

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

March 23, 1993 Hearing Room 357 3:00 p.m. Tapes 54 -56

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

VISITING MEMBER: Rep. Kevin Mannix

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

MEASURES CONSIDERED: HB 2364 - Relating to evidence HB 2412 - Relating to stalking HB 2223 - Relating to evidence HB 3321 - Relating to motor vehicles HB 3424 - Relating to driving while suspended or revoked HB 3432 - Relating to forfeiture of vehicles

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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 54, SIDE A

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

HB 2223 - WORK SESSION

013 HOLLY ROBINSON, COMMITTEE of Public Instruction

007 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2489 requires Department of State Police to supply criminal identification data on teachers, administrators, personnel specialists, school nurses, other school district employees, school district contractors and volunteers who are in contact with students.

022 REP. PETER COURTNEY, DISTRICT 33: Submits and reviews written testimony in favor of HB 2489. (EXHIBIT A)

119 CHAIR TIERNAN: Refers to a case in Oregon City concerning a teacher with a criminal record who murdered the principal. If a background check had been done, may have prevented this. What about parents helping in

classroom? Would this legislation apply to parent volunteers?

REP. COURTNEY: Yes. Covers everyone involved in the school district.

The damage is the same to the child regardless.

141 NORMA PAULUS, SUPERINTENDENT OF PUBLIC INSTRUCTION: Testifies in favor of HB 2489.

189 CHAIR TIERNAN: Seems like cost would be substantial. The mother would have to pay a \$35 fee to be fingerprinted?

PAULUS: Could exempt parents. Feels it is reasonable for a person seeking a paid position.

CHAIR TIERNAN: In some states an applicant cannot be required to pay fee. Has this been checked out?

PAULUS: Some one from our office might have that answer.

211 CHAIR TIERNAN: Would parent volunteers be covered also in this bill?

REP. COURTNEY: Damage done to children is done by individuals in trust relationships, not usually paid positions. A volunteer provision may not pass. Might consider an amendment that allows a school to run a background check if suspicious of an individual. The numbers of volunteers are too large to process and would likely be prohibitive.

249 PAULUS: Could solve the problem by leaving volunteers in bill but exempt parent volunteers. Already have laws for parental abuse. Concerned about dampening parental involvement.

271 HOLLY ROBINSON, COMMITTEE COUNSEL: Can we draw distinction between volunteers that are teaching alone or unsupervised as opposed to those

who are helpers?

283 PAULUS: Could make it optional to school district for volunteers. But could they make it optional for one volunteer or would have to check all volunteers? The need is there for bill to protect children and teachers.

REP. COURTNEY: Sex offenders are ingenious about getting next to kids. By the time they are caught, they have molested a large number of kids. Those two factors made me want to start the check with all groups and then narrow from there.

321 REP. BROWN: Concerned about volunteers criminal history, such as shop lifting, being held against them many years later.

REP. COURTNEY: That is a good point but not my intention.

REP. BROWN: But wouldn't volunteers be discouraged if they do have some sort of criminal history?

REP. COURTNEY: Would have a chilling effect on some parents who have worked hard to overcome problems. May be dehumanizing for some volunteers that we may want to come forward.

365 CHAIR TIERNAN: Discusses large numbers of teachers and volunteers in

area schools and practicality of fingerprinting all those people.

384 REP. COURTNEY: Wanted as comprehensive a bill as possible. Feels discussion about volunteers is important.

REP. TARNO: Looks as though Teacher Standards and Practices Commission (TSPC) will play a large role in determining offenses that would be listed as violations. Asks if Ms. Paulus and staff could list the offenses for the committee.

419 PAULUS: Would be happy to do that with help of TSPC.

HOLLY ROBINSON, COMMITTEE COUNSEL: The offenses that TSPC uses needs to be the same as the board uses. Would be concerned if there were significant differences.

435 CHAIR TIERNAN: Discusses role of coaches in lives of children. Doesn't think it would be too much to ask for them to be fingerprinted.

REP. COURTNEY: Further describes role of coaches in lives of children and their influence. Agrees that they should be fingerprinted and checked.

TAPE 48, SIDE A

053 JIM GREEN, OREGON SCHOOL BOARDS ASSOCIATION: Testifies in favor of HB 2489.

124 REP. TARNO: Asks witness how he feels about an individual with a criminal background but not necessarily against children.

GREEN: Concerned about them as well. Children look up to their teachers.

141 CHAIR TIERNAN: Is it appropriate to have applicants pay fee for their own testing?

GREEN: Doesn't think there is a problem with regard to statute and how the bill is written to have fee paid by the applicant. Other states require that of their applicants. CHAIR TIERNAN: Labor code does vary between states and between applicants for volunteer and paid positions. Drug and alcohol screens

done randomly. Fingerprinting isn't the cost but testing the prints.

If fingerprints were tested randomly it might act as same kind of deterrent and also save money.

169 GREEN: That is an option. May be a constitutional issue. Fingerprinting has been a deterrent in Washington.

JOSEPH BENNINGHOFF, CONFEDERATION OF OREGON SCHOOL ADMINISTRATORS: Testifies in favor of HB 2489.

255 REP. BROWN: Will background check bring up all criminal

convictions?

HOLLY ROBINSON, COMMITTEE COUNSEL: Understands that it would be all convictions.

272 ra, Oregon District Attorneys Association

HOLLY ROBINSON, COMMITTEE COUNSEL: HB 3426 decriminalizes third degree criminal mischief, second degree criminal trespass, theft of services and third degree theft. The State Police have submitted testimony. (EXHIBIT A)

023 BILL LINDEN, STATE COURT ADMINISTRATOR: Submits and reviews written testimony in favor of HB 3426. (EXHIBIT B)

083 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION (OCDLA): Penalty could be set at something other than \$250 for these offenses.

HOLLY ROBINSON, COMMITTEE COUNSEL: Some, such as tobacco statutes, have higher penalties than \$250.

098 REP. TARNO: Asks about affecting an arrest for violation.

LINDEN: Is not certain about citizen's arrest process.

118 FRED AVERA, POLK CO. DISTRICT ATTORNEY: No authority to arrest if it is not a crime. Is not certain if a citizen can detain until an officer arrives to make a charge.

124 CHAIR TIERNAN: Discusses shoplifting and process of detaining and confiscation. How will merchants deal with the problem if they can't detain?

LINDEN: Belief of criminal offense is basis for detaining. Discusses rights or options.

HOLLY ROBINSON, COMMITTEE COUNSEL: Merchant could legally stop and question because he doesn't know value of stolen merchandise.

163 CHAIR TIERNAN: How will we allow the merchant to control shoplifting?

LINDEN: Need to know current legal basis for stopping and determine if we are taking that basis away.

183 REP. BROWN: Concerned about trespassing aspect in reference to medical clinics. Reads from State Police's testimony.

AVERA: If decriminalized, police officer's authority to arrest is taken away.

AVERA: If you decriminalize these offenses, you will save money but inconvenience others.

222 CHAIR TIERNAN: Asks for description of criminal trespass situations where arrest would not be a remedy.

SHEPARD: Trespass not in a residence would be affected by this bill.

CHAIR TIERNAN: Asks about police crowd control.

LINDEN: Discusses difficulties with reclassification of crimes.

247 AVERA: A better solution may be to make it more attractive for district attorneys to use the option of treatment for the violation.

CHAIR TIERNAN: Why can't we make it an option depending on seriousness of the crime?

AVERA: Problem is to delegate responsibility to officer at the scene to determine whether conduct is criminal or non-criminal.

284 HOLLY ROBINSON, COMMITTEE COUNSEL: ORS 131.655 deals with shoplift issue. Detention and citation is okay.

AVERA: Refers to State of Oregon v. Arthur August Rode. (EXHIBIT C)

Discusses pre-trial detention when decriminalizing theft.

323 REP. COURTNEY: You want to save money for what reason?

LINDEN: Attempting to get measures into the process to save indigent defense funds.

REP. COURTNEY: They have been reduced in the Governor's budget?

LINDEN: No, this is in anticipation of our appropriations process. Has been told that the budget amount is less than in the Governor's budget.

353 REP. COURTNEY: Asks for the amount that will be cut out of his budget.

LINDEN: Looking at \$5 - 10 million in potential savings with these bills.

REP. COURTNEY: How much is in the budget now?

LINDEN: \$82 million in indigent defense.

REP. COURTNEY: And you've been told you may have to drop off \$10 million.

LINDEN: Anticipating that is the amount that we might need to balance the reductions.

415 REP. KEVIN MANNIX, DISTRICT 32: Testifies in opposition to HB 3426.

TAPE 53, SIDE A

063 REP. BROWN: Concerned that this is not good public policy but it will save money. Asks witnesses if they think this is good public policy.

LINDEN: If there wasn't such a need to cut expenditures, it would be bad public policy. Should keep this on the table.

085 AVERA: Agrees with Mr. Linden. Is not good public policy to have criminal laws and regulate costs by depriving district attorneys of ability to prosecute.

110 REP. TARNO: Why not give district attorneys discretion of reduction of charges?

AVERA: Refers to ORS 161.565 regarding reducing misdemeanors to violations.

139 CHAIR TIERNAN: Discusses a cap and use of discretion. 152 AVERA: Would oppose any act to keep district attorneys from filing criminal actions.

CHAIR TIERNAN: Discusses cap to encourage district attorneys to use their discretion.

AVERA: Agrees. Describes why district attorneys don't use ORS 161 .565 as much as they could.

179 CHAIR TIERNAN: Discusses use of discretion by district attorneys in different areas of the state.

AVERA: Agrees different offenses mean different things in different parts of the country. Current law discourages allowing things to be reduced to violations.

204 REP. BROWN: If something is charged as misdemeanor and reduced to a violation, does that trigger the appointment of an attorney regardless

of how it is treated?

SHEPARD: (tape unintelligible)

(HB 3431 grants court authority to order an offender to pay restitution to the victim on a violation conviction.)

217 LINDEN: Submits and reviews written testimony in favor of HB 3431. (EXHIBIT D)

248 AVERA: Refers to subsection 2 on p. 2 of HB 3431. Discusses options

when a case is reduced to a violation and the defendant doesn't show up for trial.

268 SHEPARD: OCDLA supports HB 3431 but opposes "paragraph 2." Believes

that the defendant should be present if and when restitution amount is assessed.

284 REP. TARNO: Asks Counsel if there is a problem with a defendant's rights being denied if he is not present in court.

HOLLY ROBINSON, COMMITTEE COUNSEL: It can be done legally in limited

circumstances.

AVERA: Thinks that is true in a criminal case. Discusses default judgements.

305 CHAIR TIERNAN: Why is there an effect on expenditures?

LINDEN: Based on estimates from misdemeanor case load to see if restitution could be applied to violation cases. Addresses issue of restitution being assessed in defendant's absence.

349 CHAIR TIERNAN: Asks for clarification on restitution in violation cases.

LINDEN: Used figures from Multnomah County on misdemeanor cases pursued as violations.

374 LINDEN: Submits and reviews written testimony in favor of HB 3428. (EXHIBIT E)

448 SHEPARD: Testifies in opposition to HB 3428.

466 AVERA: Disagrees with Mr. Shepard on the constitutional issue.

TAPE 52, SIDE B

037 REP. TARNO: If this enters into a diversion agreement program there is no implication of guilt?

SHEPARD: There could be or there could not be. Explains.

052 HOLLY ROBINSON, COMMITTEE COUNSEL: Is there a distinction between dismissal and acquittal?

AVERA: A diversion agreement is a contract between the district attorney and the defendant which is different than involuntary indictment and acquittal.

CHAIR TIERNAN: And that is the one this bill is addressing?

AVERA: It is the clearest case of distinction. Bill also addresses DUII diversions and civil compromises.

(HB 3430 allows the court to order certain parent to pay cost of appointed counsel in certain juvenile proceedings.)

082 LINDEN: Submits and reviews written testimony in favor of HB 3430. (EXHIBIT F)

097 CHAIR TIERNAN: Does this also apply to remand cases?

LINDEN: No, not delinquency matters.

SHEPARD: Disagrees. Cites ORS 419.476.

LINDEN: Intent was to limit it to non-delinquency matters. Will check language.

115 CHAIR TIERNAN: What juvenile proceedings will this include?

SHEPARD: Lists case types.

CHAIR TIERNAN: Why doesn't it include the other criminal cases?

LINDEN: Recoupment in delinquency is already available under statute.

HOLLY ROBINSON, COMMITTEE COUNSEL: Asks for history of the omission.

124 LINDEN: Doesn't have the same kind of history as recoupment and civil compromise in this version.

139 REP. TARNO: Is there a need or reason to include the emancipation issue?

LINDEN: Legally there would be no parents to assess recoupment against.

(HB 3433 directs law enforcement agencies to provide district attorneys with an additional copy of reports to provide to defense counsel.)

156 LINDEN: Submits and reviews written testimony in favor of HB 3433. (EXHIBIT G)

185 CHAIR TIERNAN: Do we need a statute for this?

LINDEN: Yes, because there is contention about who is responsible for what.

REP. TARNO: Who makes decision to disclose? Is that the district attorney's

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