

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

May 5, 1993 Hearing Room 357 3:00 p.m. Tapes 96 - 97

MEMBERS PRESENT: Rep. Bob Tiernan, Chair Rep. Kate Brown Rep. Peter Courtney Rep. Veral Tarno

STAFF PRESENT: Holly Robinson, Committee Counsel Julie Nolta, Committee Clerk

MEASURES CONSIDERED: HB 2201 - Relating to Public Utility
Commission HB 2014 - Relating to suspension of driving privileges

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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 96, SIDE A

001 CHAIR TIERNAN: Calls meeting to order at 3:10 p.m.

HB 2014 - WORK SESSION

Witnesses: Tony Delorenzo, Department of Motor Vehicles Rosanna Creighton, Citizens for a Drug Free America Fred Avera, Oregon District Attorneys Association

007 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2014 incorporates suspension for drug offenses into Oregon law on suspension and revocation of driving privileges. Gives background on the bill. There are -1 amendments requested by the DMV. (EXHIBIT A) Has included ORS 835. (EXHIBIT B)

Critical language on p. 12 of the amendments. Refers to Reasons for Amendments (EXHIBIT C) from the DMV. Explains effects of amendments.

099 REP. TARNO: Refers to Exhibit C, Reasons for Amendments, #6. Is this an assumption based on the fact that DMV is hoping to have improvements to the computerized system through this year's budget or is the process already in place? TONY DELORENZO, DEPARTMENT OF MOTOR VEHICLES: Based on future enhancements.

112 ROSANNA CREIGHTON, EXECUTIVE DIRECTOR, CITIZENS FOR A DRUG FREE AMERICA: On p. 3 of the bill, lines 9 and 10, "delivery and manufacture"

have been removed. Has a problem with that.

HOLLY ROBINSON, COMMITTEE COUNSEL: The identical language is on p. 12, line 14 of the -1 amendments.

CREIGHTON: Questions the effect of the amendment throughout the bill.

136 HOLLY ROBINSON, COMMITTEE COUNSEL: Explains the amendments are an add on to the bill and it maintains the language for the reasons for which

the license suspension is done. CHAIR TIERNAN: Nothing has been changed in the original law except for adding language to ensure the uniformity exists for all suspensions.

155 HOLLY ROBINSON, COMMITTEE COUNSEL: Because of the way the amendments

were drafted, the reasons for the suspensions will remain the same.

CREIGHTON: Asks if the -1 amendments, p.12, line 13 apply as written to juveniles?

HOLLY ROBINSON, COMMITTEE COUNSEL: Applies to juveniles and adults.

188 CREIGHTON: Concerned that the intent of the current law remain the intent through the amendments. Appeal and hardship provisions give strong outs. How can we prevent a fiscal impact at the administrative

level and prevent it from being used too often?

204 CHAIR TIERNAN: Asks Mr. Delorenzo for reasons for hardship revocations.

DELORENZO: Whenever a suspension results from a conviction we offer an administrative review. Hardship permits grant limited driving privileges.

234 CHAIR TIERNAN: Can a judge say a hardship permit will not be issued or cannot be an exception?

DELORENZO: The hardship permit would be issued if the person qualified.

240 REP. BROWN: Doesn't the hardship process mirror the DUII cases?

DELORENZO: Yes.

CREIGHTON: Concerned about hardship permits for habitual offenders.

260 REP. TARNO: Agrees with the witness but also thinks we can work with

the bill.

CREIGHTON: Wants a bill that will be enforced. 266 MOTION: REP. COURTNEY: Moves to ADOPT HB 2014-1 AMENDMENTS dated May 3, 1993.

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

CHAIR TIERNAN: Suggests an amendment to p. 2, Section 4, line 29 that when someone uses a car as a weapon and kills someone, that person should never again be entitled to a drivers' license. Needs to be narrowly drafted. Nothing in current law prohibits a permanent deprivation of a drivers license.

328 REP. BROWN: Feels comfortable with intentional language.

REP. COURTNEY: Asks for opinion of the use of the word "malice."

CHAIR TIERNAN: Wants language to the effect of knowingly kills someone.

REP. COURTNEY: Discusses interpretation of "malice."

360 HOLLY ROBINSON, COMMITTEE COUNSEL: The intentional use of a car to kill someone as opposed to intentionally killing with a car.

376 FRED AVERA, POLK CO. DISTRICT ATTORNEY: There is a subtle difference.

HOLLY ROBINSON, COMMITTEE COUNSEL: Also if the person is inside or outside of the car. Is that a distinction?

385 CHAIR TIERNAN: It is when someone uses the car to intentionally kill, when the car is the weapon.

414 HOLLY ROBINSON, COMMITTEE COUNSEL: "Intentional use of a car as a deadly weapon" would do it.

AVERA: A deadly weapon is specifically designed for causing injury. A dangerous weapon is used in a manner that would cause serious injury.

429 CHAIR TIERNAN: Then upon conviction, the license is permanently revoked in this state.

REP. BROWN: Agrees.

REP. TARNO: It is a good case but maybe it shouldn't be applied to every 16 or 17 year old.

461 CHAIR TIERNAN: If the likelihood that it could happen again is such a threat, I wouldn't want to take the chance.

REP. BROWN: If a 16 year old kills someone intentionally with a gun, that person can never get a gun permit. HOLLY ROBINSON, COMMITTEE COUNSEL: If that person is a juvenile, they

can. We are discussing revocation of driving privileges and the "relating to" clause goes to suspensions.

494 CHAIR TIERNAN: How about a 50 year suspension?

HOLLY ROBINSON, COMMITTEE COUNSEL: That would fit within the "relating to" clause.

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028 REP. BROWN: We may want to make it consistent with gun laws in terms of juveniles.

REP. TARNO: Do we want to look at doing this when that individual may need a vehicle to support themselves later in life? (unintelligible remarks)

073 REP. COURTNEY: Would this law also apply in those circumstances where there was no remand?

094 AVERA: If a juvenile is remanded it is a criminal conviction. If the remand does not take place it is an adjudication that an act has been committed.

REP. COURTNEY: So the proposed amendment would not apply on adjudications but only on convictions.

AVERA: Would have to specifically set it out.

118 HOLLY ROBINSON, COMMITTEE COUNSEL: Committee might consider creating a process by which a license can be reinstated upon application after a certain period of time.

CHAIR TIERNAN: Ten years after the person has served his time.

HOLLY ROBINSON, COMMITTEE COUNSEL: Ten years after discharge of incarceration or supervision. Can go as far out as you want.

AVERA: Isn't parole for murder for life?

143 HOLLY ROBINSON, COMMITTEE COUNSEL: What is the likelihood of conviction for something less than murder? Potentially there is going to be a separation between the conviction and a finding that there was use of the vehicle as a dangerous weapon.

CHAIR TIERNAN: Would be satisfied with ten years after date of release.

158 REP. TARNO: Confirms that we are talking about homicide not about assault.

HOLLY ROBINSON, COMMITTEE COUNSEL: In the language that says "intentional use of a motor vehicle or a car as a dangerous weapon" conceivably you could end up with attempted murder or Assault I. AVERA: That language could mean attempted assault.

171 CHAIR TIERNAN: The object is to make it very narrow applying only to

death of the victim.

DELORENZO: Under ORS 809.370 any determination by juvenile court that a child within its jurisdiction has committed any act that is grounds for suspension or revocation is equivalent to conviction. The juvenile court has the same authority to order suspension or revocation.

198 HOLLY ROBINSON, COMMITTEE COUNSEL: The criteria for sex offender petitions are: the nature of the underlying offense, other criminal or relevant non-criminal behavior, period of time during which the petitioner has not reoffended, and any other relevant factors.

225 MOTION: REP. COURTNEY: Moves to ADOPT A CONCEPTUAL AMENDMENT TO HB 2014-1 AMENDMENTS stating that "upon conviction for an offense where there has been the intentional use of motor vehicle as a dangerous weapon that results in the death of a victim, that the person's right to drive will be permanently suspended. And that after ten years after release from incarceration the person can petition the court for relief

based on criteria that are set out."

VOTE: Hearing no objections the amendments are ADOPTED. Rep. Brown is excused.

232 MOTION: REP. COURTNEY: Moves HB 2014 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

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

HB 2201 - PUBLIC HEARING

(HB 2201 provides that all final orders of the Public Utility Commission are subject to judicial review by the Court of Appeals.)

Witnesses: Tom Barkin, Oregon Public Utility Commission Gary Bower, Oregon Independent Telephone Association

250 TOM BARKIN, ASSISTANT COMMISSIONER, ADMINISTRATIVE HEARINGS DIVISION,

OREGON PUBLIC UTILITY COMMISSION: Submits and reviews written testimony in favor of HB 2201. (EXHIBIT D)

321 REP. COURTNEY: If an appeal was made to a certain court now, could the appellants have witnesses testify?

BARKIN: No, they are limited to the same standard of appeal. Some circuit courts will listen to witnesses but when you get to the court of appeals, the testimony of those witnesses is ignored because the court is limited to the record before the commission.

331 REP. COURTNEY: When you make an appeal to a circuit court, can you bring witnesses to testify to the court?

BARKIN: The circuit court's decision is limited to the record before the commission.

REP. COURTNEY: Why did you say that witnesses come before the circuit court but cannot do that in appellate court so they are confined to the record?

BARKIN: The only testimony that counts in the court of appeals is the

testimony the commission heard.

366 BARKIN: The statute that the circuit court judges applied does not allow new evidence.

REP. COURTNEY: But they have allowed it in the past.

BARKIN: Being human beings, yes they do.

REP. COURTNEY: While the statute doesn't allow it, these judges do allow it.

BARKIN: Rarely that occurs.

374 REP. COURTNEY: The appeal before the circuit court judge is exactly the same if it went on to the court of appeals.

BARKIN: Yes.

382 REP. TARNO: What percentage of those circuit court cases are appealed to the court of appeals?

BARKIN: Over the last six years, we have had 39 commission orders reviewed by the circuit court; 16 went on to the court of appeals.

394 REP. BROWN: This will increase the case load of the court of appeals.

BARKIN: A little bit. With the proposed amendment, estimates a reduction of the circuit court cases by 4-5 per year and an increase in the court of appeals load by 2-3 per year.

REP. COURTNEY: Why did you take out telecommunications?

BARKIN: U.S. West asked us to. They believe there are some provisions in current statute that provide minor benefits to them by being able to go straight to circuit court.

433 GARY BOWER, OREGON INDEPENDENT TELEPHONE ASSOCIATION: Testifies in favor of HB 2201.

469 REP. COURTNEY: Asks about the Citizens Utility Board (CUB) and where

they stand on this issue.

BOWER: Believes they have no problem with it.

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REP. COURTNEY: Wants to know where the other group stands.

REP. BROWN: Also wants to know from CUB where they stand.

HB 2014 - WORK SESSION

059 MOTION: REP. COURTNEY: Moves UNANIMOUS CONSENT to allow Rep. Brown to cast her vote to move HB 2014 to the full committee.

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

062 REP. BROWN: Votes "aye" on sending HB 2014 to the full committee.

064 CHAIR TIERNAN: Adjourns the meeting at 4:15 p.m.

Submitted by:

Reviewed by:

Julie Nolta
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Proposed amendments to HB 2014 - DMV - 12 pages B - Statutes relevant to HB 2014 - Committee Counsel - 3 pages C - Reasons for amendments to HB 2014 - DMV - 1 page D - Testimony on HB 2201 - Public Utility Commission - 1 page E - Testimony on HB 2201 - Portland General Electric Company - 1 page F - Proposed amendments to HB 2201 - 5 pages