

# SENATE COMMITTEE ON JUDICIARY

February 25, 2003  
8:00 a.m.

Hearing Room 343  
Tapes 39-40

**MEMBERS PRESENT:**     **Sen. John Minnis, Chair**  
                                  **Sen. Ginny Burdick, Vice-Chair**  
                                  **Sen. Ted Ferrioli**  
                                  **Sen. Charlie Ringo**  
                                  **Sen. Charles Starr**  
                                  **Sen. Vicki Walker**

**STAFF PRESENT:**       **Craig Prins, Counsel**  
                                  **Jane Bodenweiser, Committee Assistant**

**MEASURE/ISSUES HEARD:**     **Informational Meeting “Report of the Advisory Committee on Genetic Privacy and Research” by Astrid Newell, MD**  
                                  **SB 58 Public Hearing and Work Session**  
                                  **SB 107 Public Hearing**  
                                  **SB 122 Public Hearing and Work Session**

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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.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 39, A</b>		
001	Chair Minnis	Calls the meeting to order at 8:12 a.m. Reminds the committee of the Supreme Court lunch tomorrow, February 26, at 11:30 a.m. Introduces Dr. Ted Falk and Dr. Astrid Newell.
<b><u>INFORMATIONAL MEETING</u></b>		
015	Dr. Ted Falk	Advisory Committee on Genetic Privacy. Submits material and presents an overview of the functions of the committee and the issues involved ( <b>EXHIBIT A</b> ).
044	Dr. Astrid Newell	Advisory Committee on Genetic Privacy. Gives a basic introduction to genetics and DNA.
119	Dr. Falk	Discusses the historical background of genetic privacy in Oregon.
219	Dr. Newell	Talks about research and clinical issues addressed.
290	Dr. Falk	Summarizes the committee’s recommendations and future issues.
488	Chair Minnis	Asks who the legislative members were.
491	Dr. Newell	Replies, Sen. Courtney, Rep. Shetterly, Sen. Nelson, and Sen. Walker
512	Chair Minnis	Recesses the committee at 8:40 a.m.

**TAPE 40, A**

035 Chair Minnis

Reconvenes the meeting at 9:00 a.m. and opens a public hearing on SB 58 that expands circumstances under which colorable claim of error standard is used for purposes of filing notice of appeal in criminal case.

**SB 58 PUBLIC HEARING**

040 Peter Ozanne

Executive Director, Office of Public Defense Services. Submits testimony and testifies in support of SB 58 (**EXHIBIT B**).

077 Chair Minnis

Closes the public hearing on SB 58 and opens a work session.

**SB 58 WORK SESSION**

**088 Vice Chair Burdick**

**MOTION: Moves SB 58 to the floor with a DO PASS recommendation and be placed on the CONSENT CALENDAR.**

**VOTE: 5-0-1**

**EXCUSED: 1 - Sen. Ringo**

**090 Chair Minnis**

**Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor.**

092 Chair Minnis

Closes the work session on SB 58 and opens a public hearing on SB 107.

**SB 107 PUBLIC HEARING**

094 Craig Prins

Introduces SB 107 that requires that defendant show substantial prejudice from delay of trial before court can dismiss accusatory instrument on basis of failure to provide speedy trial.

103 Jonathan Fussner

Department of Justice. Submits testimony and testifies in support of SB 107 (**EXHIBIT C**).

170 Vice Chair Burdick

Asks if this bill would have made a difference in the outcome of the Harberts case.

178 Fussner

Replies that it would not have made a difference.

191 Vice Chair Burdick

Wonders how difficult it is for the defendant to show prejudice.

195 Fussner

Explains that it is difficult.

203 Vice Chair Burdick

Wonders how the Supreme Court got involved.

212 Fussner

Explains the process.

235 Vice Chair Burdick

Asks if cases can be re-filed after they are dismissed.

259 Fussner

Replies that cases are generally not re-filed.

265 Chair Minnis

Asks how the court reached the constitutional conclusion in the Harberts Case.

273 Fussner

Explains the process.

304 Sen. Walker

Wonders how courts might rule on the prejudice requirement.

313 Fussner

Remarks that case law has developed around the constitutional requirement.

345 Sen. Walker

Asks if there is a standard time period for a trial.

346 Fussner

Explains there are guidelines issued by the courts, but they are not binding by law.

387 Steve Dingle

Oregon District Attorney's Association (ODAA). Testifies in support of SB 107.

**TAPE 39, B**

055 Vice Chair Burdick

Asks the process for showing prejudice.

060 Dingle

Gives a typical case scenario.

081 Sen. Walker

Believes that unreasonable delay is a prejudice. Asks if this bill is intended to become the norm.

092 Dingle

Responds that this bill should become the standard.

128 Sen. Ferrioli

Asks what a judge would do if there is no public defender

154	Dingle	available for a defendant who cannot afford his own defense.
168	Chair Minnis	Explains the proposed procedure in Marion County. Advises that a lawyer can be compelled by the court to defend someone.
186	Sen. Ringo	Says as a lawyer, he would not be comfortable in criminal court.
210	Dingle	Explains that Marion County has adopted a continuing early disposition program.
226	Sen. Ringo	States the belief that delay itself causes prejudice.
232	Dingle	Says this is true.
230	Sen. Ringo	Contends there needs to be some time limit so that a defendant can have some finality.
259	Dingle	Believes that this does exist with the constitutional standards already established. Says the fact in reality is that delay benefits the defendant.
335	Susan Russell	Oregon Criminal Defense Lawyers Association. Submits testimony and testifies in opposition to SB 107 ( <b>EXHIBIT D</b> ).
412	Chair Minnis	Asks if a statutory provision to a speedy trial is a right.
380	Russell	Says it is a statutory right.
389	Chair Minnis	Asks the difference between a statutory and a constitutional right.
420	Russell	Clarifies the difference.
432	Chair Minnis	Wonders where “substantially prejudiced” is defined in case law.
433	Russell	Responds she is not aware of a definition in case law.
426	Chair Minnis	Asks for an example of when a court has “purposefully delayed” a case.
440	Russell	Says that language comes from the Harberts case.
<b>TAPE 40, B</b>		
018	Russell	Continues testimony in opposition to SB 107.
067	Chair Minnis	Wonders if the word “substantial” should be removed.

070	Russell	Believes that it would still be inadequate protection for a defendant's statutory right to a speedy trial.
114	Sen. Ferrioli	Talks about a community standard of reasonableness.
157	Russell	Points out two problems with this legislation.
178	Chair Minnis	Asks for further clarification of the "substantial prejudice" issue.
182	Dingle	Addresses the prejudice issue.
212	Sen. Ringo	Questions the pre-trial release condition imposed.
214	Dingle	Says there are travel passes.
222	Sen. Ringo	Contends that inconvenience and prejudice are two separate issues.
228	Dingle	Agrees, but says inconvenience is considered a part of prejudice.
246	Chair Minnis	Closes the public hearing on SB 107 and opens a public hearing on SB 122.

**SB 122 PUBLIC HEARING**

255	Erik Wasmann	Oregon Department of Justice. Submits testimony and testifies in support of SB 122 that expands crime of robbery in third degree to include activities relating to unauthorized use of vehicle <b>(EXHIBIT E)</b> .
275	Rick Wesenberg	Oregon District Attorneys Association (ODAA), Roseburg, OR. Submits testimony and testifies in support of SB 122 <b>(EXHIBIT F)</b> . Discusses an Oregon case that included the taking of an automobile.
351	Sen. Ringo	Asks if these people were prosecuted for kidnapping.
358	Wesenberg	Says, yes, but the jury acquitted them of that charge.
358	Sen. Ringo	Asks what the conviction was.
359	Wesenberg	Says the conviction was robbery in the first degree.
364	Wasmann	Explains why this legislation is needed for clarification.
391	Chair Minnis	Believes this closes a loophole in the law.
396	Vice Chair Burdick	Asks for a clarification of robbery and attempted robbery.
401	Wasmann	Explains the definition.
410	Chair Minnis	Discusses the difference between theft and robbery, and providing proof of either.
459	Chair Minnis	Closes the public hearing on SB 122 and opens a work session.

**SB 122 WORK SESSION**

460	Vice Chair Burdick	<b>MOTION: Moves SB 122 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 6-0</b>
466	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED. SEN. RINGO will lead discussion on the floor.</b>
470	Chair Minnis	Closes the work session on SB 122 and adjourns the meeting at 10:00 a.m.

## **EXHIBIT SUMMARY**

- A – Printed material presented by Dr. Ted Falk and Dr. Astrid Newell, 114 pp**
- B – SB 58, written testimony submitted by Peter Ozanne, 1 p**
- C – SB 107, written testimony submitted by Jonathan Fussner, 2 pp**
- D – SB 107, written testimony submitted by Susan Russell, 1 p**
- E – SB 122, written testimony submitted by Erik Wasmann 2 pp**
- F – SB 122, written testimony submitted by Rick Wesenberg, 2 pp**