

SENATE COMMITTEE ON JUDICIARY

January 19, 2001 Hearing Room 343

1:00 p.m. Tapes 7 - 8

MEMBERS PRESENT: Sen. Minnis, Chair
Sen. Courtney, Vice-Chair
Sen. R. Beyer
Sen. Burdick
Sen. Duncan
Sen. Harper
Sen. Metsger

STAFF PRESENT: Marilyn Odell, Counsel
Jane Bodenweiser, Committee Assistant

MEASURE/ISSUES HEARD: SB 69 Public Hearing
SB 76 Public Hearing
SB 77 Public Hearing
SB 78 Public Hearing
SB 79 Public Hearing
Introduction of LC Drafts 217, 1497, 1607, 1978, 1979, 1980 and 1981

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.

<u>TAPE/#</u>	<u>Speaker</u>	<u>Comments</u>
TAPE 7, A		
003	Chair Minnis	Calls the meeting to order at 1:05 p.m.
<u>SB 69, SB 76, SB 77, SB 78 PUBLIC HEARING</u>		
014	Wallace P. Carson Jr.	Chief Justice, Oregon Supreme Court Introduces a history of Access to Justice for All Committee (Exhibit A) . Testifies in support of SB 69 relating to interpreters in juvenile proceedings; SB 76 relating to qualifications of interpreters; SB 77 relating to interpreters in grand jury proceedings; and SB 78 relating to interpreters for non-English-speaking jurors. Says the committee is committed to assuring access to the court systems for all people.
069	Sen. Avel Gordly	Senate District 10 Testifies in support of SB 69, SB 76, SB 77, SB 78, and submits written testimony (EXHIBIT B) .

129	Vice Chair Courtney	Asks if any or all of these bills would be referred to Ways and Means.
138	Chief Justice Carson	Replies that SB 78 would need to be referred to Ways and Means because it has a fiscal impact.

SB 69 PUBLIC HEARING

151	Kingsley Click	State Court Administrator Testifies in support of SB 69. Provides a handout explaining the certification program used by their office (EXHIBIT C).
181	Terry Leggert	Marion County Judge Testifies in favor of SB 69. Describes her experience in juvenile court. Clarifies issue with regard to parent and child not being able to understand English.
243	Nancy Miller	Director of the Juvenile Court Programs Division. Testifies in support of SB 69. (EXHIBIT D). Discusses the need of parents of juvenile offenders to be able to understand proceedings.
270	Chair Minnis	Asks about fiscal impact of this bill.
274	Miller	Replies that it would about \$44,000 for SB 69.
281	Sen. Metsger	Asks if this bill creates any legal problems based on not having interpretation services for the parents of juvenile offenders.
300	Judge Leggert	Replies that this has not come up yet, but there is a concern of a due process problem.
335	Kathy Osborne	Senior Attorney, Juvenile Rights Project Speaks in favor of SB 69. Discusses punishment of children because the parent didn't understand the rules. Asks that we have interpreters for parents to properly understand proceedings so that children are not unjustly punished. Mentions the number of foreign speaking clients she has had in her office.

SB 76 PUBLIC HEARING

417	Miller	Explains her interpretation of the bill, (EXHIBIT E) as a technical clean up of the procedure for putting qualification of the interpreter on the record when it is a certified interpreter in the proceedings.
457	Judge Leggert	Discusses the need of certified interpreters. And the procedure currently used in the court system.
477	Vice Chair Courtney Miller	Asks about fiscal impact on SB 76. Replies that there is none.

TAPE 8, A

060	Sen. Beyer	Conveys a desire to receive fiscal impact statements when one is provided.
070	Chair Minnis	Clarifies the procedure implemented by Fiscal. Discussion continues.
107	Counsel Odell	Reads the impact statement on SB 76. Clarifies the differences between impact statements generated by Fiscal.

SB 77 PUBLIC HEARING

146	Click	Testifies in support of SB 77 (EXHIBIT F). Submits written testimony. Clarifies that this bill makes changes to the statute regarding use of interpreters with regard to "qualified vs. "certified" and suggests that there is no fiscal impact.
174	Judge Leggert	Comments that this is a "make sense" issue. Clarifies that it does not make sense to have a different standard at the trial than at the

		grand jury level.
177	Dale Penn	Marion County District Attorney and representing ODAA Discusses a neutral stand of SB 77. Would like to see some amended language regarding the procedure for calling on a certified interpreter. Explains that this would have a streamlining effect. Explains that there is no State cost involved, just county cost. Says fiscal impact is minimal.
232	Chair Minnis	Asks Mr. Penn if this is a good bill, given the benefit to the public.
235	Penn	Replies he is in favor of the bill.
251	Paul Siebert	Member of the Legislative Fiscal Office Explains how impacts are generated and the guidelines used.
276	Sen. Metsger	Asks why the dollar amount cannot be included on impact, in addition to stating that it is under \$50,000
288	Chair Minnis	Replies that we'll get what we can.
302	Sen. Harper	Asks for clarification of current rules on state mandated programs.
306	Siebert	Explains the limit with reference to ballot measure 30, which is approximately 1/2 of one percent of an entity's budget for an annual expenditure. Discusses a complex flow chart that explains when mandated payments kick in and suggests that SB 77 does not fall within this area.

SB 78 PUBLIC HEARING

346	Click	Testifies in support of SB 78 providing qualifications of jurors (EXHIBIT G) . Explains that this bill establishes parameters for appointment of certified and qualified interpreters, and provides that non-English speaking persons are not ineligible to serve as a juror.
443	Sen. Metsger	Expresses surprise that this is not already the law. Asks if there has never been an issue of this kind arise.
458	Click	Replies, there has not.
463	Judge Leggert	Agrees that this issue has not come up, but discusses an example in her court of where the process is needed.

TAPE 7, B

039	Sen. Burdick	Asks about qualifications of new citizens with regard to understanding the English language.
043	Judge Leggert	Explains that in legal proceedings the degree of English needed to understand the proceedings is more the issue than whether or not the person speaks English at all.
058	Chair Minnis	Asks if the group considered proposing this as a pilot program as opposed to a state-wide program.
060	Click	Replies that the committee did not consider it in the whole because of possible different standards in different counties.
065	Counsel Odell	Asks if there are other states that mandate interpreters.
068	Click	Explains that, yes, New Mexico and California have it in their constitutions, however it is for the Spanish speaking.
084	Counsel Odell	Asks if special requirements are needed regarding secrecy of deliberations in a trial.
088	Judge Leggert	Replies that the oath taken requires that all they will do is interpret the language spoken.
093	Sen. Harper	Asks if this fiscal applies to any and all languages.
098	Click	Explains that some assumptions were made based on the number

111	Chair Minnis	of non-English speaking persons who might be in the jury pool. Asks for a five-minute recess on SB 78.
<u>SB 69 PUBLIC HEARING REOPENED</u>		
122	Chair Minnis	Asks for clarification on SB 69 regarding payment required for purposes of the court record. Cites ORS 45.275.
130	Click	Replies that the State pays for a court-appointed interpreter when testimony needs to be on the official record of the court. There are other circumstances such as when a lawyer requests an interpreter to communicate with the client that the state would not be responsible.
164	Sen. Beyer	Asks if there is any way to lower the costs by charging court costs to people if they are not indigent.
175	Click	Discusses the rights of the parties as to when costs can be charged back. Explains that there is some flexibility, but not much.
187	Chair Minnis	Inquires if he is correct to understand that the state pays when it is establishing a record for its purposes.
194	Click	Replies that this is partially correct, but there are circumstances where some costs could be recovered.
212	Chair Minnis	Asks about recovery of costs and how this would be done.
220	Click	Indicates that she will need to get back to the chair.
238	Sen. Harper	Inquires if it would make sense to limit the number of languages to make this program more affordable.
247	Click	Replies that it does self-select in a way, in that Spanish is about 86% of the total cost right now.
269	Sen. Duncan	Recalls an incident when an interpreter was requested but not needed. Asks if there could be an abuse of this privilege.
295	Click	Replies that there is always the possibility of abuse in any situation.
303	Sen. Burdick	Asks for clarification regarding the fiscal impact of SB 69 with regard to the number of languages needed.

315	Click	Responds that because Spanish is the predominant language, additional languages would have relatively little additional fiscal impact.
368	Chair Minnis	Closes public hearing on SB 69.
372	Counsel Odell	Announces that there is a progress report on SB 38, “implementation relating to interpreters” available to members.
MEASURE INTRODUCTION		
397	Counsel Odell	Submits the following bills for introduction by the Senate Judiciary Committee. LC 217 relating to impeachment of judges; LC 1497 relating to emergency medical services; LC 1607 relating to driving under the influence of intoxicants; LC 1978 relating to probation of 414 youthful offenders sentenced as adults; LC 1979 relating to evidence; LC 1980 relating to discovery; and LC 1981 relating to privileged communication.
414	Sen. Duncan	MOTION: Moves LC's: 217, 1497, 1607, 1978, 1979, 1980 BE INTRODUCED as committee bills.
416	Chair Minnis	VOTE: 7-0 Hearing no objection, declares the motion CARRIED.
SB 79 PUBLIC HEARING TAPE 8, B		
024	Bradd Swank	State Court Administrator’s office. Submits testimony and testifies in support of SB 79, introduced on behalf of the Oregon Judicial Department which modifies the “alternate juror” selection process in criminal trials (EXHIBIT H). Explains that it improves the jury process because it is believed that alternates will be more likely to pay attention to the proceedings if their selection as an alternate is <u>not</u> made before the case has been presented. Judges would have the final say on the timing of the selection.
087	Vice Chair Courtney	Asks for clarification regarding the “after the case is presented” clause.
092	Swank	Explains that it is after the case is presented, and before the jury deliberates.
107	Vice Chair Courtney	Asks where the alternates will be seated.
114	Swank	Indicates that this may be in a number of various locations within the courtroom.
124	Sen. Duncan	Asks if analysis has been done about how often an alternate is used.
127	Swank	Replies that he does not know of any study done. Continues to explain that it is not a common occurrence.
141	Sen. Burdick	Wonders if an alternate juror can be called when a regular juror must be excused due to illness during the course of deliberation.
146	Swank	Says that the judge has the discretion to relieve jurors and bring alternates in.
162	Sen. Metsger	With reference to line 24 on page 1, asks if there is a standard procedure for a judge to randomly select jurors.
174	Swank	Responds that it is not a procedure currently used in courts because that statute provides otherwise.
181	Sen. Metsger	Asks specifically how the selection would be made.
184	Swank	Replies that they are currently working on a random selection feature for the computer.
193	Sen. Harper	Asks about due process.

198	Swank	Explains that this bill only changes when an alternate juror is told they are going to be one of the 12 actual jurors.
209	Sen. Beyer	Asks about placement of alternates that may be in the back of the room.
220	Swank	Replies there may be some concern that attorneys may not be addressing the alternates directly, thus making it difficult for alternates to give their undivided attention to the proceedings.
255	Sen. Burdick	Expresses concern about placement of alternates if they should ultimately be included as a juror.
281	Swank	Indicates that this is a legitimate issue, but explains how other judges have indicated they have seen this situation work and feel it improves the system.
306	Sen. Burdick	Asks if a particular area for the alternates could be designated.
319	Swank	Replies that he is not sure how many jury rooms could accommodate a number of alternates in the same area as the jury box.
339	Sen. Duncan	Expresses his concern about micro-management and contends that if the judges want to try this selection procedure then let them.
350	Dale Penn	Marion County District Attorney, representing the Oregon District Attorneys Association Testifies in opposition to SB 79. Expresses concern that this process only occurs in big criminal cases. Also feels that the whole process of picking jurors is problematic. Asks for exception to line 29 on page 1 to read that the Judge or the parties may object.
416	Vice Chair Courtney	Asks where the DA's and criminal defense attorneys, etc. stand on this issue. Expresses his preference to have alternates in the jury box and asks that a vote be taken at a later date.
455	Chair Minnis	Expresses his concern about random selection. Closes the public hearing on SB 79.
456	Chair Minnis	Adjourns the meeting at 3:10 p.m.

Submitted By,

Reviewed By,

Jane Bodenweiser,
Committee Assistant

Marilyn Odell,
Counsel

EXHIBIT SUMMARY

A – “Access to Justice for All Committee” submitted by Chief Justice Wallace P. Carson, Jr., 2 pp.

B – SB 69, SB 76, SB 77, AND SB 78, written testimony submitted by Sen. Avel Gordly

Dated 2/19/2001, 2 pp.

C– SB 69, Oregon Court Interpreter Certification Program reprint, submitted by Kingsley Click, 1 Pg.

D – SB 69, written testimony submitted by Nancy Miller, dated 1/19/2001, 1 Pg.

E – SB 76, written testimony submitted by Kingsley Click, dated 1/19/2001, 1 Pg.

F – SB 77, written testimony submitted by Kingsley Click, dated 1/19/2001, 1 Pg.

G – SB 78, written testimony submitted by Kingsley Click, dated 1/19/2001, 1 Pg.

H – SB 79, written testimony submitted by Bradd Swank, dated 1/19/2001, 1 Pg.