

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 859 HB 2194 HJM6 HB 2502 HB 2667 HB 3039 HB 2264 HB 2334 HB 2581 HB 2580

SENATE COMMITTEE ON JUDICIARY

May 31, 1991Hearing Room C 12:30 p.m.Tapes 202 - 204

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: Fred Pearce, Dept. of Corrections Veral  
Tarno, Oregon State Sheriff's Association Rosanna Creighton, Citizens  
for a Drug Free Oregon Jeff Kushner, Dept. of Human Resources  
Representative Ron Cease Russ Spencer, Oregon State Sheriff's  
Association Stevie Remington, ACLU of Oregon Janice Yaden, Dept. of  
Human Resources Steve Anderson, Oregon Criminal Defense Lawyers Assoc.  
Andy Clark, Staff, Rep. Edmundson Tim Barnes, Youth ADAPT Agency  
Representative Kevin Mannix Larry OgleSB y, Oregon Juvenile Director's  
Association Paul Henry, Public Utility Commission Ken Chichester, Oregon  
State Police Ginger Leach, Oregon Trucking Association Senator Jim Bunn  
Frank Brawner, Oregon Banking Association Keith Burns, Oregon Financial  
Securities Association

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TAPE 202, SIDE A

002 CHAIR COHEN: Calls hearing to order at 1:15 p.m.

PUBLIC HEARING ON HB 2194

002 FRED PEARCE, DEPARTMENT OF CORRECTIONS: Testifies in support of HB 2194. -Explains intent of HB 2194.

023 CHAIR COHEN: How do you feel about putting HB 2194 back the way it was introduced?

028 PEARCE: I would be happy with this bill in either form.

032 INGRID SWENSON, COMMITTEE COUNSEL: I am not sure about the section of the bill that deals with persons that have unlawfully departed from a correctional facility. Unauthorized departure is defined in statute, but the term "unlawfully" needs to be defined.

046 CHAIR COHEN: Do you need an emergency clause on this?

048 PEARCE: It would be helpful.

050 VERAL E. TARNO, OREGON STATE SHERIFF'S ASSOCIATION: Testifies in support of HB 2194. -Discusses the Shutter Creek prison facility.

064 CHAIR COHEN: It would be beneficial for you to be able to have the correction officers be able to continue their effort of apprehension. Do you have any problems with returning the bill to its original form?

072 TARNO: No.

069 SWENSON: Distributes and reviews amendments to HB 2194. (EXHIBIT A)

077 SEN. SHOEMAKER: What is the reason for going back to the original draft of HB 2194?

080 CHAIR COHEN: It really says that a person doesn't have to be in the act of escaping. Anyone that has escaped from a facility can be apprehended. We want to allow the correction officer to be able to pursue beyond the facility.

WORK SESSION ON HB 2194

102 MOTION: SENATOR SHOEMAKER MOVES TO ADOPT HB 2194 A-2, WITH THE ADDITION OF AN EMERGENCY CLAUSE.

VOTE: HEARING NO OBJECTION THE MOTION CARRIES.

MOTION: SEN. SHOEMAKER MOVES HB 2194 AS AMENDED, TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

PUBLIC HEARING ON HJM6

123 ROSANNA CREIGHTON, CITIZENS FOR A DRUG FREE OREGON: Submits and reviews written testimony. (EXHIBIT B)

187 TARNO: Testifies in support of HJM6. This is a good bill and it would send a strong message.

192 JEFF KUSHNER, DEPARTMENT OF HUMAN RESOURCES: Submits and reviews written

testimony. (EXHIBIT C)

209 CHAIR COHEN: Why are we spending 2.1 million dollars to keep people addicted? There are better ways to be using that money.

216 KUSHNER: Methadone maintenance surveys show a significant positive change.

224 CHAIR COHEN: That speaks to legalization and that is not what we are

doing here. -Discussion on methadone maintenance.

256 SEN. SPRINGER: Is anyone in Congress pursuing this?

263 CREIGHTON: Hopefully not. We are trying to make a clear statement here in Oregon.

275 SEN. SPRINGER: Do you have any idea on how the requestors of this bill feel about tobacco, which is the number one addictive substance?

288 CREIGHTON: I get a lot of calls on tobacco. First we are trying to stop adding more illegal drugs to the list. I would be happy to fight for cigarettes.

WORK SESSION ON HJM6

323 MOTION: SENATOR BUNN MOVES HJM6 TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

PUBLIC HEARING ON HB 2502

331 REPRESENTATIVE RON CEASE: Submits and clarifies HB 2502A-3 amendments to HB 250 2A. (EXHIBIT D) -Submits written testimony. (EXHIBIT E)

TAPE 203, SIDE A

013 SEN. BUNN: What about existing facilities or future buildings?

017 SEN. CEASE: For future buildings this would be in effect. I think it is reasonable that these types of facilities not be by daycare centers.

033 CREIGHTON: We agree with the intent of HB 2502 and support it.

042 TARNO: Testifies in support of HB 2502 and HB 2502-3 amendments. (EXHIBIT D) -Children are very vulnerable after school when everyone has gone home.

052 CHAIR COHEN: Have you had an opportunity to use the legislation passed last session?

056 TARNO: Yes we have, but I don't know any results of the calls.

058 RUSS SPENCER, OREGON STATE SHERIFF'S ASSOCIATION: It has been used extensively by the Multnomah County Sheriff's office. -Current law only pertains to the selling of illegal drugs to students or minor in these particular areas. This new language would apply to a person selling to anyone.

070 SEN. HILL: Have there been arrests and convictions in Multnomah County?

073 SPENCER: There have been numerous arrests but I don't know about convictions.

078 SEN. HILL: The purpose of this legislation last session was to protect the students. I am trying to understand the reason for wanting to have this type of legislation. I need to understand your purpose.

090 SPENCER: To establish a drug free zone in these areas where our children are going to be.

093 CHAIR COHEN: Current laws do not stop you from arresting a person who is dealing drugs in school yards. This enhanced penalty may not be necessary. We need some statistics on this.

116 TARNO: The primary reason I support this bill is to protect the kids in the school area.

122 SEN. BROCKMAN: Discusses the issue of young children who are on the verge of becoming dealers and how this might make them think twice about it.

132 SEN. HILL: Explains personal experience with this issue on a radio talk show. -I want to know specifically how many people have been charged under the current statute.

150 SPENCER: I will try to get that information for you from Multnomah County.

160 CREIGHTON: The safety zone was the main intent when we started this two years ago. There is a limitation on the delivery to someone under the age of 18. The community needs to make the decision to create a drug free zone. It is going to take several steps to get this going. We are looking to you for the language.

180 SEN. HILL: How do you feel about Representative Cease's amendments?

184 CREIGHTON: I would be in favor of them. It is one way to eliminate some of risks we are taking.

193 STEVIE REMINGTON, ACLU of OREGON: Testifies in opposition to HB 2502. This bill would cover any controlled substance and makes it a Class A Felony. If you want to pass this bill it should be limited to just students and minors. -The state court administrator said that in the entire state there have been no convictions under this statute and there have been three cases filed.

218 SEN. SPRINGER: Do you see a potential problem with selective enforcement?

227 REMINGTON: Yes that is a concern. Selective enforcement takes place in all areas.

247 STEVE ANDERSON, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Testifies in opposition to HB 2502. -Discusses the "certified daycare" definition and that it is too broad. -HB 2502 needs to be narrowed down to some extent.

PUBLIC HEARING ON HB 2667

289 JANICE YADEN, DEPARTMENT OF HUMAN RESOURCES: Testifies in support of HB 266 7. -Explains study done on the issue of disclosure of information. -Some alcohol and drug abuse counselors are not clear on the issue of reporting child abuse. -We recommend that these types of counselors be required to report child abuse.

WORK SESSION ON HB 2667

343 MOTION: SENATOR BROCKMAN MOVES HB 2667 TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

PUBLIC HEARING ON HB 3039

365 REMINGTON: Testifies in support of HB 3039. -Explains the Oregon Supreme Court's opinion regarding religious exceptions.

423 SEN. SPRINGER: Do you know who wrote that opinion?

446 REMINGTON: Supreme Court Justice Scalia.

TAPE 202, SIDE B

019 SEN. SPRINGER: Do know if our State Department of Justice has taken a position on this bill?

023 REMINGTON: I understand that Representative Edmundson who is involved with this bill has made some recommendation but I don't know his position.

028 ANDY CLARK, LEGISLATIVE ASST., REP. EDMUNDSON: This is not a drug bill it does not allow for the exemption of peyote in Oregon. -Submits written testimony. (EXHIBITS F, G & H) -There is no guarantee that people won't come forward trying to come under this legislation. -Cites statistics from the Oregon State Police regarding incidents where peyote was involved.

092 TIM BARNES, YOUTH ADAPT AGENCY: I believe HB 3039 will not be seen as a religious freedom bill by the youth of this state. It will be a contradiction of messages. -I work with a significant population of Native American youth and I don't think this will help that population. -Submits written testimony. (EXHIBIT I) -Discusses the relapse issue in regard to recovering alcoholics. -I think this would open the door for other people to justifying their use of peyote under the religious disguise. -Refers to testimony regarding recovering chemically addicted Native Americans. (EXHIBIT I)

227 SEN. BUNN: How many different tribes in Oregon used peyote before the Supreme Court ruling?

235 BARNES: I am not sure. About twenty states have adopted this statute, but we don't have a historical precedent to go by in relation to other indian tribes.

254 TARNO: Testifies in opposition to HB 3039. -The only tribe that I could find that used this substance was the Native American Church out of the Portland Metro area. This is a self serving bill specifically for that group. -It may be difficult to determine what is "good faith practice".

284 SEN. BUNN: Are you aware of other states, that by allowing this, have seen an increase of peyote in the state?

290 TARNO: California has this type of legislation but I am not aware of any results of that legislation. -Discusses the low number of police related incidents in regard to peyote.

306 SEN. BROCKMAN: Is there a representative of the Native American Church here?

330 TARNO: There were eight peyote cases submitted to the Oregon State Crime Lab.

335 SEN. BROCKMAN: Is there evidence of widespread abuse by this Church?

338 REPRESENTATIVE KEVIN MANNIX: I supported HB 3039 because of cultural misunderstandings. People in our society use drugs all of the time. The question is appropriate or inappropriate use of drugs. -We need to be careful of cultural biases. -We thought it was appropriate for government and jury to decide whether there was a "good faith" practice of religion. We didn't want people to impose standards as to what is an appropriate religion. -We are talking about making an exception to recognize a "good faith" practice of a religion. -This is not an exemption to prosecution but is an affirmative defense.

404 SEN. BUNN: I am a little uncomfortable with a jury deciding a person made a "good faith" practice of their religion.

441 REP. MANNIX: Good faith means that a person is not using the religious practice as an excuse.

TAPE 203, SIDE B

PUBLIC HEARING ON HB 2502

020 SEN. HILL: Is there a way to tell if a daycare center is certified.

028 REP. MANNIX: That is a good point. A certified daycare facility may or may not have a sign posted that states they are certified.

047 SEN. SPRINGER: Are you aware of Rep. Cease's amendments?

044 REP. MANNIX: Those amendments would be acceptable. -Supports all bill that the Committee has heard today. These are meant to be specific legislative proposals.

PUBLIC HEARING ON HB 2264

069 JEFF KUSHNER, DEPT. OF HUMAN RESOURCES: Submits and reviews written testimony. (EXHIBIT J)

080 CREIGHTON: We support HB 2264.

104 LARRY OGLESB Y, OREGON JUVENILE DIRECTOR'S ASSOCIATION: Testifies in support of HB 2264. -This gives flexibility to the courts and juvenile department to deal with incidents on a case by case basis. -This is merely a housekeeping bill.

114 CHAIR COHEN: Do you support it unamended?

119 OGLESB Y: Yes.

126 BILL HOWELL, OREGON DISTRICT ATTORNEY'S ASSOCIATION: Testifies in support of HB 2264. -The difficulty with the 1989 legislation is that once they have done their drug treatment the matter is dismissed. They may have other areas where they need help.

PUBLIC HEARING ON HB 2334

156 PAUL HENRY, DEPUTY ADMINISTRATOR OF TRANSPORTATION SAFETY, PUBLIC UTILITY COMMISSION: Submits and reviews written testimony.(EXHIBIT K)

217 KEN CHICHESTER, OREGON STATE POLICE: Submits written testimony.(EXHIBIT L) -Discusses out of service stickers. -Law enforcement needs some sort of sanction against an out of service violator.

231 GINGER LEACH, OREGON TRUCKING ASSOCIATION: Testifies in support of HB 233 4. It is a safety issue and that is what our association stands for.

250 MOTION: SENATOR BROCKMAN MOVES HB 2334 TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

PUBLIC HEARING ON HB 2581

270 CREIGHTON: Reviews intent of HB 2581. -The intent is to make the penalty very harsh so it really will be a deterrent.

287 SPENCER: Testifies in support of HB 2581. -Discusses the increased number of juveniles used for drug running.

PUBLIC HEARING ON HB 2580

334 CREIGHTON: I don't have much to add to HB 2580 because of the discussion on HB 2502. -We included "manufacturing" to go along with "delivery". -We also removed language the limits delivery to only a minor to include any person.

344 REMINGTON: Testifies in opposition to HB 2581. We are concerned with the broadening, not only as a daycare facility, but to the vast extent of all homes and residents within 1,000 feet of a public or private elementary, vocational or secondary school including private, Community and Junior Colleges along with Universities. That is an enormous amount of territory.

369 SEN. BROCKMAN: What if "for compensation language" were in there?

374 REMINGTON: That would be an improvement. I think it would be even better if you restricted it to Schedule A & B drugs.

385 CHAIR COHEN: The original content of the bill added "manufacture".

398 ANDERSON: We don't oppose or support this bill. -The definition of a "certified" daycare facility could be a problem. -Section 2B of HB 2580 recognizes that there are levels of controlled substances and some levels are more serious than others. I would urge the Committee to make this kind of recognition a part of HB 2581 and HB 2502. It would clear up a lot of concern regarding the vagueness and broadness of the language.

TAPE 204, SIDE A

PUBLIC HEARING ON HB 2581

020 ANDERSON: In HB 2581 on line 4 the word "encourage" is too vague. -Suggests taking the word "encourage" out of HB 2581. -On Line 7 of HB

2581 there should be language inserted which refers to "delivery" instead of "transportation". There is similar language in ORS 475.005, subsection 8. -HB 2581 doesn't distinguish between different kinds of controlled substances and I think it would be a better bill if it did. (regarding different schedules)

044 CHAIR COHEN: We might be looking at some language that would define "adult".

055 CREIGHTON: The original HB 2581 referred to "adults" that used "minors". -The problem is that there are people under the age of 18 that use minors for drug running.

WORK SESSION ON SB 859

085 SENATOR JIM BUNN: Submits and reviews SB 859-12 and 859-13 amendments to SB 859 .(EXHIBITS M & N) -On line 13 page 1 of SB 859A-12 amendments the number "35", should be "33". -The 859A-12 amendments would also decrease the original fiscal.

-The SB 859A-13 amendments set up a 10 year time frame between convictions.

120 REMINGTON: Testifies in opposition to SB 859A. -We oppose the forfeiture issue that this bill raises. -The worth of the vehicle being seized could far exceed the maximum fine that could be levied in a criminal proceeding. -The Speaker of the House is wanting to be sure that HB 2014 and HB 3304 come over from the House. It might be better if the Committee dealt with this issue with all three of these bills.

145 FRANK BRAUNER, OREGON BANKING ASSOCIATION: We support the concept of SB 859 , but we have the same concerns that Stevie just mentioned in her testimony. -The security interest holder would get a 10 day notice by mail. -We object to the part of SB 859 with regard to paying for removal and storage of the vehicle to get it back. -Under section 6, subsection 7 of SB 859 it would be our understanding that we would begin checking with DMV prior to any auto loan. This could be a problem for rental car agencies and in terms of leasing.

178 CHAIR COHEN: If you sell a car and they have two quick DUI's, how do you do that?

183 BRAUNER: If they have multiple cars with a DUI on each one I'm out of luck. Also there is a concern about a person getting two quick DUI's and after the first DUI, DMV doesn't have the record yet to alert us.

191 CHAIR COHEN: How often will you check that loan?

194 BRAUNER: Until something happens a person would be in good standing.

196 SEN. BUNN: Financial institutions could get the same information the insurance companies do. Three arrests on one week-end would present a problem.

204 BRAUNER: The insurance company would simply cancel the policy, we would lose the security interest.

212 KEITH BURNS, OREGON FINANCIAL SECURITIES ASSOCIATION: Car rental agencies will have a big problem with this. When a person has another person's property and someone else takes it that really bothers me. -There are at least 5 bills in the legislature shutting down DMV records. Until we know the outcome of those bills I don't think we



should do anything with this.

253 SEN. BUNN: Other than a driver, who else has the control over who is operating the vehicle?

258 BURNS: That is only if a person is aware of the other persons past.

262 SEN. BUNN: Don't we hold a vehicle owner liable.

268 BURNS: Discussion on insurance versus security interest. -An insurance company can cancel the insurance.

272 SEN. BUNN: Don't you have a responsibility to refuse a loan to someone if they have a problem with drinking and driving?

291 BRAWNER: I wish there was a way to protect or provide some notice in regard to subsection 7. We could do everything right and still lose.

301 SEN. BUNN: When we have 13,000 people arrested for subsequent drunk driving problems it needs to be dealt with.

312 REMINGTON: Explains how a retired couple in Portland lost their vehicle. So here we have created another set of victims.

330 SEN. BUNN: Is that tragedy worse then the family that is killed by a drunk driver? That is what we need to balance.

340 CHAIR COHEN: Adjourns hearing at 3:30 p.m.

Submitted by,      Reviewed by,

Shannon GossackIngrid Swenson AssistantAdministrator

EXHIBIT LOG: A - HB 2194-A2 amendments, Staff, 1 pg. B - Rosanna Creighton, HJM6, 27 pgs. C - Jeff Kushner, HJM6, 16 pgs. D - Rep. Cease, HB 2502-A3 amendments, 1 pg. E - Rep. Cease, HB 2502, 2 pgs. F - Andy Clark, HB 3039, 2 pgs. G - Andy Clark, HB 3039, 1 pg. H - Andy Clark, HB 3039, 3 pgs. I - Tim Barnes, HB 3039, 4 pgs. J - Jeff Kushner, HB 2264, 3 pgs. K - Paul Henry, HB 2234, 57 pgs. L - Ken Chichester, HB 2234 M - Senator Bunn, 859-A12 amendments, 2 pgs. O - Senator Bunn, 859-A13 amendments, 1 pg.