

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

May 26, 1993 Hearing Room 350 3:00 p.m. Tapes 115

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 501 - Relating to capacity of defendant to stand trial SB 200 - Relating to juveniles SB 204 - Relating to juveniles SB 493 - Relating to racketeering

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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 115, SIDE A

001 CHAIR TIERNAN: Calls meeting to order at 1:35 p.m.

SB 493 - WORK SESSION

010 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 493 expands definition of racketeering to include violations of wildlife laws.

021 MOTION: REP. BROWN: Moves SB 493 TO FULL COMMITTEE with a DO PASS recommendation.

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

SB 204 - WORK SESSION

026 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 204 amends notification requirements when a child is taken into temporary custody to include notice of the action taken and the time and place of the hearing.

037 MOTION: REP. COURTNEY: Moves SB 204 TO FULL COMMITTEE with a DO

PASS recommendation.

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

SB 200 - WORK SESSION

HOLLY ROBINSON, COMMITTEE COUNSEL: SB 200 gives court-appointed attorney for child in a juvenile court proceeding the ability to access a child's records without the necessity of obtaining a release of information signed by the parent or guardian. There are -5 amendments submitted by Rep. Brown. (EXHIBIT A)

068 MOTION: REP. BROWN: Moves to ADOPT SB 200A-5 HAND-ENGROSSED AMENDMENTS.

REP. BROWN: Explains -5 amendments.

076 HOLLY ROBINSON, COMMITTEE COUNSEL: Explains what Sen. Dwyer's amendments would have done to the bill.

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

107 MOTION: REP. BROWN: Moves SB 200 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

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

SB 501 - PUBLIC HEARING

Witnesses: Bob Joondeph, Oregon Advocacy Center Richard Hulteng, Mental Health Division Mary Byrkit, Mental Health Association Dale Penn, Oregon District Attorneys Association

113 HOLLY ROBINSON, COMMITTEE COUNSEL: SB 501 makes Oregon law conform to Jackson v. Indiana, 406 US 715 (1971) and the consent decree Oregon signed in the United States District Court on Sept. 11, 1991. Revises

the procedures by which a court in the mental health division must follow when an individual has been deemed incapable of standing trial.

129 BOB JOONDEPH, OREGON ADVOCACY CENTER: Submits and reviews written testimony on SB 501. (EXHIBIT B)

CHAIR TIERNAN: Asks for reasons an attorney may not be able to represent a client at a trial.

224 RICHARD HULTENG, MENTAL HEALTH DIVISION: Gives examples why an

attorney may not be able to work with a client.

CHAIR TIERNAN: Who makes those decisions for the state?

HULTENG: It is made by the criminal court.

239 CHAIR TIERNAN: Who does the evaluation?

HULTENG: The court can appoint whomever they want. If the referral was to the state, there is a team of psychologists and psychiatrists who would do that.

252 JOONDEPH: Continues testimony. Refers to SB 501A-4 amendments. (EXHIBIT C)

304 HULTENG: Submits and reviews written testimony in favor of SB 501. (EXHIBIT D)

327 CHAIR TIERNAN: If the state were doing the evaluation or it was private, you would still be confined to these guidelines?

HULTENG: All guidelines apply to the hospital since the defendant would be committed there.

332 CHAIR TIERNAN: Asks about someone with multiple personalities being able to stand trial.

HULTENG: It is rare that it exists in these cases. Describes more frequent disorders for determination.

349 MARY BYRKIT, MENTAL HEALTH ASSOCIATION OF OREGON: Submits and reviews written testimony in favor of SB 501 on behalf of Sandra Millius. (EXHIBIT E)

JOONDEPH: Discusses p. 4, line 7 of the bill regarding court notices from the hospital.

399 REP. TARNO: If the hospital notifies the court within the thirty day

period and the court fails to respond, does the hospital automatically release within a certain time frame?

JOONDEPH: Hospital is only authorized to hold a person for a maximum of three years. The other alternative is to initiate commitment proceedings on their own if the person is considered dangerous.

REP. TARNO: That would take another hearing?

JOONDEPH: They would file a notice with the court and there would be an investigation.

420 HULTENG: Typically would not release unless there was a court order. If the criminal counsel did not respond to a phone call, the hospital would initiate civil commitment proceedings.

430 JOONDEPH: Continues discussion of amendments.

466 HULTENG: If there is hope for competency for the defendant, he is sent back to the hospital. If there is no hope for competency, civil commitment proceedings are initiated.

476 HOLLY ROBINSON, COMMITTEE COUNSEL: Asks how the witnesses arrived at 3 years instead of five on p. 4 of the bill.

JOONDEPH: Discusses relevant court case, Jackson v. Indiana.

TAPE 115, SIDE B

001 JOONDEPH: Continues explanation of length of time before discharge of a defendant.

004 CHAIR TIERNAN: Asks for clarification of three years.

HULTENG: Maximum length of time they can be committed. It gives three years to get them to the point where they are able to stand trial. If that is not possible, it goes to a civil commitment.

013 CHAIR TIERNAN: Asks about length of civil commitment.

HULTENG: They are reviewed every 6 months and can be recommitted.

CHAIR TIERNAN: Asks why they want less than three years.

HULTENG: If the hospital can do anything for the person, they will be able to get results within three years. The charges can be reinstated.

034 HOLLY ROBINSON, COMMITTEE COUNSEL: How many people are being held for aid and assist?

HULTENG: Estimates 30 - 35.

HOLLY ROBINSON, COMMITTEE COUNSEL: Is that a steady number?

HULTENG: It fluctuates from 20 - 40.

039 CHAIR TIERNAN: What is average time for evaluation of these people?

HULTENG: Average might be six to eight months. Some take longer.

052 DALE PENN, OREGON DISTRICT ATTORNEYS ASSOCIATION: Testifies in favor of SB 501.

067 REP. TARNO: (unintelligible)

PENN: Representatives from the Dept. of Justice don't see a problem with compliance.

073 CHAIR TIERNAN: Asks Mr. Penn's opinion on the three year limitation.

PENN: Would accept a three year limitation. Very few cases get to that point.

082 HOLLY ROBINSON, COMMITTEE COUNSEL: Asks about the statute of limitations during this time.

PENN: Would be held to the three year period except for murder.

095 HOLLY ROBINSON, COMMITTEE COUNSEL: Dismissal without prejudice allows criminal charges to be brought if the high profile murder defendants regained ability to aid and assist.

PENN: Agrees.

CHAIR TIERNAN: What is the statute of limitation for a child molester?

PENN: Have changed statute of limitation on sex offenses. Those would be extended. Could go longer than the three year period. Would initiate civil commitment proceedings. If the statute of limitations is extended, we would still have the period of time beyond the three years to initiate.

121 REP. TARNO: (unintelligible)

PENN: The defense would argue that it should not.

SB 501 - WORK SESSION

125 HOLLY ROBINSON, COMMITTEE COUNSEL: When a victim is an adult, the statute of limitation on sex offenses is six or eight years. If there

was a child victim, there is a certain number of years past child's age of 18.

170 MOTION: REP. TARNO: Moves to ADOPT SB 501A-4 AMENDMENTS.

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

175 MOTION: REP. TARNO: Moves SB 501 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

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

CHAIR TIERNAN: Adjourns meeting at 2:25 p.m.

Submitted by:

Reviewed by:

Julie Nolta
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Proposed amendments to SB 200 - Rep. Brown - 4 pages
B - Testimony on SB 501 - Oregon Advocacy Center - 2 pages
C - Proposed amendments to SB 501 - 1 page
D - Testimony on SB 501 - Dept. of Human Resources - 1 page
E - Testimony on SB 501 - Mental Health Assoc. of Oregon - 1 page