

House Committee on Judiciary June 4, 1991 - Page

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

June 4, 1991Hearing Room 357 1:30 p.m.Tapes 117 - 118

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

MEMBER EXCUSED: Rep. Del Parks

VISITING MEMBER:Sen. Joan Dukes

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

MEASURES HEARD:SB 32 PH/WS (Transf. of Distr. of Firearm Registration) SB 638 WS (Discharging Firearms from Vehicle) SB 194 WS (Eluding Police Officers on Foot) SB 930 PH (Trespassing of Hunters) HB 3508 PH (Police Interrogations)

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TAPE 117, SIDE A

004 CHAIR RANDY MILLER: Opens Subcommittee on Criminal Law and Corrections at 2:15 p.m.

SB 32 - PUBLIC HEARING Witnesses:Cindy Becker, Dept. of General Services

026 HOLLY ROBINSON: Summarizes SB 32. *Believes in HB 3470 the requirements for handgun and firearm registration were amended and the responsibility for printing the forms was given to the state printer. SB 32 intends to transfer that responsibility from the General Services to the state police.

037 CINDY BECKER, ADMINISTRATOR, STATE PRINTING DIVISION, DEPT. OF GENERAL SERVICES: Testifies in favor of SB 32 (EXHIBIT A).

SB 32 WORK SESSION

053 MOTION, REP. BAUMAN: Moves SB 32 to the full committee with a

do-pass recommendation.

055 VOTE: Motion

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

058 CHAIR MILLER: REP. BAUMAN to carry the bill. Closes work session on
SB 32 and opens a work session on SB 638.

SB 638 - WORK SESSION

087 MOTION, REP. BAUM: Moves the -A7 amendments (EXHIBIT B).

089 No objections. Motion passes.

091 MOTION, REP. BAUM: Moves to change language in the -A7 amendments
(Section 2, top of page 2, lines 1-2) to include shopping centers,
sports arenas, premises used in connection with public passenger
transportation, city or county playgrounds and any city or county office
buildings. Also change after line 8, page 2, inserting a new subsection
("d") to read: "Persons who are authorized to possess loaded firearms by
the officer or agency that controls the public building, playground or
park." Add subparagraph (3) after that to read: "Cities and counties
that regulate the possession of loaded firearms provided in this section
shall post notice of regulation in a conspicuous manner." Re-word line
16, page 2 so that any intentional discharge of a firearm within the
city limits of any city, or within a residential areas within any urban
growth boundaries, without having legal authority for such discharge,
will be a Class C felony, with certain exceptions that are listed below.
Delete the words "discharge of firearms" on line 20 and then delete "By"
from lines 21, 23, 25, and 28. Line 25, page 2, after the word
"firearms," put in the same designations now inserted on line 16
(blow-gun, bow and arrow...etc.). Delete Section 5, because it's
already covered in ORS 166 .370.

160 REP. BAUMAN: Concerned about this process of adoption. Objects to
amendments. Concerned that this bill is a pre-emption bill to the
drive-by shooting bill which she and her adjacent constituents need.
Would rather see SB 638 come through unamended or just amended with
regard to the drive-by shooting provision.

196 CHAIR MILLER: We're in the process of getting this bill ready for
approval by the full committee. At this point, it may contain both the
provisions that were in HB 2577 and SB 638-- essentially the thoughts
that came to us from the Senate. The Senate Committee may not be able
to get to HB 2577. *This needs to get through our committee in order for
them to have the opportunity to deal with the pre-emption issue; the
issues may get there together.

217 REP. BAUM: We have taken their drive-by shooting bill and given them
exactly what they should have gotten to begin with--not to be able to
discharge firearms outside the city limits.

*SB 638 allows cities and counties more latitude than HB 2577 did,
includes more areas.

238 CHAIR MILLER: We decided to combine the two concepts some time ago
but then gave them the option to deal with pre-emption in the Senate.
They may not get that chance.

248 REP. BAUMAN: Would characterize my "no" vote as support for the drive-by shooting bill, not as lack of support for pre-emption. I will object to the A-7's as amended.

262 VOTE: Motion to amend -A7 amendments passes.

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

270 REP. BRIAN: Thanks REP. BAUM for work on the amendments.

278 REP. BAUM: We're having this reviewed by certain interest groups and they seem to be comfortable with the concepts as they are--with the -A7 as amended.

284 REP. BAUMAN: The drive-by shooting bill is an important bill; would like to see the House have the opportunity to vote on it.

298 REP. MASON: I'm going to vote for the bill but I don't think it will do that much because I think it will pass the House floor, not concurred in the Senate, and then nothing will be done.

331 CHAIR MILLER: Closes work session on SB 638 and opens a work session on SB 194.

SB 194 - WORK SESSION

346 HOLLY ROBINSON: Summarizes SB 194. *Makes 2 changes to Oregon law regarding eluding a police officer; establishes in its present form a mandatory 2-day minimum for individuals convicted of eluding from a vehicle and adds in the provision making it a Class A misdemeanor to elude on foot. *House passed a similar version which had provisions making eluding a police officer felony. That bill is currently awaiting a hearing in Ways & Means due to an indeterminate fiscal impact. *Mentions conceptual amendments needing to be discussed.

363 REP. SUNSERI: Thinks SB 194 is important because police need to have something in order to pursue people who elude them on foot. *Regarding conceptual amendments--in response to REP. MASON's concern, we discussed dropping the 2-days but leaving it as a Class A misdemeanor. *Bill with amendments would be better than nothing.

395 MOTION, REP. SUNSERI: Moves to delete the bold language on lines 16-20.

425 No objections. Motion passes.

429 HOLLY ROBINSON: In HB 2841, the committee deleted the words "on foot" to allow the option so that if an individual exits the vehicle and gets on some other mode of transportation, the police officers are not limited to only people on foot.

TAPE 118, SIDE A

003 MOTION, REP. SUNSERI: Moves that the words "while on foot" on line 13 of the bill be deleted.

007 No objections. Motion passes.

011 MOTION, REP. SUNSERI: Moves SB 194 as amended to the full committee with a "do- pass" recommendation.

012 VOTE: Motion passes. Sunseri.

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

016 CHAIR MILLER: REP. SUNSERI to carry bill. Closes work session on SB 194 and opens a public hearing on SB 930.

SB 930 - PUBLIC HEARING Witnesses:Henry White, Astoria Kathy White, Astoria Sen. Joan Dukes, District 1.

022 HOLLY ROBINSON: Summarizes SB 930. *Prohibits hunting, fishing and trapping of wildlife by persons trespassing or in violation of ORS 164.245 to 164.270 and ORS 498.120. *Prohibits occupant of a motor vehicles from pointing a rifle or other firearm from a moving motor vehicle when hunting is lawful. *Points out that the new language states that no person can do this when the hunting of wildlife is lawful but with no indication of where that hunting may be lawful.

046 HENRY WHITE: Begins summarizing testimony in favor of SB 930 (EXHIBIT E). *Refers to submitted articles (EXHIBIT F).

069 REP. MASON: Asks if permission to enter onto property could be sold so that people could harvest the unwanted elk.

072 WHITE: Doesn't think so; can't say it wouldn't happen. Continues with testimony. *Opening day of a hunt nearby was on a school day when children were waiting for buses. *Certain rural areas in Oregon are becoming so populated that to allow people to come in and hunt on property is dangerous. *Safety is the main thing with this bill.

107 KATHY WHITE: Mentions that she was the mother in the article (EXHIBIT F) trying to explain to her 4 children what was going on 25 feet from their house when a bull elk was dying.

110 REP. BRIAN: Comments that his farm in Monmouth was continually aggravated by hunters out shooting pheasants; supports the bill.

121 REP. BAUM: Discusses his concern that some people will get hit with misdemeanors when they were actually shooting from outside the property.

140 HENRY WHITE: The person who owned the land where this incident took place was not home. *Even prior to this hunting taking place, people were rapidly entering and leaving the whole private property area; the police caught one but could not respond to the others because they were in and out so quick. *The fine does not stop them; the worth of their catch outweighs it. *They can trespass and be fined for that yet they can still keep the animal.

175 REP. MASON: Aren't you a little hung up on the "catch"?

176 HENRY WHITE: Refers to Carol G. Newman letter (EXHIBIT G)--this person tried to go through due process.

179 REP. MASON: Most sportsmen do not engage in hunting for the actual

meat.

183 KATHY WHITE: They go for the horns and the meat.

186 REP. MASON: Property owners tend to get a little empirical at times about the fact that it's their property and the game happens to be on their property.

199 HENRY WHITE: If you live in the city, people can't come in your backyard and hunt and discharge firearms; we live in the country and they can do that.

207 SENATOR JOAN DUKES, DISTRICT 1: Testifies in favor of SB 930. *These incidences are flagrant violations of the state law. *Interested in the issue of who gets the animal; are looking for disincentives with SB 930. *Hunting from a moving vehicle is already illegal but only if trigger is pulled; this bill states that, at least during hunting season, you could not drive down the road with a gun pointed out the window.

257 REP. BAUMAN: Asks if it is illegal to fire a firearm across land you don't own.

259 SENATOR DUKES: Across the street it is illegal, not across land.

262 REP. BAUMAN: It seems that it is legal to shoot across someone's property at an animal.

268 SENATOR DUKES: You can kill it but you can't get it.

272 REP. BAUMAN: Suggests enhancing crimes since the penalty for trespassing doesn't seem to be deterring the activity.

280 SENATOR DUKES: We started out with a Class C and we're now down to a Class A misdemeanor as a result of Senate Judiciary.

285 REP. BAUMAN: Is concerned about people getting shot on their property.

299 REP. JOHNSON: Wants to know where it says Class A misdemeanor. Cannot locate it. Says that pointing a gun out the window when a person is just riding with it is safe. Is it your intent to affect people who are just leaning their guns out the window instead of toward the driver?

328 SENATOR DUKES: No, but it would concern me that you were negotiating a vehicle while hanging onto a gun.

331 REP. JOHNSON: There is a possibility that passengers could be doing this.

333 SENATOR DUKES: This is only during hunting season; if you're pointing a gun out the window of a moving vehicle during hunting season then the presumption is that you are hunting.

340 REP. JOHNSON: Wonders about a gun on the floor of a vehicle with the end pointed out the window.

349 SENATOR DUKES: Clarifies that the bill's intent is that a person must be pointing at something.

360 CHAIR MILLER: Closes public hearing on SB 930 and opens a public

hearing on HB 3508.

HB 3508 - PUBLIC HEARING Witnesses: Bob Keyser, Oregon Council of Police Associations, Lake Oswego Doug Hoffman, Oregon State Police Officers Association Roger Morse, Portland Police Association Jerry Donnelly, City of Eugene Akin Blitz, Oregon State Sheriff's Association Valerie SalisB ury, League of Oregon Cities Steve Winegar, City of Tualatin David Fidanque, ACLU of Oregon

378 BOB KEYSER: Testifies in favor of HB 3508. *Introduced a similar bill last session as a Senate bill (Government Operations); we worked out a compromise and a bill passed out (House 55-0; Senate 28-2). It went to Governor's office and was vetoed.

401 CHAIR MILLER: Confirms with KEYSER that the bill was up for an override of the veto.

404 KEYSER: The vote was either 15-15 or 16-14. We've taken the same language that was in the final bill and have added one section--Section 12. *Section 10 was dealt with in another bill and probably should be taken out. *Have introduced this bill for the smaller agencies who do not have the benefit of collective bargaining because of their size.

TAPE 117, SIDE B

007 DOUG HOFFMAN, OREGON STATE POLICE OFFICERS ASSOCIATION: *Confirms that Section 10 has been addressed already and can be removed. *Summarizes testimony in favor of HB 3508 from Steve Beck (EXHIBIT K).

021 ROGER MORSE, PORTLAND POLICE ASSOCIATION: Gives testimony in favor of HB

350 8 (EXHIBIT L).

060 JERRY DONNELLY, CITY OF EUGENE: Testifies against HB 3508. *Bill would complexity as compared with what exists in the collective bargaining agreements. *Agreements cover issues of due process, just cause and confidentiality of personnel records. *City has existing policy which covers almost all the elements identified in this bill. *Primary concern--there is an attempt to exempt employees who are covered by collective bargaining agreements in Section 3, paragraph 3; it does not adequately account for the possibility of those employees who are not represented by collective bargaining agreements, creating a series of case decisions that will change the nature of what it means to be in procedural or substantive compliance with the provisions of the statute. *Employer will either have to continually re-bargain issues around these pieces of the law or face the possibility that the employee or the employee's representative is going to decide to file an unfair labor practice complaint rather than a grievance, alleging that the nature of the case law has changed the interpretation of the law. *Concerned how it will be processed--if there is no collective bargaining agreement, it is processed as an unfair labor practice; if there is a contract it is processed as a grievance. It is not clear what the arbitrator's rights are; there are a lot of non-attorney arbitrators who would be potentially reviewing these cases under collective bargaining agreements.

113 CHAIR MILLER: Apologizes to audience that SB 193 will not be heard at this meeting time-- there will not be enough time.

118 DONNELLY: Continues with concerns with HB 3508. *Section 8 deals with searches of lockers which parallels closely the City's policy on locker searches for administrative reasons; the collective bargaining agreement does not directly deal with that issue. *Fears that by setting up a statutory obligation that parallels something commonly dealt with in collective bargaining agreements, there will be massive litigations created for employers. *Bill makes no distinction between exempt and non-exempt personnel; would cover a massive amount of people who are outside the collective bargaining arena.

157 AKIN BLITZ, OREGON STATE SHERIFF'S ASSOCIATION and OREGON ASSOCIATION OF CHIEFS OF POLICE: Testifies against HB 3508 (EXHIBIT M).

320 VALERIE SALISBURY, LEAGUE OF OREGON CITIES: States that PAUL SNYDER, ASSOCIATION OF OREGON COUNTIES, expressed his opposition to HB 3508 before he left. *Endorses DONNELLY's comments.

328 STEVE WINEGAR, CITY OF TUALATIN: This issue belongs at the collective bargaining table--an issue related to employment relations.

343 BLITZ: Brings attention to the quotes of the Employee Relations Board on page 7 in the printed testimony (EXHIBIT M), that the issues are better left to the collective bargaining table.

353 DAVID FIDANQUE, ACLU OF OREGON: Briefly testifies against HB 3508. *Don't have problems with some of the portions of the bill that enhance due process for police officers--particularly Section 10. *Have major problems with Sections 11 and 12, exempting records relating to disciplinary proceedings from the public records act.

377 CHAIR MILLER: Adjourns Subcommittee meeting at 3:35 p.m.

Transcribed by:Reviewed by:

Darcie Jackson Office Manager

EXHIBIT LOG:

A -Testimony in favor of SB 32 - Cindy Becker - 1 page B -SB 638-A7 Proposed Amendments - Staff - 4 pages C -Letter from Valerie Salisbury, opposed to SB 638 - Submitted for the Record - 1 page D -Letter from Mayor Bud Clark, in favor of SB 638 - Submitted for the Record - 1 page E -Testimony in favor of SB 930 - Henry & Kathy White - 2 pages F -Articles Pertaining to SB 930 - Henry & Kathy White - 11 pages G -Letter in favor of SB 930 from Carol G. Newman - Henry & Kathy White - 1 page H -Letter in favor of SB 930 from Oregon Department of Fish and Wildlife - Submitted for the Record - 2 pages I -Statement from Susie Gerttula in favor of SB 930 - Submitted for the Record - 2 pages J -Record in support of SB 930 from Sen. Joyce Cohen - Submitted for the Record - 3 pages K -Statement in support of HB 3508 from Steve Beck - Doug Hoffman - 2 pages L -Statement in support of HB 3508 - Roger Morse - 5 pages M -Testimony and attachments against HB 3508 - Akin Blitz - 30 pages

