

SENATE COMMITTEE ON JUDICIARY

February 01, 2005
1:00 p.m.

Hearing Room 343
Tapes 19 - 20

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:

SB 203 – Work Session
Kelly Skye, Oregon Criminal Defense Lawyers Association
SB 198 – Public Hearing
Ronelle Shankle, Department of Justice
Phyllis Barkhurst, Attorney General's Sexual Assault Task Force
Paul Burgett, Coos County District Attorney
Una Swanson, Department of Human Services
Terrie Quinteros, Western Prison Project

SB 199 – Public Hearing
Ronelle Shankle, Department of Justice
Phyllis Barkhurst, Attorney General's Sexual Assault Task Force
Paul Burgett, Coos County District Attorney
Kelly Skye, Oregon Criminal Defense Lawyers Association
Stephanie Tuttle, Oregon District Attorneys Association
Terrie Quinteros, Western Prison Project

SB 200 – Public Hearing
Paul Burgett, Coos County District Attorney
Phyllis Barkhurst, Attorney General's Sexual Assault Task Force
Stephanie Tuttle, Oregon District Attorneys Association
Kelly Skye, Oregon Criminal Defense Lawyers Association

Meyer – American Civil Liberties Union Andrea

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 19, A		
004	Chair Burdick	Calls the meeting to order at 1:11 p.m. Opens a work session on SB 203, which relates to the statute of limitations on certain sex abuse cases.
<u>SB 203 – WORK SESSION</u>		
016	Kelly Skye	Oregon Criminal Defense Lawyers Association (OCDLA). Discusses the problems with proposed amendments to SB 203.
032	Joe O'Leary	Committee Counsel. Describes SB 203, relating to statute of

		limitations in sex and child abuse cases.
054	Sen. Walker	Inquires about limiting the incentive for “mandatory reporting” to actually report such a crime.
065	Chair Burdick	Explains the idea of “mandatory reporter” and the responsibilities inherent in the term for the individual.
077	Sen. Walker	States that there is a statute already in place for abuse cases, but feels there should be no statute for sex abuse cases.
092	O’Leary	Reviews SB 203’s timeline in regards to the “mandatory reporter” clause. Talks about the alteration of the term “other governmental agency” to “the Department of Human Services (DHS).”
112	Sen. Prozanski	Raises concern of victim’s right to a trial and the failure of a “mandatory reporter.”
125	Sen. Walker	Details a bill coming up, SB 872, that increases the fines and penalties of mandatory reporting violations.
140	Sen. Ringo	Raises concerns of the accused, and addresses how an increase of the statute of limitations can cause problems for defendants.
151	Sen. Prozanski	Acknowledges the need for a balance between the rights of the victim and the accused.
165	Sen. Beyer	MOTION: Moves SB 203 to the floor with a DO PASS recommendation.
172	Sen. Beyer	Conveys the desire for an amendment to address the issue of the mandatory reporter actually committing the crime and starting the statute of limitations early.
183	O’Leary	Reports that the statute, as it’s written now, could be abused in such a way, but there is a bill currently addressing the issue.
200	Sen. Beyer	Asks if the statute of limitations begins if an employee of DHS abuses a child, and is therefore also a mandatory reporter.
213	O’Leary	Acknowledges that fact, and also raises the concern of the mandatory reporter, and the abuser, being a law enforcement officer which would also start the clock.
218	Sen. Prozanski	Raises issue of a mandatory reporter who also commits the sex crime being protected under self-incrimination law.
225	O’Leary	Proclaims there might be a defense to this, but not sure.
231	Sen. Whitsett	States that maybe we should focus on the law we have as opposed to writing a new one.
250		VOTE: 7-0-0
254	Chair Burdick	AYE: In a roll call vote, all members present vote Aye. The motion CARRIES.
		SEN. PROZANSKI will lead discussion on the floor.
258	Chair Burdick	Closes work session on SB 203. Opens public hearing on SB 198.
<u>SB 198 - PUBLIC HEARING</u>		
272	Joe O’Leary	Counsel. Introduces SB 198, relating to personal representatives being available to individuals during the court process.
290	Ronelle Shankle	Policy Projects and Legislative Coordinator, Department of Justice. Testifies in support of SB 198 with provided amendments. Submits written testimony (EXHIBIT A).
330	Phyllis Barkhurst	Director, Attorney General’s Sexual Assault Task Force. Discusses her history in the criminal justice system, and her involvement with the Sexual Assault Task Force committees and their support for SB 198.
375	Barkhurst	Talks about a statewide approach to victim assistance response and the prosecution of guilty parties.

395 Paul Burgett Coos County District Attorney. Reports other states' experience in victim assistance by minimizing trauma for the individual.

435 Chair Burdick Asks how often a victim is allowed to bring a friend or confidante with them.

440 Barkhurst Replies they don't know exact numbers.

447 Sen. Beyer Inquires about the statutes preventing the accompanying of victims through the process.

462 Burgett Discloses that such an occurrence would currently be up to the different jurisdictions.

477 Sen. Beyer Wonders if there is a method or mandate able to dictate a representative for victims.

TAPE 20, A

030 Burgett Replies that those types of scenarios bring different problems, not the least of which is compensation for those mandated individuals. Stresses this bill's focus is to allow friends, family, and other individuals to accompany the victim throughout the process.

038 Barkhurst Points out that many of these cases never get far enough to go to court.

045 Chair Burdick Wonders about younger individuals (i.e., children) already having confidantes with them.

050 Barkhurst States that this bill is an attempt to get an agreed age of consent across the state. Discusses the problems with adolescent responses to certain situations in comparison to adult responses.

064 Shankle Comments on the amendments currently under consideration that will take care of certain concerns raised by committee members. Reemphasizes the desire to support the victims and not hurt them in any way.

075 Sen. Prozanski Asks about the definition of protective service workers whose role is to protect children and vulnerable adults.

090 Barkhurst Reports that the definition included in the bill was aimed at two universities with sworn officers.

100 Una Swanson Department of Human Services. Submits testimony and testifies in opposition to SB 198 as written, but would conceptually support the bill if amendments discussed were put into place (**EXHIBIT C**).

111 Sen. Prozanski Inquires about the issues and concerns her department is worried about.

118 Swanson Replies that certain language is not too clear and that there is currently cooperation on the bill to resolve the issue.

131 Terrie Quinteros Reads testimony (**EXHIBIT D**) in support of SB 198.

147 Chair Burdick Closes Public Hearing on SB 198 and opens public hearing on SB 199.

SB 199 - PUBLIC HEARING

156 Joe O'Leary Counsel. Describes SB 199, relating to prohibiting the copy or distribution of sexually explicit evidence in cases involved with sexual abuse of children.

168 Ronelle Shankle Policy Projects and Legislative Coordinator, Department of Justice. Submits a proposed amendment and testifies in support of SB 199 (**EXHIBITS B & E**).

179 Phyllis Barkhurst Director, Attorney General's Sexual Assault Task Force. Describes the impetus and creation of SB 199.

189 Paul Burgett Coos County District Attorney. Reviews the process of the bill through the prosecution. Describes the results of the passage of

263	Shankle	this bill on the court process and the victim's well-being. Emphasizes that they support the concept, but the accompanying amendments need to be added before they fully support the bill.
277	Chair Burdick	Inquires about the judge's discretion to enter protective orders.
280	Burgett	Describes a judge's responsibilities and privileges in protective orders. Reviews the need of a policy sensitive to victim's rights.
297	Chair Burdick	Wonders if there are exemptions under this bill.
303	Burgett	Responds yes.
309	Chair Burdick	Questions if there have been cases where protective orders should have been issued.
311	Burgett	States that in Coos County, the courts have uniformly rejected a similar process, and he wants a legislative action to support victim's rights.
338	Sen. Walker	Asks if just video and audio imagery is covered.
365	Burgett	Replies yes, it is only sexually explicit imagery, conversations, etc. is covered in this. Reiterates that the ability of the government is not hampered by this, and the bill was only introduced to protect the victim.
400	Shankle	Mentions Exhibit E in order to respond to Sen. Walker's hesitation to provide protection to criminals.
424	Kelly Skye	Legislative Representative, Oregon Criminal Defense Lawyers Association (OCDLA). Asserts that the OCDLA will comply with any and all court orders. Raises concerns about how the bill refers to the term "expert witness." Stresses that it limits their ability to defend their clients. Illustrates the conflicts of some of the wording in SB 199.

TAPE 19, B

037	Stephanie Tuttle	Oregon District Attorney Association. Testifies in support of SB 199. Talks about the erotic imagery, or any imagery of children in any state of undress, and how the different counties control such court documents.
070	Terrie Quinteros	Western Prison Project. Reads testimony in support of SB 199 (EXHIBIT F).
080	Chair Burdick	Closes public hearing on SB 199. Opens public hearing on SB 200.

SB 200 - PUBLIC HEARING

083	Joe O'Leary	Counsel. Describes SB 200, relating to the elimination of statute of limitations for specified sex crimes under certain circumstances.
117	Paul Burgett	Coos County District Attorney. Begins discussion on DNA sampling as an incredibly effective method of solving sexual crimes.
147	Sen. Prozanski	Wonders about the breadth and width of the crime listings in the amendment.
150	Phyllis Barkhurst	Attorney General's Sexual Abuse Task Force (SATF). Explains that they wanted to cover as much ground as possible. SATF testimony of Ronelle Shankle (EXHIBIT C). EXHIBIT
157	Sen. Prozanski	Inquires about Class A misdemeanors being brought against someone half a century later, and the dangers inherent in this type of a bill for defendants.
178	Burgett	Replies that the right to a speedy trial precludes such a problem, and the district attorney would have to weigh certain situations. Details the repetitive nature of sex offenders, how they don't change their nature over time, and the appropriateness of any

		action against them.
195	Chair Burdick	Contends that the statute of limitations has nothing to do with a speedy trial, as you could start a trial fifty years later and only then process a speedy trial.
200	Burgett	Responds in the affirmative, and that the local district attorney would make the call in those instances.
211	Sen. Beyer	Inquires about misdemeanors on the list.
214	Sen. Prozanski	Answers that sex abuse in the third degree is the only listing.
220	Sen. Walker	Wonders about the drastic increase in the statute of limitations over the past few years.
235	Barkhurst	States that the increase in the statutes as well as the increase of DNA technology has greatly increased the criminal justice system's ability to convict criminals.
252	Stephanie Tuttle	Oregon District Attorneys Association. Expresses that the bill allows the criminal justice system to prosecute criminals, regardless of the time frame under certain cases.
274	Kelly Skye	Oregon Criminal Defense Lawyers Association (OCDLA). Testifies in opposition to SB 200, and describes the individual's right to a speedy trial being hampered by this bill.
300	Skye	Discusses the problems the OCDLA has with the wording of SB 200. Reviews the greater expansion of crimes appropriate for the elimination of a statute of limitations under this bill.
366	Skye	Expresses the desire to use DNA as a method of clearing convicted individuals' records, and the reciprocal thought that if the statute of limitations is eradicated for certain offenders, the statute should also be eliminated from using DNA information to free them (there is a limited time frame currently).
375	Chair Burdick	Asks about DNA evidence.
380	Skye	Describes the collection and interpretation of DNA evidence.
407	Chair Burdick	Wonders about the use of DNA evidence as the only concrete evidence available.
410	Skye	States that only in "cold hit" cases would that normally happen, and reiterates that she has never had a case such as that.
435	Chair Burdick	Inquires about other investigation options being limited over large amounts of time.
438	Skye	Replies in the affirmative. States that over time, evidence disappears and memories fade.
459	Andrea Meyer	American Civil Liberties Union. Reads testimony in opposition to SB 200 (EXHIBIT G).
TAPE 20, B		
122	Chair Burdick	Closes public hearing on SB 200 and adjourns the meeting at 2:40 p.m.

EXHIBIT SUMMARY

- A. **SB 198, written testimony, Ronelle Shankle, 2pp**
- B. **SB 199, written testimony, Ronelle Shankle, 2pp**
- C. **SB 200, written testimony, Ronelle Shankle, 2pp**
- D. **SB 198, proposed amendment, Ronelle Shankle, 1p**
- E. **SB 198, written testimony, Una Swanson, 2pp**
- F. **SB 198, written testimony, Terrie Quinteros, 1p**

- G. **SB 199, proposed amendment, Ronelle Shankle, 5pp**
- H. **SB 199, written testimony, Terrie Quinteros, 1p**
- I. **SB 200, written testimony, Andrea Meyer, 5pp**