

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

May 15, 1991 Hearing Room 357 1:00 p.m. Tapes 106 - 108

MEMBERS PRESENT: Rep. Randy Miller, Chair Rep. Ray Baum Rep. Judy Bauman Rep. Tom Brian Rep. Rod Johnson Rep. Del Parlcs Rep. Ron Sunseri
MEMBER EXCUSED: Rep. Mason STAFF PRESENT: Greg Chaimov, Committee Counsel Holly Robinson, Committee Counsel Jeff Steve, Committee Assistant
MEASURES HEARD: HB 2720 - Suspension of Driving Privileges, Minor Offenses (PH and WS) HB 2789 - Suspension of Driving Privileges, Delivery of Drugs and Alcohol (PH and WS) HB 3158 - Suspension of Driving Privileges, Furnishing Alcohol to Minors (PH and WS) HB 3495 - Suspension of Driving Privileges, Misrepresentation of Age to Purchase Alcohol (PH and WS) HB 2665 - Suspension of Driving Privileges, Using a Vehicle to Commit a Crime (PH and 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 103, SIDE A 004 CHAIR MILLER: Opens Subcommittee on Criminal Law and Corrections at 1: 16 p.m.

005 GREG CHAIMOV: Today is "car and booze day." Summarizes the bills before the committee (HB 2720 and HB 2789).

032 REP. BAUM: Mr. Chaimov, you said we had a copy of a relevant bill we sent to Ways and Means?

034 CHAIMOV: You should have in your materials a copy of the A-engrossed version of HB 2585 in the materials provided for today's discussion of HB 2789. 039 REP. BAUM: This bill excludes alcohol, correct? House Committee on Judiciary May 15, 1991 - Page 2

040 CHAIMOV: HB 2585 did not deal with alcohol.

041 REP. BAUM: So if we included alcohol and applied this language to everyone who was convicted of an alcohol related offense (delivery of alcohol included) up until age 21, we would fill in the gap? 044 CHAIMOV: Rep. Baum, that is correct. - Continues with a summary of scheduled bills (HB 3158, HB 3495 and HB 2665).

073 CHAIR MILLER: Opens public hearing on HB 2720.

HB 2720 - SUSPENDS DRIVING PRIVILEGES OF MINOR OFFENDERS - PUBLIC HEARING

Witnesses: Rep. Kevin Mannix Randy Prince, Concerned Citizen Karl Krueger, Motor Vehicle Division Renee Cannon, Concerned Citizen
077 REP. MANNIX: HB 2720 would require a judge to suspend the driving permit of any person (age 13 - 17) who commits an offense. The genesis of this bill is the success of the current law relating to controlled substances and alcohol. We have sent a sharp message to the youth of this state, and we are expanding on that concept. - We may have gone too far with the language in this bill. If you like this concept, we can easily remedy this by adding a separate section that authorizes judges to suspend driving privileges, rather than requiring the suspension.
116 CHAIR MILLER: Thank you for your testimony. Are there questions for Rep. Mannix? 118 REP. SUNSERI: Is there any provision for a judge to allow a person to drive to work, if a suspension occurs? 120 REP.

MANNIX: You can get hardship permits, as allowed in other statutes.

124 REP. SUNSERI: Line 16 says that once it is issued, you cannot withdraw it for a period of 90 days. So a person would not be allowed a hardship permit to go to work for a period of 90 days, correct?

127 REP. MANNIX: That is the language we currently have for drug and alcohol offenses. If this bill is modified in the way I am suggesting, the judge will have the discretion to decide if this suspension is appropriate for the offense in question. 131 CHAIR MILLER: Are there

further questions? Rep. Mannix, could you stay with the CHAIR MILLER: Are there further questions? Rep. Mannix, could you stay with the Committee for a while? 132

REP. MANNIX: Yes. 134 ALAN L. YOUNG, OJDDA: Submits and summarizes written testimony in opposition to HB 2720 (EXHIBIT A). House Committee on Judiciary May 15, 1991 Page 3

- I believe the association would find Rep. Mannix's amendments fairly palatable.

176 RANDY PRINCE, CONCERNED CITIZEN: Testifies against HB 2720 because it "cuts against the spirit of the young people." - This bill inflicts a generic, vindictive punishment, "obey or be punished.

256 CHAIR MILLER: Thank you, Mr. Prince. Are there any questions?

257 PRINCE: I think your use of the Department of Motor Vehicles is really a "short cut." You are not justifying this bill as you would if you were to include this in the criminal statutes. "I don't think that short cut is appropriate 264

CHAIR MILLER: Thank you for your comments. 270 KARL KRUEGER, MOTOR VEHICLES DIVISION: Submits and summarizes written testimony (see EXHIBIT B). 332 CHAIR MILLER: Thank you, Mr. Krueger. 333

REP. MANNIX: Your comments are addressed to the bill, as written. It would make a dramatic difference if we replaced the word "shall," with "may." 335

KRUEGER: Yes it would. 336 REP. MANNIX: I understand the judges would approach this sanction very carefully and cautiously if it was discretionary, rather than mandatory. Is that your impression as well? 341

KRUEGER: Yes. Courts do use discretion and at times they do not do even do what they are statutorily supposed to do. 344

REP. MANNIX: Thank you. 346 REP. PARKS: "Do you have any study which shows the differentiation, for a young person, between normal insurance and SR22 type of insurance?" 353

KRUEGER: No. Not in relation to juveniles. I don't think we have any studies concerning the SR22 filings. 359

REP. PARKS: We hear stories about auto insurance going from \$100 per month to \$350 per month as a result of an SR22 situation. People coming off this program would be SR22 reinstatements, would they not? 367

KRUEGER: That would depend on the conviction. If it was a mandatory type of conviction (i.e. DUII), we require the SR22. If it is a conviction line speeding or non-traffic infractions, we certainly would not require the SR22. 378

REP. PARKS: Do you have that kind of discretion in your rules? Could you require someone, guilty of reckless speeding, to prove their financial responsibility? House Cononittee on Judiciary May 15, 1991

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384 KRUEGER: No, we do not have discretion with the SR22. "The closest that we come to that is what is required for a hardship, occupational type permit."

389 REP. PARKS: Besides driving offenses, do you suspend licenses for any other reason relating to the automobile?

396 KRUEGER: My colleagues behind me have indicated that insufficient funds (N.S.F. checks) will lead to action by the Department of Motor Vehicles.

402 REP. PARKS: If I send you a "bad" check while doing business with the DMV, you will suspend my license?

404 KRUEGER: That is correct.

405 REP. PARKS: That situation does relate to an automobile, though. This bill would "break ground for other offenses."

408 KRUEGER: The original denial laws address any alcohol offenses, which doesn't have to occur simultaneously with operation of vehicle. It is any alcohol offense or controlled substance.

417 REP. PARKS: We have that now?

418 KRUEGER: Yes. We have that now.

424 RENEE CANNON, AN EXPERIENCED, CONCERNED PARENT: Speaks in opposition to the bill. - Believes consequences should follow, and be appropriate to, the crime.

TAPE 107, SIDE A

022 CHAIR MILLER: With respect to the change of the language from "shall" to "may" this allows some discretion to the Judge. In the case that you just described (breaking of curfew due to a school outing), the judge probably would not suspend the license. 029 CANNON: You are correct. But, I don't think it would be useful to have that law available to judges.

033 CHAIR MILLER: If there is no further testimony, I will close the public hearing on HB 2720 and open the work session on HB 2720.

HB 2720 - SUSPENDS DRIVING PRIVILEGES OF MINOR OFFENDERS - WORK SESSION

035 REP. MANNIX: I would like to recommend to the committee an amendment to HB 2720. I would like to leave current law alone and add a section to the bill changing the language from "shall" to "may." If someone finds it appropriate to make this motion, I would be happy to speak to it. 044MOTION: REP. SUNSERI moves to adopt the conceptually stated amendment, as suggested

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by Rep. Mannix.

046 CHAIR MILLER: Is there discussion on this proposal?

048 REP. MANNIX: The driving force behind this optional sanction is the lack of resources for dealing with these not-so-serious juvenile offenders. The judges currently do not have any real sanctions to offer those individuals on the margin. 063 REP. SUNSERI: If every parent did what Ms. Cannon mentioned in her testimony, we wouldn't have to bother with this because we would have a self-governing situation. From age 13 to 20, the taking of a driver's license is the most effective punishment. Personally, I know it works wonders.

071 REP. MANNIX: I would like to mention that hardship permits are available under the statute. 073 CHAIR MILLER: With respect to the hardship provision, Mr. Chaimov has an observation.

074 CHAIMOV: Rep. Mannix is correct when he speaks of the availability of hardship permits. However, there are some limitations on the Division's authority to issue hardship permits. For example, if the suspension results from driving while intoxicated. Some of the offenses covered by this bill may not be eligible for hardship permits under current law.

080 CHAIR MILLER: There was a motion to adopt the Mannix amendment. Is there objection to the adoption of the amendment?

082 REP. BAUMAN: I would like to speak to a small concern which has to do with the behavior of individual judges and differences between individual communities. There are communities where juveniles do not see judges, rather juvenile court counselors. - Rep. Mannix, have you thought about the inconsistencies which could crop up if we insert the "may" language. I realize this language was suggested to solve one problem, but I am concerned that this might be creating a whole new set of problems.

108 REP. MANNIX: You mean the case where one judge will always use the sanction while another judge will never use the sanction?

109 REP. BAUMAN: That is right. We are talking about the discretionary ability of judges to impose a sanction which we have heard a lot of opposition to.

112 REP. MANNLY: The problem is that whenever you give the judge this authority, you will not know if the judge will use it or not. We grapple with this problem all the time. Unfortunately, we cannot control the amount of times the judge decides to use this authority. Reaction from the professional as well as lay community will be the only control. Judges are elected officials and we must keep this in mind.

129 VOTE: Hearing no objection, Chair Miller so moves.

134 CHAIR MILLER: Do we have discussion on the bill, as amended?

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135 REP. JOHNSON: I am warming up to the bill if we make it optional and if we add an amendment that would make it clear that no negative impact will result on a person's insurance status, unless it is a driving offense.

153 REP. PARKS: I have a concern about enriching the various insurance companies. In my county, it is very common for the judge to 'pick up' the driver's license of the juvenile for 30 - 40 days. That is done primarily for insurance reasons.

167 CHAIR MILLER: Any additional comments on this bill?

168 REP. BAUM: Rep. Johnson is asking that the judges have the authority to keep the driver's license on file and not inform DMV of the fact?

171 REP. JOHNSON: No. It would be a restriction on the insurance companies so they could not charge more.

174 REP. PARKS: Don't they do that in your community?

175 REP. BAUM: No. The judge in my community generally obeys the law. - In my county, they have not been that creative. Is the DMV the only authority who may suspend a license, or can a judge decide to hold a license for 90 days, or 45 days? I don't know for certain.

187 REP. MANNIX: There are some practical problems that must be addressed. - We have a concern about the juvenile who leaves the county, and there is no documentation of the suspension in other counties. This might work in a rural community, where everyone knows everyone. Unfortunately, most of the offenses do occur in the urban setting. - I think we should follow up Rep. Johnson's suggestion on prohibiting this action from negatively affecting a person's insurance rates.

198 CHAIR MILLER: Are we making progress?

199 REP. BAUMAN: I think we are making progress, but I still have my concerns. In my county, this will be a paperwork procedure which will bypass any court proceeding. - I still have concerns.

213 REP. MANNIX: It has the alternative language in there, as well.

218 REP. SUNSERI: Is it actually as simple as Rep. Mannix just mentioned, with regard to limiting an insurance company's ability to take this action into consideration? I believe there is more involved, correct?

222 REP. MANNIX: I have just described a conceptual amendment. We will have to spend some time writing the amendment. It has been done in other areas, so it is possible.

235 REP. PARKS: Are we suggesting two elements? First of all, it must have some relationship to driving and secondly, the offense itself must be related to driving. Itouse Committee on Judiciary May 15, 1991 - Page 7

239 REP. MANNIX: No. Rep. Parks, I was not suggesting that. I was speaking about the insurance restriction. Unless the offense involved driving, there would be no impact on insurance. 242 REP. BAUM: That would take away the number of people you would have in court, for being caught out after curfew, which would then affect their parents' insurance premiums.

254 REP. BAUMAN: I have not hit my comfort level with regard to this bill. I have a concern about the Committee acting as if it were the parents of these children. In addition, we are going to delegate some parental authority to the judges. 284 RhP. JOHNSON: With regard to auto insurance, the point is, if the child shoplifts, that doesn't necessarily mean that he is a bad driver. 286 REP. BAUMAN: I agree. The punishment in that case should be imposed by the parent and not by the Judiciary Committee. For that reason, I am going to have to vote ~no. on this bill.

290 CHAIR MILLER: We don't have the additional amendment with respect to the insurance provision.

294 REP. MANNIX: May I recommend that we, at least, conceptually amend the bill so that there is no negative impact on insurance, unless the offense for which the suspension occurred was in fact a driving offense.

297 CHAIR MILLER: Are there questions on this proposed amendment?

300 MOTION: REP. SUNSERI moves to adopt the conceptually stated amendment to HB 2720, as suggested by Rep. Mannix. 302 VOTE: Hearing no objection, Chair Miller so moves. 303CHAIR MILLER: Is there discussion on the proposed amendment? 304 REP. BAUMAN: I just have one question. Under the construction that we have just designed, if the child drives while the license is in the judges drawer, but the child is not suspended by the DMV, what happens? 311 REP. MANNIX: This bill requires suspension. 312REP. BAUMAN: So the child will be suspended, but there will be no negative impact on the insurance rate? That suspension will not be allowed into the insurance companies files, unless the suspension occurred as a result of a driving offense. Is that correct? 317 REP. PARKS: If it is on the DMV record, the insurance company is going to have it. 319REP. BAUMAN: Rep. Parks, that would be my assumption as well. I don't know how we can achieve the "no negative effect. on insurance. . . House Committee on Judiciar~ May 15, 1991 - Page 8

322 REP. BAUM: But the law would state that insurance companies cannot raise the rates of the parents if the offense has nothing to do with driving.

329 REP. BAUMAN: So the insurance company will need to hire another clerk to go through those suspensions in order to find out what they are for.

332 REP. PARKS: If we are going to have a vote on this, I want to know the exact structure of this bill.

334 CHAIR MILLER: I realize we are getting close on this bill, but I need to briefly close the work session on HB 2720 in order that Mr. Young may testify on HB 2789 before he has to leave our meeting. - Closes work session on HB 2720 and opens a public hearing on HB 2789.

HB 2789 - REQUIRES SUSPENSION OF DRIVING PRIVILEGES FOR THOSE INVOLVED WITH DRUG OR ALCOHOL DELIVERY - PUBLIC HEARING

Witness: Alan L. Young, OJDDA

346 CHAIMOV: Explains the major elements of HB 2789. 360 ALAN L. YOUNG, OJDDA: Thank you for allowing me the opportunity to comment on HB 278 9. - Summarizes written testimony in opposition to HB 2789 (see Exhibit A).

420 CHAIR MILLER: Thank you for your testimony. Are there questions for Mr. Young?

TAPE 106, SIDE B

001 REP. PARKS: Are you a "day-in, day-out juvenile counselor"?

002 YOUNG: Yes.

003 REP. PARKS: As part of your procedure, do you pick up licenses of kids?

004 YOUNG: Yes. If the judge makes a finding that a child is under the jurisdiction of the court for one of those items in ORS 809.260, then our judges instruct the child to surrender any permit or license to us. We, in turn, send that to DMV with a coversheet signed by the judge.

007 REP. PARKS: How about in cases other than those you have mentioned?

009 YOUNG: No. Our judges do not take that step.

010 REP. PARKS: When you act as a "referee," you act informally, correct?

011 YOUNG: If I am a referee, I am acting in a judicial capacity and I could impose that license capacity and I could impose that license denial. What you might be referring to is the intake process, or an informal disposition agreement that is an agreement between the child and the juvenile department. That is not a House Committee on Judiciary
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judicial finding and would not result in a license denial.

016 REP. PARKS: As one of your conditions in your informal disposition arrangement, could you stipulate that the child not drive for 30 days?

017 YOUNG: We can do that, though it is not done as a matter of practice. We will turn to the parents and strongly encourage them to either go to DMV and suspend the child's license, or physically take the child's license themselves. Although, we do not do that as a matter of practice. - I would suggest that with regard to the insurance issue, you might want to add the language similar to legislation in the past. You might want to add language that would require the court to notify DMV, whether or not the denial is based on the use or operation of a vehicle. DMV would then be obligated to maintain a confidential status for those denials that are not related to alcohol or drug related matters. I remember this language from legislation in the past.

036 REP. BAUMAN: I think that we are going to have to add a lot of money so that judges can hire additional staff people to back them up on this issue. I am sure the judges will be happy to hear that, but Ways and Means will probably be surprised.

049 REP. BRIAN: Mr. Young,~ could you point out where your strong objections to this bill are centered?

050 YOUNG: In Section 1, Subsection 1, where this extends this language to all persons. I would extend the current law to apply to 18, 19 and 20 year olds, which my organization (OJDDA) feels is appropriate.

056 REP. BRIAN: In line 5, do you favor or oppose that deletion?

058 YOUNG: Leave current law, but expand the current upper limit of 17 years, to include 18, 19 and 20 year olds. - We would also suggest that on page 2, lines 23 and 24, you not add the new language.

072 REP. BRIAN: So your association would like to maintain the current language with respect to lines 23 and 24? 073 YOUNG: Yes.

075 REP. BAUM: Being a primary sponsor of this bill, I would like to say that I have no problem with increasing the age to those of 20 years of age or younger. - What would be your position if we limited the suspension to related offenses only? 078 YOUNG: Alcohol, or alcohol

and drug? 079 REP. BAUM: Alcohol period. 080 YOUNG: I cannot speak for the association. As a juvenile justice professional, I would rather
0 YOUNG: I cannot speak for the association. As a juvenile justice professional, I would rather leave the controlled substance language in the statute. I think that is appropriate. With many kids, alcohol and marijuana are interchangeable. House Committee on Judiciary May 15, 1991- Page 10

084 REP. BAUM: How about adding to the bill additional language concerning attempts to purchase?

085 YOUNG: I would favor that language.

086 CHAIR MILLER: Are there further questions? If not, I will temporarily close the public hearing on HB 2789 and reopen the work session on HB 2720.

HB 2720 - SUSPENDING DRIVING PRIVILEGES OF MINOR OFFENDERS - WORK SESSION

091 REP. MANNIX: I believe we are at the point now that some member might want to move the bill, as amended, to the full committee.

093 REP. PARKS: I would like to have Mr. Krueger address the confidentiality question.

095 CHAIR MILLER: Pursuant to your request Rep. Parks, I will ask Mr. Krueger to come forward.

096 KRUEGER: I would like to clarify one issue concerning insurance. What we receive from the court is an order. It doesn't indicate what the offense was that triggered the suspension. I think we could work with Rep. Johnson's amendment concerning insurance. If it is a traffic related conviction, it will come in separate from the denial and it will be on the driving record, accessible to all insurance companies. If you did want to exclude the denial entirely, that might be appropriate because the insurance companies would already have access to any traffic related convictions.

109 REP. PARKS: When you say "denial" what do you mean exactly?

111 KRUEGER: It is an order from the court, which orders the denial of driving privileges for juveniles between the ages of 13 - 17 years.

114 REP. JOHNSON: I don't have precise language, but I would move that we amend the bill so that denial of driving privileges (for non-driving offenses) not be shown on the driving record at the DMV. 119 KRUEGER: I would suggest language which states that insurance companies cannot use that entry on the driving record, otherwise it is very costly if we mandate the division to do that.

123 MOTION: REP. JOHNSON moves to amend HB 2720 by adding the language suggested by Mr. Krueger, relating to restriction of driving records. 125 CHAIR MILLER: Is there any discussion or objection to this conceptual amendment? 127 VOTE: Hearing no objection, Chair Miller so moves. 128 CHAIR MILLER: Is there further discussion on the bill, as amended? 129 REP. BAUMAN: I am really struggling with this bill. I believe in behavior modification. But House Committee on Judiciary May 15, 1991 Page 11

I fundamentally disagree with the state being the agent of behavior modification. I think these decisions should be made by the family rather than the state. - Refers to an insurance incident which occurred within her family.

179 REP. SUNSERI: I think the dialogue between parent and child that concerns you will not be circumvented by this legislation. Every time that child has to ask mom for a ride, the dialogue will be resurrected. This discussion will happen often and I don't think the child will soon forget the consequences. In fact, I think this bill will create more dialogue than if we merely leave it up to the parent, as we have in the past. 196 CHAIR MILLER: We have had testimony from one witness who said that she had experience with this without a conviction being involved. I think the dialogue between parent and child could occur before the criminal justice system takes any action. - I think we will still have that discussion.

206 REP. PARKS: I want to know precisely what the bill does before we vote on final passage.

208 CHAIR MILLER: That is a fair question. Counsel, could you help us with this?

212 CHAIMOV: As amended, HB 2720 would retain current law that requires the suspension of driving privileges for the conviction of an offense that involved alcohol or controlled substances. It would add the authority, but not require suspension of driving privileges for any other offense as well. There would be a provision in the bill which would require the DMV to not show (for review by an insurance company) a suspension based on a non-driving offense. In other words, this type of offense would be kept confidential so that it would not affect insurance rates. 225 REP. MANNIX: I would like to offer a qualification on that last item. It wasn't that it would not show, but that insurance companies may not act upon that entry. 227 CHAIR MILLER: Is there a motion on the bill, as amended? 228 MOTION: REP. SUNSERI moves HB 2720, as amended, to the full Judiciary Committee with a "do pass" recommendation. 229 CHAIR MILLER: Is there further discussion on the motion of Rep. Sunseri? 232 REP. BRIAN: Does this have a subsequent referral, or does it go to the floor of the House? 233 CHAIR MILLER: We will have to wait for an impact statement to make that determination. If it has an impact, it will probably head somewhere else before it gets to the floor. 239 REP. BAUM: Why don't we have the language concerning age 21 (and under) in this bill? 240 CHAIR MILLER: I don't believe that was moved. 244 REP. BRIAN: The other motivation for that language was our concern for alcohol (and the drinking age of 21). This bill deals with any offense, not just those offenses involving alcohol.

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248 REP. BAUM: My focus has always been the control of illegal substances and alcohol. The next bill will concern these items as well. I am just raising the issue. It doesn't have to be dealt with in this bill.

256 REP. MANNIX: We are dealing with juvenile court here in this bill and that would mean up to the age of 18.

260 VOTE: Motion passes. Rep. Mannix to carry.

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

Mason

266 CHAIR MILLER: Closes the work session on HB 2720 and reopens the public hearing on HB 2789.

HB 2789 - REQUIRES SUSPENSION OF DRIVING PRIVILEGES FOR THOSE INVOLVED WITH DRUG OR ALCOHOL DELIVERY - PUBLIC HEARING

Witnesses: Karl Krueger, Department of Motor Vehicles Joan Plank, Department of Motor Vehicles Randy Prince, Concerned Citizen

270 CHAIR MILLER: Rep. Baum, did you want to make additional comments before we hear from Mr. Krueger?

273 REP. BAUM: I would like to comment on the bill, once Mr. Krueger has addressed the Committee.

278 KARL KRUEGER, DEPARTMENT OF MOTOR VEHICLES: Submits and summarizes written testimony (see EXHIBIT C).

300 CHAIR MILLER: Thank you for your testimony. Are there questions?

302 REP. PARKS: We had a discussion a couple of weeks ago about why your figures didn't match up with regard to the "zebra bill." I cannot remember if you were in attendance or not. - We were told that your division would not be able to recover all the costs of processing because a certain percentage of the offenders do not seek to have their license reinstated.

318 KRUEGER: Rep. Parks, that is correct.

319 REP. PARKS: Therefore, you are not going to recover a portion of the \$600,000 because you not going to recover a portion of the \$600,000 because you will have the expense involved with the suspension process (and those who choose not to pay will have the expense involved with the suspension process (and those who choose not to pay the fines to reinstate their licenses). 325 KRUEGER: I will defer to Joan Plank. House Committee on Judiciary May 15, 1991 - Page L]

326 REP. PARKS: Ms. Planlc, you were there when we had that discussion. Is there any way of determining the shortfall?

329 JOAN PLANK, MOTOR VEHICLES DIVISION: Our reinstatement fee is set to cover the cost of the program, even those individuals that don't pay. We get a reinstatement fee for every 2.2 suspensions and so the reinstatement fee is set to take into account that we don't get paid for every suspension.

344 REP. BRIAN: Is the number of estimated suspensions (50,000 per year) based upon the numbers of minors in possession of alcohol? Is that the bulk of them? What is the breakdown on the projected 50,000?

353 KRUEGER: "The 50,000 was an 80% figure. We got a total figure from the Law Enforcement Data System and then we contacted the Court Administrator's Office who said that about 80% of the offenses are convicted." That 50,000 is 80% of the total figure. We are assuming the courts do what they are required to do (send the denials to the Division). 368 CHAIR MILLER: Further questions? - Would Mr. Prince approach the table? 374 RANDY PRINCE, CONCERNED CITIZEN: I have a question with regard to cigarettes. Do you plan on putting cigarettes in the category which is buffered from the review of insurance companies?

Cigarettes are a drug and they are not to be used by anyone under the age of 18. Will this affect the insurance rate of a non-smoker?

431 CHAIR MILLER: Thank you for your testimony. Are there any questions for Mr. Prince? - Closes public hearing on HB 2789 and opens a work session on HB 2789.

HB 2789 - REQUIRES SUSPENSION OF DRIVING PRIVILEGES FOR THOSE INVOLVED WITH DRUG OR ALCOHOL DELIVERY - WORK SESSION

Witness: Peter Nunnenkamp, Department of Motor Vehicles

TAPE 107, SIDE B

011 REP. BAUM: I would suggest that the Committee limit the application of this bill to persons under the age of 21. At lines 10 and 11, I would insert the word "manufacture, " before the word "possession." Then I would add the terminology "purchasing and furnishing," simply because "furnishing" is the terminology that is used to describe the delivery of alcohol.

019 CHAIMOV: Is that in place of "delivery" ' '

020 REP. BAUM: No. It would be in addition to "delivery." It would read, "delivery and furnishing, purchasing and possession, and manufacture." - I would incorporate the suggestions offered by Mr. Young (see Exhibit A) regarding the one year suspension for any conviction and provisions for reducing that suspension if conditions imposed by the judge are met. - We need to send a message to the 18, 19 and 20 year old minors who are distributing large House Committee on Judiciary May 15, 1991 Page 14

amounts of alcohol and controlled substances to even younger minors.

039 REP. JOHNSON: I would suggest inserting the old language back into line 5 and change the age from 17 to 20.

042 REP. BAUM: That would be fine.

043 REP. PARKS: So the age would be 20, instead of 17? 044 REP. JOHNSON: The existing language in the law is 17 years or younger. We are trying to apply this language to all minors - 20 years of age or younger.

049 REP. PARKS: Okay. Then you want the bill to read "manufacturing, furnishing, or attempting to purchase"?

050 REP. BAUM: It should read "manufacture, possession, purchasing, delivery, furnishing, use or abuse of alcohol or controlled substances." We are trying to send a message that "attempting" is a crime. So, we should probably add the words "attempting to" before the word "manufacture."

060 REP. JOHNSON: On the first offense, back on the second page, could you repeat what you did with the length of suspension?

061 REP. BAUM: We left it at a year, allowing for the judge to restore the license upon successful completion of the conditions imposed by the court. 062 REP. JOHNSON: Where is that language ! 063 REP. BAUM: That is a conceptual amendment. 064 REP. PARKS: Lines 12 through 18 will still be removed? 082 REP. BAUM: I would restore the

language on lines 12-14. I would put a period after the word "appropriate." 087 REP. PARKS: At line 29, page 2, I think that language should go back into the bill. 089 REP. BAUM: Yes. 093 REP. PARKS: I would make a friendly amendment to this bill regarding the impact on insurance rates, unless the offense is related to driving. 095 REP. BAUM: That would be fine. 097 MOTION: REP. PARKS moves to amend HB 2789 by adding the insurance language similar to that language adopted in HB 2720 (regarding the impact on insurance rates).

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099 CHAIR MILLER: Is there any discussion or objection? - There was some testimony with regard to discounts provided by insurance companies for nonsmokers, with respect to their driving rates.

121 VOTE: Hearing no objection, the chair so moves.

123 CHAIR MILLER: Rep. Brian, you have a question?

124 REP. BRIAN: Rep. Baum, with regard to line 7, it says "shall." In HB 2720 it was changed from "shall" to "may." What is your intent with regard to this bill? 128 REP. BAUM: We have this bill narrowed down to alcohol and controlled substance offenses, so it is similar to the catch-all language found in HB 2720. I am not stuck on "shall," but the current law features this language. 134 REP. BRIAN: I am thinking about a person who is 20 years old who gets a minor in possession but is not driving an automobile. If they are suspended for a year, what does that do to that individual's employment prospects, etc.? 141 REP. BAUM: We need to send a message to these kids. We kill a lot of folks as a result of minors passing drugs and alcohol onto other minors. 151 KRUEGER: There is a hardship, but it is only for attendance for school. It is called an emergency permit and it does not apply to employment.

158 REP. BAUM: Can that be easily changed if the bill passed? Would you change that if the bill passed? 160 KRUEGER: We would need new statutory language (an amendment) to provide for this change. Peter Nunnenkamp might be able to add to this discussion.

165 REP. BRIAN: Could we split this up so that we have "shall" apply to 17 years and younger, and have "may" apply to 18, 19, and 20 year olds?

167 REP. BAUM: Why would you have "may" apply to those individuals who are supplying most of the drugs and alcohol to those 17 years and younger?

169 CHAIR MILLER: Mr. Nunnenkamp?

170 PETER NUNNENKAMP, MANAGER OF DRIVERS SAFETY DIVISION - MOTOR VEHICLES DIVISION: ORS 807.220, which deals with emergency permits, refers back to ORS 809.260 and ORS 809.280. That type of permit is allowed for emergency purposes, i.e. driving to and from school. That is the only type of emergency license we issue for court denial suspensions. 183 CHAIMOV: The statute referred to by Mr. Nunnenkamp states: "for purposes of this subsection (referring to the emergency permit) an emergency situation that leaves the applicant with no House Committee on Judiciary May 15, 1991 Page 16

alternative means to travel to and from school is an emergency, in

addition to other emergency situations." SO it is not limited just to school, but it probably would not be broad enough to encompass going to work.

192 NUNNENKAMP: The hardship permits are not for school purposes at all. They sort of contradict one another.

195 CHAIR MILLER: Thank you, counsel. Are there further questions?

203 REP. BRIAN: Current law says "shall" for those 17 years of age and younger?

205 CHAIR MILLER: Correct. 206 REP. BRIAN: I would make the motion that "may" would apply to those 18, 19 and 20 year olds. I don't want to weaken the law for those under the age of 18. But I think we get into some other issues for those individuals between the ages of 18 to 20.

222 MOTION: REP. BAUM moves the conceptual amendment to HB 2789, proposed by Rep. Brian. 229 CHAIR MILLER: Is there discussion or objection to the proposed amendment? 230 VOTE: Hearing no objection, Chair Miller so moves.

231 REP. BAUM: We did discuss a bunch of other amendments before you joined us and moved us on to Rep. Parks' insurance amendment. I think staff should go over those amendments and then I will move them if you wish.

238 CHAIMOV: Have we adopted Rep. Brian's suggestion?

239 CHAIR MILLER: We just adopted the n hall/may" language.

244 CHAIMOV: We would add to current law "manufacture, attempting to purchase, and furnishing alcohol or controlled substances." That would be in section 1 of the bill. There would be a new section in the bill that would increase the age to cover 18, 19 and 20 year olds. But that would be "may" instead of "shall," as far as ordering the suspension of driving privileges. Lines 12 through 14 (Subsection 2) would be reinstated with a period after the word "appropriate" (line 14). The rest of the language there would be deleted. Lines 29 - 31 would be restored. Lines 26 -28 would come out of the bill. Lines 22 - 25 would be rewritten to restore the 1 year suspension, but it would include a provision that would allow the judge to reduce the suspension. Another provision would be added so that no effect on insurance rates would occur unless the underlying offense was driving related. 266 CHAIR MILLER: Thank you, counsel. Is there discussion on these proposed amendments?

268 REP. BRIAN: Don't we want to restore original language in line 5, page 1 of the bill? House Committee on Judiciary May 15, 1991 - Page 17

272 CHAIMOV: Yes. It is my understanding that we have already done that.

275 REP. BAUM: On page 2, lines 22 - 25, we have Subsection (a) directed at those of 17 years of age or younger. 280 CHAIMOV: I thought the 17 years was coming out of that language. 282 REP. BAUM: Existing law says that those under 17 years driving with a permit can have their license suspended until they are 17 years of age, or one year, whichever is longer. - So you could have a suspension longer than one year, if you are under seventeen. Do we want to retain this?

287 CHAIMOV: Yes. That is my understanding as to what the Committee

desires. 289 REP. BAUM: Okay. The other folks get 1 year suspensions if they are over 17 years of age. 291 CHAIR MILLER: Is there further discussion of the amendments moved by Rep. Baum, et al, just summarized by Mr. Chaimov? 293 VOTE: Hearing no objection, Chair Miller so moves. 294 CHAIR MILLER: Is there further discussion of the bill, as amended? Is there a motion on the bill, as amended? 298 MOTION: REP. BAUM moves HB 2789, as amended, to the full Judiciary Committee with a "do pass" recommendation. 301 VOTE: Motion passes. Rep. Baum to carry.

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

310 CHAIR PERSON: Closes the work session on HB 2789 and opens the public hearing on HB 3158.

HB 3158 - SUSPENDS THE DRIVING PRIVILEGES OF ANYONE CONVICTED OF FURNISHING ALCOHOL TO MINORS - PUBLIC HEARING

Witnesses: Karl Krueger, Department of Motor Vehicles Rep. Kevin Mannix

317 CHAIMOV: HB 3158 has a narrower scope than the bill just passed. It suspends the driving privileges of anyone convicted of furnishing alcohol to minors. 327 KARL KRUEGER, MOTOR VEHICLES DIVISION: Submits and summarizes written testimony (see EXHIBIT D). - This bill will have very little impact on the Motor Vehicle Division. House Committee on Judiciary May 15, 1991 - Page 18

338 CHAIR MILLER: Thank you for your testimony. Are there questions for Mr. Krueger? \- - ~ 340 REP. PARKS: Where in this bill is the length of time noted?

344 CHAIMOV: In the bill, page one, line seven, you will find the following language: "an order of denial of driving privileges for the person convicted for a period not to exceed one year."

349 REP, PARKS: It seems like we are lacking proportion as we tackle the issue of suspending licenses. I would think there should be a stiffer penalty for using an automobile while committing armed robbery, or similar crime.

366 REP. MANNIX: I think we ought to extend the time on HB 2665, to balance things out. When we are finished, the DMV and DEQ should thank us because there will be a lot less drivers out there and that translates to less cars on the road. 372 REP. BRIAN: On the other hand, we will have less fuels taxes and things of that nature.

378 CHAIR MILLER: Anyone else wishing to testify on HB 3158? If not, I will close the public hearing on HB 3158 and open a work session on HB 3158.

HB 3158 - SUSPENDS THE DRIVING PRIVILEGES OF ANYONE CONVICTED OF FURNISHING ALCOHOL TO MINORS - WORK SESSION

384 MOTION: REP. BRIAN moves HB 3158 to the full Judiciary Committee with a "do pass. recommendation. 386 VOTE: Motion fails.

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

HB 3495 - SUSPENDS DRIVING PRIVILEGES OF MINORS WHO LIE ABOUT THEIR AGE

TO BUY ALCOHOL - PUBLIC HEARING

Witnesses: Mike McCallum, Oregon Restaurant Association Rep. Kevin Mannix Danielle Cowan, O.L.C.C.

416 CHAIMOV: This bill suspends the license of individuals who lie about their age. It also creates a civil cause of action by a liquor server against the minor who gets served, if the server is fined or suspended for serving that minor.

426 MIKE McCALLUM, OREGON RESTAURANT ASSOCIATION: Submits and summarizes written testimony supporting HB 3495 (see EXHIBIT E).

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012 REP. BRIAN: Just to clarify for a moment, does HB 2789 address the concerns Mr. McCallum has expressed concerning HB 3495?

015 McCALLUM: They appear to, but we do not know what that bill will look like after it has been amended, and so we don't have an absolute answer for you. - As counsel has described this bill, I am not sure whether this bill will cover "attempts" to purchase. 027REP. BAUM: This bill is even narrower than HB 2789. This bill is only aimed at those minors using false identification to purchase alcohol. We started with a big net and we are funneling the scope. This bill should stand on its own because it is very narrowly crafted. I think HB 2789 might cover this, but this bill is more narrowly drafted and might have more "survivability." 039 REP. BAUMAN: I think we are being very naive

about the effect of suspending an individual's license. If these people lie about their age, will a suspended license stop these individuals from driving without a license? Rep. Baum is correct when he states that this bill has a very narrow focus. - I prefer Mr. McCallum's suggestion that there be civil liability between the establishment and the minor, to give the establishment the status that they had at one time.

069 REP. MANNIX: I have a question for our witness, Mr. McCallum. We have a provision in this bill which calls for civil liability (page five of HB 3495). In your opinion, is that an important part, or just a desirable part of this bill? 072McCALLUM: We feel that section is a very desirable part of the bill and it would have additional deterrent effect on this age group. 075 REP. MANNIX: Are you going to put up signs which warn the individuals of this civil liability for misrepresentation of age? 079 McCALLUM: We are not convinced that warning signs are tremendously effective. However, particular establishments that have a lot of problems with this issue may, in fact, take that kind of action. 082 REP. PARKS: I think Rep. Bauman has a very good suggestion. We should allow the taverns to recover their status. The only concern that I have is that I don't think this should become the liability of the parent. I think the liability should stay with the individual. 089REP. MANNIX: This bill says that the only person who will be liable is the person misrepresenting their age. This is not covered by the parent liability bill and so personal liability will result. 094CHAIMOV: Mr. McCallum, what damages do you

anticipate that a licensee could recover from an under-aged alcohol purchaser who caused a fine or suspension of an alcohol license? 098 McCALLUM: "I believe the damages would probably be outlined better with cost disbursements than attorney fees on trial that they might be subject to as a result of sanctions of O.L.C.C.." House Committee on Judiciary May 15, 1991- Page 20

102 CHAIMOV: In your opinion, would damages include profits lost if a server's license is suspended for a period of time?

106 McCALLUM: If, in fact, that is a documentable damage that was incurred as a result of that misrepresentation, it would be covered by this bill. 109 REP. BRIAN: At line 13, it discusses the type of misrepresentation addressed by this bill. If a person has a phony O.L.C.C. card, what would happen?

114 McCALLUM: We don't do O.L.C.C. cards any more.

116 REP. BRIAN: Okay, let us talk about military I.D. cards or some other types of I.D. Do we want to limit this whole provision to driver's license, driver's permit or DMV I.D. card? Perhaps we want to broaden that to include other types of non-DMV I.D. cards. 121 McCALLUM: That is a good point and to be honest, I did not know it was limited to DMV identification. If the Committee would see fit, perhaps you could change that to any identification.

124 REP. BAUM: What does a person have to show (type of I.D.) to get a drink from a server?

127 McCALLUM: Frankly, it is pretty narrow. A DMV age certificate or other significant proof of age, i.e. birth certificates, etc.

131 REP. BAUM: So we want to expand that definition?

132 McCALLUM: I think it needs to be expanded.

133 REP. BRIAN: I think there is some grey area. You could use an unaltered or unforged document that simply doesn't belong to you. You could borrow your older brother's I.D. I think we need to include altered, forged or misused identification. - If the establishment is given good I.D., aren't they relieved from all liability if they feel the I.D. was proper? 146 McCALLUM: They probably would be absolved from liability through the O.L.C.C. hearings process. However, I do not think there is anything specifically that absolves them from the sanction. We think the major value of this legislation is the deterrent effect on minors who attempt to purchase alcohol.

156 REP. MANNIX: I recommend that Legislative Counsel eliminate the phrase on page one, line 13, "issued by the Motor Vehicles Division :I.'" That would take care of the problem noted by Rep. Brian. - I am still concerned about the language on civil liabilities.

178 REP. PARKS: I think the misrepresenting individual should be liable for loss of profits. If you want to send a message, I think this is the vehicle. I do want to see this linked with Motor Vehicles Division because I think that is important. I think that linkage is important. Suspension of license should be linked with the misrepresentation of age on a license or I.D. sion of license should be linked with the misrepresentation of age on a license or I.D. card. The House Committee on Judiciary May 15, 1991 Page 21

punishment should be close to the offense. 198 REP. BAUM: Mr. McCallum, do you have a problem with the motor vehicle language with regard to the license and I.D.'s addressed by this bill? Do most people forge these types of identifications in order to purchase alcohol?

201 McCALLUM: We get asked to accept every kind of I.D. you could

imagine. We are asked to accept student body I.D.'s that have their birth dates on them. To stay with DMV identification only is very restrictive. Perhaps Danielle Cowan, O.L.C.C. could speak further on this issue.

211 DANIELLE COWAN, PUBIC AFFAIRS DIRECTOR FOR O.L.C.C.: Someone wishing to purchase alcohol would have to have a driver's license or identification from DMV, or from another state. They could not just bring in a birth certificate.

220 REP. BAUM: You are saying that they must have a driver's license from this state or another state?

221 COWAN: Or identification card.

222 REP. BAUM: What is an identification card?

223 COWAN: A DMV identification card is considered a primary card.

225 REP. BAUM: In that case (where a DMV I.D. card was used), if they got in trouble, there would be nothing to suspend, correct?

226 COWAN: That is correct. There is also a problem with individuals using licenses from other states, (i.e. Washington State). 229 REP. BAUM: You would simply suspend their driving privileges in Oregon.

231 McCALLUM: We do outline some sanctions (in Exhibit E) that could be imposed, in addition to suspension of DMV driving privileges. 237 COWAN: If a statement of age card is properly filled out, the licensee is not liable to pay any fines or sanctions. 245 REP. PARKS: Do you have to go to a hearing to establish whether the statement of age card was properly completed?

245 COWAN: Yes. They would have to go through the expenses associated with attending a hearing. They are not required to have a lawyer present at the administrative hearing.

251 REP. PARKS: How many of these tickets are issued each year in Oregon?

252 McCALLUM: I cannot answer that at this time, but I can get back to you with further detail.

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254 REP. PARKS: Do you have a "ball park figure.? 255 McCALLUM: Not very many because police of ficers don't see the current sanction as one that is imposed by the courts.

257 REP. PARKS: I am referring to the operators of the tavern. If you run a tavern and you receive a ticket for selling alcohol to a minor is what I was interested in.

259 McCALLUM: A substantial number. I would say more than 500 tickets.

264 CHAIR MILLER: I appreciate your testimony. Does anyone else wish to testify? - Closes public hearing on HB 3495 and opens a work session on HB 349 5.

HB 3495 - SUSPENDS DRIVING PRIVILEGES OF MINORS WHO LIE ABOUT THEIR AGE TO BW ALCOHOL - WORK SESSION 274MOTION: REP. PARKS moves to amend HB

3495, Section One, Subsection Three, line 13, by adding "of this state, or another state" after the word "Division." 285VOTE: Hearing no objection, Chair Miller so moves. 286 CHAIR MILLER: Are there further amendments? 287 REP. BAUM: We have a 90 day suspension in this bill, where the other bills had a one year suspension with discretion given to the judge. Should we make this bill one year also, so that it is consistent with the rest of the bills, with the option of less than one year left up to the discretion of the judge? 295REP. PARKS: The provision limited to "educational hardship" is found on page 3. I would like to change that to read just "hardship," so that employment can be considered as well. 301 MOTION: REP. BAUM moves to adopt the amendments to HB 3495, as proposed by Rep. Parks and Rep. Baum. 302 VOTE: Hearing no objection, Chair Miller so moves. 303 CHAIR MILLER: Is there further discussion to this bill, as amended?

305 REP. MANNIX: I would suggest on page 5, line 3, you add the words "civil penalties" after "liable" and delete the remaining language of lines 3 and 4.

321 REP. BRIAN: Isn't that a consideration that the court would examine during a legal proceeding?

325 REP. MANNIX: I guess the judge or jury could consider that.

327 REP. BRIAN: I am not an attorney, but wouldn't that be something they would consider during deliberation? House Committee on Judiciary May 15, 1991- Page 23

332 REP. MANNIX: That is true.

336 CHAIR MILLER: Is there further discussion of this bill, as amended?

337 MOTION: REP. BAUM moves HB 3495, as amended, to the full Judiciary Committee with a - "do pass" recommendation.

339 VOTE: Motion passes.

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

344 CHAIR MILLER: Closes work session on HB 3495 and opens a public hearing on HB 2665.

HB 2665 - SUSPENDS DRIVING PRIVILEGES FOR USING A VEHICLE TO COMMIT A CRIME PUBLIC HEARING

Witnesses: Rep. Kevin Mannix Karl Krueger, Department of Motor Vehicles

347 CHAIMOV: Introduces HB 2665 to the Committee.

354 REP. MANNIX: This is a good bill and I suggest we pass it out of Committee, as is.

368 KARL KRUEGER: Submits and summarizes written testimony (see EXHIBIT F). 402 REP. MANNIX: Do I assume properly that this estimation of \$57,000 means that if an embezzler drives to work, that means he has used the car to commit the crime? It seems to me that you have taken a very broad reading of "use in a commission of a crime." Is that how you have interpreted it? 408KRUEGER: I believe so. 410 REP. MANNIX: If we said, "a material element in the commission of a crime,~ then we would move back to a very narrow reading of the bill. 412 KRUEGER:

Correct. That is what we do presently. 413 REP. MANNIX: Now I know what we need to do. Thank you. 414 REP. PARKS: How many lawyers are you going to need to interpret whether this is a "material element" in the commission of a crime?

422 CHAIR MILLER: Are there further questions for Mr. Krueger? Thank you for your testimony. - Closes work session on HB 2665 and opens a brief work session on HB 2665. House Committee on Judiciary~ May 15, 1991- Page 24

HB 2665 - SUSPENDS DRIVING PRIVILEGES FOR USING A VEHICLE TO COMMIT A CRIME WORK SESSION 428 REP. MANNIX: I recommend an amendment on page one, line 4. I would suggest deleting the word "used" and instead, insert the words "was a material element". 441 REP. BAUM: If we use the language "elements of the crime" then we are stuck with the elements of the crime, which don't have to include a burglary being committed with a car. We have to have some language that states that the vehicle was used in the commission of the criminal offense. I don't know of any other crimes, except for unauthorized use, that have "in the motor vehicle" as the "element" of the crime. 455 REP. MANNIX: What if we said, the use of a motor vehicle was a "material part of the commission of the crime." 457 REP. MILLER: How are you going to define "material part"? 448 CHAIR MILLER: Thank you Committee. We will have to refine this matter a bit more before further consideration. - Closes the work session on HB 2665 and adjourns meeting at 3:40 p.m Submitted by: Reviewed by: Scott Kaden, Assistant Office Manager EXHIBITS LOG: Exhibit A - Alan Young - 1 page Exhibit B - Karl Krueger - 2 pages Exhibit C - Karl Krueger - 1 page Exhibit D - Karl Krueger - 1 page Exhibit E - Mike McCallum - 2 pages Exhibit F - Karl Krueger - 1 page

These minutes contain material 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.