

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

April 21, 1993      Hearing Room 357 3:00 p.m.      Tapes 82 - 85

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 2630 - Relating to juvenile corrections  
HB 2318 - Relating to crime HB 3052 - Relating to reporting of child abuse  
HB 2508 - Relating to crime

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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 82, SIDE A

001      CHAIR TIERNAN:    Calls meeting to order at 3:12 p.m.

HB 2630 - PUBLIC HEARING

Witnesses:      Rep. Kevin Mannix, District 32

006      HOLLY ROBINSON, COMMITTEE COUNSEL:    HB 2630 removes the population cap for juvenile correctional facilities.

015      REP. KEVIN MANNIX, DISTRICT 32:    Testifies in favor of HB 2630.

086      REP. BROWN:    Concerned that if we get rid of the cap that more boys will be treated and girls only receive 8% of the corrections slots. Concerned about creating equity when the cap won't focus on that.

REP. MANNIX:    The current cap means less girls are treated than boys because the more dangerous offenders are boys. The more offensive boys push out the less offensive girls. Disproportion is heightened by the cap.

110      REP. BROWN:    Shouldn't we put funds into treatment and counseling instead of into extra beds?

REP. MANNIX: There are effective treatment and counseling programs at Hillcrest and MacLaren which can't be expanded because of the cap. Removing the cap won't change the emphasis on the use of resources.

(Public hearing on HB 2630 re-opens on p. 3)

150 MOTION: REP. BROWN: Moves to RECONSIDER HB 2508.

VOTE: Hearing no objections the MOTION PASSES. All members are present.

HB 2508 - WORK SESSION

(HB 2508 creates a new crime of throwing objects off freeway overpasses.)

Witnesses: Frank Suniga, Citizen

152 REP. BROWN: Proposes that the committee consider decreasing the penalties in the bill.

154 HOLLY ROBINSON, COMMITTEE COUNSEL: Prepared comparisons to existing law (EXHIBITS A,B,C). Most serious criminal mischief is a Class C felony and second is a Class A misdemeanor. Discusses ORS 164.885 Endangering an Aircraft which is similar to HB 2508. Included a comparison on recklessly endangering. Legislative Counsel suggested taking the section of the draft which discusses the object being thrown recklessly and if injury or damage occurs then it would be the highest penalty. If the injury or damage is put together with reckless standard, then that

alleviates committee's concern which is the lack of intent.

Currently the reckless intent is a Class B felony and the criminally negligent intent is a Class C felony.

201 REP. BROWN: Proposes to move them down to a Class C felony and a Class A misdemeanor to make them more proportional and bring them in line with the criminal mischief statutes.

CHAIR TIERNAN: Some statutes are significantly similar to the level of penalties in the bill as it stands.

219 HOLLY ROBINSON, COMMITTEE COUNSEL: By bringing penalties down it comes more in line with current statutes. It is difficult without an injury

or property damage to create an offense that is a Class B felony. It is a proportionality problem.

236 CHAIR TIERNAN: Confirms penalties for criminal negligence, criminal homicide, and assault.

299 FRANK SUNIGA: Gives opinion on individuals who throw objects and the

penalties. There is an intent to hit someone below.

REP. TARNO: Isn't always an intent to cause harm so shouldn't charge them with a major felony. Should go to the weight of the evidence and the offense.

335 REP. BROWN: There is only a narrow path in which to hit a car. The bill makes it a crime regardless of whether the object is thrown into the path of the vehicle. When there are penalties when there is no property damage and no damage to person, it is out of proportion. Compares to driving under the influence which is a Class A misdemeanor.

355 MOTION: REP. BROWN: Moves to AMEND HB 2508 by lowering penalties to a Class C felony and a Class A misdemeanor respectively.

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

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

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

#### HB 2630 - PUBLIC HEARING

Witnesses: Bill Carey, Children Services Division Jim Seymour, Catholic Community Services Muriel Goldman, Juvenile Corrections Council Timothy Travis, Juvenile Rights Project Howard Klink, Multnomah County Juvenile Justice Division Bill Morris, Mult. Co. Juvenile Justice Div. Bill Fogarty, Mult. Co. Juvenile Justice Div. Mari Anne Gest, Oregon Public Employees Union Elaine Jenkins, Marion Co. Probations Mary Botkin, A.F.S.C.M.E. Joe Van Meter, A.F.S.C.M.E. Larry OgleSB y, Oregon Juvenile Dept. Directors Assoc. Marck McDonald, Mult. Co. Districy Attorneys Office

403 BILL CAREY, ADMINISTRATOR, CHILDREN SERVICES DIVISION: Testifies to HB 2630.

TAPE 83, SIDE B

001 CAREY: Continues testimony.

057 REP. BROWN: Would eliminating the cap free up resources at the county level? Are we holding kids at the county level who should be at Hillcrest?

CAREY: Believes the whole system has been pushed down a level with the cap. Gives example.

REP. BROWN: This bill will not free up more financial resources?

CAREY: Correct. The real cap is the operating budget.

079 REP. TARNO: If we lift the cap, what is the capacity potential for MacLaren and Hillcrest?

CAREY: Would not want to add hard beds. Would try to find ways to relieve pressure on the institutions. Hillcrest is almost to full capacity. MacLaren would have potential to open total of 55 more beds.

REP. TARNO: Confirms the actual capacity of both facilities is close to 600.

095 CHAIR TIERNAN: Asks witness's preference as to operating under the cap or without the cap.

CAREY: Would like to operate within Oregon statute. Recommends excluding remanded kids from the total number served in the capped system for juveniles. Exclude public safety reserve also.

113 CHAIR TIERNAN: What was the full number of beds?

CAREY: Public safety reserve is 190, projected at 200 by July. Sixteen remanded kids.

118 CHAIR TIERNAN: Remanded kids are found guilty and sent to adult court, but are serving their sentences in juvenile facilities?

CAREY: Transferred under remand statute back to us to assess whether we can provide services for them. If not, they are sent back.

125 REP. TARNO: Do we have classification plan to separate the hard liners or are they mixed together?

CAREY: There is a ten year plan for juvenile corrections.

139 HOLLY ROBINSON, COMMITTEE COUNSEL: Confirms what the witness meant about excluding public safety beds.

153 JIM SEYMOUR, CATHOLIC COMMUNITY SERVICES: Submits and reviews written testimony to HB 2630. (EXHIBIT D)

239 MURIEL GOLDMAN, JUVENILE CORRECTIONS COUNCIL: Submits and reviews written testimony in opposition to HB 2630. (EXHIBIT E)

355 REP. BROWN: The reason for the cap is to put resources in the community so that both prevention and corrections were dealt with at the community level? Getting rid of the cap focuses on a state corrections facility?

GOLDMAN: It could. Discusses providing additional funding to communities for youth services to relieve the pressure on the cap.

386 REP. BROWN: Asks witness to address the issue of judge's discretion.

GOLDMAN: Who judges commit to the training schools varies because there was no limit, designated felonies or offenses.

REP. BROWN: So the cap helps judges look toward other alternatives in

terms of corrections?

GOLDMAN: The Juvenile Corrections Council recommended that each county have a cap which puts pressure on judges.

REP. BROWN: Has asked Rep. Mannix if by getting rid of the cap it helped open up more services for girls.

GOLDMAN: Doesn't completely agree. Most of the commitments will be boys because they commit more serious crimes. It will help girls by providing more resources to the community for youth services.

431 CHAIR TIERNAN: Asks the witness about the increase in African Americans in the training schools.

GOLDMAN: Most African American youth in the training schools come from Multnomah County. There is an over-representation of the percentage of them in the training schools based on their actual representation in the population. Because Multnomah County has tried to provide community youth services, they tend to send the more difficult youths to the training schools. When money is not provided to the communities there

is an inappropriate representation of the various populations in the training schools. 463 HOLLY ROBINSON, COMMITTEE COUNSEL: If there are two children with similar criminal histories and the next offense is the same, it is more likely that the African American will be sent to the training school than the non-African American offender.

CHAIR TIERNAN: Is that what you are saying?

GOLDMAN: That has been happening because there have not been enough resources in the community to serve that population.

HOLLY ROBINSON: In part due to race, one is institutionalized and the other is not. With similar histories, a judge is more likely to sentence one to MacLaren than the other.

TAPE 82, SIDE B

033 TIMOTHY TRAVIS, LAWYER, JUVENILE RIGHTS PROJECT: Submits and reviews

written testimony in opposition to HB 2630. (EXHIBIT F)

163 CHAIR TIERNAN: How many leave the training schools and later go on to the state penitentiary?

TRAVIS: Children's Services Division has that information. Juvenile system is fairly effective in terms of preventing adult offenders. Believes the remanded and public safety kids should be the only ones who are in the training school and the cap should be on them.

180 RICK HILL, JUVENILE CORRECTIONS: Completed a recidivism study with adult correction system. 40% come back to MacLaren within one year. Describes four categories of adult system cross-overs including property offenders, non-sex offending person felons, behavioral criminals, and sex offenders.

207 CHAIR TIERNAN: You provide treatment for these offenders. When

you compared property crimes to other states you found percentages of those not re-offending to be similar. How does Oregon compare with other states regarding other crimes?

HILL: Doesn't have that information from other states.

CHAIR TIERNAN: Would you say that MacLaren is successful in dealing with offenders?

HILL: More successful with the more violent offenders, less successful with property offenders because we are dedicating beds to more serious felons.

234 CHAIR TIERNAN: Confirms Mr. Travis' statement as being "don't raise the cap because we need the money to improve MacLaren."

TRAVIS: We need to look at regional facilities of the training school type.

CHAIR TIERNAN: You would rather improve the facility we have than raise the cap?

TRAVIS: Money would be better spent elsewhere in the system, closer to the communities, for the less serious offenders.

252 CHAIR TIERNAN: Appears that if the recidivism rates aren't bad and MacLaren is performing its function and can take more kids, why don't we do that?

TRAVIS: If they take more kids, they are going to need more money.

CHAIR TIERNAN: What does it cost per kid at MacLaren?

HILL: \$120 per day. \$40,000 per year.

265 CHAIR TIERNAN: For 100 more you need \$4 million?

HILL: If we open up what is out there now, that is not the full \$120 per day because some of the buildings can be occupied again, which would be \$65 per day. The ten year plan would build new, smaller regional facilities.

CHAIR TIERNAN: If you had the money to get another 120 beds and we have enough offenders to occupy the beds, why not do it?

TRAVIS: Because that money would be more effectively spent in local treatment.

314 HOWARD KLINK, LIAISON, MULTNOMAH COUNTY JUVENILE JUSTICE DIVISION  
AND

DEPARTMENTS OF HEALTH AND SOCIAL SERVICES: Testifies to HB 2630.

383 BILL MORRIS, COURT SERVICES SUPERVISOR, MULT. CO. JUVENILE  
JUSTICE DIVISION: Testifies to HB 2630.

442 CHAIR TIERNAN: Regarding statistics witness just provided relating to increase in crime, would they be similar to other cities in

Oregon?

447 MORRIS: Crime rates have risen drastically among juveniles all over the state and nation. Attributes it to family values, acceptance of violence and violent situations, drugs, and gangs. CHAIR TIERNAN: Kids know that nothing is going to happen to them -- there aren't the resources.

MORRIS: Also heard that twenty years ago. But services are better today, too.

CHAIR TIERNAN: Then why the increases?

MORRIS: Social factors.

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TAPE MALFUNCTION. NO AUDIO RECORD OF:

Testimony of Bill Fogarty, Parole Services Supervisor, Multnomah County Juvenile Justice Division

Testimony of Mari Anne Gest, Political Director, Oregon Public Employees Union (EXHIBIT G)

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TAPE 84, SIDE A

001 ELAINE JENKINS, MARION COUNTY PROBATION OFFICER: Submits and reviews

written testimony in favor of HB 2630. (EXHIBIT H)

035 MARY BOTKIN, AMERICAN FEDERATION OF STATE AND COUNTY MUNICIPAL EMPLOYEES: Testifies in favor of HB 2630.

JOE VAN METER, PRESIDENT, JUVENILE PAROLE, A.F.S.C.M.E.: Testifies in favor of HB 2630.

153 LARRY OGLESB Y, MARION COUNTY JUVENILE DEPARTMENT, OREGON JUVENILE DEPARTMENT DIRECTORS ASSOCIATION: Testifies in favor of HB 2630.

202 MARCK MC DONALD, JUVENILE UNIT, MULTNOMAH COUNTY DISTRICT ATTORNEYS OFFICE: Testifies in favor of HB 2630.

HB 2318 - WORK SESSION

269 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2318 adds abandonment and financial exploitation of elderly and dependent persons to Criminal Mistreatment I statute. Makes persons with a legal duty to provide care

or persons who assume permanent or temporary care custody and responsibility for the supervision of another person criminally liable for certain acts of abuse or neglect.

Explains why the bill went to the full committee and was re-referred.

(EXHIBIT J)

318 CHAIR TIERNAN: Favors leaving in "financial abuse" and discusses definition of "excessive spending."

HOLLY ROBINSON, COMMITTEE COUNSEL: These resolve the issues raised at full committee. [See Exhibit J, p. 2, (a) and (b)]

356 MOTION: REP. TARNO: Moves to ADOPT COMMITTEE COUNSEL RECOMMENDATIONS on p. 2, (a) and (b) of Exhibit J dated April 21, 1993, AS -5 AMENDMENTS TO HB 2318.

VOTE: 3-0 MOTION PASSES AYE: Courtney, Tarno, Tiernan NO: None EXCUSED: Brown

367 MOTION: REP. TARNO: Moves HB 2318 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

VOTE: 3-0 MOTION PASSES AYE: Courtney, Tarno, Tiernan NO: None EXCUSED: Brown

HB 3052 - WORK SESSION

381 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 3052 deletes requirement that public or private official must come into contact with the child in an

official capacity in order to have a duty to report abuse. C.S.D.'s issue of continuing to receive reports via hotline is covered in -1 amendments. (EXHIBIT L, M) Discusses hearsay issue and official capacity requirement for receiving reports.

415 MOTION: REP. COURTNEY: Moves to ADOPT -1 AMENDMENTS TO HB 3052.  
VOTE: 3-0 MOTION PASSES AYE: Courtney, Tarno, Tiernan NO: None EXCUSED: Brown

429 HOLLY ROBINSON, COMMITTEE COUNSEL: The -1 amendments are not a replacement but an addition. Committee needs to decide what they want to do with the underlying bill. It is a huge policy change to remove both requirements of hearsay plus official capacity. If the committee wants to broaden the context in which a mandatory reporter has to report and remove distinctions of off-duty officials, then must restore "with whom the official comes into contact" and continue to delete "in an official capacity."



467 MOTION: REP. COURTNEY: Moves to AMEND HB 3052 by deleting "in an official capacity" on line 6 and 7 of the bill and insert "with whom the official comes in contact" on line 5 and 6.

TAPE 85, SIDE A

026 HOLLY ROBINSON, COMMITTEE COUNSEL: Clarifies receiving reports in an

official capacity and off-duty and hearsay reports.

CHAIR TIERNAN: Rep. Courtney's suggested amendment takes out "in an official capacity" and makes it wherever the official happens to be.

HOLLY ROBINSON, COMMITTEE COUNSEL: And restoring "with whom the official comes into contact."

041 REP. COURTNEY: An off-duty police officer who comes into contact with a child is under obligation to report, correct?

HOLLY ROBINSON, COMMITTEE COUNSEL: Correct, if the suggested amendments are adopted. But it is the child reporting and not someone else's abuse.

047 REP. COURTNEY: Wants to make it clear that an off-duty official has an obligation to report given the suggested amendments. But there must be direct contact with the child.

REP. TARNO: Agrees.

056 VOTE: 3-0 MOTION PASSES AYE: Courtney, Tarno, Tiernan NO:  
None EXCUSED: Brown

059 MOTION: REP. COURTNEY: Moves HB 3052 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

VOTE: 3-0 MOTION PASSES AYE: Courtney, Tarno, Tiernan NO:  
None EXCUSED: Brown

063 CHAIR TIERNAN: Adjourns meeting at 5:30 p.m.

Submitted by:

Reviewed by:

Julie Nolta  
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Comparisons to existing law for HB 2508 - Committee Counsel - 1 page  
B - Sex Offenses Against Children - Committee Counsel - 3 pages  
C - Oregon Statutes - Committee Counsel - 3 pages  
D - Testimony on HB 2630 - Catholic Community Services - 2 pages  
E - Testimony on HB 2630 - Juvenile Corrections Council - 2 pages  
F - Testimony on HB 2630 - Juvenile Rights Project - 2 pages  
G - Testimony on HB 2630 - Oregon Public Employees Union - 2 pages  
H - Testimony on HB 2630 - Elaine Jenkins - 2 pages  
I - Testimony on HB 2630 - Hillcrest School of Oregon - 2 pages  
J - Outline of HB 2318 - Committee Counsel - 2 pages  
K - Testimony on HB 2318 - Bertran Copp - 2 pages  
L - Proposed amendments to HB 3052 - 1 page  
M - Oregon Revised Statutes - Committee Counsel - 6 pages