

HOUSE JUDICIARY
SUBCOMMITTEE ON CIVIL LAW AND JUDICIAL ADMINISTRATION

Hearing Room 357
10:00 am Tapes - 8

MEMBERS PRESENT:

Rep. Del Parks, Chair
Rep. Bryan Johnston, Vice-Chair
Rep. Kate Brown
Rep. Chuck Carpenter
Rep. Lisa Naito
Rep. Eileen Qutub
Rep. Bob Tiernan

STAFF PRESENT:

Milt Jones, Committee Counsel
Sarah May, Committee Assistant

MEASURES HEARD:

HB 2136 - Relating to siting for juvenile corrections facilities; and
declaring an emergency
HB 2228 - Relating to civil procedure
HB 2335 - Relating to courts

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 7, SIDE A

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

PUBLIC HEARING ON HB 2136

003 MILT JONES, COMMITTEE COUNSEL: HB 2136 requires Department of Human
Resources to determine up to five sites for juvenile corrections
facilities, accommodating up to 100 juvenile offenders at each site.

Witnesses: Ted Kulongoski, Attorney General
Rick Hill, Children's Services Division
Sen. Eugene Timms, District 30

011 CHAIR PARKS: Discusses HB 2136, not going to do work session today,
explains. Discusses amendments and that the advantages are to provide that
communities can bid for juvenile facilities, explains.

043 TED KULONGOSKI, ATTORNEY GENERAL FOR OREGON AND CHAIR OF GOVERNOR TASK
FORCE ON JUVENILE JUSTICE: Testifies in support of HB 2136.

- HB 2136 same as SB 1
- discusses Measure 11
- increase of 300-450 kids incarcerated in next biennium
- DA decide where children shall be placed, will be discretion
- discusses building additional facilities to house juveniles
- discusses effects on juvenile who are processed under Measure 11
- crime is directly related to demographics for juveniles ages 15-20
- have to have very secure facilities for juveniles if they believe nothing

372 KULONGOSKI: There is a definite difference between adults and juveniles. I believe in the prevention mode. I am going to try to work with the public and educate them as to why they are wrong, but I honor their decision about juveniles. Not opposed to plea bargaining in adult system, but in juvenile system they do not need to commit a crime and have someone else tell them that they didn't do it. The best thing to tell the juveniles is that they committed the crime, they are responsible for their actions, and there is a consequence.

412 REP. BROWN: Did you hear any evidence to suggest that by having more prison beds available and having longer sentences, that that would deter juveniles from committing crimes?

424 KULONGOSKI: Yes. The issue is whether in fact the criminal law sanction actually has a deterrent effect that stops people from committing future crime. You can change the behavior of young people. We may not need the bill Rep. Tiernan was discussing, explains. Discusses the effects of implementing Measure 11. With the current system, juveniles think that there are no consequences.

TAPE 8, SIDE A

020 REP. BROWN: Cites HB 3576 from '93 session about girls crimes
-22 percentage of crimes, but only 8 percent of commitments to close custody
-girls spend smaller times in custody
-are any of the facilities specifically for girls, how are you going to address those issues?

028 HILL: Twenty-two percent represent all crimes, the training school space has been reserved for those who commit violent crimes. We had a meeting with gender equity committee during interim to discuss if there should be one facility specifically for young women, or have all the facilities set up to handle young women. Their recommendation was that all of the facilities be able to handle young women.

043 REP. TIERNAN: Cites juvenile case of Andrew Whitaker. How that would have been different under Measure 11?

052 KULONGOSKI: I agree, I am arguing that there be some light at the end of the tunnel for kids, that if they modify their behavior, there is a benefit. The issue with the juveniles is what you do on the disposition side once they are arrested. I am not opposed to them being tried in adult system, or opposed to having a set sentence. Measure 11 doesn't do that, only that "you do the crime, you do the time". Cites differences between adults and juveniles on rehabilitation. Holding juveniles accountable is good idea in Measure 11.

077 REP. TIERNAN: Asks questions on Section 1, line 7 & 9; pg. 3, line 15.
Are we building maximum, medium, or minimum facilities?

089 KULONGOSKI: The task force proposal is different than HB 2136, explains.
-there is a graduated series of sanctions
-task force suggested maximum, medium, and minimum security
-select 1,000-2,000 juveniles and proposal on super siting, these facilities are maximum security
-explains graduated tiers of security facilities
-the four maximum security facilities are in the Governor's budget, explains

122 REP. TIERNAN: This bill only applies to the 400 maximum security, so there needs to be some language changes to clarify.

125 REP. CARPENTER: Do we know, looking back, when juveniles are in prison and have been released early for good behavior, what percentage of them

come back into the system as problems?

139 HILL: We measure that in two ways, explains.

-30 percent of paroled juveniles released, return within one year from
MacLaren and Hillcrest
-depending on length of time at MacLaren or Hillcrest determines the
percent that show up in adult system, i.e., burglar or auto thief who don't

get treatment show up more frequently in adult system than the violent
offenders who have treatment.

-gives sentencing examples with treatments and how Measure 11 will effect
that

174 CHAIR PARKS: Cites Rep. Carpenter's question about letting juveniles go
after sufficient treatment. Asks if they will be ok in the community.

178 HILL: No, explains situations.

185 CHAIR PARKS: Does SB 1 have a prohibition in it about plea bargaining?

188 KULONGOSKI: No, it doesn't.

189 CHAIR PARKS: Should it?

191 KULONGOSKI: Explains prosecutorial discretion.

-discusses case of two young African-American boys who were remanded
-discusses case of a young white boy who was not remanded
-population thinks it is a race issue

250 CHAIR PARKS: Charging guidelines are a very controversial issue.

255 REP. QUTUB: Asks about insight on two different cases and why
sentencing was so different. Was it the difference of race, or was it the
expertise of lawyers?

269 KULONGOSKI: Can't answer that. This issue was before the task force,
but could not come up with a conclusion. I am only giving perceptions of
public, especially in the minority level.

282 HILL: Gives specific points of law on juvenile remand hearing.

290 KULONGOSKI: Discusses why regional facility is needed. Cites (EXHIBIT
A). The facilities we have are not the facilities for the kids today.
Federal courts will end up running the juvenile system. Explains that 100
juveniles is an optimum number in a facility.

326 REP. TIERNAN: Do we need four facilities? Discusses possibilities of
other sites, like Dammasch State Hospital, as juvenile facilities.

340 KULONGOSKI: We tried to do that with Dammasch, it is a great facility.

The problem is that it is a 1000 bed facility, which is too big, explains.

It was also controversial to have it so close to such a large metropolitan
city, Wilsonville, explains.

384 REP. TIERNAN: I don't agree that it was looked into enough, discusses.

The convenience of family shouldn't necessarily be considered. Maybe
combining to one or two facilities that would cost less, instead of
building one optimum facility.

405 KULONGOSKI: I agree, the legislature should look at Dammasch. If the
state can utilize it, then it could work. In terms of priority, the thing
that the State government should do is public safety. Optimum doesn't mean

a palace, but what is most effective for incarceration and care for
juveniles. There might be some limitations as to how the state can use
Dammasch, though.

TAPE 7, SIDE B

015 SEN. TIMMS, DISTRICT 30: Testifies and submits proposed amendments in support of HB 2136. (EXHIBIT B) Discusses facility in Harney county that would be optimum. Discusses proposed amendment. We need to provide more jobs, and by building more facilities, this bill does that.

039 REP. NAITO: Do you see value in having regional facilities rather than one central larger facility?

041 TIMMS: There are advantages of regional facilities in Eastern Oregon, explains.

054 REP. NAITO: My interest is that I think some of these juveniles can be turned around, and any support they have when they get out or by being close to their families could help. There is a human as well as economic advantage to having regional facilities, especially so that some of them can be closer to their communities.

060 TIMMS: Discusses survey of MacLaren. Out of 22 juveniles, 18 had committed murder. By having a regional facility in Eastern Oregon there would be a separation of environmental crimes. Explains that different regions have more serious and violent crimes, i.e. Portland vs. small eastern town. We don't want children to get worse by association.

073 HILL: Out of 100 bed facilities, 20 are reserved in each facility for juvenile department detention, cites (EXHIBIT A) and the effects from Measure 11. Discusses value of having detention beds at facilities.

088 REP. JOHNSTON: I've read that the best treatment success ratios are obtained when individuals with like problems are kept together. You are discussing a mixed population, which is the least effective for treatment.

099 HILL: It is our design to have 100 beds broken down into 20 bed cottages, for specialized treatment programs.

103 REP. JOHNSTON: So the populations would be kept segregated?

104 HILL: Yes.

105 REP. CARPENTER: We need to look at the fiscal questions between four facilities or one. We need to look at both the benefits of many facilities

and what is the best use of the tax payers money.

121 CHAIR PARKS: I want the committee to decide policy issues, and then send the bill to Ways and Means after deciding those policies.

132 REP. TIERNAN: These are Ballot Measure 11 offenses which are the most serious, and under Measure 11 it was designed to have punishment, deterrence, and rehabilitation.

145 REP. NAITO: Could we be given a definition as to why 100 beds is the ideal number?

149 HILL: That is the number that is recommended by the American Corrections Association, explains. The larger the institution, the most cost effective, but the smaller the institution, the more effective rehabilitation. The American Bar Association optimum number is 20 beds, without regards for effectiveness or cost.

PUBLIC HEARING ON HB 2228

Witnesses: Thomas Branford, District Judge
Bradd Swank, State Court Administrator

172 MILT JONES, COMMITTEE COUNSEL: HB 2228 - Requires the proceeding removed from small claims department of district court by reason of request

for jury trial be referred directly to arbitration in any court that has established mandatory arbitration program.

186 THOMAS BRANFORD, DISTRICT JUDGE: Testifies and submits written testimony in support of HB 2228. (EXHIBIT D)

227 CHAIR PARKS: Did you ask the judicial department to submit a bill?

228 BRANFORD: Yes.

229 CHAIR PARKS: Discusses and explains HB 2228. Does this provide that in the event of arbitration, attorney fees will be awarded to the party who appeals the decision and if they do not win, is the other party entitled to attorney fees?

251 BRANFORD: Yes, with the amendments that I suggested. Cites (EXHIBIT D).

253 CHAIR PARKS: Is that all constitutional?

254 BRANFORD: Yes, explains attorney fees and recovering cost of arbitration. It does not create the independent right to attorney fees, unless the law otherwise provides for it.

264 CHAIR PARKS: Would that be beneficial?

266 BRANFORD: It could be, yes. Explains position and why. Explains appeal process and fee allocations.

300 CHAIR PARKS: In your court, how do handle it when a corporation is the defendant?

301 BRANFORD: They can appear for themselves, but they cannot have an attorney with them. Explains how it works with large companies in small claims court.

310 CHAIR PARKS: Do you have arbitrators in Newport?

311 BRANFORD: Yes, a significant number of counties have mandatory arbitration.

315 BRADD SWANK, STATE COURT ADMINISTRATOR: Testifies and submits written testimony in support of HB 2228. (EXHIBIT E) Most of the courts now have mandatory arbitration programs of some kind.

321 BRANFORD: Mandatory arbitration is wonderful, explains benefits.

330 CHAIR PARKS: What about raising the limit to \$5000 in small claims court? Discusses the point of raising small claims in counties that don't have arbitration.

337 BRANFORD: Up to \$10,000 is mandatory arbitration in Newport. Explains how the circuit court process works.

342 CHAIR PARKS: Asks how the small claims court and arbitration works in Newport.

344 BRANFORD: Explains.

357 CHAIR PARKS: Do the parties have attorneys in arbitration proceeding?

359 BRANFORD: They can, explains that they usually don't though.

365 CHAIR PARKS: Would it be beneficial to raise it to \$5000?

367 BRANFORD: It could be, explains pros and cons.

390 REP. QUTUB: If HB 2228 is passed, will each jurisdiction have the same

rules arbitrating them?

401 BRANFORD: There are state wide uniform arbitration rules, each county may implement additional provisions that are not inconsistent with state provisions. Cites (EXHIBIT E).

422 CHAIR PARKS: Asks why in (EXHIBIT E), some language was crossed out.

424 SWANK: This is not an isolated problem, cites (EXHIBIT E). Explains change on page 2 of (EXHIBIT E).

TAPE 8, SIDE B

019 REP. TIERNAN: What happens if the plaintiff or defendant happens to be an attorney?

021 BRANFORD: They can appear themselves which has some disadvantage in arbitration to the non-lawyer.

023 REP. TIERNAN: If the plaintiff or defendant is an attorney, and the other person isn't, can they then hire an attorney?

024 BRANFORD: Yes, the judge would approve that.

028 REP. TIERNAN: On page 2, lines 13-14, asks about how there can be attorney fees?

038 BRANFORD: These rules under Chapter 36 apply to all cases that are subject to arbitration. The were attorney fees are provided by statute or contract also apply. This applies to an obligation to pay.

044 REP. TIERNAN: Should that language be struck?

045 BRANFORD: Gives examples on collecting money in arbitration process.

047 REP. TIERNAN: Does the bill address an award by the arbitrator of cost?

050 BRANFORD: If there are two parties, they each pay half of the arbitrator's fee. When you prevail in arbitration, the other party has the

obligation to pay the award and to reimburse the other party for half of the arbitrator fee. Explains and discusses situations.

064 REP. TIERNAN: Loser pays?

065 BRANFORD: Yes.

066 REP. TIERNAN: Would those pre-arbitration settlements be subject to the agreement of the parties as to who pays the cost?

069 BRANFORD: They could be, explains how system works in his court.

PUBLIC HEARING ON HB 2335

098 CHAIR PARKS: Reads testimony he received in support of HB 2335. (EXHIBIT F)

WORK SESSION ON HB 2335

116 MOTION: REP. TIERNAN: Moves HB 2335 to FULL COMMITTEE with a DO PASS recommendation.

VOTE: 7-0 MOTION PASSES
AYE: Brown, Carpenter, Johnston, Naito, Qutub, Tiernan, Parks
NO: None

125 CHAIR PARKS: Adjourns the meeting at 11:42 am.

Submitted by, Reviewed by,

Sarah May Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

- A. Testimony on HB 2136 - Rick Hill -4 pages
- B. Proposed Amendments to HB 2136 - Sen. Timms -1 page
- C. Testimony on HB 2136 - Kingsley Click - 3 pages
- D. Testimony on HB 2228 - Thomas Branford - 4 pages
- E. Testimony on HB 2228 - Bradd Swank - 3 pages
- F. Testimony on HB 2335 - Kingsley Click - 1 page