

Senate Committee on Judiciary June 5, 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.

Measures Heard SB 859 HB 2199 HB 2660 HB 2681 HB 3438 HB 2137 HB 2373 HB 2202

SENATE COMMITTEE ON JUDICIARY

June 5, 1991Hearing Room C 12:30 p.m.Tapes 211 - 213

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: Representative Kevin Mannix Senator Jim
Bunn Representative Tom Brian Dave Fidanque, ACLU of Oregon Fred Pearce,
Dept. of Correction Paul Snyder, Association of Oregon Cities Mary
Botkin, AFSCME Rebecca Anderson, Humane Society Willamette Valley Bill
Johnson, Oregon State Police

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TAPE 211, SIDE A

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

PUBLIC HEARING ON HB 2202

010 REPRESENTATIVE TOM BRIAN: Testifies in support of HB 2202. -There were some excess funds from various events and it was felt that those extra funds didn't necessarily need to go into recreational programs. Ways & Means added the language that would allow the funds be used to enhance inmate education programs including drug and alcohol.

026 FRED PEARCE, DIRECTOR, CORRECTION: Submits and reviews written testimony. (EXHIBIT A)

047 SEN. HAMBY: What kind of treatment program do you use? Do you use methadone?

051 PEARCE: No.

053 CHAIR COHEN: How are the programs that were implemented last session going?

059 PEARCE: We have three different types of drug and alcohol treatments. -Discusses the success of the Cornerstone program. -Explains how acupuncture is used in the after care programs.

080 MOTION: SENATOR HAMBY MOVES HB 2202 TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

WORK SESSION ON HB 3438A

095 REP. BRIAN: Submits HB 3438-A6 amendments. (EXHIBIT B)

109 CHAIR COHEN: How was the collective bargaining issue resolved?

113 BRIAN: On page 2, lines 10 & 11 of HB 3438A-6 is a reference to that issue. There have been informal discussions about the intent of the parties involved with regard to where the pilot programs are selected.

118 CHAIR COHEN: That issue has been left open.

120 PAUL SNYDER, ASSOCIATION OF OREGON COUNTIES: If the creation of a pilot program violates or effects a collective bargaining agreement that is currently in place then the parties will bargain over the terms of the collective bargaining agreement only. The primary goal is to integrate the case management system.

137 MARY BOTKIN, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES: We think the changes we have made in the bill will allow everyone to move forward with a little bit more security and that those changes will make all parties involved a little more comfortable with this.

174 REP. BRIAN: I think the words "recommended by" need to be in there.

186 CHAIR COHEN: Recommended needs to be in there because they can't appoint or pick an individual.

206 MOTION: CHAIR COHEN MOVES TO ADD THE WORD "RECOMMENDED" TO LINE 28, PAGE 2 AND LINE 11, PAGE 1 OF HB 3438-A6 AMENDMENTS.

VOTE: HEARING NO OBJECTION THE MOTION IS ADOPTED.

MOTION: SENATOR HILL MOVES HB 3438-A6 AS AMENDED TO HB 3438-A.

VOTE: HEARING NO OBJECTION THE MOTION IS ADOPTED.

MOTION: SENATOR HILL MOVES HB 3438-A, AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES UNANIMOUSLY WITH SENATOR BROCKMAN EXCUSED.

WORK SESSION ON HB 2199

230 PEARCE: Testifies in support of HB 2199. This bill seemed simple when we first introduced it. I think the amendments will take care of any problems.

242 CHAIR COHEN: We had a lot of testimony on this bill last time from proprietary interests.

252 SEN. SPRINGER: Have we heard from the pathologist that testified last time?

259 SWENSON: I think HB 2199-1 amendments will address his concerns. -Reviews the intent of HB 2199-1 amendments.(EXHIBIT C)

296 PEARCE: Our main problem is in the minimums where we do the random testing or suspicion testing. The inmates take a hike before we get the results back. This would be an easier way for the probation officer to determine if a client is dirty. Consideration for an emergency clause on this is critical.

323 SEN. HAMBY: How long is an individual held?

326 PEARCE: Generally the test is back between 5 and 7 days.

330 SEN. HAMBY: Could you report back next session regarding the accuracy the screening.

336 CHAIR COHEN: It is important to get some feedback.

345 SEN. SPRINGER: Would an emergency clause help? How quickly can the Health Dept. adopt rules?

351 PEARCE: It is my understanding that they are ready to go forward to right now.

MOTION: CHAIR COHEN MOVES TO AMEND HB 2199-A1 AMENDMENTS TO INCLUDE AN EMERGENCY CLAUSE.

VOTE: MOTION ADOPTED.

367 DAVE FIDANQUE, ACLU of OREGON: Slight change in the amendment by Legislative Counsel. In subsection 6, lines 19 and 20. I think it would add clarity to add "inmate of a state or local correctional facility".

389 SEN. SHOEMAKER: Inmate in not defined anywhere.

393 FIDANQUE: The first part of that subsection deals with everyone that subjected to the test. -I want to be sure someone who was on probation or parole doesn't become an inmate.

407 PEARCE: We would have no objections to that.

TAPE 212, SIDE A

002 SWENSON: I believe it was intended to be limited to state and local correctional facility inmates. -On Page 2, line 20 of HB 2199-A2 amendments after the word "inmate" add the language.

010 FIDANQUE: Insert "inmate of a state or local correctional facility" prior to the word "is" on line 20. To make clear that they are an inmate at the time of the screening test.

MOTION: SENATOR HILL MOVES TO ADD THE LANGUAGE PRESENTED BY DAVE

FIDANQUE TO LINE 20 OF HB 2199A PRIOR TO THE WORD "IS".

VOTE: MOTION ADOPTED.

MOTION: SENATOR HAMBY MOVES HB 2199-A1 AMENDMENTS AS AMENDED TO HB 2199A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR HAMBY MOVES HB 2199A AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

WORK SESSION ON HB 2660A

041 SWENSON: Submits HB 2660-A5 amendments presented at the last hearing by Representative Mannix. (EXHIBIT D)

MOTION: CHAIR COHEN MOVES HB 2660A-5 AMENDMENTS TO HB 2660A.

VOTE: MOTION ADOPTED.

059 SWENSON: Explains enhanced penalties in regard to HB 2660A.

091 SEN. BUNN: Section 3 of HB 2660A is not clear to me. If I buy an adult dog and don't want it anymore can I sell it back?

102 SWENSON: I believe that is correct. Dealers are defined to exclude a lot of people.

107 CHAIR COHEN: Look at the "dealer" definition on page 1, subsection 2, line 15. They have picked out a few specific people and tried to define them.

115 SEN. BUNN: I think we are creating confusion by this bill. -What do we have left as a "dealer"? What is the target?

137 REBECCA ANDERSON, HUMANE SOCIETY OF WILLAMETTE VALLEY: Animal dealers are people who broker adult animals for use in research facilities.

141 SEN. BUNN: The broker is not the one who sells the person's dog?

147 ANDERSON: A person who is selling his or her own animal is not a broker.

153 SEN. BUNN: The goal is to prevent pets from being used in research.

156 ANDERSON: It is to prevent either obtaining by deception or obtaining a companion animal to an animal dealer. Research facilities do not want animals that are obtained in this way.

167 SEN. BUNN: If a friend gave me an adult dog and later I wanted to get rid of it could I sell it to a dealer?

173 ANDERSON: In section 3, paragraph 1, subsection A addresses that question.

189 SEN. SHOEMAKER: Do we know what a retail pet store is? Are they

exempt from an animal dealer on line 18 of page 1?

195 CHAIR COHEN: We have had legislation in the past to regulate pet stores.

212 SEN. SHOEMAKER: Gives example of a family that wants to sell some of their puppies. -Is that the group of people we are trying to target?

-Line 25, page 2 seems to apply to a much broader category than what was intended.

233 ANDERSON: I don't think it would be wise to overlook the theft by deception of puppies as well as full grown companion animals.

WORK SESSION ON SB 859A

255 SENATOR BUNN: Submits and reviews SB 859-A11 amendments. (EXHIBIT E) -SB 859-A12 amendments are from DMV which would designate where the sticker would go. (EXHIBIT F) -SB 859-A13 amendments deal with the 10 year time frame in regard to subsequent convictions. (EXHIBIT G) -SB 859-A14 deals with the appeal of a conviction after forfeiture has occurred. (EXHIBIT H)

282 CHAIR COHEN: What about possession?

293 SEN. BUNN: Once the conviction is certain the vehicle is forfeited.

302 SEN. SHOEMAKER: I had a problem with line 13, page 2 of SB 859A regarding the stolen issue and that a report had been filed. When does that have to be done? Report of the theft would have to be filed prior to any conviction. I think that on line 13, of SB 859 A we should add language that says, "that was stolen from the owner, and prior to any conviction under section 6 of this act the owner has filed a report of this act".

326 SEN. BUNN: I would not object to that amendment. If a person wants their stolen vehicle released they have got to file the stolen vehicle report.

342 SEN. SHOEMAKER: What about parents and the wayward son issue in regard to drinking and driving?

357 SEN. BUNN: If the vehicle was stolen then they would need to say it was.

MOTION: SENATOR SHOEMAKER MOVES TO ADD THE LANGUAGE SUGGESTED ABOVE TO SB 859A, ON LINE 13 AND ALSO TO LINE 10, PAGE 3 OF SB 859A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR BUNN MOVES 859-A11 TO SB 859A.

393 SEN. SHOEMAKER: What part of the process would they be in?

395 SEN. BUNN: These are people who violate and are cited to both district and municipal court.

402 FIDANQUE: Municipal courts are not courts of record and any action would be appealable in district court.

TAPE 211, SIDE B

011 SEN. BUNN: All we are saying is upon a current conviction for these violations, where ever that conviction applies, the vehicle is gone. If we remove the municipal and justice courts there is a 4 million fiscal impact on the state court system.

020 SEN. SHOEMAKER: Wouldn't that load still be there if the case were appealed to get their car back?

028 SEN. BUNN: Most of the cases are not appealed.

031 SEN. SHOEMAKER: Asks about the proceeds of this legislation and the fact that it goes to the sheriff's office.

031 SEN. BUNN: In dealing with the city of Portland they are loosing money on the proposition. The idea is to deal with the vehicle not to generate a lot of money. -Discusses how this issue is dealt with by the City of Portland. -SB 859A-13 amendments set a 10 year time frame in regard to subsequent convictions. -SB 859A-14 amendments deals with the appeal process in regard to reversed convictions.

077 SEN. HAMBY: Have we resolved the municipal issue?

082 SEN. SHOEMAKER: (inaudible comment)

087 SEN. BUNN: On line 13, page 1 of SB 859-A12 the number "35" should be "33".

MOTION: SENATOR BUNN RESCINDS PREVIOUS MOTION.

MOTION: SENATOR BUNN MOVES SB 859-A12 AMENDMENTS WITH THE CHANGES ON LINE 13, PAGE 1, TO SB 859-A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR BUNN MOVES SB 859-A13 AMENDMENTS TO SB 859-A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR BUNN MOVES SB 859-A14 TO SB 859-A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR BUNN MOVES SB 859-A11 TO SB 859-A.

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

MOTION: SENATOR BUNN MOVES SB 859-A AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

WORK SESSION ON HB 2681

154 SWENSON: Submits and explains HB 2681 A-4 amendments. (EXHIBIT I)

180 SEN. SPRINGER: It still isn't very clear regarding "graphic focus".
-I would prefer to move the amendments offered by the ACLU at the last meeting.

187 SWENSON: Explains proposed language submitted by ACLU at a previous meeting.

204 FIDANQUE: The intent of our language is to insure that HB 2681-A doesn't sweep any farther than materials that had been produced illegally either here in the state of Oregon or in another state and then brought into Oregon.

219 SEN. SHOEMAKER: What is the reach of that?

321 FIDANQUE: That is currently in the statutes.

228 SWENSON: ORS 163.677 prohibits the transporting of child pornography into the state.

231 SEN. SHOEMAKER: What about the laws of this state regarding production?

238 FIDANQUE: Discusses ORS 163.665 - .690. Most of those are included in the A-engrossed HB 268 1. The bulk of these provisions were adopted in 1987.

252 SEN. SHOEMAKER: What would be the necessity of including an amendment dealing with the producing?

260 FIDANQUE: Importance of including it is to further clarify that what is covered under statute is what is impermissible to produce in the state or brought into the state.

271 SEN. SHOEMAKER: To convict someone of possessing would you need to prove it was produced illegally?

284 FIDANQUE: One other item not in the printed amendments that was submitted at the previous hearing. It was to add the language on page 1 of the A-engrossed at the end of line 10; "for the purpose of arousing or satisfying the sexual desire of the person".

301 SEN. BUNN: Is there any big difference in trying to prove arousal through the public indecency compared to something someone has away in a closet?

309 FIDANQUE: It would prohibit anyone from possessing this material even if the purpose was to convince people to strengthen the laws against this type of material.

322 SEN. BUNN: Wouldn't that be difficult to prove?

325 FIDANQUE: It would depend on the situation. The Committee might be more comfortable having that be a rebuttable presumption.

WORK SESSION ON HB 2660

352 SEN. SHOEMAKER: Do we know what a retail pet store is?

341 REPRESENTATIVE KEVIN MANNIX: The retailers that asked for that were satisfied with the definition. We are trying to get at the wholesale type action. -The main intent has to do with illegally acquiring or maintaining possession to sell to another individual.

405 SEN. SHOEMAKER: Gives example of a boy selling his dog's puppies.
-On line 25 page 2 dealing with unlawfully obtaining. It doesn't refer
to companion animal there. Should it not read "obtains a companion
animal, or offspring of a companion animal".

TAPE 212, SIDE B

008 REP. MANNIX: We used dog or cat because of a request from a variety
of interests. Companion animal is also defined in here.

013 SEN. SHOEMAKER: A companion animal refers to a dog or cat. Or an
offspring of a companion animal.

MOTION: SENATOR SHOEMAKER MOVES TO ADD THE WORDS "COMPANION ANIMAL OR
OFF-SPRING OF" ON LINE 25, PAGE 2 OF HB 2660-A.

VOTE: MOTION ADOPTED.

027 SEN. BUNN: Under the bill would it be illegal for an animal dealer
to obtain a dog or a cat from retail sale?

031 REP. MANNIX: Yes and the retailers don't want to sell their animals
to dealers.

037 SEN. BUNN: Where does someone who raises a sheep dog for farming
purposes fit in?

042 ANDERSON: Those would be exempt. The definition of companion animal
is in paragraph 4 line 12 of HB 2660A.

MOTION: SENATOR HILL MOVES HB 2660-A AS AMENDED TO THE FLOOR WITH A "DO
PASS" RECOMMENDATION.

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

WORK SESSION ON HB 2137

080 SWENSON: Clarifies intent of HB 2137 in regard to penalties for
forging a lottery ticket.

088 SEN. SHOEMAKER: Would that be forgery in the second degree?

092 BILL JOHNSON, OREGON STATE POLICE: Explains what a share of a
lottery ticket is.

112 SEN. SHOEMAKER: Do we really need this bill?

115 JOHNSON: There is confusion on the part of District Attorney office
in regard to forgery and penalties.

128 SEN. SHOEMAKER: How would you react to making it clear that it is a
Class A misdemeanor?

137 JOHNSON: Gives example of shares of tickets.

142 SEN. SHOEMAKER: Wouldn't that be theft by deception and the degree
of the crime would depend on the degree of the theft?

144 JOHNSON: Most of the cases we have deal with a cut and paste on the

tickets.

156 SEN. SHOEMAKER: If a person just stole that amount of money than it would be a misdemeanor.

160 JOHNSON: That is correct. There is a different validation order in regard to lottery tickets. The majority of the cases are on the scratch tickets. There is another process for the higher tier.

170 SEN. SHOEMAKER: You can get at the bigger ones another way. -I think we should clarify this as a Class A misdemeanor.

180 SEN. BUNN: Asks why the bill is necessary.

197 SWENSON: Explains what a written instrument of the government means.

MOTION: SENATOR SHOEMAKER MOVES TO ADD THE PENALTY OF A CLASS A MISDEMEANOR TO HB 2137.

VOTE: MOTION ADOPTED.

MOTION: SENATOR SHOEMAKER MOVES HB 2137 AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

WORK SESSION ON HB 2681

212 SWENSON: Rebuttable presumptions don't work in criminal law. It is considered a shifting of the burden of proof.

216 FIDANQUE: Suggests making the language affirmative defense instead of rebuttable presumption.

234 MOTION: SENATOR SPRINGER MOVES ACLU (EXHIBIT J) TO HB 2681 AND TO ADD THE LANGUAGE ON PAGE 1 LINES 10 OF HB 2681; "FOR THE PURPOSE OF ESTABLISHING A COPABLE MENTAL STATE".

247 SEN. BUNN: Where does affirmative defense fit with rebuttable presumption?

265 SEN. HAMBY: The motion would delete section 7 of HB 2681.

272 CHAIR COHEN: It would leave current language in the law, and deal with photographic material rather than child pornography.

282 REP. MANNIX: Section 2 would establish an affirmative offense that a person did not possess the material for arousal. -We are trying to get rid of child pornography. -Everyone is going to present that type of defense. -There is going to be problems with the issue of whether or not the materials were produced in violations of the laws of this state.

354 SEN. BUNN: We don't want to get at the people who are taking pictures of their child running naked on the beach, but isn't it possible under this bill?

339 REP. MANNIX: On page 2 of HB 2681 that is addresses. I think "exhibition" would protect those people.

353 SEN. HILL: I oppose Senator Springer's motion.

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

408 MOTION: SENATOR COHEN MOVES TO REMOVE "GRAPHIC FOCUS ON" FROM HB 2681.

VOTE: MOTION ADOPTED.

420 CHAIR COHEN: There is still a problem with section 8 of the bill and I would like to figure that out. We are saying it is a Class C Felony to observe explicit conduct by a child.

TAPE 213, SIDE A

007 SEN. BUNN: If a police officer observes the conduct then they would be breaking the law?

010 CHAIR COHEN: Yes and that is the problem with the section. It is a section that needs to be dealt with.

015 SEN. SHOEMAKER: We should go back to the original language currently in statute.

020 REP. MANNIX: Suggests modifying current law and to insert the language "or to pay or give anything of material value".

032 SEN. BROCKMAN: Is there a statute somewhere else that deals with this viewing issue?

036 SWENSON: I don't believe so.

040 REP. MANNIX: If you added something that said, "it is unlawful for any person to observe sexually explicit conduct by a child", or "to pay or give anything of value".

050 CHAIR COHEN: What if we on line 40 of HB 2681 left the brackets in and substituted the word "knowingly", and then on line 41 of HB 2681 inserted the existing language.

084 SEN. BUNN: I have a problem with the words becoming aware of and observing.

088 SEN. HILL: The concern was about the exchanging of material. Wouldn't the word "exchange" fit in there somewhere?

103 REP. MANNIX: To pay or exchange or give anything of value would be fine.

111 SEN. BUNN: My concern is someone who is not intentionally observing.

115 SEN. SHOEMAKER: Why don't we leave current statute in section 8 and add the word exchange in both places.

120 REP. MANNIX: The filming issue would not be covered by the exchange of something valuable. I think that "knowingly observe" would take care of it. The word "observe" is a lot tougher than "viewing".

134 CHAIR COHEN: So we are with the current law and adding the words "exchange", "pay", or "give anything of value" and "knowingly observe".

139 SEN. SHOEMAKER: Would there be any situations in which a person would be knowingly observing other than arousing sexual desire? I think we should insert the language "arousing sexual desire". There is still the issue of "known by a person to be under 18 years of age"? Gives example of a person going into a nude dancing bar and watching a dancer.

161 SWENSON: Affirmative defense is applicable regarding the age issue.

164 CHAIR COHEN: So we should delete lines 41, section 8, of HB 2681A and on line 43, page 2 of HB 2681. Leave section 9 of HB 2681 to take care of the child issue. -On line 40 of HB 2681 add the language regarding "observe for purpose of sexual arousal sexually explicit conduct by a child". -Lets get Legislative Counsel to draft this so we know what we're looking at.

220 SEN. BUNN: At this point I would join Senator Springer on his motion. I am uncomfortable with the gray area we are getting into. I think it is better to have affirmative defense.

121 CHAIR COHEN: Adjourns hearing at 3:20 p.m.

Submitted by, Reviewed by,

Shannon Gossack
Ingrid Swenson Assistant Administrator

EXHIBIT LOG: A - Fred Pearce, HB 2202, 4 pgs. B - Rep. Brian, HB 3438A, 3 pgs. C - Staff, HB 2199-1, 2 pgs. D - Staff, HB 2660-A5, 1 pg. E - Sen. Bunn, SB 859-A11, 1 pg. F - Sen. Bunn, SB 859-A12, 2 pgs. G - Sen. Bunn, SB 859-A13, 1 pg. H - Sen. Bunn, SB 859-A14, 1 pg. I - Staff, SB 2681-A4, 1 pg. J - Staff, ACLU amendments, HB 2681-A, 1 pg.

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HB 2721 HB 3375 HB 3418 HB 3222 HB 2709

SENATE COMMITTEE ON JUDICIARY

June 5, 1991Hearing Room C 5:00 p.m.Tapes 214 - 217

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

MEMBERS EXCUSEDSen. Jim Bunn Sen. Peter Brockman

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

WITNESSES: Senator Grattan Kerans Representative John
Minnis Representative Kevin Mannix Representative Marie Bell
Representative Del Parks Valerie Salsbury, League of Oregon Cities
Jackie Blume, City of Portland Charles Williamson, OTLA Larry Wobbrock,
OTLA Leonard LanFranco, Oregon Newspaper Les Zaitz, Keizer Times Tim
Birr, City of Eugene Jerry Weir, Sheriff, Union County Ken Kohl, Oregon
Dept. of Agriculture Kris Gorsuch, Oregon State Bar David Neeble, Oregon
Advocacy Center Scott McGraw, Oregon State Bar Bob Joodeph, Oregon
Advocacy Center Judge Lee Johnson, Marion County Karen Hightower, State
Court Administrator Margaret Nightengale, OAC Staff Attorney Christine
DeMoll, ARC Jeff Brandon, Marion County Gary Connor, Attorney Charles
Burt, Attorney Dave Fidanque, ACLU of Oregon Bill Birhanzl, Citizen

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TAPE 214, SIDE A

008 CHAIR COHEN: Calls hearing to order at 5:18 p.m.

PUBLIC HEARING ON HB 2828

021 REPRESENTATIVE JOHN MINNIS: The intent of this bill is to extend the same privilege to local law enforcement agencies that already exists for State Police in regard to being subpoenaed as an expert witness. This would help agencies recover some costs when an officer is asked to testify. -The original bill would of had the payment made to the state court and then sent back to the local jurisdiction. Now the bill is set up so the agency gets paid directly.

052 SEN. SPRINGER: What about a domestic abuse restraining order? Would that be a civil matter? What if a party is indigent or without funds?

057 REP. MINNIS: It could very well be. In most situations you would be arresting somebody under the domestic violence statute so it would be a criminal charge. I am not sure how this would effect a civil restraining order. It was not intended to cover that in these circumstance.

069 BILL TAYLOR, COMMITTEE COUNSEL: Would the police officer be an expert witness in those situations? The bill just relates to expert witnesses.

072 CHAIR COHEN: We need to check that out.

076 REP. MINNIS: There may be one other situation where a police officer could enforce civil statutes, and that would be with respect to civil holds for detoxification.

084 CHAIR COHEN: We want to keep this narrow.

091 REP. MINNIS: This would be when an officer is subpoenaed to make some sort of a conclusion of fact.

092 VALERIE SALSBUURY, LEAGUE OF OREGON CITIES: We support this bill because it gives us some needed relief.

107 JACKIE BLUME, CITY OF PORTLAND: Testifies in support of HB 2828. It will put our officers under the same rules as the State Police.
-Discusses cases in which an officer would be called in as an expert witness.

117 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: If an officer is coming in to testify solely as an expert we have no problem. It seems to put a major burden on litigants.

138 SEN. SHOEMAKER: On line 21 & 21, page 2 of HB 2828 there is language that indicates an officer wouldn't be compensated unless the subpoena indicates that his expert opinion will be asked. I think that the fact that their expert opinion will be asked should always be noted on the subpoena.

144 WILLIAMSON: You don't know what the other side is going to ask.

152 LARRY WOBROCK, OREGON TRIAL LAWYER'S ASSOCIATION: Discusses lines 17- 19 on page 2 of HB 2828 regarding actual expenses. It is probably costs recoverable once the injured party has obtained a verdict in their favor. However, if the actual expenses later should prove to be more than \$160.00 our rules of procedure require that the cost bills be submitted within 10 days.

179 REPRESENTATIVE MARIE BELL: The intent of this bill was to be limited to expert testimony only.

187 SEN. SHOEMAKER: If an officer who was at the scene is asked as a final question "is it your opinion that the car went over the center line", would that be an expert opinion?

192 REP. BELL: If he was the officer on call that would be in line of his duty to be involved in that hearing.

PUBLIC HEARING ON HB 3222

213 REPRESENTATIVE DEL PARKS: Clarifies intent of HB 3222 which deals with tort actions against governmental bodies. -Discusses several cases

that relate to HB 3222. -I think the public has the right to know when their money is spent.

286 WILLIAMSON: We support HB 3222. It is in the public interest to have this information exposed.

302 WOBBROCK: It enforces the right of the public for accountability.

316 LEONARD LANFRANCO, OREGON NEWSPAPERS: Submits written testimony. (EXHIBIT A) We also support the amendments to this bill.

341 LES ZAITZ, KEIZER TIMES: This opens the curtains to government conduct -Submits and reviews intent of HB 3222-A4 amendments. (EXHIBIT B)

405 SEN. HILL: I am concerned about the amount of current litigation. Is there a concern that more cases will go to trial?

TAPE 215, SIDE A

010 ZAITZ: Public exposure is better then non-exposure. Over time those cases that should not be settled or litigated will decrease. If over time we build a record that local government is not going to engage in the settlement of frivolous cases than a decrease is likely.

022 SEN. HILL: Discusses settlements in the Dept. of Corrections. Are you having difficulty getting this type of information?

030 ZAITZ: Around the state historically the press and the public has had difficulty getting that information. Very often they are treated as litigation records.

039 LANFRANCO: This deals with tort cases only not disciplinary actions that may be brought by a department. This is a narrower interpretation.

047 SEN. HILL: Maybe the threat of a suit are the ones you would want to cover in this type of legislation?

058 SEN. SPRINGER: Would this apply to condemnation proceedings?

062 ZAITZ: I am not sure.

PUBLIC HEARING ON HB 3418

085 REP. BELL: Submits and reviews written testimony. (EXHIBIT C)

150 SENATOR GRATTAN KERANS: Submits and reviews proposed amendments to HB 341 8A. (EXHIBIT D) -It is against the law for an employer to discriminate against a worker who has submitted a worker's compensation claim. -The department gets several requests for this type of information. -Suggests closing the door to individual names in order not to discriminates against injured workers.

212 TIMOTHY BIRR, CITY OF EUGENE: There were concerns in our area regarding victims being listed in public publications. -There needs to be a balancing of the public's right to know vs. an individual's right to privacy.

243 ZAITZ: Testifies in support of HB 3418. This is a growing issue across the country. -We are concerned about the amendments presented by Senator Kerans.

255 CHAIR COHEN: You need to negotiate that with Senator Kerans.

264 SEN. SPRINGER: What do we mean by the phrase "need to protect"?

268 ZAITZ: The intent is that if there is a specific reason that an enforcement officer might know about a specific need to protect a person from additional or future harm the officer needs to take that into consideration and be able to withhold information.

280 BIRR: Discusses current policy regarding release of individuals names in a case of rape, murder, etc. etc. -I am concerned about cases of intimidation. Where someone has been threatened or assaulted based on their race, religion, national origin or sexual orientation. I am concerned about releasing those individuals names and addresses in those types of crimes. The motions of discovery are still in place. It wouldn't effect what goes on in court at all.

PUBLIC HEARING ON HB 2721

314 REPRESENTATIVE KEVIN MANNIX: Reviews intent of HB 2721. -Suggests adding the word "recklessly" to "intentionally", to cover the evidentiary problem when someone want to make a parent responsible for the acts of their child. -Discusses minor acts of vandalism. -Continues reviewing each section of HB 2721.

373 SEN. HILL: What about a situation where you have a kid who has had some trouble with the law and the parents are trying to work with various groups to get the situation in hand, they aren't negligent. Where do they fit into this bill?

394 MANNIX: Explains current law in regard to legal custody.

TAPE 214, SIDE B

011 SEN. HILL: What about foster parents?

015 REP. MANNIX: They aren't covered here. We are talking about the actual parent. Legal custody of foster children remains with CSD.

020 TAYLOR: Is section 4 of HB 2721 a separate cause of action?

025 REP. MANNIX: That relates back to damages actions against parents for intentional and reckless misconduct. That is a civil penalty and is a supplemental amount.

PUBLIC HEARING ON HB 3106

049 REP. MANNIX: Explains current Oregon law in relation to HB 3106. -There is nothing here to give additional arresting authority.

077 SEN. SPRINGER: When we say "probable cause arrest" what are we talking about?

086 JERRY WEIR, SHERIFF, UNION COUNTY: The DA is still going to have to formally charge a person. A police officer citing does not cause formal charges to be filed against someone. Only the DA can do that.

093 REP. MANNIX: This allows the peace officer to write out a citation on the scene.

096 WEIR: Submits and reviews written testimony. (EXHIBIT E)

120 SEN. SHOEMAKER: What is the remedy of the suspect defendant if it turns out there was not probable cause for a citation?

123 WEIR: A lawsuit for false arrest. Technically it is an arrest but it

isn't a custody arrest. -Explains what a custody arrest is.

132 SEN. SPRINGER: What bail if any would be designated on the citation or what would be the sanction for failure to appear?

133 WEIR: There would be no bail designated. The sanction for failure to appear would be the same as failure to appear currently.

139 WEIR: Continues reviewing written testimony. (EXHIBIT E)

172 SEN. HILL: What are the procedures in other states?

178 INGRID SWENSON, COMMITTEE COUNSEL: In order to make it clear that an officer would not be able to arrest under this provision it is advisable to make that explicit because the language refers to ORS 133.055 in the authority for issuing the citation. That statute is in lieu of a arrest statute so it authorizes an arrest.

191 WEIR: When we issue a citation we are arresting that person. It isn't a full custody arrest which is different. Full custody arrest is what we don't want to do so maybe that would be some appropriate language.

198 KEN KOHL, OREGON DEPARTMENT OF AGRICULTURE: Testifies in support of HB 272 1.

220 SEN. SPRINGER: I don't think that it is that difficult when dealing with a District Attorney.

230 KOHL: Discusses personal experience in dealing with District Attorney's.

236 SEN. SPRINGER: Didn't we give you civil penalty authority to get around this issue.

242 CHAIR COHEN: What kinds of things are you talking about?

244 KOHL: Primarily brands.

247 CHAIR COHEN: So we are doing this for brands. It is such a narrow perspective.

253 WEIR: I testified to the general law enforcement need for this bill which has nothing to do with Mr. Kohl.

270 REP. MANNIX: This provides for better citizen protection.

PUBLIC HEARING AND WORK SESSION ON HB 3375

294 KRIS GORSUCH, OREGON STATE BAR: Reviews intent of HB 3375. -This bill was amended in section 3 lines 16-19, which deals with the life estate issue. -There is a problem with the language regarding "who are children" and "who are aires". Are they unborn or yet to be determined? -Gives an example of how this issue may cloud Oregon law.

356 TAYLOR: Submits information handout for committee members. (EXHIBIT F)

MOTION: SENATOR HAMBY MOVES THE DELETION OF SECTION 3 OF HB 3375.

VOTE: MOTION ADOPTED.

MOTION: SENATOR HAMBY MOVES HB 3375, AS AMENDED, TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

WORK SESSION ON HB 2743

411 TAYLOR: Submits HB 2743-A3 amendments to HB 2743-A. (EXHIBIT G)

TAPE 215, SIDE B

011 BLUME: I have met with all of the involved parties and we have solved several problems. We aren't creating a new exemption. We are amending an existing exemption and the language is stated to reflect public interests in disclosure of information as well as private information.

026 CHAIR COHEN: We are introducing your language into HB 2743-A; investigatory information section.

032 SEN. HAMBY: Could you explain section 3 of HB 2743-A3 amendments in regard to the operative date?

042 BLUME: It looks like Legislative Counsel made a mistake. We only put the language on page 5 of HB 2743-A3 amendments.

MOTION: SENATOR HAMBY MOVES TO DELETE SECTION 3 OF HB 2743-A.

057 ZAITZ: I want it on the record that we support this bill.

067 SEN. SHOEMAKER: On the top of page 2 of HB 2745-A3 in line 1, what does the "or" refer to?

076 ZAITZ: The word "that" should be inserted and the word "the" should be deleted.

100 CHAIR COHEN: We're going to set this aside and come back to it later.

MOTION: SENATOR HAMBY WITHDRAWS HER PREVIOUS MOTION.

WORK SESSION ON HB 2386

107 TAYLOR: Submits HB 2386-2 amendments (EXHIBIT H) and HB 2386-3 amendments. (EXHIBIT I) -The HB 2386-2 amendments takes care of some technical changes and section 19 takes care of a housekeeping problem dealing with the surcharge provision. -The HB 2386-3 amendments lines 1-9 which changes placement of brackets which narrowed the bill more than the proponents had intended. Section 18 is a provision requested by the committee which relates to the professional corporation act and clarifies "to render or practice your profession".

MOTION: SENATOR SPRINGER MOVES HB 2386-2 AND HB 2386-3 AMENDMENTS TO HB 2386-A.

VOTE: MOTION ADOPTED.

165 KARL MYERS, OREGON STATE BAR: We have no problem with this bill.

MOTION: SENATOR SPRINGER MOVES HB 2386-A, AS AMENDED, TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

AND BUNN EXCUSED.

WORK SESSION ON HB 2708

209 TAYLOR: Submits and clarifies HB 2708-A6 and HB 2708-A7 amendments. (EXHIBITS J & K) -HB 2708-A7 amendments remove section 4 from the bill which deals with the language regarding attorney fees and who pays. -HB 2708-A6 amendments are reflected in the hand-engrossed version of the bill that committee members have. (EXHIBIT L)

246 DAVID NEEBLE, OREGON ADVOCACY CENTER: Testifies in support of HB 2708-A. -Explains each section of the hand-engrossed bill which reflect the HB 280 7-A6 amendments. (EXHIBIT L)

331 CHAIR COHEN: Each member received a letter in opposition to this amendment from Bill Linden, State Court Administrator. There aren't very many requested hearings.

347 SCOTT MCGRAW, OREGON STATE BAR: Suggests amending lines 15 & 16 to add "authority of temporary guardian, however, shall continue as order by the trial court unless specifically stayed or limited by the court".

369 BOB JOONDEPH, OREGON ADVOCACY CENTER: No objection to that language. We believe that is current law.

393 JUDGE LEE JOHNSON, MULTNOMAH COUNTY: I am concerned about the report being limited. I want to go out and do the full report at one time.

TAPE 216, SIDE A

011 JOONDEPH: In the full guardianship proceeding there is a much more comprehensive review of the situation. It is important that the procedure doesn't get complicated or lengthy.

018 CHAIR COHEN: It says limited to the conditions that are alleged to support the appointment of temporary guardianship.

024 SEN. SHOEMAKER: Why don't we just give the court discretion to expand it? You still have three days to do it in.

028 JOONDEPH: Another additional concern is the interview by ambush. When the process server serving the notice is doing the interview at the same time without giving the proposed ward an opportunity to consult with family or counsel.

040 CHAIR COHEN: We've got that full visitor piece. This deals only with temporaries.

045 JOHNSON: It boils down to cost. The common application is for both a temporary and permanent guardianship. This language limits the courts to some extent. I want to get the most information I can.

060 JOONDEPH: He should have the most information available to him when making a decision. I don't think he will if he gets back the full report within two days which is required under the temporary guardianship provisions.

070 CHAIR COHEN: They still have to have some further detail in order to make that judgement.

072 JOONDEPH: In a smaller community also is the question of who the person is that goes out and does this. Full guardianship is a broader range.

083 CHAIR COHEN: We understand the difference and hope that someone can understand that. When you get to a permanent the quick information is not sufficient.

085 JOONDEPH: That is why we feel there is a need for two separate processes.

090 CHAIR COHEN: Maybe we should table this bill. We have worked on this and can't seem to resolve any of the problem areas.

MOTION: MOVES TO ADD TO HB 2708-A6 AMENDMENTS ON LINE 9 OF PAGE 2; "EXCEPT IF THE COURT SHALL OTHERWISE ORDER A REPORT SHALL BE LIMITED TO CONDITIONS ETC.".

108 SEN. SHOEMAKER: The judge is the one who is supposed to be making these calls and seeing to it that guardians are appropriately appointed. If we can't trust them to do it right we shouldn't have them doing it.

VOTE: MOTION ADOPTED.

MOTION: SENATOR SHOEMAKER MOVES HB 2708-A6 AND HB 2708-7 AMENDMENTS AS AMENDED TO HB 2708-A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR SHOEMAKER MOVES HB 2708-A, AS AMENDED, TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

127 CHAIR COHEN: Senator Shoemaker is excused.

WORK SESSION ON HB 2373

129 KAREN HIGHTOWER, STATE COURT ADMINISTRATOR: Testifies in support of HB 237 3 and reviews written testimony.(EXHIBIT M) -Discusses the rates in regard to failure to appear. -Supports HB 2373-A1 amendments.

190 SWENSON: Submits HB 2373-1 amendments. (EXHIBIT N) -These amendments would provide that if a party against whom a default had been entered were within 1 year to come to the court and request that the default be lifted because the person had failed to appear because of some reasonable ground, the court would be specifically justified to remove the default.

100 SEN. SPRINGER: Is there any notice provided to the person who gets the citation with this options that may be exercised by the court if the person refuses to appear?

208 HIGHTOWER: Currently that is done in traffic cases. A person would usually get a series of notices before entering a judgement. It isn't specifically set out in this bill. Usually the citation would state a person's options.

210 SEN. SPRINGER: I think that if a person doesn't post bail and doesn't appear than notice of what is going to happen should be noted on the citation.

216 SWENSON: Currently with respect to traffic citations; the court is then in power to enter a judgement upon the failure of the defendant to

appear. However, there is no provision for undoing that particular default and the amendments to not address that portion of the law.

222 SEN. SPRINGER: If it is in the interest of justice than I don't see why the court wouldn't want to do that.

MOTION: SENATOR SPRINGER MOVES HB 2373-1 AMENDMENTS WITH THE ADDITIONAL REQUIREMENT THAT THERE BE NOTICE OF OPTIONS ON THE CITATION AND THAT WE APPLY THIS TO ALL INFRACTIONS.

VOTE: MOTION ADOPTED.

MOTION: SENATOR SPRINGER MOVES HB 2372, AS AMENDED, TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

PUBLIC HEARING ON HB 2709

266 MARGARET NIGHTINGALE, OAC STAFF ATTORNEY: Submits and reviews written testimony.(EXHIBIT O)

402 CHRISTINE DEMOLL, ASSOCIATION FOR RETARDED CITIZENS OF OREGON: Submits and reviews written testimony.(EXHIBIT P)

408 SEN. SPRINGER: Asks to be excused and apologizes to witnesses.

430 JUDGE JOHNSON, MULTNOMAH COUNTY: Opposes HB 2709.

TAPE 217, SIDE A

042 JOHNSON: If it ain't broke why try to fix it. -Discusses process servers versus visitors in regard to serving notices. -Reviews each section on HB 2709.

105 SCOT MCGRAW, ATTORNEY: Testifies in support of HB 2709. -Suggests that the language regarding bankruptcy be reworded. -Disagrees with Judge Johnson's concerns about HB 2709.

167 JEFF BRANDON, MARION COUNTY: I agree with Judge Johnson on this bill and I am particularly concerned about the 7 days in relation to the visitor and the 30 days that the visitor shall submit a report language. If they take 30 days for the report than that is how long it will take for the guardianship. -On line 37 the "30 days" should say "15 days" because that is the mandated notification time line currently. -Suggests amending the bill to state that "the visitor can't serve the petition".

PUBLIC HEARING ON HB 2459

208 GARY CONNOR, ATTORNEY: Testifies in support of HB 2459. -Explains the parallel between freedom of speech vs. right to privacy. -Discusses other records that are not allowed to be given out.

312 LARRY WOBROCK, OREGON TRIAL LAWYERS ASSOCIATION: Submits and reviews written testimony.(EXHIBIT Q)

346 WILLIAMSON: If you take the time to read our testimony you will understand this issue on human terms. -Discusses some examples of how this is intrusion. -There are other states that have passed this type of legislation. -People are free to talk to whomever they want but the restricted use of records does not violate a person's freedom of speech rights.

TAPE 216, SIDE B

009 CHARLES BURT, ATTORNEY: I am disturbed at the attempt to commercialize the practice of law. Supports HB 2459. You can legitimately do only about 40 or 50 cases a year and when you have 1,000 to 2,000 your not going to serve the client at all.

040 DAVE FIDANQUE, ACLU of OREGON: We appreciate what the Trial Lawyer's Association is trying to do but we oppose HB 2459. -Discusses the current Oregon State Bar code of responsibility. -This bill treats commercial speech differently that other kinds of speech.

084 CHAIR COHEN: What if those records were closed up entirely except when the information is needed?

089 FIDANQUE: This bill attempts to close it off, but it is really only closing off for one purpose. It needs to be private or public; not sort of private.

094 TAYLOR: What if we changed the bill so it would prohibit the division from releasing records except under commercial purposes? It should be easy to distinguish between an ambulance chaser who would be interested in bulk records and someone who comes in for a newspaper article.

111 FIDANQUE: I don't think that is good enough for the proponents of this bill. A number of people just have standing orders for hard copies of all of these materials which would probably include insurance companies. The news media gets their information from the law enforcement agencies.

138 BILL BIRHANZL, CITIZEN: Submits and reviews written testimony. (EXHIBIT R)

180 Staff submits written testimony of Thomas Howe, HB 2459 for the record. (EXHIBIT S)

121 CHAIR COHEN: Adjourns hearing at 8:30 p.m.

Submitted by, Reviewed by,

Shannon GossackIngrid Swenson AssistantAdministrator

EXHIBIT LOG:

A - Leonard LanFranco, HB 3222, 1 pg. B - Les Zaitz, HB 3222-A4 amendments, 1 pg. C - Rep. Bell, HB 3418, 2 pgs. D - Sen. Kerans, HB 3418 proposed amendments, 2 pgs. E - Jerry Weir, HB 3106, 2 pgs. F - Staff, HB 3375-A, informational, 2 pgs. G - Staff, HB 2743-3 amendments, 8 pgs. H - Staff, HB 2386-A2 amendments, 2 pgs. I - Staff, HB 2386-A3 amendments, 1 pg. J - Staff, HB 2708-A6 amendments, 1 pg. K - Staff, HB 2708-A7 amendments, 1 pg. L - Staff, HB 2708-A6 hand-engrossed bill, 4 pgs. M - Karen Hightower, HB 2373, 5 pgs. N - Staff, HB 2373-1 amendments, 2 pgs. O - Meg Nightingale, HB 2709A, 7 pgs. P - Christine DeMoll, HB 2709A, 2 pgs. Q - Larry Wobbrock, HB 2459, 12 pgs. R - Bill Birnhanzl, HB 2459, 4 pgs. S - Staff, Testimony of Thomas Howe, HB 2459, 12 pgs.