SENATE COMMITTEE ON JUDICIARY

March 31, 2005 **Hearing Room 343**
1:00 P.M. **Tapes 90 - 91**
Corrected 10/26/05

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

MEMBER EXCUSED: **Sen. Charlie Ringo**
Sen. Vicki Walker

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

MEASURES/ISSUES HEARD:
SB 528 – Public Hearing
SB 914 – Public Hearing and Work Session
SB 919 – Public Hearing and Work Session

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 90, A		
003	Chair Burdick	Calls the meeting to order at 1:08 p.m. and opens a public hearing on SB 528.
SB 528 – PUBLIC HEARING		
011	Joe O'Leary	Counsel. Describes SB 528 relating to the *Blakely vs. Washington* Supreme Court decision. Introduces the -2 amendment (**EXHIBIT A**).
045	Chair Burdick	Discusses the US Supreme Court decision on *Blakely*.
070	Jennifer Lloyd	Oregon Department of Justice. Submits a summary of key provisions and testifies in support of SB 528 (**EXHIBIT C**). Talks about her role in the *Blakely* work group. Details that SB 528 is a broad attempt to curtail certain changes resulting from the *Blakely* decision.
110	Lloyd	Explains what SB 528 will accomplish upon passage.
150	Lloyd	Discusses subsections 5 and 6 of SB 528.
180	Lloyd	Stresses that the Oregon District Attorneys Association has withdrawn conflicting legislation.
218	Chuck French	Multnomah County District Attorney's office. Testifies in support of SB 528. Describes the goals in mind for the work group meetings.
259	French	States that there have been relatively few cases within his district that would fall under these criteria since the *Blakely* decision.
282	Chair Burdick	Asks how the district attorney's office has dealt with these cases

		around the state.
290	French	Replies with information on how the district attorney's office has dealt with these cases.
305	Chair Burdick	Inquires about the *Blakely* influenced cases.
307	French	Provides information on these particular cases.
313	Chair Burdick	Inquires what the regular process is for these cases.
315	French	Stresses that since there have been so few, the regular process is not truly known yet.
336	Chair Burdick	Wonders about certain offender-related decisions; inquires about prejudicial matters.
342	French	States that the same jury is used to hear these types of instances, and that different cases would have to be completed. Reiterates the fact that there is currently no regular process to deal with these cases.
370	Sen. Prozanski	Asks about offender-factor cases being bifurcated out.
382	French	Offers information as to the current process.
397	Sen. Prozanski	Comments on the bifurcated process used by Texas.
413	French	Reports on the mechanism used in proceeding with these cases.
427	Bob Holman	Oregon Criminal Defense Lawyers Association. Testifies in support of SB 528 and offers his opinion on the *Blakely* work group.
447	Chair Burdick	Inquires about the Kansas plan dealing with the *Blakely* decision.
448	Holman	Describes the Kansas methods.
470	Chair Burdick	Wonders about the work group decisions.
472	Holman	Talks about the methods approved by the work group. Continues the discussion on the results of passing SB 528; focuses on the possible problems that might arise.
TAPE 91, A		
032	Jean Ann Quinn	Senior Criminal Law Analyst, Oregon Judicial Department. Discusses the reasoning behind the opinions the work group has presented.
052	Chair Burdick	Asks how many cases are under this category currently.
054	Quinn	Responds that she isn't fully aware of the numbers.
058	Holman	Illustrates an anecdote dealing with a recent court case.
070	Chair Burdick	Introduces the -3 amendment (**EXHIBIT B**).
075	O'Leary	Describes the effects of the -3 amendment (**Exhibit B**).
117	Chair Burdick	Inquires about the -3 amendment dealing with a jury trial.
120	O'Leary	Responds with information on an individual's rights to a jury trial.
135	French	States his concern over section 21 relating to a case being remanded to a trial court at a later date.
168	O'Leary	Explains the remand issue for the committee.
176	Chair Burdick	Expresses her opinion on a possible amendment.
185	French	Discusses another possible amendment.
196	Lloyd	Talks about the waiver of a jury trial and other remands.
213	Chair Burdick	Raises a concern over the remand issue.
220	French	Expresses his opinion on the possible amendment.
231	Lloyd	Talks about section 2, subsection 2 dealing with the prosecution giving notice before relying on aggravating factors in the case.
269	Chair Burdick	Inquires about plea bargaining.
282	French	Reiterates the dispute during the work group dealing with this issue. Talks about the method Kansas has employed to address the problem.
316	Lloyd	Describes the definition of "enhancement fact" and stresses her

		problems with the issue.
360	Holman	States the reasoning behind keeping the drafting language broad.
375	French	Declares that the reasoning behind these decisions is meant to curb the amount of appeals and reversals. Addresses the problem of constitutionality.
425	French	Continues the discussion on the problems concerning constitutionality.
446	Chair Burdick	Asks if a district attorney or judge would use this as a method to employ consecutive sentencing.
458	French	Replies with information on consecutive sentencing factors.
TAPE 90, B		
019	Holman	Discusses the right to waive a jury trial. Offers his concerns over stretching this issue out.
030	Chair Burdick	Inquires about the possibility of amending the bill to have broader language.
034	Holman	Agrees that it is a possibility and continues the discussion on consecutive sentencing.
047	Sen. Prozanski	Declares that the conservative approach to dealing with this issue may be the best idea. Talks about the reasoning behind this bill.
072	French	Advocates for caution when dealing with this issue; it will be determined constitutional or not down the road.
093	Sen. Prozanski	Discusses the problems with the federal and state laws conflicting.
105	French	Comments on consecutive sentencing issues being decided on by a judge later on down the line.
121	Chair Burdick	Stresses that you won't run into problems with constitutionality by bringing too many issues in front of a jury.
122	French	Agrees with that assessment.
125	Sen. Prozanski	Reminds the panel that they can come back later to deal with this issue.
138	Chair Burdick	Desires the bill to be written broadly enough to deal with certain issues.
148	Lloyd	Discusses section 2 and the possible conflicts with current law.
165	Chair Burdick	States that prior convictions have been deleted from consideration under *Blakely*.
175	Lloyd	Replies with information on this issue.
194	O'Leary	Details the current Supreme Court decisions relating to this issue.
221	French	Talks about the recommended changes to the bill.
235	Lloyd	Discusses the sentencing methods.
255	Judge Michael Marcus	Multnomah County Trial Judge. Testifies in a neutral stance on SB 528. Comments on the *Blakely* decision and how SB 528 will address the issues currently facing the courts.
312	Chair Burdick	Asks for his opinion on the amendments facing the committee.
314	Marcus	Discusses several possible amendments to the current bill.
355	Marcus	Continues his discussion on possible amendments and problems with SB 528.
395	Marcus	Explains his major point with the *Blakely* bill (SB 528) dealing with sentencing guidelines. Expresses that sentencing guidelines do not seek to reduce crime or prevent recidivism.
445	Chair Burdick	Closes the public hearing on SB 528 and opens a public hearing on SB 914 & SB 919.
SB 914 & SB 919 – PUBLIC HEARING		
460	Joe O'Leary	Counsel. Describes SB 914 relating to directing the Department of Corrections to establish a uniform presentence report form that

		require report writers to provide analysis of the means to reduce future criminal behavior and to determine the availability of programs and treatment to the offender, and SB 919 relating to the Oregon Criminal Justice Commission studying the feasibility of incorporating consideration of reduction of criminal behavior and crime rate into sentencing guidelines. Introduces the -1 amendment to SB 914 and the -1 amendment to SB 919 (**EXHIBITS D & E**).
TAPE 91, B		
030	Judge Michael Marcus	Multnomah County Trial Judge. Submits testimony and testifies in support of SB 914 & SB 919 (**EXHIBITS F & G**).
080	Marcus	Addresses the problems with recidivism rates in Oregon.
125	Marcus	Talks about the -1 amendment for SB 914.
165	Marcus	Details the necessity of SB 914. Comments on an Oregon statute dealing with the criminal justice commission.
212	Marcus	States that Crime Victim's United did not sign on to the bill until the amendment was drafted.
220	Sen. Whitsett	Asks about a fiscal impact.
225	Marcus	Replies that there is no current fiscal impact.
241	Sen. Whitsett	Inquires about procedures being added to some courts, and thereby increasing costs.
245	Marcus	Responds with information on this issue.
265	Tim Sylwester	Department of Justice. Testifies in support of SB 914 & SB 919.
243	Craig Prins	Executive Director, Oregon Criminal Justice Commission. Testifies in support of SB 914 & SB 919.
268	Chair Burdick	Closes the public hearing on SB 914 & SB 919 and opens a work session on SB 914.
SB 914 – WORK SESSION		
242	**Sen. Starr**	**MOTION: Moves to ADOPT SB 914-1 amendments dated 3/30/05.** **VOTE: 5-0-2** **EXCUSED: 2 - Ringo, Walker**
275	**Chair Burdick**	**Hearing no objection, declares the motion CARRIED.**
276	**Sen. Starr**	**MOTION: Moves SB 914 to the floor with a DO PASS AS AMENDED recommendation.** **VOTE: 5-0-2** **EXCUSED: 2 - Ringo, Walker**
278	**Chair Burdick**	**Hearing no objection, declares the motion CARRIED.** **SEN. BURDICK will lead discussion on the floor.**
281	Chair Burdick	Closes the work session on SB 914 and opens a work session on SB 919.
SB 919 – WORK SESSION		
284	**Sen. Starr**	**MOTION: Moves to ADOPT SB 919-1 amendments dated 3/22/05.** **VOTE: 5-0-2** **EXCUSED: 2 - Ringo, Walker**
287	**Chair Burdick**	**Hearing no objection, declares the motion CARRIED.**
289	**Sen. Starr**	**MOTION: Moves SB 919 to the floor with a DO PASS AS AMENDED recommendation.** **VOTE: 5-0-2** **EXCUSED: 2 - Ringo, Walker**
290	**Chair Burdick**	**Hearing no objection, declares the motion CARRIED.** **SEN. BURDICK will lead discussion on the floor.**
292	Chair Burdick	Closes the work session on SB 919 and adjourns the meeting at

2:50 p.m.

EXHIBIT SUMMARY

A. **SB 528, -2 amendment, staff, 19 pp**
B. **SB 528, -3 amendment, staff, 19 pp**
C. **SB 528, Summary of Key Provisions, 1 p**
D. **SB 914, -1 amendment, staff, 2 pp**
E. **SB 919, -1 amendment, staff, 1 p**
F. **SB 914, written testimony, Michael Marcus, 1 p**
G. **SB 919, written testimony, Michael Marcus, 1 p**