

SENATE COMMITTEE ON JUDICIARY

January 20, 2005
1:00 p.m.

Hearing Room 343
Tapes 7 - 8

MEMBERS PRESENT: Sen. Ginny Burdick, Chair
Sen. Roger Beyer
Sen. Charlie Ringo
Sen. Doug Whitsett

MEMBER EXCUSED: Sen. Starr, Vice-Chair
Sen. Prozanski
Sen. Walker

STAFF PRESENT: Joe O'Leary, Counsel
Dale Penn, Committee Assistant

MEASURES/ISSUES HEARD & WITNESSES:

SB 26 – Public Hearing and Work Session

Kate Richardson, Office of the State Treasurer
Fred Boss, Department of Justice

SB 203 – Public Hearing

Jonathan Fussner, Department of Justice
John Hummel, Oregon Criminal Defense Lawyers Association

SB 208 – Public Hearing

Cheryl Pellegrini, Department of Justice
Paul Cosgrove, United Financed Lobby Jonathan Fussner,
Department of Justice

John Hummel, Oregon Criminal Defense Lawyers Association

Blakely/Sentencing Developments - Informational Meeting

Joe O'Leary, Committee Counsel

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 7, A		
010	Chair Burdick	Calls the meeting to order at 1:13 p.m. Opens public hearing on SB 26.
<u>SB 26 PUBLIC HEARING</u>		
016	Joe O'Leary	Counsel. Introduces SB 26 which allows Attorney General to represent the State of Oregon in certain securities fraud cases.
027	Kate Richardson	Chief of Staff, State Treasurer. Submits written testimony of State Treasurer, Randall Edwards, in support of SB 26 (EXHIBIT A).
065	Fred M. Boss	Assistant Attorney General, Chief Counsel for the Civil Enforcement Division. Submits testimony in support of SB 26 (EXHIBIT B). Explains change that occurs due to this bill.
090	Boss	Discusses the benefits, fees, and concerns involved with a class action lawsuit, as well as other factors included in any settlement.
110	Chair Burdick	Closes public hearing on SB 26 and opens a work session.

SB 26 WORK SESSION

120 Sen. Ringo

MOTION: Moves SB 26 to the floor with a DO PASS recommendation.

VOTE: 4-0- 3

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

EXCUSED: 3 – Prozanski, Starr, Walker

The motion CARRIES.

REP. RINGO will lead discussion on the floor.

125 Chair Burdick

126 Chair Burdick

Closes the work session on SB 26 and opens public hearing on SB 203.

SB 203 PUBLIC HEARING

128 Joe O’Leary

Counsel. Describes SB 203, which has to do with the statute of limitations on sex abuse. Discusses current and possible statutes. Assistant Attorney General, Department of Justice. Provides testimony in support of SB 203 (**EXHIBIT C**). Discusses child abuse sex abuse cases.

150 Jonathan Fussner

180 Fussner

Describes *Walker* case and its relationship with SB 203. Details statute of limitations under certain situations, and how SB 203 seeks to alter it. The bill clarifies "governmental agency" as law enforcement or an individual from the Department of Human Services.

209 Sen. Beyer

214 Fussner

Asks to explain section 2, particularly part concerning ORS 131. Responds why section 2 is in there with that particular information.

238 Sen. Beyer

241 Fussner

247 Sen. Beyer

Asks whether it was the Court of Appeals or Supreme Court which made ruling with regards to statute of limitations.

Replies that he doesn’t know which one, but yes.

Asks under current law, what would happen if the perpetrator of the crime reports it to themselves and also happens to work for a governmental agency.

256 Fussner

Replies not entirely sure, hasn’t thought about it, answers as best he can.

260 Chair Burdick

Clarifies law; adds that that criminal has a “mandatory reporter” responsibility to report the crime, even if he was the perpetrator. Oregon Criminal Defense Lawyers Association (OCDLA).

282 John Hummel

Testifies in opposition to SB 203 detailing the reasoning behind statute of limitations. Points out it gets difficult for defendants to defend themselves as the statute of limitations increases.

330 Hummel

Discusses statute of limitations regarding sex abuse cases, and problems associated with those cases.

386 Sen. Ringo

Asks Mr. Hummel to respond to previous testimony that any government agency member can be told an offense of sex abuse occurred and then the statute of limitations begins.

395 Hummel

Responds that current bill has that problem. Admits that SB 203 reduces that possibility, and states that OCDLA would agree with an amendment to current SB 203 definitions of governmental agencies, limiting it to members of the Department of Human Services.

420 O’Leary

States that the issue of “other government agency” issue came up with the Court of Appeals. Counsel discusses the resolution.

456 Chair Burdick

Asks about statute of limitations for mandatory reporters.

462 Fussner

Discusses ORS 419B.010, relating to mandatory reporting of an offense, and the repercussions of such.

496 Chair Burdick

States possible way out of mandatory reporting.

TAPE 8, A

041	Fussner	States the possible way out may work, but reaffirms SB 203's mission, as well as a possible amendment to deal with problems in mandatory reporting.
054	Chair Burdick	Asks if mandatory reporting would cost time in the case.
058	Fussner	Clarifies the time limit on mandatory reporting, states it might not be a bad idea to put one in.
067	Hummel	States that such a provision would make the OCDLA much more accepting of SB 203.
075	Chair Burdick	Closes the public hearing on SB 203 and opens public hearing on SB 208.

SB 208 PUBLIC HEARING

079	Joe O'Leary	Counsel. Describes SB 208, relating to Attorney General's permissions in regards to the No-Call list (NC list).
088	Pellegrini	Assistant Attorney General, Oregon Department of Justice. Submits testimony for SB 208 (EXHIBIT D). Discusses history of state and federal NC list.
125	Pellegrini	Discusses laws with relation to a federal and state NC list, and the reasons Oregon currently has no state-based enforcement.
165	Pellegrini	Indicates court proceedings involved with enforcing any federal or state-based NC list. Discusses lack of funding with Attorney General's enforcement.
181	Pellegrini	Discusses their support for SB 208, and how it will allow the Attorney General's office to take action against the main companies Oregonians have problems with.
195	Chair Burdick	Asks about fines under state laws.
198	Pellegrini	Responds with facts on state laws and fines involved with violating the NC list.
213	Chair Burdick	Asks about federal fines and laws. Responds with figures for violation of federal law.
220	Pellegrini	Begins section by section analysis of the bill. Discusses section 1 and the inclusion of cell phones under NC list.
220	Chair Burdick	Asks if fax lines apply.
223	Pellegrini	Responds in the negative.
240	Chair Burdick	Asks about federal provisions, and if they apply.
242	Pellegrini	Responds that they do not.
253	Pellegrini	Continues analysis of SB 208 section by section, beginning with section 2. Raises issue of NC list violating free speech, affirms it does not.
280	Pellegrini	Discusses section 6, with emphasis on Attorney General's powers under this bill.
307	Pellegrini	Discusses Sections 7, 8, and 9, including an emergency clause to begin bill as soon as it is passed.
319	Chair Burdick	Asks if enforcement would increase if bill passed and Attorney General would have funding.
325	Pellegrini	Replies yes, the federal government is taking on many companies, but it is also expecting states to respond to other companies, and provide protection to its citizens.
342	Chair Burdick	Asks if the state is required to take over the same criteria as the federal government.
349	Pellegrini	Replies the exemptions to the list the federal government and Oregon have are very similar. Discusses harmonizing of exemptions between states and the federal government.
379	Chair Burdick	Would like to have 18-month time limit amendment added to the

		bill.
383	Sen. Whitsett	Asks how the civil funds generated by this law are to be allocated.
390	Pellegrini	Replies if the Attorney General successfully sued in court, those funds would go into the General Fund and pay for court costs.
418	Sen. Whitsett	Inquires about fines or anything else to increase funds. Asks if everything is going into paying court costs.
428	Pellegrini	Responds how the Department of Justice (DOJ) receives funding through the court process.
490	Pellegrini	Reaffirms that DOJ receives no public funding, at this time, for any of their organizational costs; all case settlements go towards internal costs.
TAPE 7, B		
040	Paul Cosgrove	United Financial Lobby. Submits testimony in opposition to SB 208 (EXHIBIT E). Stresses desire not to have two different NC lists.
066	Chair Burdick	Asks for examples of requirements Oregon would have; also inquires about the option of having an alternative list if the federal NC list disappears.
070	Cosgrove	Discusses Attorney General's differences with federal government in relation to this bill. Talks about differences between Oregon and federal government. Offers statement they should perhaps adopt federal language on this matter.
134	Cosgrove	Discusses federal penalties, and how they benefit the state.
145	Chair Burdick	Asks if there has been a case where the federal government has distributed court settlements to the state.
148	Cosgrove	Replies that he isn't aware of any, and since Oregon hasn't been able to enforce this law, there has been none here.
158	Sen. Ringo	Asks if Mr. Cosgrove wishes Attorney General to have no enforcement capability.
163	Cosgrove	Raises concerns over current law giving Attorney General only jurisdiction over federal law, not over Oregon's NC list law.
173	Sen. Ringo	Asks if Oregon's no-call list is un-enforceable.
178	Cosgrove	Responds, no, it isn't enforceable, but federal NC list is.
190	Chair Burdick	States that bill needs work, wants findings to be recast, recalls Cheryl Pellegrini.
195	Pellegrini	States the findings are from the Federal Trade Commission, which are based upon the experience of the states.
202	Chair Burdick	Asks about harmonization, but prefers better and more transparent language.
207	Pellegrini	States they are happy to work with Mr. Cosgrove on the language.
215	Chair Burdick	Raises concern about Oregon's stronger free speech laws than the federal.
225	Sen. Ringo	Asks if there is any way to benefit Oregon consumers with clearer language.
231	Pellegrini	Discusses Oregon and federal laws, and differences between them, as well as how it would benefit consumers.
255	Chair Burdick	Raises concern of some groups allowing others to use their contact list.
260	Pellegrini	States that under certain areas, they can share lists if they shared common goals (i.e., Tsunami relief, relief for disasters in general, etc.).
293	Sen. Beyer	Asks about section 3, and was Oregon law constitutional prior to

308	Pellegrini	the federal NC list. Asks why it needed alterations. Discusses concerns raised in 2003 Legislature that Oregon constitution Article 1, section 8 was being challenged by Supreme Court. States that SB 208 is a shield against future litigation.
367	Chair Burdick	Closes the public hearing on SB 208 and opens an informational meeting.
<u>BLAKELY/SENTENCING DEVELOPMENTS - INFORMATIONAL MEETING</u>		
380	Joe O'Leary	Counsel. Describes current status of sentencing cases out of Supreme Courts, and a synopsis of guidelines and the effect of the <i>Blakely</i> decision. (EXHIBITS F & G).
435	O'Leary	Discusses Exhibit G , and the sentencing guidelines.
TAPE 8, B		
065	O'Leary	Discusses <i>Blakely v. Washington</i> and its effects on sentencing guidelines (Exhibit F) .
142	Chair Burdick	Asks about the relationship between <i>Blakely</i> and Measure 11.
150	Sen. Ringo	Asks if <i>Blakely</i> will be retroactive.
153	O'Leary	Doesn't know because many cases at the moment are pending appeal.
171	Chair Burdick	Raises issue that there is less likelihood of previous cases, already adjudicated, being affected by <i>Blakely</i> . States that the cases now in the system have a high risk of being affected by <i>Blakely</i> .
187	Sen. Beyer	Asks what happens if a judge makes a downward departure.
180	O'Leary	Responds that there are examples of downward sentencing, and it can happen, but <i>Blakely</i> will not affect this trend.
202	Sen. Beyer	Asks if that downward departure sentencing can cause undue harm to the community.
206	O'Leary	Responds that this issue was raised in federal court.
234	O'Leary	States that <i>Blakely</i> has very limited to no effect on Measure 11. Discusses offenses under that measure with mandatory minimum sentences.
300	Chair Burdick	Raises issues concerned with juvenile court cases.
324	O'Leary	Discusses plea bargaining under Measure 11, and further relationship between <i>Blakely</i> . Advises a mechanism to allow upward departures.
368	Chair Burdick	Adjourns the meeting at 2:57 p.m.

EXHIBIT SUMMARY

- A. SB 26, written testimony, Kate Richardson, 2 pp
- B. SB 26, written testimony, Frederick M. Boss, 1 p
- C. SB 203, written testimony, Jonathan H. Fussner, 1 p
- D. SB 208, written testimony, Cheryl A. Pellegrini, 3 pp
- E. SB 208, written testimony, Paul S. Cosgrove, 1 p
- F. Sentencing Law Case Summaries, Joe O'Leary, 2 pp
- G. Sentencing Guidelines Grid, Joe O'Leary, 2 pp