

Conference Committee on HB 2033 June 27, 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.

CONFERENCE COMMITTEE ON HB 2033

June 27, 1991Hearing Room E 7:30 a.m.Tapes 1 - 2

SENATE MEMBERS PRESENT: Sen. J Bunn Sen. Cohen Sen. Shoemaker

HOUSE MEMBERS PRESENT: Rep. Calouri, Chair Rep. Baum Rep. Brian Rep. Mannix

STAFF PRESENT: Greg Chaimov, Committee Counsel Kimberly Burt, Committee Assistant

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TAPE 1, SIDE A

005 CHAIR CALOURI: Calls the conference committee to order. (7:35 a.m.)

GREG CHAIMOV, HOUSE COMMITTEE COUNSEL: HB 2033 allows District Attorneys to serve as forfeiture counsel and also to be involved in settlement negotiations of both forfeiture cases and the criminal prosecutions.

The bill came back from the Senate with a provision that increases the threshold for seizing property for forfeiture from "reasonable suspicion" to "probable cause" and also added in the provisions of HB 2028.

HB 2028 had a substantial amount of debate over whether or not to allow drug dealers to get their property back pending the forfeiture proceeding without having to establish an affirmative defense and it was the house's decision to not allow such action unless an affirmative defense had been established in an expedited hearing.

024 CHAIMOV: Submits informative material, (EXHIBIT A).

The Senate didn't take action on HB 2032 which would have limited what cities and counties could have used forfeiture proceeds for.

035 CHAIR CALOURI: The concept of having the DA's act as forfeiture

counsel is fine.

The next change increases the threshold; that was something that hadn't been contemplated in the house.

050 CHAIMOV: My understanding is that the probable cause standard was something that the house could live with if the Senate were to recede from it's position on the next change.

CHAIR CALOURI: The next change deals with returning property; this deals with businesses and it wasn't the intent of the interim committee to give back autos or other kinds of properties.

080 SEN. BUNN: This is inconsistent; if it applies to businesses it should apply to individuals.

CHAIR CALOURI: We are talking about an individual's business; in many cases it is a restaurant.

The work of the interim committee centered largely around businesses.

155 CHAIR CALOURI: Section 4 is HB 2028?

CHAIMOV: Without the House amendments.

180 PETE SHEPARD, DEPARTMENT OF JUSTICE, (DOJ): The provision added by the Senate appears on page 4, section 4, lines 10 & 11.

DAVE FIDANQUE, ACLU OF OREGON: Section 6 was added in the House and retained by the Senate; HB 2028 as passed gave two options to a claimant, appointment of a receiver or offering an affirmative defense.

HB 2033-B doesn't require the making of an affirmative defense; it allows that to be offered, but also allows a claimant to seek interim relief if they can satisfy the judge that the property isn't going to be disposed of or harmed during the pendency of the proceeding.

The key issue is should there be an option of returning the property with appropriate conditions, even if a person doesn't make an affirmative defense.

217 FIDANQUE: There is the possibility of the court finding that the person hasn't met the burden of showing an affirmative defense and the concern is that the court might still return the property in those circumstances and we believe that is a slight possibility.

The oversight committee continues over the next interim and as the bill is due to sunset in 1993.

240 SHEPARD: Our concern is that under the bill a person who makes an effort at demonstrating affirmative defense but fails to persuade the court can still get their property back and I disagree with Mr. Fidanque's judgment about the probabilities of such an order.

It has been our position that HB 2028 as passed by the House does provide the people that the oversight committee was concerned about with rapid access to the court to establish their affirmative defense.

275 SEN. BUNN: Is a court required to forfeit?

SHEPARD: They are required.

REP. MANNIX: There is a legitimate concern that someone may not have been able to establish affirmative defense and wants to recover property and on the other side, there is a legitimate concern that we may be dealing with bad people who are going to abscond with their property and are using this as a way to get their property back.

On lines 10 & 11 of page 4, we could add "if the court finds by a preponderance of the evidence that it is reasonably probable that the property will remain available for forfeiture at the completion of the proceedings and that it is reasonably probable that the petitioner will ultimately prevail in the proceedings".

320 CHAIR CALOURI: The fourth element is the question about the proceeds going to local governments; this clarifies the disposition of those proceeds and I think it equates cities to counties.

The law in the past has singled out that counties shall use it for public safety purposes, law enforcement related purposes or criminal justice including but not limited to crime prevention, intervention, enforcement and prosecution.

CHAIMOV: Does Mr. Fidanque oppose that?

FIDANQUE: We do oppose that bill.

365 SEN. COHEN: I feel it is inappropriate to target the funds to law enforcement so I will oppose that.

CHAIR CALOURI: It is consistency and I feel strongly about that; I am open to additions in the various purposes but there should be some equality in the two units of government.

REP. MANNIX: We left out crime prevention and intervention; if we don't deal with the subject there are counties left with restrictions.

I would prefer a broad range of criminal justice services covered as some of the best programs are the safety programs for kids, safety programs in regards to not just drugs, but sex issues, theft issues and home safety issues.

I would suggest the language on lines 17, 18 & 19.

CHAIR CALOURI: The addition of the broader language and the inclusion of cities would be acceptable?

REP. MANNIX: That way cities would be limited and currently they aren't.

461 SEN. SHOEMAKER: If we make the changes suggested so that the proceeds would go to general public safety purposes of whatever political subdivision has jurisdiction, would there be any further need for sub paragraph "D" which provides that a city would provide a portion of it's proceeds to the county for prosecution?

CHAIR CALOURI: The counties do some work for the cities so it was fair to give them some, but you are probably right as that won't be change by this.

TAPE 2, SIDE A

050 SEN. COHEN: Sub "D"; we need to see if there is another place in the forfeiture statutes where the intergovernmental agreements are called for.

REP. BRIAN: I agree; in the 1989 session we clarified that the parties involved had a right to enter into the agreements for the costs of prosecuting and the forfeiture process itself.

SHEPARD: It is the only way counties can, under the present statute, require cities to contribute to additional costs that may be generated by forfeiture.

FIDANQUE: The provisions about the funding for cities and counties was a fragile compromise from the 1989 session.

115 SEN. SHOEMAKER: "Public safety purposes including but not limited to.." would take care of that.

SEN. BUNN: This will be the same for cities and counties?

CHAIR CALOURI: Yes.

135 SEN. SHOEMAKER: Sub D; on line 24 it says "a portion of the proceeds for prosecution"; what if we took that out so the city has an incentive to be aggressive about it?

REP. MANNIX: I would concur.

SEN. COHEN: The counties will be in a money making position on this; if you don't specify that it is for the prosecution services.

195 CHAIR CALOURI: Rep. mannix's suggestion of additions to sub "B" under 2, section 4, page 4?

SEN. BUNN: If we need more clarification or limits, section 6, is the place to deal with that, but I think we have enough provisions to protect.

This is at the discretion of the court and I don't think that we are going to create a problem with this, but if we do we'll look at it in two years.

REP. MANNIX: Section 6 is what the court does after it decides to return the property, it doesn't establish standards the courts should follow in deciding whether or not to return the property.

230 SHEPARD: Even with those standards shifted to section 4, there are no substantive standards there to tell the court how to decide whether or not this the property should be returned to a drug dealer even though the drug dealer has tried and failed to demonstrate to the court that they have an affirmative defense.

CHAIMOV: Wouldn't it be possible for the claimant to make a threshold showing that there was something wrong with what the seizing agency did?

SHEPARD: A claimant could defeat a forfeiture case by filing a motion to suppress causing evidence to be excluded; if this were changed to provide that that is the only other argument the claimant could make we

could make some progress, but the difficulty is that are no standards.

254 REP. MANNIX: I have no problem with having the judges in this state making equitable decisions when we give them something; we are giving them an evidentiary standard and preponderance of the evidence.

There are two substantive standards; that it is reasonably probable that the property will remain available for forfeiture at the completion of the proceedings and that it is reasonably probable that the petitioner will ultimately prevail.

SEN. SHOEMAKER: That puts the burden on the defendant to make their case before they need to.

REP. MANNIX: Reasonable possibility of prevailing?

SEN. SHOEMAKER: That's better.

FIDANQUE: A problem with the civil forfeiture process is that all the "cards are in the hands of the government" and I believe Rep. Mannix would like to leave open the possibility that the court can order equitable relief when the court is convinced it can be done without damage.

REP. MANNIX: A "reasonable possibility"?

SEN. COHEN: That is better.

317 MOTION: CHAIR CALOURI moves that the agreed upon changes will be concurred on; DA's acting as forfeiture, increased thresholds, changes to wording on page 4, line 11 and the addition of the "C" & "D" elements of what is currently found under 2032 as originally proposed.

SEN. SHOEMAKER: I think that Rep. Mannix should read the addition.

333 REP. MANNIX: After "proceedings" on line 11, page 4, "If the court finds, by a preponderance of the evidence, that it is reasonably probable that the property will remain available for forfeiture at the completion of the proceedings and that there is a reasonable possibility that the petitioner will ultimately prevail in the proceedings".

SEN. COHEN: Reasonably probable is unworkable.

360 INGRID SWENSEN, COUNSEL, SENATE JUDICIARY: I have never encountered "reasonably probable"; I think it would be confusing terminology for the courts.

REP. MANNIX: I have no problem saying "probable" and "reasonable possibility".

SEN. COHEN: If that is the only change in 2032 that is fine; I am not interested in having other things in there.

CHAIMOV: The only substantive changes HB 2032 makes to section 10 of Chapter 791 Oregon Laws is between lines 16 - 27; the only other amendment is conforming.

450 VOTE: In a roll call vote the motion carries unanimously.  
CARRIERS: SEN. BUNN & REP. CALOURI

CHAIR CALOURI: We are adjourned. (8:35 a.m.)

Submitted by: Reviewed by:

Kimberly Burt Greg Chaimov Assistant Administrator

EXHIBIT SUMMARY:

A - Informative material submitted by staff, pp 4