

received a letter from Representative Les Aucoin and he is one of the cosponsors of House Resolution 106 in the United States Congress.

0107 REP. SMITH asked Mr. Romain if any state had rejected the memorial.

0107 MR. ROMAIN replied no.

0110 CHAIRMAN GARDNER closed the public hearing on SJM 5 and opened the public works session on HB 2849.

HB 2849 - Sets mandatory minimum sentences for crimes involving use of firearms

0115 JUDGE JOHN BEATTY, representing the Judicial Conference, stated that the Judicial Conference believes in the exception of homicides, that the sentencing judge should maintain the discretion in other felonies to determine whether or not incarceration is essential. The reason for the Conference's position is that in their collective experience, as judges, they find that invariably an occasion will arise when probation seems to be more appropriate, taking into consideration public and community interest in security, deterrants, restitution and rehabilitation.

JUDGE BEATTY stated that when a crime is committed while a person is armed, in most instances it will result in penitentiary sentence. In connection with comparable legislation which appeared in 1977, he went back through some 6 to 700 files of his own to determine what had been his disposition of cases of armed robbery. He found that in 15 out of 17 cases he imposed a penitentiary sentence. In two cases he suspended execution of a penitentiary sentence and imposed a probationary sentence, one in which involved a year in the county jail, plus other penalties. In the other the particular individual was shot in the process of being apprehended and received permanent injuries which at that time appeared to be so serious that it was doubtful whether he could be handled in a jail setting. He stated that in the latter case he subsequently revoked probation and let a maximum penitentiary sentence be carried into execution because of certain types of misbehavior and because the individual had recovered sufficiently.

JUDGE BEATTY stated that the use of a firearm, when a sentence is executed, is part of the factor which is involved in the matrix, so the sentence itself is enhanced and the sentencing judge has the opportunity to impose a minimum period of confinement.

JUDGE BEATTY stated that section 2 of the bill is based upon the minority report of the Governor's Task Force in Corrections and he was satisfied that it is a reasonably workable section. He felt that if the committee concludes as a matter of public policy, they want to go to it, it was far preferable than any of the multitude of bills that involve either requiring that the allegations be placed in the indictment or involving the jury in the process of making a determination with respect to prior offenses. With respect to the periods of time, those periods were not based on the 1977 draft,

they are more extensive and they would upset the balance of the matrix.

0198 REP. RUTHERFORD asked Judge Beatty how the bill relates to the bill that was passed out last session regarding minimum sentencing.

0203 JUDGE BEATTY stated that the second or third offense is greater than the bill last session.

0208 DENNIS BROMKA stated that he thought that it was the same bill that was passed from the committee and it passed to the Senate.

0213 CHAIRMAN GARDNER stated that there is some concern on the part citizenry regarding the practices of the parole board once a person is sentenced to a period of years. He knew that there was the matrix, but in some cases, this bill would require that persons who use guns would serve a lot longer period of time. He felt that there was some concern on the citizenry that in many cases the sentencing judges do the right thing, but in the minds of the public they abuse their discretion as far as granting probation or a light sentence. He felt that that was why the issue kept coming back.

0228 JUDGE BEATTY stated that he recognized that, but he felt that most judges feel that the trade off isn't worth it because of the re-curring case in which it is desirable to have an exception because of the peculiar facts of the case. He stated that if you place any discretion, humans are fallable and you are going to get into an occasional situation where people disagree with the use of that discretion.

0250 CHAIRMAN GARDNER asked if the district attorney could charge a misdemeanor as opposed to a felony.

0253 JUDGE BEATTY replied that the district attorney could do it, but it is pretty awkward in most instances to drop an armed robbery to a misdemeanor.

0260 REP. LOMBARD stated that Rep. Wilhelms wanted to speak on the bill, but he was not present.

0262 CHAIRMAN GARDNER stated that he would close the public hearing until Rep. Wilhelms comes and he opened the work session on HB 2015.

HB 2015 - Relating to transfer of jurisdiction from juvenile court to adult court

0282 MR. BROMKA explained that the amendments were not ready yet from being copied.

0283 CHAIRMAN GARDNER decided to go to work session on SJM 5 instead.

0284 REP. RICHARDS moved SJ 5 to the floor of the House with a do pass recommendation.

0296 CHAIRMAN GARDNER stated that Rep. Richards moved that SJM 5 be

sent to the floor of the House with a do pass recommendation.
Voting aye: Bugas, Cohen, Gardner, Lombard, Mason, Richards,
Rutherford and Smith. Excused: Frohnmayer. The motion passed.

0305 CHAIRMAN GARDNER reopened the public hearing on HB 2849.

0315 REP. WILHELMS stated that he wouldn't read three and one half pages of testimony that he gave two years ago to the committee on a similar bill. He wanted to call to the committee's attention that HB 2849, 1979 regular session, is an exact verbatim copy of HB 3041 from the 1977 session, which did pass the House Judiciary Committee and passed in the House of Representatives 58 to 1 and then was tabled in Senate Judiciary later in the session. The bill, he felt, is fairly straight forward, in that it requires that mandatory minimum sentences be imposed upon people who are convicted of felonies during which there was a use of a firearm. He stated that this is one bill that has had extremely widespread support, in the contacts that his office had. All of the sports organizations, the gun organizations and citizen input and every other piece of input that he had received has been in support of a requirement for mandatory minimum sentence imposed upon people who are convicted of felonies during which there was a use of a firearm. He stated that this is one bill that has had extremely widespread support, in the contacts that his office had. All of the sports organizations, the gun organizations and citizen input and every other piece of input that he had received has been in support of a requirement for mandatory minimum sentence imposed upon people who are convicted of a felony while using a firearm.

REP. WILHELMS stated that he had been contacted by some of the sports and gun organizations who have asked what his position would be if a bill, which does basically the same thing but some additional things, SB 42, were merged with HB 2849. He stated that he would leave that up to the Judiciary Committee as far as whether or not they would want to do that. He stated that he did not know what success that SB 42 is having on the Senate. He was not concerned about any of the additional items that are contained in that bill. He stated that this bill deals specifically with mandatory minimums for those who are convicted of felonies while using a firearm.

0349 CHAIRMAN GARDNER asked Dennis Bromka if the committee had any other vehicles that deal with guns.

0351 DENNIS BROMKA, Legal Counsel, replied that they do.

0351 CHAIRMAN GARDNER stated that the relating clause is broad enough that if the committee decided to take some of the elements in SB 42 they could amend those vehicles as opposed to messing up Rep. Wilhelm's bill.

0365 REP. RICHARDS stated that on line 10 of the bill, on page 2, talks about both an operable or inoperable firearm. She asked what his policy basis was for including also a firearm that cannot be operated and cause harm.

- 0370 REP. WILHELMS replied that that was not in his original bill that was amended into the bill last session.
- 0373 REP. RICHARDS asked if Rep. Wilhelms felt that that should be included as a policy matter.
- 0376 REP. WILHELMS replied that it was far more important to him that you deal with the operable firearms. He stated that he would leave that up to the committee.
- 0378 CHAIRMAN GARDNER stated that the reason that they added inoperable was because of the proof problems that might arise as to whether or not the gun was in fact operable at the time of the crime.
- 0382 REP. SMITH asked for comments from Rep. Wilhelms, concerning whether the use of a firearm sometimes generates retaliatory force which could be equally dangerous and that whether it is operable or not, the person who is under the gun is seldom capable of knowing whether the gun is loaded or not.
- 0390 REP. WILHELMS stated that at one point during the discussion in the last session, the question came up as to whether or not fac-similies or toy guns should be included.
- 0394 REP. RUTHERFORD asked if this bill was a minority report last session.
- 0396 REP. WILHELMS replied that he knew that there was a minority report presented, but he didn't recall if this bill was the minority report or not.
- 0397 REP. RUTHERFORD thought that the bill was the minority report.
- 0403 CHAIRMAN GARDNER stated that he thought that that was Rep. Richards minority report and he thought that it narrowly failed.
- 0430 CHAIRMAN GARDNER closed the public hearing on HB 2849 and opened the work session on HB 2245.
- 0444 DENNIS BROMKA, Legal Counsel, explained that HB 2245 deals with theft of services. Theft of services is defined in ORS 164.125 and on line 10 of the bill the word "commercial" is deleted because under existing law, the services which are stolen or unlawfully converted to your use had to have a commercial benefit. If it is personal benefit, it is not against the law. The situation arose in Multnomah County, in which an individual had some workmen who were not his own workmen build him a tennis court for his own personal use. When he was prosecuted they couldn't get a conviction because although what he did seemed to be morally reprehensible it wasn't for commercial benefit.
- MR. BROMKA explained that the bill, introduced at the request of Rep. Starr, at the request of the Multnomah County District Attorney would delete the word "commercial" and henceforth anybody who committed the conduct of converting somebody's services to his use, for whatever benefit they would receive would fall

1111 CHAIRMAN GARDNER opened the work session on HB 2849.

HB 2849 - Sets mandatory minimum sentences for crimes involving use of firearms

1114 REP. SMITH moved the bill to the floor with a do pass recommendation.

1120 CHAIRMAN GARDNER stated that Rep. Smith moved that HB 2849 be sent to the House floor with a do pass recommendation.

1120 REP. FROHNMAYER asked if the bill was a carbon copy of HB 3041 as it was introduced last time.

1123 MR. BROMKA stated that it was minority report number two from last session.

1123 REP. RUTHERFORD asked if the bill had a subsequent referral.

1124 MR. BROMKA replied that it did not.

1125 REP. RUTHERFORD recalled that the bill had a fiscal impact.

1125 REP. FROHNMAYER felt that that was ironed out with minority report number two.

1129 REP. COHEN stated that she was not going to support the bill because there was another bill, which she was supposed to carry, that was going to take some firearms away from some intoxicated people and it is not going to be considered. She stated that until there are steps taken on the front end she was not going to vote to take care of it on this end. She stated that if they were done together she would support the vote.

1134 REP. RUTHERFORD stated HB 2849 was heavily supported from Governor Straub's office.

1135 REP. MASON stated that Mr. Shivley of the Oregon Rifle Association asked him to tell the committee that he was in favor of the bill. However Rep. Mason stated that he was not going to support the bill because he disagrees with mandatory sentencing and secondly because Senate Bill 842, now being heard, is more comprehensive and has almost all the same provisions in it.

1143 CHAIRMAN GARDNER stated he wouldn't hold his breath until SB 482 comes flying over.

CHAIRMAN GARDNER stated that the motion is by Rep. Smith to send HB 2849 to the floor with a do pass recommendation. Voting aye: Bugas, Frohnmayor, Gardner, Lombard, Rutherford and Smith. Voting nay: Cohen and Mason. Excused: Richards. The motion passed.

1159 CHAIRMAN GARDNER opened the work session on HB 2922.

and then found out that the law was wrong. These parties should be entitled to the same third party indemnity that the homebuilders are asking for.

0995 MR. VAN NATTA pointed out that he is not familiar with all regulations but probably in few cases are there the detailed and extensive regulations that are found in the building industry.

1006 REP RUTHERFORD commented that this appears to create a very cozy relationship between the regulated industry and the board. He felt the regulated industry might very well want more and more incorporated into the code because the more that is in the code the least amount of liability the builder would have.

1009 MR. VAN NATTA called this an interesting and fascinating concept. He thought this not to be a danger with the homebuilding industry but maybe with some other regulated industry.

SB 216 - Relating to domestic relations

1020 LARRY YOUNG, representing the Department of Justice, testified that the bill was referred back to committee for slight amendments and the subsequent motion to repass the bill out of committee failed 4-2 and he asked that the bill come up for another vote before the committee.

1024 MOTION: REP RUTHERFORD moved to removed SB 216 from the table.

1026 There being no objection to the motion, the CHAIR declared the motion passed.

1027 MOTION: REP RUTHERFORD moved SB 216 as amended to the floor with a "do pass" recommendation.

1030 MR. YOUNG explained that the amendments to SB 216A include deleting "any" and inserting "known" in line 10 of the bill. On line 11, after "born" insert "or adopted". On line 13, delete "any" and insert "known". On line 28 after "born" insert ", adopted". He explained that the language "adopted" being inserted is a new amendment from the amendments previously submitted.

1043 VOTE: In a roll call vote the motion carried 6-1 with Rep Richards voting no. Reps Gardner and Mason were excused.

HB 2849 - Relating to mandatory minimum sentences

1050 DENNIS BROMKA explained that this bill is "floating" around just like SB 216. He said this bill is mandatory imprisonment for a felony gun crime. He suggested that this bill will be on the agenda for tomorrow's meeting.

He said the bill was passed out with a "do pass" and there was concern expressed about the impact and the bill was delayed.

HB 2894 - Relating to agriculture

- 0932 REP. RICHARDS asked for a restatement of what the bill does.
- 0933 MR. JOSS stated that there was an interpretation which came out of the district attorney's office of Marion County which he did not agree with although he agreed that the language was somewhat ambiguous.

It is the policy of Marion County, that no adoption could be had without proof of the putative father. In that particular case, the child could not be adopted until it was a year old.

This bill is to cure the ambiguity.

- 0970 In response to a roll call vote, the CHAIR declared the motion passed. Voting aye: Frohnmayer, Gardner, Lombard, Mason, Richards, Rutherford. Excused: Bugas, Cohen, Smith.

HB 2849 - Relating to mandatory sentences

- 0977 DENNIS BROMKA stated that HB 2849 imposes mandatory minimum sentences in the case of felonies committed by people who are armed with a weapon.
- The bill was voted out of committee last week. After that was done, Legislative Fiscal brought up a fiscal impact statement which states that for the next biennium the impact would be \$1,700,000. By 1985, the impact would be \$19,600,000.
- 0990 CHAIRMAN GARDNER stated that this was an important enough issue as far as the fiscal impact is concerned for the committee to reconsider the vote by which the bill was passed.
- 0993 REP. RUTHERFORD stated that as a political matter, if the bill reaches the floor it will either come back to this committee or be sent to Ways & Means.
- He moved to reconsider the vote by which HB 2849 was sent to the floor.
- 0999 In response to a roll call vote, the CHAIR declared the motion passed. Voting aye: Frohnmayer, Gardner, Lombard, Mason, Richards, Rutherford. Excused: Bugas, Cohen, Smith.
- 1000 REP. RUTHERFORD moved HB 2849 to be sent to Ways & Means with "do pass" recommendation.
- 1003 REP. FROHNMAYER asked that if the motion passed, Rep. Wilhelms be notified.
- 1010 In response to a roll call vote, the CHAIR declared the motion failed. Voting aye: Frohnmayer, Lombard, Gardner, Rutherford. Voting nay: Cohen, Mason, Richards. Excused; Bugas, Smith.
- 1017 REP. COHEN stated that she would change her vote.
- She moved that HB 2849 be sent to Ways & Means with a "do pass" recommendation.

- 1022 In response to a roll call vote, the CHAIR declared the motion passed.
Voting aye: Cohen, Frohnmayer, Gardner, Lombard, Mason, Rutherford.
Voting nay: Richards. Excused: Bugas, Smith.
- 1033 CHAIRMAN GARDNER closed the work session and adjourned the meeting at
3:00 p.m.

Respectfully submitted,



Pearl Bare
Committee Assistant

EXHIBITS

- Exhibit A, HB 2008 - Amendments from the subcommittee
Exhibit B, HB 2008 - Proposed amendments from Kathy O'Brien
Exhibit A, HB 2009 - Proposed amendments from Kathy O'Brien
Exhibit B, HB 2769 - Amendments from subcommittee

Non-budget bills considered by Subcommittee and now before Full Committee:

House Bill 2413--Relating to public employees; creating new provisions; amending ORS 240.015, 240.215, 243.105, 243.175 and 243.180; and declaring an emergency.

Representative Katz moved that A-engrossed House Bill 2413 be reported out to the Senate "Do pass."

Representative Katz reported that the Salary Subcommittee recommends approval of this bill which allows certain positions in state government to be designated as job sharing positions and provides that the health and dental insurance contributions made by the employing agency will not exceed the total entitlement due an individual full-time employee. It will not cost any more money, and is anticipated that this flexibility will encourage employing agencies to make greater use of job sharing as one of the staffing options to managers and supervisors. She thought this a good bill for both men and women who for one reason or another cannot work full time and for employers as well since a person can do better work for three or four hours than eight.

Representative Katz's motion carried on roll call vote.

House Bill 2849--Relating to mandatory minimum sentences; creating new provisions; amending ORS 166.210, 166.250, 166.410 and 166.460; and repealing ORS 166.230.

Representative Hanneman moved that House Bill 2849 be amended as set out on the printed agenda, and that it be reported out to the House "Do pass as amended."

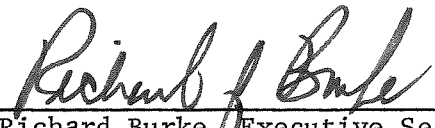
Representative Hanneman said this bill was referred to the Ways and Means Committee because of the anticipated high fiscal impact. The bill provides for mandatory minimum sentences in felony cases which involve the use or threatened use of a firearm, and as amended by Subcommittee No. 6 does provide for judicial discretion in sentencing for a first offense. A great deal of time was spent in setting up criteria for sentencing in a first offense, and it was conclusively determined that the first offense should not carry a mandatorily imposed prison sentence. Therefore, the immediate effect of the bill, as far as fiscal impact, is minimal. It is anticipated that for the next two biennia there will be only a very slight fiscal impact.

Representative Simpson asked whether testimony was received from the courts and, if so, whether they supported the proposal. Representative Hanneman replied that the judicial sector was represented, and they presented their viewpoints relative to the fiscal impact due to the inmate population at the Penitentiary and their philosophy. It would appear the ideas of the judicial representatives were mixed.

In response to Representative Simpson's concern as to the amendment allowing the judge latitude in a first offense, Senator Thorne cited examples where an innocent person could be sent to prison. The Subcommittee felt there are circumstances where the courts should have some discretion. Representative Hanneman added that this bill was reviewed by the Judiciary Committee. The amendments proposed were provided by Judge Beatty who felt they were desirable.

Representative Hanneman's motion carried, with Representatives Lindquist and Simpson and Senator Fadeley voting "no" on roll call vote.

The meeting adjourned at 9:00 a.m.


Richard Burke, Executive Secretary

18 pages

Vickie
FILE HB 2849

RECEIVED

MAY 10 1979

L F O

May 8, 1979

C
Honorable Jeff Gilmour
Chairperson
House Ways and Means
H 178 Oregon State Capitol
Salem, Oregon 97310

Dear Representative Gilmour:

O
House Judiciary has forwarded to Ways and Means
HB 2849 because of a fiscal impact reported by the Corrections
Division.

The Judicial Coinference has previously stated its
view on this legislation as a matter of policy, but remains
concerned with what we consider to be undesirable ambiguity in
subsections 4 and 5 of Section 2 of the bill.

P
I attach a brief Memorandum, together with proposed
alternative amendments, and request notice of hearing and
an opportunity to be heard concerning this matter.

Very truly yours,

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

JCB/ser
Enclosure

✓cc: Mr. Rick Burke

JUDICIAL CONFERENCE

MAY 7, 1979

M E M O R A N D U M

TO: JOINT WAYS AND MEANS

RE: HB 2849 (Relating to Mandatory Sentences for Felonies in
Which a Firearm is Used or Possessed)

1. I have already expressed to the judiciary committee the view of the Judicial Conference that it is unwise to provide mandatory penitentiary sentences for offenses other than homicide without possibility of exception. Most such offenders are given substantial prison terms, and such provisions eliminate the exercise of judicial discretion in the unusual case. With respect to the mechanics of HB 2849, I have the following comment:

2. This bill is based upon Minority Report No. 2, A-Engrossed HB 3041, which passed the House in the closing days of the 1977 session and died in the Senate. The bill requires that in every case it is the duty of the District Attorney to advise the court, and the duty of the court to inquire, as to whether the defendant used or threatened to use a firearm. Unless the use is proved in the course of the trial or admitted, the court is required to set a presentence hearing to determine the facts. The hearing procedures are satisfactory. If the court finds beyond a reasonable doubt that the defendant used or threatened to use a firearm during the commission of the crime,

it is required under Section 2, subsection (4), to impose the minimum term of imprisonment provided in Section 5. Subsection (4) goes on to say that in no case shall a person punishable under Section 2 become eligible for work release or parole until the minimum term of imprisonment is served, nor may the execution of sentence imposed be suspended.

3. Subsection (5) provides minimum terms of imprisonment. Subsection (a) states that:

"... upon conviction for such felony committed after the first conviction for such felony, five years,"

and the remainder of the section imposes enhanced penalties for the second and third offenses. Subsection (5) therefore appears to fix a minimum sentence of five years for what is in effect the second conviction which involves use or threatened use of a firearm. However, subsection (4) prohibits the trial court from suspending the imposition of sentence in any case "punishable" under Section 2. Consequently, the statute as passed by the House in this form presents ambiguity which should be clarified. It seems that if the Legislature intends the court to be free of restriction in sentencing the first firearm offense, the statute should clearly so indicate. If the Legislature intends the sentence to be imposed and the minimum to be applicable to the first offense, it should clearly say so. If this statute is to have any value, it must be as a deterrent, and ambiguity--deliberate or inadvertent--can hardly be a deterrent.

4. If the decision of the committee is that a minimum sentence is to be applicable to the first offense, then I would suggest the insertion at an appropriate point of a new subsection which provides:

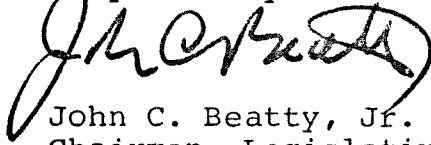
"In the case of a first offense in which the defendant used or threatened to use a firearm during the commission of a crime, the court may suspend the imposition or execution of sentence or impose a lesser term of imprisonment where the court expressly finds mitigating circumstances justifying such lesser sentence."

I believe the insertion of such discretion would take care of the unusual case and the bulk of the judiciary's concern with such mandatory sentences.

Attached are amendments which I suggest the committee employ, depending on its desire.

5. With respect to fiscal impact, I doubt it will be as great as projected by the Corrections Division, but insertion of the amendment proposed would lessen it in the first instance and in the second, reduction of the mandatory terms for second and third offenses to 8 and 12 years would undoubtedly carry the actual periods of incarceration close to levels consistent with the present sentencing practices without damaging the deterrent effect. In other words, with those changes I think the fiscal effect would be nil for the foreseeable future.

Respectfully submitted,



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

JCB/ser

Enclosures

PROPOSED AMENDMENTS TO HB 2849

(Relating to Mandatory Penalties For
Use or Threatened Use of Firearms)

A. In the event the committee wishes to impose
mandatory penalties for the first offense:

Page 2, line 19, after the word "impose" strike "a"
and insert the words "at least the."

Page 2, line 26, delete the words "committed after the
first conviction for such felony."

B. In the event the committee wishes to keep a
mandatory structure but leave the trial judge discretion on the
first offense:

Add to the amendments provided under paragraph A above
the following:

Page 2, line 20, after the word "case," insert "except
as provided in subsection (6) of this section."

Page 2, following line 31, insert a new subsection as
follows:

"(6) In the case of a first offense in which
the defendant used or threatened to use a firearm
during the commission of a felony, the court may
suspend the imposition or execution of sentence
or impose a lesser term of imprisonment to the
Corrections Division where the court expressly
finds mitigating circumstances justifying such
lesser sentence and sets such circumstances forth
in its statement on sentencing."

C. In the event the committee wishes to impose manda-
tory penalties for the second and subsequent such offenses only:

Page 2, line 19, after the word "crime," insert the words:

"and if the court finds ~~that~~ the defendant has previously been found guilty of the same after the effective date of this act,"

Page 2, line 19, after the word "impose," strike "a" and insert "at least the."

Page 2, line 26, delete the first "such felony" and insert "a felony in which the defendant used or threatened to use a firearm."

WAYS AND MEANS COMMITTEE LOG
Subcommittee No. 6

Date 5/28/79

| Counter Reading | Bill No. | | | Tape # <u>22</u> Side # <u>1</u> |
|--------------------|-------------|----------------------|--|----------------------------------|
| | HB 2849 | | | |
| 1240 | | Sen. Thorne | called meeting to order | |
| 1246 | | Gary Wilhelm | testimony of bill; in favor | |
| 1284 | | Rep. Gilmour | Question on fiscal impact, this would apply to those convicted after the bill is enacted | |
| 1295 | | Lindquist/Wilhelm | Whats a dangerous weapon? | |
| 1305 | | Gilmour/Wilhelm | Fiscal impact | |
| 1317 | | Jon Yunker | explains fiscal impact | |
| 1332 | | Mike Stinson | idem #2 institutionin increase; cost | |
| 1353 | | Neil Chambers | testimony; explains bill; discussion on probations to first time offenders, under this bill they could would be convicted and institutionalized | |
| 1392 | | Thorne/Chambers | Question on impact on corrections; Problemly no reductions in crime; punishment isn't assured so the people committing crime know nothing will happen.to them. | |
| 1425 | | Rep. Lindquist | I'm for the bill but would like to know more about the details. | |
| 1438 | | Thorne/Chambers | Discussion on the percentage of arrest that are sent to the institutions. It is very low compared to the arrests. Discussion about the Judges. | |
| 1460 | | Lindquist/Chambers | Comments on the seriousness of the offense and background that determines the sentence | |
| 1471 | | Rep. Hanneman | discussion of the cost | |
| 1480 | | Jon Yunker | " | |
| 1486 | | Hanneman/Chambers | " | |
| | | | Comments on the time involved; discussion of the bill relating to other states | |
| 1513 | | Sen. Thorne | comments on cost and facilities | |
| 1526 | | Neil Chambers | Discussion on construction and facilities. Wouldn't need to build more just for this bill. | |
| 1533 | | Thorne/Jon/Lindquist | facilities; increases | |

WAYS AND MEANS COMMITTEE LOG

Subcommittee No. 6Date 5/28/79Counter Bill
Reading No.Tape # 22 Side # 1

| | | |
|------|-------------------|---|
| 1549 | Hanneman/Chambers | The treatment for the individual should been treated the same under this bill. Not just on the circumstances; Comments on content |
| 1576 | Sen. Thorne | comments |
| 1588 | Vicki Gates LFO | comments on letter re: bill |
| 1599 | Rep. Lindquist | Need more time to look at effects of this bill |
| 1608 | Sen. Thorne | We'll get some more people in here to testify |
| 1613 | Neil Chambers | language |
| 1620 | Rep. Lindquist | comments |
| 1627 | Vicki Gates | I'll get the people down here to testify |
| 1635 | Sen. Thorne | comments on Fish and Wildlife |
| 1649 | Sen. Thorne | adjourned |

Conflicts
166.210-513402 Judicial
782 Table 1
166.2423 Table 1
166.250-402, 2423
166.411-482, 2423
166.469-482, 2423
166.231-482, 2423

60th LEGISLATIVE ASSEMBLY - 1979

JOINT WAYS AND MEANS COMMITTEE

Record of Subcommittee Proceedings

Bill No. HB 2849

Agency Name or Bill Description Re to mandatory Minimum Sentences

Analysts: Legislative Fiscal Charles Executive Winkler

Date of Hearing

Comments and Action

5/28/79

testimony by Rep Wilhelm

Neil Chambers Exec Asst. Corrections Div

5/30/79

testimony by John C. Beatty

Subcommittee Chairman Thorne

Designated to Carry: House Wilhelm Senate Thorne Full Com. Karneman

HOUSE OF REPRESENTATIVES

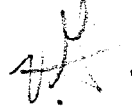
60th Legislative Assembly

STAFF MEASURE ANALYSIS

Measure: HB 2849, as amended

Committee: Joint Ways and Means Committee

Hearing Dates: May 28 and May 30, 1979

Explanation Prepared by: Vickie Gates 

Function of Measure:

The amended bill requires mandatory minimum periods of imprisonment for crimes which involve the use, or threatened use, of a firearm with the exception of first offenses. In the case of a first offense, the bill allows the trial judge discretion to suspend or impose a lesser sentence where the court finds mitigating circumstances and sets these circumstances forth in the sentencing statement.

The sentencing court is required to investigate whether a firearm was used or its use was threatened during the commission of the crime. If such use is found, mandatory minimums increasing with successive crimes apply with the exception noted.

WAYS AND MEANS COMMITTEE LOG
Subcommittee No. 6

Date 5/31/79

Counter
Reading

Bill
No.

Tape # 23 Side # 1

HB 2849

| | | |
|------|------------------|--|
| 0610 | Sen. Thoren | called meeting to order; manitory sentencing with the use of firearms |
| 0640 | John Beatty | testimony |
| 0789 | Thorne/Beatty | discussion on alternatives and amendments to the bill; no manatory sentencing on the first offense |
| 0870 | Ripper/Beatty | discussion |
| 0930 | Vicki Gates | comments |
| 0936 | Sen. Thorne | discussion of amendments for first time offenders |
| 0953 | John Beatty | replays; There's not much impact because we're already sentencing them on the second offense |
| 0970 | Sen. Thorne | comments |
| 1977 | Frank Brown | support this legislation; testimony |
| 1000 | Thorne/Brown | discussion on first time offender; discussion on the convictions in other states |
| 1020 | John Beatty | Bank robbers arn't usually put on probation but sentenced the first time. |
| 1035 | Hanneman/Beatty | discussion |
| 1064 | Thorne/Beatty | comments |
| 1078 | Lindquist | Quesiton |
| 1082 | Ripper | There's not much fiscal impact now maybe in five years |
| 1090 | John Beatty | Who should be applicable to this leg? Explains |
| 1096 | Rep. Hanneman | supportive of bill without application to the first time offender |
| 1123 | Sen. Ripper | discussion on amendment |
| 1137 | Lindquist/Beatty | Comments on the metric system |
| 1171 | Sen. Thorne | lets go with amendment |
| 1180 | Members | discussion |
| 1190 | Vicki Gates | Have legislative council review amendments |

WAYS AND MEANS COMMITTEE LOG

Subcommittee No. 6Date 5/31/79Counter Bill
Reading No.Tape # 23 Side # 1

| | | |
|------|---------------|---|
| 1194 | Sen. Thorne | Pass this to full committee after legislative council looks at the amendment |
| 1199 | " | Hanneman can carry it on the House side |
| 1200 | Rep. Hanneman | comments |
| 1208 | Sen. Thorne | adjourned |

WITNESS REGISTRATION

Committee on

Name of Committee

Date: 5/31/79 Time: 1:00 Room: #177

Public Hearing on

(Measure No.)

PLEASE REGISTER IF YOU WISH TO TESTIFY ON THE ABOVE-NAMED MEASURE.

[illegible]

HOUSE BILL 2849

House Bill 2849 requires a mandatory minimum sentence in felony cases which involve the use or threatened use of a firearm. The sentences required by the bill would increase with successive crimes to a maximum of 30 years.

During consideration of this bill the Committee heard testimony regarding the need for judicial discretion in the case of first offenders. To avoid the possibility of an unjust sentence being imposed upon a first offender when there are mitigating circumstances, the Committee recommended amendments which allow the sentencing judge to suspend or impose a lesser sentence in such cases.

House Bill 2849 was referred to Ways and Means because of the major fiscal impact anticipated by the Corrections Division. The immediate effect of the bill would have been felt in 1979-81 institutional populations because of the measure's requirements prohibiting suspension of sentence. The amendments approved by the Committee will mean that the prison population will not be measurably affected in the next two biennia. The certainty of imprisonment and consistency of sentence in felonies involving a firearm insured by House Bill 2849 should provide a deterrent to such crimes.

Phil Guthrie, CALIFORNIA:

Determinate sentencing was effective in California in early 1979. The portion relating to gun offenses was originally projected to increase intake by roughly 850 annually. Although it is difficult to assess the specific impact of that portion of the legislation as separate from all other portions, intake and inmate population have both increased significantly, and the original projection appears to be reasonably accurate. Population of male felons has increased 1,150 in the past 5 months (6.1%), and is now at 20,018. California is considering major construction as quickly as possible.

Ron Vail, INDIANA:

The shift to determinate sentencing has not resulted in significant increases in general inmate population. The result has been a balance -- inmates with lesser offenses are serving less time, while person offenders are serving more. Armed offenders are now serving significantly longer terms (about 6 months longer than formerly), and the inmates under confinement for armed offenses have increased by between 33% and 40%.

Gerry Strathman, MINNESOTA:

Minnesota's determinate sentence law leaves decisions on whether to prosecute under the gun law in the hands of the prosecutor. In practice, it is rarely used, since the existence of the gun is "bargained away." Their law calls for a 1-year minimum on first armed offense, and a 3-year minimum on subsequent offenses. If implemented in practice, it would have significant impact on the prison population. The new determinate sentence statutes don't go into effect for another year. The Commission developing the standards has been instructed by the legislature to frame them in such manner that no change in existent inmate population will be realized.

Mrs. Girard, MAINE:

The shift to determinate sentencing was originally projected to have no impact on inmate population. In practice, since the 7/1/77 effective date, inmate population of adult offenders has risen from 638 (4/30/77) to 811 (4/30/79) -- + 27.1%! The primary cause appears to be an increase of about 6 months in the average length of actual stay in the more serious offense categories among younger offenders who go to the Correctional Institution (comparable to OSCI). Probation continues to be available to all categories of offense; if it were not, the impact would have been FAR greater.

ILLINOIS:

No person competent and authorized to provide the information sought was available at the time of our contacts.

House Bill 2849

Sponsored by Representative WILHELMS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires determination be made prior to sentencing in felony cases as to whether defendant used or threatened to use firearm during commission of crime. Requires imposition of specified minimum sentence upon finding beyond reasonable doubt that defendant threatened to use or used firearm during commission of crime. Sets minimum terms of imprisonment for felonies committed with firearms. Denies access to parole or work release until minimum term of imprisonment is served. Prohibits court from suspending execution of sentence and granting probation in such cases. Defines "firearm."

Repeals provision relating to commission of felony by armed persons.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with SECTION.

A BILL FOR AN ACT

Relating to mandatory minimum sentences; creating new provisions; amending ORS 166.210, 166.250, 166.410 and 166.460; and repealing ORS 166.230.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this Act is added to and made a part of ORS chapter 161.

SECTION 2. (1) As used in this section, "firearm" means a weapon which is designed to expel a projectile by the action of black powder or smokeless powder.

(2) Prior to sentencing upon a felony conviction, it shall be the duty of the district attorney to advise the court, and the duty of the court to inquire, as to whether the defendant used or threatened to use an operable or inoperable firearm during the commission of the crime.

(3) Unless the conviction necessarily establishes that the defendant used or threatened to use a firearm during the commission of the crime, or unless the defendant admits on the record that he used or threatened to use a firearm during the commission of the crime, whenever the court has reason to believe that the defendant so used or threatened to use a firearm, it shall set a presentence hearing on the matter. The parties may offer evidence and examine and cross-examine witnesses during the hearing.

(4) Notwithstanding the provisions of ORS 161.605 or subsection (2) of 137.010, if the court finds beyond a reasonable doubt that the defendant used or threatened to use a firearm during the commission of the crime, it shall ^{at least, the} impose a minimum term of imprisonment as provided in subsection (5) of this section. ^{except as provided in subsection (6) of this section,} In no case shall any person punishable under this section become eligible for work release or parole until the minimum term of imprisonment is served, less reductions of imprisonment for good time served, nor shall the execution of the sentence imposed upon such person be suspended by the court.

(5) The minimum terms of imprisonment for felony convictions in which the court finds that the defendant used or threatened to use a firearm shall be as follows:

^{except as provided in subsection (6) of this section, upon}
(a) ~~Upon conviction for such felony committed after~~ the first conviction for such felony, five years.

(b) Upon conviction for such felony committed after ^{punishment} imprisonment pursuant to paragraph (a) of this subsection, 10 years.

(c) Upon conviction for such felony committed after imprisonment pursuant to paragraph (b) of this subsection, 30 years.

Section 3. ORS 166.210 is amended to read:

166.210. As used in ORS [166.230,] 166.250 to 166.270, 166.280, 166.290 and 166.410 to 166.470:

(1) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of black powder or smokeless powder and which is readily capable of use as a weapon.

(2) "Pistol," "revolver" and "firearms capable of being concealed upon the person," apply to and include all firearms having a barrel less than 12 inches in length.

(3) "Machine gun" means a weapon of any description by whatever name known, loaded or

INSERT (2A)

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(6) If it is the first time that the defendant is subject to punishment under this section, the court may suspend the execution of the sentence otherwise required under paragraph (a) of subsection (5) of this section, or impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances justifying such lesser sentence and sets forth those circumstances in its statement on sentencing.

1 unloaded, from which two or more shots may be fired by a single pressure on the trigger device.

2 Section 4. ORS 166.250 is amended to read:

3 166.250. (1) Except as otherwise provided in this section, ORS [~~166.230,~~] 166.260, 166.270,
4 166.280, 166.290 or 166.410 to 166.470, any person who possesses or has in his possession any
5 machine gun, or carries concealed upon his person or within any vehicle which is under his control
6 or direction any pistol, revolver or other firearm capable of being concealed upon the person,
7 without having a license to carry such firearm as provided in ORS 166.290, is guilty of a
8 misdemeanor, unless he has been convicted previously of any felony or of any crime made
9 punishable by this section, ORS [~~166.230,~~] 166.260, 166.270, 166.280, 166.290 or 166.410 to 166.470,
10 in which case he is guilty of a felony.

11 (2) This section does not prohibit any citizen of the United States over the age of 18 years who
12 resides in or is temporarily sojourning within this state, and who is not within the excepted classes
13 prescribed by ORS 166.270, from owning, possessing or keeping within his place of residence or
14 place of business any pistol, revolver or other firearm capable of being concealed upon the person,
15 and no permit or license to purchase, own, possess or keep any such firearm at his place of
16 residence or place of business is required of any such citizen.

17 (3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

18 Section 4. ORS 166.410 is amended to read:

19 166.410. Any person who manufactures or causes to be manufactured within this state, or who
20 imports into this state, or keeps, offers, exposes for sale, gives, lends or possesses a pistol, revolver
21 or machine gun, otherwise than in accordance with ORS [~~166.230,~~] 166.250 to 166.270, 166.280,
22 166.290 and 166.420 to 166.470, shall be punished upon conviction by imprisonment in the
23 penitentiary for not more than five years.

24 Section 6. ORS 166.460 is amended to read:

25 166.460. ORS [~~166.230,~~] 166.250 to 166.270, 166.280, 166.290, 166.410 to 166.450, and 166.470 do
26 not apply to antique pistols or revolvers incapable of use as such.

27 SECTION 7. ORS 166.230 is repealed.
