

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.

Measures Heard SB 775 SB 859 HB 2393 HB 2391 HB 2681

SENATE COMMITTEE ON JUDICIARY

May 29, 1991Hearing Room C 12:30 p.m.Tapes 193 - 196

MEMBERS PRESENT:Sen. Joyce Cohen, Chair Sen. Jim Hill, Vice-Chair  
Sen. Peter Brockman Sen. Jim Bunn Sen. Jeannette Hamby Sen. Bob  
Shoemaker Sen. Dick Springer

STAFF PRESENT: Ingrid Swenson, Committee Counsel Shannon Gossack,  
Committee Assistant

WITNESSES: Judge Richard Barber, Marion County  
Wallace Carson, Oregon Supreme Court Stephanie Smythe, Asst. Attorney  
General, Dept. of Justice David Shannon, Oregon Gasoline Dealers  
Association Brian Boe, Oreogn Petroleum Marketers Association John  
Burns, Western States Petroleum Association Roy Pulvers, Judicial  
Department Warren Deras, Attorney Senator Jim Bunn Lt. Glen Rader,  
Oregon State Police Brenda Peterson, Oregon Dept. of Justice Ross  
Shepherd, Oregon Criminal Defense Lawyers Association David Beem,  
Citizen Cheif Justice Edwin J. Peterson, Oregon Supreme Court Dave  
Frohnmayr, Oregon Attorney General Representative Clark Kelly Olive  
Hodson, Oregon Women's Leadership Task Force Jeff Ket, Assistant U.S.  
Attorney Representative Kevin Mannix Senator Larry Hill Stevie  
Remington, ACLU of Oregon Dean Renfro, Oregon State Police

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TAPE 193, SIDE A

002 CHAIR COHEN: Calls hearing to order at 12:48 p.m.

PUBLIC HEARING ON HB 2391

013 RICHARD BARBER, JUDGE, MARION COUNTY CIRCUIT COURT: Testifies in support of HB 2391. -Explains the current procedure for issuing writs. -Submits written testimony on habeas corpus statistics.(EXHIBIT A)

073 SEN. HILL: Asks for some examples of petitions that were dismissed.

116 SEN. SHOEMAKER: Has there been experience in other states with this type of proposed law?

120 JUDGE BARBER: Yes but I can't be specific.

122 SEN. SHOEMAKER: Has this survived legal scrutiny in the courts?

125 JUDGE BARBER: In 1989 we were issuing the writ first. The federal court does have a system in place which dismisses upon intake, but I don't know the specifics.

#### PUBLIC HEARING ON HB 2393

150 WALLY CARSON, OREGON SUPREME COURT: Objects to section 2 of HB 2392 and has no opinion on the rest of the bill. -HB 2393 takes the Court of Appeals out of the process and requires the Supreme Court to review all post conviction petitions from a judgement of conviction and sentence of death. -I am Concerned about the fact that these people have other convictions that may or may not be part of the sentence. Would those go directly to the Court of Appeals or do they wrap around and come up to Supreme Court? -The proposed change is based on saving time and money but there would not be much real savings. -Recommends deleting section 2 of HB 2393 and reviewing it again in two years.

#### WORK SESSION ON SB 775

282 STEPHANIE SMYTHE, ASSISTANT ATTORNEY GENERAL, DEPT. OF JUSTICE: Submits proposed amendments to SB 775. (EXHIBIT B) -Discusses three instances when a wholesale or retail dealer might be responsible for violating. -Explains willful types of acts or violations.

375 SEN. HILL: What is the remaining disagreement?

376 SMYTHE: On line 17, page 1 of the proposed amendments which deals with material contribution. There is disagreement regarding the retail dealer and how they might be penalized.

391 DAVID SHANNON, OREGON GASOLINE DEALERS ASSOCIATION: We already have a federal act to take care of the part we are disagreeing with. -We don't have the ability to test the product. We feel the quality control issue should be dealt with by the refineries.

#### TAPE 194, SIDE A

020 SEN. SHOEMAKER: What is the extent of the problem? What lead to this bill?

023 SMYTHE: Discusses a survey done in conjunction with the Department of Agriculture on the issue of octane. -This would reach the federal level if the rules specifically said what the octane level should be for a particular product. -There is a problem with funding at both the state and federal level in regard to testing.

040 SEN. SHOEMAKER: What other types of violations were there?

042 SMYTHE: Explains the different octane levels in Eastern Oregon.

048 SEN. SHOEMAKER: The primary purpose is getting at misrepresentation of octane levels.

050 SMYTHE: Discusses water contamination in tanks.

067 SHANNON: The issue on leaded versus unleaded is .01 grams per gallon. There are two regulations on this issue.

077 SMYTHE: Explains the definition of "knowingly contribute" language. -The retailer should be subject to a civil penalty if they knowingly contribute.

081 SEN. SPRINGER: I have seen research that indicates Oregon compared to other states has a substantial problem with this issue. I am very hopeful that the committee can get this bill out.

092 SHANNON: Submits written amendments to SB 775A. (EXHIBIT C)

102 SMYTHE: Section 1, subsection 4 of the proposed amendments (EXHIBIT C) we have no problem with. Subsection 2 is already in subsection 4 of SB 775A.

107 SHANNON: We are concerned about the language in section 2 of SB 775A in that it is too broad.

170 SMYTHE: Suggests deleting line 13, on page 2 of SB 775A delete the words "using descriptive commercial terms".

121 SEN. HILL: So the disagreement still remains?

124 SMYTHE: We would agree that less consequential type violations would not be a factor. That is something that could be addressed in rule making. We are talking about causation.

130 SEN. HILL: Are you concerned that "knowingly" is not in the amendments anywhere?

132 SHANNON: We don't know what that definition of "contribute materially" is yet.

147 SWENSON: Are you submitting the other comments contained in your testimony as proposed amendments?

156 SHANNON: No we are not.

154 SEN. SHOEMAKER: Asks about culpable mental state in regard to penalties.

171 SEN. BROCKMAN: Why do we need lines 17 - 20?

178 SMYTHE: Those are in addition to lines 13-16 of my proposed amendments. (EXHIBIT B) -Under lines 13-16 you have to know, or have reason to know that your conduct violates the law.

191 SEN. BROCKMAN: Is "contributes materially" standard language?

194 SMYTHE: Yes it is. -Gives example of what contributing materially might be.

218 SEN. HILL: I thought we are all presumed to know the law.?

221 SMYTHE: If a retailer knows that the refinery is misrepresenting the product then the retailer is "knowingly" violating.

239 SHANNON: Most deliveries are done in the middle of the night after we are gone. If we aren't physically present then we will run into problems.

247 SMYTHE: If the product is being dumped without the retailers knowledge and the retailer has no reason to believe the product is substandard than we wouldn't have a basis for a violation.

273 BRIAN BOE, OREGON PETROLEUM MARKETERS ASSOCIATION AND NW PETROLEUM ASSOCIATION: Unfortunately we are here today in opposition to SB 775 A as currently drafted. -Our problem is with the funding portion and the scope of the program.

282 SEN. SPRINGER: I don't think we should mess around with the issue of the funding because that came from the Transportation Committee.

292 JOHN BURNS, WESTERN STATES PETROLEUM ASSOCIATION: We do support octane testing, but there is not a problem with octane in this state. The Attorney General has plenty of authority under the unlawful trade practicing rule right now.

330 MOTION: SENATOR BROCKMAN MOVES TO ADOPT THE DEPT. OF JUSTICE AMENDMENTS DATED 5/21/91 TO SB 775.

359 VOTE: IN A ROLL CALL VOTE THE MOTION FAILS WITH SENATOR BUNN, HAMBY, SHOEMAKER AND HILL VOTING NAY AND SENATORS BROCKMAN, HAMBY AND SPRINGER VOTING AYE WITH SENATOR COHEN EXCUSED.

MOTION: SENATOR BUNN MOVES TO ADOPT THE DEPT. OF JUSTICE AMENDMENTS DATED 5/21/91 WITHOUT LINES 17-21 TO SB 775.

VOTE: IN A ROLL CALL VOTE THE MOTION FAILS WITH SENATORS BROCKMAN, HAMBY AND SPRINGER VOTING NAY AND SENATORS BUNN, SHOEMAKER AND HILL VOTING AYE WITH SENATOR COHEN EXCUSED.

PUBLIC HEARING ON SB 859

377 SENATOR JIM BUNN: Explains the intent of SB 859A. -Submits SB 859 A-11 amendments to SB 859A. (EXHIBIT D) -Clarifies each section of SB 859 A.

TAPE 193, SIDE B

005 SEN. BUNN: Continues reviewing SB 859 A. -One thing we need to do is create some sort of marker for a plate to protect the consumer. -We have taken out all of the impoundment ideas we originally had in this bill and it is simply based upon convictions.

085 SEN. SHOEMAKER: What about if the offending driver is a member of a family and was using another family members car?

095 SEN. BUNN: They would still lose their car. -Explains the liability issue of SB 859A.

105 SEN. SHOEMAKER: What if the vehicle were used without the consent of the owner?

108 SEN. BUNN: I don't know how close we would be to the unauthorized use of a motor vehicle. -A family has the ability to control a child's use of the family car.

122 SEN. SHOEMAKER: You would still have to prove it to DMV.

125 SEN. BUNN: Currently you can provide a report to the Motor Vehicle Division that the car was stolen or the court can provide that report. We aren't getting a hearings process here.

135 LT. GLEN RADER, OREGON STATE POLICE: We do support SB 859A. This whole bill is based on a second conviction not just one incident.

151 INGRID SWENSON, COMMITTEE COUNSEL: It could be a conviction after a prior diversion.

155 SEN. HAMBY: Would this be a part of the zebra program?

159 SEN. BUNN: We would design another type of sticker to put on the plate.

165 SEN COHEN: Are the details of the bill in order?

168 SEN. BUNN: There are still questions regarding where the sticker will go.

178 SEN. SHOEMAKER: After one conviction or diversion what is the insurance situation?

185 SEN. BUNN: I am not familiar with the insurance issue. I am sure it is very expensive.

193 SEN. BUNN: The only other area of concern is that there is no time limit between the first and second conviction. It has been suggested to put a ten year window on that, and I am comfortable with that.

205 CHAIR COHEN: Lets think about this a little bit more.

PUBLIC HEARING ON HB 2393

223 BRENDA PETERSON, OREGON DEPARTMENT OF JUSTICE: Testifies in favor of HB 239 3. -We support section 2 of HB 2393 which takes the Court of Appeals out of the process. -Reviews the state v. Pratt case in regard to alternate jurors.

350 SWENSON: Section 3 of HB 2393 doesn't have any limitations as to when you can substitute a juror?

352 PETERSON: No it does not. That may be a concern.

378 ROSS SHEPHERD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Testifies in support of HB 2393. -Suggests that the appeal of a post conviction proceeding go through the Court of Appeals as all other cases do. Delete new language in section 2 of HB 2393, on line 23.

409 DAVID BEEM, CITIZEN: I think this is a good bill and it would cut down on crime in the state of Oregon.

TAPE 194, SIDE B

PUBLIC HEARING ON HB 2391

020 EDWIN J. PETERSON, CHIEF JUSTICE OF OREGON SUPREME COURT: Submits written testimony.(EXHIBIT E) -Discusses the evolution of the habeas corpus process. -Explains that HB 2391 was drafted to help streamline the process not to take anything away.

074 CHAIR COHEN: Do you agree with the amendments?

077 JUSTICE PETERSON: Yes I do.

179 DAVE FROHNMAYER, ATTORNEY GENERAL: Submits and reviews written testimony.(EXHIBIT F) -This is a procedural issue.

136 SEN. SPRINGER: Are you asking us to reverse a decision in your court by statute?

144 JUSTICE PETERSON: To some extent yes. What we were really doing was interpreting statutes.

150 SEN. SPRINGER: Last session we limited post conviction relief. Is there any connection?

155 FROHNMAYER: Post conviction cases wouldn't necessary have any relation to habeas cases.

163 SEN. SHOEMAKER: Is there some way justice might be denied to someone if we do this?

178 FROHNMAYER: It is very unlikely that would occur. On page 2 of HB 2391, section 4, subsection 7, there is language that would protect a person.

188 SEN. SHOEMAKER: Habeas corpus relief would be that they're deprived of a constitutional right which means the incarceration doesn't meet the constitutional standards or they are without appropriate process.

190 FROHNMAYER: Or a person seeks relief from the condition for which they are incarcerated. -Discusses meritless petitions.

216 SEN. SHOEMAKER: The fact that it has been brought to the attention of the court allows the court to see some other problem that may need attention.

229 FROHNMAYER: Discusses other avenues a incarcerated individual can take.

241 JUSTICE PETERSON: There are protections built into this bill. You can't promise that there will be no miscarriages of justice. We have tried to protect existing rights.

266 ROY PULVERS, STAFF ATTORNEY, OREGON SUPREME COURT: HB 2391 primarily changes procedural processes. -There has not been a constitutional problem with this bill.

358 ROSS SHEPHERD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: I object to the provision that would allow for summary dismissal of the petition for the writ of habeas corpus. -This is not good policy. We are dealing with unrepresented people that are inside our state institutions

who are challenging the legality of their sentence or conditions of their confinement. -These people are frequently uneducated and their letters are incomprehensible. They may be trying to find some redress, but because of their lack of knowledge they may not understand all of the legal avenues open to them. -Suggests appointing an attorney to the pro-se petition to do a summary investigation to determine validity.

TAPE 195, SIDE A

007 SHEPHERD: The housekeeping parts of HB 2391 are good, but I still have serious concerns about other sections.

WORK SESSION SB 775A

045 MOTION: SENATOR BROCKMAN MOVES TO ADOPT THE DEPT. OF JUSTICE PROPOSED AMENDMENTS TO SB 775 DATED 5/21/91.

048 SEN. SHOEMAKER: I think part of the problem I have with this is the possibility of innocent violations leading to a civil penalty.

051 CHAIR COHEN: I don't think that innocent violations lead to civil penalties.

065 SEN. SHOEMAKER: Why don't we add the language "knowingly, recklessly or willfully".

069 SWENSON: Refers to Stephanie Smythe's testimony. (EXHIBIT B) -You would have to be aware that you were contributing materially, you need not be aware that constitutes a violation of rule or law.

085 VOTE: IN A ROLL CALL THE MOTION CARRIES WITH SENATORS BROCKMAN, HAMBY, SPRINGER AND COHEN VOTING AYE AND SENATORS BUNN, SHOEMAKER AND HILL VOTING NAY.

087 CHAIR COHEN: It doesn't have a referral to Ways & Means but it will need to go there eventually.

098 SWENSON: All of the witnesses testified in support of the testimony submitted by Dave Shannon (EXHIBIT C) dated 5/24/91. Section 4.1 of the testimony was requested.

105 MOTION: CHAIR COHEN MOVES SECTION 4.1 OF DAVE SHANNON'S WRITTEN TESTIMONY TO THE AMENDED SB 775A.

VOTE: HEARING NO OBJECTION THE MOTION IS ADOPTED.

MOTION: CHAIR COHEN MOVES TO DELETE THE WORDS "USING DESCRIPTIVE COMMERCIAL TERMS", ON PAGE 2, LINE 13, OF SB 775A.

VOTE: HEARING NO OBJECTION MOTION IS ADOPTED.

112 MOTION: SENATOR BROCKMAN MOVES SB 775A, AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES UNANIMOUSLY.

PUBLIC HEARING ON HB 2681

128 REPRESENTATIVE CLARK KELLY: Reviews current statute relating to child pornography.

176 OLIVE HODSON, EXECUTIVE DIRECTOR, OREGON WOMEN'S LEADERSHIP TASK FORCE: Submits and reviews written testimony. (EXHIBIT J)

234 JEFF KENT, ASSISTANT U.S. ATTORNEY, EUGENE: Submits and reviews written testimony. (EXHIBIT H) -HB 2681 criminalizes the possession of child pornography. -Discusses the Oregon Supreme Court decision (state v. Henry), which upheld the distribution of obscene material. -The primary focus of HB 2681 is to protect minors. -One advantage of this bill is that it would allow prosecutors to go after the perpetrators and not drag the minor through the traumatic court procedure.

312 SEN SPRINGER: What is the purpose of the words "graphic focus" on page 2, line 16 of HB 268 1?

322 WARREN DERAS, ATTORNEY: Defines the language "graphic focus" and where the language came from. (OSB orne v. Ohio) -Section 2 of HB 2681 does not prohibit mere nudity. -The language "graphic focus" is not critical to the statute. -If you look at the definition as a whole you are looking at extremely restrictive language that requires something far beyond total nudity.

377 SEN. SPRINGER: Extremes are easy to deal with. It seems like your trying to get inside the head of the person viewing it.

383 DERAS: We don't want to look at the motivation behind this type of behavior. -Discusses different offenses currently in statute in regard to child pornography. -The motivation behind this is the belief that the mere existence of this type of material is harmful to children because children had to be harmed to create it.

TAPE 196, SIDE A

021 SEN. SHOEMAKER: In HB 2681, section 8, there is language that says it is unlawful to observe sexually explicit conduct or view. Present law says if you pay for that privilege it is illegal. Why should we go that far?

032 DERAS: There is a significant amount of activity that goes on a voluntary exchange basis.

040 CHAIR COHEN: Explains personal experience with a legislator who went around showing child pornography photographs to get legislation passed.

053 DERAS: Section 8 doesn't address the viewer, but I don't do criminal law. -Section 8 of HB 2681 is the only section that does not have the word "knowingly" in it and I would not object to adding that in there somewhere. -There is a definition of what "knowingly" means in the criminal code.

077 CHAIR COHEN: So as the bill stands now with what you have brought to us; could and would the Senator had been in possession of that material?

079 DERAS: No.



087 KENT: There are specific exemptions regarding this issue noted at the beginning of HB 2681.

084 CHAIR COHEN: Either you are skipping over some of the real linkages here or I am not understanding.

098 REPRESENTATIVE KEVIN MANNIX: We have already talked about possession. -All we need to do is change it to say "to pay or give anything of value to for obtaining or view photographs".

110 DERAS: I think the same thing can be accomplished by adding the word "knowingly" and that would take care of the problem.

122 SENATOR LARRY HILL: The Senator in displaying the material to you violated current Oregon law. -The laws are very strict when it comes to "displaying of the material".

147 CHAIR COHEN: I need to figure out what you are driving at in terms of possession. This needs to be very clear.

163 DERAS: Explains present law and the three levels of violations in terms of child pornography. -Submits HB 2681A-3 amendments to HB 2681A regarding public and private libraries.(EXHIBIT I)

241 SEN. SHOEMAKER: Asks about the educational aspect not listed in the exemptions.(EXHIBIT I)

246 DERAS: A private college would be under 130. It is a broad scientific, charitable statute.

289 SEN. LARRY HILL: I want it on the record that I do support this bill.

292 STEVIE REMINGTON, EXECUTIVE DIRECTOR, ACLU: Submits and reviews amendments to HB 2681.(EXHIBIT J) -Focus is to get away from the viewer and material and concentrate on whether or not the child was harmed in the process. -Suggests adding the language "for the purpose of arousing or satisfying sexual desires" to HB 268 1.

349 CHAIR COHEN: If we are really serious about this then it means the people that bring these awful pictures in for me to look at would be in violation of the law.

389 DERAS: The substance of these amendments (EXHIBIT J) just guts the bill. Now in addition to showing possession you would have to show production or importation. You can't show those things based on mere possession.

449 CHAIR COHEN: In making this easier to prosecute we are extending the statutes of limitations.

TAPE 195, SIDE B

028 DERAS: Discusses the theory of free speech.

083 DEAN RENFRO, OREGON STATE POLICE: Testifies in support of HB 2681 and submits and reviews written testimony.(EXHIBIT K)

121 CHAIR COHEN: Adjourns hearing at 4:10 p.m.

Submitted by,    Reviewed by,

Shannon GossackIngrid Swenson AssistantAdministrator

EXHIBIT LOG: A - Judge Barber, HB 2391, 3 pgs. B - Stephanie Smythe, SB 775, 2 pgs. C - Dave Shannon, SB 775, 2 pgs. D - Senator Jim Bunn, SB 859-All amendments, 1 pg. E - Chief Justice Peterson, HB 2391, 13 pgs. F - Dave Frohnmayer, HB 2391, 6 pgs. G - Olive Hodson, HB 2681, 3 pgs. H - Jeff Kent, HB 2681, 94 pgs. I - Warren Deras, HB 2681, 1 pg. J - Stevie Remington, HB 2681, 1 pg. K - Dean Renfro, HB 2681, 4 pgs.

Measures Heard HB 3348-P.H. HB 2545-P.H. HB 2137-P.H. HB 2374-P.H. HB 2802-P.H. HB 2386-P.H. HB 2266-P.H. HB 3165-W.S. HB 2372-W.S. HB 2381-W.S. HB 2996-W.S. HB 3438-P.H. SENATE COMMITTEE ON JUDICIARY

May 29, 1991                      Hearing Room C 5:00 p.m.                      Tapes 197 - 201  
MEMBERS PRESENT: Sen. Joyce Cohen, Chair Sen. Jim Hill, Vice-Chair  
Sen. Peter Brockman Sen. Jim Bunn Sen. Jeannette Hamby Sen. Bob  
Shoemaker ~                      Sen. Dick Springer STAFF PRESENT:                      Ingrid Swenson,  
Committee Counsel Bill Taylor, Committee Counsel Jacqueline Talbot,  
Office Manager

WITNESSES:                      Jim Seymour, Catholic Community Services Foundation Steve  
Carmichael, Lane County Dept. of Youth Services Dennis Maloney,  
Deschutes Co. Dept. of Community Corr. Rep. Kelly Clark Rep. Tom Brian  
Bobby Mink, Childrens Services Division Bill Frey, Catholic Community  
Services Foundation Howard Clink, Multnomah Co. Dept. of Human Services  
Lorenzo Poe, Multnomah Co. Juvenile Justice Div. Jim Fransesconi Paul  
Snider, Assn. of Oregon Counties Warren Deras, Oregon State Bar John  
Ellis, Dept. of Justice Ann Christian, State Court Administrators Office  
Sherwin Cullison, Adult & Family Services Leonard Lanfranco, OR  
Newspaper Publishers Assn. Les Zietz, OR Newspaper Publishers Assn. Mary  
Botkin, AFSMCE Senate ~ on Judiciary May 29, 1991 - PaBe 2

Jeanine Meyer-Rodriguez, OPEU Billy Wasson, Marion Count Corrections  
Dept. John Burns Stephen Duca, Marine Spill Response Corp. Connie  
Jacoby, Childrens Services Division Timothy Travis, Juvenile Rights  
Project, Inc. Russ Spencer, Sheriffs Association John Bradley, Multnomah  
Co. District Attorney's Office John Blackman, Multnomah County Deputy  
Sheriff Stan Robson, Benton Co. Deputy Sheriff Captain Bill Johnson, OR  
State Police Judge Frank Knight Carl Myers, Oregon State Bar Larry  
OgleSB y, OR Juvenile Directors Assn.

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proceedings, please refer to the tapes. \ TAPE 197, SIDE A

002 CHAIR COHEN: Calls hearing to order at 5:08 p.m.

Opens public hearing on HB 3348.

PUBLIC HEARING HB 3348 024 JOHN BURNS, MARINE SPILL RESPONSE  
CORPORATION (MSRC): Introduces Steve Duca from NRSC.

After the Oil Pollution Act of 1990 (OPA 90) passed, MSRC started an  
effort in all the coastal states to seek passage of its model state act  
which provides for limited immunity for oil spill responders in coastal  
waters on the same standard as the limited immunity in the Oil Pollution  
Act for responders in federal waters.

Emphasizes that in seeking passage of the state act MSRC is not seeking  
immunity for wrongful death, personal injury, or gross negligence. Nor  
are we seeking immunity for the responsible party.

050 STEPHEN DUCA, MSRC: Submits and summarizes written testimony  
(EXHIBIT A), provides information on what MSRC is, and discusses  
provisions of the limited immunity being sought. 115 SEN. SPRINGER:  
How would the facts of the Argo Protector accident several years ago  
apply to an oil spill? ' Senate Committee on Judiciary May 29, 1991-

133 BURNS: We are talking about acting in response to direction by the federal or state on-scene coordinator for oil spill response. Does not think the grain terminal fire would be covered because that was not an oil spill response situation.

152 DUCA: The only acts that would receive immunity would be those acts that are in the direct chain of events in an oil spill. Other events that are outside of the National Contingency Plan process do not receive immunity.

158 SEN. SPRINGER: Would MSRC be in a position to help with equipment and training?

174 DUCA: MSRC intends to either own and provide equipment to clients or provide it through contract services with other environmental organizations.

195 BURNS: State contingency planning requirements are part of SB 272. DEQ will refine those requirements by administrative rule.

MSRC hopes to be in a position to contract with shippers and terminals to have the necessary equipment on the scene.

225 SEN. SHOEMAKER: Do existing laws impose liability on the responsible party if something unanticipated goes wrong with your operation and property damage is done to an innocent third party during a clean up operation?

235 BURNS: There is expressly not preemption in the federal Act and that is why MSRC is seeking state legislation.

237 SEN. SHOEMAKER: What happens under state law in a situation where the federal Act does not apply, to impose that absolute liability?

242 DUCA: The statute we are asking you to adopt is exactly the same as what now exists 12 miles off the coast in the federal area.

248 SEN. SHOEMAKER: Do we have something within state law that imposes the strict liability on the responsible party regardless of foreseeability and other tort causation?

250 BURNS: Refers to Subsection 3.

Wants it clear that the responsible party will be liable.

265 DUCA: If we committed a good faith error in state or federal waters, the removal costs and damages associated with that error, under the federal Act, and what we are asking you to adopt, would transfer to the spiller. That is a mainspring that has driven the federal statute.

The spiller will not be responsible for our gross negligence, willful misconduct, personal injury, or wrongful death.

280 CHAIR COHEN: Would I still have the opportunity to go back to the person who generated the oil spill if you damaged my dock in the process of responding to the spill? .- These minute. 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 proceed ~g~, please refer to the tepee Senate Committee on Judiciy May 29, 1991 - Page 4

290 DUCA: That is the mechanisMcontained in the federal statute and in what we are asking Oregon to adopt.

300 SEN. SPRINGER: Is a reinsurance pool available through the federal fund that may provide a back up for a catastrophic incident?

309 BURNS: OPA 90 significantly increases the financial responsibility requirements of people operating.

DUCA: If the \$1,200 gross ton limit of liability on the vessel is pierced in the process of adjudicating all claims from a spill there is a \$1 billion per incident federal fund that supplements the financial liability of the responsible party.

330 SEN. BUNN: When you are talking about the spiller being liable for the actions of the person cleaning up, are you talking about the ordinary negligence of the person cleaning up?

336 DUCA: Yes.

345 SEN. COHEN: Opens public hearing on HB 2545. PUBLIC HEARING - HB 2545

355 CONNIE JACOBY, CHILDRENS SERVICES DIVISION: Reads written testimony in support of the concept of HB 2545. CSD does not support the change in age for the crime of criminal neglect in the 3rd degree (EXHIBIT B).

395 CHAIR COHEN: What do you think about the 16 year age in Sections 1 and 3 of the bill?

410 JACOBY: The objection to the age in Section 4 is because it is not related to the manufacture and distribution of drugs. We do not have an objection when it is linked to the circumstances described in Sections 1, 2, and 3.

TAPE 198, SIDE A

002 SEN. SPRINGER: Do you think this will be the subject of much enforcement?

005 JACOBY: This goes hand in hand with the child protection statutes and is geared toward the protection of children. We would expect decisions that relate to using the most severe sanction that this would allow would take family circumstances into account.

010 SEN. SPRINGER: Will this lead to more termination proceedings?

Concerned that there is a lot of discretion in terms of charging, and discretion is sometimes exercised in a way that people of certain racial and economic categories find themselves the subject of more law enforcement and family disruption than is appropriate.

107 JACOBY: We are concerned about the family disruption. We support the bill because we think we can work hand in hand with law enforcement and avoid that situation.

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023 TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT, INC.: Submits written testimony in opposition to HB 2545 (EXHIBIT C).

Urges committee not to pass HB 2545 because the bill will not help children.

070 Believes lines 14 and 15 of the bill are ambiguous.

100 SEN. SHOEMAKER: Asks Mr. Travis' position on Section 1 as contrasted with Section 3.

105 TRAVIS: Does not see how the child is helped by convicting the parent.

120 SEN. SPRINGER: Would you agree with a recent conclusion by "The Economist" that the United States is still trying to respond to the problem as if it is strictly a law enforcement problem, and not one of health?

123 TRAVIS: Tends to agree. Is not in favor of legalization of drugs.

140 RUSS SPENCER, OREGON STATE SHERIFFS ASSOCIATION: Testifies in support of HB 2545 which is the fourth bill that has come to this committee from the Sheriffs Legislative Task Force.

John Bradley, Multnomah County District Attorney's office, was instrumental in drafting the language of the bill and can address specific concerns.

155 JOHN BRADLEY, MULTNOMAH COUNTY DISTRICT ATTORNEY'S OFFICE: Testifies in support of HB 2545. CSD's concerns with Section 4 is not the thrust of the bill. The thrust of the bill is in Sections 1 and 3. HB 2545 does not say that someone who possesses drugs would be guilty of a crime if a child knows of the possession. The bill will get to people delivering or manufacturing when children are present. To temper the bill we put in "manufacture for consideration or profit" because of criticism received about someone growing a marijuana plant for his own use. Section 1 speaks of people who have decided to go into drugs for profit. Believes HB 2545 will stop some people from having children around them when they are dealing with, or manufacturing, drugs. The intent of the bill is not termination of parental rights but to get people engaged in drug activities to make sure that children are not present at the time. 230 SEN. BROCKMAN: Do you agree with Mr. Travis that a parent out with his child would have to leave public premises if a person next to him was using drugs? 235 BRADLEY: He could go and tell someone what is happening. Does not think exposing a child to a drug situation is desirable. Committee could exclude marijuana from that section of the bill.

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250 CHAIR COHEN: Why is Section 3 as essential when it seems to be more

clouded as far as understanding? 265 BRADLEY: Relates specific incident which was genesis for Section 3. It is the view of those who crafted HB 2545 that it is wrong to consume illegal narcotics in the presence of your children. 300 CHAIR COHEN: Law enforcement is not in the business of sending moral messages. 310 BRADLEY: If the concern is about concerts, on line 13 the word "feloniously" could be inserted after "and controlled substances are". Our intent is not to address people who are casually consuming. 320 CHAIR COHEN: The language does not say that. 323 SEN. SPRINGER: Is the intent that the adult's behavior is more reprehensible morally and criminally because the person is being a bad parent, or because it poses a risk to the child, or both? 345 CHAIR COHEN: Supports Section 1, but has a problem with Section 3. 355 BRADLEY: Could accept deletion of "presence of the child". 360 INGRID SWENSON, COMMITTEE COUNSEL: If you could prove possession with intent to deliver, don't you basically have a delivery? 360 BRADLEY: Yes, under current Oregon law. 375 JOHN BLACKMAN, MULTNOMAH COUNTY DEPUTY SHERIFF: Section 3 could be cleaned up by adding "public places out of the control of the parent.. 400 SEN. SPRINGER: Sympathizes with the concern that children are at risk in the situations you speak of. Is there an assumption that people who are exposing their children will be deterred if we make this a crime and will act rationally, when in fact these people are out of control? 417 BLACKMAN: Think you would deter methamphetamine, cocaine, and marijuana users. Does not think a heroin addict would be deterred. Gives examples of incidents encountered. TAPE 199, SIDE A 010 CHAIR COHEN: Do you believe that the mission for this bill is to remove the children from the parents?

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012 BLACKMAN: No. Thinks it is to help establish a safer environment for the children. 027 CHAIR COHEN: We have a severe societal problem and does not think that passage of HB 2545 will make a real difference on the street. 042 STAN ROBSON, BENTON COUNTY DEPUTY SHERIFF: Gives his work experience with drug situations. States need for HB 2545. 060 CHAIR COHEN: Would like law enforcement to look for recourse and sanctions under current law to deal with the situation on an ongoing basis rather than elevating the crime. Do you want to use Section 3 to go after the parent who lives in a household with a child where the drug problem exists? 079 ROBSON: Yes. 082 SEN. SPRINGER: Does not think that type of intervention would have a positive impact on that family. 135 CHAIR COHEN: Opens public hearing on HB 2137.

PUBLIC HEARING - HB 2137 140 CAPTAIN BILL JOHNSON, OREGON STATE POLICE: Reads written testimony in support of HB 2137 (EXHIBIT D).

165 SWENSON: Is the problem that you have found it has been difficult to prove that a lottery ticket is a "governmental instrument"?

166 JOHNSON: There has been some confusion which HB 2137 would clear up. 177 CHAIR COHEN: Opens public hearing on HB 2374.

PUBLIC HEARING - HB 2374

185 ANN CHRISTIAN, STATE COURT ADMINISTRATOR'S OFFICE: Testifies in support of HB 2374 which addresses the issues of the ability to receive information on an individual's financial status in a timely fashion, and

what information gathered should be provided to the public.

Submits written testimony from Bill Linden (EXHIBIT E).

Think we can reach agreement with Mr. Cullison that what we intend to do and what we want to happen does not run afoul of Adult and Family Services Division concerns.

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302 SEN. SPRINGER: Is there provision in the bill to reimburse the bank for costs? . 304CHRISTIAN: Yes, on lines 17 and 18. 319 BILL TAYLOR, COMMITTEE COUNSEL: How recently were the Attorney General opinions you mentioned issued, and what was the information on the affidavits involved?

325 CHRISTIAN: The opinions were issued October, 1987 and November, 1988.

338 SEN. SPRINGER: What about information on joint accounts? . 339 CHRISTIAN: The verifiers are instructed to get releases of information from spouse and defendant. 354 TAYLOR: Does this bill address the issue of joint accounts?

355 CHRISTIAN: No.

365 SHERWIN CULLISON, ADULT AND FAMILY SERVICES DIVISION: Paraphrases written testimony on HB 2374 (EXHIBIT F) pointing out that without the indigent person's authorization to release case information Adult and Family Services Division would not be able to comply even after passage of HB 2374. Proposes clarifying language.

TAPE 198, SIDE B

012 LEONARD LANFRANCO, OREGON NEWSPAPER PUBLISHERS ASSOCIATION: The Association is concerned that Section 5 (1) and Section 7 (17) of HB 2374 seem to extend the exemption beyond what the Attorney General defines, and if a person receives court appointed counsel who is paid with public funds, a public accountability should result.

028 LES ZEITZ, OREGON NEWSPAPER PUBLISHERS ASSOCIATION: The secrecy provisions of HB 2374 overlap existing law.

Extension of the secrecy blocks overview of the judicial system in the area of appointment of legal counsel.

045 CHAIR COHEN: We are trying to get beyond just having a judge ask a person if he can afford a lawyer.

062 ZEITZ: The public already has access to indigency affidavits and supporting information currently filed.

090 LANFRANCO: A person could obtain a protective order to keep specific information from the public.

095 CHAIR COHEN: Opens public hearing on HB 2802.



PUBLIC HEARING - HB 2802 100 JOHN ELLIS, DEPARTMENT OF JUSTICE: Submits and paraphrases written testimony in support of HB 2802 (EXHIBIT G).

150 CHAIR COHEN: Would the HB 2802-A2 amendment fix the loophole which enables a parent whose tax refund is being attached to avoid the attachment? 155 ET :1 :1S: Yes. May want to make a reference to Chapter 314, which is the tax code. 160 MOTION: CHAIR COHEN: Moves to adopt the -2 amendments and instruct counsel to reference Chapter 314 if necessary. VOTE: Without objection, amendment is adopted. 165 MOTION: SEN. HAMBY: Moves HB 2802, as amended, to the floor with a do pass recommendation. 168 VOTE: On a roll call vote, motion passes. AYES: Senators Brockman, Hamby, Springer, Hill, Cohen NAYS: None EXCUSED: Senators Bunn, Shoemaker 175 CHAIR COHEN: Opens public hearing on HB 2386.

PUBLIC HEARING - HB 2386 180 ANDY MORROW, OREGON STATE BAR: Testifies in support of HB 2386 which proposes limited changes to the corporation law. Reviews proposed changes. 225 CHAIR COHEN: Does this augment the statute passed this session with respect to merging and take-over issues? 227 MORROW: It is not intended to deal with that separately. Gives examples. 252 CHAIR COHEN: Opens public hearing on HB 2266.

PUBLIC HEARING - HB 2266

257 WARREN DERAS, OREGON STATE BAR: HB 2266 contains the remnants of a bill proposed by the Estate Planning and Administration Section of the Oregon State Bar. The remnants are still supported by the Section. Notes that HB 2266-A still contains lines 40 through 42, page 2, Subsection 5. Those lines were deleted in the House Judiciary Committee.

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States purpose of probate process. The 1989 Session extensively amended the Oregon Claims Statute.

Paraphrases written testimony in support of HB 2266 (EXHIBIT H).

Original purpose of HB 2266 was to soften the statute of frauds for contract to make a will cases.

Purpose of language deleted from the bill in the House, but which still appears in HB 2266-A, was to overrule the Hocks v. Hocks case.

Asks committee to delete lines 40 through 42 of HB 2266-A.

TAPE 199, SIDE B

040 CHAIR COHEN: Opens work session on HB 3165.

WORK SESSION - HB 3165

055 TAYLOR: Reviews provisions of HB 3165 which committee last heard on May 27. Bill was brought at the request of the Oregon Collectors Association. The bill mod)fies the definition of debt collector for the purposes of unlawful debt collection to include those who collect on dishonored checks. HB 3165-1 amendment clarifies ambiguity between

federal and state law.

065 MOTION: SEN. HAMBY: Moves adoption of HB 3165-1 amendments.

VOTE: Without objection, amendment is adopted.

068 MOTION: SEN. HILL: Moves HB 3165, as amended, to the floor with a do pass recommendation. VOTE: On a roll call vote, motion passes. AYE: Senators Brockman, Hamby, Springer, Hill, Cohen NAY: None EXCUSED: Senators Bunn, Shoemaker 074 CHAIR COHEN: Opens work session on HB 2372.

WORK SESSION - HB 2372

079 SEN. SPRINGER: Have the bar associations in Linn and Benton counties been consulted and taken a position on the bill? 088 JUDGE FRANK KNIGHT, BENTON COUNTY: Has talked to a number of members of the Benton County Bar. Has not discussed the bill with members of the Linn County Bar but thinks that they support the bill. Believes that the president of the Benton County Bar sent a letter to the committee. . . Senate Committee on Judiciary May 29, 1991 - Page 11

Expresses personal support for HB 2372. 105 CARL MYERS, OREGON STATE BAR: The Public Affairs Committee of the Bar has approved HB 2372 as a committee position. The Judicial Administration Committee supports the bill. 120 MOTION: SEN. SPRINGER: Moves HB 2372 to the floor with a do pass recommendation. VOTE: On a roll call vote, motion passes. AYE: Senators Brockman, Springer, Hill, Cohen NAY: Senator Hamby EXCUSED: Senators Bunn, Shoemaker 129 CHAIR COHEN: Opens work session on HB 2381.

WORK SESSION - HB 2381 135 MOTION: CHAIR COHEN: Moves adoption of HB 2381-A2 amendments.

VOTE: Without objection, amendments are adopted.

147 MOTION: SEN. HILL: Moves HB 2381-A, as amended, to the floor with a do pass recommendation. VOTE: On a roll call vote, motion passes. AYE: Senators Brockman, Hamby, Springer, Hill, Cohen NAY: None EXCUSED: Senators Bunn, Shoemaker 154 CHAIR COHEN: Sen. Bunn will carry the bill on the floor. Opens work session on HB 2996.

WORK SESSION - HB 2996

160 MOTION: SEN. HAMBY: Moves HB 2996 to the floor with a do pass recommendation.

VOTE: On a roll call vote, motion passes. AYE: Senators Brockman, Hamby, Springer, Hill, Cohen NAY: None EXCUSED: Senators Bunn, Shoemaker

165 CHAIR COHEN: Opens public hearing on HB 3438.

PUBLIC HEARING - HB 3438

180 DENNIS MALONEY, DEPT. OF COMMUNITY CORRECTIONS, DESCHUTES

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proceedings, please refer to the tapes. Senate Committee on Judiciary  
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COUNTY: Testifies in support of HB 3438 which he feels will add significant improvements to the juvenile justice system.

The bill provides a clear message to counties that they need to increase the responsibility they take for delinquent youth.

235 JIM SEYMOUR, CATHOLIC COMMUNITY SERVICES FOUNDATION: Testifies in support of HB 3438 summarizing written testimony (EXHIBIT I).

Thinks a system can be set up that prevents counties from prematurely committing children to state custody.

TAPE 200, SIDE A

003 SEN. HILL: Will you eventually shift resources from the state to local governments if the pilot program is successful? 006 SEYMOUR: Yes, on a voluntary basis where the counties decide to participate. If they do participate, the resources would shift to the local counties who would then have the case management responsibility. Stresses that the participating counties would be held accountable to the spending limit.

020 SEN. HILL: Where would the pilot projects be conducted?

022 SEYMOUR: That will be determined by the Juvenile Corrections Council working with the administrator of Childrens Services Division and limited to three to six projects. 030 STEVE CARMICHAEL, LANE

COUNTY DEPARTMENT OF YOUTH SERVICES: Submits and summarizes written testimony reviewing provisions of HB 3438 (EXHIBIT J). Reviews funding options from (EXHIBIT J). 100 REP. KELLY CLARK: Testifies in support of HB 3438.

Feels the current system is unfair to kids.

135 REP. TOM BRIAN: Testifies in support of HB 3438.

The concepts of HB 3438 are similar to the Community Corrections Act of 1977.

Reviews HB 3438-AS amendments (EXHIBIT K).

Believes an additional section is needed in the amendment that says "in the case of the pilot, management and labor would agree to create an agreement which exempts the parole officers from the collective bargaining unit". There is currently a clause that says only parole officers can do parole. With that provision, we could not get at the vertical case management.

Thinks that independent evaluations specified in the HB 3438-AS amendments will be costly and

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unnecessary because an evaluation data collection component is already included in the bill. 240 BOBBY MINK, CHILDRENS SERVICES DIVISION: Division is very interested in participating with in the proposed pilots

because the current system has dual responsibility for adjudicated youth.

HB 3438-A gives total responsibility to the counties in the pilot counties.

CSD will be working with the Juvenile Corrections Council, Oregon Child and Youth Services Commission and others to develop outcome result measures in the evaluation process in the pilot counties. - CSD has been a partner in developing this legislation.

280 SEN. HILL: If the pilot projects are successful, what do you expect to happen?

285 MINK: Thinks the system would head in that direction if the results are better for the youth .

290 SEN. HILL: How would you implement moving in that direction?

292 MINK: The bill sunsets in 1995. Has not thought beyond that.

Would have to involve all stake holders, including CSD employees. Protecting CSD employees' status as state employees is very important to CSD. If the pilots are successful it is possible state employees could elect to become county employees or remain as state employees working through an intergovernmental contract under county supervision.

315 BILL FREY, FREY'S MARKET AND CATHOLIC COMMUNITY SERVICES FOUNDATION: Speaks of work of Catholic Community Services Foundation with juveniles. Testifies in support of HB 3438. 370 HOWARD CLINK, MULTNOMAH COUNTY DEPARTMENT OF HUMAN SERVICES: Testifies in support of HB 3438 and gives information about recently implemented Young Gang Demonstration Project in Multnomah County to address Sen. Hill's questions, summarizing (EXHIBIT L). Reviews chart in (EXHIBIT M) showing commitments to McClaren/Hillcrest following implementation of Multnomah County's program.

TAPE 201, SIDE A

CLINK: Continues his testimony.

030 LOLENZO POE, MULTNOMAH COUNTY JUVENILE JUSTICE DIVISION: Speaks of history and results of Multnomah County's Youth Gang Demonstration Project and in support of HB 3438.

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060 JIM FRANCESCONI: Testifies in support of HB 3438 which he feels is important because it gives citizens an opportunity to be involved.

115 MARY BOTKIN, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME): AFSCME has long been concerned about how juvenile justice services are delivered in Oregon. Allowing state employees to have a role in the Juvenile Justice Council and Board may provide an opportunity for them to have a meaningful input into what they need to do their jobs better. ' AFSCME is willing to cooperate with the Division and the proponents of HB 3438.

Reviews provisions of HB 3438-AS amendments and current letters of agreement which allows some deviation from current collective bargaining agreements in other pilot projects. Suggests adding language: "Nothing in this Act precludes the unions and management from modifying current collective bargaining agreements for the purpose of developing certain pilot projects" .

Concludes review of HB 3438-A5 amendments.

197 JEANINE MEYER-RODRIGUEZ, OREGON PUBLIC EMPLOYEES UNION (OPEU): OPEU supports the concept of HB 3438. Concerned about what might happen after the pilot project is completed. Supports HB 3438-AS amendments.  
225 BOTKIN: Important to have someone who is independent take a look at the pilot projects. 235 CHAIR COHEN: Feels Juvenile Justice Council can set guidelines, ask the right questions, and monitor evaluation, but an outside evaluator should be used. 280 SEN. HILL: Was the transition smooth in the Adult Community Corrections experience?  
290 BOTKIN: Thinks the transition was as bad as you can get and continues to be bad. That makes us more cautious about the juvenile proposal.

320 PAUL SNIDER, ASSOCIATION OF OREGON COUNTIES: Testifies in support of HB 343 8 for the reasons already given by the proponents. Understands labor's concerns. It is important to balance a system that accomplishes the goals of the bill, makes it appealing for counties to undertake a pilot project, while still protecting the interests of labor.  
335 LARRY OGLESB Y, OREGON JUVENILE DIRECTORS ASSOCIATION: Testifies in support of the concept of HB 3438.

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372 BILLY WASSON, MARION COUNTY CORRECTIONS DEPARTMENT: Testifies in support of HB 3438.

Reviews Adult Community Corrections project.

TAPE 200, SIDE B

030 WASSON: Continues his testimony.

049 CHAIR COHEN: Do you think it is possible to integrate the work force?

055 WASSON: Yes, but not without pain. There is a process to handle that.

Feels that the biggest barrier is the philosophical one in the minds of the workers as to whether they will be open to the change and work through the fear that the change will bring.

075 CHAIR COHEN: Training must be a part of the process.

124 WASSON: Endorses training to introduce people to the work to be done and equip them with the skills. More direct involvement of workers in decisions is also important.

Endorses the third party assessment of the pilot projects in HB 3438.

150 CHAIR COHEN: Last five minutes of Mr. Wasson's comments will be transcribed verbatim.

Meeting adjourned.

Transcribed by, Pat Zwick

EXHIBIT LOG: A: HB 2545 Testimony - Steve Duca - 6 pages B: HB  
2545 Testimony - Connie Jacoby - 1 page C: HB 2545 Testimony - Tim  
Travis - 3 pages D: HB 2137 Testimony - Captain W. Johnson - 2 pages  
E: HB 2374 Testimony - Bill Linden - 6 pages F: HB 2374 Testimony  
- Sherwin Cullison - 3 pages G: HB 2802 Testimony - John Ellis - 1  
page H: HB 2266 Testimony - Warren Deras - 2 pages I: HB 3438  
Testimony - James Seymour - 4 pages J: HB 3438 Testimony - Steve  
Carmichael - 4 pages K: HB 3438-A5 Amendment - Staff - 2 pages  
L: HB 3438 Testimony - Howard Clink - 2 pages M: HB 3438 Exhibit-  
Howard Clink - 1 page / These minutes contain materials which paraphrase  
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