

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

February 15, 1991Hearing Room 357 1:15 p.m.Tapes 19 - 20

MEMBERS PRESENT:Rep. Randy Miller, Chair Rep. Tom Mason, Vice Chair
Rep. Ray Baum Rep. Judith Bauman Rep. Marie Bell Rep. Tom Brian Rep.
Kelly Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix Rep.
Del Parks Rep. Ron Sunseri

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

MEASURES HB 2260 - Appointment of Interpreter, WS
CONSIDERED: HB 2445 - Spousal Support, WS HB 2202 - Inmate Fund,
WS HB 2056- Driving Privileges, WS HB 2071 - Discrimination, WS

INTRODUCTION LC 3163 - Criminal Procedure AS POSSIBLE BILL:LC
1653 - Video Lottery Games LC 261-2 - Equine Activities LC 2302 -
Relating to Juveniles LC 0878 - Relating to Juveniles LC 2499 - Relating
to Crime LC 2502 - Insurance Fraud LC 2257 - Criminal Procedures LC 2260
- Criminal Procedures LC 2671 - Corrections/Appropriating money LC 2702
- Law Enforcement LC 2707 - Service of Summons LC 2205 - Garnishment LC
2704 - Service Fees LC 2705 - Service of Summons LC 3048 - Antitrust
Laws LC 1283 - Assault LC 1227 - Commercial Paper LC 1775 - Debt
Collection Practices LC 1774 - Debt Collection Practices LC 3151 -
Driving Privileges

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003 REPRESENTATIVE MILLER, CHAIR: Calls the meeting to order 1:15 p.m.
Announces Full Committee meeting on Monday at 3:00 p.m. Full committee
meeting on February 28 and no meetings on March 1.

WORK SESSION ON HB 2445

044 HOLLY ROBINSON: Discusses the bill from the Family Justice
Subcommittee. This bill allows the court to reinstate spousal support
under certain circumstances.

054 CHAIR MILLER: Calls for a discussion of the bill.

055 REP. PARKS: Will file a minority report. Discusses what the bill
allows. This does not set any standards for the judge to go on with
regard to awards. Not a very well conceived piece of legislation.

106 REP. MASON: Supports the bill. Refers to testimony of Paul Saucy,
2-1-1991. This was a traditional equity proceeding and the petitioner

had to come in with 'clean hands'. There are certain standards that do apply and this is not a freebe. Meant to cover the destitute situation due to no fault of her own.

138 CHAIR MILLER: Calls for further discussion.

140 REP. BELL: This bill gives discretionary power of judges to open cases again. This bill states this can only happen within the original time period of the original decree. Supports the bill.

148 MOTOIN:REP. MANNIX: Moves the bill to the floor with a do pass recommendation.

CHAIR MILLER: Rep. Mannix moves HB 2445 to the House floor with a do pass recommendation. Further discussion.

153 REP. JOHNSON: Sub 2 is a little ambiguous. It does not specifically state the new reinstated order can not extend beyond the time frame of the original order.

163 REP. CLARK: No. It is reinstatement of the original support obligation. Under current law, a court can only enter an order at the time of the dissolution. If it is not done then, the authority to enter an award of spousal support is lost.

178 CHAIR MILLER: Calls for further discussion.

172 REP. BAUM: This has potential for harm or good in the bill.

REP. CLARK: Comments on testimony before the subcommittee.

REP. BAUM: This is making a change that will be felt by the courts. Attorneys will be charging attorneys fees for this procedure. Ought to be careful about change the playing field like this. Mind is not made up.

193 CHAIR MILLER: Has thought about this issue for a good deal of time and believes the relationship be terminated in the dissolution. This invites a lot of problems.

208 REP. MANNIX: Discusses marriage and dissolution. Dealing with a good bill here.

238 REP. BAUMAN: Comments on points made by Rep. Mannix and Chair Miller. Concern is the committee will travel in a direction not worthy of the committee. Discusses stereo-types of women in this regard.

283 REP. SUNSERI: This bill does not create new benefits. A judge is not going to order a new amount exceeding original award.

294 REP. EDMUNSON: Began firmly opposed when the subcommittee heard this bill. The only probable, realistic situation where this law would come into effect is where the spouse is awarded supported at dissolution and this spouse tries to go out into the work place to try to make it on her own and finds out she cannot make it. This allows the support to come back. This law says it is okay to go out and try to improve yourself otherwise we are saying to people don't even try.

323 REP. MASON: Discusses Rep Edmunson's hypothetical situation

presented. It muddies the waters.

340 REP. CLARK: Only get spousal support if the court determines at the outset it was a long term marriage. Rep. Edmunson was saying the receiving spouse is going out and getting employment and this may cause a support termination.

REP. MASON: What is your view of that situation?

361 CHAIR MILLER: Will take a couple more.

REP. MANNIX: Believes the clarification would be if someone came in for termination of support and the order has assumed the person is unemployable. The incentive is to maintain some support under current law because there is no way to reinstate it. This would allow some finality in some circumstances because support can be salvageable at some point.

387 REP. PARKS: There are many situations this might apply to and many circumstances. It is an invitation for a judge to buy basic equitable principles. Discusses equitable principles. This bill means something different to every person.

411 REP. BELL: It seems decisions are made on the fact that "this is a major change in the way we do things" or "it has been done this way for a great deal of time." Pleads not to use that as part of reasoning. The fact it has been done that way for a long time is not a valid reason.

425 CHAIR MILLER: Let's wrap it up.

REP. MASON: Still going to vote for it but somewhere down the line were are going to have to clarify this.

TAPE 20, SIDE A

024 REP. MASON: Continues comments on the bill. Conception of the bill was this was some circumstance beyond her control that occurred after the termination and not just the fact that she got a good job and lost it later. That is not the proper application of the bill.

031 REP. CLARK: Moves for the question.

033 CHAIR MILLER: The question has been called for. Clerk will call the roll.

COMMITTEE ASSISTANT: Roll call vote:

Rep. Baum: Nay Rep. Bauman: Aye Rep. Bell: Aye Rep. Brian: Aye Rep. Clark: Aye Rep. Edmunson: Aye Rep. Johnson: Nay Rep. Mannix: Aye Rep. Mason: Aye Rep. Parks: Nay Rep. Sunseri: Aye Chair Miller: Nay

CHAIR MILLER: HB 2445, receiving the Constitutional majority is passed to the House floor with a do pass recommendation. Asks Rep. Clark to carry.

REP. BAUM: Reserves the right to, upon further consideration, change mind on vote on the floor.

WORK SESSION ON HB 2202

048 HOLLY ROBINSON: Gives overview of bill. Allows the Dept. of Corrections to use money from canteens, telephone, vending machines, etc. to benefit the general inmate population and enhance inmate activities and exercise programs. Out of Criminal Subcommittee with a do pass recommendation. Subcommittee discussed a referral to Ways and Means.

053 CHAIR MILLER: Calls for discussion.

054 MOTION:REP. BRIAN: Moves technical amendment to refer HB 2202 to Ways and Means Committee with a do pass.

CHAIR MILLER: Rep. Brian moves the amendment to refer HB 2202 to Ways and Means.

REP. MANNIX: Asks if the referral is necessary since this is a separate account, self funding account?

063 REP. BRIAN: The revenue generated is over \$250 million. The funds have been used for recreational purposes. Emphasizes the size and scope of this fund was not fully understood by the Administration of the Correction Division. Rules and accounting procedures are being put into place. Mr. Purse of the Division supports the referral. The Director has suggested taking some of this fund and applying it to educational programs within the prisons which would require Ways and Means oversight.

083 REP. MANNIX: Answers question.

084 CHAIR MILLER: The motion is to send to the floor with a referral to Ways and Means. Can send with or without a recommendation.

REP. BRIAN: The motion was to refer it to Ways and Means not to the floor.

092 REP. BAUM: With a do pass recommendation?

REP. BRIAN: Motion would be to add to referred with do pass recommendation.

095 REP. BAUMAN: Procedural question. A bill can go from this committee directly to Ways and Means without going to the floor and then come to the floor from them with their do pass recommendation.

REP. BRIAN: That was intent. The committee would indicate approval of the language.

REP. SUNSERI: Believes this amount will never see its way back to the prisons if sent to Ways and Means. Concerned about this and ability to continually fund the recreation. Might want to re-think sending it down.

123 CHAIR MILLER: Would recommend and fully expect that members of this committee to communicate those types of concerns to Ways and Means members.

127 REP. BAUMAN: There is a policy that extends to expenditures of this amount of money in terms of process. Believes we are all on the record with the amount of money and accurate testimony from the Director. If

don't send it, will need to explain why this program is held above every other program with this size expenditure.

147 REP. BRIAN: Mr. Purse supports referral to Ways and Means.

154 REP. MASON: Discusses Ways and Means. Rep. Sunseri's point is well taken.

171 CHAIR MILLER: Asks for roll call vote:

VOTE:COMMITTEE ASSISTANT: Roll call vote:

Rep. Baum: Aye Rep. Bauman: Aye Rep. Bell: Aye Rep. Brian: Aye Rep. Clark: Aye Rep. Edmunson: Aye Rep. Johnson: Aye Rep. Mannix: Aye Rep. Mason: Aye Rep. Parks: Aye Rep. Sunseri: Nay Chair Miller: Aye.

CHAIR MILLER: The bill is referred to Ways and Means.

WORK SESSION ON HB 2056

183 HOLLY ROBINSON: This bill comes from the Family Subcommittee. This bill will delete provisions that makes person previously committed or admitted to state institutions for persons with mental illness or mental retardation automatically ineligible for a drivers license.

194 MOTION:REP. MANNIX: Moves HB 2056 to the House floor with do pass recommendation.

CHAIR MILLER: Rep. Mannix moves HB 2056 to the floor with a do pass recommendation. Asks for discussion. Calls for roll call vote.

VOTE:COMMITTEE ASSISTANT: Roll call vote.

Rep. Baum: Aye Rep. Bauman: Aye Rep. Bell: Aye Rep. Brian: Aye Rep. Clark: Excused Rep. Edmunson: Aye Rep. Johnson: Aye Rep. Mannix: Aye Rep. Mason: Aye Rep. Parks: Aye Rep. Sunseri: Aye Chair Miller: Aye.

CHAIR MILLER: HB 2056 is passed to the floor. Rep. Clark will carry the bill.

WORK SESSION ON HB 2071

210 HOLLY ROBINSON: Discusses bill. This is from the Family Subcommittee. This bill will prohibit discrimination based on handicap in state-financed programs. Creates cause of action or violation of prohibition. Mirrors federal provisions. The amendments add federal definition of disability, adds provision to obtain injunctive relief, and removes ability to sue for punitive damages. (See Exhibit A for amendments).

240 CHAIR MILLER: Discusses remarks.

HOLLY ROBINSON: It was relatively clear what the intent was. Believes use of words "benefits" as being used is taken out of context. There is no concern. It does not apply to insurance benefits.

249 MOTION:REP. MANNIX: Moves HB 2071 as amended to floor with do pass recommendation.

CHAIR MILLER: Rep. Mannix moves HB 2071 to the House floor with a do

pass recommendation.

REP. MANNIX: To the motion. There was an extensive discussion on this bill and the amendment.

264 REP. PARKS: Asks for explanation of the fiscal impact statement.

266 REP. MANNIX: Indeterminate, no substantial fiscal impact or cannot find any impact over \$50,000.

274 REP. PARKS: Fiscal Impact statement discusses the fact disability commission estimate the state wide cost to provide accommodations would be \$40,350,000.

277 REP. MANNIX: Those are changes that will be required to met federal requirements. This law will not do anything to add to the requirements.

287 REP. JOHNSON: Federal law extends now to all government agencies that will be covered by this. It says it will cover anyone who is financed in whole or in part by monies appropriated by legislative assembly. This would include some things that are not also supported by federal funds. Are we not extending these disability statutes somewhat?

296 REP. MANNIX: There will be a state remedy available so people do not have to go to federal court.

306 HOLLY ROBINSON: This issue will be addressed in the next bill the committee will be hearing. There are certain programs in this state that do not have to comply and do not receive federal funds and, for example, are not subject to this kind of a provision, such as the court system.

REP. JOHNSON: It is extending it in that extent.

HOLLY ROBINSON: Correct.

REP. JOHNSON: We are, yet again, having things crammed down our throats by the federal government. The language of the bill says that you cannot discriminate solely because of the disability. Does that mean that someone who is otherwise qualified? Discusses an example.

336 REP. BELL: Comments on Rep. Johnson's example.

347 REP. EDMUNSON: That question was asked and there are legal forms of discrimination. Discusses examples.

356 HOLLY ROBINSON: Also points out that Oregon has adopted legislative policy which prohibits discrimination against persons with disabilities. This bill creates a sanction piece.

CHAIR MILLER: Calls for further discussion. Calls for vote.

VOTE: COMMITTEE ASSISTANT: Roll call vote.

Rep. Baum: Aye Rep. Bauman: Aye Rep. Bell: Aye Rep. Brian: Aye Rep. Clark: Aye Rep. Edmunson: Aye Rep. Johnson: Aye Rep. Mannix: Aye Rep. Mason: Aye Rep. Parks: Aye Rep. Sunseri: Aye Chair Miller: Aye.

CHAIR MILLER: HB 2071 is passed to the floor. Rep. Bell will carry the bill.

WORK SESSION ON HB 2260

377 HOLLY ROBINSON: This bill requires appointment of qualified interpreters in civil, criminal, and contested case proceedings for a party or a witness. Conforms that statutes with existing federal requirements and case law regarding the appointment and payment of interpreters for both hearing impaired and non-English speaking parties in court and contested case proceedings. In addition, the bill provides the necessary authority for the court to appoint, on its own motion, an impartial interpreter for proceedings and secure payment for those services. The amendments clarify the manner for fair compensation and adds "assistive communicative devices" to appropriation clause.

400 CHAIR MILLER: Ask for a motion.

403 MOTION:REP. MANNIX: Moves HB 2260 to referral to Ways and Means as amended with a do pass recommendation.

410 CHAIR MILLER: Rep. Mannix moves HB 2260 to be referred to Ways and Means, as amended. Calls for further discussion. Calls for vote.

VOTE:COMMITTEE ASSISTANT: Roll call vote.

Rep. Baum: Aye Rep. Bauman: Aye Rep. Bell: Aye Rep. Brian: Aye Rep. Clark: Aye Rep. Edmunson: Aye Rep. Johnson: Aye Rep. Mannix: Aye Rep. Mason: Aye Rep. Parks: Aye Rep. Sunseri: Aye Chair Miller: Aye.

CHAIR MILLER: HB 2260 A-eng. is referred to Ways and Means committee.

INTRODUCTION OF LC DRAFTS

016 REP. MASON: Moves that the following LC drafts be introduced en banc. LC 1653, 261-2, 230 2, 0878, 2499, 2502, 2257, 2260, 2671, 2702, 2707, 2205, 2704, 2705, 304 8, 1283, 1227, 177 5, 1774, 3151, and 3163. As outlined on the agenda.

CHAIR MILLER: Is there discussion of the motion. Is there objection to the motion. Hearing none, these bills are introduced. So ordered.

TAPE 19, SIDE B

025 REP. BAUMAN: Asks a procedure question. Curious about introducing a committee bill in concept regarding video arrangement. ORS Chapter 135. Discusses this procedure.

038 CHAIR MILLER: Have until Monday for introduction.

043 REP. BAUMAN: Can the committee introduce a bill in concept?

HOLLY ROBINSON: It has been requested that Full Committee meet at 3:00 on Monday. Will be able to hand amend LC drafts. Have something that will accommodate your request.

057 CHAIR MILLER: Adjourns the meeting at 2:15 p.m.

Submitted by: Reviewed by:

Kathy Neely David Harrell Assistant Office Manager

EXHIBIT LOG:

A - Amendment to HB 2071 - 1 page B - Amendment to HB 2260 -
1 page