

HOUSE JUDICIARY
SUBCOMMITTEE ON CRIME AND CORRECTIONS

Hearing Room
Tapes - 62

MEMBERS PRESENT:

Rep. Veral Tarno, Chair
Rep. Floyd Prozanski, Vice-Chair
Rep. Peter Courtney
Rep. Jerry Grisham
Rep. Leslie Lewis

STAFF PRESENT:

Holly Robinson, Committee Counsel
Janet Ellingsworth, Committee Assistant

MEASURES HEARD: Work session on HB 2160 & HB 3345
 Work session on HB 2681
 Work session on HB 2975
 Work session on HB 2682
 Work session on HB 2683
 Work session on HB 2684
 Work session on HB 2685
 Public hearing on HB 3344

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 , A

003 CHAIR TARNO: Convenes meeting at 8:33 AM.

OPENS the WORK SESSION on HB 2160 and HB 3345

005 MOTION: REP. PROZANSKI: Moves to reconsider HB 2160 to be brought back to the subcommittee for work session.

011 CHAIR TARNO: HB 3345 does have amendments, but it does not have a fee bill.

012 ROBINSON: Gives brief overview of HB 3345 amendments. [EXHIBIT A]

020 REP. PROZANSKI: Is there a reason why we're moving from HB 2160 to HB 3345?

022 ROBINSON: No.

030 MOTION: REP. GRISHAM: Moves the -1 amendments HB 3345.

032 CHAIR TARNO: The motion CARRIES.

033 REP. COURTNEY: I hope all the players understand what's going on.

038 ROBINSON: With the exception of Rep. Tarno's subsequent motion, the bill is the identical work product the committee developed.

048 MOTION: REP. GRISHAM: Moves to delete section 5 of HB 3345.

051 REP. PROZANSKI: I do not want to see fees be in the way of having registration completed.

060 CHAIR TARNO: I understand what your saying. I think we need to get a better handle of what kind of a financial impact this will have on the Oregon State Police.

063 REP. PROZANSKI: Would it be inappropriate to state in the record that it should have more of a substantial financial impact than we anticipate, that we extend the invitation for them to come back before the E board?

064 CHAIR TARNO: I think it would be appropriate.

066 REP. COURTNEY: Their budget does not come out of the public safety subcommittee of Ways and Means.

071 ROBINSON: There is nothing preventing a court from ordering as a condition of probation or parole or release, the payment of this fee.

080 CHAIR TARNO: The motion CARRIES.

082 MOTION: REP. PROZANSKI: Moves HB 3345 as amended to the full committee with a do pass recommendation.

084 VOTE: In a roll call vote all members are present and vote AYE.

087 CHAIR TARNO: The motion CARRIES.

CLOSES the WORK SESSION on HB 3345
OPENS the WORK SESSION on HB 2681

102 ROBINSON: Gives brief overview of HB 2681. [EXHIBIT D]

111 TIM SYLVESTER, DEPARTMENT OF CORRECTIONS: Testimony on HB 2681.
Submits [EXHIBIT B]

147 REP. COURTNEY: During the 1989 session, we put together a statute "murder by abuse" involving children.

164 SYLVESTER: I think I know what case your talking about and I am familiar with the statute.

176 REP. COURTNEY: Is it possible through this piece of legislation to sew in language to correct that situation? Discusses recent death of child in Marion County.

180 SYLVESTER: I think the problem in the case that you are referring to is that the state was unable to prove a pattern or practice that preceded the child's death.

188 REP. COURTNEY: This is not working.

189 ROBINSON: What I was considering is that the committee can choose this vehicle to address the murder by abuse situation, but not in the specific amendments to HB 2681, but as an additional section of the bill.

192 SYLVESTER: One of the things we see frequently is that one parent points the finger at the other.

202 REP. PROZANSKI: Referring to the case here in Marion County, is it your position that the reason they couldn't go under the murder by abuse statute was because they were not able to prove one of the elements?

206 SYLVESTER: Yes. The pattern and practice, from my understanding is that they did not have any prior pattern of abuse against that child or another child.

208 ROBINSON: The other issue in that case was the statute requires a pattern or practice of assault or torture. Failure to feed a child was not assault or torture.

214 REP. PROZANSKI: So what were doing is expanding this to include these other situations that are not under this portion of that statute?

217 ROBINSON: Correct.

219 REP. PROZANSKI: Mr. Sylvester, because of your position, can you help us as to what you believe would be appropriate in expanding 163. 119, sub paragraph (c)?

226 SYLVESTER: What you need to do is expand the definition of "assault" or "torture" to include this kind of situation.

251 CHAIR TARNO: Can we look at the proposed amendments submitted by Mr. Sylvester? [EXHIBIT B]

256 ROBINSON: The committee can make some conceptual amendments.

258 REP. PROZANSKI: What we're looking at is the definitions is where we need to hone in on as compared to changing the statute itself. I would prefer that something be brought back to us before we take it to the full committee.

266 CHAIR TARNO: It's a big issue.

267 ROBINSON: We could bring it back tomorrow or next week.

276 REP. COURTNEY: I think you need to do the definition. I would just offer the definition.

281 ROBINSON: Right now you have to have a pattern or practice of assault or torture which are specifically defined and I think the committee could look at broadening the definition of assault, and add a new category of abuse.

311 REP. LEWIS: Regarding the pattern and practice aspect, you would write this to say that murder by abuse would be a pattern or practice of assault, torture or abuse as defined, are we going to run into the situation that it was not considered a pattern or practice because it was a continuum?

324 ROBINSON: I will work with legislative council to craft something to address that issue.

334 CHAIR TARNO: Lets bring this bill back before this committee as soon as

possible.

CLOSES the WORK SESSION on HB 2681
OPENS the WORK SESSION on HB 2975

345 ROBINSON: Gives brief overview of HB 2975. [EXHIBIT C]
389 MOTION: REP. COURTNEY: Moves the -2 amendments to HB 2975.
390 CHAIR TARNO: The motion CARRIES.
392 MOTION: REP. COURTNEY: Moves HB 2975 as amended to the full
committee with a do pass recommendation.
393 VOTE: In a roll call vote all members are present and vote AYE.
396 CHAIR TARNO: The motion CARRIES.

CLOSES the WORK SESSION on HB 2975
OPENS the WORK SESSION on HB 2682

419 ROBINSON: Gives brief overview of HB 2682.

437 MOTION: REP. PROZANSKI: Moves HB 2682 to the full committee with a do
pass recommendation.
445 VOTE: In a roll call vote all members are present and vote AYE.
447 CHAIR TARNO: The motion CARRIES.

CLOSES the WORK SESSION on HB 2682
OPENS the WORK SESSION on HB 2683

TAPE 62, A

025 ROBINSON: Gives brief overview of HB 2683.
033 CHAIR TARNO: Rep. Prozanski, you had some suggestions or changes?
035 REP. PROZANSKI: I did, but it does not appear that we've done
anything. We were talking about expanding this not to include people that
were on the presumptive prison sentence track,
and were not optional probation eligible.
049 ROBINSON: This is more technical than the other one, it's a bigger
policy issue because the legislature at the request of the Governor's
Council on Corrections Planning instituted pre sentence investigations
(PSI), for all sex offenders.
058 REP. PROZANSKI: If we have someone who is already in a sentencing grid
that's going to be presumptive prison, there's no reason to prolong the
sentencing.

075 MOTION: REP. PROZANSKI: Moves conceptual amendments to HB 2683.
079 CHAIR TARNO: The motion CARRIES.
081 MOTION: REP. PROZANSKI: Moves HB 2683 to the full committee as
conceptually amended with a do pass recommendation.
086 VOTE: In a roll call vote all members are present and vote AYE.
090 CHAIR TARNO: The motion CARRIES.

CLOSES the WORKS SESSION on HB 2683
OPENS the WORK SESSION on HB 2684

092 ROBINSON: Gives brief overview of HB 2684. [EXHIBIT E]
120 CHAIR TARNO: Are you proposing we have additional amendments?
121 ROBINSON: Yes. I would suggest that you adopt the -1 amendments and
then make the
subsequent amendments.
122 MOTION: REP. COURTNEY: Moves the -1 amendments to HB 2684.
124 CHAIR TARNO: The motion CARRIES.
126 ROBINSON: On line 15, "knowingly and recklessly" probably is the
mental element.
129 REP. PROZANSKI: Not "recklessly".
130 ROBINSON: Not "recklessly", "intentionally or knowingly".
131 REP. COURTNEY: Exactly where are those words going to be?
135 ROBINSON: Line 15 after the word "person". Line 16, after the word
"animal" we will add "for the purpose of satisfying sexual gratification".
141 MOTION: REP. COURTNEY: Moves conceptual amendments to HB 2694.
143 CHAIR TARNO: The motion CARRIES.

148 MOTION: REP. COURTNEY: Moves HB 2684 as amended to the full committee
with a do pass recommendation.

150 VOTE: In a roll call vote all members are present and vote AYE.

153 CHAIR TARNO: The motion CARRIES.

CLOSES the WORK SESSION on HB 2684
OPENS the WORK SESSION on HB 2685

158 ROBINSON: Gives brief overview of HB 2685. [EXHIBIT F]

167 CHAIR TARNO: Those amendments are where?

170 ROBINSON: Page 3 of the bill, lines 19 and 20.

180 MOTION: REP. PROZANSKI: Moves to adopt the conceptual amendments to
HB 2685 by the Oregon Judicial Department.

182 CHAIR TARNO: The motion CARRIES.

188 MOTION: REP. PROZANSKI: Moves HB 2685 to the full committee as amended
with a do pass recommendation.

190 VOTE: In a roll call vote all members are present and vote AYE.

193 CHAIR TARNO: The motion CARRIES.

CLOSES the WORK SESSION on HB 2685
OPENS THE PUBLIC HEARING ON HB 2695

200 CLARK SULEY: Testimony on HB 2695. [EXHIBIT H]

290 SULEY: Every year, many families can be involved in lawsuits. I would
ask that this be extended to three years.

366 SULEY: Reviews child support program. I would rather see that money
directed to the schools.

TAPE 61, B

008 JOHN ELLIS, DEPARTMENT OF JUSTICE: Testimony in opposition to HB 2695.
[EXHIBIT I & J]

040 RUSS LIPETSKY, LEGISLATIVE CHAIR, OREGON STATE BAR, FAMILY AND JUVENILE
LAW SECTION: Testimony in opposition to HB 2695. [EXHIBIT K]

102 REP. PROZANSKI: You made reference to a case, Peterson and Peterson,
and what you are saying is that the bar is taking a position we should make
sure this is an exclusive list, is that correct?

108 LIPETSKY: We have no position as to the Peterson issue.

133 MAUREEN MCKNIGHT, OREGON LEGAL SERVICES: Testimony in opposition to
HB 2695. [EXHIBIT G]

184 ELLIS: I think that of the two alternatives presented to you, we would
prefer that the statute provide that the administratively developed
guideline list be the exclusive list.

CLOSES the PUBLIC HEARING on HB 2695
OPENS the PUBLIC HEARING on HB 3344

195 REPRESENTATIVE JUDITH UHERBELAU, DISTRICT 52: Testimony on HB 2695.

222 ROBINSON: The language on page 1, lines 8 and 9 of the bill, is your
intent to draw a broader circle than this and to allow blood testing in all
situations, correct?

243 REP. UHERBELAU: It is not my intent to say when the blood test will be
taken, but when it is taken and it's above the legal limit, that is grounds
for suspension.

248 REP. PROZANSKI: Your limiting it to that soul purpose of an
administrative decision as to suspension of a license?

254 REP. UHERBELAU: The only intent of this bill is to allow the results
of a blood test to be considered in suspending a license.

263 SERGEANT RICHARD KUMICHAEL, OREGON STATE POLICE: Testimony in support
of HB 3344.

300 REP. GRISHAM: Is it only alcohol or other types of substance?

302 KUMICHAEL: This refers strictly to alcohol.

305 REP. GRISHAM: At one time previously we had a bill that talked about
making doctors and nurses responsible for reporting. If you had someone
who was delivered into the emergency room and was unconscious, is this

something that would be performed without consent?

307 KUMICHAEL: Some hospitals believe that their doctors and nurses are in a position of liability.

332 REP. GRISHAM: Would you object to inclusion to other types of substances that would test in a blood test?

336 KUMICHAEL: No, we would not object to that. There is a proposal to do that, SB 118.

339 REP. PROZANSKI: I'm reviewing a bill for Chair Parks which will require the health care providers to give notice to law enforcement if in fact during the course of treatment and they suspect the person of being a driver, to have a blood alcohol greater than what is permissible by law.

CLOSES the PUBLIC HEARING on HB 3344
OPENS the WORK SESSION on HB 3344

355 REP. PROZANSKI: This is something that as a prosecutor is a frustrating part of the job.

374 CHAIR TARNO: I signed on to get the drunks off the highway.

381 REP. GRISHAM: How would the committee respond to amendments that would broaden the intoxicants from alcohol to other types?

389 CHAIR TARNO: When a person takes other types of drugs it takes a while to get into the bloodstream.

397 ROBINSON: It is the intent of Chair Parks to bring SB 118 to this committee.

400 REP. GRISHAM: And that bill will address this issue?

401 ROBINSON: Yes.

403 REP. PROZANSKI: It would be a better avenue.

412 MOTION: REP. PROZANSKI: Moves HB 3344 to the full committee with a pass recommendation. do

425 VOTE: In a roll call vote all members are present and vote AYE.

427 CHAIR TARNO: The motion CARRIES.

CLOSES the WORK SESSION on HB 3344
OPENS the WORK SESSION on HB 2695

430 REP. PROZANSKI: Can we set this aside for now?

434 REP. COURTNEY: I've listened to the testimony offered here today, and I think that we need to look at this and work with counsel.

437 REP. PROZANSKI: I think we should really look at the ramifications of the Peterson decision.

460 CHAIR TARNO: With nothing further from the committee the meeting is adjourned at 10:02 A.M.

Submitted by, Reviewed by,

Janet Ellingsworth Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

A - Proposed amendments to HB 3345 - Staff - 14 pages
B - Proposed revisions to HB 2681 - Sylvester - 2 pages
C - Proposed amendments to HB 2975 - Staff - 2 pages
D - Testimony to HB 2681 - Staff - 1 page
E - Proposed amendments to HB 2684 - Staff - 1 page
F - Technical issue to HB 2685 - Swank - 2 pages
G - Testimony to HB 2695 - McKnight - 4 pages
H - Testimony to HB 2695 - Suley - 38 pages
I - Testimony to HB 2695 - Ellis - 3 pages
J - Testimony to HB 2695 - Ellis - 1 page
K - Testimony to HB 2695 - Lipetsky - 2 pages
L - Testimony to HB 2695 - Barlow - 8 pages