

SENATE COMMITTEE ON JUDICIARY

February 08, 2005
1:00 p.m.

Hearing Room 343
Tapes 28 - 29

MEMBERS PRESENT: **Sen. Ginny Burdick, Chair, by speaker phone**
 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 287 & SB 288 – Public Hearing
 Tom Lininger – Oregon Criminal Justice Commission
 Sybil Hebb – Oregon Law Center
 Tim Sylwester – Department of Justice
 Cheryl O'Neill – Womenspace
 Kelly Skye – Oregon Criminal Defense Lawyers Association
SB 258 – Public Hearing and Work Session
 Sylvia Stevens – Oregon State Bar
SB 272 – Public Hearing
 Peter Ozanne – Public Defense Services Commission
 Mary Williams – Department of Justice
 Kelly Skye – Oregon Criminal Defense Lawyers Association
SB 257 – Public Hearing
 Peter Gartlan

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 28, A		
005	Vice-Chair Starr	Calls the meeting to order at 1:10 p.m. Opens public hearing on SB 287 and SB 288, relating to using hearsay as evidence.
<u>SB 287 & SB 288 – PUBLIC HEARING</u>		
020	Tom Lininger	Oregon Criminal Justice Commission. Reads testimony in support of SB 288 (EXHIBIT A) and provides background on the <i>Crawford</i> decision.
050	Lininger	Discusses how <i>Crawford</i> affected Oregon law.
070	Lininger	Begins discussion of the repercussions of the <i>Crawford</i> decision on prosecution.
118	Lininger	Talks about SB 287, and its relationship to the federal rules.
156	Lininger	Admits that SB 287 is not a fix for <i>Crawford</i> , but it is a step in the right direction.
193	Sen. Ringo	Inquires about the timelines of domestic violence data.
198	Lininger	Replies that reports made closest in time to the actual events

(abuse, etc.) are closer to the truth.

214 Sen. Ringo Wonders if the statements of the victim could be videotaped, recorded, etc, so hearsay isn't an option.

221 Lininger States that many police departments are looking into this type of evidence preparation.

238 Sen. Ringo Asks if these statements are usually made to the officer at the scene or later on at the station.

243 Lininger Conveys that the usual procedure is to take a statement at the scene, but the preferred protocol involves a specialist in counseling or psychological analysis.

270 Sen. Ringo Emphasizes that the hearsay statements will be most likely those taken at the scene by an officer, in an environment not easily defended in court.

272 Lininger Responds he doesn't know for sure, but it is probably true.

290 Sen. Walker Asks if other states are dealing with the *Crawford* decision.

293 Lininger Replies that there are many states looking into this decision.

300 Sen. Walker Wonders if other states are interested in Oregon's legislation as a model.

302 Lininger States that Oregon has often been at the forefront of legislation dealing with domestic abuse.

322 William E. Taylor Counsel. Asks about the wording.

304 Lininger Discusses the language of the bill, as well as the federal template. Goes over the reasoning behind their choice in wording and shares examples.

372 Sen. Prozanski Inquirers about the balancing of the bill, focusing on the extra clause in SB 287.

400 Lininger Reiterates his desire for symmetry in this bill. Agrees that there should be language in the bill stating the proponent and opponent of the hearsay statement should not benefit from wrongdoing.

448 Sybil Hebb Oregon Law Center. Testifies in support of SB 287 & SB 288 (**EXHIBITS B & C**). Describes the reasoning behind this bill as well as the impact.

TAPE 29, A

015 Tim Sylwester Oregon Department of Justice. Clarifies the differences between SB 287 & SB 288. Cites examples of this clarification including domestic as well as elder abuse.

060 Sylwester Continues with the examples mentioned above.

085 Sen. Prozanski Inquires about SB 287 (essentially the federal law) challenged as unconstitutional.

094 Sylwester Discusses the wording of the rules and statutes to get around that problem.

117 Lininger Comments on the problems prosecutors already face with hearsay issues and how SB 288 would alleviate some of those issues.

151 Taylor Asks if the reluctance of a witness to testify would classify as "unavailable" under SB 288.

160 Sylwester Responds that being scared or changing their mind would not classify under SB 288. States that there would usually require a specific threat to the witness to fall under this bill.

182 Taylor Wonders about availability of the witness.

190 Sylwester Clarifies the current law on availability of the witness.

195 Lininger Goes on to talk about the *Crawford* decision in relation to the question.

206 Sen. Whitsett Poses the example of a murdered victim's statements used against the accused killer.

215	Lininger	Reiterates the meaning of the bill and how it would affect the above scenario.
265	Sen. Whitsett	Asks about administered evidence.
270	Lininger	Replies that there would be a subsequent inquiry concerning the administering of evidence.
295	Sen. Prozanski	Inquires if an amendment relating to murder would be needed for SB 287.
306	Sylwester	Responds that such an amendment would be prudent.
320	Lininger	Clarifies where the language is in SB 287 relating to homicide.
342	Cheryl O'Neill	Womenspace. Testifies in support of SB 287 & SB 288. Talks about the effect of the <i>Crawford</i> decision in Oregon. Explains her history with abuse legislation in Oregon.
402	O'Neill	Describes the fear victims and witnesses face during domestic violence cases.

TAPE 28, B

044	Kelly Skye	Oregon Criminal Defense Lawyers Association (OCDLA). Testifies in opposition to SB 287 & SB 288. Cites many years of litigation and increased court costs if such a set of bills were to be passed.
081	Skye	Consents that if one of the two bills were to be passed, the OCDLA would prefer SB 287, which has the federal language that has been established in federal court for many years.
139	Sen. Walker	Comments on Sen. Prozanski's earlier question relating to a murder clause in SB 287.
150	Skye	Responds with information on murder in relation to common law and SB 287.
159	Vice-Chair Starr	Closes public hearing on SB 287 & SB 288 and opens a public hearing on SB 258.

SB 258 – PUBLIC HEARING

172	William E. Taylor	Counsel. Describes SB 258, relating to appointed counsel at state expense in post conviction relief cases.
180	Peter Gartlan	Office of Public Defense Services. Testifies in support of SB 258 (EXHIBIT D). Discusses the background and cleanup of SB 258.
217	Sen. Prozanski	Wonders about the right to attorney for appeal cases.
226	Gartlan	Responds that usually judges have not allowed such an expense, but there have been exceptions.
233	Sen. Prozanski	Asks what counties have done this.
236	Gartlan	Replies that he is unsure.
251	Vice-Chair Starr	Closes public hearing on SB 258 and opens a work session on SB 258.

SB 258 – WORK SESSION

255	Sen. Prozanski	MOTION: Moves SB 258 to the floor with a DO PASS recommendation.
		VOTE: 6-0-1
		EXCUSED: 1 - Ringo
260	Vice-Chair Starr	Hearing no objection, declares the motion CARRIED. SEN. PROZANSKI will lead discussion on the floor.
265	Vice-Chair Starr	Closes work session on SB 258 and opens a public hearing on SB 272.

SB 272 – PUBLIC HEARING

270	William E. Taylor	Counsel. Describes SB 272, relating to a deadline for filing nominating petitions for positions on the board of the Oregon State Bar (with amendment, EXHIBIT E).
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284	Sylvia Stevens	Oregon State Bar. Reads testimony in support of SB 272 (EXHIBIT F & G) and provides a detailed analysis of the sections of the bill with history.
334	Stevens	Wishes to increase the role of the State Lawyers Assistance Committee in probationary or diversionary cases.
354	Stevens	Describes the amendments she has proposed relating to lawyers' claims against clients.
380	Sen. Prozanski	Asks about a provision to focus on lawfully practicing lawyers.
387	Stevens	Replies that the language makes sure only legally practicing lawyers are affected by this bill.
396	Sen. Walker	Asks if other lawyers not licensed in Oregon fall under SB 272.
400	Stevens	Responds that she does not believe so, and gives examples.
422	Sen. Prozanski	Wonders about payments to out-of-state lawyers (multi-state lawyers).
433	Stevens	States that most states want to limit their payments to their own lawyers.
457	Sen. Prozanski	Comments upon reciprocity among states.
492	Stevens	Mentions an added amendment with substitutive language.
TAPE 29, B		
040	Stevens	Discusses proposed amendment (Exhibit G).
055	Vice-Chair Starr	Closes public hearing on SB 272 and opens a public hearing on SB 257.
<u>SB 257 – PUBLIC HEARING</u>		
055	William E. Taylor	Counsel. Describes SB 257, relating to appointed counsel in post-conviction relief (PCR) cases.
080	Peter Ozanne	Public Defense Services Commission. Reads testimony in opposition to SB 257 (EXHIBIT H). Discusses PCR case statistics and information.
132	Ozanne	Goes over the most common post-conviction relief cases. Discusses the PCR proceedings involving complaints against lawyers for providing inadequate service to the convicted individual.
182	Ozanne	Advises that funding for public defense should be under the control of the Public Defense Services Commission.
207	Mary Williams	Solicitor General, Oregon Department of Justice. Testifies in opposition to SB 257 (EXHIBIT I) and focuses on the problem of indigent defense costs.
255	Williams	Comments on the increased costs involved with SB 257.
273	Taylor	Asks about the cost figures, and if there would be increased costs for the courts.
280	Williams	Responds, yes.
285	Kelly Skye	Oregon Criminal Defense Lawyers Association. Points out that there are many claims available to individuals with grievances in post-conviction relief, and how SB 257 would render this meaningless.
335	Skye	Goes over meritorious claims in post-conviction relief cases, and how lawyers assist individuals after bad service from previous lawyers.
404	Vice-Chair Starr	Closes public hearing on SB 257 and adjourns the meeting at 2:55 p.m.

EXHIBIT SUMMARY

- A. **SB 287 & SB 288, written testimony, Tom Lininger, 4 pp**
- B. **SB 287 & SB 288, written testimony, Sybil Hebb, 2 pp**
- C. **SB 287 & SB 288, *Crawford* Analysis, Sybil Hebb, 1 p**
- D. **SB 258, written testimony, Peter Gartlan, 1 p**
- E. **SB 272, -2 amendments, staff, 6 pp**
- F. **SB 272, written testimony, Sylvia Stevens, 4 pp**
- G. **SB 272, proposed amendment, Sylvia Stevens, 1 p**
- H. **SB 257, written testimony, Peter Ozanne, 2 pp**
- I. **SB 257, written testimony, Mary H. Williams, 1 p**