

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 29, 1991 Hearing Room 357 1:00 p.m. Tapes 115 - 116

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

MEMBER EXCUSED: Rep. Tom Mason

STAFF PRESENT: Greg Chaimov, Committee Counsel Kathy Neely, Committee Assistant

MEASURES CONSIDERED: HB 2655 WS (Criminal Driver License Suspension) HJM13 PH (Death Penalty for Drug Dealers) HJR 36 PH (Death Penalty for Drug Dealers) HB 2584 WS (Authorizing Sobriety Checkpoints)

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TAPE 115, SIDE A

002 CHAIR MILLER: Calls the meeting to order at 1:25 p.m.

HJM13 - PUBLIC HEARING Witnesses: Jon Zimmer, Citizen

008 GREG CHAIMOV: Explains HJM13. *Proposes an amendment to the U.S. Constitution to allow the death penalty for people convicted of selling controlled substances. *The big-time drug-dealer under federal law would get a sentence of between 30 years and life.

018 CHAIR MILLER: States that the principal sponsor of HJM13 is Rep. VanLeeuwen.

025 JON ZIMMER, CITIZEN: This discusses the death penalty for crimes that don't involve injury to others. This is another attempt to jack up all penalties for dealing of drugs. The penalty does not fit the crime.

040 CHAIR MILLER: If the use of the drug caused death of user, after purchasing from dealer, would the death penalty be warranted for that case?

046 ZIMMER: That would depend on the case. If murder--yes; we don't need extra laws to kill murderers. It may be more expensive to have a death penalty than to jail these people for life. Is generally opposed to the death penalty.

058 CHAIR MILLER: Should Ted Bundy, who was known to have killed 39 people, have received the death penalty?

062 ZIMMER: It is more appropriate there than with drugs. The only time I understand application of the death penalty is for aggravated murder. *If the penalty is so high, what's to stop a drug dealer from just going ahead and killing somebody?

070 CHAIR MILLER: If you supplied some controlled substances, knowing that the quantity you sold caused the user's death, because it somehow deals with controlled substances the death penalty is therefore inappropriate?

074 ZIMMER: No. I think the death penalty is generally inappropriate. Then there would be no difference if that person then pulled out a gun and shot that person. There are different levels of murder depending on what the action was. It is like giving somebody rat poison. But what's the responsibility of the user to decide to put in or not put in their body? Maybe it's murder but I think it could fall under existing murder statutes.

088 CHAIR MILLER: Controlled substances are probably in the same category as rat poison.

090 ZIMMER: I don't think we need to draw drug-dealing into the U.S. Constitution and the Oregon Constitution into some special category.

094 CHAIR MILLER: If this bill excluded marijuana and caused the death penalty to be possibly imposed for pushing all other drugs, what would you say to that?

101 ZIMMER: I'd feel better if it were excluded, but the penalties are still too harsh.

104 CHAIR MILLER: Is there any justification for any person dealing any other drug in your opinion?

105 ZIMMER: I don't know if there is any justification for it; I know it goes on in today's society. You have to question the efficacy of these laws--are you causing more problems with the laws?

118 REP. JOHNSON: Appreciates Zimmer's willingness to participate in the process. Brings up news stories where drug dealers are killed on the street by their competitors in the drug business.

128 ZIMMER: I've heard the stories.

130 REP. JOHNSON: It appears there is already a death penalty out there for people who engage in drug dealing.

134 ZIMMER: There are some people who have died out there because they were involved in the drug-dealing business.

136 REP. JOHNSON: Yes, and they were engaged in activity that had become so illegal that they had to pick up guns in order to participate in it.

139 ZIMMER: My experience has been with people who shun guns.

142 REP. JOHNSON: If there is the reality for dying in this business,

what would be the danger of having the government impose a death penalty?

148 ZIMMER: Not really talking about that portion of society--the ones who haul guns around. *The government should not pull the trigger on these people; if you wait long enough, they'll go down. *A very low percent are being caught for selling the big-time drugs (around 10%).

167 REP. SUNSERI: Have people become "lax" on their attitude towards crime and punishment? We don't follow through with our threats. Crime grows because people know they won't be really punished even if they are caught. Wouldn't people be more discouraged from selling drugs that could kill people--even if they could make large amounts of money--if they knew the punishment was this severe?

185 ZIMMER: Those people are risk-takers not risk-avoiders. Life is cheap to them; hardened criminals would just as soon be killed early as sell drugs. *Discusses the marijuana industry--when people split their purchases, is that a death penalty crime? *Raising the death penalty for dealing drugs isn't going to stop this so-called crime wave. *Need to look at statistics and try to quantify what that means. *It is an over-simplification to connect the rise in crime to drugs.

213 CHAIR MILLER: Reminds Zimmer that HJM13 does not require the death penalty but allows for it. Recesses HJM13 public hearing and open the public hearing on HJR 36.

HJR 36 - PUBLIC HEARING Witnesses:Jon Zimmer, Citizen

225 GREG CHAIMOV: Reviews HJR 36. *Another measure sponsored by Rep. VanLeeuwen. *Expands death penalty provision to include unlawfully delivering a controlled substance.

237 REP. PARKS: Are there any federal statutes that authorize the death penalty for drug dealers?

239 GREG CHAIMOV: There is a statute that allows the death penalty for killing a person as part of a drug network.

245 REP. PARKS: So the federal government has the ability to impose the death penalty for dealing drugs whether or not the State of Oregon's Legislature asks them to do that?

249 GREG CHAIMOV: Yes.

252 REP. BAUMAN: This seems like felony murder; isn't that currently covered under aggravated murder and eligible for Oregon's death penalty?

259 GREG CHAIMOV: Yes.

260 JOHN ZIMMER, CITIZEN: This is "more real than the Joint Memorial," as it would put the death penalty before the voters directly. Remarks will be the same as before. Death penalty is inappropriate for this type of crime. It is redundant and oppressive--an attempt to gain headlines by raising penalties dramatically. Death Row is already overcrowded; I don't think we need to add people there for non-murder crimes.

283 CHAIR MILLER: Recesses hearing on HJR 36. Opens work session on HB 258 4.

HB 2584 - WORK SESSION

308 GREG CHAIMOV: Explains HB 2584. *This sobriety checkpoint bill was previously amended in subcommittee--basically the same as preceding amendments but makes checkpoints the responsibility of the Motor Vehicle's Division and not the local police.

321 REP. MANNIX: Speaks to amendments (EXHIBIT A). *The bill no longer discusses roadblocks; changed to sobriety checkpoints instead. All that can be done at a checkpoint is to check on motor vehicle registration, driver's license and make inquiry regarding driver's sobriety.

362 REP. JOHNSON: Since we are indeed blocking traffic on the road it seems the best term for that would be a "roadblock."

370 REP. MANNIX: The focus of bill was to not give law enforcement agencies authority to, on their own initiative, carry out these sobriety checkpoints. The feeling was that if the Motor Vehicle Division was in charge of the process, the process would be focussed on safety on the highways and not on some sort of a criminal dragnet over citizens generally. *Would give people warning signs that give drivers choice for committing to the checkpoint sobriety checkpoint. *Included the time restriction--that the inquiry into the use of alcohol or controlled substances shall last no longer than 30 seconds. *Limited rest of inquiry on checking on registration and license.

407 CHAIR MILLER: Asked about the seemingly enormous fiscal impacts that have returned from DMV.

414 REP. MANNIX: There are ways of dealing with it.

415 CHAIR MILLER: Statement before the committee reflects the old version. I'm willing to move this to full committee but I'm afraid we may get back a sheet of paper that says something else.

423 REP. MANNIX: Will promptly discuss with the DMV the process and work with them on the fiscal impact statement. States that fiscal impact statements can change quickly; we need to look at what must be done if the bill passes, not what would be nice to do.

TAPE 116, SIDE A

012 CHAIR MILLER: Appreciates the comment; wanted to just caution the committee with respect to various fiscal impacts. As soon as amendments are moved, we'll send them over to fiscal.

023 REP. PARKS: Asks about people who don't stop at checkpoint.

028 REP. MANNIX: We amended that before, down to a Class A traffic infraction.

032 REP. PARKS: So you could be cited for it. When you say the DMV may delegate, do you mean to the state police?

035 REP. MANNIX: May decide to have DMV employees do it or they may contact the local sheriff's department or local police agency. *The responsibility for determining whether the checkpoint should be set up and where it will be will be with the DMV.

044 REP. PARKS: In reality, it'll be the police doing it.

045 REP. MANNIX: Right. But it won't be the police deciding if it should be done. Also, they will have to issue 48-hour notice before setting up the checkpoint.

056 REP. JOHNSON: Where is this language in the amendments?

059 GREG CHAIMOV: Page 17, lines 4 through 6.

062 REP. BRIAN: Does this have a sunset?

064 REP. MANNIX: No, but it could be proposed.

067 REP. JOHNSON: Discusses sign placement on page 2 of the amendments. How many policemen will be there waiting to stop those people who turn off at the first sign?

071 REP. MANNIX: Not assuming there will be anyone there, but they may be waiting after the second sign. Not intended to entrap people who turn off. *Discusses the way it is worked in other states. Proven to be a deterrence, hoping people will be more sober as a result.

079 REP. PARKS: Has never seen real evidence that this checkpoint system is effective.

091 REP. BRIAN: Refers to a May 21 fact sheet for sobriety checkpoints, saying that it states "evidence shows the use of checkpoints has a marked, dramatic effect on reducing alcohol-related crashes in the community."

097 REP. PARKS: That is a conclusion but we have not seen any study. State police will tell you that they think that saturation patrols are more effective.

101 REP. SUNSERI: Is generally in favor of the concept. Concerned about the advertising to warn people. It doesn't seem sensible.

110 REP. MANNIX: National Highway Traffic Safety Information Sheet indicates that 30 states are using sobriety checkpoints. *Study done in Australia, where nearly 1/3 of population was exposed to roadside checkpoints each year, alcohol-related crashes decreased by approximately 30% and have remained at that level for nearly 5 years. *Sunset clause would provide for checking on results in 4 years. *Is not really in favor of the signs. The reason was to deal with arguable constitutional concerns about entrapment. *Checkpoints may give those who are otherwise weak about peer pressure to over-indulge an excuse to stay more sober.

146 CHAIR MILLER: There was a US Supreme Court case in Michigan that authorized sobriety check points. It is employed in other states--how many? Is there any general description of the "scheme" used in the other jurisdictions?

158 REP. MANNIX: Mothers Against Drunk Driving (MADD) supplied information that 31 states have tried sobriety check points but 19 have favorable court decisions about how they could proceed in that state; 12--including Oregon--had unfavorable decisions. U.S. Dept. of Transportation states that about 30 states have used them. *Procedures in this bill are tougher in terms of constitutional protections than

procedures that existed in sobriety checkpoints that went through the court challenge process.

180 CHAIR MILLER: Are the other states' police rather than the DMV involved in the process?

184 REP. MANNIX: They usually have police agencies generally authorized to do it; we're being more restrictive now.

186 REP. BAUMAN: Comments about a probable cause arrest as a result of a motorist's behavior in approaching one of these signs. Discusses arrest in DUII case--they have to state some reason for making the stop ("driver was weaving across center line," etc.). *Is the purpose of having the warning signs to create a "reasonable suspicion of probable cause" standard for those motorists who turn around?"

211 REP. MANNIX: They're not in danger of any real criminal sanctions. Under this bill, we cannot impose the standard DUII sanctions. This is a civil process. If someone is determined to be driving under the influence, the standard DUII process does not apply; instead, there can be a breath test or car impoundment. We do not have the standard sanctions because we are not carrying out these checkpoints on the basis of probable cause.

221 REP. BAUMAN: My question is about a driver who sees the sign and turns around when a patrolman executes the traffic stop; is the patrolman justified by saying the motorist turned away?

228 REP. MANNIX: We cannot do that. It would be a form of entrapment; this is a lawful right.

242 REP. BAUMAN: Unless the person is so drunk that they cannot read, the people who will be turning around are those who should be going through in the first place. My tactic would be to position enforcement officers at the first and maybe the second sign.

255 REP. MANNIX: The real purpose of this bill is not to catch drunk drivers but to change the atmosphere--tone and concept--of the use of the roads by the motor vehicle driving public. It is a prevention/education measure to get the word out that drivers need to be sober. The apprehension system is still out there.

269 REP. BAUMAN: This certainly will have a fiscal impact. Would like to see a comparison between a whole variety of public relations programs designed to curtail drunk driving. My objection to the bill, although I will give my courtesy vote, is that we are treating innocent people like criminal suspects; it becomes a little more than a public relations program.

309 REP. JOHNSON: Is there anything in the bill as amended that restricts the number of places any given county or city can place a roadblock or that restricts frequency or duration of any roadblock they place?

316 REP. MANNIX: No but would consider it.

320 REP. JOHNSON: My original objection to the bill in February was an abuse of the power we're giving here; we could end up with checkpoints at every corner.

340 CHAIR MILLER: It may be possible to establish these on an every day basis but it would also be possible to have a saturation patrol every day and that hasn't happened.

352 REP. JOHNSON: But saturation patrols do not stop people without some reasonable suspicion of a violation.

361 REP. SUNSERI: I started out in favor of this but I'm becoming uncomfortable with it. If you could punish people for driving drunk I'd be for it, but I don't see giving people the choice to turn around as accomplishing anything.

380 REP. MANNIX: A number of people lose their judgement because they have been drinking and they drive on past the signs; sanctions are imposed (car impoundment, etc.). The soft sell is that we can't hand them a DUII.

411 REP. BRIAN: There are somewhere between 20-25,000 people killed every year in alcohol-related crashes. With a sunset, this would be a worthwhile risk to help lower those statistics.

TAPE 115, SIDE B

021 CHAIR MILLER: Discusses security restrictions at the airport. These restrictions are more elaborate and yet the roads are far more dangerous than airways. I'm willing to put up with the inconvenience.

043 REP. PARKS: If we're really trying to demonstrate that this is effective, why don't we limit the bill to some part of the state? Let's get some evidence.

064 REP. MANNIX: The sunset clause is designed to provide us with a time frame to experiment; I wouldn't want to limit it as to where it can be used or under what circumstances. This is not the end-all; this is just one of a number of measures that are designed to get at this problem.

075 REP. BAUMAN: Supports the goal of the program. Has a problem with the "police state overtone," of having to get through the checkpoints in the course of my everyday life. Points out that all cars have seat belts, many have air bags. What about using this money for a device that checks for sobriety before the car starts and give significant tax breaks for those who install them? This bill just adds another layer in our effort to do public relations and enforcement; I don't feel safer knowing that drunk drivers are going to be deterred by public relations.

124 MOTION, REP. BRIAN: Moves the "Mannix Amendments" (EXHIBIT A) with the addition that this be sunsetted on June 30, 1995.

147 No objection. Motion passes.

149 MOTION, REP. BRIAN: Moves HB 2584 as amended to the full committee, do pass.

154 REP. SUNSERI: Will give a courtesy vote but I'm not sure my courtesy is strong enough on this to get a courtesy out of the full committee.

161 VOTE: Motion

AYE: REP. BAUM, REP. BAUMAN, REP. BRIAN, REP. SUNSERI, CHAIR MILLER NO:
REP. JOHNSON, REP. PARKS EXCUSED: REP. MASON

166 CHAIR MILLER: Closes the work session on HB 2584. Re-opens public hearing on HJM13.

HJM13 - PUBLIC HEARING Witnesses: Darleen Cogburn, Rep. VanLeeuwen's aid

177 DARLEEN COGBURN, REP. VANLEEUVEN'S AID: Spoke in favor of HJM13.
*177 signatures were easily obtained in VanLeeuwen's district in support of this idea. *Drug dealing is costing society. 88% of all crimes committed is connected to some form of drug abuse/substance abuse. In the next 5 years, it is estimated that we'll spend \$5 billion on children who have been born to women using drugs. *People dealing drugs are the source for a lot of the crime and causes of deaths.

199 CHAIR MILLER: Closes public hearing on HJM13 and re-opens public hearing on HJR 36.

HJR 36 - PUBLIC HEARING Witnesses: Darleen Cogburn, Rep. VanLeeuwen's aide

203 DARLEEN COGBURN: Basically, the same comments as with HJM13.

211 REP. JOHNSON: Are you aware of the intention of VanLeeuwen or the 177 people as to what kind of drug dealers they had in mind with this bill--the 17-year-old kid on the corner selling marijuana or the drug kings?

220 COGBURN: This is more directed at the "drug kings"--especially at those who sell drugs that cause death.

230 CHAIR MILLER: Closes public hearing on HJM36. Opens work session on HB 266 5.

HB 2665 - WORK SESSION

236 GREG CHAIMOV: Discusses the -2 amendments (EXHIBIT B). *Requires a 1-year suspension for car felons. Key language on page 3, lines 13-20; needs new fiscal impact statement, assuming -2 amendments adopted, however, REP. MANNIX has had discussions with the Legislative Fiscal Office, leading him to believe there will no longer be a fiscal impact to the bill; it will be a revenue-enhancing measure.

260 REP. PARKS: As the law stands now, is it discretionary suspension for a felony or is it mandatory?

264 GREG CHAIMOV: It is now mandatory suspension for a felony when the felony requires proof of the operation of the motor vehicle as an element of the crime.

267 REP. PARKS: So if you drove to a store, cashed a bad check, and drove away, would that be using the car in committing with the crime?

275 GREG CHAIMOV: Believes not.

282 REP. BRIAN: Rep. Mannix used the phrase "was a material element in the commission," now the -2 amendments say "as part of commission of the crime" which seems more broad.

292 REP. PARKS: Right. Just to drive to the store to shoplift is not enough.

294 GREG CHAIMOV: If you took the stolen goods with you in your car, it would; if taken the next day, believes it still would be covered.

302 REP. PARKS: Confirms that a felony is now a mandatory suspension. Would a misdemeanor be a mandatory suspension in the bill as amended? Don't mind permissive suspensions as another tool for modifying conduct but now we're going to make every misdemeanor a mandatory suspension.

318 REP. MANNIX: No, bill doesn't make mandatory suspension for every misdemeanor. Page 3 of the -2 amendments is the operative language. There is a law in the books that addresses felony convictions with proof of material element involving operation of a motor vehicle. Instead we're going to say any felony or misdemeanor "as part of the commission of the crime." *If the judge determines that you used your motor vehicle as part of your commission of the crime, the judge may make that determination which is discretionary.

371 REP. JOHNSON: Suggests language "the court may determine" on page 1, line 7.

384 REP. MANNIX: That is close to the language that I referred to before. If we tie the two together then this becomes the operative language of the act; the second part only involves DMV's obligation when they get this documentation.

392 GREG CHAIMOV: Do you want to include the language "in its discretion..."

393 REP. MANNIX: "The court, in its discretion..." would probably be even clearer.

396 REP. PARKS: You mean, that it's appropriate that your license be suspended?

397 REP. MANNIX: Yes: "and the court in its discretion determines that operation of motor vehicle is part of the commission of the crime, and that suspension is appropriate.." (-2, page 1, lines 7-8).

402 REP. PARKS: I approve of that concept. I'd like it to be so that a judge 2 years from now can pick up that statute and understand that we're expecting him to use his independent judgement and, if appropriate, that he's the final word on the suspension. But I don't think there should be any discretion about determining; the judge should go ahead and find that a motor vehicle was used.

427 REP. MANNIX: Refers to Rep. Johnson's suggestion: Page 1, line 8--change "shall" to "may."

441 REP. BRIAN: Is this a current practice for felonies now--is it a "shall" or a "may" now?

TAPE 116, SIDE B

012 GREG CHAIMOV: Now, if there is a conviction for--a material element of which is the unauthorized use of a motor vehicle--then it's required to suspend the license.

016 REP. BRIAN: So the intent would be to broaden the existing laws two ways: (1) by adding misdemeanors; and (2) having a test be, instead of material element, just part of the commission.

019 REP. MANNIX: Yes. And we're actually limiting the law because we're no longer making it mandatory in certain instances. I've talked to DMV based on fiscal impact and their figures based on the revised bill is that we're not talking fiscal impact anymore.

024 REP. BRIAN: If we could finalize that language, I'd be happy to move the amendment.

028 GREG CHAIMOV: Giving the language changes for the -2 amendments (EXHIBIT B): -On page 1, line 8, delete the word "shall" and insert the word "may"

038 MOTION, REP. BRIAN: Moves -2's as amended to HB 2655.

040 No objection. Motion passes.

041 MOTION, REP. BRIAN: Moves HB 2655 as amended to the full committee do pass.

046 REP. JOHNSON: I think the courts need the tools for enforcement of criminal laws but as I understand it, we already have many people who are driving suspended already; we're just adding a whole new layer of illegal drivers out there. Once they're driving illegally, we put a huge burden on our criminal system.

055 REP. BAUM: There's not much chance of a bill's survival when we're moving it around this late in the session. That's why I'm not engaging in the debate.

065 VOTE: Motion

AYE: REP. BAUM, REP. BAUMAN, REP. BRIAN, REP. PARKS, REP. SUNSERI, CHAIR MILLER NO: REP. JOHNSON EXCUSED: REP. MASON

068 CHAIR MILLER: Rep. Mannix to carry the bill. Closes work session on HB 265 5. Adjourns at 2:55 p.m.

Transcribed by: Reviewed by:

Darcie Jackson

Office Manager

EXHIBIT LOG

A -Mannix Amendments to HB 2584 - Rep. Mannix - 17 pages B -HB 2665-2 Proposed Amendments - Staff - 13 pages