

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

March 24, 1993 Hearing Room 357 3:00 p.m. Tapes 57 - 58
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 3428 -
Relating to indigent defense HB 3430 - Relating to juveniles HB 3431 -
Relating to violations HB 3433 - Relating to criminal procedure HB 3434
- Relating to indigent defense ~ . 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.

TAPE 57, SIDE A

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

HB 3428 - WORK SESSION Witnesses: Bill Linden, State Court Administrator
Fred Avera, Oregon District Attorneys Association

008 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 3428 allows recoupment of
indigent defense costs where criminal case is disposed by civil
compromise or diversion. There are - 1 amendments proposed by the State
Court Administrator's office and a fiscal impact statement. (EXHIBIT A)

031 CHAIR TIERNAN: There were some constitutionality problems brought
up at the last work session. 034 HOLLY ROBINSON, COMMITTEE COUNSEL:
There is no question if the committee chooses to do this it will be
challenged. The questions that this will come down to are Subcommittee
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034 HOLLY ROBINSON, COMMITTEE COUNSEL: There is no question if the
committee chooses to do this it will be challenged. The questions that
this will come down to are - whether or not defendants who are
acquitted who clearly cannot be charged for recoupment of indigent
defense costs are technically the same or different than individuals who
are not guilty. The other issue is whether or not the fact that cases
are civilly compromised have the criminal charges dismissed and whether
or not the act of that court dismissal is something an appellate court
would look at. 055 BILL LINDEN, STATE COURT ADMINISTRATOR: There is a
question about what a federal court would do. This is a reasonable risk
to take. Civil compromise and diversion are prosecution avenues for the
benefit of the defendant. That is an argument in favor of the equity of
being able to assess attorney's fees recoupment against those
individuals. 064 FRED AVERA, POLK CO. DISTRICT ATTORNEY; OREGON
DISTRICT ATTORNEYS ASSOCIATION: It is something that is worth a try.
People pay the cost when they are guilty of a crime and get it dismissed
under a civil compromise or a diversion. If a federal court says you can
do it, then you have achieved a measure of justice and some revenue for
the state. 073 REP. TARNO: HB 3428 applies to individuals entering
into plea bargain that would make them eligible for a diversion program
or reduce the charges, correct? AVERA: If the plea bargain is to reduce
the charges and they are going to be pleading guilty to something, there
is already statutory authority in connection with sentence on whatever
they are guilty of to order them to pay the cost of a court appointed
attorney. The issue is now that one type of plea bargain defendants are
eligible for is a district attorney's diversion agreement. Explains
process. Statute allows us as part of that agreement to require the
defendant to admit his guilt and waive jury. If they fail diversion, a
finding of guilt is entered in court. 095 REP. TARNO: This bill also

applies to individuals who do not enter into a agreement and want to contest a case? AVERA: If a person wants to go to trial and contest the case, if they are found innocent constitutionally no one can make them pay back attorneys fees. If found guilty then there is adequate statutory authority to compel the restitution to the state for costs of defense. 106 HOLLY ROBINSON, COMMITTEE COUNSEL: The unresolved question that needs to be addressed is will these bills need to be referred to the Appropriations Committee. If action is taken, it can be a "do pass" recommendation and then issue of referral can be addressed by the time it reaches the full committee.

113 LINDEN: There were -1 amendments presented at the hearing ~at have not been acted on.

HOLLY ROBINSON, COMMITTEE COUNSEL: Amendments were requested by the State Court Administrators Office and are primarily clean-up. Section 3 would add a new section which would make this new provision applicable only for offenses committed on or after January 1, 1994. Subcommittee on Crime and Corrections March 24, 1993 - Page 3

1 19 MOTION: REP. COURTNEY: Moves to ADOPT -1 AMENDMENTS TO B 3428 dated 3-23-93. VOTE: 4-0 MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan - NO: None 123 MOTION: REP. COURTNEY: Moves HB 3428 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation. VOTE: 3-1 MOTION PASSES AYE: Brown, Courtney, Tiernan NO: Tarno

HB 3430 - WORK SESSION Witnesses: Ross Shepard, Oregon Criminal Defense Lawyers Association

129 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 3430 grants juvenile court authority to order parents whose children are before the court on juvenile proceedings other than delinquency matters to repay to the state the cost of providing court-appointed counsel and expenses. There are -1 amendments suggested by the State Court Administrator. (EXHIBIT B) 147 MOTION: REP. COURTNEY: Moves to ADOPT -1 AMENDMENTS TO HB 3430 dated 3-23-93. VOTE: Hearing no objections the amendments are ADOPTED. All members are present. 152 ROSS SHEPARD, OREGON CRIMINAL DEEENSE LAWYERS ASSOCIATION: Thinks committee should do this but it won't collect a lot of money.

155 MOTION: REP. COURTNEY: Moves HB 3430 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation. VOTE: 4 0 MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan NO: None Subcommittee on Crime and Corrections March 24, 1993 Page 4

HB 3431- WORK SESSION - Witnesses: Fred Avera, Oregon District Attorneys Association Ross Shepard, Oregon Criminal Defense Lawyers Association Bill Linden, State Court Administrator

163 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 3431 grants court authority to order an offender to pay restitution to the victim on a violation conviction. Allows court to hear a misdemeanor case if defendant is not present if the court treats the case as a violation. Two objections have been raised by district attorneys about why they are not inclined to support this: 1) whether or not the court has statutory authority to order restitution on a violation, and 2) whether or not the court can proceed if the defendant is not present. There are -1 amendments. (EXHIBIT C) 186 E RED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: Thinks it is a good idea. ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Objections raised at the last hearing are met by the

proposed amendments. 190BILL LINDEN, STATE COURT ADMINISTRATOR: One amendment deals with assessment of restitution violation cases. Section 5 provides that if there is a failure to appear, a default can be entered against a defendant, then the defendant cannot be charged for failure to appear on a misdemeanor or violation. Would require the defendants to acknowledge in writing that the possibility existed that restitution could be assessed against them. SHEPARD: That meets the due process problems that I had. My original objection was that not only could the defendant be found guilty of the violation, but a restitution amount be set without the defendant having a chance to make a presentation to the court. If the defendant is on notice that restitution amount may be entered against him, and then he chooses not to appear, the court would have the authority under that restitution amount.

222 MOTION: REP. COURTNEY: Moves to ADOPT -1 AMENDMENTS TO HB 3431 dated 3-2-93. VOTE: Hearing no objections the amendments are ADOPTED. All members are present. 225 MOTION: REP. COURTNEY: Moves HB 3431 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation. VOTE: 4 0 MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan NO: None

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HB 3433 - WORK SESSION

Witnesses: Sgt. Michael Ramsby, Oregon State Police Ross Shepard, Oregon Criminal Defense Lawyers Association Bill Linden, State Court Administrator Dale Penn, Marion County District Attorney Fred Avera, Oregon District Attorneys Association

234 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 3433 directs law enforcement agencies to provide district attorneys with an additional copy of reports to provide to defense counsel. CHAIR TIERNAN: Clarifies and restates purpose of the bill. 273 SGT. MICHAEL RAMSBY, CRIMINAL INVESTIGATIONS DIVISION, OREGON STATE POLICE: State Police are opposed to the bill. Believes there will be a fiscal impact to all law enforcement agencies in having to duplicate cases. Approximately 70% of cases going to the district attorney are prosecuted. Copy time and expenses are a burden. Frequently have cases that involve multiple case books. State Police estimates a \$94,000 fiscal impact. 297 CHAIR TIERNAN: Asks how big the average file is.

RAMSBY: Difficult to estimate. An average homicide file might involve half a dozen three ring binders plus photographs and charts. Major cases involve cardboard boxes of documents.

310 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: The prosecution is mandated to provide the defense with all applicable police reports. Just a matter of who is going to make the second copy.

BILL LINDEN, STATE COURT ADMINISTRATOR: Half a million dollars are spent each biennium paying district attorneys \$5.00 to \$7.00 per case for discovery. If the copy were obtained by the originating agency there might be less time and expense involved pulling files and making additional copies for the defense counsel. The idea was to limit the expense for everyone and bring down the half a million dollar figure by \$115,000.

327 CHAIR TIERNAN: Right now we spend about \$500,000 and why would it go down?

LINDEN: For every case in which the originating law enforcement agency is providing the copies, there wouldn't be the clerical activity in the district attorneys office that would justify the \$5 or \$7 per case expense.

CHAIR TIERNAN: But we just shift that clerical activity to the law enforcement agency?

LINDEN: Correct. Subcommittce on Crime and Corrections March 24, 1993 - Page 6

339 REP. BROWN: Then the district attorneys only copy those cases for which there is a defense counsel. If the law enforcement agencies are doing the copying you are going to have 30% more being copied than what is being used. UNDEN: There is that possibility. - 352 CHAIR TIERNAN: How many of those are indigent defense cases?

UNDEN: On a state wide basis, in felonies, about 90% are indigent. In misdemeanor cases it is approximately 2/3.

360 REP. TARNO: Asks witnesses why there is a need to charge the state for copies of the reports.

DALE PENN, MARION COUNTY DISTRICT ATTORNEY: It is a substantial amount of copying. There will be 30-35% of the cases that are not filed by the district attorneys. Additional cost is for copies that are not needed. Law says district attorney must provide the defense an opportunity to view the discovery. The amount was negotiated ten years ago. Has one person in his office who does nothing but copy files.

408 REP. TARNO: Should law enforcement pick up this tab if district attorneys are the ones to decide which ones are to be prosecuted?

PENN: Believes it is better to leave system the way it is. Would be a hardship on law enforcement and unnecessary duplication. Right now the system is as efficient as it can be. May save administrative cost in district attorney's office but will be transferred to law enforcement agency.

444 REP. TARNO: Moves to table the motion and for the state court administrator to look at other alternatives. Withdraws motion at request of the chair in order to finish discussion.

464 SHEPARD: Maybe idea could be limited to felonies.

PENN: 35% is a valid percentage.

AVERA: There are murder cases that have been filed with no defendant to give discovery to. We wait until there is a defendant to make the copies.

495 LINDEN: It would help, and would lower the amount we think we might save.

TAPE 58, SIDE A

025 CHAIR TIERNAN: If the police departments were to do that, how

efficient would that be in regards to duplicates?

LINDEN: It would be 30% of a lesser total amount. Subcommittee on Crime and Corrections March 24, 1993 - Page 7

030 REP. BROWN: Was told that Multnomah County was already provided two copies of information by Portland or Mult. Co. law enforcement. If there are other counties doing that - wouldn't that reduce our savings substantially?

LINDEN: Is not certain about practice in Multnomah Co. If that is happening, they are voluntarily saving us some expense. Fairly certain it is not happening elsewhere. The half a million dollars being spent this biennium is a fairly stable amount.

PENN: There are some departments who do that when preparing case files. Those savings are already there. This bill will impact agencies who are not doing that.

AVERA: Multnomah County District Attorneys office says that the second copy goes to victim's assistance office so it is not impacting indigent defense.

049 RAMSBY: "If we use the half a million figure per biennium and subtract the state police estimate of \$90,000, we are looking at an unfunded cost to local governments, sheriff's offices and police departments in excess of \$250,000."

CHAIR TIERNAN: Confirms that there is no issue of the defense attorneys asking for more copies than they need.

060 MOTION: REP. TARNO: Moves TO TABLE HB 3433 and to ask the State Court Administrator to look at other alternatives. VOTE: 4-0
MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan NO: None

066 CHAIR TIERNAN: Calls recess at 3:40 p.m. Reopens meeting at 3:45 p.m.

HB 3434 - WORK SESSION

Witnesses: Bill Linden, State Court Administrator Ross Shepard, Oregon Criminal Defense Lawyers Association Fred Avera, Oregon District Attorneys Association Dale Penn, Marion County District Attorney

072 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 3434 requires the State Court Administrator to allocate money appropriated for representation of indigent persons to counties on a percentage basis. Will have the Chief Justice by court order establish a formula which would then be used to distribute or allocate to the counties what their indigent defense appropriation will be as well as their case load appropriation. There has been discussion Subcommittee on Crime and Corrections March 24, 1993 - Page 8

about what elements would be accounted for in the formula and who would participate in that discussion. There are -1 amendments. (EXHIBIT E) Explains proposed amendments.

104 BILL LINDEN, STATE COURT ADMINISTRATOR: The indigent defense case load has grown by 130% and the expense by 129% in the last ten years.

The bill is based on the assumption that the indigent defense fund and the general funds that support it are not going to be held harmless in the Measure 5 environment. It will require the legislature to decide how much indigent defense we can afford in the next biennium and then cap that figure. After that we would be required to tell each county what their share of that cap figure is. If they decide to exceed that level, the counties would be required to reimburse the state general fund. If the fund is cut and the case load is not, we will need to ask for more money next biennium.

129 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: From a defense perspective, the solution is to adequately fund the indigent defense budget initially.

133 FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: It is a fallacy that county government has any substantial impact on indigent defense costs. A bill that transfers the obligation to pay from the state to an entity that has no control over the cost will not solve the problem. If the county is required to fund a program, they need to be able to decide to what degree they will fund it.

CHAIR TIERNAN: The proposal is to let the county commissioners set what the fees would be.

AVERA: The proposal was once the money runs out, the county should be able to set priorities as to what it wants to do with its resources.

168 SHEPARD: Doesn't think it is a good idea. The defense counsel will be the only ones punished for district attorney charging practices. The judges lose control over who is practicing before them, and the established state system that works well will be dismantled.

DALE PENN, MARION COUNTY DISTRICT ATTORNEY: Dislikes that one segment of a system is imposing upon everyone with no control to anyone. It will do more to harm law enforcement in the state than closing 2,000 prison beds. The counties have no control over the court system which allows it free rein. Cities have more impact on the number of cases that run through the justice system than anyone. Opposes the bill because there is no control in the system. Needs to be a partnership between the courts, the police, the counties, the prosecutors and defense bar. The courts cannot be taken out of this problem. 228 LINDEN: HB 3434 does nothing to remove the court system from indigent services. It says how much state general fund money can be spent, divides it between the counties, and leaves local flexibility to pursue law enforcement policies that would exceed that. Only then is the county responsible to put money into the defense function. This is one way there would be a predictable indigent defense for the coming biennium and does not need to be studied more.

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253 PENN: Issue of not impacting counties and capping the amounts is not true. The county has no control over how much is paid or spent in a case, it is all done through the court system. - Nothing has ever been implemented on a system wide basis to try to deal with this problem. There are alternatives but they have not been tried. Feels the bill is bad policy. 285 CHAIR TIERNAN: Intent is to send the bill to full committee for discussion. 298 REP. TARNO: Does this not give state control over the county budgeting process? LINDEN: Not in any way.

It indicates that the state has a certain amount of funds it can spend for a service. If a county chooses to spend at a higher level, the county picks up a small share of the financial responsibility.

308 REP. TARNO: Does put an onus on the counties to set aside funds as a contingency if this does occur. LINDEN: They could decide to do whatever they want at the local level. We are talking about prosecution at a rate consistent with what has been seen in the 199 0's.

319 PENN: The county has no control over that. They do not say how much is paid to defend a case, do not negotiate the contract. All they can do is lay off prosecutors and police officers at the county level to make an impact on the case load. Will be given a bill at the end of the biennium and will have to pay it with no say over how much it is.

329 AVERA: Mr. Linden says the counties will have a choice about what to do under this bill. The choice is either set aside budget funds or go to jail for violating budget law. REP. BROWN: Has a hard time believing the county has no control. Do you operate with blank check in terms of indigent defense? Do you go full bore on cases regardless of the financial consequences or do you decide which cases are worth spending tax payer money on? PENN: We decline cases because of cost factors. We have a budget we must stay within. Witness fees are partly funded by the state. Those are being cut 9090 this biennium. 360 REP. BROWN: How will this be any different? PENN: Because the county has no control over how much the contract is negotiated, what is paid to defend a case. It is different in every county. That is still going to be negotiated by the state and the county has no control over that. Once the funds are gone, if the county wants to pay new monies, then they can negotiate a contract. 377 LINDEN: It is true we negotiate contracts and we have a statutory rate we pay lawyers.

390 PAUL SNYDER, ASSOCIATION OF OREGON COUNTIES: Refers to the 1980 report of the Oregon Commission on the Judicial Branch which resulted in the bills which resulted in turn in the court takeover by the state. Agrees with Mr. Linden that 125% growth is a significant increase. In a period from 1970 to 1979 the costs to counties of indigent defense increased 500%. Subcommittee on Crime and Corrections March 24, 1993 - Page 10

422 MOTION: REP. TARNO: Moves to ADOPT -1 AMENDMENTS TO HB 3434 dated 3-16-93. VOTE: Hearing no objections, the motion is adopted. Rep. Courtney is excused. MOTION: REP. PARKS: Moves HB 3434 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation. VOTE: 4-0 MOTION PASSES AYE: Brown, Parks, Tiernan NO: Tarno EXCUSED: Courtney 440 CHAIR TIERNAN: Adjourns meeting at 4:00 p.m. Submitted by: Reviewed by: Julie Nolta Anne May Committee Clerk Committee Assistant

EXHIBIT LOG: A - Proposed amendments to HB 3428 - 1 page B - Proposed amendments to HB 3430 - 1 page C - Proposed amendments to HB 3431 - 1 page D - Testimony on HB 3433 - Oregon State Police - 2 pages E - Proposed amendments to HB 3434 - 1 page

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