

HOUSE COMMITTEE ON JUDICIARY SUB-COMMITTEE ON CRIME AND CORRECTIONS

February 18, 1993 Hearing Room 357 3:00 p.m. Tapes 28 - 29

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

STAFF PRESENT: Julie Nolta, Committee Clerk Holly Robinson, Committee Counsel Ian Lombard, Page

MEASURES CONSIDERED: HB 2223 - Relating to evidence HB 2230 - Relating to crime HB 2466 - Relating to criminal procedure HB 2545 - Relating to crime

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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 28, SIDE A

006 CHAIR TIERNAN: Calls meeting to order at 3:05 p.m.

HB 2223 - PUBLIC HEARING

Witnesses: John Foote, Department of Corrections

010 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes HB 2223.

023 JOHN FOOTE, INSPECTOR GENERAL, OREGON DEPARTMENT OF CORRECTIONS: Submits and reviews written testimony in support of HB 2223. (EXHIBIT A)

051 REP. TARNO: Have there been occasions when inmates have used the phone as a threat or intimidation tool?

FOOTE: Yes. We refer to it as phone harassment.

062 REP. BROWN: The only time phone testimony would be admissible is when it is lawfully intercepted and under no other circumstances.

FOOTE: That is our intention. Explains current statutes and legal exceptions.

077 REP. BROWN: Why should we set a different standard for those in the penitentiary regarding court proceedings?

FOOTE: The current statute already sets a different standard. Federal statutes do not prohibit using inmates' phone calls in court.

CHAIR TIERNAN: How about the conversation of the person the inmate is phoning? Is that admissible also?

087 FOOTE: A recording over the phone advises the receiver and the caller that the call is subject to monitoring.

095 CHAIR TIERNAN: Have received calls from my constituents who have received collect calls from inmates. There is no way to stop that?

FOOTE: If the receiver knows who the caller is we can do something about it. If they don't know, we may not have a way of tracking which phone it came from.

106 CHAIR TIERNAN: Can you track the inmates making these phone calls?

FOOTE: Sometimes by voice identification. We don't have a bar code system yet that is secure enough.

113 CHAIR TIERNAN: So if you are monitoring the phone, you are determining in some other way who that person is.

115 REP. COURTNEY: Because of my visibility I personally get calls of this nature.

123 FOOTE: You can refer those calls to my office. We would be happy to

investigate and find out if there is anything we can do.

HB 2223 - WORK SESSION

130 MOTION: REP. COURTNEY: Moves HB 2223 to full committee with a "do pass" recommendation.

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

HB 2230 - PUBLIC HEARING

Witnesses: Joanne Fuller, Oregon Department of Corrections Fred Avera, Oregon District Attorneys Association

143 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes and gives background on HB 2230.

163 JOANNE FULLER, DEPARTMENT OF CORRECTIONS: Testifies in support of HB

2230.

201 FRED AVERA, POLK COUNTY DISTRICT ATTORNEY, OREGON DISTRICT ATTORNEYS ASSOCIATION: Testifies in support of HB 2230. Submits proposed amendments to HB 2545. (EXHIBIT D AND E)

275 HOLLY ROBINSON, COMMITTEE COUNSEL: The intent of HB 2545 in 1991 session was to create Sex Abuse 1. The purpose of the current HB 2545

is to insert that language into statutes. The fiscal impact of this is \$90,000 therefore, the bill or part of it will have to go to Ways and Means Committee.

328 REP. BROWN: This bill just makes things consistent from a statutory standpoint. Even though there is a fiscal impact, it still needs to be done.

334 CHAIR TIERNAN: Calls a recess.

HB 2230 - WORK SESSION

Witnesses: Ross Shepard, Oregon Criminal Defense Lawyers Assoc. Rich Brooke, Oregon State Police

352 ROSS SHEPHERD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Initially thought there was no fiscal impact.

HOLLY ROBINSON, COMMITTEE COUNSEL: It is the cost of the DNA testing.

SHEPARD: It still seems to be a huge amount of money. There aren't that many convictions.

370 HOLLY ROBINSON, COMMITTEE COUNSEL: Fiscal impact statement indicates

\$3,105 per month plus benefits to analyze blood samples.

382 RICH BROOKE, CAPTAIN, OREGON STATE POLICE, DIRECTOR OF THE FORENSICS SERVICES DIVISION: Explains how they arrived at the figure of \$90,000.

415 REP. TARNO: Asks for clarification on fiscal impact of HB 2545.

HOLLY ROBINSON, COMMITTEE COUNSEL: There is additional cost in fiscal impact of services and supplies. Explains that fiscal impact requires that it be sent to Ways and Means.

488 REP. BROWN: The Department of Corrections already complies with the provisions of this measure. Are Oregon State Police conducting blood tests on lower cases but not on Sex Abuse 1 cases?

TAPE 29, SIDE A

031 BROOKE: Forensics labs are doing DNA testing on sexual abuse cases.

Doesn't know if they are doing if for Sex Abuse 1.

HB 2466 - PUBLIC HEARING

Witnesses: Denis Dowd, Department of Corrections Ross Shepard,
Oregon Criminal Defense Lawyers Assoc.

058 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes HB 2466.

068 DENIS DOWD, ASSISTANT DIRECTOR, INSTITUTIONS BRANCH, DEPARTMENT
OF CORRECTIONS: Submits and reviews written testimony in favor of HB
246 6. (EXHIBIT F)

103 HOLLY ROBINSON, COMMITTEE COUNSEL: Gives reason for the addition
of the use of video in a trial. Constitutional problems with trial by
simultaneous video.

114 REP. BROWN: This is optional to the defendant?

HOLLY ROBINSON, COMMITTEE COUNSEL: Optional to the counties, not the
defendant.

DOWD: It is the option of the court.

122 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION:
Testifies to HB 2466.

CHAIR TIERNAN: Everyone is present except for the defendant who is on
video and nobody liked the situation?

SHEPARD: Gives reasons for judges not liking the system. Lawyer can't
effectively communicate with the client.

165 REP. BROWN: Video arraignment in Multnomah County seems to work
well. What about trying the video system for two years with misdemeanor
cases to see if it would work? SHEPARD: System not used frequently
because judges prefer to have the defendant present.

REP. COURTNEY: What if you were present with your client and the judge
was in another location?

SHEPARD: Would still object. I would have an unfair disadvantage if
the prosecutor is with the judge and I am 100 miles away. There is also
difficulty with transmission of documents.

187 REP. COURTNEY: If the system is permissive, you can accept it?

SHEPARD: If it were only used in those circumstances where there is
nothing to decide.

189 REP. COURTNEY: If the defendant has no problem with the system,
that

still bothers you?

SHEPARD: If the defendant didn't and I didn't, that would be alright.

191 REP. COURTNEY: If the defendant and his attorney want to do it
that way, that is acceptable?

SHEPARD: Yes, because it is a valid constitutional waiver.

REP. COURTNEY: Would this be a meaningless law if it was very seldom used?

203 SHEPARD: Technology doesn't presently exist for it to be used in very many places in the state. In agreed upon cases it could be used if the cameras could be set up.

209 REP. TARNO: This is used for sentencing only?

SHEPARD: Sentencing is not just a formality. It is a very important part of the case.

219 REP. BROWN: A judge can make changes at time of sentencing.

CHAIR TIERNAN: The purpose of the bill is to save money in transporting the defendant.

239 AVERA: Has no direct experience with the video system. Has no constitutional concerns as long as the attorney and defendant have the ability to confer in private. Gives example of how transportation of a defendant can be expensive.

262 REP. COURTNEY: Asks for details of the case that Mr. Avera referred

to.

AVERA: Arrested for robbery and had to be housed out of the county because there were no women's facilities.

271 REP. COURTNEY: The women's prison wouldn't take her?

AVERA: The prison could not house a defendant pre-trial.

HB 2466 - WORK SESSION

285 REP. TARNO: Asks who dropped the bill.

HOLLY ROBINSON, COMMITTEE COUNSEL: The concept began last session and was before the interim committee on Government Mandates. The intent is to eliminate corrections related costs.

319 REP. TARNO: Video has been used almost exclusively for arraignments.

To what degree has it been used for sentencing?

HOLLY ROBINSON, COMMITTEE COUNSEL: The statute already allows for video to be used in arraignment. It is discretionary, not mandatory. This bill gives discretion for use at the end of proceedings as well.

335 REP. TARNO: What is the opinion of the judges involved?

340 REP. BROWN: Some defendants would like it because they do not like to be transported.

345 BILL LYNDON, STATE COURT ADMINISTRATOR: Some judges like it,
some do

not. Biggest impediment is that the transmission facilities not
available in most counties.

358 CHAIR TIERNAN: How does the defendant consult privately with
their counsel during the proceeding?

LYNDON: Explains how taping and conferral with defendant works in
Roseburg.

383 REP. BROWN: Needs to be at trial court's discretion and
defendant's discretion. It is not appropriate if the defendant wants to
appear personally at sentencing; he should be allowed to.

400 CHAIR TIERNAN: The judges discretion is already in the bill and
you would make a motion to include the defendant's discretion.

MOTION: REP. BROWN: Moves to insert in HB 2466 on line 10 that "the
defendant may choose to appear before the court."

VOTE: 2-2 Motion fails AYE: Brown, Courtney NO: Tarno, Tiernan

432 REP. TARNO: Isn't it statutory language that the judge "calls
the shots?" The defendant doesn't have the right to say whether or not
he

is going to appear in court. Has a problem with giving a defendant that
legal right.

449 CHAIR TIERNAN: Voted no because didn't want a defendant to
demand that right inappropriately.

459 REP. BROWN: This may involve a serious sentence and the
defendant should have the option to be before the judge.

485 CHAIR TIERNAN: Adjourns meeting at 4:05 p.m.

Submitted by:

Reviewed by:

Julie Nolta
Committee Assistant

Anne May Committee Clerk

EXHIBIT LOG:

A - Testimony on HB 2223 - John Foote, Depart. of Corrections - 1 page
B - Testimony on HB 2230 - Department of Corrections - 1 page C -
Prison Impact Assessment on HB 2230 - Oregon Criminal Justice Council -
1 page D - Proposed amendments to HB 2545 - Oregon District Attorneys
Association - 1 page E - Proposed amendments to HB 2545 #2 - Oregon

District Attorneys Association - 1 page F - Testimony on HB 2466 -
Department of Corrections - 2 pages