

HOUSE COMMITTEE ON JUDICIARY CRIME AND CORRECTIONS

May 14, 1991Hearing Room 357 1:30 p.m.Tapes 103 - 105

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

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

MEASURES HEARD:SB 731 - REPEALS LAW CREATING OFFENSE OF VIOLATING HABITUAL OFFENDER ORDER. PUBLIC HEARING AND WORK SESSION.

SB 212 - PROVIDES THAT PERSONS RETAKEN AND RETURNED TO THIS STATE FROM OUTSIDE STATE UPON ORDER OR WARRANT FOR VIOLATION OF CONDITIONS OF THEIR PAROLE SHALL BE DETAINED IN DEPARTMENT OF CORRECTIONS FACILITY PENDING HEARING AND ULTIMATE DISPOSITION. PUBLIC HEARING AND WORK SESSION.

SB 215 - TRANSFERS RESPONSIBILITY FOR EXAMINATIONS OF DANGEROUS OFFENDERS FROM OREGON STATE HOSPITAL TO STATE BOARD OF PAROLE AND POST-PRISON SUPERVISION. PUBLIC HEARING AND WORK SESSION.

HB 3106 - ALLOWS PEACE OFFICER TO ARREST, WITHOUT WARRANT, BASED ON PROBABLE CAUSE THAT MISDEMEANOR HAS BEEN COMMITTED, REGARDLESS OF ITS CLASS. PUBLIC HEARING AND WORK SESSION.

HB 3440 - AUTHORIZES IMPOSITION OF CIVIL PENALTY FOR VIOLATION OF FIREWORKS STATUTES. PUBLIC HEARING.

HB 2756 - PERMITS CRIMINAL DEFENDANT TO SECURE PRETRIAL RELEASE BY POSTING CORPORATE SURETY BOND. WORK SESSION.

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 103, SIDE A

004 CHAIR RANDY MILLER: Opens Subcommittee on Criminal Law and Corrections at 1:30 p.m.

HB 3106 - PUBLIC HEARING

Witnesses:Ken Kohl, Department of Agriculture Jerry Wier, Sheriff Rep. Kevin Mannix

013 REPRESENTATIVE KEVIN MANNIX, DISTRICT 32: HB 3106 has been filed at the encouragement of the District Attorney in Union County and Sheriff Jerry Wier, Union County and Oregon State Sheriff's Association. HB

3106 allows the peace officer to arrest without warrant, based on probable cause that a misdemeanor has been committed regardless of its class.

023 Gary Wier, Sheriff: EXHIBIT A Testifies in favor of HB 3106. The intent of HB 3106 is to improve efficiency in the criminal justice system. This is a procedural change which would give police officers authority to issue citations to appear and full custody arrest, if deemed appropriate, for B and C misdemeanors. ORS 133.310 allows police officers to make probable cause arrest for A misdemeanors and felonies. Probable cause meaning not having occurred in their presence.

062 REP. MASON: That is not what the bill says. It doesn't say to allow you just to cite into court. It allows you arrest and once you have the arrest power, you can issue a citation in lieu of arrest. The real purpose of this bill is to be able to issue a citation. Would you have objection to bill being amended to just give power to issue a citation?

071 Wier: No, but the reason that was not proposed initially is because there are some circumstances where full custody arrest is warranted. Disorderly conduct is example.

079 REP. MASON: Outline the implications of what happens when an arrest is made and how that ripples through certain other things that can and cannot occur for the non-attorneys present.

085 Wier: The jail situation today dictates who will be taken into full custody arrest.

089 REP. MASON: If you arrest, you have the power to search.

090 REP. MANNIX: If you need an excuse to search somebody, you probably have a reasonable basis to search just for personal safety anyway. Can't go through an inventory search at the scene, so are not talking about much more of an intrusion in terms of search and seizure.

099 Wier: Even though persons are cited and released, police are still making an arrest. Police can search for fruits of the crime under current statute.

107 REP. PARKS: Seems that the law has grown up in this particular way to protect people against having an arrest that is not based upon personal knowledge without some kind of screening technique, meaning the District Attorney. You want to do away with what is a safeguard.

117 Wier: Has no objection to the cite. It is not a cite and arrest powers bill, but an efficiency bill. All cases, regardless of whether cited before or after, have to be screened and the D.A. does have to agree to prosecute them.

124 REP. PARKS: In those cases, before a warrant is issued, you have to take it to a Deputy District Attorney.

128 Wier: It is pre-screening versus post-screening, but the police officer still has to have probable cause to issue citation.

129 REP. MANNIX: Right now, that is allowed for Class A misdemeanors and for all felonies. The question is whether or not it should be allowed for Class B and C misdemeanors.

134 Wier: There is still much review of the case regardless of which way is chosen.

137 REP. MANNIX: If the Committee as a whole feels there is resistance to allowing the arrest power for B and C misdemeanors, a compromise might be to allow officers to at least issue citations on the spot so they can save the paperwork process that was earlier described.

143 REP. PARKS: Does a follow up complaint have to be filed if you cite someone?

144 Wier: Yes. The DA still has to file a formal complaint before the person is actually technically charged. The Oregon Chiefs of Police has endorsed the concept as have the Oregon Law Enforcement Legislative Council, District Attorneys' Association.

154 REP. PARKS: Likes the suggestion of Rep. Mannix. It protects a person's right and gives police officers a way to diffuse the situation down at the tavern.

160 Ken Kohl, Department of Agriculture, Livestock Division: Testifies in favor of HB 3106. The paperwork involved has been a great financial burden to the Department of Agriculture. They deal with Class B misdemeanors. Many of their cases involve many miles of travel.

190 REP. CHAIR MILLER: Referred the committee to a letter submitted from Russell B. Werst, District Attorney, Union County. EXHIBIT B.

HB 3106 - WORK SESSION

194 REP. MANNIX: Suggests conceptual amendment which says "a citation may be issued for B and C misdemeanors", but the arrest power will not be extended beyond the current arrest power.

199 REP. MASON: Moves adoption of the Mannix suggestions.

208 No objection. Motion passes.

211 REP. BAUM: The only place this is going to work is the rural areas.

212 REP. BAUM: To Full.

237 VOTE: Motion passes. Mannix to carry.

AYE: 5 NO: EXCUSED: 3

SB 212 - PUBLIC HEARING

237 HOLLY ROBINSON: Reviewed SB 212 for Committee.

SB 212 - WORK SESSION

260 REP. BRIAN: Moves SB 212 A Engrossed to Full Committee with a do pass recommendation.

280 VOTE: Motion passes. Brian to carry.

AYE: 5 NO: EXCUSED: 3

SB 731 - PUBLIC HEARING Witnesses:Bob Peters, Attorney

294 HOLLY ROBINSON: Reviewed SB 731 for Committee.

305 Bob Peters: House keeping measure. Corrects legislative oversight of several years back that resulted in two separate statutes that provided for criminal indictment for the same conduct. Statutes are ORS 809.600 and ORS 811.185. Another statute was passed, ORS 811.182, which is a more comprehensive statute. SB 731 would delete ORS 811.185.

TAPE 104, SIDE A

SB 731 WORK SESSION

005 REP. MASON: Moves SB 104 to Full Committee with a do pass recommendation.

017 VOTE: Motion passes. Rep. Mason to carry.

AYE: 5 NO: EXCUSED: 3

SB 215 - PUBLIC HEARING

Witnesses:Vern Faatz, Board of Parole Dan Barker, Mental Health

026 HOLLY ROBINSON: Summarizes SB 215.

029 VERN FAATZ, BOARD OF PAROLE: EXHIBIT C. Part of SB 215 transfers the responsibility for the evaluation of dangerous offenders from the Mental Health Division to the Board of Parole. There is a second part. It has to do with allowing evaluations of dangerous offenders who come before the Board prior to release to be completed by psychologists, as well as by psychiatrists. When the Judge makes the determination that the person is a dangerous offender, he or she may use evaluations of either psychologist or psychiatrist. This bill proposes this be allowed at the other end when the person is considered for release.

042 Dan Barker, Mental Health Div: Supports SB 215.

SB 215 - WORK SESSION

052 REP. BRIAN: Moves effective date be shown to be July 1, 1991.

064 REP. BRIAN: Moves SB 215 as amended to Full Committee with a do pass recommendation.

068 VOTE: Motion passes. Rep. Sunseri to carry.

AYE: 5 NO: EXCUSED: 3

HB 3440 - CIVIL PENALTIES FOR VIOLATIONS OF FIREWORKS STATUTES - PUBLIC HEARING

Witnesses:Ralph Rodia, State Fire Marshall John McCulley, Fireworks Wholesalers Ron Smith, Marion County Fire Dept. Arlene Flynn

075 HOLLY ROBINSON: Reviewed HB 3440.

083 REPRESENTATIVE TOM BRIAN: Testifies in favor of HB 3440. This bill provides civil sanctions for offenses pertaining to fireworks. The

intent of the bill is to create civil fines for the use and manufacturing of legal fireworks and the illegal use of legal fireworks.

104 REP. PARKS: All the money recovered is paid to the State Fire Marshall's fund. Why not the general fund?

106 REP. BRIAN: Refers to State Fire Marshall.

121 Ralph Rodia, State Fire Marshall, Bureau Manager: EXHIBIT C. Presented and summarized written testimony. They are asking for the ability to issue a ticket or citation with monetary penalties. Also requesting it be clearly set in statute when fireworks can be used in this State. Presently the statute sets the time during which fireworks can be sold, but does not set any limit on when they can be used.

161 CHAIR MILLER: Is this period of time you described as the sales season June 22 to midnight of July 6?

162 Rodia: That's correct.

164 CHAIR MILLER: Could not discharge fireworks at any other time. What constitutes a firework?

169 Rodia: There are legal and illegal fireworks. The legal fireworks are anything that does not fly in the air, does not explode or act erratically. Those can be bought during that time frame by the general public. The ones that explode and fly in the air are limited to people who have public display permits and they can buy those at any other time during the year, but the general public is not allowed to have those particular items.

179 CHAIR MILLER: If I wanted to put a sparkler on a birthday cake on July 7th, under the provisions of this bill would I be in trouble?

185 Rodia: No. Sparklers are not considered fireworks under Oregon law, nor are smoke items or other novelty devices. They can be sold and used year around.

196 REP. BRIAN: What about fines going to the Fire Marshall's fund?

200 Rodia: The state fire marshall does not have general fund monies. All of it comes out of fees. Have no preference as to where the funds go.

246 John McCulley: Spoke in support of HB 3440. Is concerned about the illegal sale of items which has a negative impact on the sale of legal items sold by their members. Add to the record the fact there is a possibility of having a limited public display permit for private parties.

251 Ron Smith, Marion County Fire Dist: Also representing Oregon Fireworks Task Force. They stand in support of HB 3440 and amendments. Presently they have only one choice and that is to confiscate the fireworks. The issuance of a citation would give them another option in dealing with the problem.

273 REP. BAUM: Reads from statutes. What is the sanction for violation?

289 Smith: Up to \$1,000. This is more for the local fire authorities.

Very seldom is law enforcement involved in the process.

294 REP. BAUM: On the borders of the state you are going to have people bringing in these things from out of state. To date, the sanction has been confiscation if caught. Can the local fire chief and fire captains cite for this?

307 Rodia: It would be local fire authority.

316 REP. BAUM: Why is the fee \$1000. and who is going to get the money?

319 Rodia: The \$1,000. may be for someone illegally manufacturing fireworks. In Gresham last year, they busted one of the largest fireworks manufacturing operations in the United States where they were manufacturing M-3500's which are the size of a pop can. They are more dangerous than dynamite. The fines would be graded based upon the severity of the violation.

329 REP. BAUM: Understands that the \$1,000. fine applies to anyone who violates ORS 480.110 to 480.160, which would include anyone who lets off a cinder cone.

343 Rodia: There is a whole range of degrees of violations. Penalties would range from a minimum of nothing to the \$1,000. depending on the severity of the violations.

350 REP. BAUM: There is a difference between setting off the Roman candle from the porch on the 4th of July versus manufacturing in the basement.

357 Rodia: There would be a difference in penalty.

362 REP. SUNSERI: Where do you get the dates June 22nd to July 6th?

368 Rodia: Present legislation sets those dates.

387 Arlene Flynn: Testifies in favor of HB 3440. As a retailer, their fireworks stand was confiscated last year. They would have preferred to have a citation rather than be shut down for two days.

TAPE 103, SIDE B

003 REP. BAUM: If you are going to have the penalties broken down by administrative rule for various amounts for various types of infractions, are we to trust you?

010 Rodia: That is the answer that I would like to give you. With regard to Mrs. Flynn's case, the fine would have been \$50.00. A retailer who does not have a permit and is selling fireworks illegally would be \$300. That is giving you a range of potential penalties. Could go to the E Board with the administrative rules before adoption and have them approve them if the Committee wishes.

026 REP. BAUM: What kind of fine would there be for shooting off a firecracker out of season?

028 Rodia: It would depend on two things: If it were a simple, isolated incidence, it would be a warning and suspended penalty. If the person were shooting them off and gave them to children to shoot off, there would be a penalty of \$50.00 to \$100.00.

036 REP. MASON: If you do have any administrative rules you would like to bring back, the members of this committee would appreciate it if you would bring them before Legislative Counsel Committee rather than the E Board.

044 REP. BRIAN: Do you have a copy of the proposed fine schedule with you?

049 Rodia: Not the fine schedule. Has an outline that says "minimal, moderate and severe". It doesn't break it down.

055 REP. BRIAN: Committee would like to see an actual proposed schedule if one could be provided.

HB 2756 - WORK SESSION Witnesses: Pat Horton, Conkling, Fiskum & McCormick Judge Paul Lipscomb Bill Linden, State Court Administrator

083 CHAIMOV: Reviewed HB 2756.

101 Pat Horton: EXHIBIT D, E, F The present law discriminates against people of modest means because of the requirement of the present law that if a defendant is to effectuate his/her release under a 10 per cent system, they must post cash with the court. There are hundreds of people throughout the State who do not have cash to effectuate a ten percent release. The alternative is the corporate surety which does provide alternative forms of payment which the Government currently does not recognize, namely time payments or posting other forms of collateral. They have submitted an amendment which provides for notice to be placed in all correctional facilities throughout the State of Oregon in a prominent place fully advising all defendants of all forms of release available to them. There were two primary objections raised by the court administrator who was concerned that the court would lose money if corporate surety was an option. Horton submitted an amendment. That provides for the immediate payment of 1.5 percent of the face amount of the security to the court system. Gave committee a history of Legislation passed in 1972. Feels the court system has abused the system by grabbing the money which rightfully belongs to the defendant or person who has posted it and instead it is used by the court to pay for fines, forfeitures, costs and other things. That was not the original intent of the bill.

CHAIR BAUM: You are creating a good case for not having this corporate surety bond option. Doesn't see how this adds to anything they are doing now, except brings private enterprise profit and takes the money that would otherwise go to pay victims and fines and pay it to private enterprise.

220 Horton: Rich defendants will not avail themselves of this form of release. It is the people of modest means that do not have ten percent in cash that will use it.

229 REP. BAUMAN: Talking about discrimination against the middle class who have no community ties, who are at risk to recommit, who present a danger to the community and who are a flight risk. Those are the ones who aren't recoged. Isn't that the kind of people we are talking about?

240 Horton: No. It may be some people, but not all. Talking about a graduated step in terms of the least onerous forms of release possible.

247 REP. BAUMAN: The high risk people who do not get an OR release are subject to bail as ordered by the court. Everyone, except for limited offenses, has a right to bail. How do the indigents, who number somewhere around 90%, fit into this?

288 Horton: Vast majority of people are indigent. This provision is going to apply for a meaningful number, but not a majority of criminal defendants. Because most people do appear who are released on their own recognizance, there is a high failure to appear on people who are conditionally released or who post the ten percent. The courts profit from a high failure to appear rate. This bill will lower failure to appear rates. It will provide for a higher number of defendants coming to trial.

300 REP. BAUMAN: What kind of security are you going to require to guarantee?

316 Horton: Insurance companies who write security and corporate surety are going to guarantee the appearance or they are going to pay off the full amount of the bond. They are going to guarantee the appearance by monitoring the whereabouts of the defendant on a regular basis.

332 REP. BAUMAN: What security is going to be required?

338 Horton: Not suggesting that every high risk defendant is going to financially be able to post a bond or that every insurance company is going to take every high risk defendant. There are a select number of defendants who will opt for and be eligible for a corporate surety bond.

351 REP. BAUMAN: We are dealing with a piece of paper here. Would guess that there is some underwriting criteria. Talk to me about the security that is required. What is your company going to require from me to guarantee my appearance?

360 Horton: They are going to require a payment of money and that payment of money can be in cash or in forms of time payment, secured by a promise to pay or secured by personal property such as jewelry, cars, house or whatever type of collateral they may have.

372 REP. BAUMAN: What do I pay for a \$10,000. bond?

376 Horton: Ten percent.

380 REP. BAUMAN: But I don't get that refunded to me?

382 Horton: No, but you don't with the government either.

384 REP. BAUMAN: Do you pay it to my victim as restitution if I am convicted?

386 Horton: No. That is the cost of doing business for the risk I am assuming. The purpose of bail is not to get money from a defendant with a promise that if he shows up he will get it back. What really happens is he shows up and never gets it back. That is a dishonest system. Change the law and do not lie to the defendants who are posting ten percent with the expectation they are going to get the money back when they never do.

393 REP. BAUMAN: What the law could do is say the ten percent will be kept.

397 Horton: At least we are honest about it. They pay us money to assume the risk of them appearing. If they do not appear, we forfeit and pay to the court the full amount of the bond.

402 REP. BAUMAN: If I take off and you're stuck paying the bill, are you going to come and get me?

TAPE 104, SIDE B

002 Horton: Yes. And when we find you, we are going to notify a law enforcement agency of where you are and you will be arrested under the warrant for failure to appear. Presently if a person fails to appear, no one looks for them. Their name is entered into a computer and a warrant is issued and they are forgotten about until they victimize again.

008 REP. BAUMAN: Private police force?

009 Horton: No. This bill provides that whenever practicable, law enforcement agencies will perfect the surrender and arrest of the defendant.

013 REP. BRIAN: Applies to a niche of suspects who would not make bail in other circumstances. They don't have the ten percent cash and the court does not accept promises of time payments or pledge of personal property. Needs to be clear it doesn't apply to the destitute type of person, but to those who do have assets, but may not have cash.

029 REP. BAUM: Doesn't see the need for this.

044 Horton: The most vociferous opponent of this bill will admit the high failure to appear rates in the metropolitan areas throughout the state for criminal defendants.

-Speaks to other amendments.

062 Judge Paul Lipscomb, Marion County Judge: Appears on behalf of the District Court Judges Association and Judicial Administration Committee of the Oregon State Bar. Strongly opposes the bill. There is a fiscal impact that affects not the courts, but your constituents both taxpayers and victims. Suggests this is a bad bill. The law ought not to be changed.

097 REP. SUNSERI: What is the integrity problem?

101 LIPSCOMB: The jail bond system got out of hand. There were appearances of impropriety throughout the system, often involving jail bondsmen. There was an effort made to clean up the system which was the basic impetus to go to a system where the State came in and took over the responsibility for bail release and recognizance release.

111 CHAIR MILLER: Could you relate this the state getting control of the video poker.

119 LIPSCOMB: Thinks this is a peculiar situation where the state is getting involved. These people are not coming in here and asking to take over the whole job. They are asking to come in and cream the job and take the best of the best and the low risk cases.

135 CHAIR MILLER: With respect to the creaming argument, in a wide number of places the State does take the responsibility for those others won't care for. Is not unique.

152 REP. BRIAN: As he understands, the primary market would be those defendants who don't have the cash. If they can't be recoged and don't have cash, they sit.

156 LIPSCOMB: Typically.

158 REP. BRIAN: If this private interest is willing to take that niche of the market and work out time payments or security on other personal assets so they can make bail, is that a bad situation?

162 LIPSCOMB: Doesn't think they will provide the service, as he can't imagine it would be economical for them to do that. Doesn't think they will do it unless it is to their financial best interests.

180 REP. BRIAN: This could reduce the availability of cash to the system. The system is ostensibly to assure appearance in court, but actually one of its best features has grown to be that we get their cash for other purposes. Is that inaccurate?

192 LIPSCOMB: That is a side effect of the current system.

208 REP. BAUMAN: The forfeiture to the State under the bail bond system is valuable. If we are looking to an insurance company that is regulated for the full amount of the bail, could increase the bail schedules and with a three or four percent failure to appear would bring a tremendous amount of money into the State.

226 LIPSCOMB: Doubts the insurance companies will be taking a lot of risks. To sell this as a service to criminal defendants who would otherwise sit in jail is an inaccurate argument.

241 BILL LINDEN: EXHIBIT G Summarizes Exhibit G. Defendants are regularly warned they may not get their security deposit back. The court has the decision to make about the deposit. Failure to appear rate in this state is not a result of the pre-trial process. It's a result of the fact there are no effective sanctions in most local jurisdictions for individuals who fail to appear. The court system has no direct financial interest in the 15 percent retained under the security release law. That money goes into the State General Fund. It is not appropriated directly back to the agency. Refers to the concerns in his letter.

313 REP. MASON: What could they do that would make it more principled?

324 LINDEN: On the fiscal side, to keep things whole they could provide a non-refundable check for 10 percent of the bond. That would hold harmless the funds the court would have available to diSB urse at the end of a case.

350 REP. BRIAN: Asks legal counsel to explain the amendments.

364 CHAIMOV: Explains amendments.

390 REP. BRIAN: Moves to amend HB 2756 by the adoption of HB 275 6-1, HB 2756-3, HB 2756-4, HB 2756-5 amendments.

399 No objection. Motion passes.

401 CHAIMOV: On page 2, section 3 of the bill deletes security. It was suggested that language should be restored to keep it consistent with the remaining language in the bill. Page 3, line 4 refers to a security release agreement. Suggestion was to take out word "security" because it is not defined in the bill, but release agreement is.

TAPE 105, SIDE A

006 REP. BRIAN: Moves amendments described by Counsel.

008 REP. PARKS: Moves to sunset it in two years to cause the Legislature to take another look at it.

021 REP. BRIAN: Exploring practical effects, suggests 4 year sunset. Friendly amendment accepted.

041 No objection. Motion passes.

056 REP. PARKS: Moves to Full Committee with a do pass recommendation.

059 REP. JOHNSON: Gives notice that he will vote no in full.

072 VOTE: Motion passes.

AYE: 5 NO: 3 EXCUSED: 0

076 CHAIR MILLER: Adjourns meeting at 3:51 p.m.

Submitted by:

Reviewed by:

Diane Bassett, Assistant

Pat Zwick, Office Manager

EXHIBITS LOG:

A	-	Testimony on HB 3106 - 1 page	B	-	Testimony on HB 3106 -
2 pages	C	-	Testimony on HB 3440 - 2 pages	D-	Amendments on
HB 2756 - 8 pages	E	-	Testimony on HB 2756 - 4 pages		
F	-	Information on HB 2756 - 1 page	G	-	Testimony on HB 2756
- 2 pages					