

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

April 15, 1993      Hearing Room 357 3:00 p.m.      Tapes 78 - 79

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 3571 - Relating to evidence HB 2370 - Relating to corrections

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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 78, SIDE A

001      CHAIR TIERNAN:    Calls meeting to order at 3:15 p.m.

HB 2370 - WORK SESSION

(HB 2370 allows the Department of Corrections or a county to require an inmate to perform work or services in order to reimburse for rehabilitation costs; to provide restitution to crime victims; for maintenance of prison safety; for

support of the inmates' family to learn job skills and assist in rehabilitation.)

Witnesses:            Judge Robert Y. Thornton, Oregon Court of Appeals

008      JUDGE ROBERT Y. THORNTON, SENIOR JUDGE, OREGON COURT OF APPEALS: Favors proposed -2 amendments which enable the Director of Corrections to fix

reasonable compensation for the inmates in order to allow for overhead

in the Unigroup administration. Inmates should pay a portion of their room and board without their whole wage being applied to the cost of operation. Suggests language that the advisory board or county shall endeavor to minimize any negative impact on private firms, employers and workers in this state. Does not allow for veto power. The \$3 wage cap

should be removed from the bill because of the Director's ability to fix a reasonable wage.

HB 3571 - PUBLIC HEARING

Witnesses: Rep. Kate Brown, District 13

Judith Armatta, Oregon Coalition Against Domestic and Sexual Violence  
Priscilla Seaborg, Commission for Women Kathy Kyle, Mid Valley Women's  
Crisis Service Fred Avera, Oregon District Attorneys Association

097 CAROLE SOUVENIR, COMMITTEE COUNSEL: HB 3571 allows a person to introduce evidence of a pattern or practice of abuse by another when that person raises the defense of self-defense or duress. Refers to relevant appellate court case (EXHIBIT D) and amendments proposed by the Oregon Coalition Against Domestic and Sexual Violence. (EXHIBIT E)

(Other exhibits: F, G, H)

123 REP. KATE BROWN, DISTRICT 13: Testifies in favor of HB 3571.

176 JUDITH ARMATTA, LEGAL COUNSEL, OREGON COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE: Submits and reviews written testimony in favor of HB

3571. (EXHIBIT I)

278 PRISCILLA SEABORG, BOARD MEMBER, COMMISSION FOR WOMEN: Submits and reviews written testimony in favor of HB 3471. (EXHIBIT J)

404 REP. BROWN: Language of the bill has been drafted in gender neutral terms because there are instances of battered men syndrome.

411 CHAIR TIERNAN: What are the elements of Battered Woman Syndrome?

SEABORG: Describes three phases which are cyclical: tension building, physical assault, and the "roses" phase.

ARMATTA: Discusses learned helplessness as a part of the cycle and the reason for bringing into the bill the history of domestic violence and its affect on the actions of the victim.

CHAIR TIERNAN: Confirms that the bill allows the jury to hear evidence relevant to the history of the defendant. What is the difference between this bill and delayed self-defense?

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023 ARMATTA: It is a type of self-defense. Not all victims are the same

because of the context in which they live. The law as written is based on what a reasonable man would do and we need something different in this case. 049 CHAIR TIERNAN: What is the main legal difference between self defense and this defense? Why doesn't self defense cover this problem?

SEABORG: Most cases where women were convicted of murder did not fit into traditional self defense definitions. There was not imminent fear at the moment.

069 CHAIR TIERNAN: Would this defense also apply to a child in fear of physical or sexual abuse?

ARMATTA: Yes.

REP. BROWN: For the most part, judges are allowing this testimony in Oregon as long as it is relevant.

ARMATTA: Many are. Concerned that attorneys aren't bringing it up or aren't bringing it up properly.

080 SEABORG: Some expert witnesses can charge up to \$8,000 in expenses. In federal cases we had to fit Battered Woman Syndrome into Post Traumatic Stress Disorder. (PTSD)

ARMATTA: PTSD doesn't mean the woman is psychologically sick, it explains her actions. 111 CHAIR TIERNAN: Would this defense apply to a wife's killing her husband and over abuse of the children?

SEABORG: Yes, it is included in our amendments.

124 REP. TARNO: Would this bill alleviate expert witness costs?

ARMATTA: Not necessarily. It would give guidance to the court for the necessity of an expert witness for a fair trial but it doesn't have to be a \$5,000 cost.

134 REP. TARNO: Is there common language used in a court setting to qualify experts on this subject?

ARMATTA: Oregon statutes provide in evidence code that an expert can be qualified by the virtue of experience, training, education, etc. The court or attorney can decide.

168 KATHY KYLE, MID VALLEY WOMEN'S CRISIS SERVICE: Submits and reviews written testimony in favor of HB 3571. (EXHIBIT K)

299 FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: Submits and reviews written testimony in opposition to HB 3571. (EXHIBIT L)

TAPE 78, SIDE B

025 AVERA: Continues testimony.

229 CAROLE SOUVENIR, COMMITTEE COUNSEL: Asks Mr. Avera if it makes a difference that the proposed bill uses "history of abuse" and not "battered person syndrome" so that it does more than current law does.

AVERA: If the defense of self defense, diminished capacity or temporary insanity is raised and if there has been a history of abuse, it goes to the victim's psyche at the time of the murder. Believes it should be relevant under ORS 401.

258 REP. COURTNEY: Discusses self defense, PTSD and the concept of fear of imminent violence.

AVERA: Under the defense of self defense or defense of others, the defendant has to show reasonable belief of use or imminent use of unlawful physical force. In the Battered Woman Syndrome and PTSD, the prior incident is a history of battering.

330 REP. COURTNEY: How relevant is "imminent" in these discussions versus the trauma they have experienced? Discusses testimony regarding victims who were sleeping and the issue of "imminence." Can get off track by discussing "self defense."

359 AVERA: The bill would not change the definition of "self defense" and would not remove "imminence" from "self defense." Battered Woman Syndrome (BWS) testimony helps a jury understand why a defendant thought unlawful force directed toward her was imminent.

REP. COURTNEY: Is not sure the word "imminent" should be used in discussions.

AVERA: SCR 1 resolves that domestic abuse is a problem and is not adequately addressed in the court system. ODAA supports SCR 1. It is an area that needs to be studied and addressed.

424 REP. BROWN: Asks Mr. Avera if the language in the amendments is satisfactory, aside from codifying the Battered Woman Syndrome.

434 AVERA: Is opposed to codifying things we don't need. The body of knowledge on BWS is greater than it was ten years ago.

460 REP. BROWN: Self defense is codified and wouldn't you agree that BWS is similar to self defense?

AVERA: It is a form of self defense.

REP. BROWN: By including it in statute wouldn't it help increase public awareness, attorney's awareness and judge's awareness of BWS?

AVERA: Agrees.

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021 REP. BROWN: Concerned that there is a discrepancy in the judicial system in terms of women and how their cases are handled.

AVERA: Agrees.

SEABORG: This is an issue of "imminence" and to get an acquittal, self defense has to be argued. PTSD is only used to bring in expert testimony. The bill would add the effects of history of abuse between the parties to establish the person's belief of imminent use of unlawful physical force.

CHAIR TIERNAN: The question we need to answer is "as a matter of law, do we need this to protect victims and to give people a defense?"

093 CHAIR TIERNAN: Adjourns meeting at 5:00 p.m.

Submitted by:

Reviewed by:

Julie Nolta  
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Proposed amendments to HB 2370 - 2 pages B - Proposed amendments to HB 2370 - 3 pages C - Statutes relevant to HB 2370 - 2 pages D - Court case relevant to HB 3571 - Committee Counsel - 6 pages E - Proposed amendments to HB 3571 - Oregon Coalition Against Domestic and

Sexual Violence - 2 pages F - Statutes relevant to HB 3571 - Committee Counsel - 6 pages G - Testimony on HB 3571 - Committee Counsel - 3 pages H - Testimony on HB 3571 - Committee Counsel - 4 pages I - Testimony on HB 3571 - Oregon Coalition Against Domestic and Sexual Violence - 6 pages J - Testimony on HB 3571 - Oregon Commission for Women - 2 pages K - Testimony on HB 3571 - Mid Valley Women's Crisis Service - 14 pages L - Testimony on HB 3571 - Oregon District Attorneys Association - 13 pages M - Testimony on HB 3571 - Oregon Commission for Women - 1 page