

HOUSE JUDICIARY SUBCOMMITTEE

ON CRIMINAL LAW

May 26, 2005 Hearing Room 357

8:30 A.M. Tapes 68 - 69

MEMBERS PRESENT: Rep. Jeff Barker, Chair

Rep. Greg Macpherson

Rep. Andy Olson

Rep. Kim Thatcher

GUEST MEMBER: Rep. Wayne Krieger

STAFF PRESENT: Joe O'Leary, Counsel

Louann Rahmig, Committee Assistant

MEASURES/ISSUES HEARD:

SB 293 – Public Hearing and Work Session

SB 547A – Public Hearing and Work Session

SB 370A – Public Hearing and Work Session

SB 371 – Public Hearing and Work Session

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/# Speaker Comments

TAPE 68, A

004 Chair Barker Calls the meeting to order at 8:38 a.m. and opens a public hearing on SB 293.

SB 293 – PUBLIC HEARING

006 Joe O’Leary Counsel. Explains SB 293 repeals the statute that requires local public safety coordinating councils to submit a report to the Oregon Criminal Justice Commission every biennium regarding details of the county’s early disposition programs. Refers to testimony in the Senate Judiciary Committee and discussions with the director of the Criminal Justice Commission.

019 Rep. Olson Asks which counties submitted reports.

021 O’Leary Believes Lane and Multnomah Counties.

024 Chair Barker Closes the public hearing and opens a work session on SB 293.

SB 293 – WORK SESSION

025 Rep. Olson **MOTION: Moves SB 293 to the full committee with a DO PASS recommendation.**

VOTE: 4-0-0

AYE: In a roll call vote, all members present vote Aye.

027 Chair Barker **The motion CARRIES.**

REP. OLSON will lead discussion in the full committee.

031 Chair Barker Closes the work session on SB 293 and opens a public hearing on SB 547A which expands the crime of criminal impersonation of a peace officer to prohibit wearing a law enforcement uniform with the intent to obtain a benefit, or to injure or defraud another.

SB 547A – PUBLIC HEARING

035	Sen. Floyd Prozanski	Senate District 4. Testifies that SB 547 is at the request of the Eugene Police Commission and expands current law to individuals who are dressing in uniform-type apparel with the intent to obtain a benefit or to injure or defraud another person. Provides background information. Advises that the City of Eugene has changed city ordinances to restrict private security agencies from having uniforms similar to the city police.
068	Chair Barker	Comments on the amendment that added the intent to defraud.
072	Sen. Prozanski	Explains the use of a uniform to misrepresent a law enforcement officer.
078	Chair Barker	Advises that the City of Portland has an ordinance that states one cannot have a “deceptively similar” uniform.
084	Sen. Prozanski	Describes incidents at the University of Oregon.
104	Rep. Macpherson	Asks how this would impact private security personnel whose uniforms may be similar, but no intent to defraud or misrepresent themselves.
113	Sen. Prozanski	Responds that there is no intent to impact another governmental unit. Continues that something cannot be passed that will prohibit university system private security. Reads the definition of a law enforcement uniform.
137	Rep. Macpherson	States that some security guard personnel wear uniforms that look official. Suggests that the design of uniforms may project greater authority than they have.
154	Sen. Prozanski	Reports that the public safety officers for the University of Oregon want to look as similar as they can to the city police to achieve better compliance. Comments that the concern is with individuals who want to deceive.
185	Chair Barker	Comments on the false identification portion of SB 547A.
192	Sen. Prozanski	Advises that Lines 10-15 of SB 547A is current law which is being expanded.
197	Chair Barker	Closes the public hearing and opens a work session on SB 547A.

SB 547A – WORK SESSION

199 Rep. Macpherson **MOTION: Moves SB 547A to the full committee with a DO PASS recommendation.**

VOTE: 4-0-0

AYE: In a roll call vote, all members present vote Aye.

206 Chair Barker **The motion CARRIES.**
REP. MACPHERSON will lead discussion in the full committee.

The following written testimony was submitted for the record without public testimony:

Robert Lehner Chief of Police, Eugene, Oregon. Submits written testimony in support of SB 547A (**EXHIBIT A**).

208 Chair Barker Closes the work session on SB 547A and opens a public hearing on SB 370A which preserves lawyer-client privilege for communications made to the Office of Public Defense Services for the purpose of making a complaint against a lawyer providing public defense services.

SB 370A – PUBLIC HEARING

211 Ingrid Swenson Office of Public Defense Services. Testifies and submits written testimony in support of SB 370A (**EXHIBIT B**). Advises that most of the complaints received are about the quality of representation. Describes their process for investigating and resolving complaints.

259 Swenson Refers to complaints from judges about lawyers spending too much time on cases or spending funds unwisely. Continues that SB 370A creates a narrow provision that privilege will not be lost when the lawyer or client reveals privileged information just for the purpose of assisting in resolution of a complaint.

278 Rep. Macpherson Seeks clarification on the attorney-client privilege which belongs to the client but can be waived by the client.

286 Swenson

Answers, the client would waive the privilege if the client complains about an attorney and provided information that was part of a privileged communication. Refers to case law that most lawyers have authority to waive in certain circumstances. Describes a term in the privilege that is troubling to them.

- 325 Rep. Macpherson Inquires about the focus of SB 370A.
- 338 Swenson Replies there are occasions of detailed discussion about what has occurred between a client and attorney. Expresses concern about waiving the privilege generally because of a limited disclosure.
- 347 Chair Barker Asks for clarification on discovery if information not protected.
- 354 Swenson Responds that would be a confidence a lawyer would keep on behalf of the client. Discusses the confidentiality provision.
- 366 Chair Barker Inquires if information could be subpoenaed.
- 368 Swenson Answers that their confidentiality policy would prevent disclosure in response to a subpoena. Describes a possible situation.
- 394 Chair Barker Refers to a case in Bend. Asks if this would interfere with an investigation.

TAPE 69, A

- 015 Swenson Believes it should facilitate investigation.
- 018 Rep. Olson Asks for a “real life” case scenario.
- 023 Swenson Describes their complaint investigation process.
- 060 Swenson Continues with explanation of the investigation process.
- 072 Rep. Macpherson Seeks clarification that the commission can obtain information without damaging the integrity of the privilege.
- 089 Swenson Answers correct.

091 Chair Barker Closes the public hearing and opens a work session on SB 370A.

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SB 370A – WORK SESSION

092 Rep. Macpherson **MOTION: Moves SB 370A to the full committee with a DO PASS recommendation.**

VOTE: 4-0-0

AYE: In a roll call vote, all members present vote Aye.

095 Chair Barker **The motion CARRIES.**

REP. MACPHERSON will lead discussion in the full committee.

096 Chair Barker Closes the work session on SB 370A and opens a public hearing on SB 371, which preserves lawyer-client privilege for communications made to the Office of Public Defense Services for the purpose of seeking preauthorization for non-routine fees and expenses.

SB 371 – PUBLIC HEARING

100 Ingrid Swenson Office of Public Defense Services. Testifies and submits written testimony in support of SB 371 (**EXHIBIT C**). Explains that court-appointed counsels are eligible to obtain for their clients additional services beyond legal representation. Describes the preauthorization process.

130 Swenson Continues by providing examples.

161 Chair Barker Refers to complaints received for over-expenditures. Describes a case in Astoria.

174 Swenson Cites ORS 135.055 which does not allow disclosure to the District Attorney any information about non-routine expenses until the case is concluded.

187 Chair Barker Closes the public hearing and opens a work session on SB 371.

SB 371 – WORK SESSION

188 **Rep. Macpherson** **MOTION: Moves SB 371 to the full committee with a DO PASS recommendation.**

VOTE: 4-0-0

AYE: In a roll call vote, all members present vote Aye.

191 **Chair Barker** **The motion CARRIES.**

REP. MACPHERSON will lead discussion in the full committee.

193 **Chair Barker** **Closes the work session on SB 371and adjourns the meeting at 9:18 a.m.**

EXHIBIT SUMMARY

- A. SB 547A, written testimony, Robert Lehner, 1 p**
- B. SB 370A, written testimony, Ingrid Swenson, 6 pp**
- C. SB 371, written testimony, Ingrid Swenson, 3 pp**