

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

January 26, 1993 Hearing Room 357 3:00 p.m. Tapes 8 - 9 MEMBERS  
PRESENT: Rep. Tiernan, Chair Rep. Brown Rep. Courtney Rep. Tarno  
MEMBER EXCUSED: Rep. Parks STAFF PRESENT: Katy Yetter, Committee  
Assistant Holly Robinson, Legislative Counsel MEASURES CONSIDERED: HB  
2254 PPW HB 2256 PPW HB 2259 PPW

WITNESSES: Fred Avera, Oregon District Attorneys Association Peter  
Gartlan, Oregon Public Defenders Office

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 8, SIDE A PUBLIC HEARING ON HB 2254

HOLLY ROBINSON, LEGAL COUNSEL: Gives Staff Measure Summary--Measure  
enacts Murder by Abuse.

CHAIR TIERNAN: Calls Fred Avera as a witness.

FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: Brings up Peter  
Gartlan to jointly answer questions and discuss bill. Wants to define  
terms such as "assault," "torture," and "pattern of practice" in the  
statute. Gives suggestions for amending language on the bill.

CHAIR TIERNAN: Asks for testimony of Peter Gartlan.

PETER GARTLAN, OREGON PUBLIC DEFENDERS OFFICE: (EXHIBIT A) Quotes House  
Subcommittee on Crime and Corrections January 26, 1993 - Page 2

problems with bill and new language. Wants committee to decide on such  
technical aspects as number of prior incidents, etc. Would like to see  
more clear definitions.

CHAIR TIERNAN: Asks for comments from Mr. Avera.

FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: Remarks that the bill  
could be written as Gartlan suggests with some exceptions. May remove  
word "recklessly" if from present statute--Line 28 of new language.

REP. COURTNEY: Wants Avera to clarify intent of testimonial.

COURTNEY AND GARTLAN DISCUSS THE COMPLICATIONS OF PATTERN OF PRACTICE  
AND HOW IT MAY AFFECT ABILITY TO CONVICT AN OFFENDER.

REP. BROWN: Asks question about statute of limitations from both  
witnesses in regards to bill's ability to be retroactive.

REP. TARNO: Does not see it necessary to impose a statute of  
limitations, but would like to change language in section C to "prior  
occasions." -Asks about case in particular which is pertinent to Avera's  
statements.

FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: Speaks of case  
involving aggravated murder and torture.

REP. TARNO: Expresses concern about the bill not including the term "recklessly."

FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: Wants assistance from Legislature in helping to clarify statute.

REP. BROWN: Asks Gartlan if he has problems with changes in wording from "engaging in a pattern of practice" to "prior occasions."

TAPE 9, SIDE A

HOLLY ROBINSON, LEGAL COUNSEL: What about shaking a child until he died?

FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: A knowing assault, perhaps reckless homicide in that intent was to harm child.

HOLLY ROBINSON, LEGAL COUNSEL: Expresses concern about removing the word "reckless."

TIERNAN AND AVERA DISCUSS THE TERMS "CHILD ABUSE" AND HOW THEY PERTAIN TO THE ORIGINAL INTENT OF THE BILL.

REP. COURTNEY: Wants to know how this bill relates to Washington's Murder by Abuse statute as well as how often current relative statute is used. House Subcommittee on Crime and Corrections January 26, 1993 - Page 3

FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: Replies that the last time he looked at the Washington statute, there were no reported appellate decisions under it.

REP. BROWN: Washington does use the term pattern of practice in a slightly different way.

PETER GARTLAN, OREGON PUBLIC DEFENDERS' OFFICE: Does use pattern of practice, but it pertains to the same victim.

CHAIR TIERNAN: Closes public hearing on HB 2254.

HB 2254 - WORK SESSION

SUGGESTION OF DELETION OF WORDS " ENGAGED IN A PATTERN OR PRACTICE OF" FROM LINE 25 AND ADD "ED" TO "ASSAULT" AT THE END OF THE LINE AS WELL AS "TORTURE\_". BROWN CONCERNED WITH STATUTE OF LIMITATIONS IN REGARDS TO ABUSIVE INCIDENTS. CALLED BACK GARTLAN AND AVERA IN ORDER TO DETERMINE HOW THEY OBTAINED BITS OF LANGUAGE IN THE BILL SUCH AS TORTURE AND PATTERN OF PRACTICE.

REP. BROWN: Worries about actual intent of bill and some wording--does one prior incident have anything to do with murder by abuse?

HOLLY ROBINSON, LEGAL COUNSEL: Helps to clarify by speaking of terms "prior occasions." However, giving some number to prior occasions forces an artificial number into the bill.

REP. COURTNEY: Asks about time limits on torturing a child to death. How does this fit into language? Maybe consecutive days are considered as one incident and will not fit into the bill.

PETER GARTLAN, OREGON PUBLIC DEFENDERS OFFICE: Indicates both parts of

statute involving prior incidents and current conduct.

REP. COURTNEY: 7-day torture period for disciplinary reasons falls under Gartlan's definitions. Claims his testimony speaks of clarity to a legal fault.

PETER GARTLAN, OREGON PUBLIC DEFENDERS OFFICE: Believes that state could show that there are different states of mind i.e., recklessly or knowingly causing death.

TAPE 8, SIDE B

REP. BROWN: Asks about minors conducting abusive behaviors and how it may apply to the statute as it reads.

PETER GARTLAN, OREGON PUBLIC DEFENDERS' OFFICE: Replies that all final technical or legal decisions regarding the bill are up to the will of the committee.

MORE DISCUSSION ON LANGUAGE OF THE BILL--CHANGING LINE 25 TO READ, House Subcommittee on Crime and Corrections January 26, 1993 - Page 4

THE PERSON HAS ON PRIOR OCCASIONS ASSAULTED OR TORTURED THE VICTIM OR ANOTHER CHILD. SUGGESTS SECTION 2 SHOULD BE DELETED.

CHAIR TIERNAN: Closes Work Session on HB 2254.

PUBLIC HEARING ON HB 2256

HOLLY ROBINSON, LEGAL COUNSEL: Gives Staff Measure Summary. Bill Involves HIV testing following a criminal conviction.

CHAIR TIERNAN: Calls Fred Avera as a witness.

FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: Gives testimony regarding blood draws.

REP. COURTNEY: Blood drawn for what reasons in Jail?

FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: DNA banking or if the inmate has a medical condition that requires use of blood (his own). No statute as to who draws blood.

REP. COURTNEY: Asks who the witnesses intend to have draw the blood.

FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: Intent was to have a designated individual draw the blood, not necessarily a doctor.

CHAIR TIERNAN: Closes Public Hearing on HB 2256. WORK SESSION ON HB 2256

HOLLY ROBINSON, LEGAL COUNSEL: Proposes amendment that allows for a licensed medical provider under the supervision of a doctor to draw blood.

TAPE 9, SIDE B

REP. COURTNEY: Wants counsel to take bill and propose amendments in lines 9 and 10 to provide for person having authority to draw blood.

CHAIR TIERNAN: Closes Work session on HB 2256

PUBLIC HEARING ON B 2259

HOLLY ROBINSON, LEGAL COUNSEL: Gives Staff Measure Summary. Bill clarifies crime of intimidation in first degree.

CHAIR TIERNAN: Calls Fred Avera to testify.

FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: Gives testimony on House Subcommittee on Crime and Corrections January 26, 1993-Page 5

bill regarding perception of individual's status.

CHAIR TIERNAN: How does one prove perception?

FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: By outward manifestation.

REP. COURTNEY: How does one discriminate between using terms as description rather than for purposes of hatred?

FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: Replies that if that is all of the information given, the court would not be able to prove anything in regards to individual's intent.

REP. BROWN: How many of these are prosecuted-many?

FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: No.

CHAIR TIERNAN: Closes Public Hearing on HB 2259. . MOTION: REP. BROWN MOVES TO PASS HB 2259 INTO FULL COMMITTEE WITH DO PASS RECOMMENDATION. VOTE: IN A ROLL CALL VOTE, THE MOTION PASSES WITH A UNANIMOUS VOTE OF AYE FROM REPRESENTATIVES BROWN, COURTNEY, TARNO, AND CHAIR TIERNAN. REPRESENTATIVE PARKS IS EXCUSED.

CHAIR TIERNAN: Closes hearing on HB 2259, Meeting adjourned 4:55 p.m.

Submitted by: Reviewed by:

Katy Yetter      Betina Rothauser Clerk      Coordinator

EXHIBIT LOG:

A - Testimony on HB 2254 - Peter Gardan - 3 pages