

Conference Committee on January 28, 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 2390

June 28, 1991Hearing Room E 2:00 p.m.Tapes 1 - 2

SENATE MEMBERS PRESENT: Sen. Cohen Sen. J Hill Sen. Springer

HOUSE MEMBERS PRESENT: Rep. Baum, Chair Rep. Mason

STAFF PRESENT: Greg Chaimov, Committee Administrator Andy Sloop, Committee Assistant

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TAPE 1, SIDE A

001 CHAIR BAUM: Opens Conference Committee on HB 2390 at 2:45 p.m.

002 GREG CHAIMOV, COMMITTEE COUNSEL: Summarizes HB 2390-B5 amendments (EXHIBIT A).

>The House took out the "major possessor" category.

>The dash B5 amendments suggest including offenses for large quantity possessions, without any other aggravating factors, in a "category 6".

>The Senate increased the quantities that are under Section 1 (2).

>There was a section that established severity criteria for possession of specified quantities over a certain amount. Those numbers have been "increased substantially".

>There was a section that made possession within 1,000 feet of a school a category 8 offense. The Senate changed that from 1,000 feet of a school to delivery to a minor. That affects ORS 475.995 instead of ORS 475.999.

>There was a section requiring proof of specific factors. There is another section in existing statute that may provide that. Advisable to include language from this body to ensure that district attorneys do what they are supposed to.

>Under the B5 amendments, possession alone would be a category 6 offense. Under the current version of the bill, possession alone would be a category 1 offense. And under the Senate version, possession of "large quantities" is a category 8 offense.

037 ROSS SHEPHARD, OREGON CRIMINAL DEFENSE LAWYERS' ASSOCIATION:  
Discusses proposed amendments.

>The amendments double the quantities of drugs for manufacture or delivery listed in Section 1. Rationale is that arrest for possession of drugs for personal use would be appropriately treated as a probation case rather than a penitentiary case. However, if arrested for possession of "huge quantity of drugs" and the case was not tried in federal court, the court would appropriately impose a penitentiary sentence. The dash B5 amendments give judges flexibility to deal with personal possession cases.

>The B5 amendments would remedy the problem of a person possessing 100 pounds of cocaine being considered as a category 1 according to sentencing guidelines, which is a flaw contained in the B-engrossed bill.

054 CHAIR BAUM: The House felt that it wanted to send a message to possessors of large quantities of drugs, regardless of whether police witness delivery of the drugs or not.

056 SEN. COHEN: No problem with B5 amendments.

059 SEN. SPRINGER: Using the language: "mixture or substance contained in a detectable amount of . . ." is inadequate. There is a degree of arbitrariness inherent in use of any numbers, but when talking about the essence of the unlawful substance, it may be a fraction of the quantity that is actually confiscated or is subject to seizure.

077 REP. MASON: Mr. Shephard, you didn't have problems with this, did you?

081 SHEPHARD: This is the best we're going to do.

085 CHAIR BAUM: It is a pure capitalist system out there, and dealers will supply whatever the market will bear.

088 SHEPHARD: Notes typographical error in the B-engrossed version of the bill on page 2, line 34. The ORS citation there should be ORS 475.999.

091 CHAIR BAUM: What do you think about the amounts in the B5 amendments, Rep. Mason?

93REP. MASON: They're OK.

95CHAIR BAUM: Mr. Shephard, can you give us more information to put these quantities into perspective?

100 SHEPHARD: Under the B5, if an individual possesses 00 grams, or roughly 10 ounces, he's in trouble, and if he deals about half of that, he's in trouble.

114 DALE PENN, MARION COUNTY DISTRICT ATTORNEY: Marijuana is sold in

fractions of ounces. Ten ounces of marijuana "is a huge amount". Heroin is not cut. One gram typically is split into 16 doses for sale. The House discussed user amounts. Under the B5 amendments, someone would have to possess 160 hits of heroin to be charged as a category 6 offence requiring mandatory probation, unless the offender has three or four prior person-crime convictions, which most narcotics offenders don't have. Also, this would not treat anybody severely for possession of cocaine. Recommends language in the original House bill, which said that delivery of five grams and possession of 10 grams of narcotics is a category 8 offense. Under this language, someone who possesses 80 hits of heroin for sale would be subject to the maximum sentence. Moreover, offenders could still receive probation if there are mitigating circumstances.

160 CHAIR BAUM: Mr. Penn's suggestion appears to be realistic. "We're not even close to personal use amounts, with those amounts, the way the House set them. Why would we want to double them and then reduce the penalty?"

176 REP. MASON: Need to place this in context. Mr. Penn has only described one way to be charged with a category six or eight. Dealing is more directly punishable with stiffer sentences. This is supposed to address commercial drug dealing. The structure under the B5 amendments suggests that if someone is in possession of a lot of drugs, it doesn't matter what he is doing with it, and that if he is doing certain things with half the quantity of drugs, he would be subject to the same penalties. "I think that's a pretty good basic structure."

188 SEN. COHEN: Would rather require proof of four rather than three elements in Section 1 (2). Need to include criteria to differentiate between possession and dealing.

207 CHAIR BAUM: Why connect possession with delivery? If someone has large quantities of drugs, it's probably not for personal use.

214 PENN: Would rather have the Senate bill the way it is then elevating the detectable amounts from two to three.

223 REP. MASON: The factors in subsection 2, line 24 include possession, delivery or manufacture. Why would anybody plead delivery or manufacture, when possession would be the easiest? Anybody who delivers possesses, but not everybody who possesses delivers.

232 PENN: 400 hits of LSD is a lot for a category 6 possession.

238 CHAIR BAUM: This discussion would be relevant if it were confined to marijuana, but it includes harder drugs.

242 SHEPHARD: The numbers being discussed now came from the district attorney's bill in the House.

251 CHAIR BAUM: Is there any way the quantities in the House version of the bill could be applied to the category 6 factors? "We are at the 'hang-em'-high' level with the eight with the same amounts, and the Senate came back with double the amounts and moved it to six on the sentence. We're saying, let's take six and keep it at the House amount, so we can get some hold on some of these. . . These guys figure out the loss, because it's capitaliSMat it's best. It's pure profit, and they'll figure out how to protect themselves, and how to protect their people."

270 REP. MASON: In Section 1, have you dropped from eight to six but increased the amounts?

274 SHEPHARD: No. Possession is not part of Section 1 in the Senate version.

288 CHAIR BAUM: The question is: how much does some one have to possess before he becomes a dealer? Never seen people charged as dealers with these amounts. Since the Senate felt it should be a category six, the compromise solution would be to apply the House amounts to the category six levels. How do you feel about that, Mr. Shephard? Someone with no record who gets stopped with category 6 quantities of drugs would get a maximum of 90 days jail time and 180 days in other units, so a college kid with no record who gets stopped with six months worth of party drugs might get off with a slap on the wrist.

319 SEN. COHEN: Should come back again with formal amendments and vote them up or down.

328 REP. MASON: Proposes moving ahead with the substance of the bill, pulling out the council amendment.

332 SEN. COHEN: The members of this conference committee will be meeting again tonight on this and other bills.

340 CHAIR BAUM: If we have a tentative agreement on the category 6 language, can deal with that provision and the council at the appropriate time.

369 CHAIR BAUM: Recesses at 3:10 p.m.

378 CHAIR BAUM: Reconvenes at 8:37 p.m.

380 MOTION:REP. MASON moves to adopt the dash B6 LC 1962 amendments dated 6/28/91 HB 2390 (EXHIBIT B).

385 VOTE:Hearing no objections, CHAIR BAUM so moves.

390 CHAIR BAUM: Entertains motion to move the bill as amended to the House and Senate floors for repassage.

395 SEN. COHEN: Not ready to pass the bill out of committee.

422 REP. MASON: The criminal justice council isn't in jeopardy.

424 CHAIMOV: Could adopt this bill but not sign the committee report until everything is finalized.

428 SEN. COHEN: Why don't we leave this?

438 REP. MASON: "Joyce, we need to move along. We need to get this thing going."

442 SEN. COHEN: "It's a very important bill. No question about it."

456 MOTION:REP. MASON moves to adopt the conference committee report on HB 239 0.

458 SEN. COHEN: "We could wait a little bit longer. We're going to be here."

460 REP. MASON: "No. No more waiting. Let's move."

470 SEN. COHEN: "We have work to do on other bills."

477 CHAIR BAUM: "We're having trouble figuring out if your concerns are legitimate, and we don't believe they are because we moved the legislation through the House today."

482 SEN. COHEN: Understand there hasn't been a decision about if this would go to Ways and Means or to Miller's committee.

488 CHAIR BAUM: Miller's committee is closed.

490 SEN. COHEN: "The Rules Committee is open, and we're just fine right here."

TAPE 2, SIDE A

28CHAIR BAUM: We passed the bill on the House floor 44 to 16.

32REP. MASON: "I want a vote on the bill."

35SEN. COHEN: OK.

38MOTION:REP. MASON moves the previous question.

40VOTE:In a roll call vote, the motion fails, with Senators Cohen and Hill, and Representative Baum voting NAY, and Representative Mason voting AYE.

45REP. MASON: "These stunts have got to stop."

48CHAIR BAUM: Recesses the meeting.

49CHAIR BAUM: Reconvenes at 9:35 pm. Discharges the committee and adjourns.

50CHAIR BAUM: Reconvenes the meeting with new conferees at 10:03 p.m.nators Cohen, Hill and Springer, and Representatives Baum and Brian present. Entertains motion on the dash B7 amendments. (EXHIBIT C)

52MOTION:SEN. COHEN moves to adopt the dash B7 LC 1962 amendments dated 6/29/91 to HB 2390.

55CHAIR BAUM: Hearing no objections, CHAIR BAUM so moves.

58MOTION:SEN. COHEN moves that the House concur in the Senate amendments dated ???, and that the bill be further amended as follows and repassed.

61VOTE:In a roll call vote, the motion carries, with all members present voting AYE.

63CHAIR BAUM: Adjourns at 10:08 p.m..

Submitted by:    Reviewed by:

Andy Sloop            Pat Zwick Committee Assistant    Office Manager

EXHIBIT LOG

A - Dash B5 Amendments to HB 2390 - presented by staff - 1 page  
B - Dash B6 Amendments to HB 2390 - presented by staff - 2 pages  
C - Dash B7 Amendments to HB 2390 - presented by staff - 2 pages