

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 HB 2354 HB 2828 HB 2743 HB 2935 HB 2193 HB 2317 HB 2709
HB 2604 HB 2459 HB 2125 HB 2033 HB 3167

SENATE COMMITTEE ON JUDICIARY

June 7, 1991Hearing Room C 1:00 p.m.Tapes 218 & 219

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 Shannon Gossack, Committee Assistant

WITNESSES: Bob Joondeph, Oregon Advocacy Center Vern
Faatz, Parole Board Dave Fidanque, ACLU of Oregon Pete Shepherd, Dept.
of Justice Representative Jerry Barnes Steve Carmichael, Dept. of
Juvenile Services Dan Hartman, Dept. of General Services Representative
Marie Bell Marcia Morgan, Legislative Liaison, Lane County Charles
Williamson, Oregon Trial Lawyer's Association Meg Nightingale, Oregon
Advocacy Center

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TAPE 218, SIDE A

002 CHAIR COHEN: Calls hearing to order at 1:28 p.m.

PUBLIC HEARING ON HB 2935

007 REPRESENTATIVE JERRY BARNES: Testifies in support of HB 2935 and reviews the bill. -Explains that the law enforcement agencies have asked for this type of legislation.

036 INGRID SWENSON, COMMITTEE COUNSEL: Explains how HB 2935 would work in regard to remandable offenses. There is a change in terms of what happens to a child who has had a previous charge remanded which deletes the requirement of subsection 2 of HB 2935 line 5. -Discusses current law in relation to remandable offenses.

066 CHAIR COHEN: What are the current remandable offenses?

071 SWENSON: Page 1 refers to children 15 years of age or older and page 2, subsection 3 deals with a listing of offenses.

078 SEN. SHOEMAKER: Findings need not be made if they are going to subsequently remand the child for any future cases?

082 STEVE CARMICHAEL, LANE COUNTY, DEPARTMENT OF JUVENILE SERVICES: My impression is that very few children are remanded. Because it is unusual the Judges in this state don't take that step lightly.

096 SEN. SHOEMAKER: Why not require the findings that the law now requires?

099 CARMICHAEL: Once you've made those findings you have probably exhausted the resources within the juvenile system.

103 CHAIR COHEN: Once you've gone through the adult criminal court system then that would indicate that you are no longer eligible to go through the local juvenile courts.

107 SEN. SHOEMAKER: What if they aren't convicted of the remandable offense?

109 REP. BARNES: I talked to a District Attorney about that and he said that if you are not convicted when you were first remanded then the circuit judge would have to have findings of fact again to remand or it would be nullified.

113 SEN. SHOEMAKER: Juvenile court may remand before any trial occurs. They may also make some sort of subsequent order providing for all future cases also made before the trial and remand.

126 REP. BARNES: They would probably have to go through the whole process again if the teenager was not convicted.

131 SEN. HAMBY: How long has this law been in effect in the state of Washington?

PUBLIC HEARING ON HB 2193

154 DAN HARTMAN, RISK MANAGEMENT, DEPT. OF GENERAL SERVICES: In the last ten years we have received over 20,000 liability claims have resolved 19,000 of those without those going into suit. Those that did go into suit were resolved without a trial. Without this bill we are not in a position to get all of the facts which may lead us to an unresolved claim. (EXHIBIT A) -There is a fiscal but it can not be determined.

167 SEN. BUNN: Would an insurance company have the same access to this information?

179 HARTMAN: Yes, but we can't buy liability coverage.

182 SEN. BUNN: We aren't asking for a special privilege because we are the state.

PUBLIC HEARING ON HB 3317

218 REPRESENTATIVE MARIE BELL: Submits and reviews written testimony. (EXHIBIT B)

269 CARMICHAEL: Submits and reviews written testimony. (EXHIBIT C)

312 MARCIA MORGAN, LEGISLATIVE LIAISON, LANE COUNTY: Clarifies HB 3317 section by section.

343 SEN. HILL: I have the problem with the language "may" instead of "shall" if we are talking about imminent danger. You've opened it up so

a person is able to do this but than you don't, what is going to happen?

359 CARMICHAEL: If in the professional judgement the person felt it was imminent danger I think "shall" would be appropriate. We need some protection which is what the amendment will deal with. We don't want a situation where you have to warn someone every single time a threat is made.

369 SEN. HILL: I am assuming that you will only do it if you in your professional capacity feel it is necessary.

379 MORGAN: Continues reviewing bill and submits HB 3317-A5 (EXHIBIT D)

TAPE 219, SIDE A

008 SEN. SHOEMAKER: Are we sure that it is only the professional that would have this type of information or provided the information? Is there any risk that a person providing this would be doing so on a heresy basis?

011 CARMICHAEL: That could occur but I think it would be highly unlikely. Professional judgement of the person providing the information.

023 SWENSON: Who ordinarily has access to the records?

028 CARMICHAEL: Juvenile probation officers, clerical staff and professional people.

036 SWENSON: Under current law these records can be disclosed with the consent of the court or child? So do you think it is unworkable to have the worker go to the court and ask permission?

040 CARMICHAEL: Sometimes workable sometimes not. It depends on the size of the county and where the judge happens to be.

042 SWENSON: If you were to list the people who could disclose would it be Children Services Division, case workers and detention workers. Would there be anyone else?

044 CARMICHAEL: That would probably do it.

046 SWENSON: The judge already has the authority so we don't need to do anything with that. What about a referee?

048 CARMICHAEL: They act in the capacity of the judge so they would be covered,

050 SEN. SHOEMAKER: Is the person providing the information always the professional?

051 CARMICHAEL: Explains procedure set up in his department.

058 SEN. SHOEMAKER: It is only the judgement of the person providing the information who exercises the decision whether to disclose it.

063 CARMICHAEL: Our interpretation would be once it gets to the counselor the information would be theirs and they would be the one providing it in the report.

068 REP. BELL: The amendments were a result of a disagreement in the House. By adding the amendments and adding the word "shall" all involved would be happy.

081 CHARLES WILLIAMSON, OREGON TRIAL LAWYER'S ASSOCIATION: It would not make sense to give someone immunity under the "shall" language.

097 REP. BELL: Section B of subsection 6 is about the decision on whether it is imminent danger or not. Not whether it is imminent danger and they choose not to disclose.

097 SEN. BUNN: What is the professional liability in current statute?

105 REP. BELL: We don't want to get into threats that have no merit.

111 SEN. BUNN: Expresses concern about the phrases "professional judgement" and "imminent danger".

116 REP. BELL: We would be placing confidence in the professional.

123 CARMICHAEL: In terms of legal action you are right. In terms of working with families and youngsters that may be counterproductive. -Discusses the runaway shelter he ran in California.

137 SWENSON: Discusses the medical records exception in regard to liability.

154 SEN. BUNN: I like the bill the way it came from the House if we change the "may to "shall". I don't like the amendments.

161 SEN. SHOEMAKER: I think that people that this applies to should be listed and we ought to have the amendments.

185 SWENSON: The term in current statute is "clear and immediate danger" is that what the Committee wants?

190 CHAIR COHEN: That would be fine.

WORK SESSION ON HB 2828

203 BILL TAYLOR, COMMITTEE COUNSEL: The HB 2828-A2 amendments. (EXHIBIT E) -The amendments address similar language in ORS 181.450 in regarding expert witness fees.

235 CHAIR COHEN: Is the a difficult statute to manage in terms of where is the dividing line and the cut-off between an expert and a non-expert and also in the line of duty?

247 TAYLOR: Discusses accident reconstruction expert witnesses.

MOTION: CHAIR COHEN MOVES HB 2828-A2 AMENDMENTS TO HB 2828.

VOTE: MOTION ADOPTED.

MOTION: SENATOR HILL MOVES HB 2828A, AS AMENDED, TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

WORK SESSION ON HB 2354

270 TAYLOR: Submits and reviews HB 2354-A2 amendments. (EXHIBIT F)

297 SEN. BUNN: Under the amendments do we end up with a 5 year period from malpractice with a 3 year from death? If someone lived for two years from the incident of malpractice and then died do you have another

3 years? What is the longest time period allowed total from the accident until the expiration of the (inaudible)

297 WILLIAMSON: You would have 3 years from the date it was discovered or reasonably should have been discovered. If it is a non-medical malpractice and a non-products liability it is ten years.

318 SEN. SHOEMAKER: Asks for clarification on HB 2354-A2 amendments in regard to "three years from when it is discovered, or should have been discovered by decedent, personal representative or person for who's benefit the action is brought". Is it any one of the three?

327 WILLIAMSON: The intent is that if any one of those folks should have discovered it then it starts to run from that time.

MOTION: SENATOR HILL MOVES HB 2354-A2 AMENDMENTS TO HB 2354.

VOTE: MOTION ADOPTED.

MOTION: SENATOR HILL MOVES HB 2354, 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, SPRINGER, HILL AND COHEN VOTING AYE.

WORK SESSION ON HB 2743

366 TAYLOR: Explains HB 2743-3 amendments with hand-engrossed changes. (EXHIBIT G) -Redrafted for grammatical purposes. -Section 1 deals with investigatory information for criminal law purposes. The new language is "or information that covers specific law enforcement tactical plans". -The amendments also remove language on lines 1 & 2 of page 2 in HB 2743.

393 CHAIR COHEN: We need to also do the same on page 5 of the amendments.

MOTION: SENATOR SHOEMAKER MOVES HB 2743-3, AS AMENDED, TO HB 2743.

VOTE: MOTION ADOPTED.

MOTION: SENATOR SHOEMAKER MOVES HB 2743 AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

TAPE 218, SIDE B

WORK SESSION ON HB 2709

021 TAYLOR: Submits HB 2709-2 and HB 2709-4 amendments. (EXHIBITS H & I) -HB 2709-A2 amendments on page 1 of HB 2709-A narrows the language. So the Class A misdemeanor language was inserted. Also on page 2 of HB 2709 which deals with the venue language. -HB 2709-A4 amends page 2, line 33 of HB 2709 which deals with visitor language. We inserted the language pertaining to "15" rather than "30" days on line 37.

064 MEG NIGHTINGALE, OREGON ADVOCACY CENTER: We support the amendments to HB 2709-A. We would like to work at the county level to create more of a buffer period between service of notice and the visitor. We are taking out anything that mandates the exact interval.

074 CHAIR COHEN: If that doesn't work than come back to us.

077 SEN. HAMBY: Why are we deleting lines 34-36 (bold face material)?

082 CHAIR COHEN: They said it was too long and made the proceedings drag out. Each county is under different circumstances so one set time line doesn't work.

089 SEN. HAMBY: It is to bad we couldn't identify at least a shorter time period or a minimal period of contact. The notion of them both arriving in tandem is not the best thing.

093 TAYLOR: Explains the process for serving a notice in Multnomah County.

105 NIGHTINGALE: Current practice in Multnomah County is that the visitor does serve the notice.

110 TAYLOR: I think after this they would not be serving the notice.

118 SEN. SHOEMAKER: What is the reason for the limitation found on page 4 of subsection 6 regarding release of records within guardianship.

127 NIGHTINGALE: Right now the probate courts have an option of appointing a total guardianship. -The person may still have other legal concerns and we wanted it clear that they could make access to counsel on issues that the guardianship did not pertain to.

142 SEN. SHOEMAKER: The language does not permit the board to contact counsel regarding issues within the scope of a limited guardianship.

160 NIGHTINGALE: Explains differences in full and limited guardianship. -If the focus of the counsel's role is to look at how the guardian was performing there role I feel it would be within the language. If it was to directly obtain a tort attorney to proceed against a physician it wouldn't allow that. -They could seek advice on anything related to the guardianship itself, but not necessarily on the decision a guardian was authorized to make as in the medical area.

173 BOB JOONDEPH, OREGON ADVOCACY CENTER: Suggests amending HB 2709-A on line 10 after the words "to counsel", insert a period and delete the specification on the types of matters. -The probate court would still have an option should the guardian feel that the ward was acting inappropriately.

206 CHAIR COHEN: So you couldn't prevent a ward from releasing records to some other counsel. The ward and the guardian would have concurrent power to release the ward's records.

215 SEN. SHOEMAKER: Do we need to clarify "counsel for the ward"?

222 TAYLOR: Should it be "ward" or "incompacitated person".

238 CHAIR COHEN: On page 3 line 17 it talks about those words and clearly defines what they mean. The conceptual amendment will read "a guardian may not prevent the ward from contacting, retaining or releasing records to counsel for the ward".

MOTION: SENATOR HILL MOVES HB 2709-A2 AMENDMENTS AND HB 2709-A4 AMENDMENTS TO THE AMENDED HB 2709-A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR SHOEMAKER MOVES TO AMEND SUBSECTION 6, PAGE 4 OF LINES

10 & 11 OF HB 2709-A TO SAY "A GUARDIAN MAY NOT PREVENT THE WARD FROM CONTACTING OR RETAINING COUNSEL OR RELEASING RECORDS TO COUNSEL FROM THE WARD".

VOTE: MOTION ADOPTED.

MOTION: SENATOR HILL MOVES HB 2709-A AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

WORK SESSION ON HB 2604

319 SWENSON: HB 2604-A modifies the provisions for revoking parole and would allow the board to designate representatives who can impose graduated local sanctions rather than returning to prison. This bill also deals with citations. The issue of the length of confinement was a concern of some people in the local graduated situations and the HB 2604-A2 amendments address that issue. (EXHIBIT J)

348 VERN FAATZ, CHAIR, BOARD OF PAROLE AND POST PRISON SUPERVISION: We don't want a person held for an extended period of time without a hearing that considers their rights to due process.

368 SEN. HAMBY: Why the number 15?

374 FAATZ: This is not more than 15 days. There are an array of different options here. -Brief scenario of how the process would work.

395 DAVE FIDANQUE, ACLU OF OREGON: Our current processes for parolees and post prison supervision violators is probably a lot quicker than 15 days. However, if there is a chance that the person is going to be put into one of these alternative sanctions listed in subsection 2b of the bill, they should be entitled to all hearing rights.

TAPE 219, SIDE B

MOTION: SENATOR HAMBY MOVES HB 2604-A2 AMENDMENTS TO HB 2604-A.

VOTE: MOTION ADOPTED.

022 SWENSON: There was a concern about the word "waiver" in current law. The research that we did is indeed what the Senator assumed it was. In section 3 page 3 of HB 2604-A which deals with automatic termination. Under current practice there are no choices about what happened to a person under these circumstances. The amount of time they will serve is established by rule and concurrent with any other time they are serving.

MOTION: SENATOR HILL MOVES HB 2604-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 BUNN AND BROCKMAN VOTING NAY.

WORK SESSION ON HB 2459

060 CHAIR COHEN: We have had questions raised with respect to whether this is a constitutional issue or not.

MOTION: SENATOR SPRINGER MOVES HB 2459 TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

068 SEN. HILL: I was not convinced that this was needed at first but the information that was shown from the Bar Association really changed my mind.

080 SEN. SPRINGER: I heard a lot of testimony that this is something we should do.

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 HB 2125

103 TAYLOR: Submits HB 2125-A3, HB 2125-A5 and hand-engrossed HB 2125-A5 amendments. (EXHIBIT K, L & M) -HB 2125-A5 amendments deal with bonds and the amounts. The amendments also delete section 13 of the bill.

MOTION: SENATOR HILL MOVES HB 2125-A5 AMENDMENTS TO HB 2125-A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR HILL MOVES HB 2125-A3 AMENDMENTS TO HB 2125-A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR HILL MOVES HB 2125 AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

139 SEN. BUNN: I am going to vote against this because of the fingerprinting requirement.

149 SEN. SHOEMAKER: My problem is with existing language about waiver by the Commissioner of the requirement of an (can't understand) bond on lines 4-8 page 5.

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

WORK SESSION ON HB 2033

188 PETE SHEPHERD, DEPARTMENT OF JUSTICE: We object to HB 2033-A2 & HB 203 3-A3 amendments. They do not increase the efficiency of the tool and actually make it easier for narcotics traffickers to protect their proceeds. Secondly they do not improve the fairness of the law. We object to the authority under the amendments.

212 CHAIR COHEN: So what are you objecting to?

216 SHEPHERD: We object to the authority under the amendments where the court orders the government to return property to a claimant who has tried to prove an affirmative defense under these accelerated hearings and has failed.

220 CHAIR COHEN: So we are arguing about the fact that the court doesn't "have to" but it "may".

225 SHEPHERD: In section 4 of HB 2033-A3 amendments on lines 11 & 12 it provides that "the petition shall reflect whether the petitioner seeks one or more of the following". Then there is a list of things and we disagree with the second one listed. (EXHIBIT N) -Submits and reviews written testimony. (EXHIBIT O)

WORK SESSION HB 3167

266 SWENSON: HB 3167-A5 amendments would extend the intent of the original bill to include "intentionally", "knowingly" and "reckless" and exclude injuries that result from motor vehicle accidents. (EXHIBIT P)

MOTION: SENATOR SPRINGER MOVES HB 3167-A5 AMENDMENTS TO HB 3167-A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR SPRINGER MOVES HB 3167-A 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.

298 SEN. SHOEMAKER: If a claimant establishes an affirmative defense at that hearing do you concur that it would be appropriate for the judge to release the property?

310 SHEPHERD: It would be required. If an affirmative defense isn't established the court could still release the property because there is no constraint.

300 FIDANQUE: I don't think we can reach consensus on this issue. The amendments as drafted do not require a claimant to make an affirmative defense at this expedited hearing. We foresee individuals coming in who are not prepared to make an affirmative defense because they don't know what the case is against them. We don't think that a judge is going to release property to someone who they are convinced is a drug dealer. There is nothing in here that forces the court to release property.

339 SHEPHERD: The theory that people can't go forward because they are not ready to do so simply does not apply under the bill.

MOTION: SENATOR SPRINGER MOVES HB 2033-A5 AMENDMENTS TO HB 2033-A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR SPRINGER MOVES HB 2033-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 BUNN AND BROCKMAN EXCUSED.

375 CHAIR COHEN: Adjourns meeting at 3:55 p.m.

Submitted by, Reviewed by,

Shannon Gossack Ingrid Swenson Assistant Counsel

EXHIBIT LOG: A - Dan Hartman, HB 2193, 1 pg. B - Rep. Bell, HB 3317, 1 pg. C - Steve CarMichael, HB 3317, 1 pg. D - Marsha Morgan, HB 3317, 1 pg. E - Staff, HB 2828, 1 pg. F - Staff, HB 2354, 1 pg. G - Staff, HB 2743, 8 pgs. H - Staff, HB 2709-A2, 1 pg. I - Staff, HB 2709-A4, 1 pg. J - Staff, HB 2604-A2, 1 pg. K - Staff, HB 2125-A3, 2 pgs. L - Staff, HB

2125-A5, 1 pg. M - Staff, HB 2125-A5 hand-engrossed, 11 pgs. N - Staff/Pete Shepherd, HB 2033-A3, 6 pgs. O - Pete Shepherd, HB 2033, 3 pgs. P - Staff, HB 3167-A5, 1 pg.