

SENATE COMMITTEE ON JUDICIARY

May 12, 2005
1:00 P.M.

Hearing Room 343
Tapes 135 - 136

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: **William E. Taylor, Counsel**
 Joe O'Leary, Counsel
 Dale Penn, Committee Assistant

MEASURES/ISSUES HEARD:
 SB 301 – Work Session
 SB 528 – Work Session
 SB 1050 – 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 135, A		
003	Chair Burdick	Calls the meeting to order at 1:13 p.m. and opens a work session on SB 301.
<u>SB 301 – WORK SESSION</u>		
007	Joe O'Leary	Counsel. Describes SB 301 relating to specifying the circumstances under which a peace officer and corrections officer may use deadly physical force. Introduces and describes the -2 amendment (EXHIBIT A).
043	Sen. Whitsett	Asks about the technical changes made in section 12 of the -2 amendment.
050	O'Leary	Offers information on the grand jury proceedings, and the technical changes made to the process in the -2 amendment.
062	Pete Shepherd	Deputy Attorney General. Submits testimony and agrees with Counsel on their assessment of the changes made with the -2 amendment (EXHIBIT B). Introduces written testimony from Multnomah County District Attorney Michael D. Schrunk in support of the -2 amendment to SB 301 (EXHIBIT E).
068	Chair Burdick	Inquires about the representatives that formed this work group on the -2 amendment.
071	Shepherd	Replies with information on the makeup of the work group.
088	Chair Burdick	Inquires about the blank area in the bill dealing with the funds available for this project.
090	Shepherd	Talks about the necessity of retaining the state as a financial partner in addressing this problem. Goes on to talk about the

120	Chair Burdick	commentary dealing with the effects of the bill (Exhibit B). Asks for a summarization of the changes made with the -1 and -2 amendments.
121	Shepherd	Replies with information on the changes between the -1 and -2 amendments. Discusses the amount and variety of the leave offered to officers after an injury or event resulting from the firing of a weapon or other aggravated occurrence.
161	Shepherd	Stresses a conceptual difference between the -1 and -2 amendments: the effort must be a combined effort between the state and local jurisdictions.
196	Shepherd	Declares that District Attorney John Foote from Clackamas County authorized Mr. Shepherd to offer his support for this bill.
215	Chair Burdick	Closes the work session on SB 301 and opens a work session on SB 528.

SB 528 – WORK SESSION

222	Joe O’Leary	Counsel. Introduces and describes the -8 and -9 amendments (EXHIBITS C & D).
275	Chair Burdick	Describes the term “retroactive” and how it would not apply to cases that have exhausted all other measures, only to those cases that are currently being challenged.
311	Brad Berry	Yamhill County District Attorney. Testifies on the amount of jurors needed for an enhanced sentence.
328	O’Leary	Agrees with the assessment, and stresses that this points out an earlier flaw with the statutes. States that the same amount of jurors, and the same specific jurors, must agree on an enhancement sentence that earlier convicted the defendant.
368	Berry	Discusses the enhancement factor requirements, from a jury standpoint.
408	Sen. Prozanski	Clarifies that the jurors who originally made the verdict must also be the same jurors who approve an enhancement factor.
425	Sen. Beyer	Inquires if the jurors who might vote not-guilty would be released from jury sentencing.
435	Berry	Replies that they would not, but their vote would not truly count after that. Describes the scenario resulting from allowing jurors
466	Sen. Prozanski	Asks about a problem with segregating the jury in such a way.
TAPE 136, A		
024	Chair Burdick	States that there is a chance that a juror convinced of guilt might not believe in an aggravated verdict.
032	O’Leary	Talks about the situation where 11 of the 12 jurors vote guilty, and then 10 of the 11 must vote for the enhancement factor.
039	Berry	Responds in the affirmative.
043	Chair Burdick	Asks if all trials will have that threshold and if the same jurors must vote for both factors (guilty and enhancement factor).
047	Berry	Stresses that in a six person jury, a unanimous verdict is required.
059	Chair Burdick	Asks about the issue of retroactivity.
061	Berry	Offers his support of the -9 amendment. Talks about the need for this procedure in allowing for more efficient trials.
105	Berry	Discusses the constitutionality of this bill and the ramifications of its passage.
133	Chair Burdick	Brings up the issue of techniques and methods that might conflict with future legislation.
147	Tim Sylwester	Department of Justice, Criminal Justice Division. Testifies on the issue of post conviction cases resulting from the passage of these types of bills. Talks about a recent supreme court case that

addresses the issue of individuals citing bad representation from counsel for not anticipating future court decisions.

198 Sylwester Discusses the people most affected by this legislation would be the most offensive individuals; those who have accrued the longest sentences for the most heinous crimes (aggravated crimes).

230 Sylwester Addresses the double jeopardy clause as a possible use for further litigations (Court of Appeals: *State of Oregon vs. Sawatzky*).

248 Chair Burdick Inquires if there are any constitutional conflicts resulting from this future decision.

252 Sylwester Replies that he does not believe there will be.

264 Chuck French Deputy District Attorney, Multnomah County. Talks about the offenders who have aggravated sentences: violent offenders, sexually dangerous offenders, etc.

320 French Discusses the issue of financial impact on the correctional divisions. Stresses that there would be little to no cost, and possibly less, towards the Department of Corrections. States that these individuals would only get less sentencing by bringing their cases to the courts: less time in prison and therefore lower costs.

375 French Declares that the financial impact would be little to none for the court system. Acknowledges that there might be a few extra cases brought against the department.

403 Chair Burdick Asks if the expo facto or double jeopardy problems will present a future litigation challenge for the state.

413 Sylwester Talks about the expo facto and double jeopardy issues facing the Department of Justice; stresses that this issue is not an expo facto or double jeopardy problem.

449 Chair Burdick Closes the work session on SB 528 and opens a work session on SB 301.

SB 301 – WORK SESSION

463 Sen. Starr MOTION: Moves to ADOPT SB 301-2 amendments dated 5/6/05.

464 Sen. Whitsett States that he hasn't had the time to address the testimony and alterations made relating to the amendments.

TAPE 135, B

**Chair Burdick VOTE: 5-2-0
 AYE: 5 - Prozanski, Ringo, Starr C., Walker, Burdick**

NAY: 2 - Beyer, Whitsett

027 Chair Burdick The motion CARRIES.

028 Sen. Starr MOTION: Moves SB 301 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Senate Budget Committee.

034 Sen. Prozanski Talks about his current support for the bill, but hesitates to fully support the bill until he hears from law enforcement in his district.

**Chair Burdick VOTE: 5-2-0
 AYE: 5 - Prozanski, Ringo, Starr C., Walker, Burdick**

NAY: 2 - Beyer, Whitsett

051 Chair Burdick The motion CARRIES.

053 Chair Burdick Closes the work session on SB 301 and opens a work session on SB 528.

SB 528 – WORK SESSION

064	Peter Gartlan	Chief Defender, Legal Services Division, Office of Public Defense Services. Submits testimony and testifies in opposition to the retroactivity clause in SB 528 (EXHIBIT F).
120	Gartlan	Talks about the two court of appeals cases that have dealt with dangerous offenders (Measure 11 offenders). States that 120 cases are in their office that deal with the recent <i>Blakely</i> Supreme Court case.
157	Gregory Silver	Chief Attorney, Metropolitan Public Defender Services. Submits testimony and testifies in support of SB 528, but stresses their opposition to the retroactivity clause (EXHIBIT G).
195	Silver	Discusses the challenges facing the retroactivity clause if it is adopted. Brings up the issue of the double jeopardy and expo facto clauses being used against the retroactivity clause.
245	Silver	Talks about how anything that increases the sentence beyond what the sentencing guidelines grid allow is part of the actual crime, and they have already been convicted of this.
267	Silver	Comments on the <i>State of Oregon vs. Sawatzky</i> court case where a woman was upward departed from the presumptive sentencing.
296	Chair Burdick	Asks about consecutive sentences in the <i>Sawatzky</i> case.
298	Silver	Responds with information on the consecutive sentencing in the <i>Sawatzky</i> case.
340	Silver	Continues his discussion on the <i>State of Oregon vs. Sawatzky</i> case.
364	Chair Burdick	Inquires about statutory authorization in influencing Supreme Court decisions.
368	Silver	Declares that he doesn't know if that would influence the Supreme Court's decision on such an issue.
410	Sen. Walker	Wonders what may occur if the Supreme Court refuses to accept the petition of such a case.
421	Silver	Talks about how the judges who face the cases themselves would take it upon themselves to adjudicate the issue.
TAPE 136, B		
009	Michael Marcus	Circuit Court Judge, Multnomah County. Submits testimony and testifies on the issue of the retroactivity clause in the amendments for SB 528 (EXHIBIT H).
063	Marcus	Talks about the financial impact resulting from this decision. States that the upward departures are not entirely focused on the most dangerous offenders.
104	Chair Burdick	Inquires about an expo facto clause being in conflict with this clause.
110	Marcus	Addresses the issue of expo facto.
117	Sen. Whitsett	Asks about a statute requiring or allowing retroactive sentencing enhancement would influence the Oregon Supreme Court's decision on the actual constitutionality of such a policy.
122	Marcus	Stresses that the legislation should have no impact on the decisions of the Supreme Court dealing with constitutionality.
138	Nancy Miller	Deputy State Court Administrator. Testifies in a neutral stance on the issue of retroactivity. Addresses the fiscal impact resulting from the passage of the bill. Expresses the uncertainties facing the panel today: how many of the decisions they face are based on "ifs" and "possibilities."
180	Miller	Explains that with a minimum amount of cases, the court system would exceed their allotted funds.

197	Chair Burdick	Appreciates the work by the panel witnesses on this issue. Closes the work session on SB 528 and opens a public hearing on SB 1050.
<u>SB 1050 – PUBLIC HEARING</u>		
207	William E. Taylor	Counsel. Describes SB 1050 relating to modifying the requirements for the eligibility of a child 18 years of age or older and under 21 years of age to receive child support while attending school. Introduces the -2 amendment (EXHIBIT I).
227	Hans Bernard	Legislative Aide, Sen. Brown. Testifies in support of SB 1050. Reads a letter from Judge Keith Raines in support of SB 1050 (EXHIBIT J).
276	Ronelle Shankle	Project and Legislative Liaison for the Attorney General. Submits a testimony packet, a hand-engrossed version of SB 1050 with the -2 amendment, and written testimony from Concetta F. Schwesinger, the Oregon District Attorneys Association Child Support Program Liaison (EXHIBITS K – M).
314	Celia Nunez	Policy Analyst, Senate Majority Office. Submits testimony and testifies in support of SB 1050 (EXHIBIT N).
355	Nunez	Continues reading testimony in support of SB 1050 (Exhibit N).
387	Shani Fuller	Department of Justice, Oregon Child Support Program. Submits testimony and testifies in support of SB 1050 and the -2 amendment (EXHIBIT O). Discusses the proposed -3 amendment.
413	Karen Berkowitz	Oregon Law Center. Submits testimony and testifies in support of SB 1050 (EXHIBIT P).
477	William E. Taylor	Asks if she is proposing an amendment.
480	Berkowitz	Replies that she is not.
484	Chair Burdick	Closes the work session on SB 1050 and adjourns the meeting at 3:05 p.m.

EXHIBIT SUMMARY

- A. **SB 301, -2 amendment, staff, 19 pp**
- B. **SB 301, written testimony, Pete Shepherd, 18 pp**
- C. **SB 528, -8 amendment, staff, 19 pp**
- D. **SB 528, -9 amendment, staff, 20 pp**
- E. **SB 301, written testimony, Pete Shepherd, 2 pp**
- F. **SB 528, written testimony, Peter Gartlan, 1 p**
- G. **SB 528, written testimony, Gregory Silver, 3 pp**
- H. **SB 528, written testimony, Michael Marcus, 2 pp**
- I. **SB 1050, -2 amendment, staff, 4 pp**
- J. **SB 1050, written testimony, Keith Raines, 1 p**
- K. **SB 1050, written testimony, Ronelle Shankle, 2 pp**
- L. **SB 1050, Hand-engrossed version, staff, 5 pp**
- M. **SB 1050, written testimony, Concetta Schwesinger, 2 pp**
- N. **SB 1050, written testimony, Celia Nunez, 2 pp**
- O. **SB 1050, written testimony, Shani Fuller, 4 pp**
- P. **SB 1050, written testimony, Karen Berkowitz, 2 pp**