

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

May 13, 1993           Hearing Room 357 3:00 p.m.   Tapes 105 - 106

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 2489 - Relating to criminal identification data HB 2630 - Relating to juvenile 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 105, SIDE A

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

HB 2630 - WORK SESSION

(HB 2630 removes the population cap for juvenile correctional facilities and grants the assistant director authority to maintain the population within available resources.)

Witnesses:    Rep. Kevin Mannix, District 32 Timothy Travis, Juvenile Rights Project Muriel Goldman, Juvenile Corrections Council Rick Hill, Juvenile Corrections

004    REP. KEVIN MANNIX, DISTRICT 32: Submits hand-engrossed -3 amendments to HB 2630. (EXHIBIT A) Explains effects of the amendments and the intent behind removing the numerical cap.

044    TIMOTHY TRAVIS, JUVENILE RIGHTS PROJECT: Submits testimony on HB 2630. (EXHIBIT B) If there is no numerical cap, it creates pressure to allocate more resources to MacLaren.

CHAIR TIERNAN: You are in favor of the existing number? TRAVIS: May need an upward adjustment for population growth and need to move remanded kids from cap number.

055    REP. MANNIX: Agrees with concept but is trying to avoid micro-management of numbers of people in an institution. Adult remand should be addressed through budget and appropriations process.

078 MURIEL GOLDMAN, CHAIR, JUVENILE CORRECTIONS COUNCIL: Council is opposed to lifting the cap because there are no sentencing guidelines for the use of the training schools. Cap was to encourage judges to develop community resources for kids not considered a safety risk. Doesn't want to see remanded kids counted against the cap.

119 REP. MANNIX: Putting a cap number in the statute doesn't solve the problem. Allocation of community resources is in budgeting process. Amendments set standards for use of resources.

143 REP. TARNO: Asks Mr. Travis when the Juvenile Rights Project filed suit.

TRAVIS: In the 1970's.

REP. TARNO: Asks if he sees a problem with increasing the population by agreeing to Mannix's amendments.

TRAVIS: Not as long as it is a specific increase. Believes that more pressure will be created to transfer more funds to the training school program. The policy in Oregon is down-sizing and decentralizing.

171 RICK HILL, ACTING DIRECTOR, JUVENILE CORRECTIONS: Trying to find a solution that will work. Amendments say we will consult with members of the Juvenile Corrections Council before making changes. We are in conflict with statute because we are over the cap number every day.

185 CHAIR TIERNAN: What would happen if the cap was raised to 600?

HILL: Would only fund 513 beds unless additional resource was found.

188 REP. COURTNEY: But you are already over 513 every day. Discusses overcrowding at Oregon Correctional Institute.

HILL: We have contracts with counties not to exceed a certain number of kids at MacLaren and Hillcrest. We give them \$7 million per biennium to develop community resources.

REP. COURTNEY: How many kids are at MacLaren today?

HILL: Guesses 525-530. High point was 565 kids in March. Kids should be kept in community programs but in reality many are remanded to adult court and prisons. We need to find middle ground.

221 CHAIR TIERNAN: Calls recess at 3:30 p.m. Reopens meeting at 3:32 p.m.

CHAIR TIERNAN: Suggests giving the parties a chance to come up with a resolution before the next scheduled work session.

HB 2489 - WORK SESSION

Witnesses: Lt. Cliff Daimler, Oregon State Police David Myton, Teacher Standards and Practics Commission John Fairchild, Dept. of Education

249 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 2489 directs the Department of

State Police to provide the Teacher Standards and Practices Commission

and the Oregon Department of Education with complete criminal identification information on persons applying for educational licenses, other school district employees, volunteers and contractors. Discusses issues needing resolution: treatment of volunteers, time needed to complete the background check, and what happens to the fingerprint cards.

284 CHAIR TIERNAN: Do any of those issues affect the fiscal impact?

HOLLY ROBINSON, COMMITTEE COUNSEL: No. It is expected to cost \$35 - 40 each to analyze fingerprint cards. Doesn't know if the fiscal impact statement included the volunteers.

309 REP. COURTNEY: The volunteer part needs to come out of the bill.

CHAIR TIERNAN: Are coaches included in the category of volunteers?

321 REP. COURTNEY: Volunteers are volunteers regardless of what they do.

Can't do background checks and fingerprint all of those individuals.

330 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses time frame for completing the background check for renewing licenses and being hired.

364 LT. CLIFF DAIMLER, IDENTIFICATION SERVICES, OREGON STATE POLICE: Turnaround time for a fingerprint card is 2-3 days for Oregon record check. FBI turnaround time is from 60 - 90 days.

CHAIR TIERNAN: Which one is more important?

DAIMLER: Both are important.

379 REP. COURTNEY: The bill also applies to existing employees.

HOLLY ROBINSON, COMMITTEE COUNSEL: Only at the point when they switch school districts or apply for a renewal of license.

392 DAVID MYTON, EXECUTIVE SECRETARY, TEACHERS STANDARDS AND PRACTICES COMMISSION: Renewals occur at one, three and five year intervals based on the type of license. Average length of license is 3.5 years.

REP. COURTNEY: What about non-licensed employees?

MYTON: Classified employees are not licensed except for school bus drivers. Some would never be rechecked because they would be continuously employed.

HOLLY ROBINSON, COMMITTEE COUNSEL: Unless they are newly hired or switched school districts.

411 CHAIR TIERNAN: We could add language to say every 5 years an employee would have to be checked.

REP. COURTNEY: Could hire them subject to a background check. Should keep existing employees while checking them.

445 CHAIR TIERNAN: Discusses time frame for fingerprint checks. Can terminate employment if the signed employment statement is false.

REP. TARNO: Asks Lt. Daimler if an initial survey can be done through Law Enforcement Data System (LEDS).

DAIMLER: Correct.

REP. TARNO: What if the first check was done through LEDS, we put them to work, and if the record comes back bad, then let them go?

476 CHAIR TIERNAN: What happens with classified employees without a regular check? Do we make a requirement that they be checked every five years?

TAPE 106, SIDE A

026 HOLLY ROBINSON, COMMITTEE COUNSEL: Under current law, if an employee

gets into trouble, the school district gets the report. The focus of the bill is on out of state prior convictions.

CHAIR TIERNAN: Any teacher whose license will come up for renewal will have a background check.

REP. TARNO: Biggest expense will be going to the FBI for fingerprint checks. Why would an employee up for renewal have to have a full background check? Why not just an update?

CHAIR TIERNAN: Once they have been checked, wouldn't an update have to include the FBI?

REP. TARNO: Why wouldn't it be local state police?

CHAIR TIERNAN: Discusses someone who may be out of state for the summer.

REP. TARNO: Oregon State Police would have the ability to check that.

050 DAIMLER: Could do a name inquiry unless the identity was falsified.

All checks are premised on fingerprint checks.

CHAIR TIERNAN: Concerned about the classified employee who may never have a check. Do we want to make a five year requirement for an update check?

DAIMLER: Indicated in the fiscal impact that there were two options. Keep the initial fingerprint card so employee would not have to go

through re-fingerprinting. Could run a computer inquiry every 3 years on that applicant record. The concept was met with resistance in the Senate by the ACLU. Senate is opting to fingerprint every time.

REP. TARNO: If an Oregon employee got in trouble in California, would we know through Automatic Fingerprint Identification System (AFIS)?

DAIMLER: California would find out before we would, through AFIS, and would make inquiries.

090 CHAIR TIERNAN: Asks what the state of Washington does.

DAIMLER: Doesn't know.

CHAIR TIERNAN: Do we want to include the classified employees in language that says every five years?

REP. COURTNEY: How long will it take to check everyone presently employed? How many classified employees work for the school district in the state?

107 MYTON: About 7,000 in terms of instructional assistants. They were forecasting about 25,000 if all classified employees were included. There are about 35,000 working licensed as teachers or administrators.

119 JOHN FAIRCHILD, OREGON DEPT. OF EDUCATION: We utilize in-state checks for issuing school bus driver certificates and permits. We checked about 18,000 records last year of classified employees who voluntarily

signed a waiver. If done on a regular basis we would anticipate 8,000 per year.

CHAIR TIERNAN: What would you think of a rule that said all classified employees must be screened within three years of passage and every 5 years thereafter for an update?

FAIRCHILD: There is rationale for requesting that kind of check.

159 CHAIR TIERNAN: The Senate is requesting that once the check is done,

the records must be deleted?

DAIMLER: Describes the Senate's work on the bill.

CHAIR TIERNAN: What is the rationale for destroying the card?

DAIMLER: Doesn't know.

168 CHAIR TIERNAN: If the card is going to be kept for future checks in order to save money, and it can't be used for anything else, what is the difference?

DAIMLER: Doesn't know.

175 HOLLY ROBINSON, COMMITTEE COUNSEL: What is the policy on fingerprint

cards for background checks for purchasing guns or concealed weapons permits?

DAIMLER: They are returned to the police agency but are not mandated to be destroyed.

HOLLY ROBINSON, COMMITTEE COUNSEL: Is there an enhanced penalty if the information is used inappropriately?

DAIMLER: It is a Class A misdemeanor.

182 HOLLY ROBINSON, COMMITTEE COUNSEL: The issue is the possibility of inappropriate use of fingerprint information. Discusses 1989 committee action on a gun bill and the subsequent enhanced penalty for misuse. Police are keeping records on law abiding citizens.

211 REP. COURTNEY: Asks if the bill is out of the Senate.

DAIMLER: The bill is still in committee.

MYTON: SB1078 has been voted out of committee but has not reached the Senate floor.

217 DAIMLER: The gun lobby lobbied to keep the fingerprint cards for all

concealed handgun license holders. We are holding them to a higher standard of accountability which would be similar to teachers.

CHAIR TIERNAN: Understands the argument but doesn't agree.

DAIMLER: The information stored now is not subject to open records, but accessed only by court order.

HOLLY ROBINSON, COMMITTEE COUNSEL: It's potential misuse by law enforcement they are concerned about. 242 CHAIR TIERNAN: Asks how law enforcement could misuse a fingerprint card.

HOLLY ROBINSON, COMMITTEE COUNSEL: If it has come into possession in a certain way, there is a question about its use in a criminal investigation without obtaining it legally based on that new investigation.

CHAIR TIERNAN: What is the harm in identifying a body, for example, with this type of fingerprint?

259 HOLLY ROBINSON, COMMITTEE COUNSEL: If a fingerprint lifted at a bank

robbery matches with a teacher, that cannot be legally done. The concern is the temptation would be great to do that.

278 DAIMLER: That would be unlawful use of fingerprints and there would be no reason to put them in the AFIS computer. Do not have state bar fingerprint cards in the criminal history file.

CHAIR TIERNAN: What about the classified employees screening

requirement?

297 MYTON: Teacher's licenses come up for renewal every one, three or five year cycle.

CHAIR TIERNAN: If we required every classified employee to be screened within three years of this passage and an update every 5 years, that would put them on the same level as a teacher. And teachers would be checked upon renewal and updated.

308 HOLLY ROBINSON, COMMITTEE COUNSEL: Committee may want to consider a sunset and have reporting back concerning numbers of people being screened and the results. The other question is what is to be done with the fingerprint cards?

REP. COURTNEY: Asks what Washington is doing.

DAIMLER: Doesn't know. Believes Washington State Patrol keeps the cards.

REP. BROWN: Confirms that in the Senate bill the fingerprint cards are destroyed.

340 CHAIR TIERNAN: Could add language sayng the fingerprints can't be used for anything but identifying teachers. This will save money.

MYTON: Teachers Standards and Practices introduced SB 15. The expectation was to fingerprint new applicants and thereafter rely on LEDS checks for updates at renewal. There is a provision for re-fingerprinting those whose licenses have lapsed for three years or more. Commission would not oppose if there were a requirement for re-fingerprinting on each renewal. There would be a higher fiscal impact statement, however.

378 CHAIR TIERNAN: Out of 1,000 cards, how many would be rejected for bad prints?

DAIMLER: About 1%. A concealed handgun license is a good reflection on the applicant because of the extensive clearance process. 401 REP. COURTNEY: You like to find people with concealed weapons in schools?

DAIMLER: No. Not in schools. It indicates that they have been totally checked out by law enforcement and fingerprint checks and that nothing

bad has been found out.

415 FAIRCHILD: A section in SB 1078 that was deleted deals with checks that are done only if the statute requires them to be done. Wanted to add a section that the check would be required upon the applicants permission.

REP. COURTNEY: Has no problem with that.

454 FAIRCHILD: The possibility for coercion was raised in a Senate hearing.

TAPE 105, SIDE B

CHAIR TIERNAN: Restates Mr. Fairchild's proposal for voluntary fingerprinting.

036 FAIRCHILD: We have been doing criminal record checks for school bus

drivers since 1976 and have seen numbers of persons with records steadily decline to a certain level. Some still apply even though they have been convicted.

054 REP. TARNO: Suggests amending language to require LEDS check for volunteers.

CHAIR TIERNAN: It's not expensive to go through a state check, is it?

DAIMLER: Fairly inexpensive to do a LEDS check. They already have authority to do LEDS checking.

069 CHAIR TIERNAN: Is there a problem with requiring a volunteer to be checked?

FAIRCHILD: The problem is the cost. Will have a chilling effect for volunteers.

082 HOLLY ROBINSON, COMMITTEE COUNSEL: Summarizes actions of the committee and the amendments.

120 CHAIR TIERNAN: Adjourns meeting at 4:20 p.m.

Submitted by:

Reviewed by:

Julie Nolta  
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Proposed amendments to HB 2630 - Rep. Kevin Mannix - 1 page  
B - Testimony on HB 2630 - Juvenile Rights Project - 2 pages  
C - Proposed amendments to HB 2630 - 1 page  
D - Testimony on HB 2489 - Oregon Head Start Assoc. - 1 page