

SENATE COMMITTEE ON JUDICIARY

April 25, 2005
1:00 P.M.

Hearing Room 343
Tapes 119 - 120

Corrected 10/26/05

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:
HCR 7 – Public Hearing & Work Session
SB 1025 – Public Hearing
SB 333 – Work Session
SB 913 – Work Session
SB 265 – 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 119, A		
003	Chair Burdick	Calls the meeting to order at 1:12 p.m. and opens a public hearing on HCR 7.
<u>HCR 7 – PUBLIC HEARING</u>		
006	William E. Taylor	Counsel. Describes HCR 7 relating to declaring May 2 to 8, 2005 as Jury Appreciation Week in Oregon.
014	Natasha Ernst	Former juror, Chief of Staff, Rep. Avakian. Testifies in support of Discusses her recent role as a juror and the need to appreciate those serving this vital role.
035	Chair Burdick	Asks when, and where, she was called for jury duty.
037	Ernst	Replies with information on when and where she served jury duty.
041	Marilyn Odell	Oregon State Bar, Judicial Committee. Testifies in support of HCR 7.
059	Sen. Prozanski	Wonders if we should raise the rates for jurors instead of this bill.
062	Odell	States that the increase of rates would be much appreciated.
073	Chair Burdick	Closes the public hearing and opens a work session on HCR 7.
<u>HCR 7 – WORK SESSION</u>		
076	Sen. Starr	MOTION: Moves HCR 7 be sent to the floor with a BE ADOPTED recommendation.
080	Sen. Prozanski	Offers his support for the resolution, but declares that they should do more for jurors.

VOTE: 5-0-2

EXCUSED: 2 - Ringo, Walker

Hearing no objection, declares the motion CARRIED.

Closes the work session on HCR 7 and opens a public hearing on SB 1025.

086 Chair Burdick

093 Chair Burdick

SB 1025 – PUBLIC HEARING

096 William E. Taylor

Counsel. Describes SB 1025 relating to modifying the requirements for use, retention, and disclosure of genetic information and DNA samples. Talks about the -1 amendment (**EXHIBIT J**).

108 Chair Burdick

Introduces written testimony from Emily L. Harris, Assistant Program Director & Senior Investigator, Center for Health Research, Kaiser Permanente, Northwest Region (**EXHIBIT A**).

111 Gwen Dayton

Co-Chair, Advisory Committee on Genetic Privacy and Research. Submits testimony and testifies in support of SB 1025 (**EXHIBIT B**). Submits written testimony from Sumeet S. Chugh and Susan J. Hayflick (**EXHIBITS E & F**).

153 Dayton

Discusses the federal common rule relating to privacy regulations in research. Addresses the regulations on research from health care providers in the Health Insurance Portability and Accountability Act of 1996.

195 Dayton

Talks about the possible proposed amendments, both technical and substantive, they recommend for the current bill.

227 David Holt

Director, Research Subjects Protection Office, Kaiser Permanente, Northwest Region. Submits testimony and testifies in support of SB 1025 (**EXHIBIT C**). Details the repercussions that result from breaches of privacy occurring during research trials.

265 Holt

Comments on Institutional Review Board's (IRB) protocol, involving informed consent documentation, before they are able to begin such research.

310 Holt

Talks about the special consent needed for projects relating to genetic research.

335 Taylor

Addresses an exception in the bill concerning a person conducting research possibly departing from existing protocol for consent.

342 Dayton

Details the reasoning behind the need for SB 1025, a bill that changes the criteria for consent in order to perform research.

363 Taylor

Asks for examples when this might be needed.

369 Holt

States that retroactive data research may be impossible to access and perform new studies without tracing back to every person who participated in these projects to get new consent.

382 Chair Burdick

Wonders if there is any way for the data to be traced back to the individual.

388 Mary Durham

Kaiser Permanente. Submits testimony and testifies in support of SB 1025 (**EXHIBIT D**). Gives examples of why this bill needs to be enacted. Talks about individuals who might give blood samples for their own clinical diagnoses that are later needed by researchers to study a particular disease.

433 Chair Burdick

Inquires if those samples have personal data on them.

439 Durham

Replies that the information can be removed, but there are times when family history, or past genetic history, is needed by the researchers and the data needs to be accessed.

014	Sen. Prozanski	Explains that, in 1995 when the Legislative addressed this issue earlier, it was argued that they could get this information from the samples.
020	Durham	Replies that there are tests where tens of thousands or even millions of individuals are involved, and such methods are not easily employed.
026	Sen. Prozanski	Raises a hypothetical situation involving individuals who give blood or tissue samples and are then made aware of the possibility of future research.
031	Durham	Stresses that the public is very interested in performing, and allowing, medical research. Continues reading her testimony in support of 1025 (Exhibit D).
070	Durham	States that the majority of samples are taken for clinical reasons: to diagnose a disease, to study the immediate medical concerns of the patient, etc.
091	Chair Burdick	Asks about the minimal risk involved with the criteria the IRB's must follow.
093	Holt	Replies with the dangers that may occur during the research process.
103	Durham	Addresses the question of risk to the individual.
110	Chair Burdick	Inquires about the effects that may occur when the researchers do not have access to the personal data of the individual.
108	Durham	Stresses that this method is currently employed most of the time. Talks about the situations where familial history may be needed to research certain medical issues, genetic diseases, etc.
131	Chair Burdick	Brings up issues with the risk involved for the individual.
148	Holt	Talks about the balancing act between minimal risk and the benefit to society.
153	Sen. Prozanski	Discusses a hypothetical involving an individual's sample being used for a reason that was not initially authorized.
204	Durham	Addresses the scenario that Sen. Prozanski talks about and explains that it is very unlikely. States that the IRB would determine whether or not to grant access to identifying information on specific medical samples.
243	Sen. Whitsett	Talks about a study he has been part of for around 40 years with a medical group, and the level of consent that has been constant throughout.
262	Holt	Discusses the IRB protocol dealing with consent for medical research.
278	Gary Chiodo	Chair, Oregon Health Sciences University Institutional Review Board. Testifies in support of SB 1025. Details how nearly every clinical study completed has an amount of remaining sample.
326	Chiodo	Stresses that the confidentiality risk still exists because an identifier is attached to each sample, which are coded for protection.
365	Chiodo	Talks about a study done on an entity called the Philadelphia chromosome, and how the inventor used coding for each sample used in the research.
398	Chair Burdick	Asks if the researcher required names or identifying information for his study.
402	Chiodo	Replies that the system he was using allowed him to access that information if it was vital to the study itself.
428	Chiodo	Discusses the financial impact resulting from Oregon's harsh

genetic privacy acts.

TAPE 119, B

015	Paul Newton	Chair, Department of Health Services, Public Health Institutional Review Board. Submits testimony and testifies in support of SB 1025 (EXHIBIT G).
041	Newton	Stresses that the bottle of water the committee members may be drinking actually contains their genetic information. Draws the comparison that such genetic information is not protected from someone taking the bottle and studying the contents.
073	Newton	Talks about the federal system of privacy laws, and how they are successful in their ability to protect the rights of individuals.
105	Chair Burdick	Asks about the ability of researchers to complete their studies without any access to the records of identification.
116	Chiodo	States that most researchers will be able to do their studies without coding the samples, but there are times and scenarios where further information is needed. Discusses the situations where science may move on and new information is discovered that warrants the return to previous data and samples.
144	Chair Burdick	Inquires if the lack of information on personal identification would decrease the negative financial impact talked about earlier: would it keep the researchers in Oregon and not force them to matriculate elsewhere.
152	Chiodo	Replies that this would go far in alleviating this problem.
161	Chair Burdick	Stresses the need to reduce the possibility to have personal identification violated.
163	Chiodo	Explains that they need investigators to be able to go to an IRB in order to access that personal information for further study.
174	Sen. Prozanski	Asks how long the samples are kept.
176	Chiodo	Replies that there are methods to indefinitely store most types of samples, but that there are federal guidelines as to how long certain information may be kept.
192	David Fidanque	Executive Director, American Civil Liberties Union (ACLU). Testifies on the issue of genetic privacy.
146	Fidanque	Addresses the fact that most research being done today is done with coded samples which allow for a modicum of access to personal information, but in Oregon they must go through certain protocol to access that information.
245	Fidanque	Talks about a possible amendment to the current bill that would address the ACLU's concerns.
303	Chair Burdick	Inquires about the situation where an individual chooses to opt out of allowing their samples for research.
310	Chiodo	States that the majority of samples needed for study are from clinical studies (where no consent form was needed) and this type of scenario would be difficult.
350	Chair Burdick	Asks for the percentage of patients who choose to opt out.
351	Chiodo	Replies that he isn't quite sure.
356	Fidanque	Brings up the issue that genetic information, even protected and coded, can still be traced back to the individual. States that as we move farther with our technology, the ability will become more commonplace and the information easier to gather and analyze.
394	Sen. Whitsett	States that one extra consent form isn't really the answer to the issue of informed consent.
420	Fidanque	Stresses that more and more research is being done without informed consent and without notice to the individuals from

whom the samples were taken. Talks about the mistakes that the IRB's have made in the past; they're not the end-all of protections for individuals.

TAPE 120, B

010 Chair Burdick

Closes the public hearing on SB 1025 and moves SB 99 to Thursday, April 28, 2005. Opens a work session on SB 333.

SB 333 – WORK SESSION

021 Joe O'Leary

Counsel. Describes SB 333 relating to increasing the maximum amount of damages the plaintiff may claim in certain tort actions for which the court must award attorney fees if the plaintiff prevails. Introduces the -3 amendment (**EXHIBIT H**).

041 Chair Burdick

Closes the work session on SB 333 in order to allow Sen. Ringo, sponsor of the bill, to return, and opens a work session on SB 913.

SB 913 – WORK SESSION

047 Joe O'Leary

Counsel. Describes SB 913 relating to directing the Department of Human Services to suspend medical assistance for certain persons while the persons are residing in public institutions. Introduces and discusses the -3 amendment.

083 Chair Burdick

Inquires if they need the -1 and -2 amendments.

084 O'Leary

Replies that the -3 amendment supersedes the -1.

088 Sen. Beyer

Asks about a fiscal impact.

090 Joe O'Leary

Responds that there isn't a fiscal impact at the moment.

101 Bob Nikkel

Administrator, Office of Mental Health and Addiction Services, Department of Human Services. States that the -3 amendment causes a minor fiscal impact that will be absorbed by the department.

119 O'Leary

Inquires that the individuals who fall under the -3 amendment would already be receiving a level of care that would not increase the cost by any large amount.

122 Nikkel

Replies yes.

126 Sen. Whitsett

Observes that with the number of individuals who are released from the institution with severe mental illness, it seems ludicrous to have a bill for this instead of using common sense.

132 Sen. Prozanski

Responds that there is a six month waiting list for those who go into the Oregon Health Plan.

138 Sen. Starr

MOTION: Moves to ADOPT SB 913-3 amendments dated 4/21/05.

VOTE: 7-0-0

141 Chair Burdick

Hearing no objection, declares the motion CARRIED.

142 Sen. Starr

MOTION: Moves SB 913 to the floor with a DO PASS AS AMENDED recommendation.

VOTE: 7-0-0

144 Chair Burdick

Hearing no objection, declares the motion CARRIED.

SEN. WHITSETT will lead discussion on the floor.

146 Chair Burdick

Closes the work session on SB 913 and re-opens a work session on SB 333.

SB 333 – WORK SESSION

149 Sen. Ringo

Testifies on the -3 amendment and how the defense lawyers support the bill.

177 Chair Burdick

Commends Sen. Ringo for working on this bill.

182 Sen. Starr

MOTION: Moves to ADOPT SB 333-3 amendments dated 4/21/05.

184	Chair Burdick	VOTE: 7-0-0
186	Sen. Starr	Hearing no objection, declares the motion CARRIED.
		MOTION: Moves SB 333 to the floor with a DO PASS AS
		AMENDED recommendation.
188	Sen. Beyer	Stresses his opposition to the bill as amended.
	Chair Burdick	VOTE: 5-2-0
		AYE: 5 - Prozanski, Ringo, Starr C., Walker, Burdick
		NAY: 2 - Beyer, Whitsett
202	Chair Burdick	The motion CARRIES.
		SEN. RINGO will lead discussion on the floor.
204	Sen. Beyer	Serves notice of intent for a minority report.
217	Chair Burdick	Closes the work session on SB 333 and opens a public hearing on SB 265.

SB 265 – PUBLIC HEARING

218	William E. Taylor	Counsel. Describes SB 265 relating to requiring that a statement made by a defendant during custodial interrogation, recorded electronically, to be admissible as evidence against defendant. Introduces the -1 amendment (EXHIBIT K).
231	Lara Smith	Oregon Association of Process Servers. Testifies in support of SB 265. Talks about the need for this legislation.
255	Aaron Crowe	President, Oregon Association of Process Services. Testifies in support of SB 265.
322	Sen. Prozanski	States that this bill doesn't give extra protection during the serving action.
329	Crowe	Responds that this will give them a legal action to take against any aggravated situations during the act of serving. Stresses that there are loopholes that could result in the halt of the foreclosure process because of an individual's inability to serve.
371	Sen. Prozanski	Stresses that this bill may just create more hostility and conflict.
379	Smith	Details the reasons why these cases against process servers are thrown out instead of assault charges being followed through in behalf of the servers.
413	Taylor	Inquires if they believe the bill would give them extra rights to enter property that has posted "no trespassing" signs.
416	Crowe	Replies that they would absolutely not have that idea.
432	Sen. Prozanski	States that in his county, they would follow these types of cases.
443	Crowe	Responds with the different counties that refuse to follow these cases.
450	Sen. Prozanski	Raises the issue of the bill creating hostile situations.
474	Crowe	Stresses that their members do not want conflict.
495	Matt Markee	Oregon Collector's Association. Testifies in support of SB 265 and the amendment.
504	Chair Burdick	Closes the public hearing on SB 265 and moves to tomorrow agenda 495, SB 546, SB 568, and SB 947, SB 965. Adjourns the meeting at 3:05 p.m.

EXHIBIT SUMMARY

- A. SB 1025, written testimony, Emily Harris, 3 pp
- B. SB 1025, written testimony, Gwen Dayton, 3 pp

- C. **SB 1025, written testimony, David Holt, 2 pp**
- D. **SB 1025, written testimony, Mary Durham, 2 pp**
- E. **SB 1025, written testimony, Gwen Dayton, 1 p**
- F. **SB 1025, written testimony, Gwen Dayton, 1 p**
- G. **SB 1025, written testimony, Paul Newton, 1 p**
- H. **SB 333, -3 amendment, Sen. Ringo, 1 p**
- I. **SB 913, -3 amendment, staff, 1 p**
- J. **SB 1025, -1 amendment, staff, 1 p**
- K. **SB 265, -1 amendment, staff, 1 p**