

CONFERENCE COMMITTEE ON HB 2219

June 29, 1991 Hearing Room E 9:30 a.m. Tapes 1 - 2 SENATE MEMBERS
PRESENT: Sen. Hamby Sen. J Hill Sen. Shoemaker

t HOUSE MEMBERS PRESENT: Rep. R. Johnson, Chair Rep. Mannix Rep.
Bauman Rep. Sunseri STAFF PRESENT: Greg Chaimov, Committee
Administrator Diane Bassett, Committee Assistant

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.

TAPE 1, SIDE A

001 CHAIR JOHNSON: Called the meeting to order at 10:20

004 CHAIMOV: Summarized the bill. Referred to Counsel suggestions,
which takes the B engrossed version of HB 2219 and deletes language on
line 10 and 22 to 23 that he feels cause some constitutional problems,
either freedom of speech or because it would make the crime too vague to
enforce. Suggestion for A engrossed version was to limit it to Class A
felony and reduce the minimum terms. The Senators said they could live
with having the use of minor being an element in aggravation of the
crime but not minimum sentences.

022 KATHLEEN BOGAN, CRIMINAL JUSTICE COUNSEL: Other aggravating factors
that are listed in sentencing guidelines currently. Current
non-exclusive: deliberate cruelty to a victim, a particularly vulnerable
victim, violence toward a victim or witness. You would want to add it to
the aggravating factor. The way the sentencing guidelines work is there
is a presumptive offense - the underlying offense. The aggravating
factors can be used for the judge to depart and impose a higher sentence
and the higher sentence can be up to double the presumptive sentence.

040 MANNIX: Can a single aggravating factor be enough to depart all the
way as you have just suggested or do they have to be multiple
aggravating factors?

043 BOGAN: They do not have to be multiple aggravating factors. The
judge is supposed to use the presence of one or more.

045 MANNIX: So if the judge finds out that a 19 year old drug dealer
was using a 14 year old courier, the judge can say that is an
aggravating factor and double the sentence? Conference Committee on June
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047 BOGAN: Yes. 049 CHAIMOV: Are the aggravating factors in your list
something that be used on any crime or are they limited to class A
felonies or class B felonies? 051 BOGAN: Any felony. 052 JOHNSON If
there was an aggravating factor we wanted to add, we wouldn't need to
identify A or B?

053 BOGAN: You would not. 058 MANNIX: The reason for sentencing
guidelines is there is a logical stream of shifting sentences within a
range of particular factors we have put out there. Wouldn't want to

limit an aggravating factor to particular felonies. 068 SHOEMAKER: Can you have aggravation of a misdemeanor? 070 BOGAN: There are aggravating factors in the statutes. 072 MANNIX: We are talking about making only an aggravating factor for felonies. That would be specific in the statutes. 075 SHOEMAKER: Not comfortable with moving it down to the C felonies. 083 MANNIX: Not aware of very many technical crimes that constitute a Class C felonies. May be talking about Class C misdemeanors. 086 SHOEMAKER: Class C felonies seems to be a catchall category. 097 MANNIX: Very concerned about fooling around the sentencing guidelines on a particular bill. Either we use the guidelines or we don't. 096 HILL: The dilemma is how we feel about the A's and B's versus consistency with the guidelines. 102 JOHNSON: Recessed meeting at 10:30 a.m. Reconvened 10:32

106 ROSS SHEPARD: It would allow the judge to rely on that specific aggravated factor to depart from the presumptive sentence. 110 CHAIMOV: How often do judges depart from presumptive sentences? 111 ROSS SHEPARD: Very infrequently. It requires more paperwork. 116 SHOEMAKER: There is leeway within the guidelines to depart aside from aggravation. Is there any way to know how often they depart upward because of proof of an aggravating factor? Conferenco Committee on June 29, 1991 - Pago 3

119 SHEPARD: Most of the departures are downward. 121 JOHNSON: Of the departures that are upward what aggravating factor is most commonly associated with an upward movement? 124 ~11 1 Add use of a minor as an aggravating factor to apply to all felonies.

130 JOHNSON: Looking at the A Engrossed bill you would be willing to put section 1 paragraph 1 back into the bill with certain modifications and have it apply to all felonies, not just A or B. Not insert paragraph 2 or 3 or 4, of section 1. 137 HAMBY: Do want 4. Delete "encourage" and "otherwise used" . 140 JOHNSON: Asked for reaction of House members. 147 BAUMAN: Sounds reasonable at this point. 152 SUNSERI: That was the sense of what the people thought they were doing this for at the time which was minimum. 158 MANNIX: The real thrust of the debate and discussion was not wanting criminals to think that they can get away with a criminal activity by shielding themselves with a kid. Couriers came up most often relating to drug deals. Wanted them to understand that if they engaged in that kind of nefarious activity, there was an additional hammer in the hands of law enforcement people. 177 HILL: The issue is there have been sentencing guidelines adopted to allocate present prison space. It is a matter of making sure it is done within the context of the sentencing guidelines. 193 JOHNSON: Concerned that the aggravating factor approach will not result in any additional jail time. Feelings have been that sentencing guidelines have resulted in inadequate sentencing in certain cases and they want to make sure in the cases of drug pushers using children and the prostitute pushers using children, the message gets on the street "you had better keep your hands off our kids". Reluctant to give up on the mandatory minimums. Not convinced that the aggravation by itself will have any real impact. 206 REP. MANNIX: Willing to entertain a package deal. 212 SEN. HAMBY: Reminded the Committee of HB 2581 includes a class A felony for an adult knowingly paying, soliciting or employing a minor passed those chambers. 224 REP. BAUMAN: Proposal for the committee to look at on the B Engrossed HB 221 9. Delete lines 6, 7, 8. Delete language "or any other act not authorized by the medical facility" in line 10. Add words "or exit" after the word "enter" on line 11. Delete the words "or hinders" on line 12 and add word "or" between "obstructs" and "impedes". Add the words "or exit" following the word "enter" on line 12. The entrance to medical facility for criminal mischief and theft is covered under

existing criminal mischief and theft. 267 REP. MANNIX: Was concerned that when people visit medical facilities, they are there for

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reasons of utmost personal necessity. They should not be impeded from entering medical facilities.

310 SHOEMAKER: Would like to hear from Jean Atkins regarding deletions of lines 6, 7, 8. 314 JEAN ATKINS, PLANNED PARENTHOOD: Spoke to the Bauman amendments. Was acceptable to them.

339 MOTION, REP. BAUMAN: So moved her proposal.

237 SHOEMAKER: To speed the process, perhaps Rep. Bauman could include in her motion the deletion of portions of line 22 and 23, which was discussed. There would then be a complete motion.

351 MOTION, REP. BAUMAN: Amend motion to delete "in connection with a labor dispute" on lines 22 and 23 and insert a period after the word "picketing" on line 22. 359 CHAIR JOHNSON: Asked for any objections. Being none, so ordered. The penalty that is in the B Engrossed version is a Class A misdemeanor for a person who is guilty of joining hands with someone to form a line that they don't want someone to walk through. It may be that a Class B misdemeanor may be sufficient punishment. 380 REP. MANNIX: How about Class B for first offense and Class A for second. 383 SHOEMAKER: Those are maximum sentences. Have to trust the courts to not overdo.

386 REP. BAUMAN: Vast range of activities that are contemplated here and we really do need to have some trust in the operation of courts and the fact they represent the sentiments of the community in which they operate. We are looking at activities which could potentially be extraordinarily serious, which will be under the ceiling of a Class A misdemeanor.

409 REP. MANNIX: Think that Class B misdemeanor for first offense, but if someone wants to persist in this activity, need to move into Class A misdemeanor.

TAPE 2, SIDE A

057 INGRID SVENSON, COUNCIL, JUDICIARY COMMITTEE: One distinction between A misdemeanor and B misdemeanor is that a police officer can make an arrest on probable cause for A misdemeanor and may not with a B misdemeanor. 065 SEN. HAMBY: Reality tells us judicial discretion allows that to occur already. 071 REP. BAUMAN: Repeat offenses do appear in the D.A.'s charging decision and in the judge's sentencing.

073 MOTION, REP. BAUMAN: Move to make the addition of the amended version of the A engrossed HB 2219 as sec. 2 to B engrossed HB 2219 as amended. Specifically, paragraphs 1 and 4, leaving out paragraphs 2 and 3 from A engrossed version of the bill. . Conference Committee on June 29, 1991 - Page 5

083 CHAIMOV: On the A engrossed version of HB 2219 in Section 1 would be amended to apply to all felonies, instead of Class A and B. There may be some additional modification that is needed because this will be a sentencing guideline issue rather than a separate crime. Also in section 4, lines 23 and 24, the word "encourage" comes out after "coerces and or" and "or otherwise used" in line 24 comes out. 087 MOTION, REP.

BAUMAN: Moved the amendments. 089 CHAIR JOHNSON: Asked for objections to amendments. Hearing none, so ordered. 091 MOTION, REP. BAUMAN: Move the bill as amended with the appropriate motion to our respective chambers with a do pass recommendation that the Conference Committee Report be adopted. 095 REP. SUNSERI: Objects. 096 MOTION, REP. SUNSERI: Move to amend her motion to insert paragraph 2 and 3 of 2786. 108 SHOEMAKER: Objection and asked for roll call. 110 VOTE: Motion failed. AYE: 5 NO: 2 EXCUSED: 0 118 CHAIR JOHNSON: Called for roll call vote on Rep. Bauman's motion to move the bill as amended.

VOTE: Motion AYE: 5 NO: 2 EXCUSED: 0 119 CHAIR JOHNSON: Recessed the meeting.

Submitted by:
Bassett

Reviewed by: Diane
Pat Zwick Assistant Office Manager .