

## SENATE COMMITTEE ON JUDICIARY

January 31, 2005  
1:30 p.m.

Hearing Room 343  
Tapes 17 - 18

**MEMBERS PRESENT:** Sen. Ginny Burdick, Chair  
Sen. Charles Starr, Vice-Chair  
Sen. Roger Beyer  
Sen. Floyd Prozanski  
Sen. Charlie Ringo  
Sen. Vicki Walker  
Sen. Doug Whitsett

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

### **MEASURES/ISSUES HEARD & WITNESSES:**

#### **Measure Introduction**

#### **SB 182 – Public Hearing**

Craig Prins – Oregon Criminal Justice Commission

Terry Leggett – Marion County Circuit Court Judge

Leonard Williamson – Department of Justice

Stan Czerniak – Department of Corrections

Mary Botkin – American Federation of State, County, and  
Municipal Employees

Andrea Meyer – American Civil Liberties Union

Geoff Sugerman – Western Prison Project

Steve Shelton – Department of Corrections

Jef Van Valkenburgh – Attorney General's Office

#### **SB 115 – Public Hearing**

Stan Czerniak – Department of Corrections

Jef Van Valkenburgh – Attorney General's Office

Geoff Sugerman – Western Prison Project

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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.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 17, A</b>		
004	Chair Burdick	Calls the meeting to order at 1:32 p.m.
<b><u>MEASURE INTRODUCTION</u></b>		
005	Joe O'Leary	Committee Counsel. Reads LC 1653 for introduction <b>(EXHIBIT A).</b>
008	Sen. Starr	<b>MOTION: Moves LC 1653: BE INTRODUCED as committee bill.</b> <b>VOTE: 6-0- 1</b> <b>AYE: In a roll call vote, all members present vote Aye.</b> <b>EXCUSED: 1 - Beyer</b>
011	Chair Burdick	<b>Hearing no objection, declares the motion CARRIED.</b>

015	Chair Burdick	Opens a public hearing on SB 182.
<b><u>SB 182 - PUBLIC HEARING</u></b>		
019	Joe O'Leary	Committee Counsel. Introduces SB 182 which relates to the administrative process being exhausted before allowing grievances to be filed with the courts.
028	Craig Prins	Executive Director, Oregon Criminal Justice Commission. Reports SB 182's involvement with the criminal justice system's task force.
043	Terry Leggett	Marion County Circuit Court Judge. Talks about inmate litigation in Marion County. Testifies in support of SB 182.
070	Chair Burdick	Asks if other states require this method.
072	Judge Leggett	Replies that the federal government has required this since 1983.
074	Sen. Ringo	Wonders what the administrative process entails.
077	Judge Leggett	Describes administrative process.
090	Sen. Prozanski	Inquires about the checks and balances in the administrative process.
115	Judge Leggett	Comments on the Circuit Court process as well as the administrative process, and the timelines involved.
140	Leonard Williamson	Department of Justice. Testifies in support of SB 182. Identifies the federal examples of cases that have been dismissed when an individual does not seek administrative process for grievances. Illustrates court cases in Oregon where the individual making a complaint does not exhaust the administrative process.
187	Sen. Ringo	Inquires about the grievance process.
191	Williamson	Describes the grievance process for the committee and goes on to discuss special cases such as racial grievances.
232	Chair Burdick	Asks about timelines for grievances.
235	Williamson	Replies with schedules for grievances.
247	Chair Burdick	Wonders about response timeline for grievances.
250	Williamson	Explains that he doesn't know that information, as the rules have recently been changed.
260	Sen. Ringo	Asks about the four types of grievances, and if they have talked about them all.
264	Williamson	Describes other types of grievances.
277	Sen. Ringo	Asks which types of complaints are common, or what is a typical grievance.
280	Williamson	Cites examples of regular grievances, including religious preparation of food.
289	Sen. Ringo	Asks about the number of lawsuits.
292	Williamson	Does not have that information.
295	Sen. Ringo	Asks about the scope of the problem.
299	Williamson	Gives examples of the width of the current grievance problem.
318	Sen. Ringo	Asks, again, about the scope, and questions the recent example given.
323	Williamson	Responds concerning the example.
341	Sen. Prozanski	Asks about the grievances; tries to walk through the process.
365	Williamson	Describes the process again, and a certain exemption listed by Sen. Prozanski.
372	Sen. Prozanski	Asks who would receive the complaints that go beyond the regular administrative methods available to the inmate.
385	Williamson	Describes a committee that reviews the grievance in an institutional approach (doctor, nurse, etc.).
392	Sen. Prozanski	Asks who oversees the grievances within the process.
399	Williamson	Responds that Dr. Shelton, the Medical Director, can be

416	Sen. Prozanski	approached with the grievance in any circumstance. Asks what occurs if the Therapeutic Care Committee denies the grievance.
420	Williamson	Declares that the Director, Max Williams, or other administrative heads, before the administrative process is exhausted.
465	Stan Czerniak	Assistant Director for Operations, Department of Corrections (DOC). Explains the grievance process to the committee.
<b>TAPE 18, A</b>		
044	Czerniak	Explains information relating to the grievance process, focusing on the timelines.
080	Chair Burdick	Asks if the timelines quoted include acute medical problems.
082	Czerniak	Responds that those grievances would go to Dr. Shelton.
099	Czerniak	Begins reading testimony ( <b>EXHIBIT B</b> ). Asks for amendments to the bill limiting the scope of SB 182.
118	Mary Botkin	American Federation of State, County, and Municipal Employees, representing the officers and staff within the Department of Corrections. Testifies in support of SB 182. Cites examples of complaints being filed against dentists with the dental board.
163	Botkin	Declares the DOC's desire to not eliminate the grievance process, but to make it safer for the staff and other individuals.
216	Andrea Meyer	American Civil Liberties Union. Reads testimony in opposition to SB 182 ( <b>EXHIBIT C</b> ).
305	Chair Burdick	Inquires about other states drafting similar bills.
309	Meyer	Responds that there are other states, but doesn't have the information on hand.
345	Sen. Walker	Asks about the DOC getting out from under the legislature by shortening the grievance timeline.
350	Meyer	Explains the methods that could be used by the DOC to circumvent the legislature.
370	Sen. Walker	Asks if there is a different grievance process under the administrative method than in the statutes.
375	Meyer	Responds in the affirmative.
385	Geoff Sugerman	Western Prison Project. Testifies in opposition to SB 182. Describes the administrative process available, and the timeline, before the court process should take over. States that they have not seen any real problems with frivolous lawsuits.
460	Joe O'Leary	Clarifies the reading of the bill.
<b>TAPE 17, B</b>		
042	Steve Shelton	Medical Director, Oregon Department of Corrections. Discusses acute medical care being taken care of immediately. Says there is no cause for court cases in those cases.
059	Chair Burdick	Wonders about cases such as Hepatitis C.
065	Dr. Shelton	Describes the disease process of Hepatitis C and its non-status as a progressive disease. Mentions the class action lawsuit relating to the standard of treatment and the grievance timelines.
085	Dr. Shelton	States that the DOC has no desire to delay medical care in anyway. Talks about the grievances usually filed; breast reduction services, wanting two mattresses, etc. Maintains that these types of grievances have been filed.
108	Sen. Whitsett	Inquires about West-Nile virus.
130	Dr. Shelton	Walks through the grievance process, as it should be, using an unknown disease as the catalyst.
150	Chair Burdick	Asks about the timeline for the process for a resolution.

180	Dr. Shelton	Gives a timeline for grievance resolution.
192	Jef Van Valkenburgh	Chief Counsel, Attorney General's Office. Discusses the habeas corpus process.
205	Sen. Prozanski	Wonders if habeas corpus process on medical claims would not be affected by the passage of SB 182.
209	Van Valkenburgh	Responds that it would not.
236	Sen. Prozanski	Asks if Dr. Shelton, who might have refused an earlier grievance, would sit on the panel to address a subsequent grievance.
253	Dr. Shelton	States that the grievance panels are regional consensus committees where many individuals provide input towards a decision. Conveys the process of such a committee.
300	Sen. Prozanski	Inquires if attending physicians are also on the panels addressing grievances.
305	Dr. Shelton	Responds yes they are; it is a peer review process.
315	Chair Burdick	Closes public hearing on SB 182 and opens a public hearing on SB 115.

**SB 115 - Public Hearing**

325	Joe O'Leary	Counsel. Presents SB 115, which relates to radiation health care provided to certain individuals.
330	Stan Czerniak	Assistant Director for Operations, Department of Corrections. Reads testimony for SB 115 ( <b>EXHIBIT D</b> ).
390	Chair Burdick	Asks the number of individuals in the class action lawsuit.
392	Czerniak	Responds that there were 67 individuals.
395	Chair Burdick	Asks if that included all the individuals affected at the time.
403	Jef Van Valkenburgh	Chief Counsel, Attorney General's Office. Replies in the affirmative, describes the complete settlement of those individuals in court.
409	Sen. Prozanski	Wonders about the claims brought through the settlement process.
420	Van Valkenburgh	Expresses that this was a settlement, and all individuals waived their subsequent rights for care.
437	Sen. Prozanski	Inquires if any other issues raised from the settlements from this dispute would be contractual actions.
442	Van Valkenburgh	Responds in the affirmative, as the state has lived up to its part of the deal.
450	Chair Burdick	Asks about other liability from the state towards these people.
455	Van Valkenburgh	Highlights that SB 115 would be repealing a law that has no longer purpose.
474	Sen. Prozanski	Wonders if new cases from inmates would be dismissed due to lack of merit.
490	Van Valkenburgh	States that there is even less incentive if there is no law in the books for him to cite.

**TAPE 18, B**

031	Sen. Beyer	Inquires about inmates released prior to this lawsuit and if they were included in the class action.
037	Van Valkenburgh	Responds in the affirmative.
042	Geoff Sugerman	Western Prison Project. Asks for time to investigate SB 115.
054	Chair Burdick	Closes public hearing on SB 115 and adjourns the meeting at 2:58 p.m.

## **EXHIBIT SUMMARY**

- A. **Introduction, LC 1653, staff, 6pp**
- B. **SB 182, written testimony, Stan Czerniak, 2pp**
- C. **SB 182, written testimony, Andrea Meyer, 5pp**
- D. **SB 115, written testimony, Stan Czerniak, 2pp**