

HOUSE COMMITTEE ON JUDICIARY

February 1, 1993 Hearing Room 357 1:30 p.m. Tapes 5 - 8

MEMBERS PRESENT: Rep. Del Parks, Chair Rep. Tom Mason, Vice-Chair Rep. Ken Baker Rep. Tom Brian Rep. Kate Brown Rep. Peter Courtney Rep. Jim Edmunson Rep. Veral Tarno Rep. Bob Tiernan

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

MEASURES CONSIDERED: HB 2216 - Relating to HIV testing - WS HB 2247 - Relating to criminal procedure - WS HB 2249 - Relating to criminal procedure - WS HB 2250 - Relating to the death penalty - WS HB 2251 - Relating to charging a person with an offense - WS HB 2253 - Relating to criminal law - WS HB 2259 - Relating to criminal law - WS HB 2352 - Relating to post-conviction relief - WS HB 2477 - Relating to motor vehicle accidents - WS

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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 5, SIDE A

005 REPRESENTATIVE PARKS, CHAIR: Calls meeting to order at 1:35 p.m.

HB 2216 - WORK SESSION

HOLLY ROBINSON, LEGISLATIVE COUNSEL: Bill introduced at request of Criminal Justice Services Division in part to bring Oregon into compliance in order to receive Federal Bureau of Justice Assistance grant money. Summarizes bill. There are amendments which need to be adopted. 012 MOTION: REP. MASON: Moves amendments to HB 2216 be adopted.

VOTE: Hearing no objection, the motion carries.

024 MOTION: REP. MASON: Moves HB 2216 as amended be moved to the floor with a "do pass" recommendation.

027 VOTE: 9 - 0. Motion passes. AYE: Baker, Brian, Brown, Courtney, Edmunson, Mason, Tarno, Tiernan, Parks NO: None

Rep. Mason to carry

HB 2247 - WORK SESSION

035 CAROLE SOUVENIR, LEGISLATIVE COUNSEL: The bill is proposed in response to the Court of Appeals decision in State vs. Person. Summarizes bill.

049 MOTION: REP. TIERNAN: Moves that HB 2247 as amended be moved to the floor with a "do pass" recommendation.

066 VOTE: 9-0 Motion passes. AYE: Baker, Brian, Brown, Courtney, Edmunson, Mason, Tarno, Tiernan, Parks NO: None

Rep. Edmunson to carry

HB 2249 - WORK SESSION

076 CAROLE SOUVENIR, LEGISLATIVE COUNSEL: Summarizes bill which would allow the Attorney General to release money judgement liens under certain

circumstances.

090 MOTION: REP. BAKER: Moves HB 2249 to the floor with a "do pass" recommendation.

VOTE: 9-0 Motion passes AYE: Baker, Brian, Brown, Courtney, Edmunson, Mason, Tarno, Tiernan, Parks NO: None

Rep. Courtney to carry

HB 2250 - WORK SESSION

097 CAROLE SOUVENIR, LEGISLATIVE COUNSEL: HB 2250 would allow the Department of Correction to use potassium chloride or any other

substances in the lethal injection if it determines they are more humane to carry out the death penalty.

115 REP. MASON: Death penalty should not be killing with kindness, but a punitive retributive action. Originally voted against this bill, and

will again. Will give notice of possible minority report. Wants to be honest with the people of Oregon and present the death penalty as it really is.

138 DEL PARKS: It would be good to review minority report procedures.

145 HOLLY ROBINSON, LEGISLATIVE COUNSEL: Gives procedures for filing a minority report.

152 REP. BROWN: Will also be voting against the bill. The death penalty is not humane.

158 REP. BAKER: Will be supporting the bill but is concerned that language "lethal substances" is indistinct.

166 REP. COURTNEY: Is it Rep. Baker's position that we won't know the specific chemicals being used?

REP. BAKER: Yes.

REP. COURTNEY: Thought that the witnesses set out specific chemicals.

CAROLE SOUVENIR, LEGISLATIVE COUNSEL: ORS 137.473 sets out combination of drugs. HB 2250 amends the language to "substance or substances."

189 REP. TIERNAN: According to testimony heard before the committee, it allows the department to adopt new substances as they are developed to

assure swifter execution.

197 REP. COURTNEY: The legislative record refers specifically to potassium chloride as the third chemical which was intended by use of this

language.

211 REP. MASON: The bill doesn't refer to a specific chemical only a fatal chemical.

231 REP. EDMUNSON: Concerned that the language does not stipulate that a short acting chemical will be used.

232 CHAIR PARKS: What is the practical problem of naming, in the bill, the chemical to be used?

252 REP. BRIAN: The bill should include the criteria of humane and short acting.

263 MOTION: REP. BRIAN: Moves that the bill be sent back to the Sub-committee on Crime and Correction.

VOTE: Hearing no objection, the motion carries.

HB 2251 - WORK SESSION

269 CAROLE SOUVENIR, LEGISLATIVE COUNSEL: Summarizes the bill.

280 MOTION: REP. BROWN: Moves HB 2251 to the floor with a "do pass" recommendation.

VOTE: 9-0 Motion passes AYE: Baker, Brian, Brown,

Courtney, Edmunson, Mason, Tarno, Tiernan, Parks NO: None

Rep. Brown to carry

HB 2253 - WORK SESSION

290 CAROLE SOUVENIR, LEGISLATIVE COUNSEL: This bill clarifies the procedure for charging a person with an offense. The current statute is no longer necessary because the State Court Administrator's office has a computer system which can locate the information if needed.

302 MOTION: REP. BAKER: Moves HB 2253 to the floor with a "do pass" recommendation.

VOTE: 9-0 Motion passes AYE: Baker, Brian, Brown, Courtney, Edmunson, Mason, Tarno, Tiernan, Parks NO: None

Rep. Edmunson to carry

HB 2259 - RELATING TO CRIMINAL LAW - WORK SESSION

315 HOLLY ROBINSON, LEGISLATIVE COUNSEL: HB 2259 clarifies the crime of intimidation in the first degree. In the section on menacing,

perception is required rather actual status. Amendments need to be adopted to remove the emergency clause.

338 MOTION: REP. BAKER: Moves that amendments to HB 2259 be adopted.

VOTE: Hearing no objections, the motion passes.

341 MOTION: REP. BRIAN: Moves HB 2259 to the floor with a "do pass" recommendation.

344 REP. BAKER: Is the language "their perception" clear enough in reference to the criminal?

HOLLY ROBINSON, LEGISLATIVE COUNSEL: It relates to the criminal and the victim.

339 REP. BAKER: I'm struggling with the phraseology.

HOLLY ROBINSON, LEGISLATIVE COUNSEL: It parallels current law and language.

REP. BAKER: We're talking about the victim's race, color or religion.

HOLLY ROBINSON, LEGISLATIVE COUNSEL: Clarifies who the pronouns are referring to.

REP BAKER: The pronouns aren't consistent.

383 REP. PARKS: Would the use of "the actors" clarify it?

REP. BAKER: Yes.

387 MOTION: REP. BAKER: Moves the technical amendment substituting "actors" instead of "their."

MOTION: REP. BROWN: Moves to make a friendly amendment to make the same changes on line 7 and 10.

395 REP. BAKER: Accepts changes.

Hearing no objections, the amendments are adopted.

400 MOTION: REP. TARNO: Moves HB 2253 as amended to the floor with "do pass" recommendation.

404 VOTE: 9-0 Motion AYE: Baker, Brian, Brown, Courtney, Edmunson, Mason, Tarno, Tiernan, Parks NO: None

Rep. Tarno to carry

HB 2352 - WORK SESSION

416 MOTION: REP. TIERNAN: Moves to refer HB 2352 back to Crime and Corrections Sub-committee.

426 CHAIR PARKS: Explains reason for referring bill back to the sub-committee. Hearing no objection, the motion is passed.

HB 2477 - WORK SESSION

440 MOTION: REP. TIERNAN: Moves HB 2477 be returned to Sub-committee on Crime and Corrections.

CHAIR PARKS: Explains reason for referring bill back to the sub-committee.

Hearing no objections, the motion is passed.

TAPE 6, SIDE A

015 MOTION: REP. MASON: Moves LC 323, LC 320, LC 322, and LC 356 be introduced as committee bills.

Hearing no objections, the motion is passed.

REP. PARKS: Just because you agree to the procedure it does not mean you support them.

030 REP. BAKER: Has someone on this committee looked at these bills?

REP. PARKS: Rep. Mason has.

034 REP. MASON: Some may not even be heard.

REP. BAKER: Wants to cut down on work load.

REP. MASON: Fewest number of bills this committee has ever introduced.

047 Hearing no objections, the LC's will be introduced as committee bills.

049 REP. BRIAN: Asks for clarification of affects of amendments to HB 235 2 on fiscals.

HOLLY ROBINSON, LEGISLATIVE COUNSEL: Explains where to find these affects and how to read them.

REP. BRIAN: Doesn't understand why this is not in the fiscal.

HOLLY ROBINSON, LEGISLATIVE COUNSEL: Will forward comments to the Fiscal Office.

072 CHAIR PARKS: Explains procedures and reasons for the following public hearing. Declares 5 minute recess.

SB 137 - PUBLIC HEARING

Witnesses: Elyse Clawson, Dept. of Corrections Judge James Ellis, Multnomah County Vern Faatz, Board of Parole and Post-Prison Supervision

124 ELYSE CLAWSON, DEPT OF CORRECTIONS, Introduces Judge James Ellis and Vern Faatz (EXHIBITS A, B, C)

CLAWSON: SB 137 would allow the Board of Parole and Post-Prison Supervision to limit the length of parole supervision for some offenders based on compliance, thus reducing expenditures and allowing for some funds to provide transition services.

169 CHAIR PARKS: Are these across the board reductions?

172 FAATZ: Criminal justice agencies are concerned with functioning of the system. Gives reasons for passage of the bill and what the bill will

do. Discusses affect of Victim's Rights Bill on work load. This system is almost non-functional, in personal opinion.

230 CHAIR PARKS: Why the dramatic increase?

FAATZ: A result of the Victims Rights Initiative. Even though there were many positive changes, this one is a difficult issue to manage.

244 CHAIR PARKS: Would adoption of SB 137 overrule or modify the initiative?

FAATZ: Would overrule the length of supervision portion.

248 CHAIR PARKS: In what way?

FAATZ: It gives authority to the board, with certain exceptions, to set length of post-prison supervision. Gives examples of types of offenders.

CHAIR PARKS: This would change what people voted for?

FAATZ: Yes.

270 CHAIR PARKS: What did initiative require?

FAATZ: Gives requirements with respect to supervision.

284 REP. BROWN: Does this decrease the work load of parole officers?

FAATZ: Yes, and it will allow them to supervise those offenders who most need supervision. Discusses recidivism rates in Oregon. Need to make better use of resources.

327 REP. TIERNAN: What crimes have prospective unsupervised offenders committed and how will their terms of supervision be shortened? FAATZ: Not people who have committed serious person crimes, but driving offenses, etc.

ELLIS: Adds examples of offenders.

FAATZ: Those with insignificant criminal history, no string of major felonies.

362 REP. TIERNAN: These are offenses that affect the majority of Oregonians in day to day lives.

353 FAATZ: Yes.

REP. TIERNAN: What is the period of time their supervision will be cut to?

FAATZ: Six to 36 months or less in some cases.

359 REP. TIERNAN: As resources dictate, could be a lot less?

FAATZ: Yes.

REP. TIERNAN: We wouldn't be facing this alternative if Measure 5 was not an issue?

FAATZ: We would be asking for this authority anyway. Gives reasons.

REP. TIERNAN: It seems that Measure 5 is not a driving force.

FAATZ: It is for the Dept. of Corrections, but from my perspective only, we would be asking for this anyway.

424 REP. TIERNAN: Are the 63 additional field staff referred to in the impact statement enough to take care of current problem?

CLAWSON: That is our best projection. Our current solution is to reduce supervision for those on probation. Explains how this proposal would solve this problem.

461 REP. TIERNAN: The \$6 million is not funding current programs?

CLAWSON: That's how much it would take to continue to supervise and provide sanctions to that group of people to hold them accountable.

REP. TIERNAN: Those aren't programs now in place?

CLAWSON: Some are in place but would have to be expanded.

474 REP. BROWN: You are wanting to terminate people early who are on parole and doing well?

FAATZ: Yes.

REP. BROWN: Previously, if a parolee is doing very well and has a three year parole period, you are required to supervise them for three years.

FAATZ: That is correct.

REP. BRIAN: Currently, wouldn't those people be case banked?

FAATZ: Receives requests everyday to terminate the supervision of those who are doing well. I assume many of those are case banked.

TAPE 5, SIDE B

312 CLAWSON: Some are case banked. Gives examples of who are case banked and when.

324 CHAIR PARKS: If the probation officer doesn't think probation is necessary, does he stop supervision regardless of having your permission?

CLAWSON: The officers probably focus on those who are causing them the most trouble. Certain levels of supervision are audited.

344 CHAIR PARKS: So the answer is no until they are excused from this duty?

CLAWSON: Yes, but they do maintain minimum contact required.

350 REP. COURTNEY: The issue is supervised vs. non-supervised?

FAATZ: Yes.

REP. COURTNEY: You may terminate them but they are still under parole?

FAATZ: No, we would discharge the sentence.

361 REP. COURTNEY: Parole period is part of the sentence?

FAATZ: Yes.

REP. COURTNEY: You have or you want that authority to determine length of sentence?

FAATZ: We want that authority.

REP. COURTNEY: You don't have it now?

FAATZ: We do not. In some cases we do, according to sentencing date.

394 REP. COURTNEY: Can we go half way? Supervision or non-supervision based on offenders meeting certain standards.

FAATZ: We are there essentially. Explains current case supervision policy.

452 REP. COURTNEY: What is definition of supervision? CLAWSON: Explains active and inactive supervision.

TAPE 7 SIDE A

029 REP. COURTNEY: Are checks random?

CLAWSON: Fairly random.

REP. COURTNEY: No one is being checked every week?

CLAWSON: On an inactive case?

REP COURTNEY: On an active case.

CLAWSON: Some are checked every week.

038 REP. COURTNEY: Aren't some case loads pretty high?

CLAWSON: It varies. Gives examples.

REP. COURTNEY: Still don't have a feeling for case load supervision.

Wants hard facts.

059 CHAIR PARKS: My understanding is that supervision will be terminated for people who aren't being supervised anyway. Where are we going to pick

up gain?

067 CLAWSON: Describes types of case loads and management of

activity.

091 REP. BRIAN: So there will be a down shifting in levels of supervision.

CLAWSON: Correct. Explains how this would affect case load.

REP. BRIAN: Are affects of these bills in the Governor's mandated budget?

CLAWSON: Yes.

115 REP. TIERNAN: Referring to second paragraph, how much money is that?

CLAWSON: Approximately \$9.6 million.

REP. TIERNAN: And you're going to use that to do what?

CLAWSON: Discusses proposed programs.

REP. TIERNAN: Who gets these services?

CLAWSON: Virtually everyone coming out of institutions would receive transitioning services and some coming out of probation. 136 CHAIR PARKS: You will be diverting \$9 million but will need another \$6 million?

CLAWSON: If this proposal goes through, we will not. We need additional resources but not for this case load. Explains funding from Governor's budget.

CHAIR PARKS: The change means we will spend \$9 million in a different way and a new \$10 million that we are not spending now.

CLAWSON: That is correct.

REP. TARNO: This requires board to supervise certain types of offenders but no mandate in addition to these?

148 FAATZ: Explains length of sentence of listed offenders including possible early discharge upon unanimous vote of the Board. All others

will receive supervision pursuant to rule.

175 REP. BROWN: What are the periods of Class B and A felonies?

FAATZ: One to three years for most offenders.

REP. BROWN: It gives you the discretion to bring the group sentenced from 1986 to 1989 in conformance with parole period guidelines?

FAATZ: It gives us greater discretion and the opportunity to terminate

earlier than a year.

193 REP. BAKER: Wants to know Judge Ellis's view.

ELLIS: States view of the issue. We will be more likely to prevent future crimes if we more closely supervise for a shorter time than just look over someone's shoulder for years and that is the intention of this bill.

238 REP. COURTNEY: Doesn't understand why sex offenders, a particularly difficult group of offenders, are set aside with the others?

269 FAATZ: There is no reason this section can't be modified.

REP. COURTNEY: References comments made to him by professionals concerning the difficulty of treating sex offenders.

286 REP. TIERNAN: Does this proposal make Oregonians safer? Will sex offenders be supervised a shorter amount of time according to bill

proposed?

309 FAATZ: With respect to parole, the sex offender would be under supervision until expiration of the sentence unless a unanimous vote by board.

317 REP. TIERNAN: How long would it be for a first time offender?

ELLIS: Depending on the crime. REP. TIERNAN: Sexual misconduct for a first timer would be 16-18

months. What would be the parole period?

332 FAATZ: The term is "post-prison supervision." The chart will tell the length of time. Refers to bill passed in last session to require sex

offenders to serve longer terms.

361 REP. TIERNAN: In pursuant to your proposal, how long would the person serve?

FAATZ: Twelve years unless the Board votes unanimously to terminate earlier.

383 REP. TARNO: Ms. Clawson indicated that the case load would be reduced to 3300.

CLAWSON: That is our best estimate.

REP. TARNO: Would this reduce the state prison population?

CLAWSON: I am not certain of the impact.

REP. TARNO: Those on the street under active supervision now.

CLAWSON: Including maintenance of everyone, doesn't have the information today to make an estimate.

410 REP. TARNO: This will not allow for early release of currently sentenced prisoners?

CLAWSON: No.

SB 138 - WORK SESSION

Witnesses: Elyse Clawson, Dept. of Corrections Judge James Ellis, Multnomah County Vern Faatz, Board of Parole and Post-Prison Supervision

CLAWSON: Submits written testimony and summarizes the bill. Gives reasons that the bill would be good for corrections process.

TAPE 8, SIDE A

031 ELLIS: Started idea to hold probation violation hearings administratively instead of in the courts. Appearing on behalf of

Oregon Criminal Justice Council. Summarizes how the present system works, what the bill will do and how this is an improvement.

080 CHAIR PARKS: Aren't the violations almost always submitted? 085 ELLIS: Very few hearings have no violation found whatsoever.

093 REP BROWN: Agrees with Judge Ellis. After doing probation violation hearings for a year, about five were factual disputes.

096 REP. TARNO: Would this have a direct impact on local county jail levels and their funding and bed capacities?

101 CLAWSON: It may. Generally the jail is being used the same or slightly less. Gives reasons. Individual agreements with local county sheriffs

are being developed.

112 REP. TARNO: Will this cut some of the red tape out of the process of getting an inmate several hearings before we can finally process his

case?

CLAWSON: Yes.

117 ELLIS: This cannot be allowed to have an overall adverse impact on jails because jails are full. Gives examples and how he envisions it will

work. Run more people through with shorter periods of time.

135 CHAIR PARKS: What is the fiscal impact?

CLAWSON: Difficult to project because they will be phasing in. Explains budget transfer to parole board with remainder to come from the Governor's budget.

151 CHAIR PARKS: Asks for clarification on how reduction in case loads will help with funding.

CLAWSON: Doesn't understand question.

CHAIR PARKS: Less people supervised gives you more resources.

163 CLAWSON: SB 137 reduces supervision.

CHAIR PARKS: Didn't understand that reduction in supervision would generate any money because we would still have the same number of officers. They would just have a smaller work load.

CLAWSON: Explains how it would free up some resources.

CHAIR PARKS: How many officers now and how many later?

176 CLAWSON: About 381 officers today. If both parts of proposal pass, number would be reduced by about 96.

182 CHAIR PARKS: About 1/3?

CLAWSON: Yes.

182 ELLIS: Gives reason for difficulty of estimating effect.

212 CHAIR PARKS: How will it work in a county where there is no hearings officer?

206 FAATZ: Working out ways to meet the needs of local jurisdictions without a hearings officer in every county in the state.

CHAIR PARKS: Do you hold hearings in the jail?

221 FAATZ: Most are held in the jail, hearings officer is present or on the telephone.

CHAIR PARKS: So the fellow would have his hearing at the jail but the officer could be in Roseburg.

FAATZ: Yes, that is a possibility.

240 CLAWSON: We anticipate a reduction in hearings because the probation officer will have the authority to implement a variety of sanctions. If the offender consents to the punishment, there doesn't need to be a

hearing.

249 CHAIR PARKS: Asks for examples of what could be handled without a hearing.

FAATZ: Explains how system used to work and how it works now.

294 REP. TIERNAN: References paragraph 4 of the Department of Corrections statement on SB 138 and asks for explanation of how that works.

303 CLAWSON: Uses sentencing grid to explain the use of custody units when sentencing.

REP. TIERNAN: But you are limiting the amount of first time jail to a certain length of time.

CLAWSON: We are limiting it at the time of sentencing but not during the time of supervision. REP. TIERNAN: This limits the judges sentencing.

CLAWSON: That is correct and also what current practice is.

REP. TIERNAN: But if the judge wanted to throw the book at someone, this would reduce the time in prison by 2/3.

354 ELLIS: This is jail, not prison. Essentially you are correct. Explains how they arrived at these numbers. This is policy made necessary by lack of jail space in Oregon.

REP. TIERNAN: There is supposed to be truth in sentencing so that any normal citizen could understand and I don't see how they possibly could.

ELLIS: Truth in sentencing is in reference to sentence imposed not to the structure.

383 REP. TIERNAN: If the grid says 60 days, that is the length of time the judge could sentence an offender to jail.

ELLIS: And I think he still could under this proposal.

REP. TIERNAN: Under this proposal it says it is reduced by 2/3.

ELLIS: Yes, however, the reason is because of lack of space in jails. But if there is space, the higher number of days can be imposed. It is not the guidelines that are limiting, it is lack of jail space. Gives example.

409 CLAWSON: The 60 days of jail are still available if they violate the period supervision.

REP. TIERNAN: But if he had the full 60 days, he might not have had the opportunity to commit the parole violation that we have to send him back to jail for.

CLAWSON: Perhaps.

425 CHAIR PARKS: Announces the hearing will stop at 4:00. Wants the bills discussed enough so that the members will understand what the ideas are.

TAPE 7 SIDE B

035 CHAIR PARKS: Do you want to go on to the next bill?

CLAWSON: It should be a brief discussion.

CHAIR PARKS: We talked earlier about reducing sentences meted out under sentencing guidelines by 15%. Correct?

CLAWSON: That was the discussion. We can discuss it now.

SB 139 - WORK SESSION

Witnesses: David Factor, Criminal Justice Council Michael Shrunk, Multnomah Co. District Attorney Judge James Ellis, Multnomah Co.

038 DAVID FACTOR, CRIMINAL JUSTICE COUNCIL: We gave overview of the council during the interim. (EXHIBIT D)

REP. BAKER: Can you identify the Criminal Justice Council?

FACTOR: It is a policy planning agency for the state made up of 21 members representing the criminal justice field. Lists members. Issues come to them for discussion. Regarding the 15% reduction in the sentencing guidelines grid, that

proposal is tied to specific policy modifications designed to meet certain prison capacity scenarios. Discusses budget proposals these are tied to.

Introduces Michael Shrunk, Multnomah County District Attorney.

087 FACTOR: Under current capacity, the council elected to move forward with the proposal that would save 300 beds by applying the 15% reduction in prison terms. Discusses other factors not included in the

estimations. Lists the policy change options under the Governor's proposed budget and respective savings.

120 CHAIR PARKS: Asks for copies of testimony. Asks the committee to stay even though he needs to leave early for a presentation. Asks for

District Attorney's opinions before he leaves.

138 MIKE SHRUNK, MULTNOMAH COUNTY DISTRICT ATTORNEY: Doesn't like it, but this is the hand we've been dealt. Doesn't think we should reduce by

15% but if numbers are accepted, with the best data available, and more resources aren't available, let's tell the public what we are going to have to do so they can make the decisions. Refers to p. 2 de-felonization of certain crimes. Need to focus on working with local officials and utilizing local jails to focus resources.

185 Refers to Judge Ellis's comments on prioritizing person to person crimes. These are the best cuts we can come up with.

193 REP. TIERNAN: If you don't deal adequately with the property crime question, don't those people graduate to person crimes?

203 SHRUNK: I agree. Gives examples of not dealing with crimes at lower level.

215 CHAIR PARKS: When considering sex offenders, they should be kept on a short leash.

SHRUNK: That is a good way to work through an allocation of resources and keep faith with the public concerning a serious crime.

226 REP. COURTNEY: How many beds are available in Ontario? Sentencing guidelines put together in 1989 were premised on the Ontario

maxi-prison. Asks for more information about what is going on with Ontario. Does this mean that numbers at OSP and OCI will increase?

264 ELLIS: When guidelines are implemented some will not initially go, there is an immediate impact from those who do not go immediately.

There is no effect from those who go longer. Gives example. Initially the population will drop.

289 REP. COURTNEY: Thought prison guidelines and construction were based on crime rates, probation vs. actual time served being factored in.

ELLIS: Remember we are talking estimates and long term.

262 REP. COURTNEY: I'd like to know about Ontario and what you plan to do with existing prisons in terms of double bunking, etc.

FACTOR: These questions are more appropriately directed at the Department of Corrections instead of to the council. But you are right, when guidelines were designed, they were designed around for projections of a certain number of beds to be built.

REP. COURTNEY: Except we were never at capacity when it was opened.
Are we at capacity today?

FACTOR: That is correct. They opened half the beds.

REP. COURTNEY: I need to know for my own peace of mind -- where are we
today with Ontario?

322 REP. TIERNAN: You are here to ask for a 15% reduction in
sentencing guidelines. What about the flexibility of increasing them
to longer

sentences?

ELLIS: The guidelines system is designed so that the council and the
board are required to come to you with a proposal that will fill
whatever beds we have, either less or more.

REP. TIERNAN: But it takes another legislative action to increase the
beds, correct?

ELLIS: The guidelines don't increase the number of beds.

346 REP. TIERNAN: Strike that. To increase the term in months.

ELLIS: You open prisons with hundreds of beds at one time. We can't
arrange our sentencing that way. The population goes up in a steady
line but the construction ordinarily goes up in sharp jumps.

REP. TIERNAN: Let's just say your projections are wrong and we now have
200 empty beds. Can't we have a mechanism that allows sentencing
guidelines to expand the months available?

374 ELLIS: Not on the short term because the term can't be changed
after sentencing.

380 SHRUNK: Because of this proposed sentencing guidelines matrix
and the ability to forecast bed and prison space, you can now operate
at the

policy level. You can make discreet decisions instead of sweeping ones
regarding specific crimes and make appropriations accordingly.

TAPE 8, SIDE B

039 SHRUNK: As the judge pointed out, you can't extend sentencing but
we can certainly figure out how to use them.

041 CHAIR PARKS: Needs to leave and turns chair over to Rep. Tiernan.
048 REP. BROWN: On the 15% reduction, does that apply to presumptive probation cases as well?

FACTOR: It is referring to those cases which are presumptive prison cases.

REP. TIERNAN: If we have 200 beds available, can we predict how long those beds will be available?

063 FACTOR: I think we could. These are the questions I ask my research manager.

REP. TIERNAN: If I were to ask you right now today, could you tell me exactly how many are not occupied?

FACTOR: We could find out.

069 ELLIS: I am aware that the Department of Corrections has that figure day by day but I don't know if they could tell you the same day.

REP. TIERNAN: If this was the Excalibur, the largest hotel in the world with 8,000 rooms, they could tell you that day how many beds they have available.

076 ELLIS: Explains how prisons are more complicated than hotels as far as different types of units.

088 REP. TIERNAN: If a specific number of beds are available to the courts to use as sanctions, is that figured into the proposed guidelines?

FACTOR: The rate of revocation is factored in. That is part of what the probation intervention guidelines proposal is directed at but also to affect those people more quickly and more certainly in the community.

101 REP. COURTNEY: Department of Corrections does publish daily a body count, prison by prison, and unit by unit. We thought we would reach a

day where there were additional beds but won't because of what happened at Ontario and the shortfall.

113 REP. BAKER: How is this going to impact our county jails?

121 SHRUNK: It may well impact them and they have got to work hand in glove. Refers to probation revocation issue. Justice council tries to

be cognizant of the state vs. county balance.

155 REP. TIERNAN: Asks for Mr. Shrunk's opinion as a district attorney on SB 137.

SHRUNK: We need to prioritize where we spend our money. Case banking

sounds good but not if it's by computer. SB 137 will do more good than harm in the system and may free up dollars for transitional services and community sanctions.

184 REP. TIERNAN: What harm do you think it does?

SHRUNK: It is perception. If the current system is changed, we have to get credible, accurate information out to the public regarding this proposal. The image that comes out of this committee is very important.

218 REP. TIERNAN: What would it take to do a better job?

SHRUNK: I think there are some crimes that should have longer periods of incarceration.

REP. TIERNAN: What crimes would those be?

SHRUNK: Personal crimes, property crimes such as car thieves, narcotics offenders. We need consequences for property offenders.

239 REP. TIERNAN: Why aren't we seeing more proposals to correct our system?

ELLIS: It's been popular to "get tough" on crime. Now we need to try to "get smart." Gives examples of current sentencing.

SHRUNK: Everyone has been pointing the finger at someone else but now the rubber is meeting the road. This is the way to do it.

325 FACTOR: We brought some other materials regarding an overview of the implementation of sentencing guidelines that we will leave.
(EXHIBIT D, E)

330 SHRUNK: If there are any other questions that we could answer for the committee, we would be happy to.

TIERNAN: Thanks them for coming.

337 REP TIERNAN: Adjourns the meeting at 4:25 p.m.

Submitted by:

Reviewed by:

Julie Nolta
Administrator

Betina Rothauser Clerk

EXHIBIT LOG:

A - Testimony on SB 137 - Department of Corrections - 2 pages B -
Testimony on SB 138 - Department of Corrections - 9 pages C - Testimony
on SB 139 - Department of Corrections - 2 pages D - Testimony on SB
139 - Oregon Criminal Justice Council and Sentencing Guidelines Board -
4 pages E - Testimony on SB 139 - Oregon Criminal Justice Council -
10 pages F - Testimony on HB 2216, non-verbal - Mark Hass - 1 page