

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 2843 HB 2580 HB 3312 HB 3098 HB 2545 HB 2581
HB 2581 HB 2935 HB 3418

SENATE COMMITTEE ON JUDICIARY

June 11, 1991 Hearing Room C 1:00 p.m. Tapes 225 - 227

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: Representative Marie Bell Jim Carlson,
Oregon Medical Association Representative Bill Markham Mike McCallum,
Oregon Restaurant Association John Ross, Oregon Restaurant Association
John Powell, State Farm Insurance Paul DonHeffner, Marine Board Russ
Spencer, Oregon State Sheriff's Association John Brunelle, Multnomah
County Sheriff's Association Dale Penn, ODAA Rosanna Creighton, Citizens
for a Drug Free Oregon Representative Ron Cease Bill Drew, Legislative
Asst., Senator Hamby Senator Paul Phillips Dave Fidanque, ACLU of Oregon

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TAPE 225, SIDE A

PUBLIC HEARING ON HB 2843

010 REPRESENTATIVE BILL MARKHAM: Reviews and testifies in support of HB 284 3.

030 SEN. SPRINGER: Have you talked to the director of Insurance and Finance to see what they can do to help out?

040 REP. MARKHAM: No I have not.

045 JIM CARLSON, OREGON MEDICAL ASSOCIATION: Our legal counsel looked at this and tried to figure out a way to work it. We found that the only way is under a county Health Department and under limited capacity, and only at the request of and under the direction of the county health

officials. We think it is a good bill. It doesn't do anything to change the liability to current physicians by the county. These people would be an additional resource for the counties to draw on. I am not aware of any opposition to this bill.

072 BILL TAYLOR, COMMITTEE COUNSEL: Submits and reviews HB 2843-A4 amendments. (EXHIBIT A) The amendments would just remove the first line of the HB 284 3-A. Any retired physician that meets the qualifications set forth in section 1 would be free from liability, but if a person were hurt, that person would be able to make a claim under the state tort claims act.

090 CHAIR COHEN: Your not eliminating people from making claims.

PUBLIC HEARING ON HB 3312

097 REPRESENTATIVE MARIE BELL: Testifies in support of HB 3312.
-Discusses what a Victim Impact Panel does.

131 SEN. HAMBY: How much have these types of panels grown?

134 REP. BELL: Explains impact panels in the state of Washington.

142 SEN. SHOEMAKER: The bill applies only to those who have been released from prison. What about allowing this to be a condition of probation.

149 REP. BELL: I don't think that came up in discussion. In some states this is considered prior to sentencing.

157 CHAIR COHEN: You just want a person to go in and sit in on a session.

160 REP. BELL: If it were connected to parole we would get unwilling participants.

175 MIKE MCCALLUM, OREGON RESTAURANT ASSOCIATION: Submits and reviews written testimony. (EXHIBIT B)

208 JOHN ROSS, OREGON RESTAURANT ASSOCIATION: This has been a growing problem across the country. This has to do with drunk driving and a lot of other offenses.

227 MCCALLUM: This bill also has a provision that would include a right of civil license for a 18- 20 year old.

233 SEN. HAMBY: Over the last biennium how many servers have been pulled into court for serving a minor?

237 MCCALLUM: The OLCC would make that sanction rather than a civil court action.

246 SEN. SHOEMAKER: Since this bill relates to alcoholic liquor I would like to amend HB 3495 by adding SB 254 to it. SB 254 deals with the suspension of a driving privileges of 18, 19 and 20 year old when they breath any alcohol at all. Would you have a problem with doing that?

263 ROSS: We have no objection. A zero tolerance is what we are talking about.

269 JOHN POWELL, STATE FARM INSURANCE COMPANY AND NW PACIFIC: On page 5

of HB 3495 lines 19 & 20 prevents and insurer from using the fact that someone's driving privilege has been taken away from them for non-driving offenses. This is not sound public policy. -Explains the intent behind section 5 of HB 3495.

326 CHAIR COHEN: You don't have to be under the influence just using a false identification.

329 SEN. HILL: When you are rating someone for insurance purposes do you take into consideration their criminal record?

338 POWELL: If there was a serious felony, it may be taken into consideration. We are limited to three areas of driving information.

350 SEN. HILL: Discusses the issue of relevancy.

372 POWELL: Many of the offenses that are addressed by the laws in question involve the use of drugs and would be directly related to the persons driving ability. There is some relevance to this.

391 SEN. HILL: Gives example of an alcoholic in regard to driving.

TAPE 226, SIDE A

012 POWELL: Some people that get a DUI will never ever drive drunk again, yet it is on their record and for insurance purposes it will be used against them for three years. There are others, on the other hand, that will continue to drink and drive. You will never get it to the point where it applies to everyone equally.

027 SEN. SPRINGER: Maybe next session we will start suspending licenses for spitting on the sidewalk. The fact that they could have something on their driving record that has absolutely nothing to do with their driving seems ridiculous.

043 POWELL: I agree with your desire to deal with reality. In a realistic sense those again who practice these things to the point where they get caught and cited and found guilty in court, are likely to also to be the ones most likely to abuse the privilege of driving down our highways sober.

PUBLIC HEARING ON HB 3098

063 PAUL DONHEFFNER, MARINE BOARD: Testifies in support of HB 3098. -Reviews each section of HB 3098.

108 CHAIR COHEN: There is concern about HB 2156 which is stuck in a conference committee. -We have been asked to add onto HB 3098.

128 DONHEFFNER: We were surprised by the nonconcurrence by the House to add the amendments to HB 2156 which restored the current statute. We don't really understand the notion that we should weaken the current Boating Under the Influence Law by creating a wholesale exemption for any class of vessels. I can site a number of cases where the vessels in the exemption class have resulted in death or serious injury to others. I do not believe a compromise is possible between the Conference Committee members. The House version of the bill would be unacceptable and we would rather live with current statute. There is support for boating under the influence bill in the Senate version on the House side. Sponsors of HB 309 8 are willing to take the fight to the floor in order to pass the bill with the boating under the influence in it.

MOTION: SENATOR HILL MOVES HB 2156 BE AMENDED TO HB 3098-A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR HILL MOVES HB 3098 AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

177 SEN. HAMBY: Introduces Boy Scout troop from HillsSB oro.

WORK SESSION ON HB 2545

195 INGRID SWENSON, COMMITTEE COUNSEL: Submits and reviews hand-engrossed HB

254 5 and HB 2545-A2 amendments. (EXHIBIT C) -This bill would create two classes of child neglect. Existing would become second degree and would remain unchanged. The new class would be a B Felony offense which would occur when a person who had custody or control of a child under 16; permitted, allowed or knowingly left a child in a vehicle or on premises where controlled substances are being criminally delivered or manufactured for consideration or profit.

-The amendments would limit the application to having children in the immediate proximity of the manufacture or delivery. It also excludes public places. Sections 2 & 3 of the bill have been deleted.

238 SEN. SHOEMAKER: Is it intended that in section 1 of HB 2545 that the criminal delivery or manufacture occur while the child is on the premises or in a certain proximity?

241 SWENSON: I am sure that was the intent.

247 CHAIR COHEN: The language on line 5, "knowingly leave child or allow the child to stay", would relate to that.

255 RUSS SPENCER, OREGON STATE SHERIFF'S ASSOCIATION: Your concerned with the immediacy of the activity. Gives example of a methadone lab and the danger involved.

274 SEN. SHOEMAKER: If someone is home where they are growing marijuana and the child is living in that home, even if they aren't there when a deliver takes place, they would fall under this.

287 SPENCER: When a person is involved with this type of activity there is a danger that exists.

294 SEN. HILL: Someone that sells drugs while the child is at school and they don't sell drugs while the child is at home. Is that the person you would want to get at as well?

306 LT. JOHN BRUNELLE, MULTNOMAH COUNTY SHERIFF'S OFFICE: Whether the child is home or not the drugs are there and just that fact is a danger especially in certain areas. -Gives example of the Postal service employee.

326 SPENCER: The fact that it is commonly known among the drug consuming community makes a home a target in respect to danger. Gives examples of drive by shooting, rip offs, burglary etc. etc....

347 SEN. SHOEMAKER: What about this type of situation in an automobile?
-Gives examples of drug transaction in a vehicle.

352 SPENCER: That is not our intention. I am not sure about the next day issue.

367 SWENSON: If the intent is to treat vehicles different than premises we need to make that fact very clear here.

MOTION: CHAIR COHEN MOVES TO ADD THE LANGUAGE "IN A VEHICLE WHERE CONTROLLED SUBSTANCES ARE BEING CRIMINALLY DELIVERED OR MANUFACTURED, OR ON PREMISES WHERE THEY ARE" TO HB 2545-A2 AMENDMENTS.

VOTE: MOTION ADOPTED.

MOTION: SENATOR SHOEMAKER MOVES HB 2545-A2 AS AMENDED TO HB 2545-A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR SHOEMAKER MOVES HB 2545-A AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

TAPE 225, SIDE B

WORK SESSION ON HB 2581

010 SWENSON: Submits and reviews HB 2581-A2 amendments as amended. (EXHIBIT D) -The conceptual amendments would delete the word "encourage" on line 4 of HB 2581-A, so that the person using the minor would have to "solicit, force, compel, coerce, employ a minor" rather than just "encourage" a minor. The amendments would also provide that if the delivery of marijuana is a quantity of less than 5 grams that it would be a class A misdemeanor rather than a class A felony.

024 SEN. BUNN: Questions the 1 gram causing a jump from A misdemeanor to A felony.

029 SWENSON: That is the case with our current controlled substance law.

033 CHAIR COHEN: Gives example of a gang of kids where the 13 year old is actually the ring leader and more dangerous than the 16 year old.
-Revision of the Juvenile Code.

059 SEN. SPRINGER: If feel better with the amendments. We need to be very explicit when it comes to the A felony as to what kind of conduct is sanctioned. The language on line 5 of the bill "as otherwise used" is too vague. Is any mental state required here?

073 SPENCER: Currently HB 2581-A2 amendments are fine with us. On line 7, "otherwise use" could be related to the issue of look-outs for example.

084 SEN. SPRINGER: If that is what we want to sanction than we should state that specifically.

088 BRUNELLE: Discusses the criminal justice system and how people circumvent it.

122 SEN. SHOEMAKER: What about "assist in" manufacture and distribute?
-Does this catch the minor that is assisting?

136 CHAIR COHEN: I don't want to mess with the distribution aspect in
line 7 of HB 2581. If you want to put "assist" in then it should
probably go up in the first few lines.

142 DALE PENN, OREGON DISTRICT ATTORNEY'S ASSOCIATION: We have no
problem with confining this to adults. We want to primarily impact
adults at this time. If later on we can

deal with juveniles that would be fine. Since the other terms on line 5
of HB 2581 are more defined you might want to use "or otherwise use as
an aider and abetter.

161 SEN. SPRINGER: What about the issue of mens rea.

171 PENN: Explains distribution and manufacturing in regard to
aggravating sentencing. It is our burden to prove that issue.

186 SEN. SPRINGER: I would feel better with "knowingly" in there.

190 SEN. SHOEMAKER: Is it correct the criminally negligent is the mens
rea involved?

193 SWENSON: Since it is outside the criminal code and provides no
specific mens rea I gather criminal negligence is a sufficient mental
state.

207 ROSANNA CREIGHTON, CITIZENS FOR A DRUG FREE OREGON: We are the
requestor

of this bill and we would be comfortable returning the language to the
original intent.

MOTION: SENATOR SPRINGER MOVES HB 2581-A2 AMENDMENTS TO HB 2581-A WITH
THE ADDITIONAL LANGUAGE "OTHERWISE USE AS AN AIDER OR ABATOR" AND TO
ALSO ADD THE WORD "KNOWINGLY" IN SECTION 1. (asks the Legislative
Counsel figure out exactly where to add the language)

225 SEN. BUNN: I don't like lines 3-8 of the HB 2581-A2 amendments. I
think we need the clarification of an adult. I will not support the
motion.

242 SEN. BROCKMAN: Objects to the motion on the basis of going to an
adult only.

248 PENN: The issue is to deal with the adult offender. The need is not
so great in regard to the child.

VOTE: MOTION CARRIES WITH SENATORS BROCKMAN, HAMBY, SHOEMAKER, SPRINGER
AND COHEN VOTING AYE AND SENATOR BUNN VOTING NAY WITH SENATOR HILL
EXCUSED.

MOTION: SENATOR SPRINGER MOVES HB 2581-A AS AMENDED TO THE FLOOR WITH A
"DO PASS" RECOMMENDATION.

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

WORK SESSION ON HB 2935

300 SWENSON: Explains HB 2935-A2 amendments. (EXHIBIT E)

MOTION: SENATOR SHOEMAKER MOVES HB 2935-A2 AMENDMENTS TO HB 2935- A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR SHOEMAKER MOVES HB 2935-A AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

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

WORK SESSION ON HB 3418

342 CHAIR COHEN: This bill allowed the confidentiality of victims who were thought to be in danger.

350 MARK THORBURN, COMMITTEE ASSISTANT: Reviews intent of HB 3418.
-Senator Kerans has withdrawn his amendments that he presented at a previous meeting.

MOTION: SENATOR HAMBY MOVES HB 3418 TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

367 SEN. BUNN: I don't feel comfortable exempting more information from public disclosure.

370 CHAIR COHEN: This is a temporary disclosure. When it come to the court it would be released in the normal course of events. There isn't anyone that this would effect adversely.

413 SEN. BUNN: On page 3, lines 34 & 35 of HB 3418 we are taking investigatory information compiled for criminal law purposes and saying it will not be disclosed.

425 THORBURN: That is current law they are just rephrasing the language.

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

TAPE 226, SIDE B

WORK SESSION ON HB 3312

MOTION: SENATOR HAMBY MOVES HB 3312 TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

VOTE: MOTION CARRIES WITH SENATORS BUNN, HAMBY, SHOEMAKER, SPRINGER AND COHEN VOTING AYE WITH SENATORS BROCKMAN AND HILL EXCUSED.

WORK SESSION ON 2843

MOTION: SENATOR SHOEMAKER MOVES HB 2843-A4 (EXHIBIT A) AMENDMENTS TO HB 2843-A.

VOTE: MOTION ADOPTED.

MOTION: SENATOR SHOEMAKER MOVES HB 2843-A AS AMENDED TO THE FLOOR WITH A "DO PASS" RECOMMENDATION.

VOTE: MOTION CARRIES WITH SENATORS BUNN, HAMBY, SHOEMAKER, SPRINGER AND COHEN VOTING AYE AND SENATORS BROCKMAN AND HILL EXCUSED.

WORK SESSION ON HB 2580

077 SWENSON: Submits and reviews HB 2580-A4, 2580-A5 and 2580-A6 amendments. (EXHIBIT F, G & H)

081 SEN. BUNN: Maybe we should go back to the original house version of HB 258 0.

083 REPRESENTATIVE RON CEASE: There is a larger issue here in response to the use of methadone clinics but that needs to be dealt with in the interim. -In HB 2580-A4 amendments on line 20 after "clinic" put in a colon and at the end of the sentence and on line 22 insert a semi-colon after "minor" and add "or" then add subsection B which would read "within 1000 feet of the real property comprised in a licensed daycare facility". -This bill relates only to a new facility of a licensed daycare facility. The penalty would be only a nuisance and nothing else. The larger methadone issue is not what we are trying to get at with this bill.

154 CHAIR COHEN: There are a number of committee members that would like to add "manufacturer" and not change "delivery adult to adult" .

161 SEN. BUNN: That would be my second choice. My first choice would be to take the original house bill without changing the student or minor parts.

168 CHAIR COHEN: We need to look at further defining what this bill does.

177 SEN. HAMBY: I have heard from numerous constituents regarding Rep. Cease's amendments.

183 SWENSON: The intent of Representative Cease's amendment is clear to me.

187 SEN. HAMBY: HB 2580-A5 and HB 2580-A6 amendments before you that vary only slightly. There is additional inclusion of language in HB 2580-A6 that speaks to a written request by a physician and the medical card follow-up.

202 CREIGHTON: We have no problem with HB 2580-A6 amendments. We were concerned that the records be available to make sure the reports were authorized by the doctors.

237 SEN. SHOEMAKER: Who's acceptance or approval are we talking about?

247 BILL DREW, LEGISLATIVE ASSISTANT, SEN. HAMBY: The acceptance and approval would be from the parole officer or probation officer if any. There would be cases where there wouldn't be a parole or probation officer.

258 SEN. SHOEMAKER: Why is it necessary to have the parole officer approve the request by a physician?

269 DREW: I would hope that would be a routine approval. In the instance where they might be a friendly physician to a methadone clinic we thought "required" should be in there to monitor that more carefully.

300 CHAIR COHEN: Can we talk about the original bill. Is there any agreement on the suggestion made by Senator Bunn to go back to the original bill and remove the italics on "to student or minor" and add "manufacture or deliver".

307 SEN. BUNN: I would like the original bill not the A-engrossed.

312 SEN. HAMBY : Senator Phillips feels strongly that we should stay with HB 258 0-A.

317 SENATOR PAUL PHILLIPS: I am in support of HB 2580 not HB 2580-A. There is another vehicle which would deal with the methadone issues. I concur with Senator Bunn.

342 DAVE FIDANQUE, ACLU OF OREGON: Explains where the language "delivery to a student or a minor" came from last session. If you take that language out you will be making it an A felony for someone in the confines of their house, who live close to a school, providing codeine cough syrup to a spouse for whom the cough syrup was not prescribed illegal. The current statute requires that the delivery be to a student or minor. We strongly urge the Committee to retain that language. We don't think that the "manufacturer" language is extremely necessary. -There have only been three arrests under the current statute none of which resulted in a conviction.

TAPE 227, SIDE A

004 SEN. BUNN: Currently under law if they give the cough syrup to their minor child they are in violation.

007 FIDANQUE: With regard to a schedule 5 substance under ORS 475.995 delivery of a schedule 5 substance to a minor would be a class B misdemeanor. That statute already ups delivery one notch.

011 SEN. BUNN: The original bill as drafted if I lived within a 1000 feet of my home and gave my spouse the cough syrup I would be guilty of an A felony.

014 FIDANQUE: That is correct.

016 SEN. BUNN: If the amendment were not adopted and I provided that same cough syrup to my child wouldn't I currently be guilty of an A felony based upon the way the law reads?

018 FIDANQUE: Yes I believe you would.

017 PENN: Urges the committee to strike the language "to a student or minor". There have only been three cases utilized under this statute. The difficulty is that language is very confining. The statute that was originally proposed did not have that language because it mandates that you have an under cover operation that uses a minor. I am opposed to that and very careful with that kind of action. Otherwise, you have to have someone voluntarily come forward with this type of information. It is very difficult to prove this type of action. The intent of the bill is to create in your community a drug free zone and to allow your community to organize and to put up warning signs.

MOTION: SENATOR BUNN MOVES TO AMEND HB 2580-A BY ADOPTING THE ORIGINAL HB 2580.

VOTE: MOTION CARRIES WITH SENATORS BROCKMAN, BUNN, HAMBY AND HILL VOTING

AYE AND SENATORS SHOEMAKER, SPRINGER AND COHEN VOTING AYE.

MOTION: SENATOR HAMBY MOVES HB 2580-A6 AS CONCEPTUALLY AMENDED TO HB 2580-A.

066 SEN. SHOEMAKER: Clarifies conceptual amendments to HB 2580-A6.
(EXHIBIT I)

112 SEN. BUNN: I don't mind the concept but I think we should use another vehicle and keep HB 258 0 clean and move it out.

115 SEN. HAMBY: I don't think we have another vehicle to move it out in.

117 SEN. BROCKMAN: Why don't we find out. I agree with Senator Bunn. I don't want to kill this bill for lack of amendments.

120 SEN. HAMBY: The sponsor of the bill is extremely upset so I am withdrawing my motion.

MOTION: SENATOR HAMBY WITHDRAWS HER MOTION.

121 CHAIR COHEN: We still have Representative Cease's amendments.
(EXHIBIT G)

122 SEN. BUNN: Senator Hamby's and Senator Cease's amendments should go into a vehicle together because they are dealing with methadone. HB 2580-A is not dealing with methadone and I think we should find a different vehicle for them.

125 CHAIR COHEN: Adjourns hearing at 3:15 p.m.

Submitted by, Reviewed by,

Shannon Gossack Ingrid Swenson Assistant Counsel

EXHIBIT LOG: A - Staff, HB 2843-A4 amendments, 1 pg. B - Mike McCallum, HB 3495-A, 1 pg. C - Staff, HB 2545-A2 amendments, 2 pgs. D - Staff, HB 2581-A2 amendments, 1 pg. E - Staff, HB 2935-A amendments, 1 pg. F - Staff, HB 2580-A4 amendments, 2 pgs. G - Staff, HB 2580-A5 amendments, 2 pgs. H - Staff, HB 2580-A6 amendments, 2 pgs.