

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 28, 1991Hearing Room 357 1:30 p.m.Tapes 113 - 114

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:HB 2852 - PROVIDES FOR FORFEITURES AND DESTRUCTION OF DEADLY WEAPONS USED DURING COMMISSION OF CRIMES. PUBLIC HEARING.

HB 2405 - PROVIDES THAT ONE-HALF OF INCOME OF INMATE BE USED TO PAY RESTITUTION. PUBLIC HEARING.

HB 2735 - REQUIRES DIRECTOR OF DEPARTMENT OF CORRECTIONS TO SET ASIDE ALL OR PART OF INMATE'S COMPENSATION TO PAY RESTITUTION OBLIGATION. PUBLIC HEARING.

SB 191 - EXPANDS POLICE AUTHORITY TO ALLOW POLICE OFFICER TO ISSUE TRAFFIC INFRACTION CITATIONS BASED ON INFORMATION RECEIVED FROM POLICE OFFICER WHO OBSERVED OFFENSE. PUBLIC HEARING AND WORK SESSION.

SB 194 - PUNISHES FLEEING OR ATTEMPTING TO ELUDE POLICE OFFICER IN VEHICLE BY MAXIMUM ONE-YEAR IMPRISONMENT, \$2,500 FINE, OR BOTH. PUBLIC HEARING.

SB 493 - CREATES CRIME OF UNLAWFUL FACTORING OF CREDIT CARD TRANSACTION. PUBLIC HEARING AND WORK SESSION.

HB 3502 - ENHANCES PENALTY FOR CRIME OF PROVIDING ALCOHOL TO MINOR IF VIOLATION RESULTS IN DEATH OR INJURY OF MINOR. WORK SESSION.

HB 3440 - AUTHORIZES IMPOSITION OF CIVIL PENALTY FOR VIOLATION OF FIREWORKS STATUTES. WORK SESSION.

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TAPE 113, SIDE A

004 CHAIR RANDY MILLER: Opens Subcommittee on Criminal Law and Corrections at 1:45 p.m. SB 638 will be heard at a later date due to anticipated amendments.

SB 191 - TROOPER ON A TRAIN - PUBLIC HEARING Witnesses: Lt. Glen Rader, Oregon State Police Everett Cutter, Oregon Railroad Assn.

025 HOLLY ROBINSON: Summarized SB 191.

046 GLEN RADER, STATE POLICE: EXHIBIT A. Reads from Exhibit A. Requested SB 191 be amended back to permit probable cause from an aircraft to permit full utilization of their aircraft as an enforcement tool.

088 EVERETT CUTTER, OREGON RAIL ROAD ASSOCIATION: EXHIBIT B Reads from and refers to Exhibit B. Spoke regarding safety programs and education. Feels they still have a large problem in the area of education and enforcement. There are 25 percent of the public crossings in Oregon gated, representing about 82 percent of total exposure for automobile and train collision. In the year 1989, of the forty-seven crossing accidents that occurred, 38 percent were at gated crossings with drivers driving through or around gates. Explained Trooper on a Train program.

118 REP. PARKS: To Mr. Rader, 280 tickets were issued based on observations from the plane? 120 RADER: Correct. All for speed violations.

121 REP. PARKS: When did this occur?

122 RADER: Present time.

124 REP. PARKS: How do you do that?

126 RADER: Can issue from the airplane and the ground. Can't do it for anything other than speed violations.

129 REP. PARKS: Thought there was a problem about you outfoxing the Legislature and they made you give the airplane back.

133 RADER: The Department has 5 aircraft. Used primarily for Fish and Game enforcement and criminal investigation projects. Also used for special enforcement projects.

139 REP. SUNSERI: Is this the bill you said replaced the other bill that allowed officers pursuit outside the vehicle?

142 RADER: No. That is SB 194.

144 CHAIR MILLER: Would like us to amend it?

146 RADER: Would like to amend the bill to read on line 13 "Infraction from an aircraft or a train".

SB 191 - WORK SESSION

155 REP. BRIAN: Moves amendments of May 6. Insert on line 13 the words "aircraft" to read "aircraft or train".

172 REP. PARKS: When this goes back to the Senate, do you want the bill on the train?

177 RADER: Regarding limitation of using this ability on a train, rather than from the aircraft, they request that the amendment be put back in and the issue worked out at the Conference Committee.

182 VOTE: No objections. Motion passes.

184 REP. BRIAN: Moves SB 191 as amended to Full Committee with a "do pass" recommendation.

190 VOTE: Motion passes.

AYE: 8 NO: 0 EXCUSED: 0

SB 194 - PUBLIC HEARING Witnesses: Lt. Glen Rader, Oregon State Police Sgt. Tom Mason, Eugene Police Dept.

224 HOLLY ROBINSON: Summarizes SB 194.

233 GLENN RADER, STATE POLICE: EXHIBIT C. Reads from Exhibit C. HB 2841, which was passed by the Committee, is identical to SB 194, with the exception that attempting to allude in a vehicle has been reduced to a Class A misdemeanor, which is present statute. There has been added a mandatory two day jail sentence, rather than making the offense of attempting to allude in a vehicle a Class C felony. They ask that SB 194 be amended for a technical change on line 13, deleting the words "while on foot".

262 REP. SUNSERI: How did you arrive at two days?

266 RADER: There was a conference between the law enforcement community and the Senate Judiciary Committee and it was decided it would be two days. No specific reason.

272 SGT. TOM MASON, EUGENE DEPARTMENT OF PUBLIC SAFETY: EXHIBIT D Reads from Exhibit D. SB 194 holds those who cause the hazards of a police pursuit responsible for their actions. A long standing problem law enforcement has encountered with people who are operating a motor vehicle is they will yield to emergency equipment, but step out of the vehicle and run and officers have no recourse for that individual in those circumstances. This would be one more tool for law enforcement in those circumstances for apprehension.

311 REP. BAUMAN: Interesting reading in Exhibit D. Regarding the statement "agency experiencing a reduction in the number of vehicle pursuits because officers don't want to risk their financial security or the health and well being of the community based on the actions of an irresponsible person". Can you talk about the officer's financial security?

326 MASON: Officers are feeling that the direction of the policy decision by government is, because of the kinds of liability cases they have seen, that society does not want the police to pursue. The bill is asking that those who create the hazard for the community be held responsible.

342 REP. MASON: Remembers back when prosecuting, there was a two year

mandatory sentence. Saw problems at that time with Judges upholding the mandatory sentence. Is uncomfortable with mandatory two days sentence.

388 RADER: The other bill passed by this Committee had it as a Class C Felony. There is an impact, potential and actual injury or hazard to not only to the person in the car who is eluding, but to the citizens that are using the roads or walking down the street, as well as the police officer. There has to be some kind of message or some provision that would stop people from eluding in a vehicle. The Class C felony, with the economics in the State right now, puts it into such an expense that the courts come in with an indigent defense fund that is expensive.

TAPE 113, SIDE A

004 REP. MASON: Agrees it is serious. Maybe it should be put back as Class C felony.

HB 3440 - WORK SESSION

025 REP. BRIAN: EXHIBIT E. When the bill was heard previously, three questions came up. One was the total potential amount of civil fine of \$1,000. Two, how the State Fire Marshall would enforce this. Three, whether or not simple possession of legal fireworks would trigger the fine process. Presented matrix from Fire Marshall's office regarding offenses. They recommended lowering the high end of the fines from \$1,000. to \$500. and exempting possession of fireworks with a retail value of less than \$50.00.

040 CHAIR MILLER: The amendments are included in the letter from Mr. Rodia.

046 MOTION, REP. BRIAN: Moves Exhibit E amendments.

047 VOTE: No objection. Motion passes.

048 MOTION, REP. BRIAN: Move HB 3440 as amended to Full Committee do pass.

050 VOTE: Motion passes. Rep. Brian to carry.

Aye: 8 No: 0 Excused: 0

HB 2784 - WORK SESSION

063 HOLLY ROBINSON: Summarizes HB 2784. On line 19, page 1 of the bill, it says "the person under 21 years of age suffers serious personal injury", there was some question as to which "the person" refers to. The Committee may wish to readdress that issue.

071 REP. BAUMAN: Suggests using the word "any." Friendly amendment to Rep. Baum's motion, on line 19 also insert "or causes another to suffer."

088 MOTION, REP. BAUM: Accepts friendly amendment and so moves. Motion is, on line 19 after the word "violation," rest of sentence would read "any person under 21 years of age suffers or causes another to suffer serious physical injury as defined on O.R.S. 161 .015 or death".

094 REP. PARKS: Is under 21 still in there and what is the distinction?

097 REP. BAUM: In order to provide alcohol improperly, it has to be to a minor.

099 REP. PARKS: The way it reads to me is if any person under the age of 21 suffers. That is the object of the verb.

104 REP. BAUMAN: Suggests keeping "the" in there and insert "or causes another to suffer". It would then read "if, as a result of the violation the person under 21 years of age suffers or causes another to suffer serious physical injury". The only question is if we are making the other any age, because the intention is another of any age.

111 REP. BAUM: Considers this a friendly amendment.

118 REP. JOHNSON: Likes the word "any". The concept of adding "or causes another to suffer" is one he is attracted to. Wants to clarify this other person can be any age. What was the rationale to changing it back to "the"?

123 REP. BAUMAN: That's the intent of the amendment. Regarding "the", we have two classes of people here. There is the persons under the age of 21 years who has been sold alcoholic liquor, which establishes the liability of the person who sold the alcoholic liquor and then there is any other person of any age who is caused to suffer serious physical injury or death by "the" person under 21.

139 REP. BRIAN: Would it be clearer if we said in line 19 "or causes any other person to suffer" rather than "another person"? If after the word "suffers" in the amendment, we said "or causes any other person".

160 ROBINSON: Wants to clarify that the third party being injured can be of any age.

164 VOTE: No objections. Motion passes.

166 MOTION, REP. BAUM: Moves HB 2784 as amended to Full Committee with a "do pass" recommendation.

VOTE: Motion passes. Rep. Baum to carry.

Aye: 8 No: 0 Excused: 0

HB 2852 - PUBLIC HEARING

178 CHAIR MILLER: Opens and Closes hearing on HB 2852.

HB 3502 - WORK SESSION

192 REP. BAUMAN: Moves HB 3502-2 amendments. EXHIBIT F.

198 VOTE: No objections. Motion passes.

200 MOTION, REP. BAUMAN: Moves HB 3502 as amended to Full Committee with a "do pass" recommendation.

207 VOTE: Motion passes. Rep. Bauman.

AYE: 8 NO: 0 EXCUSED: 0

SB 493 - PUBLIC HEARING Witnesses: Stephanie Smythe, Department of

Justice Tim Martinez, Oregon Bankers' Assoc.

216 HOLLY ROBINSON: Outlines SB 493.

234 STEPHANIE SMYTHE, DEPARTMENT OF JUSTICE: EXHIBIT G Reads from Exhibit G. Department of Justice supports SB 493. They are concerned not only for the Banks who have to pay the charge-backs requested by consumers who don't receive the services, but because many consumers don't get the charge-backs. If they don't make a claim within the time limits that are provided by Federal law, they may not get a refund at all. Further explained the process used in credit card factoring.

262 REP. PARKS: What is the time limit and what do you have to do to initiate a claim?

264 SMYTHE: Need to make a claim within 60 days of the date the charge appears on the credit card statement. There are some exceptions for merchandise that is not delivered as promised.

267 REP. PARKS: Does it have to be in writing?

268 SMYTHE: Should be in writing, as long as you make your claim known to the Bank. If it is not done in writing, might suffer the problem of not being able to document that it was timely. In some cases, consumers don't know to make the claim to the credit card issuing Bank in the first place. The hope is that the practice of credit card factoring would be criminalized in Oregon as a deterrent.

290 REP. BRIAN: Are there civil sanctions for recovery?

293 SMYTHE: Yes.

312 TIM MARTINEZ, OREGON BANKERS' ASSOCIATION: EXHIBIT H. Reads from Exhibit

H. Credit card factoring or laundering is a substantial problem to banks in the states, as well as merchants. Florida has adopted similar legislation. Feels it will reduce telemarketing fraud because prohibiting the factoring of credit card transactions would make it more difficult for fraudulent operators to obtain funds by using credit cards and credit card account numbers.

SB 493 - WORK SESSION

342 MOTION, REP. BRIAN: Moves SB 493-2 amendments.

348 HOLLY ROBINSON: The -2 amendments were introduced by Rep. Mannix last time. They bring in a separate and unrelated issue. Might want to discuss them further.

350 REP. BRIAN: Withdraws motion.

370 MOTION, REP. BRIAN: Moves to Full Committee unamended.

390 VOTE: Motion passes. Rep. Johnson.

AYE: 7 NO: 0 EXCUSED: 1

TAPE 113, SIDE B

HB 2405 - PUBLIC HEARING Witnesses: Mary Hoyt, Task Force on Sex Offenses Against Children Dennis Dowd, Department of Corrections David Kenney, Crime Victim's Assis. Network

007 HOLLY ROBINSON: Summarized HB 2405.

018 MARY HOYT, TASK FORCE ON SEX OFFENSES AGAINST CHILDREN: EXHIBIT I. Reads from Exhibit I. Requests tabling HB 2405 and if possible, an interim committee look at all the facets of restitution.

045 DENNIS DOWD, DEPARTMENT OF CORRECTIONS: EXHIBIT J. Reads from Exhibit J. Does not support HB 2405. Department supports the concept of restitution and inmate work involvement. The problem is the diversion of a significant amount of wages or reimbursement would have a negative impact on the inmate work program and reduce the incentive for inmate involvement.

068 DAVID KENNEY, CRIME VICTIM'S ASSISTANCE NETWORK: EXHIBIT K. Reads from Exhibit K. Came to testify in support of the concept contained in HB 240 5. Under Oregon sentencing guidelines, the amount of time that people are supervised after they are released from prison tends to be shorter. That is the time the criminal justice system has to collect money for restitution through the parole officers. The time is being reduced through the implementation of those guidelines. Therefore, being able to collect money from people while they are incarcerated would be a good idea. Agrees that interim committee could deal with entire aspect of restitution.

084 REP. JOHNSON: Do you support tabling this issue?

087 KENNEY: Feels the bill would be helpful, but realizes there are some problems that Corrections could have problems with administratively. Tabling might be good in order to take a look at the whole issue of restitution.

090 REP. JOHNSON: Is there a good chance that during interim something could be worked out on this issue. Are we wasting time or is there a chance something good could come out of waiting?

094 HOYT: There is a good chance.

HB 2735 - PUBLIC HEARING Witnesses: Darlene Cogburn Denis Dowd, Dept. of Corrections

114 DARLENE COGBURN: Restitution is ordered many times, but not followed through with. When the Judge orders restitution and the offender gets probation, he is still under the jurisdiction of the court. After a certain length of time without payment, the victim can pursue the matter. But if the offender gets prison time, when he is released he is under the parole board who is more concerned with activities. Convicted offenders need to be held responsible for their actions.

141 REP. BRIAN: To Dennis Dowd, don't some of the persons sentenced to the Corrections Division have, as part of their sentence, restitution?

143 DOWD: Could not tell exact figures, but appears to be around ten percent of offenders who have a victim restitution order.

148 REP. BRIAN: This bill would tap any income they generate at the

prison to be applied towards that restitution? Where the problem comes in is that it is competing with all the other things this Body has over the years authorized to be taken out of those proceeds.

156 DOWD: Inmates who are actually receiving minimum wage or above do pay 5% into the victim restitution fund no matter what. The rest don't. This bill, as written, would affect those inmates in prison industries who are receiving the wage of 13 cents per hour to 80 cents per hour.

163 REP. BRIAN: Your point is there is a prior claim on that money in terms of costs.

166 DOWD: No. Have no prior claim. We do not take money from inmates for room and board unless they are receiving enough money to pay it.

172 REP. BRIAN: You are claiming money out of their inmate earnings. Your testimony on HB 240 5 said it diverts over half of the limited income of many inmates.

178 DOWD: Yes. Significant disciplinary action is a fine. That is deducted from an inmate's wage or income. Another is paying for medical devices. Those are the two specific mandatory deductions referred to.

188 REP. BAUMAN: Adjourns Subcommittee at 3:58 p.m.

Submitted by: Reviewed by:

Diane Bassett Pat Zwick, Office Manager Assistant

EXHIBIT LOG:

A - Testimony on SB 191 - Rader - 5 pages B - Testimony on SB 191 - Cutter - 11 pages C - Testimony on SB 194 - Rader - 7 pages D - Testimony on SB 194 - Mason - 2 pages E - Testimony on HB 3440 - Rep. Brian - 5 pages F - Amendment HB 3502 - 3 pages G - Testimony on SB 493 - Smythe - 2 pages H - Testimony on SB 493 - Martinez - 6 pages I - Testimony on HB 2405 - Hoyt - 1 page J - Testimony on HB 2405 - Dowd - 1 page K - Testimony on HB 2405 - Kenney - 1 page