

SENATE COMMITTEE ON JUDICIARY

May 25, 2005
1:00 P.M.

Hearing Room 343
Tapes 146 - 147

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 978 – Public Hearing and Work Session
 SB 528 – Work Session
 SB 1041 – Public Hearing
 SB 392 – Public Hearing
 SB 1050 – Work Session
 SB 424 – Work Session
 SB 1059 – Public Hearing and 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 146, A		
003	Chair Burdick	Calls the meeting to order at 1:12 p.m. and opens a public hearing on SB 978.
<u>SB 978 – PUBLIC HEARING</u>		
010	Rep. Dennis Richardson	House District 4. Submits testimony and testifies in support of SB 978 (EXHIBIT A). Introduces written testimony from Mark Huddleston, Jackson County District Attorney (EXHIBIT B).
024	Mary Botkin	American Federation of State, County, and Municipal Employees. Submits testimony and testifies in support of SB 978 (EXHIBIT C).
074	William E. Taylor	Counsel. Describes SB 978 relating to prohibiting the disclosure of public records relating to the criminal investigation or prosecution or to confinement of persons convicted of crimes unless personal identifiers that have been deleted. Introduces and discusses the -2 and -3 amendments (EXHIBITS D & E).
095	Botkin	Suggests the addition of the word "home" in front of the term "address" to protect the houses of agency workers.
111	Dan Norris	Malheur County District Attorney, Oregon District Attorney Association. Testifies in support of SB 978.
130	Sen. Prozanski	Notes the specific location where the additional term "home"

		would be added.
138	Taylor	Clarifies the effect of the bill; protecting the home address and information from access.
153	Chair Burdick	Closes the public hearing and opens a work session on SB 978.
<u>SB 978 – WORK SESSION</u>		
160	Sen. Starr	MOTION: Moves to ADOPT SB 978-3 amendments dated 5/25/05.
		VOTE: 5-0-2
		EXCUSED: 2 - Ringo, Walker
163	Chair Burdick	Hearing no objection, declares the motion CARRIED.
164	Sen. Starr	MOTION: Moves SB 978 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0-2
		EXCUSED: 2 - Ringo, Walker
166	Chair Burdick	Hearing no objection, declares the motion CARRIED.
		SEN. PROZANSKI will lead discussion on the floor.
172	Chair Burdick	Closes the work session on SB 978 and opens a work session on SB 528.
<u>SB 528 – WORK SESSION</u>		
177	Joe O’Leary	Counsel. Describes SB 528 relating to decreasing the penalty for a crime of cheating to a maximum of one year’s imprisonment, \$6,250 fine, or both. Introduces and describes the -10 amendment (EXHIBIT F).
219	Chair Burdick	Commends the work from counsel and by Legislative Counsel.
225	O’Leary	States that the Fiscal Impact Statement was not ready at the time of the hearing, but it will be indeterminate.
240	Chair Burdick	Asks if the bill would trigger the local impact provision.
243	O’Leary	Replies that it will not.
247	Chair Burdick	Talks about the discussion over whether the bill should be retroactive to cases in the ‘pipeline.’ Stresses that if a case has exhausted all appeals, then <i>Blakely</i> will not apply.
271	O’Leary	Comments on the retroactivity provision in the -10 amendment.
279	Sen. Beyer	Inquires about the -10 amendment representing the -9 as opposed to the -8 amendment.
290	Chair Burdick	Says that the -10 represents the -9 with fixes.
296	Sen. Starr	States that the -10 amendment replaces the entirety of the bill.
300	O’Leary	Declares that the -8 amendment did not apply retroactively and the -9 and -10 did.
310	Sen. Prozanski	Talks about the jurors required to convict and aggravate the sentence.
321	O’Leary	Replies that there would need to be at least 10 jurors to add an aggravated factor to the judgment.
345	O’Leary	Stresses that there may be further applicability resulting from <i>Blakely</i> and this bill.
372	Sen. Whitsett	Wonders if the Oregon Criminal Defense Lawyers Association supports this -10 amendment.
384	John Hummel	Oregon Criminal Defense Lawyers Association. Declares their opposition to the retroactivity clause in the -10 amendment.
403	Sen. Starr	MOTION: Moves to ADOPT SB 528-10 amendments dated 5/18/05.
405	Sen. Ringo	Declares his objection over the -10 amendment.
		VOTE: 4-2-1
		AYE: 4 - Beyer, Prozanski, Starr C., Burdick
		NAY: 2 - Ringo, Whitsett

		EXCUSED: 1 - Walker
418	Chair Burdick	The motion CARRIES.
420	Sen. Starr	MOTION: Moves SB 528 to the floor with a DO PASS AS AMENDED recommendation.
424	Sen. Beyer	Offers his hesitance to fully support a bill with no fiscal impact statement yet.
		VOTE: 6-0-1
		EXCUSED: 1 - Walker
441	Chair Burdick	Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor.
TAPE 147, A		
010	Chair Burdick	Closes the work session on SB 978 and opens a public hearing on SB 1041.
<u>SB 1041 – PUBLIC HEARING</u>		
013	William E. Taylor	Counsel. Describes SB 1041 relating to creating a civil action for custodial interference in any degree.
028	Sean Cruz	Legislative Aide, Sen. Avel Gordly. Submits testimony and testifies in support of SB 1041 but states that there are amendments pending (EXHIBIT G).
071	Bealisa Sydlik	Family Law Senior Policy Analyst. Office of the State Court Administrator. Submits testimony and testifies in a neutral stance on SB 1041 (EXHIBIT H). Encourages amendments that would decrease the statute of limitations and eliminate the retroactivity in the bill.
118	Taylor	Asks about if she means conviction when she states “prosecution.” Inquires about the filing by either a District Attorney or a private citizen.
113	Sydlik	Replies that the filing of a case might constitute prosecution, and the District Attorney needs to accept the case.
129	Sen. Ringo	Inquires about if the crime of custodial interference requires intent.
132	Taylor	Responds that it does require intent. Addresses the legality of the issue.
143	Sen. Ringo	Comments on the term “protracted period” of time.
185	Sen. Ringo	Asks about the typical custodial interference case.
188	Sydlik	Replies with information on custodial interference cases.
200	Sen. Prozanski	Discusses the concerns raised by Sen. Ringo.
215	Sybil Hebb	Oregon Law Center. Testifies on the issue of custodial interference.
239	Sen. Starr	Agrees that work needs to be done on this issue.
261	Chair Burdick	Closes the public hearing on SB 1041. Asks for a suspension of the rules to allow Sen. Walker to vote on SB 528. Opens a work session on SB 528.
<u>SB 528 – WORK SESSION</u>		
270	Sen. Starr	MOTION: Moves to SUSPEND the rules for the purpose of allowing Sen. Walker to vote on SB 528.
		VOTE: 6-0-1
		EXCUSED: 1 - Prozanski
272	Chair Burdick	Hearing no objection, declares the motion CARRIED.
275	Sen. Walker	Votes Aye.
280	Chair Burdick	Closes the work session on SB 528 and opens a public hearing on SB 392.
<u>SB 392 – PUBLIC HEARING</u>		
283	Sen. Westlund	Senate District 27. Testifies in support of SB 392. Tells a story

348	Chair Burdick	involving family murder that would be addressed by SB 392. Commends Sen. Westlund for bringing this issue to light. Asks about the exception in the bill relating to individuals pressuring another to get around the bill.
364	Sen. Westlund	Details the rational process that needs to be followed before any exemptions would be allowed or assets signed over.
385	William E. Taylor	Addresses current slayer laws.
416	Chair Burdick	Inquires if an exemption exists for people under the age of 18.
425	Sen. Westlund	Talks about the proceeds resulting from the death of a person; what would occur if a trust would be setup for underage individuals in these situations.
444	Taylor	States that, if the younger person would die, then the property would go to other family members: with this bill, the assets would not go to the family member convicted of the slaying.

TAPE 146, B

011	Taylor	Comments on the guardian status in relation to blood relatives.
033	Chair Burdick	Closes the public hearing on SB 392 and moves SB 1025 to Tuesday, May 31, 2005. Opens a work session on SB 1050.

SB 1050 – WORK SESSION

048	William E. Taylor	Counsel. Describes SB 1050 relating to modifying the requirements for eligibility of a child 18 years of age or older and under 21 years of age to receive child support while attending school. Introduces and describes the -3 amendment (EXHIBIT I).
067	Ronelle Shankle	Attorney General’s Office, Department of Justice. Testifies in support of the SB 1050 with the -3 amendment.
086	Shani Fuller	Department of Justice, Oregon Child Support Program. Submits testimony and testifies in support of SB 1050 (EXHIBIT J). Talks about the -3 amendment.
130	Fuller	Addresses the emergency clause in the bill.
133	Sen. Starr	Inquires if this bill applies to intact families.
135	Fuller	Replies that it does not.
145	Sen. Starr	Declares that he does not believe these opportunities should be offered to families that have been broken up if they are not offered to intact families.
164	Shankle	Stresses that this bill does not affect the support entitlement for these children. Talks about the effects of the bill.
174	Taylor	Asks how long this law has been on the books.
177	Shankle	Replies that it has been on the books for many years, but she is not sure about the exact date it was created.
181	Chair Burdick	Inquires if the obligation to pay for a child’s college education is determined by the divorce decree.
186	Shankle	Reports that this is not a dollar-for-dollar reimbursement of educational expenses; requires a dissolution or administrative order (support order).
192	Chair Burdick	Wonders if this bill only applies to supporting the child; not obligating individuals to pay for college tuition, etc.
196	Shankle	Replies that it does not obligate others to pay for tuition.
224	Chair Burdick	Closes the work session on SB 1050 and opens a work session on SB 424.

SB 424 – WORK SESSION

227	Joe O’Leary	Counsel. Describes SB 424 relating to giving the court discretion in awarding temporary custody of parties’ children when the court issues restraining orders under the Family Abuse
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268 Bealisa Sydlik Prevention Act. Introduces and describes the -1 and -2 amendments (**EXHIBITS K & L**).
 Family Law Senior Policy Analyst. Office of the State Court Administrator. Submits testimony and testifies in support of SB 424 (**EXHIBIT M**).

300 Chair Burdick Asks how many of these types of cases are brought before judges in Oregon.

307 Sydlik Replies that these cases do not occur often (5% of the cases brought before judges, roughly), and reports with information on the statistics for these cases.

314 Chair Burdick Wonders about the tight requirements in the -2 amendment.

319 Sydlik States that the judge would need additional information before seeking this method.

330 Sybil Hebb Oregon Law Center. Submits testimony and FAPA Custody Changes and testifies in a neutral stance on SB 424 and support the -2 amendment (**EXHIBITS N & O**).

380 Hebb Talks about the -2 amendments and the support for the bill.

400 Hebb Declares their support of the current state of the law, but if the bill would move, to include the -2 amendment with their support.

425 Hebb Strongly urges the committee provides direction for the department when this clause would be used.

TAPE 147, B

022 Sen. Walker States that taking a child away from a parent is something that needs to be heavily discussed before it is done; declares that the problem needs to be fixed.

039 Sen. Walker Stresses that a -3 is needed.

049 Sydlik Talks about the commitment to increase department training on this issue.

080 Sen. Prozanski Talks about the lack of an emergency clause, discloses his hesitation to support a bill that clearly has issues.

102 Sen. Whitsett Comments on the judicial power to make an informed decision.

111 Chair Burdick Closes the work session on SB 424 and moves SB 1047 to another day. Opens a public hearing on SB 1059.

SB 1059 – PUBLIC HEARING

124 Joe O’Leary Counsel. Describes SB 1059 relating to providing that a person under 18 years of age who is found guilty except for insanity of a crime may be committed to a secure intensive community impatient facility. Introduces and discusses the -1 and -2 amendments (**EXHIBITS P & Q**).

164 Sen. Beyer Asks if this bill has a similar effect as another they had heard earlier in the session.

165 O’Leary Talks about the different bills relating to this subject that the Senate Judiciary Committee has heard this session.

187 Bill Bouska Office of Mental Health and Addiction Services. Submits testimony and testifies in support of SB 1059 with the -1 and -2 amendments (**EXHIBIT R**).

214 Sen. Walker Asks if this bill is a result of closing Ward 40. Asks when the new program started, and if all the adolescents from Ward 40 are in the Corvallis secure adolescent program.

215 Bouska Replies yes. States that the new program began in early March and that all adolescents are in the Corvallis program.

244 Sen. Beyer Inquires as to where they received the statutory authority to move these adolescents.

247 Bouska Responds with information on where in Oregon statutes

		(161.370) they received the authority to accomplish this relocation of adolescents. Talks about the different options available to the court to deal with these younger offenders.
274	O'Leary	Addresses Sen. Beyer's concern on statutory authority and the example the witness discussed. Discusses the lack of flexibility of the Psychiatric Security Review Board to manage these issues.
314	Mary Claire Buckley	Director, Psychiatric Security Review Board. Testifies on the legal options for conditionally releasing these adolescents into the new programs.
338	Sen. Beyer	Asks if any of the patients who were recently moved considered dangerous.
346	Buckley	Replies that there were dangerous offenders moved to the new program, but there are very secure methods used by the program to eliminate any threat these individuals may pose.
359	Sen. Beyer	Stresses that he does not like adapting law to fit the methods already used by different agencies that are bending the current statute.
369	Sen. Prozanski	Clarifies the effects of SB 1059. Declares that they have not broken the law, violated the statutes, or are outside their statutory authority.
393	Chair Burdick	Closes the public hearing and opens a work session on SB 1059.
<u>SB 1059 – WORK SESSION</u>		
399	Sen. Walker	MOTION: Moves to ADOPT SB 1059-1 amendments dated 5/18/05.
		VOTE: 6-0-1
		EXCUSED: 1 - Starr
404	Chair Burdick	Hearing no objection, declares the motion CARRIED.
405	Sen. Walker	MOTION: Moves to ADOPT SB 1059-2 amendments dated 5/18/05.
409	Sen. Prozanski	Declares his support for the emergency clause for the bill.
		VOTE: 6-0-1
		EXCUSED: 1 - Starr
416	Chair Burdick	Hearing no objection, declares the motion CARRIED.
418	Sen. Walker	MOTION: Moves SB 1059 to the floor with a DO PASS AS AMENDED recommendation.
424	Chair Burdick	Declares a potential conflict of interest.
427	Sen. Beyer	States that there has yet to be a fiscal for the bill.
429	Joe O'Leary	Counsel. Stresses that there will need a -3 amendment which will then receive a fiscal.
		VOTE: 6-0-1
		EXCUSED: 1 - Starr
450	Chair Burdick	Hearing no objection, declares the motion CARRIED.
		SEN. WALKER will lead discussion on the floor.
453	Chair Burdick	Closes the work session on SB 1059 and re-opens a work session on SB 1050.
<u>SB 1050 – WORK SESSION</u>		
457	Sen. Walker	MOTION: Moves to ADOPT SB 1050-3 amendments dated 5/19/05.
		VOTE: 5-1-1
		AYE: 5 - Prozanski, Ringo, Walker, Whitsett, Burdick
		NAY: 1 - Beyer
		EXCUSED: 1 - Starr C.
461	Chair Burdick	The motion CARRIES.

466	Sen. Walker	MOTION: Moves SB 1050 to the floor with a DO PASS AS AMENDED recommendation.
472	Sen. Beyer	Talks about how this is bad law and will not support the bill.
489	Sen. Whitsett Chair Burdick	Declares a potential conflict of interest. VOTE: 5-1-1 AYE: 5 - Prozanski, Ringo, Walker, Whitsett, Burdick NAY: 1 - Beyer EXCUSED: 1 - Starr C.
494	Chair Burdick	The motion CARRIES. SEN. BURDICK will lead discussion on the floor.
502	Chair Burdick	Closes the work session on SB 1050 and adjourns the meeting at 3:03 p.m.

EXHIBIT SUMMARY

- A. SB 978, written testimony, Rep. Richardson, 1 p
- B. SB 978, written testimony, Rep. Richardson, 1 p
- C. SB 978, written testimony, Mary Botkin, 1 p
- D. SB 978, -2 amendment, staff, 3 pp
- E. SB 978, -3 amendment, Rep. Richardson, 3 pp
- F. SB 528, -10 amendment, staff, 20 pp
- G. SB 1041, written testimony, Sean Cruz, 5 pp
- H. SB 1041, written testimony, Bealisa Sydlik, 2 pp
- I. SB 1050, -3 amendment, staff, 6 pp
- J. SB 1050, written testimony, Shani Fuller, 5 pp
- K. SB 424, -1 amendment, staff, 3 pp
- L. SB 424, -2 amendment, staff, 38 pp
- M. SB 424, written testimony, Bealisa Sydlik, 9 pp
- N. SB 424, written testimony, Sybil Hebb, 3 pp
- O. SB 424, written testimony, Sybil Hebb, 1 p
- P. SB 1059, -1 amendment, staff, 1 p
- Q. SB 1059, -2 amendment, staff, 1 p
- R. SB 1059, written testimony, Bill Bouska, 2 pp