

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

March 30, 1993 Hearing Room 357 3:00 p.m. Tapes 61- 62
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 2481-
Relating to corrections HB 2232 - Relating to corrections

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TAPE 61, SIDE A

001 CHAIR TIERNAN: Calls meeting to order at 3:08 p.m.

HB 2232 - PUBLIC HEARING Witnesses: Joanne Fuller, Department of Corrections Robert McAlister, Oregon Health Division

002 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2232 creates a Department of Corrections review panel that receives offender information regarding HIV status and determines by majority vote whether to disclose the information to the court or supervisory or releasing authority. (EXHIBIT A) 042 JOANNE FULLER, DEPARTMENT OF CORRECTIONS: Submits and reviews written testimony in favor of HB 2232. (EXHIBIT B, C) 079 REP. BROWN: Not clear as to why this information is necessary for parole and probation officers. All clients are potentially HIV positive and the officers act accordingly. Why do they need this information?
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FULLER: Not proposing that information be shared with probation officers but that probation officers share information with the court.

101 HOLLY ROBINSON, COMMITTEE COUNSEL: In that context, in current law the results don't go to the court. The ability of the court to get the information in a parole violation hearing does not exist under law.

CHAIR TIERNAN: Asks for example of how this would come up.

FULLER: There might not be a victim that comes forward but there is violation behavior. The officer may have previously discussed HIV status with the offender and is concerned that the offender may put others at risk.

121 CHAIR TIERNAN: The officer may only find out if the information was volunteered by the offender.

FULLER: Explains three ways the probation officer may find out the offenders HIV status.

132 CHAIR TIERNAN: You are talking about some form of admission or permission to find out.

FULLER: Explains what the probation officer would do upon finding out an offenders HIV status.

151 CHAIR TIERNAN: The offender who volunteered the information to his parole officer would have to commit another crime?

FULLER: Would have to commit a probation violation involving his bodily fluids, such as sharing needles.

159 CHAIR TIERNAN: Why do you need a panel?

HOLLY ROBINSON, COMMITTEE COUNSEL: Sharing needles would come under the proposed changes. The panel deals with the situations where there was not transmission of bodily fluids or a sex offense.

FULLER: There has to have been the transmission of bodily fluids or sexual contact in order for probation officer to take the first step to share the information with the panel.

169 CHAIR TIERNAN: If he is back because he molested a child, then what happens?

FULLER: He is either charged with new a crime or probation officer writes him up for a violation. He could be tested for HIV under Section 3 of the bill. The probation officer could take information to the panel and possibly to the judge.

186 CHAIR TIERNAN: What is the purpose of the panel? Why can't the information just be given to the judge?

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FULLER: The panel was developed because the Health Department and Department of Corrections was concerned that officers might share inappropriate information which can't be retracted. Needed a review process by an objective group.

196 HOLLY ROBINSON, COMMITTEE COUNSEL: What would prevent an officer from putting in a presentence report?

FULLER: Our attorney has advised us not to disclose information regarding HIV status with anyone.

HOLLY ROBINSON, COMMITTEE COUNSEL: The defendant has admitted that he is HIV positive so you are not disclosing status but an admission.

FULLER: We have been advised that we can't do that.

208 REP. BROWN: Why not?

FULLER: Admission is covered by confidentiality laws.

HOLLY ROBINSON, COMMITTEE COUNSEL: But you are not sharing the information that they are HIV positive but information that the individual has stated.

FULLER: Correct, but we have been advised that we cannot share that information.

217 CHAIR TIERNAN: Once an admission has been made, you have given up the right to confidentiality. HOLLY ROBINSON, COMMITTEE COUNSEL: Not so much a confidentiality issue as an unsupported statement. CHAIR TERNAN: You don't know if it is true, only that it was said. 225HOLLY ROBINSON, COMMITTEE COUNSEL: Concerned that without amending other confidentiality laws, the court couldn't share the information with anyone other than the defendant. Explains catch-22 situation of hearsay information and the confidentiality laws. 253 ROBERT MC ALISTER, HIV PROGRAM MANAGER, OREGON HEALTH DIVISION: Submits and reviews written testimony in favor of HB 2232. 274 MOLLY ROBINSON, COMMITTEE COUNSEL: Can't change statutory confidentiality laws by rule. Unless separate test is ordered which panel may not be able to do, you're back in the catch-22. 278 MC ALISTER: May be ways to get confirmation that would not require going against existing statutes or even getting another test. Could get a signed release for medical records. HOLLY ROBINSON, COMMITTEE COUNSEL: Why wouldn't parole officer do that then?
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MC ALISTER: Sometimes a parole officer may viewed in an adversarial position where Health Division may not.

HOLLY ROBINSON, COMMITTEE COUNSEL: In a review panel situation where no names are known, how can the offender with HIV be approached?

CHAIR TIERNAN: Asks that the discussion be held for work session and that the witness continue testimony.

311 MC ALISTER: Continues testimony.

349 REP. TARNO: Will there be a point when we will recognize HIV and AIDS as being an epidemic and go public with that information?

MC ALISTER: We have recognized HIV as an epidemic for many years now.

REP. TARNO: Would you agree that the confidentiality law is somewhat outdated?

MC ALISTER: There is no reason to believe they are.

REP. TARNO: In the beginning, AIDS primarily hit homosexual community and drug users and now it is in every facet of society. Wouldn't that change warrant a different perspective on the statutes regarding AIDS?

MC ALISTER: Not necessarily. Estimates 8-10,000 people are HIV positive in Oregon. The ability to control the spread of the epidemic depends on the people at risk seeking diagnosis. We need to do everything possible to create a friendly atmosphere for high risk people so they will come forward for testing and counseling. If we send a message that the information will be shared, then people are unlikely come forward for testing.

415 REP. TARNO: The State Health Division's philosophy hasn't varied a great deal since the outbreak?

MC ALISTER: Not accurate. Used to be much less concerned about teaching about processes and referrals. Now other services and education can be offered.

450 REP. BROWN: People may not want to come forward because they are

treated differently and discriminated against and this is a reason for confidentiality.

MC ALISTER: That is entirely accurate.

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(HB 2481 creates within the Department of Corrections a special alternative incarceration program stressing a highly structured and regimented routine based on a military basic training model and providing cognitive restructuring and drug and alcohol treatment. Offenders must submit a written request to participate and the Department is solely responsible for deciding who is accepted into the program.)

Witnesses: Rep. Peter Courtney, District 33 Frank Hall, Department of Corrections

019 REP. PETER COURTNEY, DISTRICT 33: Submits and reviews written testimony in favor of HB 2481. (EXHIBIT E, F) The bill is fighting an uphill battle for funding.

198 REP. TARNO: In regards to sunset, how long would it take for an evaluation of the program?

FRANK HALL, DIRECTOR, OREGON DEPARTMENT OF CORRECTIONS: Would know within two years. Would have recidivism data. (EXHIBIT G, H)

210 REP. COURTNEY: First class would have to be out for four to six years before knowing about recidivism rates.

225 REP. TARNO: Likes the concept of the bill but wants to know how long it will be before we have a positive idea of how effective it will be. ~ . HALL: First class could start October 1 and would be graduated and out in the community by the end of the biennium. Would have a good feel for success within two years.

REP. TARNO: If we were to sunset this in July of 1997?

HALL: Yes. Would have real data by that time.

250 REP. BROWN: What is different about this program than will make it a success?

REP. COURTNEY: In other programs, serious mistakes have been made in screening and connection to the community when released. No support after release was a mistake.

HALL: Agrees that screening is a key element. Explains screening

criteria and process. Discusses elements of the program which are heavily oriented to treatment.

317 REP. BROWN: Does the intensity of the program make up for its brevity? Subcommittee on Crime and Corrections" March 30, 1993 - Page 6

HALL: The intensity is key and follow up must be there. The right kind of treatment will work and the screening process must be rational. It is critical to house people in the same treatment program together as it will make the program more effective. Military model is very effective.

393 REP. COURTNEY: We are doing much more than the physical part of the boot camp. The program may be more effective for women than men. Will gain self-image and self-respect.

CHAIR TIERNAN: Did you feel in boot camp that a lot of people were changed?

REP. COURTNEY: Yes. You cannot go through that program and have it roll off you.

438 REP. TARNO: Is this a front end program or back end?

HALL: Could be back end program for some people. Initial classes would be identified right at intake. They would likely be in trouble before but not in prison. The positive impact of the program would be self esteem and sense of accomplishment from participation and contribution. Corrections can only be effective if we demand something - a change in the way they think and lead their lives.

483 REP. TARNO: Concerned about hard core drug addicts who have been in and out of prison being admitted into the program.

HALL: That type of person probably wouldn't be in the program.

TAPE 61, SIDE B

032 REP. TARNO: Does the program have flexibility to accept someone at year six of a ten year sentence?

HALL: Yes, with the exception of the excluded sentences. Could be the last stop on their way out of prison. Would have to screen carefully.

044 CHAIR TIERNAN: Sees how military experience can change people because of structure and intensity. Changes mental attitude. Thinks it is a good tool.

HALL: Can have a positive impact on self-image by working as a team and contributing.

090 CHAIR TIERNAN: How many can we put through in a year?

HALL: If we started on October, could have 500 through by the end of the biennium.

108 REP. TARNO: What if someone drops out in five months?

HALL: Goes back to prison and completes his sentence.

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111 REP. TARNO: Is the camp in a confined setting?

HALL: Facility at Coos Bay used to be a military installation and most activity would be within the facility.

REP. TARNO: What would happen to existing staff?

HALL: We would select new staff specifically for the program.

128 CHAIR TIERNAN: Not everyone has mind set to succeed in that type of program. The screening system is important. HALL: We will have failures. Other programs failed to carefully screen and properly orient the applicants about what the program will demand. Estimates will lose 10%. CHAIR TIERNAN: That is important to the credibility of the program.

156 REP. COURTNEY: Didn't say that the program will be 100% successful. At least 30% will fail. 173 REP. BROWN: If the program was longer, would recidivism rate decrease? HALL: No. There is a diminishing return. Alcohol and drug treatment follow up may be needed but not at same level of intensity. Six months is a good length of time for the program. REP. COURTNEY: Discusses the fact that after 3 years of jail time, the prisoner becomes numb. Six months will probably get the job done. HALL: Also looking at experience of other programs and six months seems to be the model. 306 CHAIR TIERNAN: Because of regimentation, six months is a long time. 216 HALL: Department of Corrections strongly support the bill. Will have measurable impact on recidivism rates. It is an investment and prevention strategy, but is not a cure all. 252 CHAIR TIERNAN: Is it possible to get military drill instructors for the program? HALL: Selection and training of staff is critical. There is interest within Corrections staff. Thinks it will help staff also in mental attitudes about their jobs. 291 CHAIR TIERNAN: What types of crimes would be the main emphasis in this program?

HALL: Will see people with drug problems and drug history, property crimes, and robbery.

317 REP. COURTNEY: Concerned about Rep. Tarno's district where the program will be located. Wants to be sensitive to communities that house penal facilities. Doesn't want sex

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offenders in this program because they aren't curable and doesn't want them in communities.

HALL: The Coos Bay facility has 200 inmates and has a good relationship with the community. Have excluded people from the boot camp program that are currently at Coos Bay.

390 REP. COURTNEY: Mr. Hall wants the legislature's support for the idea.

413 REP. TARNO: He doesn't need the money?

REP. COURTNEY: Needs the funding but does not need permission. Wants support.

450 CHAIR TIERNAN: Adjourns meeting at 4:35 p.m.

Submitted by: Reviewed by: Julie NoltaAnne May Committee
Clerk Committee Assistant

EXHIBIT LOG:

A - Proposed amendments to HB 2232 - 2 pages B - Proposed amendments to
HB 2232 - Dept. of Corrections - 2 pages C - Hand-engrossed HB 2232 -
Dept. of Corrections - 3 pages D - Testimony on HB 2232 - Dept. of
Corrections - 2 pages E - Testimony on HB 2481 - Rep. Peter Courtney - 2
pages F - Proposed amendments to HB 2481 - Rep. Peter Courtney - 3 pages
G - Testimony on HB 2481 - Department of Corrections - 2 pages H -
Testimony on HB 2481 - Dept. of Corrections - 15 pages

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