

HOUSE COMMITTEE ON  
JUDICIARY

Hearing Room 357  
Tapes - 21

MEMBERS PRESENT:

Rep. Del Parks, Chair  
Rep. Kate Brown, Vice-Chair  
Rep. Chuck Carpenter  
Rep. Peter Courtney  
Rep. Jerry Grisham  
Rep. Bryan Johnston  
Rep. Leslie Lewis  
Rep. Lisa Naito  
Rep. Floyd Prozanski  
Rep. Eileen Qutub  
Rep. Veral Tarno  
Rep. Bob Tiernan

STAFF PRESENT:

Holly Robinson, Committee Counsel  
Milt Jones, Committee Counsel  
Sarah Watson, Committee Assistant

MEASURES HEARD:

HB 2208 - Work Session  
HB 2645 - Work Session  
HB 2681 - Work Session  
HB 3377 - Work Session

These minutes contain materials which paraphrase and/or summarize  
statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings,  
please refer to the tapes.

TAPE , SIDE A

004 CHAIR PARKS: Calls the meeting to order at 10:08 am

WORK SESSION ON HB 2208

005 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2208 permits Oregon State Police  
to test and certify breath analysis equipment using automated systems.  
(EXHIBIT A)

020 MOTION: REP. COURTNEY: Moves HB 2208 be sent to the floor with a DO

PASS recommendation.

022 VOTE: 10-0 MOTION PASSES  
AYE: Brown, Courtney, Grisham, Johnston, Lewis, Naito, Prozanski, Tarno,  
Tiernan, Parks  
NO: None  
EXCUSED: Carpenter, Qutub

027 CHAIR PARKS: Rep. Tarno will carry the bill.

WORK SESSION ON HB 2645

029 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2645 prescribes procedure  
allowing health care provider to report blood alcohol content of certain  
motor vehicle accident victims. (EXHIBIT B)

041 REP. BROWN: Was patient/doctor privilege discussed at all in the  
subcommittee?

044 REP. PROZANSKI: It would be removed from the confidentiality statutes  
and there would also be a civil criminal liability (inaudible).

048 REP. BROWN: This treatment would no longer be confidential?

049 REP. PROZANSKI: (inaudible)

050 MOTION: REP. COURTNEY: Moves HB 2645A be sent to the floor with a  
DO PASS recommendation.

054 REP. JOHNSTON: Cites section 1 language. This doesn't mean that if  
someone is in an accident that they are automatically given a blood test.  
The blood test has to somehow be related to the medical treatment.

062 HOLLY ROBINSON, COMMITTEE COUNSEL: If in the event of treating a  
person, the provider becomes aware that the blood alcohol is above the  
legal limit, then the police would be called. Discusses what police would  
then do.

069 REP. JOHNSTON: There is a difference between a blood test result and a

overzealous hospital attendant who decides to give a blood test, discusses.

074 CHAIR PARKS: Rep. Johnston is right, this bill is probably unconstitutional. Discusses effects of bill in hospital situation.

083 REP. BROWN: I have the same concerns. I think there is some way to get around this other than breaking the patient/doctor privilege. Therefore, I am going to vote no on the bill, but would be willing to discuss further options.

089 CHAIR PARKS: What about the corpus delecti problems in reporting? You don't have any confession that the crime has occurred.

094 REP. JOHNSTON: The evidence of a hospital test would just be circumstantial evidence.

099 REP. TIERNAN: I don't think the bill reads well. I don't see the intent of the bill clearly stated. Discusses how the language in the bill reads, gives example.

113 HOLLY ROBINSON, COMMITTEE COUNSEL: It is important to read this bill in the context of current and implied consent law.

115 CHAIR PARKS: How does that read?

116 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses language of implied consent law. Oregon's implied consent law covers people who are driving and have to give consent to a breath test, or people who are injured in a car accident are assumed to give consent to a blood test when they are brought to the hospital.

123 REP. TIERNAN: For what purpose?

124 HOLLY ROBINSON, COMMITTEE COUNSEL: For the purpose of the police coming and requesting blood in the same way that they can request a breath test, explains. Current law says that if you are driving, you consent to either a breath test or a blood test if you go to the hospital immediately following an accident. The hospital blood tests are not the same test as the police would use the blood test for. Discusses bill last session, HB 3444, and examples under these bills. Discusses intentions of HB 2645.

150 REP. TIERNAN: How would the hospital have a belief that the blood alcohol level is high enough to take the test?

151 HOLLY ROBINSON, COMMITTEE COUNSEL: Explains circumstances of blood alcohol test. Gives accident example and how this would effect specific situations.

174 CHAIR PARKS: The issue is that all of this comes as a result of a revelation to a medical provider for the purposes of obtaining treatment which otherwise would be privileged under Oregon law.

079 REP. TARNO: Discusses testimony from subcommittee that health care personnel must report suspected child abuse, stab wounds, seizures, and communicable diseases, but not drunk drivers.

185 REP. JOHNSTON: What we are trying to do is give a proper placement of a line between usable evidence and nonusable evidence. The placement right now favors the person who is driving under the influence, which is inappropriate.

191 CHAIR PARKS: The other bills with similar topics will not be effected by this bill, explains.

200 REP. PROZANSKI: The intent of this bill isn't to bifurcate what already is existing for the implementation of blood tests. It only gives the catalyst for notification, explains. This bill isn't trying to utilize the test results of the hospital in place of the safeguards that are already in place for anyone who is suspected of driving under the influence.

210 REP. TIERNAN: Gives example of an accident and blood alcohol level being .10.

220 REP. PROZANSKI: Yes, based on the other elements required, that the person was there for health care resulting from motor vehicle accident.

223 REP. TIERNAN: Is this the only incident where this bill will cover that?

225 REP. PROZANSKI: No, gives other examples.

228 REP. TIERNAN: The Emergency Medical Technician would be drawing the blood in your example?

229 REP. PROZANSKI: No, they would just be transporting the person. There are situations where the police are not called or notified of the accident, explains.

234 REP. TIERNAN: What are the EMT's doing?

236 REP. PROZANSKI: They can use evidence or any information they have on a person. Explains situation concerning observations of person in question.

241 REP. TIERNAN: Asks about "immediately" language on line 5.

245 HOLLY ROBINSON, COMMITTEE COUNSEL: It is the Webster's definition of "immediately", which is in the implied consent statute.

251 REP. PROZANSKI: If you can show that a person has been drinking after the accident, that will raise concern for the prosecutor. They may not be able to prove that the person was under the influence at the time of the accident.

261 REP. TIERNAN: If the person doesn't need blood work and objects to blood work, are they required to take blood? If they do take blood over an objection, can that blood be used?

267 REP. PROZANSKI: It wouldn't be a means of taking a blood test. The blood has to be taken in the line of medical health care.

276 REP. TIERNAN: I'm concerned that people will not get immediate medical treatment because they are aware of these laws and know what will happen if they go to the hospital for fear of a blood test.

286 REP. PROZANSKI: Cites language in bill that is a safeguard against that sort of situation.

297 VOTE: 10-1 MOTION PASSES  
Tiernan, Parks AYE: Courtney, Grisham, Johnston, Lewis, Naito, Prozanski, Qutub, Tarno,  
NO: Brown  
EXCUSED: Carpenter

308 CHAIR PARKS: Rep. Prozanski will carry the bill.  
WORK SESSION ON HB 2681

312 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2681 creates crime of failure to protect child from sexual abuse.

325 REP. BROWN: Were the amendments adopted?

326 HOLLY ROBINSON, COMMITTEE COUNSEL: Yes. Discusses -2 amendments.

335 MOTION: REP. BROWN: Moves HB 2681 AS AMENDED be sent to the floor with a DO PASS recommendation.

341 REP. BROWN: My concern about this bill is if both child and mother are victims of domestic violence, would that be an affirmative defense in this case?

351 REP. NAITO: Cites language on page 2, line 14 of the amendments.

361 HOLLY ROBINSON, COMMITTEE COUNSEL: That issue was discussed and could be a defense if that issue was raised. Because the bill is so narrow, it could help some women get out of the situation when fearing their child's life as well as their own.

379 REP. TIERNAN: What is the definition of "lawful custodian"?

382 HOLLY ROBINSON, COMMITTEE COUNSEL: Explains definition of lawful custodian and that it is currently in statute. I'm not aware that it was interpreted to be a teacher, but it could be.

394 REP. TIERNAN: Cites concern on last page of bill about failure to report felonious assault. What is the reason for that language?

400 REP. TARNO: (Inaudible)

401 HOLLY ROBINSON, COMMITTEE COUNSEL: The bill is intended to get at eminent harm, explains.

418 REP. TIERNAN: Give example of grandparent learning about abuse of grandchild in past. Do they have the obligation to report that or be subject to failure to report?

425 HOLLY ROBINSON, COMMITTEE COUNSEL: If it is a felony crime by statute, then yes.

431 REP. TIERNAN: If a grandparent knows about something that happened two years ago, then they are required to call the police?

438 HOLLY ROBINSON, COMMITTEE COUNSEL: If the person who was the assaulter was the lawful custodian, then yes they would have to report it.

444 REP. JOHNSTON: I disagree. If someone has knowledge of a past violation, they wouldn't be required to report it under the statute, cites language.

453 REP. TIERNAN: What is the meaning of section 3, pg. 3, line 6-9?

003 REP. NAITO: That relates to section 4 language which is crime of failure to report and not a failure to protect.

006 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses the two types of offenses in bill and how they would apply to specific circumstances.

016 REP. TIERNAN: I think it is odd that someone who may not know all the facts or what a felonious assault is, may be charged if "they knew". Is this something that is in other areas of the law? People that may "have knowledge" are going to be charged with a crime?

027 REP. NAITO: Most child care providers are covered by the Mandatory Reporting Laws anyway.

030 CHAIR PARKS: Cites specific language that is very broad.

034 REP. BROWN: This is rather broad, but if you know by witnessing or by being told that a child is being subject to a felonious assault, you should tell someone.

038 REP. TIERNAN: Children can say things that are hard to believe sometimes, gives examples. I have a hard time with this language because it is extremely broad and I'd like to know more about it and what it is intended to get at. Cites other child abuse cases where this bill would apply.

049 REP. PROZANSKI: The intent of this language was more on the immediate occurrence of an act happening. It isn't intended to go back several years and find what was, or wasn't reported.

053 REP. JOHNSTON: Discusses section 2 vs. section 4. The only thing someone is gaining with the failure to report is the ability to go into the past and be charged with a crime. I find it so broad that we might need to throw the whole thing out. If section 2 and 3 are there, that is the more immediate problem. Section 4 would make thousands of people across the state guilty of a crime.

062 CHAIR PARKS: Cites abuse example situation without proof. This language makes me really uncomfortable and I will vote no on it.

073 REP. BROWN: Would the chair be willing to delete section 4 of the bill?

074 CHAIR PARKS: No, I want to send this bill back to subcommittee to get reworked.

079 REP. BROWN: Withdraws motion to move HB 2681 to the floor.

080 MOTION: REP. BROWN: Moves HB 2681 AS AMENDED be re-referred to the subcommittee on CRIME AND CORRECTIONS.

VOTE: Hearing no objections HB 2681 AS AMENDED is RE-REFERRED.

WORK SESSION ON HB 3377

085 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 3377 increase penalties for offenses relating to cruelty to animals. (EXHIBIT D)

102 REP. NAITO: Is there a definition of "cult ritual practices"?

104 REP. TARNO: It means sadistic, masochistic, cult, witchcraft.

106 REP. NAITO: Is the animal injured in those practices?

107 REP. TARNO: Yes, they can be skinned, have their eyes taken out, etc.

110 REP. BROWN: Why was scientific research specifically excluded from the terms of animal abuse?

114 HOLLY ROBINSON, COMMITTEE COUNSEL: There are other statutes that cover use of animals in research and how they are used. If a circumstance is covered by another statute, then it is exempted from this.

121 REP. JOHNSTON: Does snake handling constitute under section 2a?

123 HOLLY ROBINSON, COMMITTEE COUNSEL: I don't think snakes are covered under the animal definition.

128 MOTION: REP. COURTNEY: Moves HB 3377A AS AMENDED be sent to the floor with a DO PASS recommendation.

136 REP. TIERNAN: Cites language and asks about at what point do we allow pets to die of natural causes, or put them asleep?

148 HOLLY ROBINSON, COMMITTEE COUNSEL: That situation is current law. Cites page 2 of bill about veterinary practices.

152 REP. TIERNAN: What if a person allows their pet to die rather than give them the medical treatment they would need to continue living?

156 HOLLY ROBINSON, COMMITTEE COUNSEL: That is fine. The bill doesn't change current law in regards to that topic.

157 REP. TIERNAN: What does the bill do then?

158 HOLLY ROBINSON, COMMITTEE COUNSEL: This bill says that if a person is convicted of having caused serious physical injury twice, as currently defined by law, then a person is guilty of a felony.

164 REP. QUTUB: What if a person decided to kill an animal mercifully?

167 REP. TARNO: That isn't cruelty.

170 REP. QUTUB: Asks about the way some animal shelter use a method killing an animal in a cruel manner. Would that be considered cruel?

182 REP. TARNO: That isn't the intent of the bill.

183 CHAIR PARKS: She is right.

186 REP. QUTUB: I think that cruel methods ought to stop, that they should give animals a shot.

187 REP. TIERNAN: It is expensive to put an animal to sleep.

189 HOLLY ROBINSON, COMMITTEE COUNSEL: That is a question of interpretation, explains. If someone wanted to challenge that as being a cruel method, they could do that with or without this law in place.

199 VOTE: 12-0 MOTION PASSES  
AYE: Brown, Carpenter, Courtney, Grisham, Johnston, Lewis, Naito, Prozanski, Qutub, Tarno, Tiernan, Parks  
NO: None

208 CHAIR PARKS: Rep. Josi will carry the bill.

211 CHAIR PARKS: Adjourns the hearing at 10:57 am.

Submitted by, Reviewed by,

Sarah Watson Debra Johnson  
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

- A. Proposed Amendments to HB 2208 - Staff - 3 pages
- B. Proposed Amendments to HB 2645 - Staff - 1 page
- C. Proposed Amendments to HB 2681 - Staff - 3 pages
- D. Proposed Amendments to HB 3377 - Staff - 3 pages