

SENATE COMMITTEE ON JUDICIARY

April 04, 2005
1:00 P.M.

Hearing Room 343
Tapes 92 - 93

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 208 – Work Session
 SB 39 – Work Session
 SB 216 – Public Hearing
 SB 422 – Public Hearing
 SB 94 – 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 92, A		
003	Chair Burdick	Calls the meeting to order at 1:20 p.m. and opens a work session on SB 208.
<u>SB 208 – WORK SESSION</u>		
007	Chair Burdick	Moves SB 208 to April 14, 2005.
<u>SB 39 – WORK SESSION</u>		
011	Joe O'Leary	Counsel. Describes SB 39 relating to requiring the court to determine, on record, the mental disease or defect established as a basis for a guilty except for insanity verdict. Introduces and details the -1 and -3 amendments (EXHIBITS A & B).
042	Sen. Beyer	Inquires about a fiscal impact.
050	Mary Claire Buckley	Executive Director, Psychiatric Security Review Board. Testifies on the fiscal impact of SB 39.
060	Sen. Beyer	Inquires about an estimate for the scope of the problem.
062	Buckley	Replies with statistical data from 2003 and 2004 that would fall under this bill.
090	Sen. Starr	MOTION: Moves to ADOPT SB 39-1 amendments dated 3/29/05.
		VOTE: 5-0-2
		EXCUSED: 2 - Ringo, Whitsett
092	Chair Burdick	Hearing no objection, declares the motion CARRIED.

093	Sen. Starr	MOTION: Moves to ADOPT SB 39-3 amendments dated 4/4/05. VOTE: 5-0-2 EXCUSED: 2 - Ringo, Whitsett
095	Chair Burdick	Hearing no objection, declares the motion CARRIED.
096	Sen. Starr	MOTION: Moves SB 39 to the floor with a DO PASS AS AMENDED recommendation. VOTE: 5-0-2 EXCUSED: 2 - Ringo, Whitsett
100	Chair Burdick	Hearing no objection, declares the motion CARRIED. SEN. PROZANSKI will lead discussion on the floor.
109	Sen. Beyer	Asks about a conflict with SB 41 and SB 39.
112	O’Leary	Describes the work group meeting for SB 41 and SB 39, and the compromise reached between the parties on this conflict.
145	Sen. Beyer	Inquires if this has any effect on the actual trial.
149	O’Leary	Replies that there is no foreseeable effect on the actual trial.
153	Sen. Beyer	Wonders about the costs.
156	O’Leary	Points out that the work group addressed this issue on page 1, line 23, on the -3 amendment (Exhibit B).
169	Chair Burdick	Closes the work session on SB 39 and opens a public hearing on SB 216.
<u>SB 216 – PUBLIC HEARING</u>		
172	Joe O’Leary	Counsel. Describes SB 216 relating to allowing the Attorney General to intervene in a class action lawsuit to assert a claim on behalf of the class members who fail to submit statements for award of damages. Introduces and discusses the -1 and -2 amendments (EXHIBIT C & D).
205	Frederick M. Boss	Assistant Attorney General, Department of Justice. Submits testimony and testifies in support of SB 216 (EXHIBIT E). Explains the effects of the bill and talks about the -1 and -3 amendments.
237	Boss	Comments on the methods used by other states.
260	Chair Burdick	Asks for the definition of “cy-pres.”
271	Chair Burdick	Reads the definition of “cy-pres.” Inquires if only two states follow this method of allocating unresolved monies. Wonders about the settlements.
281	Boss	Replies yes, and offers information on settlements in class action lawsuits.
302	Chair Burdick	Inquires about unclaimed funds, and if they would be returned to the company that had the action against them.
310	Boss	Responds that it is possible, but it would usually be discussed between both parties.
336	Sen. Prozanski	Asks for the types of suits this bill would apply to.
339	Boss	Explains the different cases that this bill would affect.
350	Sen. Prozanski	Inquires about the -1 and -2 amendments.
357	Boss	Offers information on the funds under the -1 and -2 amendments.
365	Sen. Prozanski	Wonders about the statute of limitations and the lack of locating all members of a class action lawsuit.
375	Boss	Clarifies the possibilities of individuals who were not involved with the class action lawsuit but have a legitimate claim.
420	Chair Burdick	States that she believed there was no statute of limitations on the class action lawsuits.
430	Boss	Discusses the problems in these scenarios with individuals who have yet to make a claim.

440	Sen. Prozanski	Desires clarification on this issue.
448	Boss	Clarifies the information relating to class action lawsuits.
452	Kevin Neely	Executive Assistant for Attorney General Hardy Myers, Department of Justice. Testifies in support of SB 216. Talks about the amount of unclaimed money from lawsuits in 2003.
472	Sen. Beyer	Wonders about how the courts determine the size of the reward.
497	Boss	Discloses the regular process in arriving at a figure for class action lawsuit settlements.
TAPE 93, A		
040	Sen. Beyer	Brings up the issue of an overestimation of settlement payments.
049	Chair Burdick	Clarifies the issue concerning overestimation of settlement payments.
055	Neely	Talks about the adjudication of class action lawsuits.
074	Sen. Beyer	States that instead of placing money in other funds, why they don't just give the remaining money to the claimants who sought the class action lawsuit.
085	Chair Burdick	Declares that the fund is there for individuals who might discover they have a claim many years later, to be able to access the money.
095	Sen. Whitsett	Explains his confusion over the issue of unclaimed money for someone who has never made a claim. Talks about his hesitation to create such a windfall for the state or other funds by overestimating the members in the class action lawsuit.
112	Jim Gardner	PhRMA, Microsoft Corporation, Philip Morris USA, etc. Testifies in opposition to SB 216. Mentions the Council on Court Proceedings that was created in 1977 to undertake a non-partisan and systematic forum to address issues relating to the rules of civil procedure.
150	Gardner	Discusses the possibility of cooperation to address both sides of this issue. Explains that the bill, as well as the -1 and -2 amendments, is far beyond what the panel suggested.
192	Gardner	Reads testimonial from the Attorney General in 1981 that was in opposition to the concept behind this bill.
222	Gardner	Discusses a possible provision remaining in the statute that might see the defendant pay twice.
225	Chair Burdick	Talks about the unclaimed property fund.
232	Gardner	Comments on what occurs with the money in these unclaimed funds.
243	Chair Burdick	Declares that only two states return the money to the company from the unclaimed fund.
249	Gardner	Acknowledges that other states do things differently, and explains the methods used in Oregon.
267	Chair Burdick	Asks what he expects to come out of the council for court proceedings.
268	Gardner	Replies with information on what he expected.
271	Chair Burdick	States that this would be a court decision.
272	Gardner	Stresses that it is not a court decision, but is instead decided post-judgment.
286	Chair Burdick	Reiterates the concern raised by Sen. Beyer relating to overestimating the size of the class in the lawsuit.
290	Gardner	Explains that the definition of the class occurs at the outset of a class certification proceeding.
306	Chair Burdick	Asserts the problem still exists concerning overestimating a class in a lawsuit.

313	Gardner	Replies with information on the class action lawsuit process.
324	Chair Burdick	Illustrates the award scenario in the class action lawsuits.
330	Gardner	Responds that the above estimation is not entirely accurate. Talks about the final settlement in these cases.
366	Chair Burdick	Discusses the workings of the unclaimed property act.
375	Gardner	Indicates that the precaution that will be needed for this issue.
384	Chair Burdick	States that the organization was created in 1977 and has had 28 years to address this issue.
387	Gardner	Talks about the council on court proceedings and the topics they discuss.
423	Sen. Prozanski	Inquires about class action lawsuits under this bill.
429	Gardner	Details the process for class action lawsuits.
473	Sen. Prozanski	Brings up the issue of settlements, and the payments to the class action claimants.
490	Gardner	Addresses the payment process.
502	Sen. Prozanski	Asks about the statute of limitations on this issue.
TAPE 92, B		
032	Gardner	Replies with information on the statute of limitations for class action lawsuits.
035	Sen. Prozanski	Talks about the issue of statute of limitations, and where the money goes once that time is up.
050	Gardner	States that if the statute is missed, then the claimant can no longer bring the issue to court.
055	Chair Burdick	Asks about the issue of higher amounts of claimants than originally expected.
062	Gardner	Replies that he does not know the answer to that question, but guesses that the claims would have to be paid.
068	Julie Brandis	Associate Oregon Industries. Testifies in opposition to SB 216. Talks about the unclaimed property issue. Explains their hesitance to support the Attorney General in their interpretation on the rightful use of such funds.
105	Chair Burdick	Brings up the issue of an individual not receiving their due compensation and the funds being returned to the defender.
112	Brandis	Addresses the above scenario. Stresses that she wants to unite claimants with their compensations, but states that this bill does not accomplish this.
143	Sen. Prozanski	Asks about the council for court procedures.
147	Gardner	Replies with information on the statutory makeup of the council.
156	Sen. Prozanski	Inquires how long the council has dealt with this problem.
159	Gardner	States that the question was before the committee during the last interim.
173	Sen. Prozanski	Wonders when they will reach a conclusion to their hearing.
175	Gardner	Responds that they will conclude the issue later, but he does not know exactly when.
183	Chair Burdick	Closes the public hearing on SB 216 and opens a public hearing on SB 422.
<u>SB 422 – PUBLIC HEARING</u>		
185	Joe O’Leary	Counsel. Describes SB 422 relating to allowing a person subject to a stalking protective order to seek dismissal of that order.
210	Mark Kramer	Attorney, Kramer & Associates. Submits testimony and proposed amendments and testified in support of SB 422 (EXHIBITS F & G).
245	Kramer	Continues reading testimony relating to the revocation of stalking orders (Exhibit F).

285	Kramer	Continues reading testimony relating to dismissal of stalking orders. (Exhibit F).
320	Laura Graser	Attorney. Testifies in support of SB 422 and cites an example of the problems with current law.
370	Graser	Stresses the importance to separate the socially inept with the truly dangerous.
406	Sen. Whitsett	Asks who has the burden of proof in these cases.
409	Graser	States that current statute requires the victim to initially establish proof, but then the defendant has the burden to disprove.
426	Andrea Meyer	Legislative Director, American Civil Liberties Union (ACLU). Testifies in support of SB 422 for the ACLU and the Oregon Criminal Defense Lawyers Association.
457	Nancy Glass	Oregon Health Sciences University. Submits a paper on stalking as a risk factor for attempted and actual intimate partner femicide and testifies in opposition to SB 422 (EXHIBIT H).

TAPE 93, B

033	Glass	Continues testimony about the dangers facing women concerning stalkers.
051	Sen. Prozanski	Desires clarification on the testimony and its relation to SB 422.
056	Chair Burdick	Asks about the areas of consensus that Mr. Kramer identified.
061	Glass	Advocates caution to amending current law.
071	Sybil Hebb	Oregon Law Center. Submits testimony and testifies in opposition to SB 422 (EXHIBIT I). Agrees with the concept of the bill, but is concerned with the proposal in the bill and Mr. Kramer's proposed amendments.
118	Hebb	Addresses 1995 testimony that helped create the current statute.
131	Sen. Whitsett	Inquires about the scope of the reports dealing with increased duration of separation's relation to stalking cases.
137	Glass	Directs the committee to the reference for that information.
144	Gina Skinner	Deputy District Attorney, Washington County, Oregon District Attorneys Association. Testifies in opposition to SB 422 in its current form. Discusses the hearing and restraining order that is possible to address these cases.
180	Skinner	Talks about the seriousness of stalking orders. Comments on the concerns over the duration of these orders. Acknowledges that there should be some mechanism in place to petition their removal.
208	Chair Burdick	Closes the public hearing on SB 422 and opens a work session on SB 94.

SB 94 – WORK SESSION

214	Joe O'Leary	Counsel. Describes SB 94 relating to mandatory cross reporting of child abuse reports between law enforcement agencies and the Department of Human Services. Introduces and describes the -4 amendment (EXHIBIT J).
246	Sen. Starr	MOTION: Moves to ADOPT SB 94-4 amendments dated 4/4/05. VOTE: 6-0-1 EXCUSED: 1 - Ringo
250	Chair Burdick	Hearing no objection, declares the motion CARRIED.
253	Sen. Starr	MOTION: Moves SB 94 to the floor with a DO PASS AS AMENDED recommendation.
254	Sen. Whitsett	Declares his hesitance to support the bill, but agrees to pass it out of committee. VOTE: 6-0-1

