

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

March 17, 1993 Hearing Room 357 3:00 p.m. Tapes 49 - 51

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

VISITING MEMBER: Rep. Del Parks

STAFF PRESENT: Julie Nolta, Committee Clerk Holly Robinson, Committee Counsel

MEASURES CONSIDERED: HB 3425 - Relating to representation of juveniles HB 3434 - Relating to indigent defense

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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 49, SIDE A

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

HB 3425 AND HB 3434 - PUBLIC HEARING

WITNESSES: Rep. Del Parks, District 53 Bill Linden, State Court Administrator Paul Snyder, Association of Oregon Counties Larry OgleSB y, Marion County Juvenile Dept. Fred Avera, Oregon District Attorney's Association Fred Neal, Intergovernmental Relations Officer

017 REP. DEL PARKS, DISTRICT 53: Testifies in favor of HB 3425 and HB 343 4.

060 REP. BROWN: Not being normal times, are these temporary proposals that will then revert back to the former system?

067 REP. PARKS: We should not revert to former system.

086 BILL LINDEN, STATE COURT ADMINISTRATOR: Gives background on the current court system. -Submits and reviews written testimony (EXHIBIT C) in favor of HB 3425

and HB 3434.

233 CHAIR TIERNAN: How long have these bills been discussed?

238 LINDEN: Both are new bills. -Continues testimony.

266 REP. TARNO: Governor's mandated, recommended, or mandated plus?

268 LINDEN: All three. -Continues testimony.

279 CHAIR TIERNAN: Who decides how many cases are coverable?

281 LINDEN: The spending cap would be decided by legislature; formula adopted by chief justice order; all parties would develop it.

291 CHAIR TIERNAN: Can they choose to spend money and not spend all the money?

299 LINDEN: They wouldn't actually get the money under HB 3434. They would under 3425. -Rep. Parks would like a way for the unspent money to go back to the state.

314 CHAIR TIERNAN: Why the difference for juveniles?

317 LINDEN: Juvenile indigent defense shouldn't be in the state court system.

323 CHAIR TIERNAN: They don't get so much for each case though, right? They can spend more on one case than another?

333 LINDEN: The key figure is the dollar cap.

340 CHAIR TIERNAN: In an example, if they went over the cap, they'd have to get the money out of their own general fund?

348 LINDEN: This will not include death penalty cases in the amount.

357 CHAIR TIERNAN: Should that be in the bill?

359 LINDEN: It doesn't need to be, but it could be.

367 HOLLY ROBINSON, COMMITTEE COUNSEL: Is anything else outside the cap?

369 LINDEN: Nothing I've identified. -Continues testimony.

453 CHAIR TIERNAN: There are perceptions of agencies making excessive administrative rules. Could we get list of formula for money distribution to these counties?

477 LINDEN: Yes. Need to tie in indigency rates and other factors. -Don't want to reward for past practices.

TAPE 50, SIDE A

037 REP. BROWN: Would you agree that the crime seriousness level in Multnomah County is higher than Coos County, for example? In terms of juveniles?

042 LINDEN: We would use data that isn't caseload driven.

050 REP. TARNO: Unemployment would be a consideration?

053 LINDEN: It would be a valid factor. -Continues testimony.

126 CHAIR TIERNAN: In an example, could a county try to remand all the juveniles to adult court instead?

134 LINDEN: Theoretically.

138 CHAIR TIERNAN: Could the county then spend those juvenile dollars anyway they wanted?

140 LINDEN: That may need to be addressed.

146 REP. BROWN: We could make a transfer of county money then decide we need to go back to the old policy. -It's a temporary cost saving measure.

157 LINDEN: That's a valid concern. Could include it under HB 3434 cap. -Explains other options.

174 REP. TARNO: If the state funds are depleted would that use state or county employees?

180 LINDEN: If they exceed cap, the state pays services out of general fund and they pay it back.

188 REP. TARNO: Would that require a new contract with the county?

189 LINDEN: Maybe an extension. -Concludes testimony.

224 REP. TARNO: A bust for a violation would not fall under this, correct?

228 LINDEN: Correct. There is another bill that provides for us seeking

restitution in a violation case. 243 PAUL SNYDER, ASSOCIATION OF OREGON COUNTIES: Testifies in opposition to HB 3425 and HB 3434.

379 CHAIR TIERNAN: Is decentralization of state government a good idea?

383 SNYDER: Yes.

389 CHAIR TIERNAN: If the provider of those services also controls those

services, can't they control the amount of money spent?

396 SNYDER: Yes. But, this doesn't give control.

430 CHAIR TIERNAN: What are you getting out of this idea?

432 SNYDER: This should be a state function.

447 CHAIR TIERNAN: Do you have any suggestions for saving money?

453 SNYDER: Allocate money on a per county basis. The state should retain 10 percent of that.

480 CHAIR TIERNAN: Yes, but do you have specific suggestions?

490 SNYDER: Eliminate criminal penalty for truancy.

TAPE 49, SIDE B

045 SNYDER: Also, the criminal justice council should be funded to run different scenarios.

069 CHAIR TIERNAN: In another example, if two almost identical counties had different philosophies, wouldn't there be two different indigent defense funds?

080 SNYDER: The prosecutor is only one of the people that's involved in those decisions.

095 REP. BROWN: Need to separate two issues. Is this good public policy

and will save any money? -There is no local control, correct? -Are most in the juvenile justice system state or county employees?

105 SNYDER: A combination.

108 LARRY OGLESB Y, MARION COUNTY JUVENILE DEPT.: The staff who carry the

cases are county employees. Support staff in court are state employees.

115 REP. BROWN: We're not giving the county more control. Your opinions

are no, correct? -Are we going to save money just shifting around? How will that change money spent?

128 SNYDER: I don't know.

131 REP. BROWN: How will giving counties money change process?

136 OGLESB Y: I believe it won't.

145 HOLLY ROBINSON, COMMITTEE COUNSEL: Why would that be? That's an interpretation, correct?

149 OGLESB Y: Correct.

153 HOLLY ROBINSON, COMMITTEE COUNSEL: Wouldn't require a different filing though? Where would it control spending?

155 OGLESB Y: To the extent of resources transfer. Wouldn't control spending. There is greater liability of county to pick up indigent expense.

183 HOLLY ROBINSON, COMMITTEE COUNSEL: Who makes the decision of filing a

misdemeanor or a felony?

184 OGLESB Y: The District Attorney. -The court determines where to appoint counsel. -The county eats the cost at end.

197 OGLESB Y: Criteria for appointing counsel not dealt with in

these bills.

212 REP. BROWN: Your assumption is that there is no control, but it could have opposite effect if judges agreed not to appoint counsel in certain cases.

220 OGLESBY: Correct.

222 REP. TARNO: Would this cause counties to pay out of other budgets?

224 SNYDER: Yes.

226 REP. TARNO: Have you asked the county commissioner where those funds

would come from?

227 SNYDER: No, but they could only come from the county general funds.

231 REP. TARNO: In an example, if the people who handle the case are all

state employees, does the county have any say?

238 SNYDER: I don't believe so.

239 REP. TARNO: But they could get stuck with costs?

240 SNYDER: Under this bill, yes.

247 FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: Testifies in opposition to HB 3425 & HB 3434. Gives background and role of district attorneys in indigent defense.

410 CHAIR TIERNAN: Do you have suggestions?

418 AVERA: Decriminalization of some offenses, for one.

448 CHAIR TIERNAN: Isn't capping a way to get everyone to the table to talk?

457 AVERA: Yes, but some won't want to come to the table.

TAPE 50, SIDE B

038 CHAIR TIERNAN: If there's no money left toward the end of a year, then what would be the difference if you were given a certain amount of money and treated it like that's all the money there was?

047 AVERA: Crimes will still be committed, and either the lawyer will not be paid, or the lawyer will refuse to work.

062 CHAIR TIERNAN: If you're almost out of money all of a sudden seems worse than being given a set amount and knowing how much you have to spend.

074 AVERA: Being almost out of money won't have much impact on arrests.

116 REP. BROWN: District Attorneys will prioritize which crimes to prosecute.

119 AVERA: Maybe. Every district attorney will make their own decisions.

123 REP. BROWN: You can't prosecute if there is no attorney.
-District Attorneys make more money than court appointed defense lawyers, right?

128 AVERA: In some counties yes, but not in all.

134 CHAIR TIERNAN: Will there be an objection to how the money is distributed, or is it the amount?

143 AVERA: I don't know. It will probably make local government nervous.

163 REP. BROWN: They'd have to dip into human services budgets. Wouldn't we see more justice costs later?

170 AVERA: Yes.

173 REP. TARNO: Can the counties be forced to pay costs for indigent defense?

177 AVERA: I believe if the legislature passes a law that says so, yes.
186 FRED NEAL, INTERGOVERNMENTAL RELATIONS OFFICER FOR MULTNOMAH COUNTY:

Testifies in opposition to HB 3425 & HB 3434.

340 REP. COURTNEY: Has this ever required an E-board request?

343 NEAL: Yes.

356 COURTNEY: We will not resolve this issue.

366 REP. BROWN: Can we give counties more control?

374 NEAL: You could decentralize crimes.

397 REP. BROWN: This is not good public policy and won't save money?

401 NEAL: That's an adequate summary.

406 CHAIR TIERNAN: Invites people back for work session.

416 LINDEN: We can't run business as usual. It will be a challenge to come up with other money. -Come up with other ideas if we don't like this one.

449 REP. BROWN: The control in the hands of the legislature and is a state issue, correct?

460 LINDEN: It is a shared responsibility, not a one way street.

477 REP. BROWN: My concern is that discretion in is the departments.

-No one will benefit by decreasing or putting a cap on the number of court appointed lawyers.

500 LINDEN: This plan is not to spread wealth of benefits, but to keep at current levels.

TAPE 51, SIDE A

056 REP. TARNO: The counties may think that the state can't handle the problem.

060 LINDEN: Maybe. The counties might be on the line for more money.

069 CHAIR TIERNAN: Adjourns meeting at 5:05 p.m.

Prepared by:

Reviewed by:

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EXHIBIT LOG:

A - Amended HB 3425 - Staff - 6 pages B - Amended HB 3434 - Staff -
1 page C - Testimony on HB 3434 - Bill Linden - 4 pages