

HOUSE COMMITTEE ON JUDICIARY

Subcommittee 1

May 8, 1981 1:45 p.m. 350 State Capitol

Members Present: Representative Tom Mason, Chairperson
Representative Bill Rutherford
Representative Joyce Cohen
Representative Peter Courtney
Representative Margie Hendriksen
Representative Kip Lombard
Representative Dick Springer

Staff: Steve Griffith, Legal Counsel
Ellen Rogers, Committee Assistant

Measures: HB 2479 - Relating to crime
HB 2702 - Relating to civil action for violence
HB 2703 - Relating to intimidation
HB 2772 - Relating to jury selection in criminal cases

Witnesses: Frank Gruber, Legislative Counsel
Roger Martin, Oregon Catholic Conference
Willard F. Alburn, private citizen
Linda Roberts, Metropolitan Human Relations Commission
John Bradley, Multnomah County District Attorney's Office
Angel Lopez, Affirmative Action Program, Oregon State Bar
Pina Bonner, Rep. Jane Cease's office, District 18

Tapes: H-81-JUD-366
H-81-JUD-367

TAPE 366
SIDE A

000 CHAIRPERSON MASON called the subcommittee to order at 1:45 p.m.

HB 2772 - Relating to jury selection in criminal cases

010 FRANK GRUBER, Legislative Counsel, submitted some amendments to the subcommittee (Exhibit C, HB 2772). He explained that the purpose of the bill is to set up a procedure for questioning the challenge of jurors on the grounds of race, sex and other questionable categories.

As drafted, the bill restricts the prosecutor from challenging jurors on the grounds that they belong to certain kinds of classes. The amendments simply make that prohibition applicable to either party.

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053 REP. HENDRIKSEN submitted two letters into the records from Alan Contreas (Exhibit A, HB Racial Harassment) and Monica Kirk (Exhibit B, Racial Harassment).

068 CHAIRPERSON MASON submitted a letter dated May 8, 1981, from the League of Women Voters of Oregon (Exhibit C, Racial Harassment), and a letter dated May 8, 1981 from the Governor's Commission for Women (Exhibit D, Racial Harassment).

075 ANGEL LOPEZ, Affirmative Action Program, Oregon State Bar, expressed his support for the bill and explained that the charge of their steering committee is to increase the number of minority lawyers in this state to facilitate good equal representation for the minority communities and meaningful access to the legal and political system. Their ultimate goal is to make a better life for the minorities and that goal is being frustrated.

He felt that harassment is a system of the times. Whenever economic times go bad the frustrations are taken out on the minority. He stated that the bill will be subject to constitutional challenges because it is vague. He referred the committee to subsection (d) of Section 2 which may have a chilling effect on free speech. He felt that the bill should be amended to cure those type of defects.

In answer to REP. HENDRIKSEN'S question, MR. LOPEZ explained that the Bar had no position on HB 2702 or HB 2703 because his committee directs their attention solely to racial and ethnic minorities.

115 CHAIRMAN MASON explained that it was not his intention to move the bill at this meeting because the Governor was meeting with some interested parties later on during the week with regards to the bill. He didn't want to send the bill out until the results of that meeting was know.

CHAIRMAN MASON felt that one big issue for the subcommittee is should they or should they not include in any racial harassment bills, which emerges a parallel or an additional civil remedy. He read an amended bill presented by the NAACP (Exhibit K, HB 2479).

148 REP. HENDRIKSEN pointed out that HB 2702 provides separately for a civil cause of action without having to go through criminal proceedings.

160 CHAIRPERSON MASON asked what the committee's pleasure was regarding a civil remedy in the possible bill.

164 MR. GRIFFITH explained that the civil remedies would be the entirety of HB 2702, for example.

177 REP. HENDRIKSEN explained that HB 2702 was drafted by Professor Dom Vetri and he used an existing California law as a model.

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423 REP. RUTHERFORD explained a little history on parental responsibility before the Judiciary. He stated that he would accept a friendly amendment.

TAPE 366

SIDE B

008 MOTION: REP. LOMBARD moved the deletion of the phrase "the parent, parants or legal guardian when an unemancipated minor shall be liable for any judgment recovered against such minor in under this section". That is in the April 14, 1981 NAACP amendments.

016 REP. COURTNEY was concerned that if a child harasses someone on the basis of race then the parent would not be liable.

018 CHAIRPERSON MASON didn't think that was correct because all the other operative provisions of the civil and criminal law do impose a certain amount of parental responsibility. The motion would just delete a specific inclusion of parents.

025 REP. COURTNEY stated that he is aware of other parts of the country and the use of children to do something like this is not beyond certain parents. If liability is going to attach anyway, why take this out of the bill.

036 REP. LOMBARD asked if there were any other statutory provision that has created any type of tort liability. He felt it would be just extending the vicarious liability for torts.

044 The committee had further discussion regarding the liability of parents and guardians.

057 Voting Aye: Rep. Lombard, Rep Rutherford and Rep. Mason. Voting Nay: Rep. Courtney and Rep. Springer. Excused: Rep. Cohen. The motion passed.

067 CHAIRPERSON MASON wanted the subcommittee to look at the actual operative provisions of the various bills. He read Section 2 of HB 2479 and stated that was the straight intimidation version of the bill. He then read the NAACP version of Section 1 (Exhibit K, HB 2479) which has the peculiar language of saying "by word or conduct". It does not include intentional or reckless language. He read Mr. Wilson's version of Section 2 (Exhibit M, HB 2479) which could be called the federal version. He then read the Metropolitan Public Defender's version of Section 1 (Exhibit E, HB 2479). He read the Department of Justice's version of Section 1 (Exhibit D, HB 2479).

CHAIRPERSON MASON felt that the original bill is the simplest version but he didn't think it was the most constitutional.

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227 REP. RUTHERFORD stated that he liked the NAACP's intent approach.

232 REP. COHEN stated that she supported Mr. Wilson's approach because she is convinced that the constitutionality of trying to dispute because you are of a certain political belief you will be put into a different class for doing the same crime. She felt that was a good constitutional argument.

251 MR. GRIFFITH pointed out that Mr. Wilson's approach has both a motive and an intent.

264 MOTION: CHAIRPERSON MASON read the federal version of Section 2 (Exhibit M, HB 2479). The chair moved the deletion of the phrase "and harassment" in the federal version, page 3.

271 Hearing no objection it was so ordered.

He felt that subsections (c) and (d) are constitutionally impermissible. Subsection (c) was declared unconstitutional by State vs Spencer. Subsection (d) was declared unconstitutional in State vs Blare.

He felt that the subcommittee should merely list, by statute, the actual crimes which would be menacing, harassment or criminal mischief.

307 CHAIRPERSON MASON and REP. RUTHERFORD discussed the overlapping of two of the statute of the Department of Justice's version and the Metropolitan Public Defender's version of the statutes 163.160, 163.190, 166.065 and 164.345.

REP. RUTHERFORD stated that if the committee wanted to take those four statutes they would have harassment, menacing, criminal mischief and assault.

350 JOHN BRADLEY stated that two of those sections have been taken out because they were unconstitutional. The offensive physical touching is still in.

358 CHAIRPERSON MASON stated that the only thing left is 166.065 (a).

373 JOHN BRADLEY stated that as a prosecutor, he didn't want them to adopt offensive physical touching, which means slapping, etc. If someone threatens a person with slapping them and uses racial overtones, it may well justify the use of deadly physical force. He didn't want to have to go up to some black parents and tell them that the person that killed their child was acquitted because of the law that was aimed to protect the minority.

The original bill follows the federal civil rights violations and it is made a felony. As is, it will be allowing self defense where you

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the federal language having it been used in the federal civil rights prosecutions.

- 112 MR. GRIFFITH replied that he was sure that intent to deprive a person of the exercise of privileges secured by the constitution has been used.
- 126 CHAIRPERSON MASON asked that Legislative Counsel be contacted regarding this issue and that a version of HB 2479 be drafted that has Section 1, its operative section using the federal language and that it refers to the ORS crimes of 166.065 (a), 163.160, 163.190 and 164.345. That bill would further include, as its next section, the NAACP civil remedy involving the injunction. It would also include Section 6 of Mr. Wilson's version that includes non exclusive remedy. In the actual penalty section it would be stated that intimidation as found in Section 2 is a misdemeanor unless it is a person who conspires.
- 155 MR. GRIFFITH suggested getting around a constitutional problem of intimidation by simply saying "a conspiracy to commit" with regards to the four categorical crimes.
- 171 Hearing no further business to come before the subcommittee it was adjourned at 3:30 p.m.

Submitted



Ellen Rogers
Committee Assistant

EXHIBITS

- Exhibit C, HB 2772 - Presented by Frank Gruber
Exhibit R, HB 2479 - Presented by Roger Martin
Exhibit S, HB 2479 - Presented by Linda Roberts
Exhibit T, HB 2479 - Presented by Linda Roberts
Exhibit U, HB 2479 - Presented by Linda Roberts
Exhibit A, Racial Harassment - Presented by Rep. Hendriksen
Exhibit B, Racial Harassment - Presented by Rep. Hendriksen
Exhibit C, Racial Harassment - Presented by Rep. Mason
Exhibit D, Racial Harassment - Presented by Rep. Mason

HOUSE COMMITTEE ON JUDICIARY

Subcommittee 1

May 21, 1981 1:30 p.m. 350 State Capitol

MEMBERS PRESENT: Tom Mason, Chairperson
Peter Courtney
Bill Rutherford
Dick Springer

MEMBERS EXCUSED: Joyce Cohen
Kip Lombard

STAFF: Steve Griffith, Legal Counsel
Pamela Burke, Committee Assistant

WITNESSES: Jim Hennings, Metropolitan Public Defenders
Susan Mandiberg, Oregon State Bar Commission on Defense
and Indigent Accused
Bob Thuemmel, Oregon State Bar Commission on Defense and
Indigent Accused
Fred Neal, State Finance Action Committee, Executive Director
Larry Craig, Multnomah County Department of Justice Services
D. Richard Hammersley, Attorney
Jim Sanderson, Department of Justice

MEASURES: HB 2383 - Relating to court-appointed attorneys in criminal
cases
HB 2449 - Relating to criminal law
HB 2479 - Relating to crime
HB 2766 - Relating to criminal offenses
HB 2869 - Relating to jurors
HB 2917 - Relating to criminal prosecution
HB 2947 - Relating to criminal sentencing procedures

TAPES: H-81-JUD-406, H-81-JUD-407 and H-81-JUD-408

TAPE H-81-JUD-406, SIDE A

010 CHAIRPERSON MASON convened the meeting at 1:55 p.m.

HEARING

HB 2383 - Relating to court-appointed attorneys in criminal cases

022 JIM HENNINGS, Metropolitan Public Defenders, testified in favor of HB 2383, submitting proposed amendments (Exhibit B, HB 2383). He stated that there is no place for the indigent defender because they are opposed to the government. Some method of control should begin at the local level.

137 SUSAN MANDIBERG, Oregon State Bar Commission on Defense and Indigent Accused, testified in favor of HB 2383. She stated that the law requires a \$30 hr. minimum salary for court appointed work, no matter of the outcome. The courts are paying \$30 hr. but are disallowing 1/2 to 3/4 of the hours. The attorneys are not getting paid for the work that they did. The results being too little time spent on the cases and an experienced lawyer will stop accepting court-appointed cases all together. The inexperienced lawyer who needs money will practice and get experience. A number of qualified members of the criminal defense bar are talking about refusing court-appointed cases. Oregon law requires that a person cannot go to jail without the defense of a lawyer, therefore many problems would be created.

They are proposing that in each judicial district a committee would be appointed to set out standards for the court-appointed counsel and to serve as a review board. If the lawyer felt cheated the Review Board could review the decision of the judge and change that decision to where it was reasonable.

263 BOB THUEMMEL, Oregon State Bar Commission on Defense and Indigent Accused, testified in favor of HB 2383. The attorneys are now getting paid depending on the class of the felony, no matter how many hours were spent in preparation. The review board will not cost the State any money. They will insure that the law is being followed.

TAPE H-81-JUD-407, SIDE A

020 LARRY CRAIG, Multnomah County Department of Justice Services, testified in opposition of HB 2383. He stated that the proposed amendments (Exhibit B, HB 2383) removed anyone with any responsibility for budgeting public funds from that committee. The county now has three private contracts for indigent services. The county provides investigators and serves subpoenas. The private attorney does not have these resources available.

166 FRED NEAL, State Court Finance Action Committee, Executive Director, testified in opposition of HB 2383. He stated that the proposed amendments (Exhibit B, HB 2383) does not deal with the problem at the local level. Statewide figures show \$9.6 million for indigent defense for 1980-1981. It costs \$32 million to operate the circuit and district courts. 30% of the total costs go to indigent defense. The costs for indigent defense increases 20% per year.

TAPE H-81-JUD-406, SIDE B

HB 2449 - Relating to criminal law

036 D. RICHARD HAMMERSLEY, Attorney, testified in favor of HB 2449, submitting written testimony and proposed amendments (Exhibit A, HB 2449).

WORK SESSION

HB 2449

153 MOTION: REP. RUTHERFORD moved to adopt the proposed amendments from D. RICHARD HAMMERSLEY (Exhibit A, HB 2449).

165 There were no objections.

167 MOTION: REP. RUTHERFORD moved HB 2449 to the full committee with a "do pass" recommendation.

170 The motion carried 4-0 with Rep. Courtney, Rutherford, Springer and Chairperson Mason voting aye. Rep. Cohen and Lombard were excused.

HB 2479

188 STEVE GRIFFITH, Legal Counsel, submitted proposed amendments titled "Revised Text: HB 2479" (Exhibit V, HB 2479), which he clarified.

360 MOTION: REP. RUTHERFORD moved in the proposed amendments (Exhibit V, HB 2479) to delete all of line 5 and on line 6 of section 1 the words "the laws, or of equal privileges and immunities of the laws,".

There were no objections.

395 MOTION: REP. RUTHERFORD moved in the proposed amendments (Exhibit V, HB 2479) in section 2, lines 10-11 to the the words "agrees with one or more persons to commit or cause the commission of the crime of intimidation as defined in" and insert the words "conspires to violate".

TAPE H-81-JUD-407, SIDE B

035 There were no objections.

038 MOTION: REP. RUTHERFORD moved in the proposed amendments (Exhibit V, HB 2479) to delete section 3.

There were no objections.

060 JIM SANDERSON, Department of Justice, suggested that they delete section 5 of the proposed amendments (Exhibit V, HB 2479) because of financial difficulty.

096 MOTION: REP. RUTHERFORD moved in the proposed amendments (Exhibit V, HB 2479) to delete in section 4 (2) (b) line 26 the words "not to exceed \$10,000,".

There were no objections.

188 MOTION: REP. RUTHERFORD moved to adopt the proposed amendments titled "Revised Text: HB 2479" (Exhibit V, HB 2479).

215 The motion carried 4-0 with Rep. Courtney, Rutherford, Springer and Chairperson Mason voting aye. Rep. Cohen and Lombard voted nay.

220 MOTION: REP. RUTHERFORD moved HB 2479 to the full committee, as amended, with a "do pass" recommendation.

225 The motion carried 4-0 with Rep. Courtney, Rutherford, Springer and Chairperson Mason voting aye. Rep. Cohen and Lombard voted nay.

HB 2766

230 STEVE GRIFFITH submitted proposed amendments (Exhibit D, HB 2766). He then clarified the amendments.

375 MOTION: REP. COURTNEY moved to adopt the proposed amendments and to add the word "or" after the word "property;" on page 1, line 22.

There were no objections.

380 MOTION: REP. COURTNEY moved HB 2766 to the full committee with a "do pass" recommendation.

403 The motion carried 3-1 with Rep. Courtney, Rutherford and Springer voting aye. Chairperson Mason voted nay. Rep. Cohen and Lombard were excused.

HB 2917

405 REP. COURTNEY submitted proposed amendments from ALLISON SMITH, Department of Justice, (Exhibit D, HB 2917).

440 MOTION: REP. RUTHERFORD moved to adopt the proposed amendments to HB 2917 (Exhibit D, HB 2917).

There were no objections.

448 MOTION: REP. COURTNEY moved HB 2917 to the full committee with a "do pass" recommendation.

450 The motion carried 4-0 with Rep. Courtney, Rutherford, Springer and Chairperson Mason voting aye. Rep. Cohen and Lombard were excused.

HB 2947

474 REP. SPRINGER requested that HB 2947 be carried over so that persons wanting to testify and were not able to be here today, could do so.

486 CHAIRPERSON MASON stated that HB 2947 would be carried over.

TAPE H-81-JUD-408, SIDE A

HB 2869

010 STEVE GRIFFITH submitted proposed amendments to HB 2869 (Exhibit A, HB 2869). He clarified the amendments.

080 MOTION: REP. COURTNEY moved to adopt the proposed amendments to HB 2869 (Exhibit A, HB 2869).

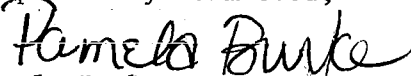
There were no objections.

084 MOTION: REP. COURTNEY moved HB 2869 to the full committee, as amended, to the full committee with a "do pass" recommendation.

086 The motion carried 4-0 with Rep. Courtney, Rutherford, Springer and Chairperson Mason voting aye. Rep. Cohen and Lombard were excused.

088 CHAIRPERSON MASON adjourned the meeting at 3:55 p.m.

Respectfully submitted,



Pamela Burke
Committee Assistant

TAPE LOG: H-81-JUD-406, SIDES A and B
 H-81-JUD-407, SIDES A and B
 H-81-JUD-408, SIDE A

EXHIBIT LOG: Exhibit B, HB 2383
 Exhibit A, HB 2449
 Exhibit V, HB 2479
 Exhibit D, HB 2766
 Exhibit D, HB 2917
 Exhibit A, HB 2869