

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

February 11, 1993 Hearing Room 357 3:00 p.m. Tapes 22 - 23

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

STAFF PRESENT: Julie Nolta, Committee Clerk Carole Souvenir, Committee Counsel Ian Lombard, Page

MEASURES CONSIDERED: HB 2250 - Relating to the death penalty HB 2364 - Relating to evidence HB 2664 - Relating to murder

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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 22, SIDE A

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

HB 2250 - WORK SESSION

Witnesses: Jefry Van Valkenburgh, Oregon Department of Justice

009 CAROLE SOUVENIR, COMMITTEE COUNSEL: Summarizes the bill regarding substances used to carry out the death penalty. Discusses past

committee action and proposed amendments.

024 CHAIR TIERNAN: Explains why HB 2250 has come back from full committee.

031 MOTION: REP. COURTNEY: Moves the Department of Justice option A-2 amendments to HB 2250 be adopted. (EXHIBIT A)

035 CHAIR TIERNAN: Sees that A-1 and B-1 options both allow the Department of Correction to use substances as technology develops for most humane

method of lethal injection. Option A-2 has other language. 047 REP. TARNO: Wonders if selection of substances should be provided for statutorily versus an administrative rules concept.

054 CHAIR TIERNAN: Asks Rep. Courtney why he prefers option A-2.

REP. COURTNEY: Because of discussion in full committee. They wanted clarification on definition of "substances."

062 CHAIR TIERNAN: Asks for differences between options A-1 and A-2.

067 JEFRY VAN VALKENBURGH, ASSISTANT ATTORNEY GENERAL, FINANCE AND GOVERNMENT SECTION, OREGON DEPARTMENT OF JUSTICE:
Describes

differences between all options.

082 CHAIR TIERNAN: Option A-1 is currently in three states?

CAROLE SOUVENIR: A-1 language was used in three states that we located.

086 CHAIR TIERNAN: Option A-2 not in any other states that we could find.

CAROLE SOUVENIR: It was used in Illinois.

091 CAROLE SOUVENIR: Asks which states use potassium chloride and whether those states use language "substances or substances" in their statutes.

VAN VALKENBURGH: Doesn't know answer. Names states which use lethal injection.

105 VAN VALKENBURGH: Printed bill has both A-1 and B-1 options in it.

117 VOTE: 4-0 Motion passes AYE: Brown, Courtney, Tarno,
Tiernan NO: None

139 MOTION: REP. COURTNEY: Moves HB 2250 as amended to full committee.

VOTE: 1-3 Motion fails AYE: Courtney NO: Brown, Tarno,
Tiernan

182 MOTION: REP. TARNO: Moves to reconsider the motion to move HB 2250 to full committee.

VOTE: 3-1 Motion passes AYE: Courtney, Tarno, Tiernan NO:
Brown 194 MOTION: REP. TARNO: Moves HB 2250 as amended to full committee with a "do pass" recommendation.

VOTE: 3-1 Motion passes AYE: Courtney, Tarno, Tiernan NO:
Brown

Witnesses: Rep. Kate Brown, District 13 Rep. Kevin Mannix,
District 32 Fred Avera, Oregon District Attorneys Association Russ
Abrams, Law Student

214 CAROLE SOUVENIR: Summarizes HB 2364 and explains current rape
shield law. Refers to amendments submitted by Rep. Kevin Mannix.

240 REP. KATE BROWN, DISTRICT 13: Testifies in favor of and reviews
written amendments to HB 2364. (EXHIBIT B)

265 REP. KEVIN MANNIX, DISTRICT 32: Testifies in favor of and
reviews written amendments to HB 2364. (EXHIBIT C)

354 REP. BROWN: Continues with testimony.

379 REP. MANNIX: Defines use of language "in camera."

396 FRED AVERA, DISTRICT ATTORNEY, POLK COUNTY, OREGON DISTRICT
ATTORNEYS ASSOCIATION: Testifies in favor of HB 2364. Submits
amendments.

(EXHIBIT D)

TAPE 23, SIDE A

010 AVERA: Continues testimony.

046 CHAIR TIERNAN: If judge holds a proceedings in camera and
finds information relevant to the jury, what happens after that?

AVERA: The information is admissible in the public trial.

CHAIR TIERNAN: If the judge determines it is irrelevant, then it stays
in the room.

AVERA: Yes.

CHAIR TIERNAN: Under what circumstances is the rape victim's history
brought up?

AVERA: When it is a question of consent.

061 CHAIR TIERNAN: That would not be in camera?

AVERA: The hearing to determine whether or not it is admissible would
be in camera.

CHAIR TIERNAN: Anything involving the rape victim's history with the
defendant would be in camera.

AVERA: If the defendant wishes to bring up the rape victim's history,
he must give notice and then an in camera hearing can be held. The

judge then determines if it is admissible for trial.

072 CHAIR TIERNAN: Is there any other opportunity in court proceeding when the victim's history can come up that would not be subject to this in

camera proceeding?

AVERA: Yes. Names others.

080 CHAIR TIERNAN: Does this in camera proceeding prevent any type of information regarding the rape victim's history from coming in?

AVERA: Yes.

089 RUSS ABRAMS, LAW STUDENT, UNIVERSITY OF OREGON: Submits and reviews written testimony regarding constitutionality of HB 2364. (EXHIBIT E)

133 REP. BROWN: When referring to the Oregonian v. Diaz case, wasn't there language to get around the strict construction position? You would

agree there is a little room?

142 ABRAMS: Discusses determining legal rights of the rape victim based on presentation of evidence versus constitutionality of a closed

proceeding.

159 REP. BROWN: Asks witness to explain ways to address the problem to get around the constitutional question.

ABRAMS: Explains solutions to constitutional problems of protecting the rape victim.

HB 2364 - PUBLIC HEARING

Witnesses: Fred Avera, Oregon District Attorneys Association
Dale Penn, Marion Co. District Attorney

184 MOTION: REP. BROWN: Moves to adopt Rep. Mannix's amendments to HB 2364 dated Feb. 11, 1993. (EXHIBIT C)

REP. BROWN: Explains reasons for change in language from "chambers" to "camera."

206 VOTE: 4-0 Motion passes AYE: Brown, Courtney, Tarno,
Tiernan NO: None

217 FRED AVERA, DISTRICT ATTORNEY, POLK COUNTY, OREGON DISTRICT ATTORNEYS ASSOCIATION: Explains the three sections of the Oregon District

Attorneys Association's proposed amendments. (EXHIBIT D)

262 CHAIR TIERNAN: Confirms that the first two amendments strictly clean up the language of current statutes and the third closes up possible future loopholes.

294 AVERA: Explains that number 2 of the proposed amendments refers to HB 2364, page 1, lines 6 and 9.

306 REP. TARNO: Refers to ODAA's first amendment. Would this bill deal adequately with a minor child without emotional stability to handle a

courtroom setting?

AVERA: It would aid a minor child in that it would allow for some crimes to be dealt with in camera but it doesn't address the issue you are raising.

326 REP. BROWN: Did you intend to include the public indecency statute within the framework of the rape shield and why?

AVERA: The intent was to give the legislature an opportunity to consider the entire range of sexual offenses even though public indecency cases don't occur often.

341 DALE PENN, DISTRICT ATTORNEY, MARION COUNTY: Testifies in favor of the ODAA's amendment 1. Believes when prosecuting a sexual crime, past

sexual history should have some precise relevance instead of attacking the victim.

366 REP. BROWN: Asked the question because doesn't want to make the issue too broad.

PENN: There are small numbers of public indecency cases. The rest of the bill is much more important if the committee wants to take that part out.

AVERA: Refers to other statutes where the Sex Abuse I crimes do not reflect the rape shield law.

HB 2364 - WORK SESSION

415 MOTION: REP. BROWN: Moves HB 2364 with the District Attorney amendments as corrected, dated Feb. 4, 1993, adding the

lines "6 and 9" to the amendments and "lines 11 and 12" to

p. 2 of HB 2364. 431 VOTE: 4-0 Motion passes AYE: Brown, Courtney, Tarno, Tiernan NO: None

436 MOTION: REP. BROWN: Moves HB 2364 as amended to the full committee with a "do pass" recommendation.

442 VOTE: 4-0 Motion passes AYE: Brown, Courtney, Tarno,
Tiernan NO: None

HB 2664 - PUBLIC HEARING

Witnesses: Fred Avera, Oregon District Attorneys Association Dale Penn, Marion Co. District Attorney Rep. Tom Mason, District 11

449 CAROLE SOUVENIR: Summarizes HB 2664 and explains current statute.

476 FRED AVERA, DISTRICT ATTORNEY, POLK COUNTY, OREGON DISTRICT ATTORNEYS ASSOCIATION: Testifies in opposition to HB 2664.

TAPE 22, SIDE B

026 AVERA: Continues testimony.

114 DALE PENN, DISTRICT ATTORNEY, MARION COUNTY: Testifies in opposition to HB 2664.

223 CHAIR TIERNAN: According to sentencing guidelines, what does life imprisonment with a minimum of 30 years mean now?

PENN: That sentence only applies to aggravated murder which is not covered by sentencing guidelines.

232 CHAIR TIERNAN: If it was aggravated murder and the defendant received life imprisonment with a minimum of 30 years, how many years would that be right now?

PENN: Explains current practice and how the bill would change parole eligibility.

256 REP. COURTNEY: Asks where this bill came from.

AVERA: Four years ago the committee asked that a study be made. Two years go the bill was proposed in a slightly different form.

271 REP. TARNO: Asks if "aggravated murder" is constitutional language.

AVERA: Explains the penalty for aggravated murder.

REP. TARNO: If that were omitted by adopting this bill, could death penalty be circumvented?

AVERA: There is language in HB 2664 that refers to aggravated murder. It still leaves the problem of minimum sentencing set by the constitution.

298 REP. TOM MASON, DISTRICT 11: Testifies in favor of HB 2664.

416 CHAIR TIERNAN: Confirms that pre-meditated murder is subject to sentencing guidelines and not death penalty.

427 REP. MASON: The situation is ironic. Explains aggravated murder statutes which does not include pre-meditated murder.

442 REP. COURTNEY: Confirms that Rep. Mason just wants to add another category to the death penalty.

TAPE 23, SIDE B

018 REP. MASON: Seems to be an anomaly that pre-meditated murder is not included in the crimes that qualify for the death penalty.

023 REP. BROWN: For the person who has never committed any crimes, he is not eligible for death penalty if he commits pre-meditated murder?

REP. MASON: If they plan and murder in cold blood, the death penalty is not within our statutes.

PENN: Would be open to adding a new category to aggravated murder. Discusses the duplication of "deliberate" and "pre-meditated" in sentencing.

064 REP. COURTNEY: Do we run the risk when getting into pre-meditation that it won't overlap into other categories of crimes?

REP. MASON: Other categories are traditional. Discusses definition of "pre-meditation." Asks committee to consider HB 2364 a vehicle to examine the murder statutes.

099 REP. COURTNEY: Confirms that Wesley Allen Dodd would have come under Oregon statutes for murder.

105 CHAIR TIERNAN: Discusses cases where a murderer has collected life insurance of victim. AVERA: Defendants were found guilty of negligent homicide which insurance policy did not preclude.

115 CHAIR TIERNAN: Pre-meditated murder seems to carry the lesser of any penalty.

PENN: Asks to allow discretionary minimum to the trial judge if the committee does not like the sentencing guidelines penalty. Discusses

the constitutional problem with HB 2364.

135 CHAIR TIERNAN: Intentional murder is not narrow enough for the death penalty?

AVERA: If intentional murder is considered aggravated murder and subject to the death penalty, we could be certain that statute would be unconstitutional because there would be no substantial narrowing in accordance with guidelines.

161 CHAIR TIERNAN: Adjourns the meeting at 4:45 p.m.

Submitted by:

Reviewed by:

Julie Nolta
Committee Assistant

Anne May Committee Clerk

EXHIBIT LOG:

A - Testimony and amendments to HB 2250 - Oregon Department of Justice - 3 pages B - Testimony on HB 2364 - Chuck Mundorff - 1 page C - Amendments to HB 2364 - Rep. Kevin Mannix - 1 page D - Amendments to HB 2364 - Oregon District Attorneys Association - 1 page E - Testimony on HB 2364 - Russ Abrams - 12 pages