

SENATE COMMITTEE ON JUDICIARY

March 09, 2005
1:00 P.M.

Hearing Room 343
Tapes 60 - 61

Corrected 10/26/05

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

MEMBER EXCUSED: Sen. Charlie Ringo

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

MEASURES/ISSUES HEARD:

SB 229 – Work Session
SB 234 – Work Session
SB 232 – Work Session
SB 921 – Public Hearing and Work Session
SB 230 – Work Session
SB 231 – Work Session
SB 233 – Work Session
SB 547 – Public Hearing and Work Session
SB 548 – 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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 60, A		
003	Chair Burdick	Calls the meeting to order at 1:10 p.m. and opens a work session on SB 229 and SB 234.
<u>SB 229 & SB 234 – WORK SESSION</u>		
008	Chair Burdick	Puts the bills over until Monday, March 14, 2005. Opens a work session on SB 232.
<u>SB 232 – WORK SESSION</u>		
013	Joe O'Leary	Counsel. Describes SB 232 relating to the affirmative defense of mental disease or defect constituting insanity in juvenile delinquency proceedings.
023	Sen. Kate Brown	Senate District 21. Testifies in support of SB 232.
038	Sen. Beyer	Asks if SB 232 had been available to Kip Kinkle, what would have changed.
043	Sen. Brown	Replies that she does not know the mental makeup of Mr. Kinkle.
050	Sen. Beyer	Repeats the question: If Kip Kinkle would have been acquitted on mental defects.
058	Sen. Brown	Comments on the rights and process for individuals, especially children, who suffer from mental illnesses. Explains the goal of

		SB 232.
074	Chair Burdick	States that Kip Kinkle was tried in adult court, not in juvenile court.
078	Sen. Beyer	Inquires if passing SB 232 would allow individuals like Kip Kinkle to stay in juvenile court.
081	Chair Burdick	Responds no.
084	Sen. Beyer	Wonders about the fiscal impact of SB 232.
087	Sen. Brown	Replies that Mary Claire-Buckley of the Psychiatric Security Review Board will absorb the costs of this bill. Discusses the other fiscal impacts of SB 232.
108	Sen. Beyer	Asks about the specific numbers for the next biennium.
109	Sen. Brown	Responds that she does not know for sure.
112	Chair Burdick	States that the fiscal statement is still in Legislative Fiscal. Comments that the fiscal is not yet ready.
122	Sen. Whitsett	Wonders if they are underestimating the number of individuals attempting to take part in this bill.
126	Sen. Brown	Cites numbers for the fiscal impact over the next biennium.
145	Wendy Johnson	Deputy Director, Oregon Law Commission. Gives information as to the fiscal impact discussed. Talks about the insanity defense available to adults and juveniles. Addresses the funding available through the federal government.
174	Sen. Brown	Brings up the issue of juveniles ending up in the Oregon Youth Authority (OYA); states there will be savings in that department.
183	Chair Burdick	Asks if they have quantified data.
187	Sen. Brown	Replies with information on the staffing and funding available to the OYA.
201	Sen. Starr	MOTION: Moves SB 232 to the floor with a DO PASS recommendation and BE REFERRED to the committee on Ways and Means by prior reference.
		VOTE: 5-0-2
		EXCUSED: 2 - Ringo, Walker
203	Chair Burdick	Hearing no objection, declares the motion CARRIED.
206	Chair Burdick	Closes the work session on SB 232 and opens a public hearing on SB 921.

SB 921 – PUBLIC HEARING

210	Joe O’Leary	Counsel. Describes SB 921 relating to the petitioner for adoption being required to serve summons and motion and order to show cause on certain parents who do not consent to adoption. Introduces written testimony from Maureen McKnight in support of SB 921 (EXHIBIT A)
221	Wendy Johnson	Deputy Director, Oregon Law Commission. Submits the juvenile code revision work group report and testifies in support of SB 921. Introduces the -1 amendment and summarizes SB 921 (EXHIBITS B & J).
275	Sybil Hebb	Legislative Advocate, Oregon Law Center. Submits testimony and testifies in support of SB 921 (EXHIBIT C). Discusses the rights of juveniles in court cases.
328	Scott C. Adams	Attorney, adoption cases. Submits testimony and testifies in support of SB 921 (EXHIBIT D). States that 90% of his law office’s business deals with adoption cases.
380	Adams	Discusses the process involved with adoption cases. Details how the parent can have their rights taken away, but is not informed why or how it will be done, or on what timeframe.

430	Adams	Talks about the publication cases. Comments on parents who have “disappeared” from a family, and how the lawyers should have counsel rights.
TAPE 61, A		
024	Adams	Addresses the publication requirement, and giving the parents all the information possible.
030	Johnson	Points out that the juvenile court often must use publications as a method of business. Discusses the expense of such a process.
044	Adams	Stresses the need for SB 921 with or without the amendments.
054	Chair Burdick	Closes the public hearing on SB 921 and opens a work session on SB 230.

SB 230 – WORK SESSION

079	Sen. Kate Brown	Senate District 21. Discusses the appointments of guardian ad litem in the juvenile court system.
099	Joe O’Leary	Counsel. Details the -1 and -2 amendments. Brings up the issue of a possible extra amendment. Talks about how this amendment is redundant, and offers examples why.
130	Wendy Johnson	Deputy Director, Oregon Law Commission. Testifies in support of SB 230. Explains the effects after passing the bill.
144	Sen. Beyer	Asks why the rules of evidence do not apply in a hearing to appoint a guardian ad litem.
147	O’Leary	Speculates why the court would not allow the rules of evidence to occur.
161	Sen. Prozanski	Explains the reasoning behind the suspension of the rules of evidence in a hearing to appoint a guardian ad litem.
184	Sen. Beyer	Inquires about the suspension of parental rights in these cases.
187	O’Leary	Replies that there isn’t anything in the bill dealing with the denying of parental rights in the guardian ad litem cases.
194	Sen. Brown	Explains the reasoning behind protecting the client’s rights.
203	Timothy Travis	Oregon Judicial Department. Discusses the termination of parental rights, and how the guardian ad litem is not allowed to suspend those rights. Details the situation where and why a guardian ad litem is needed. Talks about the inclusion of hearsay evidence through these hearings.
236	Sen. Beyer	Brings up the issue of a parent not agreeing with the methods employed be removed as a guardian in lieu of a guardian ad litem.
241	Sen. Brown	Addresses the issue raised by Sen. Beyer by summarizing sections of the bill that deals with the ability of a parent to serve in the capacity as a guardian.
269	Sen. Beyer	States that the parent’s rights can get bypassed by not allowing the evidence rules.
276	Sen. Prozanski	Comments on the circumstances where the rules of evidence should be suspended, and the inclusion of hearsay allowed, for the best defense of the child.
321	Sen. Brown	Details that SB 230 provides guidance to the individuals who are appointed as guardian ad litem.
344	Sen. Beyer	Asks about the bill language relating to the appointment of guardian ad litem.
353	Travis	Discusses the evidence code applying and not applying in certain situations, and the presumption of applying or not in juvenile cases. Talks about the code being vague when describing certain situations.
400	Travis	Explains that SB 230 appoints a disinterested party as the

434 Sen. Beyer guardian ad litem; never a parent or the lawyer of the client. Asks if this bill grants statutory authority to something they already done.

438 Sen. Prozanski Replies that there will be rules and parameters to the procedure.

450 Chair Burdick Inquires if there is a problem with grandparents stepping in as guardian ad litem.

452 Travis Replies that over the past 10-15 years it has occurred infrequently but not rarely.

456 Sen. Beyer Wonders why a grandparent (or other family member) shouldn't be a guardian ad litem.

463 Travis Replies with information on why they are not sought after as a guardian ad litem.

TAPE 60, B

021 Chair Burdick Explains the situation relating to the appointment of a guardian ad litem.

029 Sen. Prozanski Expresses that SB 230 will not allow a possible guardian to become a guardian ad litem.

047 Sen. Beyer Comments that it is still up to the court who will become the new guardian, not the guardian ad litem.

051 Travis States that there is a conflict of interest in those cases.

053 Sen. Prozanski Stresses the earlier statement that a possible guardian cannot become a guardian ad litem.

057 Chair Burdick Acknowledges that the guardian ad litem is for the parent who is incapable of participating in their own interests.

069 Sen. Prozanski Expresses his desire to discuss the bill with Sen. Beyer.

096 Chair Burdick Closes the work session on SB 230 and opens a work session SB 231.

SB 231 – WORK SESSION

093 Joe O'Leary Counsel. Describes SB 231 relating to requiring the court, under certain circumstances, to cause a list to be made that identifies reports or material provided to court for consideration but not admitted as exhibits. Details that there is no fiscal impact as of yet. Discusses the -1 amendment (**EXHIBIT K**).

118 Wendy Johnson Deputy Director, Oregon Law Commission. Testifies in support of SB 231 and discusses the effects of this bill.

136 Sen. Starr **MOTION: Moves to ADOPT SB 231-1 amendments dated 1/31/05.**
VOTE: 6-0-1
EXCUSED: 1 - Ringo

140 Chair Burdick **Hearing no objection, declares the motion CARRIED.**

141 Sen. Starr **MOTION: Moves SB 231 to the floor with a DO PASS AS AMENDED recommendation.**
VOTE: 6-0-1
EXCUSED: 1 - Ringo

145 Chair Burdick **Hearing no objection, declares the motion CARRIED.**
SEN. WALKER will lead discussion on the floor.

146 Chair Burdick Closes the work session on SB 231 and opens a work session on SB 233.

SB 233 – WORK SESSION

148 Joe O'Leary Counsel. Describes SB 233 relating to the Oregon Youth Authority case planning.

164 Wendy Johnson Deputy Director, Oregon Law Commission. Testifies in support of SB 233 and discusses the -2 amendment (incorporates the -1 amendments) (**EXHIBIT L**).

179	Sen. Walker	Expresses her hesitation to move the bill today without further study and discussion.
189	Chair Burdick	Agrees that further discussion is called for, but wishes to move the bill today to the floor.
203	Sen. Starr	MOTION: Moves to ADOPT SB 233-2 amendments dated 2/21/05. VOTE: 6-0-1 EXCUSED: 1 - Ringo
207	Chair Burdick	Hearing no objection, declares the motion CARRIED.
208	Sen. Starr	MOTION: Moves SB 233 to the floor with a DO PASS AS AMENDED recommendation. VOTE: 6-0-1 EXCUSED: 1 - Ringo
211	Chair Burdick	Hearing no objection, declares the motion CARRIED. SEN. WALKER will lead discussion on the floor.
215	Chair Burdick	Closes the work session on SB 233 and opens a public hearing on SB 547 & SB 548.

SB 547 & SB 548 – PUBLIC HEARING

200	Joe O’Leary	Counsel. Describes SB 547 relating to expanding the crime of criminal impersonation of police officers, and SB 548 relating to modifying the crime of interfering with a peace officer. Introduces the -1 amendment to SB 547 and the hand engrossed SB 547 (EXHIBITS E & F).
265	Sen. Prozanski	Submits written testimony from Tim Laue in support of SB 547 (EXHIBIT G). Discusses the reasoning behind the need for SB 547.
293	Sen. Prozanski	Gives a brief history of SB 548 and introduces the -1 amendment and the hand engrossed version of SB 548 with the -1 amendment (EXHIBITS H & I).
214	Gina Skinner	Oregon District Attorney Association. Testifies in support of SB 547. Details the effects of the bill, and the need for its passage.
355	Sen. Prozanski	Discusses the campus security officers at the University of Oregon sharing identical uniforms with the Eugene police department, and the problems this presents.
394	Chair Burdick	Asks about the practical effect from SB 547 on the University of Oregon’s campus security.
400	Sen. Prozanski	Admits there would not be much assistance from this bill and offers clarification on what they hope to accomplish with SB 547.
414	Dan Swift	Oregon State Police Officers Association. Testifies in support of SB 547. Addresses the uniform scenario discussed earlier, and the real effects of SB 547; details why it is vital to protecting both officers and citizens.
470	Chair Burdick	Inquires if the OSPOA has looked at the -1 amendment.
472	Swift	Replies yes.
477	Skinner	Testifies in support of SB 548. Talks about how the security of citizens and officers will be increased after passing SB 548.

TAPE 61, B

044	Skinner	Addresses the necessary changes resulting from the -1 amendment.
066	Swift	Testifies in support of SB 548 and the -1 amendment.
082	Chair Burdick	Asks for the definition of a crime scene.
084	Swift	Gives a definition of what constitutes a crime scene.
090	Chair Burdick	Inquires if the determination is based on a case by case basis.

091	Swift	Answers yes.
094	Sen. Prozanski	Comments on the possible amendment dealing with a lawful assembly.
125	Chair Burdick	Wonders about changing the language to fix the vague language.
134	Swift	Discusses the detaining of individuals involved with a crime scene. Points out that SB 548 is meant to make the officers' jobs easier and people safer.
151	Sen. Prozanski	Asserts that an individual who continues to interfere, even after repeated warnings, must be punished.
170	Chair Burdick	Raises the concern of interfering with the rights of individuals.
180	Sen. Prozanski	Explains the wording of the bill that would protect such occurrences.
199	Skinner	Gives information on the process taken by peace officers before suspending their rights.
233	Chair Burdick	Closes the public hearing on SB 547 & SB 548 and opens a work session on SB 547.

SB 547 – WORK SESSION

241 Sen. Prozanski **MOTION: Moves to ADOPT SB 547-1 amendments dated 3/8/05.**

VOTE: 6-0-1

EXCUSED: 1 - Ringo

245 Chair Burdick **Hearing no objection, declares the motion CARRIED.**

248 Sen. Prozanski **MOTION: Moves SB 547 to the floor with a DO PASS AS AMENDED recommendation.**

VOTE: 6-0-1

EXCUSED: 1 - Ringo

248 Chair Burdick **Hearing no objection, declares the motion CARRIED.**

SEN. PROZANSKI will lead discussion on the floor.

252 Chair Burdick Closes the work session on SB 547 and re-opens a work session on SB 921.

SB 921 – WORK SESSION

255 Chair Burdick Moves SB 921 to the agenda on Monday, March 14, 2005.

261 Chair Burdick Closes the work session on SB 921 and adjourns the meeting at 2:55 p.m.

EXHIBIT SUMMARY

- A. SB 921, written testimony, Maureen KcKnight, 2 pp
- B. SB 921, Juvenile Code Revision Work Group Report, Wendy Johnson, 9 pp
- C. SB 921, written testimony, Sybil Hebb, 2 pp
- D. SB 921, written testimony, Scott Adams, 1 p
- E. SB 547, -1 amendment, Sen. Prozanski, 1 p
- F. SB 547, hand-engrossed version, staff, 1 p
- G. SB 547, written testimony, Tim Laue, 1 p
- H. SB 548, -1 amendment, Sen. Prozanski, 1 p
- I. SB 548, hand-engrossed version, staff, 1 p
- J. SB 921, -1 amendment, Wendy Johnson, 7 pp
- K. SB 231, -1 amendment, Wendy Johnson, 2 pp
- L. SB 233, -2 amendment, staff, 6 pp