

## SENATE COMMITTEE ON JUDICIARY

February 26, 2003  
8:00 A.M.

Hearing Room 343  
Tapes 41-42

**MEMBERS PRESENT:**    **Sen. Minnis, Chair**  
                              **Sen. Burdick, Vice-Chair**  
                              **Sen. Ferrioli**  
                              **Sen. Ringo**  
                              **Sen. Starr**  
                              **Sen. Walker**

**STAFF PRESENT:**       **Craig Prins, Counsel**  
                              **Nancy Masee, Committee Assistant**

**MEASURE/ISSUES HEARD:**  
                              **SB 49 Public Hearing**  
                              **SB 300 Public Hearing**  
                              **SB 303 Public Hearing**

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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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TAPE/#	Speaker	Comments
<b>Tape 41, A</b>		
004	Chair Minnis	Calls meeting to order at 8:15 a.m. Opens a public hearing on SB 49, SB 300 and SB 303.
<b>SB 49, SB 300, and SB 303 PUBLIC HEARING</b>		
009	Kevin Starrett	Executive Director, Oregon Firearms Federation. Submits testimony in opposition to SB 49 and SB 300 ( <b>EXHIBIT A</b> ). States these bills are gun control bills pure and simple. Responds to proponents' arguments supporting bills.
065	Sen. Ringo	Asks what his suggestion is for domestic violence control.
066	Starrett	States he does not believe any law can protect these victims.
105	Chair Minnis	Asks in what situations firearms should be removed from a person.
110	Starrett	Replies any situation which calls for arrest.
117	Chair Minnis	Gives example of how police officers take guns for safe keeping.
125	Starrett	Responds that if a person is willing to hurt somebody else, confiscating his firearms does not make him less dangerous. Taking away firearms does not render a person harmless.
163	Sen. Walker	Gives example of keeping weapons away from potential teen suicides.
174	Starrett	Replies teen suicides have nothing to do with these bills.
182	Sen. Walker	Gives personal example of domestic violence.
194	Starrett	Replies that the person was guilty of a crime and should have been arrested and dispossessed of a firearm.
217	Chair Minnis	Asks Mr. Starrett to address the issue that if a restraining order is issued, that person cannot possess firearms.
247	Starrett	Does not believe a law can prevent a perpetrator from committing an act with a gun. Discusses the futility of restraining orders.
280	Susan Russell	Oregon Criminal Defense Lawyers Association. Submits testimony in opposition of SB 49 ( <b>EXHIBIT B</b> ). Says SB 49 lacks standards and procedures for determining issues of domestic violence.
354	Russell	Continues discussing SB 49 and suggests amendments. Discusses SB 49's restriction of the constitutional right to bear arms. Engrossed SB 49 and -2 amendment submitted to the record ( <b>EXHIBITS C and D</b> ).
391	Sen. Burdick	Asks about SB 300. Asks about amendments.
400	Russell	Says they do not take a position on SB 300. Does not oppose portion of SB 49 allowing either party to request a hearing.
413	Sen. Walker	Says she does not agree with the restraining order statement about dispossessing firearms.
414	Russell	Replies it would be fixed if each party had a chance to respond.
428	Sen. Walker	Asks if the respondent already has the right to request a hearing.
450	Russell	Explains how a hearing would take place.
<b>TAPE 42, A</b>		
020	Sen. Ringo	Asks about the judge's discretion in opposing firearms. Says restraining orders can be issued if a violent act may occur.
044	Russell	Gives the example of pushing someone against a wall resulting in an injury, a bruise, and pain during a domestic argument. Gives example of domestic violence where unintentional injury results from an argument.
063	Sen. Ringo	Gives example of conflicting stories from spouses.
070	Russell	Says the courts are cautious in dropping a restraining order once it is in place. If the conduct is there, the motivation to cause injury, different kinds of things can become weapons, such as a wall.
129	Chair Minnis	Reiterates that the Criminal Defense Lawyers want a bill that has specific due process guaranteed. Reiterates the need for a hearing and in a form that is fair to both sides.
137	Russell	Answers, yes, and the judge should have discretion in time limits.
145	Craig Prins	Committee Counsel. Asks Ms. Russell about due process. Mentions <i>Mathews v. Eldridge</i> to set out the process.
146	Russell	Answers that sounds correct.
150	Prins	Asks if Ms. Russell has reviewed case law to determine if any <i>ex parte</i>

restraining laws have been upheld under the 5<sup>th</sup> amendment due process challenges.

153 Russell Answers not with respect to the firearms prohibition.

159 Prins Suggests looking at cases that say due process is satisfied if there is an opportunity for contested hearing and there is a judge making explicit factors. States the U.S. Constitution states the right to bear arms. Asks if that is an individual or collective right.

170 Russell Replies she is not sure on that.

175 Sen. Burdick Says it relates to collective rights.

177 Sen. Walker Relates to cases where both spouses beat each other.

191 Russell Describes cross petitions for restraining orders against each other. Says under current law, when a weapon is used, the conviction would be assault in the second degree, a felony,

220 Sen. Walker Asks about the ease of renewing restraining orders. Asks if there should be some restrictions on getting renewed restraining orders.

232 Russell Answers that under current law, the respondent would have an opportunity to be heard.

248 Sen. Burdick Says the purpose of these bills was to close loopholes.

262 Russell Refers to SB 300 and SB 303 that were drafted to address loopholes. SB 49 presents an alternative.

300 Vice Chair Burdick Asks if the policy should be consistency for federal prosecution or should a state system of prosecution be adopted.

310 Russell Answers the federal penalties are usually greater.

348 Andrea Meyer American Civil Liberties Union (ACLU). States that SB 300 is ok. Expresses concerns with SB 49 due process issues.

353 Prins Asks if ex parte order violates due process. Says there is a difference between a due process issue and a violation of due process.

359 Meyer Replies the concern is that there has to be the opportunity to be heard.

365 Vice Chair Burdick Asks if the concern is about Assault 4, the permanency of the gun ban, or if the gun ban goes into effect at all.

380 Russell Replies the concern is the length of the prohibition as well as the blanket prohibition which is not specific to the case.

418 Nick Coffee Salem resident. Opposes SB 49. Gives personal experience on restraining orders. Thinks that restraining orders should be issued easily.

#### TAPE 41, B

077 Coffee Continues discussing how civil liberties are being challenged.

083 Sen. Ringo Asks counsel to clarify about the restraining order.

092 Prins Replies that civil restraining orders and enforcement are issued when the judge declares contempt. Says there is "other relief" portion of the restraining order. It is not a crime to violate that, but it is contempt.

119 Sen. Ferrioli Asks if the judge has the discretion to take, or not take, action on firearms in relation to the restraining power.

127 Prins Clarifies this does not touch the judge's contempt powers. Clarifies further, it makes it unlawful to possess a firearm after that contested time has passed.

145 Sen. Ferrioli States that judges have the discretion.

156 Rod Harder National Rifle Association. Says the federal law is specific and offers more protection than SB 300 and SB 49. Under federal law only the respondent can demand a hearing. Restraining orders should be issued for safety. Refers to the guarantee of the constitution that is protected by due process.

227 Vice Chair Burdick Asks about Mr. Harder's comment on the protection of having only the respondent requesting a hearing.

245 Harder Responds about frivolous complaints and restraining orders.

252 Sen. Walker Asks where the protection is.

260 Prins Refers to the federal statute which says the prohibition of firearms is only applicable after a hearing of which the subject is notified and had an opportunity to participate. In Oregon law, only the respondent requests a contested hearing; that is not a requirement of the federal law.

294 Vice Chair Burdick Reiterates that at the federal level the hearing is automatic. At the state level the hearing is not held unless requested.

310 Prins Responds the federal prohibitions are applicable to state law. Says states have different ways of getting restraining orders.

337 Harder Discusses the judges' discretion.

342 Sen. Walker Asks if the petitioner should have the right to request a hearing.

350 Harder Answers he is not comfortable with due process in restraining order hearings.

373 Vice Chair Burdick Summarizes her understanding is that Oregon's law allows ex parte restraining orders. There is no automatic hearing. Asks if a hearing was automatic, would that take care of the concerns.

412 David Nebel Oregon Law Center. Explains how the judge has discretion to enter orders for the protection of the petitioner and children saying respondent is not allowed to possess firearms while the restraining order is in effect.

#### TAPE 42, B

044 Nebel Explains what SB 300 is seeking to do.

057 Sen. Ferrioli Refers to the Oregon constitution and the right to bear arms. Shares concerns about the due process issue.

079 Lisa Naito Commissioner, Multnomah County. Says the intention of SB 49 was to parallel federal requirements and to achieve gun dispossession.

109 Sen. C. Starr Says people are not protected by taking away guns. Citizens protect themselves with guns. States that this is gun control legislation which he

130	Sen. Ringo	does not accept. Opposes these bills. States that the Criminal Defense Lawyers say there should be discretion in this bill.
145	Naito	Responds the intention was not to interfere with discretion of the court. Discusses the problems of domestic violence and how guns are a big part of that.
162	Prins	Explains the exceptions in federal law for law enforcement officers. Relates to SB 49 in a misdemeanor assault. Asks if in Oregon the defendant had waived right to counsel, would a prior conviction be valid.
179	Sen. Ferrioli	Says judges have the authority. Asks are judges refusing to consider firearms seizure. Asks are police not enforcing these orders.
191	Naito	Responds it is not clear under state due process.
208	Nebel	Says this bill would not result in searching for guns. SB 300 would make this a crime under federal law, but it would be in a U.S. Marshal's jurisdiction. Explains differences between contempt of court and a crime.
233	Staff	Submits additional written testimony ( <b>EXHIBITS E, F, and G</b> ).
234	Vice Chair Burdick	Closes public hearing on SB 49, SB 300, and SB 303. Adjourns meeting at 9:55 a.m.

**EXHIBIT SUMMARY**

- A – SB 49 and SB 300 written testimony, K. Starrett, 7 pp
- B – SB 49, written testimony, S. Russell, 1 p
- C – SB 49-2, hand engrossed, staff, 19 pp
- D – SB 49-2 amendments, staff, 1 p
- E – SB 49, written testimony, M. Schrunk, 1 p
- F – SB 300, written testimony, J. Broadfoot, 2 pp
- G – SB 49, SB 300, SB 303, written testimony, D. Simmons, 1 p