

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

March 1, 1993      Hearing Room 357 3:00 p.m.      Tapes 37 - 38

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:            SB 231 - Relating to probation SB 247 - Relating to unitary assessment HB 2223 - Relating to evidence

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

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 37, SIDE A

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

SB 231 - PUBLIC HEARING

Witnesses:      Bill Linden, State Court Administrator, Oregon Department of

Justice

010      HOLLY ROBINSON, COMMITTEE COUNSEL:    SB 231 makes probation a type of sentence that a court may impose. In State v. VaSB y, the Court of Appeals concluded that probation is an alternative to sentencing, prohibiting the imposition of restitution and a suspended sentence while placing a defendant on probation. SB 231A clarifies that a court may sentence a defendant to probation.

031      BILL LINDEN, STATE COURT ADMINISTRATOR, OREGON DEPARTMENT OF JUSTICE:

Submits and reviews testimony in support of SB 231. (EXHIBIT A)

056      CHAIR TIERNAN:    Has the Supreme Court spoken on this yet? LINDEN: A petition was filed on that case and was not granted. Under

existing law, Court of Appeals decision was not correct.

061 CHAIR TIERNAN: Asks for explanation of probation and how it may change.

LINDEN: An individual who commits a Class C felony who is placed on probation can be sentenced by the court to pay restitution and statutory victim's assessment. An individual who commits a Class A misdemeanor who is placed on probation, which is not a sentence, cannot be assessed any fees. The attempt is to place misdemeanors in the same setting as a felony as far as the legal definition of probation and its consequences. The case interpreted existing law and the conclusion was that probation is an alternative to a sentence, in the case of a misdemeanor.

089 CHAIR TIERNAN: Do we have deferred prosecution in Oregon?

LINDEN: Doesn't know if term is widely used here although there are many methods of deferred prosecution used.

104 CHAIR TIERNAN: Believes there is a bill that refers to deferred prosecution or diversion. Can a diversion under a DUII sentence require restitution or would a conviction be necessary?

LINDEN: When diverting under DUII statutes, a variety of charges are assessed. Doesn't know if court can order restitution at the time of diversion. Believes there is a bill that refers to deferred prosecution in the context of requiring a guilty plea prior to an individual being

moved into diversion. This will affect sentencing misdemeanants. It will remove confusion about whether or not probation is a sentence.

133 REP. BROWN: Does this have a retroactive affect?

LINDEN: No, it couldn't.

REP. BROWN: Does this affect the recent line of DUII cases and not being able to put those offenders on probation? Can't remember case name.

140 LINDEN: SB 231 would affect any misdemeanor offense in terms of the legal definition of probation as it relates to sentencing the individual involved.

147 HOLLY ROBINSON, COMMITTEE COUNSEL: Does this apply to bench probation?

LINDEN: Applies to any type of probation that a court is ordering in terms of discharging its sentencing function. Supervised probation for misdemeanants is less available than options such as bench probation.

The formal sentence of probation that would be affected by SB 231.

157 HOLLY ROBINSON, COMMITTEE COUNSEL: Does it also cover probation on violations?

LINDEN: Don't believe it would. Involves misdemeanor offenses only.

SB 231 - WORK SESSION

167 REP. TARNO: Confirms that SB 231 went through Senate counsel and that it is in line with the Court of Appeals opinion.

MOTION: REP. COURTNEY: Moves SB 231 to full committee with a DO PASS recommendation.

VOTE: 4-0 MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan NO: None

SB 247 - PUBLIC HEARING

Witnesses: Bill Linden, Oregon Department of Justice

180 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 247 clarifies that all fines and assessments collected after July 1, 1995 are deposited in the Criminal

Fine and Assessment Account even if the person paying the fine or assessment was prosecuted on an accusatory instrument that was filed prior to July 1, 1992. Clarifies that a person accepted into a marijuana or driving while under the influence diversion programs pays directly the organization that conducted the diagnostic assessment.

231 BILL LINDEN, STATE COURT ADMINISTRATOR, OREGON DEPARTMENT OF JUSTICE:

Submits and reviews testimony in favor of SB 247. (EXHIBIT B)

289 REP. BROWN: Does the bill affect court's ability to waive fees?

LINDEN: No. Laws regarding assessment of fees to indigents are not affected. The court still must make "ability to pay" decisions.

303 REP. TARNO: Could this save paper work if the defendant pays agencies directly?

LINDEN: It did. Bill makes it clear that this method of payment is preferred.

318 REP. TARNO: Does the prisoner medical account have its own funding mechanism?

LINDEN: It is called the Law Enforcement Medical Liability Fund and is in the Unitary Assessment, Category 4.

331 REP. TARNO: Asks for current balance in that account.

LINDEN: Does not have current balance but Dept. of Revenue could provide one.

REP. TARNO: At some point in time it seems the medical liability fund could draw interest.

LINDEN: The funds are managed for interest.

SB 247 - WORK SESSION

355 MOTION: REP. BROWN: Moves SB 247 to full committee with a DO PASS recommendation.

VOTE: 4-0 MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan NO: None

HB 2223 - WORK SESSION

Witnesses: John Foote, Department of Corrections Rep. Veral Tarno, District 48

369 HOLLY ROBINSON, COMMITTEE COUNSEL: Allows criminal evidence that was

lawfully recorded on inmate phone calls by corrections officials and on persons detained in county jails by law enforcement public officials to be used in court proceedings. Discusses general prohibitions. Full committee was concerned about whether inmates are adequately informed that telephone conversations are monitored and whether the provisions apply to persons being detained as well as visitors.

429 JOHN FOOTE, DEPARTMENT OF CORRECTIONS: Testifies in support of HB 222 3.

477 REP. BROWN: Concerned that conversations will be used against persons who have not yet been convicted. Also concerned about informing people who speak foreign languages.

TAPE 38, SIDE A

030 FOOTE: Issue of notice is not a statutory requirement, but an expectation of privacy. If a person speaking another language does not understand the warning, that can be raised in court.

CHAIR TIERNAN: According to Oregon law, as long as one person knows a conversation is being recorded, it is appropriate?

FOOTE: Yes, on a telephone. Exception is in a jail where the monitoring is being done by the institution and not one of the conversants. CHAIR TIERNAN: You do have these recordings on every call at every pay phone?

FOOTE: Yes.

052 REP. BROWN: Would feel more comfortable if it were limited to convicted felons within the department of corrections and if there were notices posted on telephones. Concerned about inmates who do not speak English or read.

FOOTE: If they don't read the sign, there is still a recording on

phone. If there is no recorded warning on the phone and no sign posted, then the individual's constitutional rights stand. Reads statute where prohibitions do not apply.

088 CHAIR TIERNAN: What is your position on limiting the recordings to the Department of Corrections?

FOOTE: Some is better than nothing. Doesn't believe many jails have the capability. Department could accept that arrangement.

099 CHAIR TIERNAN: Multnomah County has a large number of felons. What would be the consequences on not allowing recording to take place in the Multnomah County jail?

FOOTE: They can't admit it now. We are asking for a change.

107 CHAIR TIERNAN: What about people who will be monitored who have no convictions?

FOOTE: Is a legitimate concern. The authority to listen to the phones is not based on whether or not they are convicted, but the fact they are in jail. It deals with their expectation of privacy.

116 CHAIR TIERNAN: Does this apply to the Donald E. Long home for juveniles?

FOOTE: Bill doesn't say juvenile facilities and Donald E. Long home is not a jail but a detention facility.

CHAIR TIERNAN: Has received several complaints from people who have received calls from inmates. Only possibility is deterrence at the other end.

129 FOOTE: Hadn't considered juvenile facilities, may not even legally be able to listen to phone calls. Marion County jail can electronically block certain phone numbers from being dialed.

142 REP. BROWN: Expectation of privacy of someone who has been convicted of a crime is different from someone who has not been convicted. Those people should not be held to lower standard. That is my reasoning for

narrowing to Department of Corrections inmates only.

155 CHAIR TIERNAN: If we limited to Corrections Department and see how that works, it might pass easier.

168 REP. VERAL TARNO, DISTRICT 48, FORMER COOS COUNTY SHERIFF:  
Issue of

intercepting inmate phone conversations did not arise from trying to obtain evidence. Came from the county level primarily because of high phone bills, calls being made to victims and an escape attempt planned over the phone. There is a need for corroboration of evidence. Would not like to see county jails exempted because individuals seem more agitated before sentencing rather than after a conviction.

253 CHAIR TIERNAN: Is a navy intelligence officer and states that largest area of intelligence collection is in communications. Can't discuss techniques and full benefits because of compromise of security. This type of monitoring can save people from getting hurt.

279 REP. TARNO: The use of a phone in jail is a privilege, not a right.

There has been large amount of abuse by inmates.

304 REP. BROWN: This bill doesn't resolve problem of cost to counties from abuse of inmate telephones by monitoring the calls. They will still abuse regardless of whether we allow this to be used as evidence or not.

310 REP. TARNO: In that abuse, they are making contact with victims and witnesses.

REP. BROWN: Does not believe this is a minor bill. Several members had concerns about the bill. Concerned about fighting crime, getting criminals off the street and public safety. But also concerned about the Constitution and rights to privacy and expectation of criminals. Criminals are human beings and are entitled to their constitutional rights.

327 REP. COURTNEY: If they were warned in a specific way that evidence in a phone conversation could be used against them, that still wouldn't be enough?

REP. BROWN: Would alleviate some concerns. There will be people who can't read or understand the warnings because they don't know the language.

345 REP. TARNO: The same problem will exist when those recordings need to be interpreted.

REP. COURTNEY: What about a verbal warning as soon as phone is picked up?

FOOTE: It is being done now. Tells the receiver and the inmate that the phone call is subject to being monitored and recorded.

REP. COURTNEY: Even then they still talked about crimes, they didn't believe the tape recorded message.

382 REP. COURTNEY: How many institutions are you speaking for?

FOOTE: Only speaking for the Department of Corrections. Isn't uniform throughout the counties. Most don't have recording capabilities.

REP. COURTNEY: This bill would cover Department of Corrections and what else?

FOOTE: Covers everything in ORS 165.542A which is jails, police premises, sheriff's office, Department of Corrections institutions and other penal or correctional institutions.

431 REP. TARNO: Can understand Rep. Brown's reservations. Can this

language be added to bill "with proviso that admonishment has been made."

CHAIR TIERNAN: Agrees that language should be put in the bill for posted warnings on the phone and that a recorded notice be put on the conversation for both parties.

455 REP. TARNO: Suggests that language pertain only to corrections institutions and county jails as far as admonishment is concerned.

FOOTE: This may not work because you may be amending a different statute, ORS 165.540 and not ORS 41.910. Language may be too complicated.

472 HOLLY ROBINSON, COMMITTEE COUNSEL: This bill creates new exception to evidence code. Is there a way to phrase the admission of this evidence? Under what circumstances is this information going to be admitted? Can already be recorded legally but can we use it?

TAPE 37, SIDE B

034 CHAIR TIERNAN: Thought the bill created the exception on the condition that the recording was obtained after notice.

HOLLY ROBINSON, COMMITTEE COUNSEL: Evidence is admitted into court after notice. May have information but not notice. Don't want to restrict ability to obtain information. The second step under these circumstances is to say that the information can subsequently be admitted.

047 CHAIR TIERNAN: Calls two minute recess.

051 REP. TARNO: Wants to consider an amendment for admissibility of evidence.

CHAIR TIERNAN: Asks Mr. Foote how he would get at this concern to make the county jails consistent with Department of Corrections.

060 FOOTE: Don't know if that is the most practical move to make. Suggests bifurcating it since state system is uniform and county system is not.

State system would be admissible because the system in which evidence is obtained is consistent and let the county monitor but not allow it to be admissible.

068 REP. COURTNEY: May have problems when the bill is referred to the Senate.

075 REP. TARNO: There are fifteen state institutions and all have same telephonic system?

FOOTE: All have basically same technology. REP. TARNO: But all systems have the same admonishment when the phone

is picked up?

FOOTE: Yes.

085 HOLLY ROBINSON, COMMITTEE COUNSEL: If language could state "if conversation was preceded by ..." then it could be admissible subject to other admission standards. If the tape recorded evidence indicated that the tape recording had been preceded by an official announcement, then

the provisions of ORS 41 would apply. What if we said "if the inmate had actual notice that the phone conversation was being recorded?"

CHAIR TIERNAN: Essentially it would state there was notice and let the parties decide in court if there was notice or not.

102 HOLLY ROBINSON, COMMITTEE COUNSEL: You would establish the preliminary requirement that the inmate had actual notice.

106 REP. BROWN: Would add the limit to the inmates under the jurisdiction of the Department of Corrections.

CHAIR TIERNAN: That would not be my vote.

117 HOLLY ROBINSON, COMMITTEE COUNSEL: Wants to make a recommendation to

Legislative Counsel add a subsection (b) that says that "the following evidence which has been intercepted communications shall be admissible under certain circumstances if it was obtained by these individuals under these circumstances and the inmate had actual notice." Need to create a new section of the evidence code dealing specifically with this.

114 MOTION: REP. TARNO: Moves TO CONCEPTUALLY AMEND HB 2223 to provide recorded notice by telephone in order to allow communications to be entered into evidence.

VOTE: 4-0 MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan NO: None

144 CHAIR TIERNAN: Counsel will bring draft back with actual wording of the amendment at which time we will vote to pass the bill to the full committee.

149 REP. BROWN: Discusses definition of word "inmate" for clarification.

164 CHAIR TIERNAN: Adjourns meeting at 4:20 p.m.

Submitted by:

Reviewed by:



Julie Nolta  
Committee Assistant

Anne May Committee Clerk

EXHIBIT LOG:

A - Testimony on SB 231 - Oregon Department of Justice - 3 pages B -  
Testimony on SB 247 - Oregon Department of Justice - 3 pages