

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

June 24, 1993 Hearing Room 357 3:00 p.m. Tapes 136 - 137

MEMBERS PRESENT: Rep. Bob Tiernan, Chair Rep. Kate Brown Rep. Peter Courtney Rep. Veral Tarno

STAFF PRESENT: Holly Robinson, Committee Counsel Julie Nolta, Committee Clerk

MEASURES CONSIDERED: SB 764 - Relating to graffiti SB 1019 - Relating to ignition interlock devices SB 1094 - Relating to fines

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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. [--- Unable To Translate Graphic ---]

TAPE 136, SIDE A

CHAIR TIERNAN: Calls meeting to order at 3:10 p.m.

SB 764 - PUBLIC HEARING

Witnesses: Sen. John Lim, District 11 Jacqueline Zimmer, Legislative Aide, Sen. Trisha Smith

008 SEN. JOHN LIM, DISTRICT 11: Submits and reviews written testimony in

favor of SB 764. (EXHIBIT A)

028 CHAIR TIERNAN: Asks if the court has power to order a defendant to clean up graffiti.

SEN. LIM: There are no clear guidelines.

CHAIR TIERNAN: Would the defendant have to provide the materials to do the clean up?

SEN. LIM: The bill does not state how it will be done.

038 CHAIR TIERNAN: Is this a problem outside of Portland? SEN. LIM: It exists all over but is most prevalent in the metro area.

Has a negative effect on tourism.

CHAIR TIERNAN: If the victim has to clean up their own graffiti, can the defendant be required to clean up other graffiti?

SEN. LIM: Will require them to clean up their own and other graffiti also.

054 CHAIR TIERNAN: Thought this could already be required by a judge.

057 REP. TARNO: Doesn't see a definition of graffiti in the bill. Should add that language.

SEN. LIM: Agrees but there should be a common understanding of what graffiti is.

065 CHAIR TIERNAN: Some graffiti is considered art work.

SEN. LIM: Art is in the eye of the beholder but most people can tell the difference between art and graffiti.

077 JACQUELINE ZIMMER, LEGISLATIVE AIDE FOR SENATOR TRISHA SMITH: Testifies in favor of SB 764.

122 REP. BROWN: Thought a judge could order any penalty as long as it was related to the crime.

ZIMMER: Have not been successful in getting judges to do this. Could be a risk factor to the victim.

REP. BROWN: Discusses changing "shall" to "may" on line 5 to give courts discretion in ordering clean up.

166 SEN. LIM: May not have time to get this done, but has no objection to that change.

CAROLE SOUVENIR, COMMITTEE COUNSEL: Asks if "must" should be changed to "may" on line 11.

REP. BROWN: That may be a better way to deal with it.

182 SEN. LIM: Asks for clarification.

CHAIR TIERNAN: Requires person to perform some form of community service, not necessarily clean up.

191 ZIMMER: Addresses issue of definition of "graffiti."

REP. TARNO: A key issue would be any type of defacing.

ZIMMER: Agrees. Discusses art vs. graffiti issue. 203 CHAIR TIERNAN: Any graffiti done improperly is considered vandalism.

CAROLE SOUVENIR, COMMITTEE COUNSEL: Criminal mischief.

CHAIR TIERNAN: That should cover it.

210 REP. BROWN: What level of misdemeanor is criminal mischief?

REP. TARNO: Depends on the cost of the damage.

CHAIR TIERNAN: Who pays for the materials?

CAROLE SOUVENIR, COMMITTEE COUNSEL: It is not specified in the bill.

245 REP. TARNO: Appropriate to find definition for graffiti?

REP. BROWN: That is not necessary because the key is conviction of criminal mischief.

SB 764 - WORK SESSION

254 CHAIR TIERNAN: Thinks judges can do this already.

REP. BROWN: Compares to broad language in SB 139 regarding conditions of probation.

CHAIR TIERNAN: Judges aren't doing this because they don't do it even though they can.

REP. COURTNEY: Would like to hear District Attorney's or judge's view on the issue.

SB 1019 - PUBLIC HEARING

Witnesses: Debbie Lee on behalf of Sen. Springer Peter Nunnenkamp, Dept. of Motor Vehicles Jill Vosper, Dept. of Transportation David Factor, Criminal Justice Council

325 CAROLE SOUVENIR, COMMITTEE COUNSEL: SB 1019 repeals the sunset on the ignition interlock program and removes the requirement that the Traffic Safety Division choose counties for a pilot program.

359 DEBBIE LEE: Testifies on behalf of Sen. Springer. (EXHIBIT B)

385 PETER NUNNENKAMP, DEPARTMENT OF MOTOR VEHICLES: Testifies on SB 1019.

401 CHAIR TIERNAN: How long are you required to have this device on your car?

NUNNENKAMP: For six months after the ending date of the suspension of DUII.

414 CHAIR TIERNAN: How much does the device cost?

NUNNENKAMP: \$75 to install and \$50 per month.

CHAIR TIERNAN: Can you buy them?

424 NUNNENKAMP: No. Provider leases them.

CHAIR TIERNAN: What if they don't have the money to pay to have the device?

NUNNENKAMP: The statute allows money from the Intoxicated Driver fund to pay for the indigent driver's device.

434 CHAIR TIERNAN: Do you have to put it on all cars you own?

NUNNENKAMP: Only if you drive them.

CHAIR TIERNAN: How much do the devices cost?

NUNNENKAMP: Doesn't know. None of the four vendors sell them.

460 CHAIR TIERNAN: Is there any way around the device?

NUNNENKAMP: Can have someone else blow into the device if you had been drinking. Can be unhooked from the ignition system.

CHAIR TIERNAN: Do the devices break?

NUNNENKAMP: Some have had problems but the technology has improved.

TAPE 137, SIDE A

027 JILL VOSPER, TRAFFIC SAFETY SECTION, DEPT. OF TRANSPORTATION:
Testifies in favor of SB 1019.

030 CHAIR TIERNAN: How many have been installed in the pilot period?

NUNNENKAMP: About 5000 since 1987.

VOSPER: 650 per month in use at all times.

039 CHAIR TIERNAN: How many in use are anticipated for a full blown program?

VOSPER: About twice that many.

CHAIR TIERNAN: Who pays for it when it breaks down? VOSPER: Vendor owns the device so would be responsible for malfunctions.

NUNNENKAMP: That is the way it works now.

CHAIR TIERNAN: Have there been any lawsuits because of cars that won't start?

NUNNENKAMP: No lawsuits.

058 CHAIR TIERNAN: How many other states are doing this?

LEE: Twenty-three.

NUNNENKAMP: There will be an additional 1,000 installations per year if the bill is passed.

CHAIR TIERNAN: These will be installed all over the state. Who installs them?

NUNNENKAMP: Have several vendors but will they be required to provide devices throughout the state.

070 CHAIR TIERNAN: Do you have the low bidder now?

NUNNENKAMP: There were no bidders. They were the only provider interested in coming into Oregon.

075 LEE: In 1987 there was only one vendor. Now there are four.

CHAIR TIERNAN: Asks for number of vendors and what other states are paying.

NUNNENKAMP: Only 14% of those who are required to have the device actually install. The rest stay suspended.

094 VOSPER: Describes options of installing the device or having an extra six months of suspension.

CHAIR TIERNAN: Do a lot of people opt for the device? If you can't afford it, you can get it paid for?

VOSPER: If you are indigent.

CHAIR TIERNAN: Who would not opt for it then?

NUNNENKAMP: Only 14% install it.

104 REP. BROWN: Asks for numbers of people who have the device who are indigent.

VOSPER: Of the 14% who choose the interlock device, 2% are indigent and have the devices paid for by the Indigent Defense Fund. Estimates there would be 30 devices per year paid for if the bill was passed.

LEE: Thinks numbers are low because it is a deterrent and a hardship.

CHAIR TIERNAN: Can Oregon be liable if a device malfunctions and someone is killed?

VOSPER: Doesn't know if that has ever happened.

130 NUNNENKAMP: Believes it is the responsibility of the vendor.

CAROLE SOUVENIR, COMMITTEE COUNSEL: The state would have to be found contributorily negligent.

137 REP. BROWN: Thinks most people drive suspended anyway.

NUNNENKAMP: Study shows the device is effective in reducing recidivism for those people who do use it. (EXHIBIT C) Discusses actions needed for the suspended drivers if the bill does not pass by July 1, 1993, the sunset date.

170 CAROLE SOUVENIR, COMMITTEE COUNSEL: Asks about Section 6 of the B engrossed bill.

NUNNENKAMP: Explains how the law would be handled if passed.

CAROLE SOUVENIR, COMMITTEE COUNSEL: Is there an amendment you would suggest?

185 NUNNENKAMP: Will shut down the program on June 30 if the bill does not pass.

CAROLE SOUVENIR, COMMITTEE COUNSEL: What does that mean?

NUNNENKAMP: Explains that driving records would have to be changed to no longer reflect the requirement for the interlock device or the suspension. Record would have to reflect that they had been cleared.

It is a data processing issue.

210 VOSPER: Current law sunsets on June 30. All suspensions and device requirements are invalid after that.

CHAIR TIERNAN: Has problems with the costs of the programs. Wants further information.

CAROLE SOUVENIR, COMMITTEE COUNSEL: Confirms that the project will go out for bid.

SB 1094 - PUBLIC HEARING

Witnesses: David Factor, Criminal Justice Council

261 CAROLE SOUVENIR, COMMITTEE COUNSEL: SB 1094 directs the Oregon Criminal Justice Council to study and make recommendations concerning the imposition and collection of fees, fines and other financial obligations.

269 DAVID FACTOR, CRIMINAL JUSTICE COUNCIL: Testifies and submits written testimony in support of SB 1094. (EXHIBIT D and E)

397 REP. TIERNAN: What happens if we decide not to implement the structured fines?

FACTOR: "We stay where we are."

CHAIR TIERNAN: Is there a study you have to give to the government?

FACTOR: Yes. We give them quarterly progress reports on where we are going.

407 CHAIR TIERNAN: Why aren't you done now?

FACTOR: Original 15 months was not enough time. Development is slow. Faster and easier when up and running.

422 CHAIR TIERNAN: What do judges think about this?

FACTOR: Don't know because they don't use it in their courts. Judges

that are using it are the ones that opted to use it. Continues testimony.

472 REP. BROWN: Why do you need a bill to have authorization to complete a study?

TAPE 136, SIDE B

026 FACTOR: Don't need it. Historically, the Legislature has directed the Council in its work.

CHAIR TIERNAN: You had a bill that introduced this.

FACTOR: Had a bill last session which did not pass.

046 CHAIR TIERNAN: Who decided to start this study?

FACTOR: The Criminal Justice Council elected to write the grant and we were selected to participate in the project.

059 CAROLE SOUVENIR, COMMITTEE COUNSEL: Sections 2-4 increase the fines above the current caps. Those rules won't be approved until the next Legislative Session.

FACTOR: Correct. SB 139 raised the caps but we didn't know that was going to happen. Discusses meeting and exceeding the caps. 075

CAROLE SOUVENIR, COMMITTEE COUNSEL: Are you exceeding the cap in the

four counties where this is happening?

FACTOR: Rarely. Explains.

CAROLE SOUVENIR, COMMITTEE COUNSEL: What is the purpose of Section 4?

FACTOR: Discusses proportional fines and defendant's ability to pay.

CAROLE SOUVENIR, COMMITTEE COUNSEL: Every county could start adopting this theory.

089 CHAIR TIERNAN: Adjourns meeting at 4:15 p.m.

Submitted by:

Reviewed by:

Julie Nolta
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Testimony on SB 764 - Sen. John Lim - 1 page B - Testimony on SB 1019 - Sen. Dick Springer - 1 page C - Testimony on SB 1019 - 27 pages D - Testimony on SB 1094 - Oregon Criminal Justice Council - 4 pages E - Testimony on SB 1094 - Oregon Criminal Justice Council - 1 page

