

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

April 20, 1993 Hearing Room 357 3:00 p.m. Tapes 80 - 81

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 3139 - Relating to criminal law HB 3140 - Relating to criminal law HB 3141 - Relating to criminal law HB 2226 - Relating to corrections HB 2508 - Relating to crime

[--- Unable To Translate Graphic ---]

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 80, SIDE A

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

HB 2226 - WORK SESSION

008 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2226 allows the director of the Department of Corrections to establish by rule an emergency leave program for inmates who need medical services not available within the

institution. Summarizes a letter from the Department of Corrections outlining reasons for inmate hospitalization. (EXHIBIT A)

MOTION: REP. BROWN: Moves HB 2226 TO FULL COMMITTEE with a DO PASS recommendation.

REP. COURTNEY: Concerned about hospitals and how they might react.

052 HOLLY ROBINSON, COMMITTEE COUNSEL: Testimony from Denis Dowd at the bill's first hearing stated that he had been in contact with the Salem

hospital and that they were not concerned.

062 CHAIR TIERNAN: Contacted security firms who charge an average of \$10

per hour. Doesn't like the bill. Is not sound public safety decision. Could become an intent to escape if an inmate was unescorted. Would support the bill if we would supply some security for the person.

REP. TARNO: Tends to support the bill. If we can put the onus on the inmate for paying part of medical costs. Would also go to the condition of the inmate.

107 CHAIR TIERNAN: They are in prison for a reason and has a hard time with letting them out.

REP. BROWN: Feels comfortable with the bill. There are currently circumstances where they are being released. Criteria for release is limited and only applies to a narrow group of people. It will save state money.

128 VOTE: 2-2 MOTION FAILS AYE: Brown, Tarno, NO:  
Courtney, Tiernan

HB 2508 - WORK SESSION

Witnesses: Rep. Gail Shibley

136 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2508 creates a new crime of throwing an object off a freeway overpass. Summarizes proposed -1 amendments dated April 7, 1993. Legislative Fiscal estimates a \$320,000 cost to post signs on all overpasses. (EXHIBIT C)

169 REP. BROWN: Confirms that another committee is considering a bill to

require screening of overpasses and asks what the likelihood of passage is.

HOLLY ROBINSON, COMMITTEE COUNSEL: The fiscal impact of the screens is probably greater than that of the signs and believes the bill is going to the Appropriations Committee.

REP. BROWN: Confirms that throwing an object off an overpass, hitting a car and killing someone is homicide. If someone is injured it is an assault?

182 HOLLY ROBINSON, COMMITTEE COUNSEL: It depends on the intent. Potentially, yes.

REP. BROWN: So we are creating a new penalty for a situation where there already are penalties? HOLLY ROBINSON, COMMITTEE COUNSEL: No. The intent is the act of throwing anything over a bridge. Not considering the consequences, is

what would be the criminal act, not the subsequent damage that may or may not result.

REP. BROWN: So we are changing the intent level?

HOLLY ROBINSON, COMMITTEE COUNSEL: No. In homicide and assault

statutes, the condition of victim becomes the criminal act. In this situation it is the actions of the alleged defendant of throwing, as opposed to the result of throwing.

206 REP. BROWN: This would it make a crime even if no one is injured?

HOLLY ROBINSON, COMMITTEE COUNSEL: It is the intent to say that it would be a criminal act just to throw something because of the potential risks involved.

213 MOTION: REP. TARNO: Moves to ADOPT HB 2508-1 AMENDMENTS.

VOTE: Hearing no objections the amendments are ADOPTED. All members are present.

215 MOTION: REP. TARNO: Moves HB 2508 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

219 REP. TARNO: Does that go to the Appropriations Committee?

HOLLY ROBINSON, COMMITTEE COUNSEL: If the sign piece stays in, the committee may want to consider sending it to Appropriations.

CHAIR TIERNAN: This would come out of highway funds and not the general fund?

HOLLY ROBINSON, COMMITTEE COUNSEL: Yes.

227 REP. TARNO: Withdraws the motion to send HB 2508 to the full committee.

243 MOTION: REP. TARNO: Moves HB 2508 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation with subsequent referral to the Appropriations Committee.

VOTE: 4-0 MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan NO: None

250 REP. BROWN: We are creating a Class B felony if someone throws an object the size of a small rock off a bridge?

HOLLY ROBINSON, COMMITTEE COUNSEL: If an object is large enough that the defendant should have known that it was likely to cause damage.

REP. BROWN: We are creating a Class B felony even if there was no person injured? We need to put this in perspective in terms of our assault statutes.

263 REP. TARNO: The idea behind this is someone who maliciously and intentionally throws something off of an overpass of a freeway.

REP. BROWN: There is no intent in mind. Isn't burglary a Class B felony?

HOLLY ROBINSON, COMMITTEE COUNSEL: Yes.

REP. BROWN: This is a property crime because there is no person

involved.

REP. TARNO: There is potential for major disaster. Isn't that the intent?

279 REP. COURTNEY: There is a variable which is the speed of cars. A small rock becomes a boulder in terms of damage. On the face it may only be a property crime but the damage can be severe.

311 REP. BROWN: Concerned that this is too broad. It doesn't require that the object be thrown anywhere near the freeway.

CHAIR TIERNAN: This is a question of proof now. Agrees with Rep. Courtney that it is inherently dangerous.

337 REP. BROWN: This bill makes it a Class B felony to throw a rock off a bridge into a stream. It is too broad.

365 REP. COURTNEY: Asks Rep. Brown if she would still oppose the bill even if it was confined to roads and cars.

CHAIR TIERNAN: Anytime you throw anything onto the freeway it is an inherently dangerous situation.

REP. BROWN: This doesn't require that the object be thrown onto the freeway. It can be thrown anywhere.

380 REP. COURTNEY: Asks Rep. Brown if she is making a constitutional argument.

HOLLY ROBINSON, COMMITTEE COUNSEL: In earlier discussions, the committee wanted to draw a distinction between overpasses, which implies cars or people underneath, and bridges. The answer to the question "is it constitutionally over broad" is "no" because the defendant would be aware that someone could be hit by throwing something over. The conduct is limited and covers a large number of situations

if you knew or should have known that the object was likely to cause damage.

433 REP. BROWN: It might make sense to limit it to "cause damage to anything the object might hit."

HOLLY ROBINSON, COMMITTEE COUNSEL: "Persons or vehicles or modes of transportation?"

454 REP. GAIL SHIBLEY: Refers to the -1 amendments, on p. 1 line 7. Delete "of sufficient", "anything", and "might" so the clause reads: "an object was of a type or size to cause damage to a person, a vehicle, raft or boat if the object hits it."

TAPE 81, SIDE B

033 REP. BROWN: Is satisfied with that language.

036 REP. COURTNEY: This is a public policy situation. Hopes nothing has

been excluded in this defining of specifics.

CHAIR TIERNAN: "Vehicle" should include any number of things.

REP. COURTNEY: Hopes that Counsel will review for technicalities.

060 MOTION: REP. BROWN: Moves to ADOPT AMENDMENTS TO HB 2508 on lines 7

and 21 as stated above by Rep. Gail Shibley.

VOTE: Hearing no objections the amendments are ADOPTED. All members are present.

065 REP. TARNO: Supposing there is no intent to throw an object at a vehicle or boat, but just to throw an object. Should it be a lesser crime?

HOLLY ROBINSON, COMMITTEE COUNSEL: The object doesn't have to come into contact. All we need is the likelihood that it could cause damage.

078 MOTION: REP. TARNO: Moves HB 2508 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

REP. BROWN: Has concerns about making it a Class B felony. will vote "aye" and reconsider before the full committee votes.

VOTE: 4-0 MOTION PASSES AYE: Brown, Courtney, Tarno, Tiernan NO: None

#### HB 3139, 3140 AND 3141 - PUBLIC HEARING

Witnesses: Rep. Gail Shibley, District 12 Ken Osher, Governor's Advisory Committee on DUII Lynn Owen, Marion County Mothers Against Drunk Driving Capt. James Stevenson, Oregon State Police

092 HOLLY ROBINSON, COMMITTEE COUNSEL: We are hearing all three bills at

the same time because there are elements of HB 3140 and HB 3141 in HB 3139. HB 3140 and HB 3141 deal with the issue of enhancing the penalties in those situations where the driver of a vehicle is intoxicated and causes injury to child under 16. HB 3139 has a piece that deals with assault statutes and enhances the penalties if there are repeated episodes of harassment or menacing leading to an assault.

113 CHAIR TIERNAN: Asks Counsel what the difference is between the bills.

HOLLY ROBINSON, COMMITTEE COUNSEL: HB 3140 is subsumed in HB 3139. One should be discussed as the assault bill and the other bill as the driving bill. HB 3140 deals with change in the assault statutes. HB 3141 deals with changing recklessly endangering persons statutes.

131 REP. GAIL SHIBLEY, DISTRICT 12; GOVERNOR'S ADVISORY COMMITTEE ON

DUII: Submits and reviews written testimony in favor of HB 3139, HB 3140 and

HB 3141. (EXHIBIT D, E, F)

171 KEN OSHER, BENTON COUNTY DISTRICT ATTORNEY'S OFFICE, CHIEF DEPUTY; GOVERNOR'S ADVISORY COMMITTEE ON DUII: Testifies in favor of HB 3139,

HB 3140, and HB 3141. (EXHIBIT G)

278 CHAIR TIERNAN: What would be the sentence for drunken driving with children in the car?

OSHER: The court could enter separate convictions for DUII and recklessly endangering and impose separate sentences.

CHAIR TIERNAN: Does it automatically mean a person is recklessly endangering if he/she fails the breathalyzer test?

OSHER: The proposal elevates the penalty if a child is recklessly endangered. The state still must prove intoxication which posed a danger of physical injury to a child passenger.

319 CHAIR TIERNAN: Wouldn't that presumption be automatic as per .08% blood alcohol content?

OSHER: No, because there is no statute or case law which deems .08 as reckless conduct. The jury must decide that there was substantial and unjustifiable risk of injury.

335 OSHER: Gives example of a conviction under this proposal.

358 CHAIR TIERNAN: A certain percentage of drunk drivers have a child in

the car. What is the basis of proof of reckless endangerment?

OSHER: It remains a jury question. The state would be justified in filing a charge of recklessly endangering if a person was demonstrably

impaired and if a child was endangered. 409 HOLLY ROBINSON, COMMITTEE COUNSEL: How many times have you currently

charged someone with recklessly endangering in this type of car scenario?

OSHER: Relatively few. Recklessly endangering is currently a Class A misdemeanor and expected penalties are virtually negligible.

434 REP. SHIBLEY: Any officer would have to observe something to stop someone. If there is probable cause, the officer will conduct a field

sobriety test. If they are a .09 and they have child in the car, extra penalties are warranted. Discusses the impact on indigent defense.

TAPE 80, SIDE B

025 LYNN OWEN, PRESIDENT, MARION COUNTY MOTHERS AGAINST DRUNK DRIVING (MADD): Submits and reviews written testimony in favor of HB 3140. (EXHIBIT H)

084 REP. COURTNEY: Are we approaching the time when you don't drink and drive at all?

113 OSHER: Refers to a bill submitted to the reduce presumptive level from .08 to .04. Also a bill which would establish a zero tolerance level for under age 21.

REP. SHIBLEY: The zero tolerance for drivers under age 21 passed the 1991 Legislative Session. It is possible but not likely to pass a zero tolerance bill for adults.

OSHER: MADD does not endorse total prohibition but is concerned with the impaired driver and keeping that person off the road.

148 CHAIR TIERNAN: Describes drinking rules for other organizations and occupations.

168 REP. BROWN: Refers to laws regarding child neglect in the first degree and endangering the welfare of a minor. It might make sense to put this piece within endangering the welfare of a minor. ORS 163.575.

OSHER: Consideration was given to the endangering a minor statute. We did not wish to criminalize any new conduct but to enhance the penalty if it endangered a child.

197 REP. BROWN: Why the difference between ages 16 and 18?

REP. SHIBLEY: We decided on 16 because theoretically you can take the test for your own drivers license. The question is whether or not the person has a choice to be a passenger in that vehicle.

218 CAPT. JAMES STEVENSON, PATROL DIVISION, OREGON STATE POLICE: Submits

and reviews written testimony in favor of HB 3141. (EXHIBIT I)

234 REP. BROWN: Oregon's drunk driving laws are some of the toughest in the country?

STEVENSON: Explains Oregon drunk driving laws.

243 REP. COURTNEY: Asks when the .08 law was enacted.

STEVENSON: 1984.

247 CHAIR TIERNAN: Have the police taken a position on lowering the blood alcohol content?

STEVENSON: Yes, have testified in favor of .04.

253 REP. COURTNEY: What is toughest state in regards to drunk driving laws?

STEVENSON: Oregon ranks in the highest level. We don't have sobriety check points which would complete the package.

283 CHAIR TIERNAN: Calls recess at 4:30 p.m. Reopens the meeting at 4:35 p.m.

HB 2508 - WORK SESSION

285 MOTION: REP. BROWN: Moves to SERVE NOTICE OF POSSIBLE RECONSIDERATION OF HB 2508.

289 CHAIR TIERNAN: Adjourns meeting at 4:40 p.m.

Submitted by:

Reviewed by:

Julie Nolta  
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Testimony on HB 2226 - Counsel - 2 pages B - Testimony on HB 2226 - Dept. of Corrections - 2 pages C - Proposed amendments to HB 2508 - 3 pages D - Testimony on HB 3139 - Rep. Gail Shibley - 1 page E - Testimony on HB 3140 - Rep. Gail Shibley - 1 page F - Testimony on HB 3141 - Rep. Gail Shibley - 1 page G - Testimony on HB 3140 and HB 3141 - Benton Co. District Attorneys Office - 1 page H - Testimony on HB 3140 - Marion Co. MADD - 24 pages I - Testimony on HB 3141 - Oregon State Police - 2 pages J - Testimony on HB 3140 - Oregon Criminal Justice Council - 1 page K - Testimony on HB 3141 - Oregon Criminal Justice Council - 1 page