

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 3444 (PAW) HB 2585 (PAW) HB 2944 (PAW)

SENATE COMMITTEE ON THE JUDICIARY

June 26, 1991Hearing Room C 2:20 p.m.Tapes 244 - 245

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 MARK THORBURN, COMMITTEE ASSISTANT

WITNESSES: ERIK WASMANN, DEPARTMENT OF JUSTICE ROGER  
DINGEMAN, OREGON STATE POLICE ROSS SHEPARD, OREGON CRIMINAL DEFENSE  
LAWYERS ASSOCIATION DAVID FIDANQUE, ACLU OF OREGON KERRY BARNETT,  
GOVERNOR ROBERTS' STAFF STEPHEN TELFER, OREGON HEALTH SYSTEM BOB  
JOONDEPH, MENTAL HEALTH ASSOCIATION JOAN PLANK, MOTOR VEHICLES DIVISION  
TERRY ROGERS, GOVERNOR ROBERTS' OFFICE

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TAPE 244, SIDE A

004 SEN. HILL: Calls the meeting to order at 2:20 p.m.

HB 3444

005 SEN. HILL: We'll start off with HB 3444.

012 ERIK WASMANN, DEPARTMENT OF JUSTICE: Submits Exhibits A, B, C, and D; explains underlying problem the bill tries to solve, explains how the bill would work and its benefits, and paraphrases portions of Exhibits A and B.

- Comments on credibility of Exhibit C.

152 ROGER DINGEMAN, OREGON STATE POLICE: Paraphrases Exhibit E.

182 INGRID SWENSON, COMMITTEE COUNSEL: The A4 amendments (Exhibit D) apply to the B-engrossed version of the bill.

- Under the amendments, we're deleting three crimes, correct?

194 WASMANN: Yes.

196 SWENSON: How were these particular offenses selected?

201 WASMANN: As submitted, the bill swept to pick up, as broadly as possible, sexual offenses. Not every crime that is of a sexual nature appears in conviction records as a sexual offense; cites example. The deletion concerns consensual sex and public indecency; explains why.

234 SWENSON: Is there sexual offender literature which indicates that these particular offenses are predictive of sexual aggression?

238 WASMANN: I cannot point you to literature regarding these three offenses.

240 SWENSON: I mean any of these offenses that are described in the measure.

242 WASMANN: On the entire list? Certainly; cites studies.

263 SWENSON: Compelling and compelling prostitution; are they predictive of sexual aggression?

268 WASMANN: Have antidotal experience of their connection with sexual violence; cites examples.

288 SEN. HILL: You said that there's already a way to get the evidence into court now; why do you want this change?

295 WASMANN: Describes how the evidence gets into court now and what the bill would do.

317 SEN. HILL: Where do you litigate whether the test was properly administered?

322 WASMANN: Could be litigated either at pretrial or during the trial; explains.

345 SEN. SHOEMAKER: Regarding juveniles found in the jurisdiction of the court, the blood sample would not be expunged. What happens if the juvenile is found not guilty?

356 WASMANN: The finding that he is within the jurisdiction of the court is, in effect, a finding of guilt.

364 SWENSON: But if the Court of Appeals reverse the determination, there's no provision of amending the record, correct?

370 WASMANN: Yes and that should be in there.

376 SWENSON: Does line 18 on page 3 include post-conviction relief?

394 WASMANN: If the word "reverse" does not cover post-conviction relief, would have no problem with including post-conviction relief in this provision.

- Cases are frequently reversed and sent back for trial and it didn't seem appropriate to destroy the record if we're going back for retrial. Perhaps destroy if conviction is vacated or the person obtains a court order for the destruction of the record.

435 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Addresses sections 12 and 13 of the bill and their elimination of all pretrial litigation; believes that pretrial litigation is essential. Favors the B5 amendments (Exhibit F).

TAPE 245, SIDE A

040 SEN. HILL: They litigate the validity of DNA evidence?

042 SHEPARD: That has been done in some cases, but the technology itself may be part of the discussion on the testing that was done. That has to be explained to the judge.

048 SWENSON: Senator Cohen wants the Committee to be aware of the Oregon Supreme Court case of State v. Brown; gives citation and explains its relevance. This bill, as is, would change the rule set in that case.

063 DAVID FIDANQUE, ACLU OF OREGON: Supports the B5 amendments; explains why.

- Concerned that the bill might violate the warrant requirement of the Oregon Bill of Rights.

136 SEN. SHOEMAKER: You're concerned that this is a warrantless search?

137 FIDANQUE: Right.

137 SEN. SHOEMAKER: To gather evidence to be used in the future, but there is no . . .

138 FIDANQUE: No individualized suspicion because there's no crime yet.

139 SEN. SHOEMAKER: Then you talked about the admissibility.

142 FIDANQUE: Its another reason to adopt the B5 amendments.

142 SEN. SHOEMAKER: But they're two different threads.

143 FIDANQUE: Yes, they are.

143 SEN. SHOEMAKER: If it's a warrantless search . . . .

144 FIDANQUE: It would be prohibited.

145 SEN. SHOEMAKER: You'd have to say no to the whole bill.

145 FIDANQUE: It would be prohibited until a later date when there was some

individualized suspicion and probable cause of a new offense; explains how that would work.

- Also concerned that the bill might violate the ex post facto provision of the Oregon Bill of Rights; explains.

175 SWENSON: Among the documents provided is a copy of a Virginia court case (Exhibit G); discusses significance of the case.

- In terms of Oregon law, there's the Milligan case (Exhibit H); discusses its significance.

218 CHAIR COHEN: Any other questions; invites Keri Barnett to testify.

225 KERRY BARNETT, GOVERNOR ROBERTS' STAFF: Supports the bill; would defer questions to the Attorney General's office.

230 SEN. HILL: Please clarify the amendments one more time.

231 SWENSON: Would be happy to on behalf of Mr. Barnett.

237 CHAIR COHEN: Do you have a position on Section 13?

246 BARNETT: We support the bill, with or without the admissibility section.

255 SEN. HILL: How much does the A4 narrow the application of this down?

258 SWENSON: Again, the A4 works with the B-engrossed version of the bill. Analyzes the amendments in detail.

285 SEN. HAMBY: Did I hear that testimony that we currently use it in paternity proceedings?

289 WASMANN: Yes. By statute, evidence of DNA analysis is currently admissible in paternity proceedings.

299 SWENSON: Continues explaining the amendments.

321 CHAIR COHEN: Any other questions?

327 GENERAL DISCUSSION: Variety of comments by committee members about what is going on in other committee and in conference committees.

HB 2944

344 CHAIR COHEN: Let's do 2944.

347 BILL TAYLOR, COMMITTEE COUNSEL: Explains amendments (Exhibits I and J). Identifies witnesses.

383 CHAIR COHEN: Invites witnesses to testify.

391 STEPHEN TELFER, OREGON HEALTH SYSTEM: Explains intent behind the amendments.

409 CHAIR COHEN: Why do you need the part that's remaining?

410 TELFER: To allow transport from one hospital to another; without it, there's liability. Gives example.

433 CHAIR COHEN: Invites Bob Joondeph to testify; notes that he is signed up against the bill.

437 BOB JOONDEPH, MENTAL HEALTH ASSOCIATION: Given the changes, we have no opposition to the bill.

- Offers points of clarification of what the bill does.

- Holding a person for five judicial days is to cover both the two physician hold situation and the additional time for the transport hold.

457 SEN. SHOEMAKER: The proposed amendment reduces from 24 to 12 hours the time after the examination that may elapse before the statement is made and limits to 12 hours the time the person can be held before being transported. Is that workable? Do you need as long as 12 hours?

472 TELFER: 12 hours is enough. Also trying to reflect circumstances that might exist outside the Portland Metropolitan Area.

486 SEN. SHOEMAKER: You can now hold the person in a health care facility licenses under ORS Chapter 431; what is that?

491 TELFER: Wants to confine this to just hospitals.

TAPE 244, SIDE B

035 SEN. SHOEMAKER: These are just hospitals?

037 TELFER: Any licensed health care facility, keeping in mind that you still need a licensed physician involved.

042 CHAIR COHEN: Any other questions?

043 SEN. SHOEMAKER: Are we ready to move? Any other witnesses?

044 CHAIR COHEN: David Fidanque was signed up in opposition to the bill.

045 SEN. SHOEMAKER: He's O.K?

046 CHAIR COHEN: I assume he had concerns about the original bill.

048 SEN. SHOEMAKER: Has a couple of suggested additions to the hand engrossed bill (Exhibit J); specifies the changes.

066 MOTION: With his additions, Sen. Shoemaker moves the committee counsel's amendments (Exhibit I).

069 CHAIR COHEN: Calls for objections; hearing none, so ordered; Sen.s Brockman, Bunn, and Springer excused.

072 SEN. HILL: Assume the ACLU is not opposed to the bill?

075 CHAIR COHEN: They are very opposed to the bill in its original form.

- I've made commitments to the proponents of the bill to see, during the interim, if there is any way to resolve the issue and the problems that they are . . . (inaudible) . . . out.

083 SEN. HILL: So this is involuntary.

083 CHAIR COHEN: Yes; we have removed all of that.

086 SEN. HILL: O.K.

088 CHAIR COHEN: This is section 22 of the bill reworked.

092 MOTION: Sen. Shoemaker moves SB 2944 as amended to the floor with a "do pass" recommendation.

097 SEN. BUNN: If you've got four votes, I'd like to pass.

099 SEN. HILL: I was going to do that, but I see that you need the votes.

100 VOTE: Motion unanimously passes with Sen. Bunn excused from voting and Sen.s Brockman and Springer excused from attendance.

107 SEN. SHOEMAKER: There's a conference committee requiring the presence of three of us.

117 CHAIR COHEN: Discusses rest of the day's agenda; recesses the committee to reconvene at the call of the Chair at 3:25 p.m.

IN RECESS

135 CHAIR COHEN: Calls meeting to order at 6:20 p.m.

HB 2585

137 CHAIR COHEN: We're going to take up 2585.

155 JOAN PLANK, MOTOR VEHICLES DIVISION: This is Oregon's bill to comply with recent federal legislation (Exhibit K) requiring states to suspend the driving privileges of persons convicted of drug offenses. Explains the federal statute and the bill as written. Explains consequences of not complying with the federal law.

- We have no objection to the amendments (Exhibit L).

186 SEN. SHOEMAKER: Do we know how many highway dollars we're talking about?

186 SEN. HILL: \$11 million.

187 PLANK: For the '93 - '95 biennium.

189 CHAIR COHEN: Asks Ms. Swenson to go through the bill.

194 SWENSON: There is a hand engrossed version of bill (Exhibit M) that reflects the B4 amendments (Exhibit L). Explains the amendments.

280 CHAIR COHEN: Anyone want to speak to the amendments?

283 TERRY ROGERS, GOVERNOR ROBERTS' OFFICE: We need to have this bill, but don't want to do anything more than what the federal law requires.

291 CHAIR COHEN: Anyone else?

296 MOTION: Sen. Hill moves the B4 amendments.

298 CHAIR COHEN: Calls for objections; hearing none, so ordered; Sen.s Bunn and Hamby excused.

305 SWENSON: This does have a subsequent referral to Ways and Means.

308 SEN. BROCKMAN: It's already been there.

314 MOTION: Sen. Hill moves HB 2585 as amended to the floor with a "do pass" recommendation with a letter that recommending the referral to Ways and Means be rescinded.

335 VOTE: Motion passes by 5 aye votes to 2 no votes with Sen.s Bunn and Hamby voting no.

HB 3444

372 CHAIR COHEN: Back to 3444; we have amendments (Exhibits D and F).

387 MOTION: Sen. Hill moves the A4 amendments.

392 CHAIR COHEN: Calls for objections; hearing none, so ordered.

395 MOTION: Sen. Hill moves the B5 amendments.

397 CHAIR COHEN: Calls for objections; hearing none, so ordered.

411 SWENSON: There was testimony regarding another portion of the bill

on page 3, line 18, subsection 5, of the B-engrossed version of the bill. Suggests various amendments.

478 SEN. BUNN: What would happen if we had a reversal and a retrial; would that cause the information to be lost?

482 SWENSON: The person could, after the reversal, apply to have the specimen removed and be subject to having it taken again or not apply and see what happens on retrial and, on retrial, if there is a reconviction, not have to go through the blood test again.

495 BARNETT: A change would also need to be made on line 22.

TAPE 245, SIDE B

042 CHAIR COHEN: Any further comments.

044 BARNETT: The changes suggested by Ms. Swenson are consistent with what we intended.

045 MOTION: Sen. Hamby moves the amendments suggested by Ms. Swenson and Mr. Barnett.

046 CHAIR COHEN: Rephrases motion; calls for objections; hearing none, so ordered.

054 MOTION: Sen. Hill moves HB 3444 as amended to the floor with a "do pass" recommendation.

057 SWENSON: There is a Ways and Means referral.

058 CHAIR COHEN: We'll forward it with the same letter.

060 VOTE: Motion passes unanimously.

064 CHAIR COHEN: Adjourns meeting at 6:45 p.m.

Submitted by:

Reviewed by:

Mark Thorburn

Ingrid Swenson Committee Assistant  
Committee Counsel

EXHIBIT LOG:

A	-	Testimony on HB 3444 (Dave Frohnmayer) - Erik Wasmann - 2
pages B	-	Testimony on HB 3444 (Self) - Erik Wasmann - 11 pages
C	-	Testimony on HB 3444 (Karin Rodland) - Erik Wasmann - 2 pages
D	-	Amendments to HB 3444 (Dash Four) - Erik Wasmann - 1 page
E	-	Testimony on HB 3444 - Roger Dingeman - 2 pages
F	-	Amendments to HB 3444 (Dash Five) - Ross Shepard - 1 page
G	-	Copy of Jones v. Murray (HB 3444) - Committee Staff - 24 pages
H	-	Copy of State v. Milligan (HB 3444) - Committee Staff - 11
pages I	-	Amendments to HB 2944 - Committee Staff - 1 page
J	-	Hand Engrossed Version of HB 2944 - Committee Staff - 2 pages
K	-	Copy of 23 USC 154 (HB 2585) - Joan Plank - 4 pages
L	-	Amendments to HB 2585 - Committee Staff - 2 pages
M	-	Hand Engrossed Version of HB 2585 - Committee Staff - 6 pages

EXHIBITS DISTRIBUTED TO COMMITTEE BUT NOT REFERRED TO DURING HEARING:

N - Copy of ORS 163.355 et. seq. (HB 3444) - Committee Staff - 7  
pages O - Letter from Legislative Counsel (HB 2585) - Committee  
Staff - 4 pages P - Testimony on HB 2944 - Howard Harrison - 2  
pages