SENATE COMMITTEE ON JUSTICE

Room 347, State Capitol
SALEM, OREGON 97310
(503) 378-8833

Tuesday, July 7, 1981 — 3:00 P.M. — Room 350, State Capitol

MEMBERS PRESENT: Senator Walt F. Brown
Edward Fadeley
Kenneth Jernstedt
Ted Kulongoski
Robert F. Smith, Vice-Chairperson
Jan Wyers, Chairperson

MEMBERS EXCUSED: Senator Jim Gardner

STAFF PRESENT: Felicia Gniewosz, Legal Counsel
Glenda Harris, Committee Assistant

WITNESSES & BILLS:

Tape 270A	012	House Bill 3058 - Relating to criminal mistreatment
	060	House Bill 2479 - Relating to crime
	200	Jerry Cooper, Washington County District Attorney's Office
Tape 271A	020	Bob Oliver, Governor Atiyeh's staff
	255	Carol Herzog, American Civil Liberties Union
Tape 270B	235	Ruth McFarland, Senate District 12
Tape 271B	052	House Bill 2320 - Relating to parole from jails
	147	House Bill 2322A - Relating to criminal sentences
	205	House Bill 2327A - Relating to Corrections
	210	Cy Cornbrodt, Federation of Oregon Parole & Probation Officers
	283	House Bill 2328A - Relating to parole
	339	Bob Watson, Corrections Division
Tape 272A	050	House Bill 2320 - Relating to parole from jails
	065	House Bill 2327A - Relating to Corrections

TAPE 270A
009 MEETING WAS CALLED TO ORDER BY SENATOR JAN WYERS, CHAIRPERSON AT 3:25 PM.

MEMBERS PRESENT: Senator Walt F. Brown
Edward Fadeley
Kenneth Jernstedt
Ted Kulongoski
Robert F. Smith, Vice-Chairperson
Jan Wyers, Chairperson

MEMBERS EXCUSED: Senator Jim Gardner

TAPE 270A

HOUSE BILL 3058 - Relating to criminal mistreatment.

012 MOTION: Senator Jernstedt moved that HB 3058 be sent to the Senate Floor with a Do Pass recommendation.

VOTE: In a roll call vote the measure passed with Senators Brown, Fadeley, Jernstedt and Wyers voting Aye. Excused were Senators Gardner, Kulongoski and Smith.

060 HOUSE BILL 2479 Relating to crime

061 COUNSEL GNIEWOSZ explained there were amendments to HB 2479 (EXHIBIT A), adding that the amendments would, in effect, delete the conspiracy portion of the bill. WYERS said it was Senator Brown's suggestion, (lines 16-17) that a limit of $5,000 be set on the amount of tort liability for parents or legal guardians. That would make it consistent with other bills dealing with school and vandalism bills.

093 MOTION: SENATOR BROWN moved that on line 17, before the period, insert "in an amount not to exceed $5,000".

094 WYERS stated that Mr. Oliver of the Governor's Office had said he was not troubled by that amendment.

MOTION ADOPTED WITHOUT OBJECTION.

098 WYERS explained the four ORS references on line 4 were Assault IV, Menacing, Criminal Mischief and Harassment. He said the discussion at an earlier hearing which led to the amendments (Exhibit A) would adopt the House bill, but would subtract Section 2 (the conspiracy section) and Section 4, (which put the attorney general into the bill). WYERS said he had discussed this with ACLU and they said they thought it would improve the bill from their point of view.

139 GNIEWOSZ said there had been some concern that if conspiracy was taken out, Class C felony was also taken out. A suggestion she had heard was to delete 'district attorney' in Section 4, but not "attorney general", so there would be some powers of the Attorney General as an alternative source of aiding people.

148 WYERS said he thought that would broaden the attorney general's role in a way that the local prosecuting attorneys should do.

153 WYERS said he had concerns about the conspiracy statutes and asked Counsel if her research indicated that in Oregon today, there didn't need to be an affirmative act to constitute conspiracy.

170 WYERS said he would like to punish people who conspired together to harass people because of their race, color, religion or national origin, but his concern about conspiracy was and others had told him they were concerned, that in some way the bill could be misconstrued..

185 BROWN said that, under Section 1, they had made it a Class A misdemeanor, but already Assault IV was a Class A misdemeanor. He said they might want to elevate it to a Class C felony; he thought all the violations set forth on line 4 of the bill were already Class A misdemeanors.

200 JERRY COOPER, Washington County District Attorney's Office said menacing was a Class A misdemeanor, criminal mischief in the third degree was a Class C misdemeanor and harassment was a Class B misdemeanor. From a district attorney's standpoint, if a person had commited a crime of Assault in the Fourth degree or menacing, they would prosecute under that theory; they would not include the additional element of the reason (race, color, etc.). He said he assumed the measure had been drafted in that manner for the House so that when there was a conspiracy, the A misdemeanors would be elevated to Class C felony status. COOPER said under Oregon law, if there was conpiracy to commit a crime, it was the same degree as the completed crime. For murder, that was reduced one degree. He said it was the first place he had seen where a conspiracy to commit an act, which was not completed, would be greater.

224 SENATOR SMITH arrived at this point.

224 WYERS asked Jerry Cooper to define for the committee and for the legislative record, the term "disproportionate to the crime".

COOPER explained there was a clause in the Oregon constitution which was interpreted in Shumway, which indicated if a person commited a crime of murder, it would be life inprisonment; if it was aggravated murder, it was life inprisonment with a mandatory twenty or thirty year penalty. The initiative was passed by the people, (he said this was right out of Shumway) where if a person was convicted of murder, they had to serve a minimum of twenty-five years. The Oregon Supreme Court said there was a disproportionate sentence for a person who was convicted under the initiative for twenty-five years and the original bill in 1977, which called for life inprisonment, with the parole board being able to release at anytime they felt it was reasonable. He said they were looking at something where one crime would have a greater penalty than another. He said he was thinking in terms of conspiracy to commit menacing with a Class A misdemeanor.

245 BROWN questioned Mr. Cooper on aggravated and unaggravated murders under the initiatives.

260 WYERS asked if the Shumway case was based on the interpretation that the inititive and the aggravated murder statute were both valid laws - one would not supersede the other. COOPER replied that that was correct; the initiative did not implyedly repeal the aggravated murder and regular murder. WYERS said if that legal reasoning was applied to this measure, a completed Assault IV would be punished less than a discussed Assault IV, where no act took place. A person could get a Class C felony for talking about it and meaning it, even without doing anything, whereas if someone actually commited the act, it would be a Class A misdemeanor.

278 SENATOR KULONGOSKI arrived at this point.

280 GNIEWOSZ said the federal courts had long recognized that the conspiracy can be punished more severely than the intended act of the conspiracy. (See Exhibit B) She said the House had discussed that issue.

315 COOPER asked for definition of 'conspire'.

330 JERNSTEDT and WYERS discussed line 16 of the measure, clarifying that an act would have to be commited.

365 COOPER suggested, on line 4, Assault IV and menacing not be included because those were crimes that could be proved without the bill. Criminal Mischief III and harassment should be left in because those would be enhanced to a higher degree of crime if a person commited them by reason of race, color, religion or national origin. In line 7, if a defendent conspires or does a conspiracy to intimidate, if that person conspires to violate subsection (1) of this act, or ORS 163.160 or 163.190, that way the Assault IV and Menancing would be enhanced to a Class C felony. WYERS reminded Cooper of the doubts he had expressed on the constitutionality. COOPER said the Shumway case brought those to his mind, there may be other case law from other jurisdiction and Shumway was strictly a murder case. He did not know how the Supreme Court would interpret this. BROWN said the Shumway case was not the first Oregon Supreme Court case to cut down a punitive statute under the disporportionate and cited a case.

COMMITTEE MEMBERS and COOPER discussed different approaches concerning charges for conspiracy.

475 FADELEY asked if the measure hadn't been introduced as a felony bill and why did the House knock it down.

TAPE 271A

020 BOB OLIVER, Governor Atiyeh's staff, said originally it was to have been a felony bill - the objection was raised that someone could draw a police officer into a consternation, thereby commiting a felony and if the police officer was a racist police officer, he might use deadly physical force to resist the commission of a felony - and he would be within his rights. Oliver said that was his understanding of why it was knocked down to a Class A misdemeanor. WYERS said if two or three people were together and apparently conspiring, then it would be a felony. OLIVER said one other approach the committee might want to consider would be to avoid the

conspiracy approach by saying "that if two or more people in combination, commit the crime of intimidation, then it became a Class C felony".

038 FADELEY asked if Oliver would object to using the words "acting together" instead of "in combination". OLIVER said he would not object.

045 OLIVER said that line 6 would then read "If two or more persons acting together violate section 1 of this act, such action constitutes a class c felony". He added that would come close to achieving the intent of the bill and would avoid the conspiracy issue.

070 WYERS listed the changes to be made: Section 1 would be left as it is: Section 2 would be the new language offered above by Oliver; assault IV and menacing would be moved from section 1 to Section 2.

100 MOTION: CHAIRPERSON WYERS moved that ORS 163.160 and 160.190 be moved to Section 2 so if a person commits an Assault IV or menancing when they are acting with another, when two or more people are acting together, that would be a Class C felony and if two or more people were acting together, they violate Section 1 (which just leaves criminal mischief and harassment in Section 1) that would be a Class C felony.

VOTE: Motion was adopted without objection.

132 MOTION: THE CHAIR moved to delete "attorney general or" from section 4, line 18 & 20.

VOTE: MOTION adopted without objection.

200 FADELEY pointed out that "acting together" did not mean two or more people had to be physically present together.

237 MOTION: FADELEY moved that Section 1 be criminal intimidation in the second degree; section 2 be criminal intimidation in the first degree.

VOTE: MOTION adopted without objection.

255 CAROL HERZOG, ACLU, stated that the amendments just made had cleared up a lot of the problems they had with the bill. The exception was section 4. She said they would feel better if the entire Section 4 was deleted. WYERS, FADELEY discussed this with Herzog.

303 MOTION: WYERS moved to delete, in Section 4, line 19 "a pattern or practice involving or leading to a"; adding an "s" to "violation"; substituting "violations" for "pattern or practice" on line 21; add an "s" to "violation" on line 22 at the end of that sentence.

VOTE: MOTION adopted without objection.

MOTION: SENATOR BROWN moved to send HB 2479 to the Senate Floor with a Do Pass As Amended recommendation. (The committee report would be read before it went to the desk.)

322 KULONGOSKI asked the ACLU representative if the organization would still oppose the bill with the amendments made today. HERZOG said it was possible they would still oppose it.

400 KULONGOSKI stated that his concern was that the intimidation of any citizen, regardless of race, color, creed or sexual orientation, should not be condoned. He would support the bill, but when they started singling out specific categories of people who would be treated differently, there was a unspoken or implied reference that somehow it was being condoned for other people. That was the aspect that bothered him the most.

420 HERZOG said they had tried in the House, to get "sex" and "sexual orientation" included as part of the protected classes.

TAPE 270B

023 WYERS brought up the issue of adding the word "sex" to the bill.

036 FADELEY and HERZOG discussed "protected classes".

063 BOB OLIVER said the Governor perceived the most socially disruptive type of violence directed against groups as being those based on religious or racial motivation; it was not to condone violence against any other group.

(KULONGOSKI expressed concern that the measure might be both a sword and a shield.

115 HERZOG said some of the "hate groups" seemed to see this type of litigation as something that they would be able to use as a sword against the minorities this was designed to protect; that was one of the major problems they had with the idea of this legislation in general.

125 WYERS stated that the way the committee had amended the measure, it would have to be a violent act for this bill to be enforcable - which wasn't the way it came from the House.

202 WYERS explained to Senator McFarland the action the committee had taken on the measure and their discussion on whether they should add anything to 'race, color, religion or national origin'. He added that the Governor's representative had informed them that the Governor's preference was to stick with the four traditional entities.

235 RUTH MCFARLAND, Senate District 12, said she did not think it would weaken the bill any to add "sex"; it might strengthen it and it might give a whole group of people protection, that might not now have it. She also thought "sexual orientation" should be added.

272 KULONGOSKI stated that this might address, with the word "sex" added, sexual harassment in the workplace.

332 FADELEY said it appeared to him that "sex" was an equally important classification concerning discrimination. Age had not been treated quite the same way. The bill was highly identified with the Governor, he had

been requesting it; however it had been substantially amended in the process. Out of courtesy, he said he had a hard time putting something into a bill that the sponsor didn't want in the bill.

395 KULONGOSKI stated that he thought the way the statute was written, if it was constitutional, addressed the problem of sexual harassment in the workplace. He thought that the law could be utilized for that purpose; he thought the general purpose of the bill, with the word "sex" in it, was good. He said he had as much commitment to that issue as to what he saw as another benefit of the bill, if it did pass. He said he considered it one of the primary forms of economic discrimination in the country.

407 WYERS said it might be a significant step forward in keeping people from using their physical strength, or their willingness to use physical violence in their intimate relationships, adding that they were trying with every method possible to get people to quit beating each other up and battering their spouses.

428 MCFARLAND said she believed that the subtleties of discrimination against women not being expected to take part in certain kinds of activities had not all been addressed, and this bill would be a step in the direction of addressing discriminatory kinds of practices. She strongly urged and asked that the word "sex" be added to this bill - if it was not happening, then it wouldn't make any difference - if it was happening, it needed to be addressed.

TAPE 271B

027 WYERS said this might work in concert with the sexual penetration bill which had come over from the House.

026 BROWN withdrew his motion to send the bill out Do Pass.

030 MOTION: KULONGOSKI moved to add "sex" on line four, after "national origin".

VOTE: Voting aye were Senators Brown, Fadeley, Kulongoski and Wyers. Voting Nay were Senators Jernstedt and Smith. Excused: Senator Gardner.

034 MOTION: BROWN Moved HB 2479 to the Senate Floor with a Do Pass As Amended recommendation.

039 VOTE: Senators Brown, Fadeley, Kulongoski and Wyers voted AYE. Senators Jernstedt and Smith voted NAY. Senator Gardner, EXCUSED.

052 HOUSE BILL 2320 - Relating to parole from jails

055 COUNSEL GNIEWOSZ explained that presently only inmates, six months or more, can be paroled to the Corrections Division. The bill deletes the present subsection (5) with the effect that the parole of misdemeanants would become local responsibility. The bill amends the statutes to clarify