002 CHAIRMAN MASON called the meeting to order at 1:40 p.m.

HB 2317 - Relating to conditions of probation

029 O.R. CHAMBERS, Corrections Division, testified in favor of the bill. (Exhibit A, HB 2317)

192 Stephen Griffith, Legal Counsel, suggested on page 2, line 22, deleting the words "nor frequent" and inserting the words "and from frequenting".

210 PAUL SNIDER, Association of Oregon Counties, testified that his understanding of page 2, line 11, included probation fees that a circuit or district court could impose when deemed necessary.

238 SIMON KORNBRODT, Federation of Oregon Parole & Probation Officers, President, testified in favor of the bill with amendments. (Exhibit B, HB 2317)

313 CLAYTON PATRICK, Oregon Trial Lawyers Association, testified that HB 2317 posed problems in these areas: Page 2, line 16, submission to a polygraph examination; page 2 line 26, refraining from associating with persons with criminal records. He suggested that "knowingly" be inserted between the words "associating with". Problems were also noted on page 3, lines 11-13, but these problems had already been stated by previous witnesses.

350 MARCY HERTZMARK, Metropolitan Public Defenders Office, Portland, testified in favor of HB 2317 with amendments. (Exhibit C, HB 2317)

444 JUDGE BEATTY, Multnomah Circuit Court, suggested that the committee be cautious with this bill. They may find that they have cut out a very substantial power of the sentencing court to deal with probation.

TAPE H-81-JUD-23, SIDE A

There being no further questions or witnesses, Chairman Mason stated that this bill would be referred to in a Work Session.

Work Session

Chairman Mason proposed legislation (1) LC 630 - Relating to criminal corrections.(became HB 2488) (2) A bill drafted by Parks, Montague, Allen & Greif Law Firm relating to leins on boats and vessels regarding insurance premiums. (became HB 2489). and (3) LC 1076 from the Oregon State Bar, a revision of the Corporation Chapter. (became HB 2489)

HOUSE COMMITTEE ON JUDICIARY

Full Committee

March 24, 1981 1:30 p.m. 350 State Capitol

Members Present:	Representative Tom Mason, Chairperson Representative Bill Rutherford, Vice Chairperson Representative Ted Bugas Representative Joyce Cohen Representative Margie Hendriksen Representative Kip Lombard Representative Dick Springer Representative Norm Smith
Excused:	Representative Peter Courtney
Staff:	Stephen L. Griffith, Legal Counsel Pearl Bare, Committee Assistant
Measures:	HB 2317 - Relating to conditions of probation HB 2325 - Relating to Relating to duties of probation officers HB 2326 - Relating to criminal sentence procedure
Witnesses:	Sy Kornbrodt, Federation of Oregon Parole and Probation Officers Niel Chambers, Corrections Division Marcie Hertzmark, Metropolitan Public Defenders
Tapes:	H-81-JUD-180 H-81-JUD-181

Tap 180
Side A

004 CHAIRPERSON MASON called the meeting to order at 1:30 p.m. and opened the public hearing.

006 HB 2317 - Relating to conditions of probation revision

008 SY KORNBRODT, Federation of Oregon Parole and Probation Officers, spoke in opposition to HB 2317. He reiterated his testimony of January 26, 1981 (Exhibit B, HB 2317, January 26, 1981).

034 STEPHEN L. GRIFFITH, Legal Counsel, suggested that it read "change neither employment nor residence without promptly informing the probation department" and deleting "first obtaining written permission from".

035 MR. KORNBORDT replied that was fine.

Page 3, beginning with line 8, could be interrupted as requiring notification to the court before any arrest takes place. The change should be that it will result in notification of the violation to the sentencing court. The discretion that now exists would remain.

066 HB 2325 - Relating to duties of probation officers

068 MR. KORNBRODT stated that Multnomah County is now in the process of laying off a couple of probation officers at one of the jail facilities. The intent seems to be to replace them with personnel from his association. The bill would allow the counties to use state employes to replace county employes and take people out of the bargaining unit and put them into other areas. A phrase stating this could only be done consistent with any agreement that the state has with a bargaining unit would correct that. That is concerning the second phrase on line 26 and lines 11 through 13.

115 CHAIRPERSON MASON asked if there was labor-related language in other statutes which would cover that situation.

119 MR. GRIFFITH stated that it sounded like Mr. Kornbrodt's concern was that the state would pass a law requiring one or another party to breach its contract. That is prohibited by the constitution and this legislation would be read in light of that. It goes back to the Dartmouth College case.

128 MR. KORNBRODT stated that his concern was that this permits a breach of a section of the contract under the theory of severability by being the intent of the legislation that that portion of the contract be invalid. That may not actually be allowed, but his association might be tied up in expensive litigation making sure that it cannot be done. That could be corrected in the bill by a phrase saying it had to be done consistent with existing contracts.

140 REP. RUTHERFORD stated that the section allowing the probation officer to collect money ordered by the courts to be paid has been deleted.

148 NIEL CHAMBERS, representing the Corrections Division, stated that another bill submitted to cover that was tabled since that deletion was included in this bill.

151 REP. RUTHERFORD asked how the supervisory charges from courts would be collected.

152 MR. CHAMBERS replied that every county has officers that are now collecting and handling money such as the tax assessors officer and the county treasurer.

Corrections Division clerical personnel could also collect it.

The issue is whether the probation officer would personally handle those collections.

The deletion avoids any question on the part of the parolee or probationer as to who actually gets the money. It also prevents an added work load on people whose duties are quite different. It is primarily for simplification and to avoid any problems.

175 REP. LOMBARD stated that he had received a call from one of his circuit court judges who was concerned about the bill because of the impact it would have on the local corrections program in Jackson County, particularly the county's ability to continue to run and operate its own release assistance, diversion, work release and community services programs. The new language under sub (c) would transfer that authority to the Corrections Division.

The added language on lines 8, 13 and 25 "and approved by the court" is still not clear. It could be a drafting problem.

203 REP. COHEN asked if the bill were not passed, would it hamstring the Corrections Division in terms of flexibility of people.

204 MR. CHAMBERS replied that it had no effect; it continues the present situation. The intent of the bill is to conform existing statute to existing case law and to clarify the difference and derivation of authority between county personnel and state personnel.

221 HB 2326 - Relating to criminal sentence procedure

230 SY KORNBRODT suggested that if it were a case where a person absconded from probation during the five-year period, the period that a warrant is out for the person not be counted toward the five-year period.

242 WORK SESSION

243 HB 2317 - Relating to conditions of probation

249 MR. GRIFFITH presented the committee with a memorandum from the ACLU (Exhibit D, HB 2317).

277 REP. COHEN stated that Judge Beatty had said there is a large volume of case law. This operates without much difficulty. Passage of this law may be restricting the authority of the court. REP. COHEN agreed that the power should remain with the judge.

291 MR. GRIFFITH stated that Judge Beatty's March 5 letter (Exhibit E, HB 2317) indicated that Judge Beatty had no objection to enumerating these as special conditions of probation as long as they did not limit the judge's power to impose other conditions. This supercedes Judge Beatty's letter of February 17 (Exhibit F, HB 2317).

327 REP. COHEN stated that she did not see why there was a problem with putting this into a rule rather than a statute.

345 MOTION: CHAIRPERSON MASON moved to table HB 2317.

352 MOTION FAILED: Aye - Cohen, Lombard, Mason, Smith. No - Bugas. Excused - Courtney, Hendriksen, Springer, Rutherford.

363 REP. SMITH stated that the bill was merely putting a recipe in the statute.

He read from Mr. Chambers' memo of January 26 (Exhibit A, HB 2317, January 26).

389 MR. CHAMBERS stated that he was not sure that the Corrections Division could pass a rule which was binding on the probationer before the court. The court retains jurisdictions throughout probation and looses it only if it revokes or terminates probation.

412 REP. RUTHERFORD stated that he saw nothing wrong with updating law to keep up with case law.

He has received no adverse response from the people in his district.

454 MR. GRIFFITH stated that the first suggestion is on page 1, line 23. "Direction" would mean an order. "Counsel" means advice.

460 MR. CHAMBERS stated that "direction" would be sufficient.

462 MOTION: CHAIRPERSON MASON moved deletion of "and counsel".

465 MOTION PASSED: There were no objections.

469 MR. GRIFFITH stated that the question on line 26 was whether it had to be on specified forms and whether the intent was to exclude the court from the reporting process.

Tape 181
Side A

024 MOTION: REP. SMITH moved to delete on line 26, the words "on forms" and that the phrase "and in a manner" be inserted.

036 MOTION PASSED.

037 MOTION: REP. SMITH moved to delete on line 27 ", and in person when directed".

041 MOTION PASSED. There were no objections.

043 MR. GRIFFITH stated that line 30 says that a person shall find gainful full-time employment.

051 CHAIRPERSON MASON stated the legislative intent could be and the court would take appropriate notice of the fact that no job may be available.

The intent of this legislature is not that a person be held liable for not finding a job if a job is not available.

059 MOTION: REP. SMITH moved to delete on line 1, page 2, the phrase "first obtaining written permission from" and to insert "promptly informing".

062 MOTION PASSED: There were no objections.

065 MR. GRIFFITH stated that the intent on line 3 was to permit the probation officers to visit the probationer at the probationer's residence, work site or elsewhere.

069 MR. SMITH stated that sometimes the probation officer goes to the residence and finds out the probationer is not there. This would be visiting the residence, not the probationer.

087 REP. RUTHERFORD suggested inserting "or the probationer".

088 REP. COHEN suggested inserting "the" after "permit" and after "visit" insert "the probationer's. That means that the probationer does not have to be present when the residence, work site or elsewhere is visited.

100 CHAIRPERSON MASON asked why a probation officer needed statutory authority to go "elsewhere" to find the probationer.

101 REP. COHEN stated that her question was why any of this authority was needed.

106 MR. KORNBRODT stated that one of the problems is that sometimes when a probation officer goes to a probationer's house, the probationer steps outside and refuses to let the probation officer in or the spouse opens the door and refuses to let the probation officer in.

128 REP. SMITH stated that as he understood search and seizure law, anyone in a residence has some control over it and may give permission for someone to be there. In the instance of a spouse being the only person at home, if the language is adopted for the probation officer to visit the residence, the probation officer would have standing statutory authority to go on the premises and go inside even when the probationer is not home.

That bothers him on the right of privacy. He suspects statutory language that is a categorical right for anyone to enter someone else's dwelling.

157 REP. RUTHERFORD suggested substituting "permit the probation officer to visit the probationer or the probationer's residence or work site" for the language on line 3.

158 REP. COHEN stated that the "or" left it the same as the present language.

She suggested "probationer at the probationer's".

176 REP. RUTHERFORD stated that the existing language does not say that the probation officer can visit the probationer. It just allows the probation officer to go to the residence, etc.

He suggested two sentences: "Permit the probation officer to visit the probationer.", "Permit the probation officer to visit the probationer's residence or work site."

192 REP. SMITH stated that basically allowed the probation officer to visit the probationer at any time or any place.

Probationers now have to agree to these things. This would make them statutory.

207 MR. GRIFFITH stated that his impression was that there is no constitutional problem, but there is a policy question.

211 REP. SMITH stated that he was not concerned about the probationer. He was concerned about the other members of the household. They have some rights of privacy in the household. It is an unreasonable restraint on other members of the household.

223 MR. KORNBRODT stated that if the probationer officers are told they cannot go in, they do not. A violation report may be written. It would be hard to write a violation report that said the probationer's spouse would not let the officer in when the probationer was not home. The violation report has to show that the probationer was wilfully in violation.

240 MOTION: REP. RUTHERFORD moved deletion of the language of line 3 and insertion of the language "Permit the probation officer to visit the probationer or the probationer's residence or work site."

245 MOTION PASSED: There were no objections.

247 There were no objections to editorially inserting "fingerprinting" in place of "fingerprints" on line 4.

259 MR. GRIFFITH stated that the Metropolitan Public Defender has proposed that line 6 read "Neither own, posses, nor control any firearm or knife which is considered to be a dangerous weapon.

268 The committee members decided that it should be left the way it is.

296 MR. GRIFFITH stated that on line 11, the word "including" should appear before the word "but".

298 There were no objections to that inclusion.

301 MR. GRIFFITH stated that on lines 16 and 17, the Oregon Trial Lawyers had a question whether this accurately reflected current law.

311 REP. SMITH stated that is done by stipulation now.

314 MARCIE HERTZMARK, representing the Metropolitan Public Defenders, stated that Rep. Smith was correct.

The Metropolitan Public Defenders are concerned with the laundry list of conditions. They would like to delete those and replace them with the general phrase "The court may order conditions of probation reasonably related to the defendant's crime and conditions which would reasonably assist the defendant from committing future criminal acts."

344 MR. CHAMBERS stated that the listing from line 12 on are optional. They were selected because they are the items most commonly invoked by the courts at present. They are not intended to limit the court to these or to impose them on the court.

360 MOTION: REP. SMITH moved to insert on line 20, the word "from" after "Abstain".

361 MOTION PASSED: There were no objections.

374 MOTION: Rep. Smith moved that line 22 be amended to read "Refrain from knowingly associating with persons who use or possess controlled substances illegally, or from frequenting places where they are kept or sold."

375 MOTION PASSED: There were no objections.

381 MOTION: REP SMITH moved to insert "knowingly" before "associating" on line 24.

382 MOTION PASSED: There were no objections.

385 MR. GRIFFITH stated that the Metropolitan Public Defenders suggested that line 26 read "Persons with criminal records not engaged in a rehabilitative enterprise".

391 MOTION: REP. SMITH so moved.

392 REP. LOMBARD asked what a rehabilitative enterprise was.

417 MR. GRIFFITH suggested "rehabilitative program".

422 MR. CHAMBERS stated that if a person works with, is engaged in rehabilitative therapy with or buys his gasoline at a station where such a person works, it is not considered by the courts to be association. It is part of the normal routine of life. It is quite different than social association, which he believes was the intent of the existing statute and would be the intent of the Corrections Division.

441 CHAIRPERSON MASON and REP. SMITH stated that would be a sufficient statement of legislative intent.

458 MR. GRIFFITH stated that the ACLU questioned if lines 27 and 28 were necessary even if age were not a factor in the crime. However, this does appear as a special condition.

The Metroplitan Public Defenders recommend that line 29 be deleted.

475 CHAIRPERSON MASON stated that even if it were deleted, the condition could be imposed under other situations.

There is a question on line 30 as to shock therapy.

Tape 180
Side B

021 MR. GRIFFITH stated that is included under therapy or treatment. ACLU and the Metropolitan Public Defender questioned whether it would include electroshock therapy. The Metroplitan Public Defender proposed to insert at the end of that phrase "excluding electroshock therapy".

024 REP. RUTHERFORD stated he thought that was outlawed in general.

026 REP. SMITH stated that he thought it was still used.

He asked if there had ever been any instance where it has been a condition of probation to undergo electroshock therapy.

030 MR. CHAMBERS stated that the only time electroshock therapy is lawful in this state is when it is prescribed by a competent physician.

032 REP. SMITH stated that he did not think that amendment was necessary.

040 MR. GRIFFITH stated that the next suggestion was from Mr. Kornbrodt on lines 8 - 13 to revise it, beginning on line 9, to read "probation department and its representatives may result in arrest and revocation of probation and will result in notification of the violation to the sentencing court.".

047 CHAIRPERSON MASON stated that Mr. Kornbrodt wanted the ability to arrest first and to get out of the Catch-22 of having to notify the court before the arrest.

062 MOTION: REP. SMITH moved the language outlined by Mr. Griffith.

063 MOTION PASSED: There were no objections.

065 MR. GRIFFITH stated that the Metropolitan Public Defenders would suggest an entirely new section 4: "(a) The court may order conditions of probation reasonably related to the defendant's crime and conditions which will reasonably assist the defendant from committing future criminal acts. (b) Upon a finding that the probationer constitutes a threat to the safety of the public, that the probationer is not benefiting from the probation, probation may be revoked.

080 CHAIRPERSON MASON stated that leaves out the term "or that the probationer has violated one or more terms of probation".

092 MS. HERTZMARK stated that some of the conditions are vague and some of the conditions are minor. The concern was if the violations were minor or of vague conditions, revoking probation would be an abuse of the ability to revoke.

101 MOTION: REP. LOMBARD moved to rewrite (b) to say that probation may be revoked upon a finding that . . . and then have the three things subitemized.

121 CHAIRPERSON MASON stated that the usual rules of judicial discretion would apply. Usually people are not revoked for minor violations of conditions.

128 MS. HERTZMARK stated that a lot of clients of her association were having their probation revoked for minor violations as an harassment.

130 REP. SMITH stated that the problem is at the level of the probation officer in writing someone up on a minor violation.

134 MS. HERTZMARK replied that probation officers are directed to write up violations of any terms.

135 MR. KORNBRODT stated that Multnomah County allows quite a bit of latitude. The probation officers can submit special reports that do not require show cause hearings. That is not the rule in some

counties. The probation officers in Lane County are told to submit a report and schedule a show cause hearing. The officer does not have to recommend that probation be revoked.

150 MR. CHAMBERS stated that the judges do use a great deal of discretion now. A relatively small percentage of the violation reports they receive result in revocation.

158 REP. LOMBARD stated that if the conditions are significant enough to put in the statutes, there ought to be sanctions behind them.

166 MOTION PASSED: There were no objections.

168 MR. GRIFFITH stated that Judge Beatty was concerned that it be clear that this is not an exclusive list of the conditions that the court may impose. Page 2, line 11, takes care of that concern.

172 MOTION: REP. SMITH moved the bill as amended to the floor with a do pass recommendation.

177 MOTION PASSED: Aye - Bugas, Cohen, Lombard, Rutherford, Mason, Smith. Excused - Courtney, Hendriksen, Springer.

182 CHAIRPERSON MASON stated that Rep. Bugas would carry HB 2317 on the floor.

195 HB 2325 - Relating to duties of probation officers

204 REP. SMITH stated that he had a reference suggesting merger of HB 2324 into HB 2325.

205 REP. LOMBARD stated that was essentially section 1 of the bill, down to line 23.

217 REP. BUGAS stated that HB 2324 was tabled.

233 MOTION: REP BUGAS moved insertion of "and approved by the court" after "the Corrections Division" on lines 8, 13 and 25.

239 REP. LOMBARD stated that he was not sure that clarified what the Corrections Division wanted to do. He would prefer conceptual amendments that would come back to the committee.

244 MOTION WITHDRAWN: REP. BUGAS withdrew his motion.

251 MR. GRIFFITH stated that if, under sub (f), it is going to be requested by the Corrections Division and approved by the court, it is the same thing as being required by the court. If that is the intent, "as requested by the Corrections Division" could be deleted.

O. R. Chambers
Executive Assistant
Corrections Division

House Judiciary Committee
Full Committee Jan. 26, 1981
Exhibit A, HB 2317 1 page
O.R. Chambers, Corrections Div.

TESTIMONY CONCERNING HB 2317

Current law concerning conditions of probation is in some aspects vague and open to interpretation. The Corrections Division has developed a list of standard conditions which are usually imposed by the courts, but officers must occasionally impose specific instructions upon probationers in following out the understood intent of the courts. In a recent case (State vs. Maag), however, it was determined that revocation of probation must be based upon violation of a condition specifically imposed by the court; it cannot be based on violation of a condition imposed by a supervising officer attempting to follow out understood court intent.

HB 2317, drafted jointly by Corrections Division and Board of Police Standards and Training personnel, in consultation with the Attorney General's Office, is designed to rectify this situation. It proposes listing in statute those specific conditions of probation presently imposed by the courts in the majority of cases, indicating them to be in effect unless specifically deleted by the court. It also proposes listing in statute specific conditions now frequently imposed by the courts in individual cases, indicating them to be available for imposition by the court when appropriate. By making these clear lists of options available in law, need for officer interpretation of court intent will be reduced, and court intent will be more clear to probationer and officer, alike.

The provisions of HB 2317 will apply equally to all probations, both felony and misdemanor, whether supervised by Corrections Division personnel or officers of local authority. The Corrections Division recommends passage of HB 2317.

House Judiciary Committee
Full Committee Jan. 26, 1981
Exhibit B, HB 2317 2 pages
Simon Kornbrodt, Pres. of Federation of OR Parole & Probation Officers

FEDERATION OF OREGON PAROLE & PROBATION OFFICERS
P.O. Box 230084
Tigard, Oregon 97223
(503) 639-5522

Federation Position of HB 2317:

Mr. Chairman, Committee Members: My name is Simon Kornbrodt and I am the Presidentof the federation of Oregon Parole & Probation Officers.

We generally support HB 2317, however, we have problems with two of its provisions.

We object to the language of section (1) (g). The language requiring prior written permission to change employment or residence is in our opinion unnecessary. In individual cases an officer can require such prior written permission under the guidelines of section (1)(b), requiring the client to abide by the officers counsel and direction. However, in the vast majority of the cases the officer either wants a prior contact with a client, or wants the client to notify him (or her) promptly <u>after</u> a change in either employment or residence occurs. The language in the bill would lock the officer into a generally unworkable procedure and require more paper work, and would generally restrict the officer in using his best professional judgment in each case.

We strongly oppose the language of section (4)(a). As written now this section indicates that on evidence of a violation, and prior to any arrest, the sentencing court must be notified. This would put the officer in the position of finding weapons, or narcotics, or evidence of other criminal conduct, and then have to leave theprobationer in the community while a report is made to the Court and authorization for an arrest is made, and then hope that the client can still be found to effect

such an arrest. Under the present system the client if it is felt that he poses a present threat to the community, can be plàced in custody on a detainer, which is only valid for 15 days. The court must promptly be notified, and may upon such notification release the client, or schedule a hearing for theclient to show cause why his probation should not be revoked. We do not think that the public woiuld be well served by a situation that would restrict the Officer form exercising his arrest powers in situations requiring the protection of the community, and permitting those persons in obvious violation of their probation to remain free in the community.

House Judiciary Committee
Full Committee Jan. 26, 1981
Exhibit C, HB 2317 2 pages
Marcy Hertzmark, Legislative Liaison

METROPOL
PUBLIC DEFENDER SERVICES, INC.

JAMES D. HENNINGS
Director

January 29, 1981

House Judiciary
Tom Mason, Chair
Rm. 352

Representative Mason, and Committee members: Re HB 2317

I am submitting this testimony on behalf of the Metropolitan Public Defenders and apologize fornot having it prepared in time for the public hearing on HB 2317 which was held on Monday, January 26.

We are not totally opposed to this bill's passage, but feel that some of the provisions need to be looked at more closely. For example:

Page 1, line 23: too vague and similar to line 22.
Page 1, lines 24 and 26: "truthfully" is quite a requirement.
Page 2, lines 1 and 2: The burden on both the probationer and the probation officer would be unduly harsh.
Page 2, line 3: This requirement could be a violation of constitutional right to privacy without further limitations.
Page 2, lines 4 and 5: Needs a reasonableness clause.
Page 2, line 6: "Weapon" needs to be defined.
Page 2, line 26: "persons with criminal records" would eliminate some agency half-way houses which have staff members with criminal records.
Page 2, line 29: Overbroad.
Page 2, line 30: Needs protection against electro-shock therapy.
Page 3, lines 8-13: confusing

We would like to submit the following amendments to HB 2317:

Page 1, line 23: delete entire sentence.

Page 1, line 24: delete "and truthfully"

Page 1, line 26: Delete "Truthfully"

Page 2, lines 1 and 2: Change to read: (g) Promptly notify the probation department or its representatives of a change in either employment or residence.

Page 2, line 3: Change to read: (h) Permit probation officer to visit residence of the probationer, present work site of probationer or area where probationer has indicated as a place where he or she can be found.

Page 2, line 6: Change to read: (j) Neither own, possess, nor control any firearm or knife which is considered to be a dangerous weapon.

Page 2, line 26: Change to read: (B) Persons with criminal records not engaged in a rehabilitive enterprise, or known to be engaged in criminal activities.

Page 2, line 29: Delete this provision.

Page 2, line 30: Change to read: (i) Undergo, medical, psychological or therapy treatment excluding electro-shock therapy.

Page 3, lines 8 -13: Change to read: (4)(a) Court may order conditions of probation reasonably related to the defendant's crime and conditions which will reasonably assist the defendant from committing future criminal acts.

(b) Upon a finding that the probationer constitutes a threat to the safety of the public, that the probationer is not benefitting from the probation, probation may be revoked.

I hope that these changes will be of some help to you. Please contact myself at 362-0837, or Jim Hennings in Portland, if further explanations of our position on HB 2317 are needed.

Thank you for your attention in this matter.

Sincerely,

Marcy Hertzmark

Marcy Hertzmark
Legislative Liaison

House Judiciary Committee
Exhibit D, HB 2317
March 24, 1981 - 1:30 p.m.
2-page exhibit
presented by staff

AMERICAN CIVIL LIBERTIES UNION

M E M O R A N D U M

January 28, 1981

TO: House Judiciary Committee

FROM: Susan Mandiberg, ACLU cooperating attorney

RE: H.B. 2317, relating to conditions of probation

The proposed ORS 137.540(1)(6) appears to be an attempt to circumvent the impact of *State v. Maag* 41 Or App 135 (1979) and *State v. Pike* 49 Or App 67 (1980). Those cases are based on the current statute, which permits the court to order as a condition of probation that the probationer "remain under the supervision and control of the probation officer." As part of that supervision, the probation officers of Maag and Pike themselves set specific conditions, and the probations were revoked when these conditions were violated. The Court of Appeals reversed the revocation in both cases since the conditions were not set by the judge at the time of sentencing.

Although the proposed revision makes it a mandatory condition that the probationer "abide by the direction" of the probation officer, this will not satisfy the concerns of the Court of Appeals. The probationer will not be able to appeal the validity of a specific condition set by the probation officer after the time for appeal from the overall sentence of probation has run. See *Maag*, 41 Or App at 135; *Pike*, 49 Or App at 70.

Furthermore, unless the specific condition is expressed or clearly implied by the sentencing judge, probation revocation based on noncompliance with that condition may violate a probationer's due-process rights. See *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), *Morrissey v. Brewer*, 408 U.S. 471 (1972), *Douglas v. Buder*, 412 U.S. 430, *Carradine v. United States*, 28 Cr. L. Rptr. 2137 (D.C. Ct. App. 1980).

Proposed subsection (4)(6) also arguably violates due process because of its vagueness; it gives the probationer no notice of what he or she must do to "benefit" from probation. See *Rowan v. U.S. Post Office Department*, 397 U.S. 500 (1970), *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), *Gagnon v. Scarpelli, supra, Morrissey v. Brewer, supra, Douglas v. Buder, supra.*

The remaining conditions in the proposed revision are similar to those frequently imposed as conditions under current practices. Constitutional problems could arise if these conditions are abused by the state. For example, if searches under subsection (1)(k) are without reasonable cause or beyond the scope provided by such cause; if the probation department orders tests, fingerprints, and so forth, to aid police to circumvent constitutional limits on investigating crime, or if submission to procedures such as those in proposed subsections (2)(c) are seen as waivers to conventional rules of evidence in ensuing criminal trials.

House Judiciary Committee
Exhibit E, HB 2317
March 24, 1981 -1:30 p.m.
1-page exhibit
presented by staff

CIRCUIT COURT OF OREGON
FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
1021 S.W. 4TH AVENUE
PORTLAND, OREGON 97204

JOHN C. BEATTY, JR., JUDGE
Department No. 5
Circuit Court of Oregon
Fourth Judicial District

512 Multnomah County Courthouse
1021 S.W. Fourth Avenue
Portland, Oregon 97204
248-3187

March 5, 1981

M E M O R A N D U M

TO: House Committee on Judiciary

RE: HB 2317 (Altering and Restating Conditions of Probation)

The Executive Committee of the Judicial Conference has reviewed this bill and concurs with the simplified standard conditions of probation, but has no objection to enumerating special conditions of probation as set forth so long as they are not considered to be limiting and so long as they are broad enough in scope to include community service in all its forms.

This represents a modification of the view of the bill which I previously stated to you in my memorandum of February 17, 1981.

Respectfully submitted,

John C. Beatty, Jr., Chairman
Legislative Committee
Judicial Conference

JCB:ach

House Judiciary Committee
Exhibit F, HB 2317
March 24, 1981 - 1:30 p.m.
2-page exhibit
presented by staff

CIRCUIT COURT OF OREGON

FOURTH JUDICIAL DISTRICT

PORTLAND, OREGON 97204

JOHN C. BEATTY, JR., JUDGE
Department No. 5
Circuit Court of Oregon
Fourth Judicial District

512 Multnomah County Courthouse
1021 S.W. Fourth Avenue
Portland, Oregon 97204
248-3187

February 17, 1981

M E M O R A N D U M

TO: House Committee on Judiciary

RE: HB 2317 (Altering and Restating Conditions of Criminal Probation)

I have reviewed the bill with Judge Robert E. Jones, Chairman of the Commission on Prison Terms and Parole Standards, and have the following comment:

1. Under present law the Corrections Division imposes "standard" conditions upon all probationers. The authority for this is the usual sentencing language "subject to the usual conditions of probation." The Corrections Division would like more specific authority and in this bill seeks to enumerate what it would like as "standard conditions," unless they are deleted by the court.

2. The trial judges have quite adequate authority to impose reasonable general or special conditions under present law. They do not wish to jeopardize their present case law authority under the existing statute. It is, in addition, not desirable to require that trial judges check over a very long list of standard conditions to see which ones should not apply in each case.

3. We suggest that if standard conditions are to be specified, they be limited to the following:

(a) Be subject to the supervision and direction of the Department of Probation and its probation officers.

(b) Answer promptly and truthfully all reasonable questions of his probation officer relating to his probation.

(c) Report to the probation officer when required, in person or in writing, and advise promptly of any change in residence, and obey all laws.

(d) Not leave the State of Oregon without permission.

(e) Find and maintain employment.

(f) Permit the probation officer to visit at place of residence or employment.

4. We would then delete the enumeration of special conditions which may be imposed by the court changing subsection (2) to read as follows, at line 10, page 2 of the printed bill:

"(2) In addition to the standard conditions of probation the court may impose such special conditions of probation for protection of the community or for the rehabilitation of the defendant as it may in its discretion find desirable."

We would add a new subsection (3) as follows:

"(3) Special conditions of probation may include confinement to a county jail for not more than one year or one-half the maximum period of confinement to which the defendant could have been sentenced for the offense committed."

5. We do not believe that Section 4 is necessary.

Respectfully submitted,

John C. Beatty, Jr., Chairman
Legislative Committee
Judicial Conference

COMITTEE LOG SHEET

COMMITTEE: Judiciary DATE: 1/26/81

☒ HOUSE ☐ SENATE ☐ JOINT

ASSISTANT: Diane Daggett

RECORDING SEQUENCE:

TAPE	~~1~~	~~1~~	2R	2B	2D	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Side	~~1~~	~~1~~	A	A	B																					

Register Number -- For Cassettes Listed in the Recording Sequence

1 H-81-JUD-22	4	7	10
2 H-81-JUD-23	5	8	11
3	6	9	12

TAPE # & SIDE	CUE#	DIGITAL READING	BRIEF DESCRIPTION OF SUBJECT MATTER OR A CHANGE IN SPEAKER, ETC.
2R-A	~~00~~	002	Chairman Mason called meeting to order
		HB2317 029	O.R. Chambers - testimony
		192	Stephen Griffith - suggested language
		210	Paul Snider - testimony
		238	Simon Kornbrodt - testimony
		313	Clayton Patrick - testimony
		350	Marcy Kurtzmark - testimony
		444	Judge Beatty - testimony
2B-A		HB2354 108	O.R. Chambers - testimony
		HB 2325 131	O.R. Chambers - testimony
		179	Stephen Griffith - amendment proposal
		HB2324+2325 190	Paul Snider - testimony
		HB2325 213	Simon Kornbrodt - testimony
		273	Judge Beatty - testimony

COMITTEE LOG SHEET

COMMITTEE: Judiciary DATE: 3/24/81

☒ HOUSE ☐ SENATE ☐ JOINT 1:30 p.m.

ASSISTANT: Pearl Bare

RECORDING SEQUENCE:

TAPE	180	181	180	181	–	–	→	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Side	A	B	A	B																				

Register Number -- For Cassettes Listed in the Recording Sequence

1 H-81-JUD-180	4	7	10
2 H-81-JUD-181	5	8	11
3	6	9	12

TAPE # & SIDE	CUE#	DIGITAL READING	BRIEF DESCRIPTION OF SUBJECT MATTER OR A CHANGE IN SPEAKER, ETC.
180-A		004	Public Hearing Opened
		006	HB 2317
		008	Cy Kornbrodt, Fed. Ore. Parole & Probation Officers
		066	HB 2325
		148	Niel Chambers, Corrections Division
		221	HB 2326
		242	Work Session
		243	HB 2317
		363	Motion to table failed
181-A		036	Motion to amend passed.
		041	Motion to amend passed.
		062	Motion to amend passed.
		245	Motion to amend passed.
		361	Motion to amend passed.

TAPE # & SIDE	CUE#	DIGITAL READING	BRIEF DESCRIPTION OF SUBJECT MATTER OR A CHANGE IN SPEAKER, ETC.
181-A		375	Motion to amend passed
		382	Motion to amend passed
180-B		063	Motion to amend passed
		101	Motion to amend
		166	Passed
		177	Motion: Do pass as amended, Passed
		195	HB 2325
		345	HB 2326
		460	Motion to amend
181-B		036	Passed
		042	Motion: Do pass as amended
		106	Passed
		117	Adjourned

TAPE 167A

007 MEETING WAS CALLED TO ORDER BY SENATOR JAN WYERS, CHAIRPERSON, AT 3:12 P.M.

MEMBERS PRESENT: Senator Walt Brown
Senator Edward Fadeley
Senator Jim Gardner
Senator Kenneth Jernstedt
Senator Ted Kulongoski
Senator Robert F. Smith, Vice Chairperson
Senator Jan Wyers, Chairperson

009 HB 2872 - RELATING TO REPAYMENT OF REWARDS

Tape 167, Side A, is inaudible. The committee held a hearing and work session on HB 2872.

REP. MAX SIMPSON spoke about the bill and suggested removing "circuit court" on line 6.

The Committee adopted the motion to delete "circuit court" on lines 6 and 11.

HB 2317 - RELATING TO CONDITIONS OF PROBATION

NEIL CHAMBERS, representing the Corrections Division, spoke in support of the bill and presented written testimony (Exhibit A).

SY KORNBRODT, representing the Federation of Oregon Parole and Probation Officers, spoke in support of the bill except for one point inadvertently left out having to do with "1) you shall not illegally use narcotics. . ."

RICHARD BARTON, representing the Oregon Trial Lawyers Association (OTLA) spoke in opposition to the bill. It substitutes one list for another. The use of "any weapon" is too broad. (K) should not apply to probationers; it should apply to parolees.

HON. JOHN BEATTY, representing the Judicial Conference, presented the committee with a brief comments on some bills (Exhibit B).

Tape 167B

014 WORK SESSION

015 SB 86 - RELATING TO PUBLIC BODY TORT LIABILITY

019 WYERS noted the L.C. amendments (Exhibit C). These were the result of a meeting between Bob Lundy, Legislative Counsel; Bill Blair, City Attorney for Salem; and Kris LaMar. The compromise that was adopted last week had some internal references that needed adjustments. There are no substantive changes made in the proposed amendments (Exhibit C).

036 MOTION: SMITH MOVED TO BRING THE BILL BACK TO COMMITTEE AND TO RECONSIDER THE VOTE BY WHICH THE COMMITTEE PASSED THE BILL.

040 MOTION PASSED: THERE WERE NO OBJECTIONS.

041 MOTION: SMITH MOVED ADOPTION OF THE PROPOSED AMENDMENTS (EXHIBIT C).

044 MOTION PASSED: THERE WERE NO OBJECTIONS.

045 WYERS set the bill over for another work session.

051 PUBLIC HEARING

052 HB 2317 - RELATING TO CONDITIONS OF PROBATION

053 DEKE OLMSTED, representing the Department of Community Corrections, Washington County, spoke in support of the bill. He supported Judge Beatty's statements. OLMSTED'S department supervises 1500 probationers with 22 professional staff.

He is concerned with (k) being in the standard conditions of probation. He did not believe that all probationers should be subject to a standard condition of search and seizure, nor should the judge have to delete it in cases where he does not see it appropriate. It would be more appropriate to have this as an optional condition in section 2.

The bill cleans up some old language which is difficult to interpret, such as what is a vicious habit.

079 FADELEY questioned what the penalty would be if the probation officer abused the search.

084 OLMSTED stated that strict policy is set so that it is very difficult for a probation officer to search. If the officer does not follow policy, it would be a legal question as to whether or not there were reasonable grounds. His current rules would prohibit many of the searches that the bill would permit.

115 WYERS asked if the judge in a probation order would give reasons for the conditions.

130 OLMSTED said that in practice, the judge might offer reasons. The court in Washington County is concerned with helping the defendent understand the relevancy of the conditions of probation, the need to adhere to the conditions and the consequences for not adhering.

The special conditions of probation are added to the order in a special list.

147 JERRY COOPER, Chief Deputy District Attorney for Washington County, stated that the Oregon District Attorneys' Association (ODAA) is in favor of the bill. He agreed with Mr. Barton that on page 2, line 9, the standard condition of "neither own, possess nor control any weapon" is open to a lot

of debate as to what a "weapon" is. A "deadly weapon" would make sense. A "dangerous weapon" could be any piece of property; the use or attempted use makes it dangerous.

He agreed that submitting to the search and seizure, line 10, must be limited to a type of case where the court has just grounds. It should not be a standard condition of probation.

He agreed with Judge Beatty that the optional condition of refraining from knowingly associating with persons with criminal records should require some showing that the probationer knew that the person had a prior conviction. State v. Martin, the Oregon Supreme Court in 1980 said there must be a record to support why a person would not be able to associate with a spouse. In the case, the trial court said that the woman could not associate with her husband.

222 CAROL HERZOG, representing the Oregon Chapter of the American Civil Liberties Union, spoke in opposition to the bill. She presented the committee with a letter (Exhibit D) outlining her oral testimony.

Proposed section 4(b) relating to revocation of probation upon a finding that probationer is not benefiting from that probation should be amended. It is so vague that it does not give the probationer notice of what must be done to benefit from probation. It may be unconstitutionally vague and therefore void for violating due process.

270 BROWN stated that the portion about a threat to the safety of the public is too broad. If the probationer has a communicable disease, which would include tuberculosis, he could be considered a threat to public safety.

293 WYERS agreed that the threat to the safety of the public was too broad.

295 BEATTY stated that as a practical matter, he did not feel the language "not benefiting from probation" added anything to the bill. A court does not revoke probation for this reason. It revokes probation because the person has violated the conditions of probation and it is not profitable to continue the person on probation.

As to special findings by the judge for the conditions of probation, case law now makes it clear that when the court imposes special conditions of probation, the condition imposed must reasonably relate to the probation. As a matter of practice, most judges will indicate in general why special conditions are imposed. He did not think special findings should be necessary. It would lengthen proceedings.

365 BARTON stated that it is a violation of the federal Firearms Act for a person to possess a firearm if they have been convicted of any crime punishable as a felony at the time of sentencing. This is for the life of the person and does not matter if the conviction has been expunged. (There is a waiver that can be received.)

409 MARCY HERTZMARK, representing the Metropolitan Public Defender, stated that the Public Defender's objections have been stated by the previous

witnesses. The Director of the Public Defenders, Jim Hennings, suggested drafting language giving the court authority to order conditions of probation which are reasonably related to the defendant's crime, rather than having a laundry list. The conditions should also reasonably assist the defendant from committing future criminal acts.

458 HB 2326 - RELATING TO CRIMINAL SENTENCE

Tape 168A

022 RICHARD BARTON, representing Oregon Trial Lawyers Association (OTLA), spoke in support of the bill as amended. He is also authorized by the Oregon State Bar to say that association supports it as it presently exists.

031 BOB WATSON, Administrator of the Corrections Division, spoke in support of the bill and presented a memo (Exhibit E).

044 WYERS asked how many people would be extended.

045 WATSON replied that he believed that the impact in terms of people affected is not a large number, but is in the direction needed. It might build up to 50 at any one time.

072 SY KORNBRODT, representing the Federation of Oregon Parole and Probation Officers, spoke in opposition to part of the bill. An extension of probation beyond the five years is not needed. In those cases where a person has gone on probation for five years and then commits a violation, the judge should determine whether the person is or is not a threat to the community. If the person is not a threat to the community, he should not be on probation anymore. It is rare to have a person on probation for five years who has had no problem. If the person is on a lesser probationary period and has problems, the probation is usually extended to five years. If the person is on five years and has no problem, early termination requests are routinely put in at about 2 1/2 or three years. The only person this extension would effect is the person who is in and out of trouble during that period. Extending the probation another year is a waste of the resources the probation officers have to work with.

The only extension should be the time a person has absconded.

130 JUDGE JOHN BEATTY, representing the Judicial Conference, stated that the Judicial Conference has no objection to the present form of the bill. He agreed with Mr. Watson's statements on the fiscal impact.

164 MARCIE HERTZMARK, representing the Metropolitan Public Defenders, agreed with Mr. Kornbrodt that no additional time on probation is necessary, except for periods of absconding.

180 HB 2448 - RELATING TO CRIMINAL PROCEDURE

185 WYERS stated that this was just an extension of the decision made last session.

SB 541

215 COUNSEL said there was one letter in the file opposing the bill from the City of Powers. (EXHIBIT K) She said there were no amendments proposed.

267 SENATOR WYERS went on to the next bill since several members did not want to act on the bill at this time.

HB 2317

275 SENATOR WYERS said HB 2317 repeals a lot of archaic language and attempts to lay out some guidelines to the sentencing judge.

288 COUNSEL said she had proposed amendments (EXHIBIT L) and also had just received amendments from the Metropolitan Public Defender Services (EXHIBIT M) who had testified at the last hearing they would like to change the whole structure of the present bill and the amendments would take care of the concept of not having a laundry list.

300 COUNSEL went over the amendments and said the first portion of the bill deals with the court placing the defendant on probation and having them subject to the following general conditions unless specifically deleted by the court. She then went over the proposed amendments step by step and SENATOR WYERS explained the changes.

447 JERRY COOPER, Chief Deputy District Attorney, Washington County said he thought the concerns of the people who are before the court a great deal at sentencing and Judge Beatty mentioned some concern, is that if you lay out everything the way it is proposed here you've got some mandatory provisions. He felt that everyone who testified had different ideas of what should be mandatory and said he knew the court can delete but it seemed to him that the court, taking each individual case, should be able to taylor make the conditions of probation. He didn't think a statute by making any recommendations would be that helpful. The probation officers have a different idea and once they get the probationer under their supervision they want to have certain safeguards because the court of appeals has ruled on two occasions they can not impose conditions they believe are important or necessary, you have to go back to the court. He felt this was an attempt to make the court give certain types of control for the probation officer over the probationer.

Tape 204-A
035 SENATOR WYERS said he thought it was an important bill and some more work should be done on it and asked Mr. Cooper to help work on it.

HB 2326

067 COUNSEL said this bill would give the judge in a felony case the option of extending the period of probation beyond the five years. She said usually it would be the situation where at the end of the probation the offender violates a condition of probation near the end of the probationary term. Under current law the judge has to either let the violation pass or revoke the probation and commit them to confinement. This bill would extend the

SENATE COMMITTEE ON JUSTICE

June 11, 1981 3:00 p.m. "B", State Capitol

Tape 225, Side A

012 SEN. WYERS, CHAIRPERSON, called the meeting to order at 3:17 p.m.

MEMBERS PRESENT: SEN. JAN WYERS, CHAIRPERSON
SEN. ROBERT SMITH, VICE-CHAIRPERSON
SEN. WALT BROWN
SEN. ED FADELEY
SEN. JIM GARDNER
SEN. KEN. JERNSTEDT
SEN. TED. KULONGOSKI

013 HB 2872A - Relating to rewards

015 MS. GNIEWOSZ stated that the amendments where in the mocked up bill (Exhibit A).

018 MOTION: SEN. GARDNER MOVED THE AMENDMENTS IN THE MOCKED UP BILL (Exhibit A).

029 MOTION PASSED: THERE WERE NO OBJECTIONS.

030 MOTION: SEN. GARDNER MOVED HB 2872 (AMENDED) TO THE FLOOR WITH A DO PASS AS AMENDED RECOMMENDATION.

034 MOTION PASSED: Ayes - Gardner, Jernstedt, Smith, Wyers. Excused - Brown, Fadeley, Kulongoski.

035 SEN. SMITH was assigned to carry the bill on the floor.

044 HB 2317A - Relating to conditions of probation

049 MS. GNIEWOSZ stated that although the committee has met several times on this, there were still some areas where there were questions.

Amendments were presented (Exhibit B).

The bill basically amends the present statutes relating to conditions of probation. It sets out two areas. The first subsection puts in the general condition that would be set. These would be set unless specifically deleted by the court.

The first question was on page 2, line 3. The recommended language now reads "Find and maintain gainful full time employment, approved schooling or a full-time combination or both." The recommended language is to add "Any waiver of this requirement must be based on a finding by the court stating the reasons for the waiver." (Exhibit B).

072 SEN. WYERS stated that the Corrections Division said that was acceptable.

081 MS. GNIEWOSZ said the recommendation to delete line 9 was to delete this as a general condition. It will be put in under special conditions, after line 38.

086 SEN. SMITH asked who would specify the weapons.

087 SEN. WYERS stated that would be specified by the judge at the sentencing.

090 MS. GNIEWOSZ stated that if it were a crime that involved a knife, for instance, the person might be prohibited from carrying any kind of knife except an eating utensil.

092 SEN. WYERS asked if a person with a Class C felony conviction could have a hunting rifle. The person can't under federal law.

094 MS. GNIEWOSZ stated that the reason any language dealing with weapons was taken out of the general was that the committee, because there is a federal prohibition, did not want it to seem as though the person could carry certain weapons.

099 NEIL CHAMBERS, Corrections Division, stated that it is a federal law concerning felonies. Many probationers are misdemeanants.

102 MS. GNIEWOSZ stated it was left out as a general condition to avoid having to distinguish between felonies and misdemeanors.

The next change would be to delete lines 10 and 11. This is the area where there is still some concern. This is the search and seizure area. Right now, sub (k) reads "Submit person, residence, vehicle and property to search by a probation officer having reasonable grounds to believe such search will disclose evidence of a probation violation." Mr. Chambers still feels very strongly that that should be left in.

The alternatives were to delete the language entirely and to move it into the special conditions.

115 MOTION: SEN. WYERS MOVED TO DELETE LINE 9.

122 MOTION PASSED: THERE WERE NO OBJECTIONS.

125 SEN. WYERS stated that there was testimony that either the grounds for submitting to the search should be limited or the it should be eliminated. An integral part of parole is to be subject to search at any time by the probation officer. If there were reasonable grounds that a search would disclose criminal activity, a search warrant could be obtained. The question is whether this should be a general condition of probation.

137 SEN. GARDNER asked if that couldn't be put in as a specified condition of probation.

139 MS. GNIEWOSZ stated that the special conditions start on line 13. That is one of the alternatives. The suggestion was that if that were put in special conditions, some language be included that the condition should be imposed only when reasonably related to the purpose of the probation.

It was also pointed out that the special conditions say that they are for the protection of the public or reformation of the offender or both.

156 SEN. BROWN asked if the consititutional validity of that type of special condition has ever been raised.

160 MS. GNIEWOSZ stated that there were cases on that saying that it can be lawfully imposed.

162 SEN. WYERS stated that the problem he had with this is that although the chances of being searched are very low, it still puts a chip on a person's shoulder to know that they can be searched at any moment. The provision could become counterproductive.

There is some provision in case law that will permit this even if it isn't on the form. This is where the whole argument comes in of whether there should be a laundry list or not.

176 JERRY COOPER, Washington County District Attorney's office, representing the Oregon District Attorneys Association, stated that was correct. The trial judge would have to make the decision whether it was reasonably related.

180 SEN. WYERS stated that judge's decision would be after it was already done. A probation officer can get a police officer to do this whether or not it is on the laundry list.

181 SEN. BROWN stated it would required probable cause.

182 MR. COOPER stated that case law seemed to indicate that if the judge believes it is necessary for the enforcement of probation, the judge can put in a specific condition that the defendant consent to this type of search and seizure process by the probation officer. If the defendant refuses, that could be, by itself, a violation of probation.

188 MS. GNIEWOSZ stated that the language in State v. Davis says "this condition was appropriate and reasonably related to the purpose of probation." That was to consent to a search of his person, place of residence or motor vehicle at any time of day or night.

193 SEN. GARDNER stated he would have no objection to language making it a special condition if such a condition is reasonably related to the purpose of probation.

198 SEN. WYERS stated that if there were to be "reasonably related" language, he thought it should be reasonably related to the facts surrounding the conviction. If it is reasonably related to the purpose of probation, it would be too broad.

203 SEN. GARDNER stated that Sen. Wyers suggestion was good.

207 MS. GNIEWOSZ stated that the judge could still go beyond that, such as in the case of a drinking problem.

216 SEN. WYERS stated that it seemed to him that if a person with a drinking problem commits a crime which has nothing to do with drinking, there should not be a condition that the person's place could be searched for booze.

226 MR. COOPER stated that what the judges do in the fact situation posed by Sen. Wyers is to have a specific condition of probation that the probationer neither consume nor possess alcholic liquor. There would then be a second condition that in order for the probation officer to determine whether the probationer is complying with that condition, the probation officer could do this search and seizure with the consent of the probationer. If the probationer refuses, it is a violation of probation. It might be a theft charge, but the pre-sentence report indicates that the reason he committed the crime was because of a problem with alcohol.

237 SEN. WYERS stated that the language "reasonably related to the facts surrounding the act that led to the conviction" would cover that.

239 MR. COOPER suggested also "to enforce conditions of probation". There will be a specific prohibition against drugs or alcohol or possessing stolen properties.

243 SEN. GARDNER asked if Mr. Cooper wanted that as a general condition of probation.

246 MR. COOPER replied that it should be as a special condition so that it can be tailored to the offender.

247 SEN. WYERS stated that the members agreed that it would be a special condition of probation.

248 SEN. BROWN suggested that it should be "submit to" rather than "consent". It is not really "consent".

250 SEN. WYERS stated that "submit" was already there.

252 SEN. BROWN stated that the Court of Appeals decision used the word "consent".

258 MS. GNIEWOSZ stated that it would be the language in (k) on lines 10 and 11, but it would be a special condition, such as ". . . and the condition is reasonably related to the facts surrounding (or the circumstances) . . ."

270 SEN. GARDNER suggested having language brought back to the committee.

271 SEN. SMITH suggested that legal counsel work with Corrections on this.

272 SEN. GARDNER stated that probationers also have to submit to a search to determine whether a condition of probation has been violated.

276 SEN. WYERS stated that was on line 11. There will be an additional restriction on line 11 and lines 10 and 11 will be moved to special conditions.

287 MS. GNIEWOSZ stated that the period would be a comma and the language would continue ". . . and the condition is reasonably related to the facts surrounding the offense that the conviction is based upon."

292 SEN. SMITH stated that he did not like the language.

300 SEN. GARDNER stated that he was in favor of the concept but wanted the language fine-tuned.

(K) is for searches where there is a reasonable cause to believe that it will disclose evidence of a probation violation. The additional language only applies where that particular probation condition is reasonably related to the facts surrounding the offense. Although the conditions of probation would still be valid, an officer could not search on less than probable cause of a crime to determine whether the specific condition was being violated.

334 SEN. SMITH had a problem with that.

335 SEN. WYERS and SEN. GARDNER felt that the concept was reasonable.

336 SEN. JERNSTEDT was not comfortable with it.

342 SEN. SMITH stated that line 24 is "abstain from or limit the use of intoxicants". What is "limit"?

349 SEN. WYERS stated that as a special condition of probation, it allowed the judge to order just about whatever the judge wanted to.

360 SEN. SMITH asked if Corrections' purpose was to provide that probationers abstain from the use of intoxicants.

365 MR. CHAMBERS stated it was Corrections' purpose to offer the option of two conditions (either abstain or avoid excess). In some cases, it would not be necessary to even mention it. Corrections' wants the option available for imposition by the court in those cases where it is appropriate.

382 MS. GNIEWOSZ stated that after line 12, "to pay fine costs and attorney fees" was to be moved to a general condition (Exhibit B). At present, it is on lines 16 and 17.

398 SEN. WYERS stated that was just to emphasize the need for people on probation to pay back the cost of their involvement in the court system.

401 There was no objection to that change, so it was adopted.

404 MS. GNIEWOSZ stated that that line 30 deals with knowingly associating with persons. Some of the language has been changed (Exhibit B).

418 There was no objection to the change, so it was adopted.

427 MS. GNIEWOSZ stated that line 38 is adding language (Exhibit B). It is the same type of thing talked about in search and seizure.

432 SEN. SMITH asked if the same language couldn't be used on the search and seizure portion.

438 SEN. GARDNER suggested ". . . nature or facts of the offense . . ."

448 There was no objection to the adoption of the language as written (Exhibit B). It was so adopted.

Tape 226, Side A

036 MOTION: SEN. WYERS moved that on line 30, "known by the probationer to be engaged in criminal activity" be inserted.

037 MOTION ADOPTED: There were no objections.

040 SEN. WYERS stated that the remaining issue was on lines 10 and 11. The suggestion was to add language saying "when the search is reasonably related to the nature and facts of the offense, conviction of which the probation is based on."

He asked if the committee would agree to the concept and to having legal counsel draft language to bring back to the committee

052 SEN. GARDNER suggested language saying that the search condition could be set when "it is reasonably related to the nature or facts of the offense."

055 There were no objections to the amendment. It was adopted.

057 MS. GNIEWOSZ said that line 39 would be deleted.

060 SEN. WYERS stated that Corrections does not necessarily agree with that. If it is made a condition of probation that a probationer cannot drive a car, the probation drives a car and is sent to prison for probation violation, the person is really sent to prison for driving a car. This is something that the committee is trying to keep from happening.

065 MS. GNIEWOSZ stated that this is really a checklist. It is not all inclusive. If there were extraordinary circumstances, this kind of condition could still be placed on a probationer. That is on line 14.

071 The amendment was adopted. There were no objections.

073 MS. GNIEWOSZ stated that the amendments (Exhibit B) delete sub (b) on page 3.

083 MR. CHAMBERS did not object to taking that out.

085 The amendment was adopted. There were no objections.

086 MS. GNIEWOSZ stated that the last amendment (Exhibit B) was to add a sub (5) that the court may modify at any time the conditions of probation. That language is presently in the statute on page 1, line 5.

090 SEN. WYERS stated this was deleted by the original bill. Corrections Division wants it.

092 The amendment was adopted. There were no objections.

094 MOTION: SEN. GARDNER moved HB 2317 as amended to the floor with a do pass recommendation.

098 MOTION PASSED: Aye - Brown, Gardner, Jernstedt, Kulonogski, Smith, Wyers. Excused - Fadeley.

102 HB 2459 - Relating to criminal procedure

111 THE HONORABLE GEORGE M. JOSEPH, Chief Judge, Oregon Court of Appeals, stated that HB 2459 is intended to eliminate excessive sentence review. The bill would repeal ORS 138.050. He had written a letter which suggested that he favored the retention of sentence review in other than guilty plea cases. (The bill would eliminate all appellate sentence review.) He was testifying to clarify this. He favored repeal of ORS 138.050. He also supports elimination of all appellate review of sentences. That is a function that can and should be performed by the Parole Board. He also favors amending section 1 of the bill so that 138.040 will not be read to let people who have pled guilty or nolo contendre appeal on some other ground. That is what he intended to say in his original letter. The courts have no basis or staff to review the fairness of sentencing.

154 SEN. GARDNER stated that Congress has the power to regulate and define the nature of appellate jurisdiction of the Supreme Court. Could they define the appellate jurisdiction so as to exclude review of sentences to determine whether they were cruel and unusual punishment within the meaning of the Constitution?

159 MR. JOSEPH replied in the affirmative.

188 SEN. KULONGOSKI stated that what has bothered him about this bill is that HB 2444 and HB 2445 are following with it.

199 MR. JOSEPH stated that HB 2444, 2445 and 2459 come from the Oregon District Attorneys' Association (ODAA) and the A.G.'s office. One question that is trying to be solved is "merger" and real merger. HB 2459 would solve that, but he was taking no stand on that issue.

There ought to be some body that has the authority to look at sentences in a comparative way. The appellate courts have no way to do that. The appellate courts can look at sentences that violate the law.

The appellate courts have never defined cruel, unusual or excessive. It was done negatively in a case written by Judge Schwab when the judge said the court would review sentences only to see if they exceed the statutory bounds.

273 SEN. FADELEY asked why there should be a difference if a person is convicted by a jury or if the person pleads guilty.

275 MR. JOSEPH replied that one of the concepts of pleading guilty is that the person waives the right to a trial at which an error might occur that could be appealed. Mistakes made in taking guilty pleas are reachable in post conviction.

STATE OF OREGON

INTEROFFICE MEMO

SENATE JUSTICE
HB 2317
Exhibit A
5/7/81-1 page
Corrections
Division.

TO: The Honorable Jan Wyers
Chairperson, Senate Justice Committee

DATE: May 7, 1981

FROM: Niel Chambers, Executive Assistant
Corrections Division

SUBJECT: HB 2317

Current law concerning conditions of probation is in some aspects vague and open to interpretation. The Corrections Division has developed a list of standard conditions which are usually imposed by the courts, but officers must occasionally impose specific instructions upon probationers in following out the understood intent of the courts. In a recent case (State vs. Maag), however, it was determined that revocation of probation must be based upon violation of a condition specifically imposed by the courts; it cannot be based on violation of a condition imposed by a supervising officer attempting to follow out understood court intent.

HB 2317, drafted jointly by Corrections Division and Board of Police Standards and Training, in consultation with the Attorney General's Office, is designed to rectify this situation. It proposes listing in statute those specific conditions of probation presently imposed by the courts in the majority of cases, indicating them to be in effect unless specifically deleted by the court. It also proposes listing in statute specific conditions now frequently imposed by the courts in individual cases, indicating them to be available for imposition by the court when appropriate. By making these clear lists of options available in law, need for officer interpretation of court intent will be reduced, and court intent will be more clear to probationer and officer, alike.

The provisions of HB 2317 will apply equally to all probations, both felony and misdemeanor, whether supervised by Corrections Division personnel or officers of local authority. The Corrections Division recommends passage of HB 2317.

SENATE JUSTICE
HB 2317
Exhibit B
5/7/81 - 2 pages
Judicial Conference

CIRCUIT COURT OF OREGON
FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
1021 S.W. 4TH AVENUE
PORTLAND, OREGON 97204

JOHN C. BEATTY, JR., JUDGE
Department No. 5
Circuit Court of Oregon
Fourth Judicial District

512 Multnomah County Courthouse
1021 S.W. Fourth Avenue
Portland, Oregon 97204
248-3187

May 7, 1981

M E M O R A N D U M

TO: Honorable Jan Wyers, Chairman
Senate Committee on Justice

RE: Certain listed measures before the Committee, 3:00 PM, May 7, 1981

SB 760 Computation of deductions from sentence and period of confinement.
The Judicial Conference has filed herewith a memorandum in opposition.

SB 541 Appeals from Municipal Court.
The Judicial Conference sees no objection.

HB 2448 Continues present law permitting waiver of presentence reports when Defendant, Judge and District Attorney concur.
The Judicial Conference believes the law has worked satisfactorily the past two years and should be continued.

HB 2459 Deletes appeal of a legal sentence to the Court of Appeals on the ground of excessiveness.

The Conference supports this measure as a means of judicial economy and as a part of a package of several measures recommended to the House.

First: The Parole Board will be permitted to override the imposition of consecutive sentences as in the case of a designated minimum term.

Second: The Court of Appeals, per the Harris case, will review the application of the matrix to defendants where the period of confinement is appealed.

Third: The period of confinement is controlled by three statutes: Matrix, minimum term, and consecutive sentence.

The matrix is developed by the Joint Commission on Prison Terms and Parole Standards, and its application subject to appeal as noted above. The minimum term and consecutive sentences are subject to Parole Board override. Hence, the period of legal confinement is subject to adequate review and it becomes unnecessary to provide appeals of every legal sentence to the Court of Appeals. The evidence before the House Committee on the Judiciary was that such appeals are numerous, and the Court of Appeals cannot, as a practical matter, review the exercise of discretionary judgment by a trial judge in imposing a sentence within the legal range. Since the matrix applies to most sentences, and the Board can override minimums and consecutives, such review is unnecessary and is a waste of time and money.

Note: Nothing in this measure affects the right to appeal error committed at trial or the imposition of an illegal sentence.

HB 2317-A Conditions of probation restated.

The Judicial Conference sees no objection to this measure.

HB 2326 Extending probation period in certain instances.

The Judicial Conference believes this is an appropriate amendment of the present statute which may avoid the necessity of revocation in certain cases.

Respectfully submitted,

John C. Beatty, Jr., Chairman
Legislative Committee
Judicial Conference

JCB:ach
Enclosure: Memorandum

SENATE JUSTICE
HB 2317
Exhibit D
5/7/81 - 1 page
ACLU

D. RICHARD HAMMERSLEY
ATTORNEY AT LAW
POWERS BUILDING • FOURTH FLOOR
65 S.W. YAMHILL STREET
PORTLAND, OREGON 97204
TELEPHONE (503) 221-1188

Chairman,
Senate Judiciary Committee
Oregon State Senate

May 6, 1981

Re: Testimony HB 2317

Dear Mr. Chairman:

The Oregon Chapter of the American Civil Liberties Union respectfully requests that your committee consider this letter for submission as testimony on the above proposed legislation.

Paragraph (1)(f) should be amended to allow for "reasonable efforts" to maintain gainfull full-time employment or schooling.

Paragraph (1)(k) should be amended to require that the Court make specific findings that the waiver of 4th Amendment Search and Seizure rights be "reasonably related to some articulable purpose of probation".

Paragraph 2(c) should be eliminated or require a similar finding by the Court that the use of polygraph examinations be "reasonably related to an articulable purpose of probation".

Paragraph 2(h)(A) should be amended so that a probationer may associate with his spouse or other family members unless a specific finding by the Court is made concerning the necessity for such a condition to the contrary.

Paragraph 2(L), relating to operation of a motor vehicle should be amended to require a specific finding by the Court of some reasonable relationship to probation purposes.

In summary, the above areas of this proposed legislation significantly diminish valuable constitutional rights without requiring that the court make findings regarding a reasonable relationship to the purposes of probation. As written, this legislation will only result in burdensome and unnecessary work for the Oregon Court of Appeals and Supreme Court, not to mention the U.S. Supreme Court.

Respectfully,

D. Richard Hammersley
Member, ACLU Sub-committee on
Corrections and Parole

SENATE JUSTICE
HB 2317
Exhibit J
5/7/81 - 1 page

WITNESS REGISTRATION

Senate Committee on JUSTICE

Date: 5/7/81 Time: 3:00 Room: 350

Public Hearing on Amended HB 2317 - Relating to Conditions of Probation
Measure No.

Please register if you wish to testify on the above-named measure.

Name and address	Representing	For	Against
X Richard Burton	OTLA		X
X O. R. Chambers	CORRECTIONS DIVISION	X	
X ~~Fee~~ Sy Hornbrook	FED. OF OREGON PAROLE & PROB. OFF	X	
X [illegible]	Jud. Conf. 1500 prob.		
X Deke Olmsted	Dept of Comm Corr - Wash Co	W/AMEND X	
X Carol Hersey	ACLU		X
X Jerry Cooper	Washington County Dep DA	X	
X Marvin Hartzmark	Metropolitan Public Defender		(mild) X

EXHIBIT L

SENATE COMMITTEE ON JUSTICE

Room 347, State Capitol
SALEM, OREGON 97310
(503) 378-8833

Senate Committee on Justice
5/27/81, HB 2317A
1 page

PROPOSED AMENDMENTS H.B. 2317 A

On page 2 of the bill, line 3 after "Find" delete "and" and insert "or".

On line 3 after the period insert "Any waiver of this requirement must be based on a written finding by the court that the probationer is physically or mentally incapable of complying with this condition."

On line 9 after "any" insert "deadly", and after "weapon" insert "as defined in ORS 161.015(1)."

On line 10 EITHER (1) delete lines 10 and 11 OR

(2) insert (k) lines 10 and 11 under special conditions after line39

On line 16 delete (a) (line 16 and 17) and insert (a) after line 12, general condition

On line 38 after the period insert "This condition shall be imposed only when the offense involved drugs"

On line 30 after "Persons" insert "known by the probationer to have a felony conviction." and delete the rest of the sentence.

Delete line 39.

On Page 3 delete lines 16-18.

On Page 2 after line 39 insert: (m) Neither own, possess, not control any dangerous weapon as defined in ORS 161.015(2).

EXHIBIT M

Senate Committee on Justice
5/27/81, HB 2317A, 2 pages

METROPOLITAN PUBLIC DEFENDER SERVICES, INC.

JAMES D. HENNINGS
Director

May 22, 1981

Senate Justice Committee
Senator Jan Wyers, Chair

Re: HB 2317A which alters the conditions of probation.

Chairman Wyers, members of the committee:

The Metropolitan Public Defenders would like to submit an amendment to this bill which we feel would provide the flexibility necessary in this situation.

Page 1, delete lines 4 through 30.
Page 2, delete lines 1 through 41.
Page 3, delete lines 1 through 13.

SECTION 1. (1) The court may order conditions of probation reasonably related to the defendant's crime and these conditions will reasonably assist the defendant from committing future criminal acts.

(2) In addition to the general conditions, the court may impose special conditions of probation for the protection of the public or reformation of the offender, or both, but not limited to:

(a) Pay fine, costs, attorney fees or restitution or all combination thereof ordered by the court pursuant to ORS 137.106 on a schedule of payments arranged by the court or the probation officer.

(b) Be confined to the county jail for a period not to exceed one year or one-half of the maximum period of confinement that could be imposed for the offense for which the defendant is convicted, whichever is lesser.

(3) Upon a finding that the probationer constitutes a threat to the safety of the public or that the probationer is not benefiting from the probation, probation may be revoked.

In addition, the relating clause would have to be amended to read:

2 Relating to conditions of probation; creating new provisions and [amending] repealing ORS 137.540.

Thank you for your consideration in this matter.

Sincerely,

Marcy Hertzmark

Marcy Hertzmark
Legislative Liaison

CONFERENCE COMMITTEE ON HB 2317

HOUSE COMMITTEE ON JUDICIARY

June 26, 1981 9:00 a.m. 346 State Capitol

MEMBERS PRESENT: Rep. Bill Rutherford, Chairperson
Rep. Peter Courtney
Sen. Jim Gardner

MEMBER EXCUSED: Sen. Jan Wyers

STAFF: Felicia Gniewosz, Legal Counsel, Senate Justice Committee
Steve Griffith, Legal Counsel, House Judiciary Committee
Pamela Burke, Committee Assistant

WITNESS: Allison Smith, District Attorney's Association

MEASURE: HB 2317 - Relating to criminal probation

TAPE: H-81-JUD-500

TAPE H-81-JUD-500, SIDE A

006 CHAIRPERSON RUTHERFORD convened the meeting at 9:20 a.m.

HB 2713 - Relating to cirminal probation

008 CHAIRPERSON RUTHERFORD stated that the differences that the Senate and House have are on page 2, lines 38-40 of HB 2317 B-Engrossed.

010 He stated that there are three choices in solving their differences: 1) To delete the language entirely. 2) To delete on lines 39-40 the words "This condition may be set when it is reasonably related to the nature or facts of the offense.". 3) To delete line 39 and insert the words "Submit person, residence, vehicle and property to search by a probation officer, having reasonable grounds to believe such search will disclose evidence of a probation violation. This condition may be set when it is reasonably related to the nature or facts of the offense.".

015 He stated that the purpose of the bill was to enumerate what a probation officer may do.

017 STEVE GRIFFITH, Legal Counsel, stated that another choice would be to restore the search and seizure law to a general condition.

020 SEN. GARDNER stated that SEN. WYERS did not want a condition placed on a defendant for an unrelated offense.

023 CHAIRPERSON RUTHERFORD stated that there are two ways that would be appropriate: 1) In a plea bargaining situation a person may be convicted of something that the condition would not be imposed. 2) The person may have a prior history of the use of a firearm.

028 ALLISON SMITH, District Attorney's Association, stated that a person may be supporting a drug habit by stealing. The conviction would be for burgulary but the problem is drugs.

037 STEVE GRIFFITH stated that this would be removing the limitation that a condition would have to be reasonably related to the offense.

043 ALLISON SMITH stated that case law requires that it be reasonably related.

048 STEVE GRIFFITH stated that by deleting lines 39-40 on page 2 of HB 2317 B-Engrossed it would be removing the limitation that it would have to be reasonably related to the facts of the offense.

General discussion followed.

072 STEVE GRIFFITH stated that the Senate Amendments to A-Engrossed HB 2317, changed a general condition to a special condition for possessing a weapon. Concerning search, they changed a general condition to a special condition, limiting it to it has to be related to the offense. On fine costs and restitution, they changed it from a special condition to a general condition. Concerning association with codefendants or crime partners, they limited the prohibition limited it to persons who where presently engaged in criminal activity, deleting the reference to past criminal records.

095 CHAIRPERSON RUTHERFORD submitted written testimony and proposed amendments from LOUIS CHANDLER, Corrections Division (Exhibit A, HB 2317).

097 CHAIRPERSON RUTHERFORD stated that the House would like to delete on page 2 lines 39-40 of HB 2317 B-Engrossed, the words "This condition may be set when it is reasonably related to the nature or facts of the offense.".

100 ALLISON SMITH stated that on page 2 of the letter from LOUIS CHANDLER (Exhibit G, HB 2317) concerning the condition of "Not illegally use narcotics or dangerous drugs.",this is covered by the general condition of state and local laws.

108 CHAIRPERSON RUTHERFORD recessed the meeting at 9:30 a.m., to reconvene on a later date.

Respectfully submitted,

Pamela Burke

Pamela Burke
Committee Assistant

TAPE LOG: H-81-JUD-500, SIDE A

EXHIBIT LOG: Exhibit A, HB 2317

HOUSE COMMITTEE ON JUDICIARY

July 6, 1981 | 1:15 p.m. Conference Committee | 346 State Capitol

MEMBERS PRESENT: Rep. Bill Rutherford, Chairperson
Rep. Peter Courtney
Sen. Jim Gardner
Sen. Jan Wyers

STAFF PRESENT: Felicia Gniewosz, Senate Justice Counsel
Lee Mosher, Judiciary Committee Assistant

MEASURE: HB 2317B - Relating to criminal probation

TAPE: H-81-JUD-523

TAPE H-81-JUD-523, SIDE A

005 CHAIRPERSON RUTHERFORD convened the meeting at 1:25 p.m.

010 SEN. WYERS stated the facts were not to be limited by the elements which you have to approve to get a conviction. By facts, it was meant to be the surrounding facts and he gave an example of a special condition to probation. He asked if that was too restrictive.

023 REP. COURTNEY replied that if he reads the language, it is just counter to what Sen. Wyers said.

028 SEN. WYERS stated it was known that what the Corrections Division wanted was not done.

031 CHAIRPERSON RUTHERFORD noted one of the possibilities was to delete the sentence entirely and asked ALLISON SMITH his opinion on deleting "this condition may be set when it is reasonably related to the nature of the facts of the offense".

034 ALLISON SMITH, District Attorneys Association, stated that would leave it up to the present case law and interpretation which would have the effect of using the case law language as set out in line 35 and 36.

037 CHAIRPERSON RUTHERFORD quoted "this condition may be set when it is reasonably related to the nature of the offense and treatment of the offender".

039 SEN. WYERS noted he did not wish to be arbitrary about it but it was his feeling that that was a little too broad. He discussed some language that would be assertive of his position.

049 Discussion followed.

062 FELICIA GNIEWOSZ noted that she had talked to JUDGE JOHN BEATTY, Judicial Conference, to find out how many cases search and seizure conditions were set and he had stated ten to fifteen (10-15%) percent were searches and seizures when not related to the offense.

069 SEN. GARDNER thought the language should not be included in line 40 since it is already in line 35 and 36.

073 Discussion followed.

080 MS. GNIEWOSZ reviewed two items in question i.e., weapons was a special condition in the B-engrossed bill and it was taken out as a general condition, line 37.

088 Discussion followed.

094 CHAIRPERSON RUTHERFORD asked if there was agreement on everything including line 39 and 40 and deleting the language in 35 and 36.

096 MOTION: REP. COURTNEY moved to delete the words on line 39 and 40 "this condition may be set when it is reasonably related to the nature of the facts of the offense" and insert the language from line 35 and 36 "this condition may be set when it is reasonably related to the nature of the offense or treatment of the offender".

The motion carried 4 - 0 with Rep. Courtney, Sen. Gardner, Sen. Wyers and Rep. Rutherford voting aye.

107 REP. COURTNEY referred to a proposed amendment submitted by PAUL SNIDER, Association of Oregon Counties (Exhibit B , HB 2317).

110 Discussion followed as to the necessity of the amendment.

129 MOTION: REP. COURTNEY moved on page 2 of the B-engrossed bill, line 11, after the word "costs" insert the words "including probation costs,".

The motion carried 4 - 0 with Rep. Courtney, Sen. Gardner, Sen. Wyers and Rep. Rutherford voting aye.

137 CHAIRPERSON RUTHERFORD adjourned the meeting at 1:38 p.m.

Respectfully submitted,

Lee Mosher

Lee Mosher, Committee Assistant

HOUSE JUDICIARY COMMITTEE
Conference Committee
Exhibit A , HB 2317 2 pages
Rep. Rutherford, District 29
Testimony - Louis Chandler
Corrections Division June 26, '81

VICTOR ATIYEH
GOVERNOR

Department of Human Resources

CORRECTIONS DIVISION

McMINNVILLE OFFICE

~~525 E. 4TH ST. ROOM 2~~ McMINNVILLE, OREGON 97128 PHONE 472-9371, EXT. 207
615 E. SIXTH STREET JUNE 23, 1981

Representative William Rutherford
State Capital Building
Salem, Oregon 97310

RE: House Bill 2317

Dear Bill:

This letter is in reference to House Bill 2317, and the fact that writer was not aware of testimony before the House Judiciary concerning this proposed legislation. In looking at the B engrossed bill, there are several recommendations I would like to make and, if at all possible, request that the changes be proposed on the House floor.

Change #1: It is writer's personal opinion that the search and seizure clause as contained on page 2, line 38, should be a general condition of probation. However, talking with other individuals who were aware of some of the testimony, it appears that there was not common testimony indicating that this should be a standard condition of probation. However, in looking at page 2, line 39, I would suggest that the following sentence be completely deleted, which reads: "This condition may be set when it is reasonably related to the nature or facts of the offense".

The reasons for this change are that in many instances an individual has had a prior history concerning the use of a firearm, but the charge on which he is on probation may not be the crime of conviction, i.e., an individual who may have robbed or burglarized a pharmacy could very easily be charged with Possession of a Controlled Substance, and the defense attorney might reasonably argue that the search condition should not imply just for the possession of a controlled substance.

Also, it has been our experience that many times as part of the plea negotiations, the District Attorney's Office will drop one of the charges if the individual will plead to another charge. An example might be that an individual charged with Attempted Rape, in which a knife or a firearm was used, could very easily plead guilty to a

lesser included charge of Sexual Abuse in the First Degree. Under normal circumstances, a sexual abuse charge would probably not mandate a search clause. Also, it has been our experience that some individuals have had a prior history of the use of weapons and, if placed on probation, the Court would be very interested in making sure the individual was not a threat to the general community. It is this writer's opinion that a search clause might satisfy concerns of both the Court and this Department, that the individual could be a candidate for probation supervision.

In any event, writer recommends that the second sentence, as contained on page 2, line 39 and 40, be deleted.

Change #2: It is also writer's opinion that when the conditions of probation were presented, one condition was overlooked, which should read:

"Not illegally use narcotics or dangerous drugs."

This condition could be added after page 2, line 12, and would be standard condition No. L, and to read as stated above.

Concern #3: In the past, any individual who was placed on felony probation was informed of the 1968 Federal Gun Law, which indicated any person convicted of a felony was not to use, own, possess or control a firearm. However, writer has received some information indicating that the Federal authorities may take this out of the jurisdiction of the FTA, and ask the States to enforce any type of gun control legislation. With this in mind, I am not proposing that all individuals who are on probation supervision have a no firearm condition; however, the legislature should be aware of pending changes in the Federal legislation, and might want to make this a standard condition of probation.

Writer is well aware of the fact that a great deal cannot be done at this late stage, but hopefully this letter will give you some ammunition to make at least a proposed change in the search and seizure clause, and add to the standard conditions of probation that individuals are not to possess or illegally use narcotics or dangerous drugs.

Thank you for your attention in the above matter.

Sincerely,

Louis Chandler
Corrections Manager

LC:jeh

HOUSE JUDICIARY COMMITTEE
SENATE JUSTICE COMMITTEE
Conference Committee, July 6, 1981, Exhibit B, HB 2317, 1 page, Assn of Oregon Counties, amendment

6/29/81

PROPOSED AMENDMENTS TO B-ENGROSSED HB 2317

On page 2 of the printed B-Engrossed bill, line 11, after "costs" insert "including probation costs," .

Association of Oregon Counties