

Measures Heard HB 2187(VVS) HB 2203(VVS) HB 2214(11VS) HB 2255(WS) HB 2373(VVS)

HOUSE COMMITTEE ON JUDICIARY FULL COMMITTEE

January 25, 1991                      Hearing Room 357 1:00 p.m.                      Tapes 11-12  
MEMBERS PRESENT: Rep. Randy Miller, Chair Rep. Tom Mason, Vice Chair  
Rep. Judith Bauman Rep. Marie Bell Rep. Tom Brian Rep. Kelly Clark Rep.  
Rod Johnson Rep. Kevin Mannix Rep. Del Parks Rep. Ron Sunseri

MEMBERS EXCUSED: Rep. Baum Rep. Edmunson STAFF PRESENT: Greg  
Chaimov, Committee Counsel Holly Robinson, Committee Counsel Jeff Steve,  
Committee Assistant

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TAPE 11, SIDE A

004 CHAIR MILLER: Opens meeting at 1:00 P.M.

016 ROBINSON: Briefly discusses possible bills to be introduced. -LC 2204 establishes standards of responsibility for vaccine manufacturers and administers and procedures governing civil actions arising out of vaccine related injuries. -LC 2305 would require juvenile court orders requiring children to pay restitution to be docketed as civil judgments. -LC 1335 would allow stepparents to have standing in wrongful death proceedings if a step child for whom they cared for was killed. -LC 2431 authorizes police officers to require a urine test for persons arrested for DUII to determine the presence of controlled substances and other procedural indicators. House Committee on Judiciary January 25, 1991 - Page 2

-LC 2432 changes the definition of percent by weight of alcohol in the blood for how it is measured in DUII cases. -LC 2500 requires insurers to release certain information regarding officials, but otherwise provides that it would be exempt from disclosure. -LC 2240 would include certain judges in exemptions from certain lobbying regulations.

041 CHAIR MILLER: Introduction of bills in no way signifies your endorsement of the concept. It merely causes it to be introduced.

074 MOTION, REP. MASON: Motions to introduce LCs en banc.

085 VOTE: No objections. Motion passes. 090 MOTION, REP. MASON: Moves the following bills for rereference to other committees: -HB 2077 be rereferred to the Committee on Agriculture, Forestry and Natural Resources -HB 2060 be rereferred to the Committee on State and Federal Affairs -HB 2062 be rereferred to the Committee on State and Federal Affairs -HB 2211 be rereferred to the Committee on Business and Consumer Affairs -HB 2212 be rereferred to the Committee on Business and Consumer Affairs -HB 2216 be rereferred to the Committee on Business and Consumer Affairs -HB 2228 be rereferred to the Committee on Transportation -HB 2234 be rereferred to the Committee on Transportation -HB 2295 be rereferred to the Committee on Transportation -HB 2389 be rereferred to the Committee on Revenue 142 VOTE: No objection. Motion passes.

WORK SESSION ON HB 2254

156 CHAIMOV: Summarizes HB 2254. Deletes requirement that certain abandoned property escheat to state if not claimed within 25 year.

175 MOTION, REP. BRIAN: Moves HB 2254 to floor with "do pass"  
recommendation. 177 VOTE: 10-0

Aye: Bauman, Bell, Brian, Clark, Johnson, Mannix, Mason, Parks, Sunseri,  
Miller No: 0 Excused: Baum, Edmunson

Motion passes. HB 2254 moves to the floor with a "do pass"  
recommendation. Rep. Edmunson to carry.

WORK SESSION ON HB 2255

192 CHAIMOV: Summarizes HB 2255. Allows Adult and Family Services  
Division to convey real property acquired under its programs without  
action by Division of State Lands.

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203 MOTION, REP. BRIAN: Moves HB 2255 as amended to floor with a "do  
pass" recommendation. 205 VOTE: 10-0

Aye: Bauman, Bell, Brian, Clark, Johnson, Mannix, Mason, Parks, Sunseri,  
Miller No: 0 Excused: Baum, Edmunson

Motion passes. HB 2255 moves to floor with a "do pass" recommendation.  
Rep. Johnson to carry.

WORK SESSION ON HB 2187

228 MOTION, REP. CLARK: Moves HB 2187 to Family Subcommittee.

230 VOTE: No objections. So ordered.

WORK SESSION ON HB 2203

233 CHAIMOV: Summarizes HB 2203. HB 2203 expands the definition of  
"contraband," which currently includes items which incarcerated and  
other persons are prohibited from obtaining or possessing and which  
would endanger the safety of the institution or any person in it, to  
also include controlled substances and drug paraphernalia as defined in  
the Uniform Controlled Substances Act. "Money" is deleted as a  
prohibited item. 248 MOTION, REP. MASON: Moves HB 2203 as amended to  
the floor with a "do pass" recommendation. 251 REP. BRIAN: Is that  
with amendments dash 1 and dash 2? 253 CHAIR MILLER: That is correct.  
255 VOTE: Aye: Bauman, Bell, Brian, Clark, Johnson, Mannix, Mason,  
Parks, Sunseri, Miller No: 0 Excused: Baum, Edmunson Motion passes. HB  
2203 as amended moves to floor with a "do pass" recommendation. Rep.  
Mason to carry.

WORK SESSION ON HB 2373

266 CHAIMOV: Summarizes HB 2373. HB 2373 authorizes courts to fine  
defendants who fail to appear for their hearings on infractions and  
violations. HB 2373 extends that procedure to other types of infractions  
such as wildlife and boating. House Committee on Judiciary January 25,  
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296 REP. PARKS: At the time we took testimony, there was a representation that, what is in essence a criminal fine or forfeiture, there was a method to set aside the fine as a default. Is there methodology in the bill for a person who has a reasonable excuse for missing the hearing to have that fine set aside?

315 CHAIMOV: There is nothing in the bill. There is nothing in the rest of the criminal code that expressly provides that when a defendant fails to appear for an infraction hearing having a reasonable excuse that the fine be set aside. Traditionally, judges who handle these types of cases have the authority to grant relief under appropriate circumstances, however, they are seldom presented with circumstances that are appropriate.

329 MOTION, REP. PARKS: Moves HB 2373 be rereferred to Subcommittee on Crime and Corrections to incorporate this provision. 343 REP. PARKS: I think it is important that people are guaranteed the opportunity to be heard when they have a reasonable excuse for missing the hearing. 349MOTION, REP. MASON: Moves to amend Rep. Parks' motion to include intent of bill in the judicial record. The intent is that the courts have had, do have and will always have, the inherent power to set aside these fines. 364 REP. PARKS: Will that appear in the statute or will that appear in the committee notes? 367 REP. MASON: That will be in the Committee Record. This should be stated as legislative intent. 382 REP. PARKS: I understand, but there is nobody in the world that looks up legislative intent. This is the kind of court that most people deal with and I think it is important that this provision be included in the statute. 395 CHAIR MILLER: Objects to Rep. Parks motion to rerefer. You are going to unsolve the problem we sought to solve. We are trying to expedite the process when people fail to appear for their hearings. 60% of the infraction defendants in Multnomah County do not appear. Setting up an elaborate appeals process of fines of this kind will bring us back into the same situation that we are trying to get away from. 429REP. BELL: It is the right of an individual to represent themselves. There should be something in writing that tells them about this process. Perhaps we could include the provision, "Upon written appeal the presiding judge has the discretion of waiving the fine. 446REP. MANNIX: None of this is necessary. Under the statutory scheme the judges already have this authority. If the judge fails to grant relief then the defendant can go through the standard appeals process as having appeared. 463REP. CLARK: I would have included some specific standards as reason why someone might have a fine set aside. I did not consider it important at the time. House Committee on Judiciary January 25, 1991 - Page 5 TAPE 12, SIDE A 004 REP. BAUMAN: As with any other legal matter, when a person appears they should have their argument prepared then, not send it in at another date. For the record, I don't know if there are 100,000 people with traffic infractions who apply for a hearing in Multnomah County, or if there are 100,000 traffic infractions issued as citations annually in the County. This makes a big difference. 60% of defendants who send their money in and don't appear is much different than 60% of that portion of the 100,000 who choose not to send in the money and request a hearing. I ask that the State Court Administrator provide this information to the Committee. ., 035 REP. MASON: Clarifies motion to amend Rep. Park's motion from rereferral to the Criminal Law Subcommittee to an official expression of legislative intent that the courts have always had the power to set aside these fines.

050 MOTION, REP. MASON: Moves to amend Rep. Parks' motion to include intent of bill in the judicial record. The intent is that the courts

have had, do have and will always have, the inherent power to set aside these fines. 061ROBINSON: If the motion fails then Parks motion is on the floor. 062 VOTE: 6-4 Aye: Brian, Clark, Johnson, Mannix, Mason, Miller No: Bauman, Bell, Parks, Sunseri Excused: Baum, Edmunson 072 ROBINSON: You need a quorum of the full committee for a motion of this committee to carry. I am not sure that the motion passes.

084 REP. BRIAN: What is done now when someone fails to appear, or who has the excuse of a "flat tire?" 098 CHAIMOV: Under current law, the judge issues an arrest warrant for the person who failed to appear and brings that person into court. Even under the bill as passed, the failure to pay the fine for a boating or wildlife infraction would not trigger a Driving While Suspended. That is only for the traffic infractions.

105 REP. BRIAN: Right now there is a provision in law for a defendant to raise their objection or voice their excuse. Does that same provision still exist with regard to the placement of a fine by a judge? 114 CHAIMOV: The question is whether there is a procedure in existence today for a court to set aside a fine imposed for an infraction. Yes. 120 REP. BRIAN: If we go to the fine methodology as in HB 2373 that remedy to the accused is still there.

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122 CHAIMOV: Yes. The court retains the inherent power to set aside the fine and hold a hearing.

123 REP. BRIAN: Rep. Mason's amendment would only emphasize that that is our continued intent.

124 REP. SUNSERI: Is it true that a person has the right to a remedy in this?

129 CHAIMOV: Under the Court's inherent power it can decide to set aside the fine and hold a hearing at the appropriate request of a defendant.

132 VOTE, REP. SUNSERI: Changes his vote to aye. Count is now 7-3.

157 REP. JOHNSON: The only question we have left is whether a defendant who misses a date will come and try to exercise his right to get the judge to change his mind. Those who are sincere will call in to the court. Those who are not will not call.

177 MOTION, REP. MASON (See above) 177 VOTE: 9-1

Aye: Bauman, Bell, Brian, Clark, Johnson, Mannix, Mason, Sunseri, Chair Miller No: Parks

Mason motion passes.

180 REP. BAUMAN: Changes vote to No on HB 2373 as amended. Serves notice of a possible minority report. Changes vote back to aye.

185 MOTION, REP. MANNIX: Moves HB 2373, unamended, to floor with a

"do pass" recommendation. 197 VOTE: 8-2

Aye: Bell, Brian, Clark, Johnson, Mannix, Mason, Sunseri, Miller No:  
Bauman, Parks

Motion passes. HB 2373 passes to floor with a "do pass" recommendation.  
Rep. Mannix to carry.

204 CHAIR MILLER: Adjourns Full Committee.

FAMILY JUSTICE SUBCOMMITTEE (See Also Family Justice Minutes 1/25/91)

212 CHAIR CLARK: Summarizes HB 2187. This is a bill to bring Oregon Student Records Law in compliance with federal law for the purposes of funding. Everything up to line 37 on page 2 of the Bill is basically mandated by the federal government. The last sentence of the Bill was inserted in an attempt to prevent the Oregon Student Lobby from opposing the Bill.

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231 MOTION, REP. SUNSERI: Move that after the word "student" on line 38 we insert "under 21 years of age." Parents who are providing education for these children deserve to have access to those records up to that age. 363VOTE: 5-2 Aye: Bauman, Bell, Mannix, Parks, Sunseri No: Mason, Clark

Motion passes. . . . 373 REP. BAUMAN: I suggest that we move with a conceptual amendment that the state board may authorize disclosure of information to any person financially responsible for any student.

390 REP. PARKS: Moves HB 2187 to full committee with a "do pass."

402 REP. MANNIX: Thinks "under" should be changed to "over" 21 years.

404 REP. SUNSERI: Meant to say "over."

TAPE 11, SIDE B

054 MOTION, REP. MANNIX: Moves to amend HB 2187 to delete the words from the Sensari Motion and insert instead "21 years of age or older" after the words "dependent student." 062REP. BAUMAN: Votes no on Mannix Amendment. 070 VOTE: 6-1

Aye: Bell, Mannix, Mason, Parks, Sunseri, Clark No: Bauman

Motion passes.

073 MOTION, REP. MANNIX: Moves HB 2187 as amended to Full Committee with a "do pass" recommendation. 077 REP. BAUMAN: I think there are some circumstances where parents of dependent students are not the one's paying the bill. The student may be dependent without being dependent on the parent. In fact, there are some parents who's interest and involvement for children even younger than that is not necessarily positive. Therefore, I will be opposing the bill. 081 VOTE: 6-1 Aye:

