

SENATE COMMITTEE ON JUDICIARY

March 01, 2005
1:00 P.M.

Hearing Room 343
Tapes 51 - 52

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:
 SB 332 – Public Hearing & Work Session
 SB 89 – Public Hearing
 SB 333 – Public Hearing

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 51, A		
003	Chair Burdick	Calls the meeting to order at 1:13 p.m. and opens a public hearing on SB 332.
<u>SB 332 – PUBLIC HEARING</u>		
008	Joe O'Leary	Counsel. Describes SB 332 relating to confidential communications between patients and dentists.
022	Robert W. Staley	Dentist, Attorney. Submits testimony and testifies in support of SB 332 (EXHIBITS A & B). Discusses a patient questionnaire form (Exhibit B).
055	Chair Burdick	Commends Dr. Staley on the submission of the questionnaire form.
065	Tom Gallagher	Newspaper Publishers. Testifies in support of SB 332.
074	Chair Burdick	Submits written testimony from April Love in support of SB 332 (EXHIBIT P). Closes the public hearing and opens a work session on SB 332.
<u>SB 332 – WORK SESSION</u>		
076	Sen. Starr	MOTION: Moves SB 332 to the floor with a DO PASS recommendation.
		VOTE: 6-0-1
		EXCUSED: 1 - Walker
079	Chair Burdick	Hearing no objection, declares the motion CARRIED.
		SEN. RINGO will lead discussion on the floor.
082	Chair Burdick	Closes the work session on SB 332 and opens a public hearing on SB 89.
<u>SB 89 – PUBLIC HEARING</u>		
083	Joe O'Leary	Counsel. Describes SB 89 relating to custodial sexual

100	Stan Czerniak	misconduct in the first and second degree. Assistant Director of Operations, Oregon Department of Corrections (DOC). Submits testimony and testifies in support of SB 89 (EXHIBITS C & D).
125	Stan Czerniak	Talks about how Oregon and Vermont are the only two states who do not have a felony statute on this issue. Describes the effects of the passage of SB 89.
165	Jason Barber	Assistant Director, Crime Victims Assistance Section, Department of Justice. Testifies in support of SB 89.
169	John Powell	Oregon State Sheriff's Association. Testifies in support of SB 89.
185	Mike Wilkerson	Under-Sheriff, Marion County Sheriff's Office. Testifies in support of SB 89. Explains a recent case involving sexual misconduct in the correctional facility.
205	Sen. Whitsett	Asks if there is any duty to report among the DOC staff.
210	Wilkerson	Replies that there is a mandatory reporting law.
216	Sen. Whitsett	Inquires if there are any cross-departmental methods of reporting such abuses.
220	Greg Olson	Under-Sheriff, Marion County Sheriff's Office. Responds that the Department of Public Safety Standards and Training would be notified if such an abuse has occurred and the officer would have their certification revoked.
228	Sen. Whitsett	Wonders if there are any protections from retaliation for employees that report such an action.
233	Olson	States that there are protections, but it would be an expected aspect of their job to report.
236	Chair Burdick	Inquires as to where the duty to report originates.
239	Wilkerson	Explains an ethics oath officers must take before serving.
250	Chair Burdick	Wonders what the repercussions are of breaking that oath.
251	Wilkerson	Replies that termination is a common result.
253	Chair Burdick	Inquires if there is anything in the statutes that relates to a mandatory reporting clause.
254	Wilkerson	Affirms there is not anything he is aware of in the statutes.
260	Olson	Testifies in support of SB 89 and discusses the departmental process taken after an act of sexual abuse occurs.
282	Chair Burdick	Inquires about implementing a mandatory reporting statute.
285	Olson	States that they would support such an action.
290	Sen. Prozanski	Raises the issue of labor contracts conflicting with such a law.
315	Heidi Evans	Volunteer, Amnesty International, USA. Submits testimony and testifies in support of SB 89 (EXHIBITS E & F).
344	Chair Burdick	Asks if a contract conflicted with the mandatory reporting clause, would Amnesty International support a protection clause for reporting a crime instead.
356	Evans	Replies that she would support such an action. Cites examples of sexual misconduct within the DOC, including some high-profile cases.
410	Dena Marshall	State Coordinator, Stop Violence Against Women Campaign. Testifies in support of SB 89. Advises that same-sex search rules be statutorily enacted.
448	Sen. Walker	Expresses her horror over the cases discussed in the recent testimony (Exhibit F).
466	Mary Botkin	American Federation of State, County, and Municipal Employees (AFSCME). Testifies in opposition to SB 89.

025	Mary Botkin	Explains the DOC's stance on sexual conduct between a staff and an inmate. Testifies in opposition to Amnesty International's amendment requiring a mandatory reporting clause.
058	Botkin	Raises the issue of officers needing to search inmates in order to remove any weapons they might have. Explains the role of officers in a body search, and the precautions taken in order to observe safety protocols.
091	Chair Burdick	Inquires about collective bargaining agreements that would stop a mandatory reporter clause.
094	Botkin	Replies that there is no writing that would stop a mandatory reporting clause. Stresses that a peace officer is already a mandatory reporter if they witness a criminal occurrence. Discusses the occurrence of hearsay.
115	Sen. Prozanski	Explains that his earlier question related to reporting outside of their statutory requirements. Discloses his hesitance to dictate the requirements of mandatory reporting to an outside agency.
132	Botkin	Expresses the importance of making choices relating to sexual relationships involving parties who supervise each other.
141	Chair Burdick	Inquires about protection from reporting.
146	Botkin	States that the AFSCME would represent anyone who reported a grievance.
150	Botkin	Details that they file several claims when a grievance is brought to their attention so that it will not get ignored.
160	Sen. Walker	Brings up the issue of conflicting drafting in SB 89.
170	Czerniak	Discusses the Code of Conduct that all staff in the DOC must take. Clarifies the search policy.
201	Sen. Walker	Wonders about the mandatory reporting law relating to inmates.
208	Botkin	Articulates their desire for tighter drafting language relating to SB 89's relation to mandatory reporting.
212	Sen. Walker	Compares the child abuse mandatory reporting law with the mandatory reporting law in SB 89.
229	Czerniak	Details the actions taken by the DOC relating to the mandatory reporting law.
240	Botkin	Explains that mandatory reporting applies to other classes than just children, and it is part of the DOC's policy to report abuses.
262	Sen. Beyer	Talks about the criminalization of mandatory reporting for all crimes.
274	Chair Burdick	Wonders about the application of SB 89 towards inmates under custody, not just in a facility (including transport, etc.).
298	Terrie Quinteros	Program Director, Crime Survivors for Community Safety, Western Prison Project. Submits testimony and testifies in support of SB 89 (EXHIBIT G).
337	Quinteros	Expresses that this is not an issue of love between two people, but one of dominance and exerting power over an individual.
364	Theresa Huggins	Volunteer, Crime Survivors for Community Safety. Submits testimony and testifies in support of SB 89 (EXHIBIT H). Details her personal story of being strip searched by male officers.
398	Chair Burdick	Asks how long ago this occurred.
399	Huggins	Replies that it happened 10 years ago.
441	Brigitte Sarabi	Executive Director, Western Prison Project. Submits testimony and testifies in support of SB 89 (EXHIBIT I).
458	Sen. Walker	Addresses the issue that Oregon is only one of two states with no custodial sexual misconduct legislation (Exhibit I).

474	Andrea Meyer	American Civil Liberties Union. Raises their concern that the sexual misconduct may occur from a person not in a supervisory role (i.e., janitor, etc.). Advises that the language be tightened.
TAPE 51, B		
033	Meyer	Addresses section 3 of the bill discussing roles within and outside the institutions or agencies. Brings up the issue of marriage defense in relation to SB 89.
053	Chair Burdick	Inquires as to the DOC's policy on officers guarding their spouse.
060	Czerniak	Discusses the policy on relationship within the DOC.
066	Sen. Prozanski	Brings up the scenario of marriage between an inmate and an officer.
072	Czerniak	Talks about the DOC's policy that forbids any relationship between an inmate and the staff.
086	Botkin	Addresses the scenario raised by Sen. Prozanski, relating to relationships between inmates and staff.
098	Sen. Prozanski	Asks about the protocol of staff marrying inmates.
104	Czerniak	Reiterates the DOC's policy on relationships between staff and inmates.
115	Jeff Van Valkenburg	Department of Justice. Discusses the drafting decision to keep the section dealing with marriage in the bill.
132	Botkin	Talks about a similar bill two years ago relating to this issue.
140	Chair Burdick	Expresses the desire to structure the wording a little better before passing this bill.
136	Heather Huhtanen	Director, Sexual Abuse Training Institute. Submits testimony and testifies in support of SB 89 (EXHIBIT J). Expresses their support of the amendments from Amnesty International with some small reservations.
189	Chair Burdick	Closes the public hearing on SB 89 and opens a public hearing on SB 333.

SB 333 – PUBLIC HEARING

195	Joe O'Leary	Counsel. Describes SB 333 relating to certain tort actions.
211	Cheryl Albrecht	Hearings Referee, Multnomah County. Testifies in support of SB 333. Details how the bill allows for easier access to justice for all citizens.
247	Mark Ginsberg	Oregon Trial Lawyers. Submits testimony and testifies in support of SB 333 (EXHIBIT K). Discusses lawyer costs for small cases and how SB 333 would allow more citizens the access to justice.
275	Ginsberg	Discusses the scenarios and court cases in his testimony (Exhibit K).
316	Sen. Whitsett	Asks about attorney fees in these types of cases.
327	Ginsberg	Responds with information on attorney fees.
353	Sen. Charlie Ringo	Senate District 17. Submits testimony and testifies in support of SB 333 (EXHIBIT L). Details the plight of an individual being abused by the insurance companies and how SB 333 addresses these occurrences.
397	Sen. Ringo	Discusses examples of insurance cases in his testimony (Exhibit L).
438	Sen. Ringo	Talks about page 3 of his testimony (Exhibit L).
450	Chair Burdick	Asks how long the current penalty limit has been in effect.
452	Sen. Ringo	Replies that he will address that question. Continues discussing the third example in his testimony (Exhibit L).
490	Sen. Ringo	Comments on the chart on the final page of the testimony

(Exhibit L).

TAPE 52, B

034	Sen. Beyer	Inquires about section 2 of SB 333, relating to the date the bill would go into effect.
046	O'Leary	Describes section 2 of SB 333.
051	Sen. Ringo	Replies that he believes this applies to the date after the statute would go into effect.
057	Chair Burdick	Offers clarification on the issue.
060	O'Leary	Addresses the confusion on the effective date of the bill.
067	Sen. Beyer	Raises a scenario dealing with a claimant going back to court to recover extra money due to SB 233.
071	Sen. Prozanski	Replies that it is impossible, and offers an explanation as to why.
078	Sen. Beyer	Raises another scenario dealing with a claimant attempting to retrieve more money from a past adjudicated court decision.
084	Sen. Prozanski	Addresses the issue under discussion.
090	O'Leary	Defines the section of SB 333 which resolves the issue.
095	Sen. Whitsett	Asks about situations dealing with both parties' attorney fees being charged to a claimant.
109	Sen. Ringo	Replies that the increased fees are important in court cases. Addresses the scenario that the claimant could be charged the attorney fees for both parties.
151	John Powell	State Farm Insurance Company. Testifies in opposition to SB 333.
154	Steve Murrell	State Farm Insurance Company. Testifies in opposition to SB 333. Expresses his belief that SB 333 will eventually encourage increased litigation which will raise insurance costs.
197	Murrell	Addresses the fees that could be levied against the plaintiff.
211	Sen. Prozanski	Inquires about early property payments.
215	Murrell	Discusses early payments, especially those involved with property or vehicular damage.
221	Sen. Prozanski	Asks about a scenario where the legislature would require both personal and property damage be dealt with at one time, and would the insurance companies support such an amendment.
227	Murrell	States that it would not be the best solution, but it would be helpful.
230	Chair Burdick	Wonders about existing statutes dealing with payment on a claim.
233	Murrell	Details the situations facing the insurance companies where two sets of claims will be brought against them for one accident.
240	Sen. Ringo	Raises the issue of non-economic damages.
249	Murrell	Explains their stance on the scenario of non-economic damages and other claims.
255	Sen. Ringo	Cites personal examples of where the insurance companies have denied allocations to individuals he represented.
272	Bill Sime	Oregon Association of Defense Counsel. Submits testimony and testifies in a neutral stance on SB 333 (EXHIBIT M).
318	Sime	Talks about the demands letter from the lawyer, and how more often than not there is little to no documentation or proof to support the claim.
363	Sen. Prozanski	Asks about the issues relating to the insurance claim brought up by the witness.
371	Sime	Clarifies his testimony on those issues.
379	Sen. Ringo	Comments on his tentative support for the amendments being discussed, and his willingness to cooperate to resolve claims for

423	Chair Burdick	the individual. Submits testimony on SB 333 from Robert Dorband and Shawn Miller (EXHIBITS N & O).
449	Chair Burdick	Submits Oregon Rules of Appellate Procedure (EXHIBIT Q)
452	Chair Burdick	Closes the public hearing on SB 333 and adjourns the meeting at 3:02 p.m.

EXHIBIT SUMMARY

- A. **SB 332, written testimony, Robert Staley, 1 p**
- B. **SB 332, Patient information form, Robert Staley, 1 p**
- C. **SB 89, written testimony, Stan Czerniak, 2 pp**
- D. **SB 89, custodial sexual misconduct, Stan Czerniak, 1 p**
- E. **SB 89, written testimony, Heidi Evans, 6 pp**
- F. **SB 89, summary of SB 89, Heidi Evans, 4 pp**
- G. **SB 89, written testimony, Terrie Quinteros, 2 pp**
- H. **SB 89, written testimony, Theresa Huggins, 1 p**
- I. **SB 89, written testimony, Brigitte Sarabi, 1 p**
- J. **SB 89, written testimony, Heather Huhtanen, 2 pp**
- K. **SB 333, written testimony, Mark Ginsberg, 1 p**
- L. **SB 333, written testimony, Sen. Charlie Ringo, 5 pp**
- M. **SB 333, written testimony, Bill M. Sime, 6 pp**
- N. **SB 333, written testimony, Robert Dorband, 1 p**
- O. **SB 333, written testimony, Shawn Miller, 1 p**
- P. **SB 332, written testimony, April Love, 2 pp**
- Q. **SB 333, Oregon Rules of Appellate Procedure, staff, 2 pp**