pages FAmendments to SB 638 - Robinson - 4 pages