

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

June 3, 1993 Hearing Room 357 3:00 p.m. Tapes 122 - 123

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

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

MEASURES CONSIDERED: HB 3664 - Relating to indigent defense SB 1047 - Relating to criminal proceedings without defendant being physically present HB 3319 - Relating to knives

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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 122, SIDE A

001 CHAIR TIERNAN: Calls meeting to order at 3:45 p.m.

HB 3319 - WORK SESSION

Witnesses: Jackie Bloom, City of Portland Lt. Dennis Merrill, Portland Police Bureau John Nichols, Oregon State Shooting Association Sgt. Scott Weinager, Portland Police Bureau

006 HOLLY ROBINSON, COMMITTEE COUNSEL: HB 3319 prohibits carrying concealed ballistic and push knives. Explains -1 amendments. (EXHIBIT A)

022 CHAIR TIERNAN: Is self defense a requisite of intent?

HOLLY ROBINSON, COMMITTEE COUNSEL: Yes, it is considered a weapon in that case.

034 REP. TARNO: Believes the amendments are workable. Intent will still

have to be proved.

CHAIR TIERNAN: Asks witnesses how the city intends to enforce the bill and their opinion of the bill.

048 JACKIE BLOOM, GOVERNMENT RELATIONS, CITY OF PORTLAND: Explains

why the description of "knives" was eliminated from the amendments.

CHAIR TIERNAN: This takes away tool knives, buck knives, etc. as long as a person intends to use it for purposes other than self defense?

063 LT. DENNIS MERRILL, PORTLAND POLICE BUREAU: Correct. Focus is on those who carry concealed knives with the intent to use them as a weapon.

CHAIR TIERNAN: Asks about Swiss army knives.

MERRILL: It must be based on circumstances and state of mind of the defendant.

089 JOHN NICHOLS, OREGON STATE SHOOTING ASSOCIATION: Would prefer language in ORS 166.220. Current language is too open.

116 BLOOM: In ORS 166.220 you need a victim as part of intent to use unlawfully.

129 REP. BROWN: Carrying a knife for self defense is not using it as a weapon.

BLOOM: Everyone has a right to carry a knife, but not concealed. Concealed weapon statute is to protect the public.

146 CHAIR TIERNAN: Do you have problems with linoleum knives?

MERRILL: No.

149 SGT. SCOTT WEINAGER, PORTLAND POLICE BUREAU: Only had one problem with a linoleum knife in 12 years.

MERRILL: Any bladed instrument could be lethal. The key is carrying it concealed and as a weapon.

163 REP. TARNO: Asks what "intent to use" would entail.

MERRILL: Provides some latitude in terms of totality of circumstances.

REP. TARNO: Are overt actions considered intent?

MERRILL: Yes. An overt action is an indicator of intent.

WEINAGER: Focused on "weapon" because it eliminates other legitimate uses.

221 REP. COURTNEY: Concealed weapons statutes would apply to this?

MERRILL: No.

REP. COURTNEY: So there is no way to get a concealed weapons permit to allow you to carry a knife as a weapon?

MERRILL: No.

224 NICHOLS: It is a concealed handgun statute, not concealed weapon statute. Without "intent to use unlawfully" it is overly broad.

REP. COURTNEY: States that he carries a knife as a weapon when camping.

264 REP. BROWN: Asks Ms. Bloom what the problem was with "unlawful purpose." Does that raise it to a Class C felony?

WEINAGER: It doesn't change the punishment but the threshold of proof for the intent.

REP. BROWN: That wouldn't allow us to convict a person for carrying a knife with no other evidence surrounding it?

WEINAGER: Correct, because there is nothing to show intent to use as a weapon.

283 REP. BROWN: As the amendments are currently written, that person couldn't be convicted.

WEINAGER: Unless a statement or an overt action is made, there is no violation of this proposed statute.

REP. BROWN: What about intent to injure?

BLOOM: That would raise it to a Class C felony and a victim would be needed.

MERRILL: Other crimes might be involved as well.

305 REP. BROWN: Should say "intent to be used for an unlawful purpose."

May not be as broad.

NICHOLS: The -1 amendments could accomplish the same thing as ORS 166.220 by saying "unlawful use." Someone carrying a knife only in self defense could be arrested.

348 REP. BROWN: Concerned about putting another person or victim into the statute.

BLOOM: Would be replicating what is already in the law. Would be requiring the same level of intent to be used against another.

REP. BROWN: Does current statute include switch blades?

360 MERRILL: They are specified as illegal in statute.

CHAIR TIERNAN: Supports the intent of the bill but wants to use the best language possible.

379 REP. TARNO: Refers to line 5, subsection (b) of the HB 3319-1 amendments. Proposes language to say "who with the intent that the instrument be available for use as an offensive weapon."

MERRILL: It is also an issue of concealment. An encounter may be different if both know they are armed. An unarmed aggressor is disadvantaged.

REP. TARNO: You cannot draw a parallel between a concealed firearm and

a concealed knife.

MERRILL: Questions the meaning of "offensive weapon."

436 NICHOLS: Likes Rep. Tarno's solution. Should be obvious according to circumstances whether someone is carrying a knife for defensive or offensive purposes.

459 CHAIR TIERNAN: Asks about how knives at school will be interpreted.

BLOOM: The totality of circumstances will determine.

MERRILL: The wording says "upon the person."

476 CHAIR TIERNAN: So if the knife is in a bag, etc. it is not concealed?

MERRILL: It is not the same as unlawful possession.

486 REP. BROWN: When reading ORS 166.240, there is no intent required. Statute is already very broad.

TAPE 123, SIDE A

SB 1047 - PUBLIC HEARING

Witnesses: Bill Taylor, Senate Judiciary Committee Dale Penn, Oregon District Attorneys Association

075 CAROLE SOUVENIR, COMMITTEE COUNSEL: SB 1047 allows the defendant to appear in court to plead guilty to a felony, probation violation or parole violation by means of simultaneous television transmission or telephonic communication. Gives background of the bill.

091 BILL TAYLOR, COUNSEL, SENATE JUDICIARY COMMITTEE: Submits and reviews written testimony and background on SB 1047. (EXHIBIT B)

133 CHAIR TIERNAN: What is the difference between the two bills?

TAYLOR: Describes differences between the bills.

148 DALE PENN, OREGON DISTRICT ATTORNEYS ASSOCIATION: Testifies in favor of SB 1047.

162 REP. COURTNEY: Asks about committee concerns when hearing HB 2246 relating to the same issue.

REP. BROWN: Explains some concerns regarding HB 2246.

SB 1047 - WORK SESSION

187 MOTION: REP. BROWN: Moves to AMEND SB 1047 by deleting "probationer" on line 27 of p. 1 of the bill and inserting "parolee"; and inserting "or its designee" after "board."

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

195 MOTION: REP. COURTNEY: Moves SB 1047 AS AMENDED TO FULL COMMITTEE with a DO PASS recommendation.

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

HB 3664 - PUBLIC HEARING

Witnesses: Rep. Kevin Mannix, District 32 Bill Linden, State Court Administrator

205 CAROLE SOUVENIR, COMMITTEE COUNSEL: HB 3664 establishes the Public Defender Board that shall be responsible for adopting administrative rules regarding the determination of indigence of persons entitled to be represented by counsel and the compensation and qualifications of such

counsel.

219 REP. KEVIN MANNIX, DISTRICT 32: Testifies in favor of HB 3664.
325 CHAIR TIERNAN: How would this save time, money or effort?

REP. MANNIX: Discusses efficiencies.

372 CHAIR TIERNAN: Asks Rep. Mannix if he has had personal experience with this.

REP. MANNIX: Explains experience with public defender's office in Guam and in district attorneys office. Describes other state's work in this area.

396 CAROLE SOUVENIR, COMMITTEE COUNSEL: Why are two boards set up?

REP. MANNIX: Concerned about the transition process. Anticipates a proposal to merge the two boards in 2 - 4 years. Discusses the current appellate board.

442 BILL LINDEN, STATE COURT ADMINISTRATOR: Submits and reviews written testimony in favor of HB 3664. (EXHIBIT C)

TAPE 122, SIDE B

035 LINDEN: Continues testimony.

110 CHAIR TIERNAN: Asks for negative aspects of the issue.

LINDEN: Doesn't see a down side if the leadership is adequate. Will depend on personnel as well. Accountability is not lost.

161 REP. TARNO: You have contracts with forensics sciences laboratory work? That would be part of this package?

LINDEN: That would be up to the board.

REP. TARNO: That would be a defense issue, but it is not in the bill?

LINDEN: There is language that provides that existing contractual relationships would continue unless the board decided to terminate them.

172 REP. TARNO: Asks about transitional budget package.

LINDEN: Explains how transitional board and expenses would work.

186 REP. TARNO: Asks how much it would cost to get the program going.

LINDEN: Currently spend \$1 million on administration. Verification program in the counties costs another \$1.7 million.

211 CHAIR TIERNAN: Adjourns meeting at 4:55 p.m.

Submitted by:

Reviewed by:

Julie Nolta
Committee Coordinator

Anne May Committee Clerk

EXHIBIT LOG:

A - Proposed amendments to HB 3319 - 1 page B - Testimony on SB 1047 -
Senate Judiciary Committee - 3 pages C - Testimony on HB 3664 - State
Court Administrator - 16 pages D - Testimony on HB 3664 - Public
Defender - 2 pages