

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

February 22, 1993 Hearing Room 357 3:00 p.m. Tapes 30 - 31

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

MEASURES CONSIDERED: HB 2318 - Relating to crime HB 2693 -  
Relating to aggravated theft of a motor vehicle

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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 30, SIDE A

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

HB 2318 - PUBLIC HEARING

Witnesses: John Mullin, Clackamas County Social Services Cindy Nelson, Clackamas County Social Services Pam Edens, Oregon Alzheimer's Public Policy Committee

Grover Simmons, Independent Adult Care Providers Association Dave Foster, Wash. Co. IACPA Sandra Rogers, Vice President, IACPA Bertran Copp Mark Campbell, Christian Science Comm. on Publication Gina Mattioda, Oregon Medical Association Jim Carlson, Oregon Medical Association Fred Avera, Oregon District Attorneys Association

010 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes HB 2318 and gives background.

041 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes elements of Criminal Mistreatment I and II for the purpose of making a comparison between current law and HB 2318. Discusses definition of "dependent person."

098 CHAIR TIERNAN: Asks for clarification on definition of abandonment.

HOLLY ROBINSON, COMMITTEE COUNSEL: Explains "violation of legal duty."

106 CHAIR TIERNAN: "Willfully inflicting physical pain" is not specifically covered in HB 2318.

114 REP. BROWN: Are the definitions of "financial abuse" and "mental abuse" covered under Criminal Mistreatment statutes?

118 HOLLY ROBINSON, COMMITTEE COUNSEL: Not covered under Criminal Mistreatment nor by "elder abuse" as written.

122 CHAIR TIERNAN: Asks for definition of financial abuse.

REP. BROWN: "Old people being stripped of their life savings and cast aside."

125 REP. TARNO: There are statutes already in existence dealing with mistreatment. Approves of language that puts no age limit on elder abuse.

HOLLY ROBINSON, COMMITTEE COUNSEL: Was aware that there would be questions about why current legislation isn't adequate.

135 REP. BROWN: We need to address the issue of age because people can get Alzheimers before the age of 65.

155 JOHN MULLIN, DIRECTOR, CLACKAMAS COUNTY SOCIAL SERVICES: Submits and

reviews testimony in support of HB 2318. (EXHIBIT A)

181 CINDY NELSON, CLACKAMAS COUNTY SOCIAL SERVICES: Testifies in support of HB 2318.

261 CHAIR TIERNAN: Asks for witness' definition of financial abuse.

NELSON: Defines financial abuse or exploitation. Gives examples of situations when this occurs.

287 CHAIR TIERNAN: Financial abuse can be a very vague term. The committee will need to come up with a good definition.

297 HOLLY ROBINSON, COMMITTEE COUNSEL: Refers to Model Act on Elder Abuse. 310 NELSON: Reviews numbers of referrals of elder abuse.

CHAIR TIERNAN: After investigation, what are the actual number of cases that would be cited as abuse?

320 NELSON: A total of 30 between January 1 and February 12 of 1993. The remainder were self neglect cases.

331 PAM EDENS, OREGON ALZHEIMERS PUBLIC POLICY COMMITTEE: Submits and reviews testimony in support of HB 2318. (EXHIBIT B)

394 CHAIR TIERNAN: Discusses the necessity of careful drafting of a definition of financial abuse.

429 EDENS: There is a fine line to be drawn between an individual

choosing to do what they want with their own money and someone taking advantage

of it.

433 REP. TARNO: How does the Oregon Alzheimer's Public Policy Committee deal with the individuals who have Alzheimer's and have funds? Do they go through power of attorney?

EDENS: Each situation is individualized and sensitive. Gives examples.

TAPE 31, SIDE A

021 GROVER SIMMONS, INDEPENDENT ADULT CARE PROVIDERS ASSOCIATION (IACPA):

Submits and reviews testimony in opposition to HB 2318. (EXHIBIT C)

122 DAVE FOSTER, PRESIDENT, FOSTER'S HOME CARE; PRESIDENT, WASH. CO. IACPA: Submits and reviews testimony in opposition to HB 2318. (EXHIBIT D)

173 SANDRA ROGERS, PRESIDENT, JOLLY ROGERS' CARE CENTERS; VICE PRESIDENT,

IACPA: Submits and reviews testimony in opposition to HB 2318. (EXHIBIT E)

267 REP. TARNO: Confirms all foster homes are licensed. Are they mandated to have a licensed practitioner or nurse on-call or on-site?

ROGERS: Usually they have someone on-site but it is not mandated. They are required to take training and have two years experience before being licensed as a resident manager.

286 FOSTER: We also network with home health agencies.

289 CHAIR TIERNAN: Are all foster homes live-in situations?

ROGERS: They are all live-in situations and people working there are employees.

298 REP. TARNO: Is it routine that a nurse would come in once a week for

sick calls or basic maintenance?

FOSTER: Depends on the situation of the residents.

ROGERS: Explains types of people who visit the homes frequently.

323 REP. TARNO: Confirms that the witnesses are part of a state wide association. What kind of claims have been filed against foster homes

in the last year or two?

SIMMONS: Senior and Disabled Services Division keeps track of numbers and claims.

REP. TARNO: Do you have knowledge of cases currently pending?

FOSTER: No.

346 CHAIR TIERNAN: Confirms that Mr. Simmons would support adding "abandonment" and "willfully inflicting" to the bill.

SIMMONS: Problems arise when it goes beyond "negligence" and "criminal negligence."

357 CHAIR TIERNAN: Aren't there care giver services for people in their own homes?

SIMMONS: Called "in-home care."

ROGERS: There are several service companies for at-home care.

375 CHAIR TIERNAN: Oregon is the leader in having elderly people live at

home. Abuses do occur and there should be a deterrent to actual abuse.

410 ROGERS: It is important that something be done. Concerned that some

care-givers may not want to take the risk of false accusation of elder abuse and may get out of the business.

SIMMONS: Gives example of false accusation of elder abuse and the costliness for defendant.

463 CHAIR TIERNAN: Refers to federal legislation requiring the least restrictive method of restraint.

482 REP. TARNO: Confirms the parts of the bill that Mr. Simmons could support.

TAPE 30, SIDE B

033 REP. TARNO: Would you support a section defining financial exploitation if it was well drafted?

SIMMONS: Wouldn't that fall under intentional willful misconduct? We would support the inclusion of that kind of activity including abandonment.

049 REP. TARNO: I didn't see abandonment as one of your supportive issues.

SIMMONS: Our doubt arises at ordinary negligence.

061 BERTRAN COPP: Submits and reviews testimony in support of HB 2318. (EXHIBIT F)

148 CHAIR TIERNAN: Who had conservatorship of your mother's estate.

COPP: The court appointed an outside conservatorship. My sister had my mother put into home.

CHAIR TIERNAN: Were you part of that court proceeding?

COPP: I argued at every hearing but was not allowed to care for my mother.

170 MARK CAMPBELL, CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR THE STATE OF OREGON: Submits and reviews testimony and proposed amendment in support of HB 2318 (EXHIBIT G)

205 REP. BROWN: The suggested exemption is not included in criminal mistreatment statutes.

219 GINA MATTIODA, OREGON MEDICAL ASSOCIATION: Submits and reviews testimony and amendments in support of HB 2318. (EXHIBIT H)

234 JIM CARLSON, OMA: Testifies in support of HB 2318.

FRED AVERA, DISTRICT ATTORNEY, POLK COUNTY; OREGON DISTRICT ATTORNEYS ASSOCIATION: Submits and reviews testimony in support of HB 2318. (EXHIBIT I)

372 CHAIR TIERNAN: Besides abandonment, willfully inflicting of physical

pain needs to be covered?

AVERA: Describes classification of willful infliction of physical pain.

CHAIR TIERNAN: So it was torture you were referring to?

AVERA: Torture would be a Class C felony.

385 HOLLY ROBINSON, COMMITTEE COUNSEL: Drafter of the bill intended language to be more similar to torture than what would be covered by Assault IV.

AVERA: Currently if you call it "assault" or "inflict serious physical pain" you are going to have assault or criminal mistreatment.

420 CHAIR TIERNAN: In your opinion, the only area not currently covered is abandonment.

AVERA: Yes.

423 REP. TARNO: Financial exploitation is not covered?

AVERA: Proof of financial exploitation is a problem. The victims make bad witnesses. It is difficult to prove theft or bad judgement.

465 REP. BROWN: Is emotional abuse covered by Criminal Mistreatment II?

AVERA: Don't think emotional abuse is covered. It is hard to define emotional abuse in context of criminal law.

478 HOLLY ROBINSON, COMMITTEE COUNSEL: Given the fact that you have

suggested the abandonment and child neglect statutes be modified to deal with dependent persons, couldn't the committee do the same with the definition of mental and emotional abuse?

TAPE 31, SIDE B

031 AVERA: Some of those statutes are not in the criminal code and the degree of precision of definition is not the same.

HB 2693 - WORK SESSION

Witnesses: Dan Stroebel, City of Eugene Police Dept. Joe Zink, Portland Police Bureau Dale Gesner, Salem Police Depart Fred Avera, Oregon District Attorneys Association

058 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2318 amendments actually refer to HB 2693. Summarizes and explains how amendments affect the bill. (EXHIBIT L and M)

103 REP. TARNO: The theft of a motor vehicle with force and without the use of a weapon is left out of the -2 amendments.

121 HOLLY ROBINSON, COMMITTEE COUNSEL: That would be included in line 6 of the amendments.

REP. TARNO: Supposing we were looking at Robbery I when physical force is used in the commission of an auto theft.

HOLLY ROBINSON, COMMITTEE COUNSEL: Then the provisions from line 23 and 24 enter and remains a Class A felony but court is directed to impose a departure sentence. Classification of the crime becomes less important than crime seriousness rating.

151 CHAIR TIERNAN: Procedurally where are we with the relating clause and with the fiscal impact statement?

HOLLY ROBINSON, COMMITTEE COUNSEL: Amendments to HB 2693 cannot be incorporated into that bill because of the relating clause.

162 REP. COURTNEY: Because HB 2693 is a property crime and we want to make it a person crime, correct.

HOLLY ROBINSON, COMMITTEE COUNSEL: The relating to clause of HB 2693 states "aggravated theft of a motor vehicle" which is too narrow. The amendments enhancing robbery cannot go into that.

174 CHAIR TIERNAN: Do we have a bill in which we can amend the robbery statute?

HOLLY ROBINSON, COMMITTEE COUNSEL: Could be added into HB 2318 because of the relating to clause. Elder abuse provisions could be put into another bill particularly if the committee is inclined to amend current law. A committee bill could be introduced. A committee member could introduce it using a priority drafting requests. A "gut and stuff" procedure could be used on another committee bill with a relating to

clause that is broad enough to handle the amendments.

192 REP. COURTNEY: Can use one of his priority drafting requests. Doesn't want to mess around with HB 2318. HB 2693 will come under assault at the full committee because of the prison bed issue.

203 CHAIR TIERNAN: Has procedural questions regarding dead stalking bills.

HOLLY ROBINSON, COMMITTEE COUNSEL: The ones that have "relating to crime" clauses can be vehicles for HB 2693.

213 REP. COURTNEY: Makers of those bills may be agreeable.

225 HOLLY ROBINSON, COMMITTEE COUNSEL: Chairman Parks has advised that this should not be handled as replacement bill.

253 DAN STROEBEL, INVESTIGATOR, CITY OF EUGENE POLICE DEPARTMENT: Testifies in support of HB 2693.

274 CHAIR TIERNAN: Would this bill cover motorcycles?

STROEBEL: Covers anything conveyed by a motor.

290 JOE ZINK, DETECTIVE, PORTLAND POLICE BUREAU: Testifies in support of HB 2693.

342 DALE GESNER, SALEM POLICE DEPARTMENT: Testifies in support of HB 269 3.

360 REP. TARNO: Wouldn't unauthorized use be a lesser included? We are discussing robbery not auto theft.

GESNER: If you can replace "theft" with another word. Intent may not be to keep the vehicle.

ZINK: We are looking to circumvent the definition of theft.

411 FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: Agrees that intent of joy-riding may not be theft.

439 ZINK: May want to add a third paragraph to third degree robbery statute regarding "taking of a motor vehicle for any amount of time no matter how short."

CHAIR TIERNAN: Will send suggestion back to counsel.

469 REP. COURTNEY: Prefers that the bill become a product of the committee.

480 CHAIR TIERNAN: Adjourns meeting at 5:00 p.m.

Submitted by:

Reviewed by:

Julie Nolta

Anne May Committee Clerk

Committee Assistant

EXHIBIT LOG:

A - Testimony on HB 2318 - Clackamas Co. Social Services - 2 pages  
B - Testimony on HB 2318 - Oregon Alzheimer's Public Policy Committee - 2 pages  
C - Testimony on HB 2318 - Independent Adult Care Providers Association - 2 pages  
D - Testimony on HB 2318 - Dave Foster - 2 pages  
E - Testimony on HB 2318 - Sandra Rogers - 2 pages  
F - Testimony on HB 2318 - Bertran Copp - 1 page  
G - Testimony and proposed amendment to HB 2318 - Christian Science Committee on Publication for the State of Oregon - 1 page  
H - Proposed amendments to HB 2318 - Oregon Medical Association - 1 page  
I - Proposed amendments to HB 2318 - Oregon District Attorneys Association - 3 pages  
J - Proposed amendments to HB 2318 - Oregon Health Care Association - 1 page  
K - ORS 163.160 regarding offenses against persons - 2 pages  
L - Proposed amendments to HB 2318 regarding HB 2693 - 2 pages  
M - Proposed amendments to HB 2318 regarding HB 2693 - 2 pages  
N - Anti Car Theft Act of 1992 - 9 pages