

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

May 25, 1993 Hearing Room 357 3:00 p.m. Tapes 113 - 114

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: SB 112 - Relating to criminal procedure involving dangerousness of offenders SB 353 - Relating to release of offenders

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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 113, SIDE A

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

SB 353 - PUBLIC HEARING

Witnesses: Sen. Jeannette Hamby, District 5 Tracy Cummings Vern Faatz, Board of Parole and Post-Prison Supervision Denis Dowd, Department of Corrections

013 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 353 allows the Board of Parole

and Post-prison Supervision to release an inmate who is elderly or permanently disabled earlier than their release date if the prisoner is no longer a threat to public safety and continued incarceration constitutes cruel and inhuman treatment.

CHAIR TIERNAN: Asks if the committee has already heard any related bills.

HOLLY ROBINSON, COMMITTEE COUNSEL: This committee has not heard this issue related to early release for medical and other reasons. 031

SEN. JEANNETTE HAMBY, DISTRICT 5: Testifies in favor of SB 353. Submits proposed -3 amendments. (EXHIBIT A)

070 TRACY CUMMINGS: Testifies in favor of SB 353.

184 REP. COURTNEY: Asks if the inmate will be paroled to the county where they resided or where they committed the crime.

HOLLY ROBINSON, COMMITTEE COUNSEL: Where the inmate resided at the time the offense was committed.

REP. COURTNEY: If the victim's rights section of the bill is triggered, where would the inmate be paroled? If the victim lived in the county where the crime was committed?

SEN. HAMBY: There have been more than 200 exceptions.

222 REP. COURTNEY: Because of one of the exceptions, a paroled sex offender lives two doors down from me. If we put another exception in the bill, what county will they go to?

236 REP. BROWN: Discusses conditions of early release. Shouldn't the conduct of outstanding reformation and the other piece be an "and"?

SEN. HAMBY: Refers to lines 12 - 15 of the bill.

REP. BROWN: The "or" was deleted at the end of line 12? So subsection (a) is a requirement with (b) or (c)?

259 SEN. HAMBY: Yes. In response to Rep. Courtney's, there are unique circumstances which are cause for exception.

REP. COURTNEY: We don't want them all to stay in Marion Co. either. But there are exceptions to the bill.

280 CUMMINGS: Wants to know how many exceptions have been granted because they were requested by the victim.

REP. BROWN: Refers to subsection (B) on p. 2 of the amendments.

293 CUMMINGS: Hopefully these amendments will help other victims.

CHAIR TIERNAN: If a senior citizen commits a crime, is he eligible for this early release because of age?

SEN. HAMBY: The amendments call for a clearly, permanently incapacitating condition. Compares cost of incarceration versus cost of a nursing home.

329 CHAIR TIERNAN: Could be up to \$2,000 per month for a nursing home.

HOLLY ROBINSON, COMMITTEE COUNSEL: Two-thirds of that amount is picked up by Medicare. SB 353 changes what the Board would have to do in relationship to those with severe medical conditions and puts in additional safety concerns.

366 CHAIR TIERNAN: Wouldn't these inmates already be in the prison hospital?

SEN. HAMBY: Not necessarily.

374 CHAIR TIERNAN: Is someone with AIDS considered incapacitated?

SEN. HAMBY: At some stages, yes. Refers to line 15 on p. 1 of the bill.

384 REP. TARNO: On p. 1, line 12, dovetails into line 13?

HOLLY ROBINSON, COMMITTEE COUNSEL: The "or" is now on line 13.

REP. TARNO: Are lines 12 and 13 compatible? Or is the language on line 12 enough to release a person?

SEN. HAMBY: You must have subsection (a) plus (b) or (c).

407 HOLLY ROBINSON, COMMITTEE COUNSEL: Disagrees. Clarification is needed if that is how the committee wants the bill to read.

CHAIR TIERNAN: Understanding was that it had to be all three.

HOLLY ROBINSON, COMMITTEE COUNSEL: Reads relevant current statute and interprets it to mean that (a) or (b) stand alone. Significant policy change to mean (a) plus (b) or (c).

448 REP. TARNO: Doesn't old language have the "or" after line 12?

HOLLY ROBINSON, COMMITTEE COUNSEL: Yes. But now it is only on line 13.

REP. TARNO: Doesn't the "or" change the language substantially?

454 HOLLY ROBINSON, COMMITTEE COUNSEL: No. An inmate can be released under subsection (a), or (b) or (c).

REP. BROWN: Sen. Hamby's interpretation is incorrect?

HOLLY ROBINSON, COMMITTEE COUNSEL: Yes. Current ORS is one or the other. Discusses action taken on the issue during the 1991 Legislative Session.

494 CHAIR TIERNAN: Asks for clarification.

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029 HOLLY ROBINSON, COMMITTEE COUNSEL: Restates that the options are one of the three subsections only.

CHAIR TIERNAN: The way it is written?

HOLLY ROBINSON, COMMITTEE COUNSEL: Explains that the "or" does not need to be repeated. The underlying statute was (a) or (b) and this just adds a new subsection (c).

041 REP. TARNO: States his opinion of what Sen. Hamby wanted relating to

the subsections.

REP. BROWN: Sen. Hamby said (a) plus (b) or (c).

CHAIR TIERNAN: Why did the Senate Judiciary Committee drop the "or" on line 12 of the bill?

HOLLY ROBINSON, COMMITTEE COUNSEL: For purposes of drafting, you don't need to repeat it. It was dropped because they added a third subsection.

059 VERN FAATZ, BOARD OF PAROLE AND POST PRISON SUPERVISION: Speaks to SB 353.

062 REP. BROWN: Asks how current law works in terms of release dates and

outstanding reformation.

FAATZ: Explains that the subsections stand alone and apply only to those inmates incarcerated under the matrix system. Discusses subsection (b). Other similar statutes apply to those sentenced under

sentencing guidelines. Discusses early release of inmates who are terminally ill. Subsection (c) also stands alone.

109 REP. BROWN: Why wasn't line 12 of p. 1 of the bill included regarding sentencing guidelines?

FAATZ: It is one of the differences between the matrix and sentencing guidelines.

115 REP. BROWN: Refers to subsection (F) on p. 2 of the bill. What happens in the situation where there is significant danger to the victim? Where do the inmates go when they are released?

FAATZ: We are concerned about crime victims. We manage that by supervision and some have been sent to other counties.

141 REP. BROWN: How are counties chosen?

FAATZ: We look at resources and treatment available to the individual.

REP. BROWN: How many exceptions have been granted in the last two years?

FAATZ: Doesn't recall. Explains when exceptions are made. 179 DENIS DOWD, ASSISTANT DIRECTOR, INSTITUTIONS BRANCH, DEPARTMENT OF CORRECTIONS: Submits testimony in favor of SB 353. (EXHIBIT B)

CHAIR TIERNAN: Asks Mr. Dowd why there were "no" votes in the Senate.

DOWD: Doesn't know.

CHAIR TIERNAN: Was there opposition in the Senate committee?

DOWD: Doesn't recall opposition.

SB 112 - PUBLIC HEARING

Witnesses: Vern Faatz, Board of Parole and Post-Prison Supervision
Eric Wassman, Oregon District Attorneys Association

200 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 112 authorizes the State Board of Parole and Post-prison Supervision to make determination regarding dangerousness of offender based on certain mental conditions. HB 2478

is included in SB 112. Section 1 of SB 112 is new. Explains what Section 1 does. Summarizes Section 5. (EXHIBIT C)

CHAIR TIERNAN: Asks for major differences between SB 112 and HB 2478.

271 HOLLY ROBINSON, COMMITTEE COUNSEL: Explains differences.

326 VERN FAATZ, CHAIRMAN, BOARD OF PAROLE AND POST-PRISON SUPERVISION: Testifies in favor of SB 112.

445 ERIC WASSMAN, ASSISTANT ATTORNEY GENERAL; OREGON DISTRICT ATTORNEYS ASSOCIATION: Testifies in favor of SB 112.

473 FAATZ: Discusses lines 30-37 of p. 4 of SB 112 regarding endangering

life and safety of another.

CHAIR TIERNAN: Asks when that takes place.

HOLLY ROBINSON, COMMITTEE COUNSEL: Has to be pled initially and then remainder would be held in the sentencing phase.

TAPE 113, SIDE B

034 CHAIR TIERNAN: Doesn't recall the standard of beyond a reasonable doubt.

HOLLY ROBINSON, COMMITTEE COUNSEL: Has not been in statute but necessity of doing this has been established in case law. 040
WASSMAN: There is burden under case law to prove beyond reasonable doubt. There is a separation between facts related to the current crime and facts related to the prior crime having to do with criminal background.

052 REP. BROWN: Concerned that those who are mentally ill have a different standard of protection. The issue is whether or not the prisoner is a

threat or danger to the community not the fact that the person has a mental condition and is a danger.

FAATZ: Some inmates, by their history, have demonstrated their dangerousness, and the combination of past history, institutional conduct, and finding of the presence of a disorder leads us to believe that they should not be released.

078 REP. BROWN: Questions release of inmates who are mentally ill and those who are not in terms of release.

083 FAATZ: Refers to p. 1, line 26 and p. 2, line 1. It clarifies our authority. We can do this under present statute.

REP. BROWN: You are working under the presumption that most inmates

have some sort of mental disorder or deficiency.

FAATZ: Not necessarily, but many are personality disordered at some level or other.

105 CHAIR TIERNAN: Asks Mr. Faatz if there is anything they want to add regarding Section 1.

FAATZ: No. Would take SB 112 as it is.

119 CHAIR TIERNAN: Adjourns meeting at 4:15 p.m.

Submitted by:

Reviewed by:

Julie Nolta
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Proposed amendments to SB 353 - 3 pages B - Testimony on SB 353 -
Dept. of Corrections - 1 page C - Staff Measure Summary on SB 112 -
Committee Counsel - 1 page D - Testimony on SB 112 - Sen. Catherine
Webber - 4 pages