

# SENATE COMMITTEE ON JUDICIARY

February 03, 2005  
1:00 p.m.

Hearing Room 343  
Tapes 24 - 25

Corrected 10/26/05

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

**MEMBER EXCUSED:**      **Sen. Charlie Ringo**  
                                  **Sen. Doug Whitsett**

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

**MEASURES/ISSUES HEARD & WITNESSES:**

**Introduction of Committee Measures – Work Session**  
**SB 124 – Public Hearing and Work Session**  
                                  **Craig Prins – Oregon Criminal Justice Commission**  
**SB 266 – Public Hearing**  
                                  **John Hummel – Oregon Criminal Defense Lawyers Association**  
                                  **Michael T. Dugan – Deschutes County District Attorney**  
**SB 273 & SB 274 – Public Hearing**  
                                  **Justin Baxter – Oregon State Bar**  
                                  **Jim Markee – Oregon Collectors Association**  
                                  **Cindy Robert – NACM**  
                                  **Sybil Hebb – Oregon Law Center**

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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 24, A</b>		
007	Chair Burdick	Calls the meeting to order at 1:17 p.m. Opens a work session in order to introduce committee bills.
<b><u>INTRODUCTION OF COMMITTEE MEASURES – WORK SESSION</u></b>		
010	Joe O'Leary	Committee Counsel. Reads LC 210, 1263, 1806, 2068 for introduction ( <b>EXHIBITS A - D</b> ).
018	Sen. Starr	<b>MOTION: Moves LC's: 210, 1263, 1806, 2068 BE INTRODUCED as committee bills.</b> <b>VOTE: 4-0-3</b> <b>AYE: In a roll call vote, all members present vote Aye.</b> <b>EXCUSED: 3 - Prozanski, Ringo, Whitsett</b>
025	Chair	<b>Hearing no objection, declares the motion CARRIED.</b>
025	Chair Burdick	Opens public hearing on SB 124, relating to sentencing guidelines.
<b><u>SB 124 - PUBLIC HEARING</u></b>		

030	Craig Prins	Executive Director, Oregon Criminal Justice Commission. Submits testimony and additional material in support of SB 124 ( <b>EXHIBITS E – I</b> ). Discusses the sentencing guidelines for crimes.
070	Prins	Comments on the amended crimes with special focus on recent court cases (i.e., <i>Blakely</i> ). Talks about <b>Exhibits G &amp; H</b> .
093	Chair Burdick	Asks about the furthest right column on <b>Exhibit H</b> that mentions “no action.”
096	Prins	Replies that no action will be taken in those circumstances. Explains recent legislative bills relating to sentencing guidelines with <b>Exhibit H</b> .
135	Prins	Describes section 2 and 3 of SB 124, and how these areas will assist in streamlining the sentencing guidelines process.
166	Sen. Beyer	Wonders how the <i>Blakely</i> decision affects this.
175	Prins	Replies that the <i>Blakely</i> decision only affects aggravating factors.
188	Sen. Beyer	Asks about the fiscal impact of a decision that allowed a small amount of aggravating sentencing.
195	Sen. Prozanski	Comments on how we could go back to regular sentencing guidelines, and how it could affect the cost factors.
204	Prins	Mentions a recent court case interpreting the <i>Blakely</i> case and how it affects the court system in Oregon.
228	Chair Burdick	Reviews a bill coming into the Senate Judiciary that was the result of a work group with district attorneys and law enforcement which will focus on the sentencing guidelines.
232	Sen. Prozanski	Questions if this bill is mainly a housekeeping bill.
240	Prins	Replies that this bill is “pretty mundane.”
246	Sen. Beyer	Inquires about <b>Exhibit G</b> and the wording.
260	Prins	Responds that he will find the information.
284	Chair Burdick	Asks if a bill does not show up on <b>Exhibit H</b> from the charts on <b>Exhibit G</b> , then it did not pass in the 2003 Legislative session.
308	Chair Burdick	Closes Public Hearing on SB 124 and opens a work session.

**SB 124 – WORK SESSION**

310	Sen. Starr	<b>MOTION: Moves SB 124 to the floor with a DO PASS recommendation.</b> <b>VOTE: 6-0-2</b> <b>EXCUSED: 2 - Ringo, Whitsett</b> <b>Chair Burdick Hearing no objection, declares the motion CARRIED. SEN. BEYER will lead discussion on the floor.</b>
315	Chair Burdick	
322	Chair Burdick	Closes work session on SB 124 and opens a public hearing on SB 266.

**SB 266 – PUBLIC HEARING**

326	Joe O’Leary	Counsel. Reads description of SB 266, relating to conviction of third felony sex offense.
340	John Hummel	Attorney, Oregon Criminal Defense Lawyers Association. Reads testimony in support of SB 266. Describes the common situation of a defendant in court cases concerning third felony sex offense.
390	Hummel	Defends the purpose of the bill.
450	Chair Burdick	Asks if the role of the defense attorney is to go beyond what they learn from their client and try to figure out if they have previous sex abuse charges.
459	Hummel	Replies that yes, the attorney is supposed to do that, but states that prosecutors have greater resources to accomplish background checks.

033	Chair Burdick	Wonders about the withholding of information from the defense.
039	Hummel	Expresses that this is not about withholding of information, in these situations, the prosecutors don't have the information until after the trial begins.
044	Chair Burdick	Asks about the number of individuals defending themselves.
046	Hummel	Responds that he doesn't have the numbers.
049	Sen. Beyer	Inquires about other courts, not involved with sex abuse cases, being required to share maximum sentencing possibilities with the defendant.
055	Hummel	Asserts that crimes with a sentence contingent on previous convictions are usually not told to the defendant prior to the sentencing.
068	Sen. Beyer	Asks what would occur if the information was uncovered after the trial was started.
077	Hummel	Replies that in those circumstances, a delay would normally be given to allow both prosecutors and defendants to analyze the new information.
086	Sen. Prozanski	Inquires about several different scenarios, and asks what would occur in these situations after this bill passed.
100	Hummel	Analyzes the different scenarios and provides information on what would happen if SB 266 was passed.
110	Sen. Prozanski	Wonders if the court, at arraignment, should inform the defendant of any presumptive life sentencing guidelines.
129	Hummel	Responds that the OCDLA would support such a requirement.
145	Sen. Prozanski	Inquires about the scope of this problem.
150	Hummel	Replies that it is not a huge problem.
160	Michael T. Dugan	District Attorney, Deschutes County. Reads testimony in opposition to SB 266 ( <b>EXHIBIT J</b> ). Discusses presumptive sentences, and the possibility to have the entire guidelines challenged under the <i>Blakely</i> decision.
229	Sen. Prozanski	Asks about Measure 11 cases.
232	Dugan	Points out that they know if a case is Measure 11 at the onset.
250	Sen. Prozanski	States that it should be the responsibility of the judge at arraignment to express the maximum penalty.
261	Hummel	Counters it should not be the judge's responsibility at arraignment.
281	Chair Burdick	Closes public hearing on SB 266. Opens public hearing on SB 273 and SB 274.

**SB 273 & SB 274 – PUBLIC HEARING**

289	Joe O'Leary	Counsel. Describes SB 273 and SB 274, relating to providing exemptions for debtors.
309	Justin Baxter	Oregon State Bar, Consumer Law Section. Testifies in support of SB 273 and SB 274 ( <b>EXHIBITS K &amp; L</b> ). Discusses the need for alterations to judgment and bankruptcy exemptions from over a decade of appreciation and inflation in the market.
375	Baxter	States that those items usually taken in lawsuits are usually needed to go to work and provide for families (cars, homes, etc.). Expresses that these items need to be kept from settlements.
420	Baxter	Mentions tax breaks for children, and the possible tax liabilities and credits. Comments that those refunds and breaks should go towards taking care of the family, as opposed to paying off debt.
458	Chair Burdick	Asks when the last time these exemptions were looked at or altered.
460	Baxter	Declares that it was July 1993 the last time these numbers were

		changed.
470	Chair Burdick	Inquires as to the numbers, and how the Oregon State Bar came up with them in comparison to other states.
<b>TAPE 24, B</b>		
020	Baxter	Replies with statistics and examples.
030	Sen. Walker	Asks about the national scale for Oregon's affordable housing rates.
032	Baxter	Responds that both the prices and ability to buy factor into the scenario. States that Oregon is around the middle of the road in these respects. Mentions that location also has a great impact on this scenario.
052	Sen. Walker	Wonders if Congress intended for an individual to have to move to a lower priced area when they declare bankruptcy.
060	Baxter	Declares that he does not believe so, and that Americans are entitled to a "fresh start" if their liabilities get out of control. Discusses how Congress put factors into place to assist this.
080	Sen. Walker	Inquires about bankruptcy being a "windfall."
088	Baxter	Responds that under bankruptcy law, creditors have many rights they can petition against the debtors. Goes on to talk about the rights of both creditors and the individual requiring bankruptcy.
091	Sen. Walker	Wonders about the allotment under the bill that goes towards purchasing a vehicle.
112	Baxter	Expresses that the three thousand dollars allotted to buying a new car allows the debtor to purchase a solid, cheap car, not a luxurious automobile.
120	Sen. Walker	Desires the committee to know that there are balancing factors in these situations.
130	Sen. Beyer	Inquires about the child tax credit scenarios being cumulative.
150	Baxter	Replies that yes, it is cumulative.
155	Sen. Beyer	Wonders about the tax credit limit for the children.
164	Baxter	Discusses the tax credit limit.
179	Jim Markee	Oregon Collectors Association. Testifies in opposition to SB 273 and SB 274. Talks about the balancing act involved with bankruptcy. Offers information as to why the numbers have not been altered in the last few years.
240	Markee	Discusses the automobile example earlier, and how raising the rates would be acceptable to his client, but not as high as the current bill proposes.
280	Markee	Talks about the confusion over the new child tax credits in SB 274. Explains the financial illiteracy in this country, and how it sometimes is appropriate to ask individuals who are bankrupt due to living over their means to live below it after they declare.
314	Cindy Robert	National Association of Credit Management (NACM). Testifies in opposition to SB 273. Discusses the comparison between leaving college and bankruptcy. Explains that nobody is entitled to a fresh start, and that you should pay back what you owe.
367	Sen. Prozanski	Reaffirms that it is going to be a policy decision for this committee whether anything needs to be adjusted from this point on. Inquires if it is possible to look at those numbers again, and increase the exemptions to a point that is agreeable to both parties.
410	Sen. Walker	Asks for a work group to be assigned to address these issues. Believes that negotiations could occur between both groups.
485	Chair Burdick	Approves such a workgroup; asking them to focus on SB 273.

**TAPE 25, B**

053	Sen. Beyer	Inquires about clarification on SB 274, relating to the additional child support credit.
065	Sybil Hebb	Oregon Law Center. Provides written testimony on SB 273 ( <b>EXHIBIT M</b> ).
069	Chair Burdick	Closes public hearing on SB 273 and SB 274.
085	Chair Burdick	Adjourns the meeting at 2:42 p.m.

**EXHIBIT SUMMARY**

- A. **Introduction, LC 210, staff, 2 pp**
- B. **Introduction, LC 1263, staff, 2 pp**
- C. **Introduction, LC 1806, staff, 2 pp**
- D. **Introduction, LC 2068, staff, 3 pp**
- E. **SB 124, written testimony, Craig Prins, 4 pp**
- F. **SB 124, Summary of Changes to the Rules, Craig Prins, 2 pp**
- G. **SB 124, 2003 Legislation Affecting Sentencing Guidelines Rules, Craig Prins, 3 pp**
- H. **SB 124, Recommendations for Sentencing Guidelines, Craig Prins, 4 pp**
- I. **SB 124, 2003 Amended Felony Sentencing Guidelines Rules, Craig Prins, 29 pp**
- J. **SB 266, written testimony, Michael Dugan, 2 pp**
- K. **SB 273, written testimony, Justin Baxter, 3 pp**
- L. **SB 274, written testimony, Richard Slottee, 23 pp**
- M. **SB 273, written testimony, Sybil Hebb, 2 pp**