

## SENATE COMMITTEE ON JUDICIARY

April 11, 2005  
1:00 P.M.

Hearing Room 343  
Tapes 101 - 102

**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:**       **William E. Taylor, Counsel**  
                                  **Dale Penn, Committee Assistant**

**MEASURES/ISSUES HEARD:**  
                                  **SB 966 – Public Hearing**  
                                  **SB 287 – Work Session**  
                                  **SB 95 – Work Session**  
                                  **SB 253 – Work Session**  
                                  **SB 368 – Work Session**  
                                  **SB 940 – Work Session**  
                                  **SB 946 – Work Session**

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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 101, A</b>		
003	Chair Burdick	Calls the meeting to order as a subcommittee at 1:09 p.m. and opens a public hearing on SB 966.
<b><u>SB 966 – PUBLIC HEARING</u></b>		
006	William E. Taylor	Counsel. Describes SB 966 relating to requiring the court to appoint an attorney for the child in certain domestic relations proceedings if the child's best interests are not adequately represented.
016	Mark Kramer	Attorney, family law. Submits testimony and testifies in support of SB 966 ( <b>EXHIBIT A</b> ). Describes proposed amendments within his testimony packet ( <b>Exhibit A</b> ).
050	Kramer	Discusses a Supreme Court case dealing with the issue of representation for children.
073	Chair Burdick	Asks about the two proposed amendments in Mr. Kramer's testimony ( <b>Exhibit A</b> ).
079	Kramer	Replies with information on the court of appeals appointing counsel in the past.
100	Kramer	Details the responsibilities of the counsel in situations where the child is of age and when they are not.
141	Kramer	Stresses that there should be no fiscal impact from staffing attorneys for SB 966; the court should request volunteers from

		counsel.
155	Taylor	Inquires about the possible payment methods for attorneys.
161	Kramer	Responds with information on the funding processes for this bill.
175	Taylor	Wonders what may happen if nobody volunteers to provide counsel.
182	Kramer	States that if that unlikely scenario occurs, there would be no counsel.
188	Julie McFarlane	Supervising Attorney, Juvenile Rights Project. Submits testimony and testifies in support of SB 966 ( <b>EXHIBIT B</b> ). Discusses the situations involving representation for children in these cases.
220	McFarlane	Talks about the helpline available through the Juvenile Rights Project, and its relationship with identifying cases of abuse and neglect.
258	Chair Burdick	Asks about the chart in her testimony dealing with appointment laws in Oregon ( <b>Exhibit B</b> ).
262	McFarlane	Offers clarification on the appointment laws in Oregon.
267	Chair Burdick	Wonders if a child can only get a lawyer if that child requests it, and how old they must be to ask for representation.
276	McFarlane	Replies with information on the representation of children.
290	Paul Saucy	Family Law Section, Oregon State Bar. Submits testimony and testifies in opposition to SB 966 ( <b>EXHIBIT C</b> ). Details the current procedures for providing representation or evaluators for the needs and wants of children.
349	Saucy	Discusses the proposed amendment supported by Mr. Kramer. Goes on to talk about the Oregon State Bar's concerns over this amendment.
380	Saucy	Draws the comparison between this bill and the occurrences in the film <i>Kramer vs. Kramer</i> .
430	Saucy	Comments on the parenting coordinator and other statutes already on the books that protect the rights and needs of the child.
458	Sen. Prozanski	Asks about the court appointed special advocates' (CASA) stance on this issue.
472	Sen. Whitsett	Inquires about statutory precedent dealing with the assessment of legal fees.
480	Saucy	Replies that this issue is already in the law.
<b>TAPE 102, A</b>		
023	Sybil Hebb	Oregon Law Center. Submits testimony and testifies in support of SB 966 ( <b>EXHIBIT D</b> ). Addresses the above question relating to CASA volunteers in these proceedings.
064	Chair Burdick	Closes the public hearing on SB 966, convenes a full committee at 1:40 p.m., and opens a work session on SB 287.

**SB 287 – WORK SESSION**

069	William E. Taylor	Counsel. Describes SB 287 relating to creating an exception to the prohibition on the use of hearsay as evidence. Introduces the -5 and -6 amendments ( <b>EXHIBITS E &amp; F</b> ).
094	Tim Sylwester	Department of Justice. Testifies on the proposed amendments.
112	Erik Wasmann	Department of Justice. Comments on the fairness and equity in current law, and the proposed law after SB 966.
162	Chair Burdick	Inquires about the repercussions of leaving the drafting as it is.
168	Wasmann	Replies with information on the issue of leaving the language in the bill as it is currently, and how the term "reliability" can affect the processes of the case.

189 Ann Munsey Deputy Public Defender, Office of Public Defense Services. Submits testimony and testifies on SB 287. Advocates caution when dealing with exceptions to the use of hearsay as evidence.

245 Chair Burdick Asks about the word “reliable” in other hearsay exceptions.

249 Munsey Replies with information on the reliability of evidence accepted under the hearsay rules.

264 Tom Lininger Professor, University of Oregon Law School. Addresses the issue of “reliability” in the hearsay exceptions.

297 Chair Burdick Inquires about the concept and inclusion of the term “reliability.”

302 Sylwester Talks about the issue of reliability in hearsay evidence exceptions.

328 Wasmann Discusses the inclusion of hearsay evidence through exceptions.

346 Sen. Prozanski Discusses the use of the term “reliability” in current statutes as opposed to its use in the -6 amendment.

384 Munsey Comments on the general hearsay exceptions and the new exception being implemented in this bill. Cites specific examples of the use of hearsay evidence.

433 Chair Burdick Asks about the situation cited above, and expresses the possibility of the use of hearsay being thrown out in court.

440 Munsey Talks about the requirements for proving “reliability” for the exception for hearsay evidence.

472 Sen. Prozanski Inquires about the applicable nature for this term in the other requirements for allowing hearsay evidence.

**TAPE 101, B**

017 Sylwester Discusses the constitutional concerns facing the legislature on this issue in the past, and the reasoning for choosing this drafting language.

044 Sen. Walker Asks about the issue of inclusion of hearsay evidence being under the province of the courts.

046 Lininger Replies with information on the province of the courts with the inclusion of hearsay evidence.

**060 Sen. Starr MOTION: Moves to ADOPT SB 287-5 amendments dated 4/11/05.**

065 Sen. Prozanski Commends the panel for working on this difficult bill.

081 Chair Burdick Thanks the panel for their work.

091 Sen. Whitsett States his support for the -6 amendment including the term “reliable.”

**Chair Burdick VOTE: 5-1-1**  
**AYE: 5 - Beyer, Prozanski, Starr C., Walker, Burdick**  
**NAY: 1 - Whitsett**  
**EXCUSED: 1 - Ringo**  
**The motion CARRIES.**

**106 Chair Burdick MOTION: Moves SB 287 to the floor with a DO PASS AS**  
**110 Sen. Starr AMENDED recommendation.**  
**VOTE: 6-0-1**  
**EXCUSED: 1 - Ringo**  
**Hearing no objection, declares the motion CARRIED.**  
**SEN. PROZANSKI will lead discussion on the floor.**

113 Chair Burdick Closes the work session on SB 287 and opens a work session on SB 95.

119 Chair Burdick

**SB 95 – WORK SESSION**

121 William E. Taylor Counsel. Describes SB 95 relating to expanding the membership of the Oregon Criminal Justice Commission. Introduces and

153	Timothy Travis	discusses the -1, -2 & -3 amendments ( <b>EXHIBITS H – K</b> ). Oregon Judicial Department. Testifies in support of SB 95. Talks about the effects of the -3 amendments.
190	Chair Burdick	Wonders about certain drafting language amendments clarifying the effects of the bill.
195	Travis	Addresses the drafting language in the bill and explains their choices.
209	Craig Prins	Executive Director, Criminal Justice Commission. Testifies in support of SB 95.
215	Chair Burdick	Asks if they support all three amendments.
217	Prins	Responds in the affirmative.
219	Starr	Inquires about a fiscal impact for the proposed amendments.
221	Prins	Replies that there might be a fiscal for the -2 amendment.
231	Taylor	Wonders if this bill should head to Ways and Means.
232	Prins	Responds that he believes it does. States that this bill does not require rushing, and would prefer to wait for the whole bill.
268	Sen. Beyer	Asks how this bill fits into the still undefined meth plan. States his opposition to the original bill and the -1 amendment.
292	Travis	Discusses the resources available to the Criminal Justice Commission.
316	Sen. Prozanski	Talks about the committee's hesitance to expand the Commissions membership.
326	Sen. Beyer	Comments on the vacancies already on the commission, and how there are already budget concerns; wonders why they should add several more positions to the commission.
357	Sen. Walker	Desires clarification on the membership count.
375	Taylor	Points out how and why the membership count is needed to be at fifteen.
398	Chair Burdick	Closes the work session on SB 95 and opens a work session on SB 253.

**SB 253 – WORK SESSION**

401	William E. Taylor	Counsel. Describes SB 253 relating to enacting an Interstate Compact for Juveniles. Introduces the -1 amendment ( <b>EXHIBIT K</b> ).
435	Chair Burdick	Asks if there needs to be a referral to Ways and Means.
439	Taylor	Replies yes, and gives information on the transfer of funds.
<b>465</b>	<b>Sen. Starr</b>	<b>MOTION: Moves to ADOPT SB 253-1 amendments dated 3/28/05.</b>
371	Sen. Beyer	States his opposition to SB 253, even with the -1 amendment. Talks about the need for the Compact to pass 32 other states before it is enacted.

**TAPE 102, B**

026	Taylor	Explains the additional expense from the compact, but the \$200,000 is a transfer from one agency to another in order to pay for the administration of the Compact.
047	Sen. Beyer	Redacts his opposition to the -1 amendment, but continues his opposition to the bill as a whole.
049	Sen. Prozanski	Discusses Oregon's roll in this Interstate Compact.
067	Sen. Beyer	States the conflicts present to getting this bill enacted (budget problems, statutory authority, etc.).
075	Sen. Walker	Talks about the sunset provision placed by North Dakota in a similar bill.
086	Taylor	Declares that regardless of what occurs, the bill needs to travel to Ways and Means.

100 Sen. Whitsett Details his hesitance to support an appointed commission that writes statutes and levies taxes which will affect Oregonians.

111 Taylor Discusses the effects of enacting the Compact from a state and federal perspective.

124 Chair Burdick Closes the work session on SB 253 and opens a work session on SB 368.

**SB 368 – WORK SESSION**

127 William E. Taylor Counsel. Describes SB 368 relating to prohibiting audio visually recording motion pictures in motion picture theaters without the consent of theater owners. Introduces the -1 amendment (**EXHIBIT L**).

150 Sen. Starr **MOTION: Moves to ADOPT SB 368-1 amendments dated 2/14/05.**  
**VOTE: 6-0-1**  
**EXCUSED: 1 - Ringo**  
**Hearing no objection, declares the motion CARRIED.**

152 Chair Burdick **MOTION: Moves SB 368 to the floor with a DO PASS AS AMENDED recommendation.**

155 Sen. Starr **VOTE: 6-0-1**  
**EXCUSED: 1 - Ringo**  
**Hearing no objection, declares the motion CARRIED.**  
**SEN. BURDICK will lead discussion on the floor.**

157 Chair Burdick Closes the work session on SB 368 and opens a work session on SB 940.

159 Chair Burdick

**SB 940 – WORK SESSION**

160 William E. Taylor Counsel. Describes SB 940 relating to requiring the sheriff to fix the date for a foreclosure sale. Introduces the -1 amendment (**EXHIBIT M**).

184 Sen. Starr **MOTION: Moves to ADOPT SB 940-1 amendments dated 4/4/05.**  
**VOTE: 6-0-1**  
**EXCUSED: 1 - Ringo**  
**Hearing no objection, declares the motion CARRIED.**

188 Chair Burdick **MOTION: Moves SB 940 to the floor with a DO PASS AS AMENDED recommendation.**

190 Sen. Starr

192 Sen. Whitsett Addresses the issue of a district foreclosing on a property and then selling off the water rights.

205 Kristina McNitt Oregon Water Resources Congress. Testifies in support of SB 940 and stresses that she does not believe that the bill addresses water rights in anyway.

226 Taylor Discusses current law on water rights during foreclosures.

279 Sen. Walker Comments on the benefits of the bill.  
**VOTE: 6-0-1**  
**EXCUSED: 1 - Ringo**  
**Hearing no objection, declares the motion CARRIED.**  
**SEN. WHITSETT will lead discussion on the floor.**

285 Chair Burdick Closes the work session on SB 940 and opens a work session on SB 946.

293 Chair Burdick

**SB 946 – WORK SESSION**

294 William E. Taylor Counsel. Describes SB 946 relating to requiring the judge to order a report of proceedings in aggravated murder and murder trials. Introduces the -2 amendment (**EXHIBIT N**).

317 Sen. Walker Addresses the concerns of the committee from the public hearing.

332 Sen. Starr **MOTION: Moves to ADOPT SB 946-2 amendments dated**

3/30/05.  
VOTE: 6-0-1  
EXCUSED: 1 - Ringo  
336 Chair Burdick Hearing no objection, declares the motion CARRIED.  
338 Sen. Starr MOTION: Moves SB 968 to the floor with a DO PASS AS  
AMENDED recommendation and BE  
REFERRED to the committee on Ways and  
Means.  
VOTE: 6-0-1  
EXCUSED: 1 - Ringo  
344 Chair Burdick Hearing no objection, declares the motion CARRIED.

### **EXHIBIT SUMMARY**

- A. SB 966, written testimony, Mark Kramer, 7 pp
- B. SB 966, written testimony, Julie McFarlane, 18 pp
- C. SB 966, written testimony, Paul Saucy, 2 pp
- D. SB 966, written testimony, Sybil Hebb, 2 pp
- E. SB 287, -5 amendment, staff, 1 p
- F. SB 287, -6 amendment, staff, 1 p
- G. SB 287, written testimony, 1 p
- H. SB 95, -1 amendment, staff, 1 p
- I. SB 95, -2 amendment, staff, 3 pp
- J. SB 95, -3 amendment, staff, 2 pp
- K. SB 253, -1 amendment, staff, 2 pp
- L. SB 368, -1 amendment, staff, 1 p
- M. SB 940, -1 amendment, staff, 1 p
- N. SB 946, -2 amendment, staff, 1 p