

SENATE COMMITTEE ON JUDICIARY

May 24, 2005
1:00 P.M.

Hearing Room 343
Tapes 143 - 145

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: **Heidi Moawad, Counsel**
 Sam Sears, Counsel
 Dale Penn, Committee Assistant

MEASURES/ISSUES HEARD:
 HB 2050A – Public Hearing
 HB 2185 – Public Hearing
 HB 2225 – Work Session
 HB 2213A – Public Hearing and Work Session
 HB 2545A – Work Session
 HB 2547A – Work Session
 HB 2548 – Work Session
 HB 3157A – Work Session
 HB 2634A – 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 143, A		
002	Chair Burdick	Calls the meeting to order at 1:12 p.m. and opens a public hearing on HB 2050A.
<u>HB 2050A – PUBLIC HEARING</u>		
008	Heidi Moawad	Counsel. Describes HB 2050A relating to requiring, as a condition of probation, parole, or post-prison supervision, that certain persons cannot reside within three miles of a victim of a crime if the victim requests an imposition of the condition.
027	Chair Burdick	Inquires about judicial discretion in counties that have less than 130,000 residents.
029	Moawad	Replies that Michael Selvaggio, legislative aide for Sen. Ringo, sponsor of the bill, can best answer any inquiries concerning the bill.
040	Michael Selvaggio	Legislative Aide, Sen. Charlie Ringo. Submits testimony and testifies in support of HB 2050A (EXHIBIT A).
075	Selvaggio	Details the reasoning behind the exemption concerning counties under 130,000 residents.

073	Sen. Prozanski	Inquires why the number 130,000 was selected.
075	Selvaggio	Comments on the choice to provide an exemption to counties with less than 130,000 residents: anything less would cause a possible constitutional conflict.
105	Chair Burdick	Asks how the distance is measured (“as the crow flies” or driving).
106	Selvaggio	Replies that it is based as “the crow flies”: standard distance. States that they desired to apply this bill only to the more populous counties, the most developed.
122	Chair Burdick	Stresses that the bill would only apply to the counties listed in his testimony: Clackamas, Deschutes, Jackson, Lane, Marion, Multnomah, and Washington.
123	Selvaggio	Replies that this is correct.
130	Sen. Whitsett	Talks about how current blue book estimates would place some of those counties under the 130,000 exemptions. Comments on how this doesn’t apply to rural Oregon.
146	Selvaggio	Declares that the constitutional conflict dictated their limitations to counties with less than 130,000 residents. States that he would like this to apply to rural Oregon, but they need to address the constitutional issue.
172	Sen. Prozanski	Brings up an issue with the drafting language of the bill dealing with offenders under the age of 18 who are making decisions that, because of this law, impacts them greatly: what about parental authority with these issues.
188	Moawad	Talks about the situation with representatives for under-age victims.
205	Chair Burdick	Offers a conflict that may exist between parents who wish one thing and the District Attorney who believes there is a danger in the parents’ choice and makes the choice for the family.
210	Sen. Prozanski	Discusses the problems dealing with representing a child.
232	Selvaggio	Stresses that cases of statutory rape (17 year old girl, 19 year old boy; the parents of the girl want to arbitrarily punish the boy) were heavily discussed with this bill.
242	Chair Burdick	Talks about the cases involving underage children as opposed to adults.
263	Moawad	Replies that she will work with Mr. Selvaggio to address these issues.
296	Sen. Whitsett	Asks why, if the judges can place these offenders in areas closer than three miles without conflicting with the constitution, they would need a bill fixing an issue that doesn’t exist.
319	Selvaggio	Replies with information on the need for the bill; trying to fill all the cracks in current law. Clarifies the constitutional conflict they sought to circumvent with this bill.
352	Chair Burdick	Wonders about the smaller radius for rural counties.
361	Selvaggio	Responds that it was considered.
382	Jeff Wood	Sergeant, Parole and Probation Division, Marion County Sheriff’s Office. Submits testimony and testifies in opposition to HB 2050A (EXHIBIT B). Declares his support for the concept for the bill, but stresses that the fiscal impact would be too great to realistically initiate.
436	Sen. Whitsett	Inquires why such complicated and expensive methods are needed in these cases.
451	Wood	Replies that many offenders have multiple victims, and there are numerous criteria that increase the cost for so many victims.

TAPE 144, A

022	Sen. Walker	States that a recent bill passed in another session talked about the illegality of shifting these costs to the local counties. Desires a fiscal impact from Legislative Fiscal.
032	Moawad	Addresses the fiscal impact from Legislative Fiscal: minimal to state or local agencies.
045	Moawad	States that these figures were not discussed in front of the House Judiciary Committee.
051	Sen. Walker	Declares that an inquisition to Legislative Fiscal on these new figures would be needed.
071	Chair Burdick	Asks for continued work on this bill. States that it seems like there are enough resources on-line or otherwise that would make their jobs easier.
078	Wood	States that many resources online would not be secure or updated regularly: their own system would be secure and valid.
093	Sen. Prozanski	Addresses the past bill on unfunded mandates.
126	Kelly Skye	Oregon Criminal Defense Lawyers Association. Testifies on the implementation problems with this bill. Brings up the issue that the victim's address is confidential during this process.
148	Chair Burdick	Inquires if there would be a problem with the victim knowing where the offender lives.
150	Skye	Replies that she doesn't know if that information is confidential, so she cannot address that question.
162	Sen. Walker	Talks about the sex offender registry. Discusses the problems of where this sex offender is going to live.
183	Skye	Comments on several issues with the implementation of the bill.
216	Sen. Walker	Details the difficulty in transitional housing.
241	Sen. Beyer	Addresses Article 11, section 15 of the Oregon Constitution dealing with this issue.
249	Sen. Prozanski	Brings up an issue of the victim moving within those three miles of the offender.
256	Chair Burdick	Closes the public hearing on HB 2050A and opens a public hearing on HB 2185.

HB 2185 – PUBLIC HEARING

244	Heidi Moawad	Counsel. Describes HB 2185 relating to increasing the period of time a person is ineligible to receive a hardship permit if a person refused to take a breath or blood test and a person previously had been charged with the offense of driving while under the influence of intoxicants.
289	Vinita Howard	Submits written testimony and testifies in support of HB 2185 (EXHIBIT C). Introduces written testimony from Anne Pratt and Lloyd Clodfelter (EXHIBITS D & E).
355	Sen. Prozanski	Asks about the parameters for the statute.
370	Howard	Replies with information on the legal parameters for the bill and statute relating to taking the breath or blood test.
387	Chair Burdick	Clarifies the charges resulting from the bill.
393	Sen. Prozanski	States that the bill has only minor changes in statute. Inquires about a person who was charged before, and didn't take the test, would this bill be triggered without a conviction.
432	Howard	Addresses the concept of the implied consent law.

TAPE 143, B

007	Sen. Prozanski	Comments on enhanced suspension periods being altered by this bill; very little other statutory changes result from this bill.
033	Moawad	Declares that, if a person successfully completed their diversion

		program, and another offense occurred within these five years, they would be covered by this new bill.
059	Troy Costales	Oregon Department of Transportation. Submits testimony and testifies in support of HB 2185 (EXHIBIT F). Talks about the exemptions facing a citizen if a driving license was taken away: a hardship permit.
096	Kelly Skye	Oregon Criminal Defense Lawyers Association. Testifies in opposition to HB 2185. Declares that there is already an incentive (a law with repercussions) to take the blood/breath test.
110	Chair Burdick	Asks if this would keep people from getting licenses.
112	Skye	Replies that it would keep people from getting a hardship permit.
117	Sen. Prozanski	Brings up the issue of enhancing the penalties for refusing to take the blood/breath test on a second offense.
136	Moawad	Inquires about the unconstitutionality of forcing the blood/breath test.
139	Skye	Responds that the particular judge on that case made the judgment due to a double jeopardy clause and dismissed the offense.
153	Sen. Prozanski	Asks if that case was up for appeal and when it occurred.
155	Moawad	Addresses the history of this particular case.
174	Chair Burdick	Closes the public hearing on HB 2185 and opens a work session on HB 2225.

HB 2225 – WORK SESSION

179	Heidi Moawad	Counsel. Describes HB 2225 relating to establishing a standard of review for appeals from judgment in a violation proceeding.
195	Sen. Starr	MOTION: Moves HB 2225 to the floor with a DO PASS recommendation.
200	Sen. Whitsett	Asks about the appellate court judges' opinions on this bill.
203	Moawad	States that she is not aware of any judges having an opinion about this bill. VOTE: 6-0-1 EXCUSED: 1 - Ringo
236	Chair Burdick	Hearing no objection, declares the motion CARRIED. SEN. WHITSETT will lead discussion on the floor.
241	Chair Burdick	Closes the work session on HB 2225 and opens a public hearing on HB 2213.

HB 2213A – PUBLIC HEARING

245	Sam Sears	Counsel. Describes HB 2213A relating to declaring state policy regarding spousal support obligations.
264	Ronelle Shankle	Department of Justice. Submits testimony and testifies in support of HB 2213A (EXHIBIT G)
297	Shani Fuller	Oregon Child Support Program. Testifies in support of HB 2213A. Addresses a possible conflict in current statute that this bill seeks to fix.
330	Fuller	Discusses the amendment that was enacted by the House.
356	Chair Burdick	Asks how much of the caseload falls into the low-income category.
358	Fuller	Replies that around 280 cases fall under this criteria.
363	Sen. Whitsett	Inquires how they are able to give certain protections to sections of the populace (low-income) that are not available to all citizens.
372	Shankle	Offers information on those individuals who require state assistance (the threshold the state uses).
391	Sam Sears	Addresses the class of individuals who would be segregated by this bill; wealth is the criteria, and it is not a protected class.

437	Sen. Whitsett	Talks about the discriminatory stature of separating classes.
447	Shankle	Declares that there might be a time where the state could provide these services to a broader base.
463	Loralee McKee	Lane County District Attorney's Office. Submits testimony and testifies in support of HB 2213A (EXHIBIT H).
TAPE 144, B		
032	McKee	Details a story of spousal support obligations that addresses the conflicts they seek to fix.
058	McKee	Talks about another spousal support case that fell into the problems this bill attempts to fix.
101	McKee	Stresses that this bill is not "anti-spousal support," but rather attempts to use the department's limited resources to the best of their ability.
107	Chair Burdick	Inquires if there are other legal remedies through the judicial process available.
110	Shankle	Replies yes.
113	Sen. Beyer	Inquires who the "administrator" is in the bill on lines 8 and 9.
118	Shankle	Responds that the person is the administrator of the child support services.
123	Fuller	States that whenever they provide child support services, they are required to provide other spousal support services that require administration.
139	Chair Burdick	Closes the public hearing and opens a work session on HB 2213A.

HB 2213A – WORK SESSION

150	Sen. Starr	MOTION: Moves HB 2213A to the floor with a DO PASS recommendation.
		VOTE: 5-0-2
		EXCUSED: 2 - Ringo, Whitsett
153	Chair Burdick	Hearing no objection, declares the motion CARRIED. SEN. BEYER will lead discussion on the floor.
160	Chair Burdick	Closes the work session on HB 2213A and opens a work session on HB 2545A.

HB 2545A – WORK SESSION

162	Sam Sears	Counsel. Describes HB 2545A, which allows a public body, in order to comply with request for disclosure of public records, to establish a fee to reimburse the public body for time spent by attorney to review records, redact material from records or segregate records into exempt and nonexempt records.
172	Chair Burdick	Comments on previous testimony.
178	Sen. Starr	MOTION: Moves HB 2545A to the floor with a DO PASS recommendation.
		VOTE: 5-0-2
		EXCUSED: 2 - Ringo, Whitsett
181	Chair Burdick	Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor.
183	Chair Burdick	Closes work session on HB 2545A. Opens a work session on HB 2547.

HB 2547A – WORK SESSION

184	Sam Sears	Counsel. Provides background on HB 2547A, which increases the value of estate for which a small estate affidavit may be filed.
200	Sen. Starr	MOTION: Moves HB 2547 to the floor with a DO PASS recommendation.
		VOTE: 5-0-2

		EXCUSED: 2 - Ringo, Whitsett
204	Chair Burdick	Hearing no objection, declares the motion CARRIED.
		SEN. STARR will lead discussion on the floor.
206	Chair Burdick	Closes work session on HB 2547. Opens a work session on HB 2548.
<u>HB 2548 – WORK SESSION</u>		
208	Sam Sears	Counsel. Provides background on HB 2548, which mandates arbitration in circuit court proceedings in which \$50,000 or less is involved.
217	Sen. Starr	MOTION: Moves HB 2548 to the floor with a DO PASS recommendation.
		VOTE: 5-0-2
		EXCUSED: 2 - Ringo, Whitsett
219	Chair Burdick	Hearing no objection, declares the motion CARRIED.
		SEN. PROZANSKI will lead discussion on the floor.
221	Burdick	Closes work session on HB 2548. Opens a work session on HB 3157A.
<u>HB 3157A – WORK SESSION</u>		
222	Sam Sears	Counsel. Provides background on HB 3157A, which provides that the duty of a county court or board of county commissioners to inspect the local correctional facilities is discretionary for the facilities not operated by the county.
232	Prozanski	Expresses his reservations, but agrees with the checks and balances.
242	Walker	Comments on the 58-1-0 vote on the House.
248	Sen. Starr	MOTION: Moves HB 3157A to the floor with a DO PASS recommendation.
		VOTE: 5-0-2
		EXCUSED: 2 - Ringo, Whitsett
251	Chair Burdick	Hearing no objection, declares the motion CARRIED.
		SEN. PROZANSKI will lead discussion on the floor.
253	Burdick	Opens a public hearing on HB 2634 A.
<u>HB 2634A – PUBLIC HEARING</u>		
256	Sam Sears	Counsel. Provides background on HB 2634A, which establishes pleading requirements for actions asserting a professional negligence against real estate licenses.
267	Jana Jarvis	Government Affairs Director, Oregon Association of Realtors. Submits written testimony (EXHIBIT I) and testifies in support of HB 2634A.
279	Matt Farmer	Associate General Counsel, Oregon Association of Realtors. Testifies in support of HB 2634 A.
327	Emily Cedarleaf	Executive Director, Multifamily Housing Council of Oregon. Submits written testimony (EXHIBIT J) and testifies in opposition to HB 2634A.
TAPE 145, A		
010	Walker	Questions whether Ms. Cedarleaf is a lawyer.
012	Cedarleaf	Explains her occupation and involvement with this issue.
018	Walker	Asks about the drafting of the bill.
021	Cedarleaf	Explains how difficult it is to research in a vacuum. Talks about the drafting of the bill.
030	Rep. Bob Ackerman	House District 13. Testifies in support of HB 2634A. Discusses malpractice claims.
066	Walker	Comments on “tort reform.” Expresses her support for HB

072	Prozanski	2634A. Inquires about the notarized statement, and if the individual is disclosed.
075	Rep. Ackerman	Responds that he does not think so, and argues that he believes it requires a notification statement.
083	Burdick	Closes public hearing on HB 2634A. Adjourns the meeting at 3:08 p.m.

EXHIBIT SUMMARY

- A. **HB 2050, written testimony, Michael Selvaggio, 1 p**
- B. **HB 2050, written testimony, Jeff Wood, 3 pp**
- C. **HB 2185, written testimony, Vinita Howard, 2 pp**
- D. **HB 2185, written testimony, Anne Pratt, 1 p**
- E. **HB 2185, written testimony, Lloyd Clodfelter, 1 p**
- F. **HB 2185, written testimony, Troy Costales, 1 p**
- G. **HB 2213A, written testimony, Ronelle Shankle, 2 pp**
- H. **HB 2213A, written testimony, Lorelee McKee, 2 pp**
- I. **HB 2634, written testimony, Jana Jarvis, 2 pp**
- J. **HB 2634A, written testimony, Emily Cedarleaf, 2 pp**