

SENATE COMMITTEE ON JUDICIARY

January 22, 2001 Hearing Room 343
1:00 P.M. Tapes 9 - 10

MEMBERS PRESENT: **Sen. John Minnis, Chair**
 Sen. Peter Courtney, Vice-Chair
 Sen. Roger Beyer
 Sen. Ginny Burdick
 Sen. Verne Duncan
 Sen. Steve Harper
 Sen. Rick Metsger

STAFF PRESENT: **Craig Prins, Counsel**
 Annola DeJong, Committee Assistant

MEASURE/ISSUES HEARD: **SB 111 Public Hearing**
 SB 133 Public Hearing
 SB 95 Public Hearing
 SB 74 Public Hearing and Work Session
 SB 75 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 9, A		
001	Chair Minnis	Calls the meeting to order at 1:09 p.m., and opens a public hearing on SB 111 and SB 133.
<u>SB 111 and SB 133 – PUBLIC HEARING</u>		
005	Chair Minnis	Notes that SB 133, of which Rep. Lowe is the proponent, has been previously heard and is conceptually similar to SB 111. States that the chair's intent is to hear public testimony and possibly form a work group to "come up with a bill that makes sense to everyone."
011	Kevin Mannix	Attorney, Salem, OR Testifies in support of SB 133 which would make it a crime for a felon to possess, or wear soft body armor. Points out that "the law enforcement community fully supports the intent" of both SB 111 and SB 133. Suggests that the focus should be on "persons who are presently prevented by law from possessing a firearm." Notes that language of both bills could be narrower in focus.
053	Sen. Burdick	Inquires if SB 111 would apply to non-felons who are restricted by a restraining order.
058	Mannix	Responds that this is a "novel concept" and hesitates to expand it that far.
075	Sen. Harper	Asks if this is an issue in Oregon.
076	Mannix	States that to the best of his knowledge it is not. Notes that SB 111 is an attempt to "engage in preventative maintenance."
088	Sen. Duncan	Wonders what the differences are between SB 111 and SB 133.

090	Mannix	Acknowledges that conceptually they are very similar, as is their basic intent, yet he has not gone over them line by line.
104	Chair Minnis	Adds that the language is the same in terms of concept, and a work group could put together a “good product.”
119	Mannix	Defers to SB 133 as being the “appropriate vehicle.”
133	Rep. Lowe	States that she is interested in collaborating on SB 133.
146	Chair Minnis	Requests that Rep. Lowe coordinate the work group.
150	Vice Chair Courtney	Raises the matter of first time offenders having a “free ride” vs. someone who has committed a felony in the past. Notes this issue is not addressed by either bill, and hopes that the work group will consider it.
162	Chair Minnis	Agrees with Sen. Courtney.
165	Sen. Metsger	Suggests that a Class C felony is perhaps too broad for aggressive crimes.
181	Rep. Lowe	Submits testimony and testifies about the California Statute that prohibits convicted felons from owning or possessing body armor (EXHIBIT A).
208	Mannix	Points out that with Oregon’s sentencing guidelines persons can actually spend more time in jail if they commit a Class A misdemeanor vs. a Class C felony.
224	Rep. Lowe	Asks for clear direction from the committee on where to go with SB 133.
235	Chair Minnis	Proposes including “certain crimes...i.e. murder, or certain kinds of assaults” where it would make sense to prohibit the possession of “defensive devices.” Suggests a “broader category”- if it could be proven that a person wore body armor “with the intent to overcome police action, or to keep from being apprehended”
253	Mannix	Suggests an “exemption clause.”
269	Chair Minnis	Closes the public hearing on SB 111 and opens a public hearing on SB 95.

SB 95 – PUBLIC HEARING

283	Mannix	Presents testimony in support of SB 95 which would expand the scope of home visits by probation officers. Describes what this bill would accomplish.
327	Chair Minnis	Asks for additional clarification on what SB 95 would achieve.
332	Mannix	Explains that SB 95 would give probation officers the legal ability to “check out the back room” for example. States that “it is all an issue of statutory authority” and not a 4 th Amendment matter.
355	Chair Minnis	States his understanding of what a probation officer currently has the authority to do.
369	Mannix	Responds with further information about what is allowed in a home visit under the current law. States that “probation officers want the wide latitude to act on their hunches.”
420	Sen. Burdick	Addresses the example of a meth lab located in the bedroom of another occupant, and questions authorizing a search of a room that is not “under the control” of the person on probation.
429	Mannix	Answers that “control of the probationer” means access to the room. States that if this wording is problematic, broader language could be used, however “we don’t want to be over broad” about the visits.

TAPE 10, A

015	Sen. Burdick	Asks, “Where do you draw the line?” Inquires about whether a
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		roommate of a probationer would have their room “subject to inspection.”
022	Counsel Prins	Offers a summary of the Guzman case. Questions whether the constitution makes the distinction between a “walk through of a private room” and a “search” (EXHIBIT B).
050	Chair Minnis	Explains his understanding of what a probation officer was able to do during a home visit prior to, and then after, the court’s ruling.
057	Counsel Prins	Agrees with Chair Minnis’ interpretation.
059	Mannix	Concurs with Chair Minnis and Counsel. Points out that under probationary rules there is an agreement to consent to a search on “reasonable grounds.” States that while walking around the premises the officer “has a reason to believe” that there is something hidden in “that drawer, or under the bed” then they may “rummage through.”
069	Counsel Prins	Adds further explanation about the probation agreement.
076	Chair Minnis	Clarifies his understanding of what the probation officer did in the Guzman case as it related to the probation agreement.
080	Counsel Prins	Agrees with Chair Minnis. Notes that items seized in the Guzman case were suppressed since there was no consent given.
083	Mannix	Adds that SB 95 will allow a probation officer to go into the probationer’s room and look around without consent.
090	Chair Minnis	Reviews what SB 95 would do that the current law does not allow.
097	Mannix	Agrees with explanation. Points out the change in language: “permit the walk through” vs. “consent to the search.” Notes that refusal represents “a violation of the terms of the probation.”
104	Ingrid Swenson	Oregon Criminal Defense Lawyers Association (OCDLA) Testifies in opposition to SB 95. Notes that the constitution prohibits police officers and probation officers from embarking on a search without a warrant. Explains that SB 95 would violate the constitution.
128	Chair Minnis	Clarifies that a search warrant with probable cause is not a problem. To search without a warrant, “without consent,” is a “constitutional problem.”
143	Swenson	Agrees with clarification.
152	Sen. Duncan	Asks what the guideline is for searching a person’s “area” while in prison.
157	Chair Minnis	Responds there is a difference between being inside a correctional facility and within one’s private residence.
163	Counsel Prins	Points out that a probationary agreement is signed when the person is out of prison. Explains conditions of a probation agreement, and what a person is consenting to. Questions if a walk-through of a “private room” is in fact a search under the constitution.
197	Swenson	Agrees with counsel. Mentions that legislature said that a probation officer can “go to that level of intrusion” i.e. looking in closets, private rooms if there is “reasonable suspicion.” Stresses that without reasonable suspicion the “intrusion” is limited to a “walk-through of common areas.”
214	Sen. Harper	Inquires about Guzman case, verifying what the probation officer should have done under the existing statute.
218	Counsel Prins	Verifies Sen. Harper’s understanding.
223	Swenson	Adds the probation officer needed to have “reasonable suspicion

		and he did not.”
226	Counsel Prins	Responds that a probation officer does not need to say there is reasonable suspicion. Acknowledges that in court the State will need to prove “that there was reasonable ground to ask for consent.”
232	Sen. Harper	Asks why energy is not being spent on training probation officers.
234	Counsel Prins	Responds that whenever there is a case before the court that “changes” or “interprets” the law, training will take place for police officers and probation officers so they are acting in accordance with the new interpretation of law.
253	Vice Chair Courtney	Asks if SB 95 will give police officers “greater authority” to search than currently exists.
262	Swenson	Responds that SB 95 does not give power to probation officers. A person on probation, in conjunction with the conditions of probation, must allow a probation officer to search. No such requirement applies to a police officer.
276	Sen. Metsger	Asks why OCDLA objects to SB 95.
289	Swenson	Replies the legislature’s previous interpretation is appropriate since it “respects the distinction between private area and public areas.” Reiterates the probation officers need to have reasonable suspicion.
314	Sen. Metsger	Asks to verify that his understanding of what might be considered reasonable suspicion, and how it would apply under the current statute, is correct.
331	Swenson	Concurs that the Senator is correct.
343	Mannix	Mentions a case, and quotes from a letter, in which the apparent lack of a “statutory definition” of what a home visit can include proved problematic for the Malheur County District Attorney. Explains that SB 95 will allow for a “plain view walk-through” of a probationer’s residence, with an exception for those rooms not under the probationer’s control (EXHIBIT C).
380	Chair Minnis	Inquires if the court has addressed the matter of a possible statutory definition defect vs. a constitutional issue.
385	Mannix	Replies that the court has.
389	Chair Minnis	Suggests that the committee could change the statute and include “plain view areas” in the definition of “walk-through.”
410	Vice Chair Courtney	Wonders if, while a person is incarcerated, are there private areas?
421	Swenson	Suggests that a person’s property, i.e. a wallet, is considered private.
430	Vice Chair Courtney	Reviews that there is a private area for persons out on probation, but not while incarcerated.
451	Swenson	Points out that in Oregon a person on probation is considered a “free person, possessed of all civil rights except for those which are specifically taken away.”
TAPE 9, B		
017	Mannix	Gives an explanation of what would be allowed under SB 95.
035	Vice Chair Courtney	Comments that he is unclear about the rights of individuals on probation in Oregon.
043	Mannix	Stresses that SB 95 is “specific and narrow” addressing a particular concern.
055	Chair Minnis	States that the committee will defer “any movement” on SB 95 until more in-depth study is done.

061	Chair Minnis	Closes the public hearing on SB 95 and opens a public hearing on SB 74.
<u>SB 74 – PUBLIC HEARING</u>		
063	Bradd Swank	State Court Administrator’s Office Submits testimony and testifies in support of SB 74 relating to the charge of failure to appear in court on a traffic violation (EXHIBIT D) .
152	Chair Minnis	Asks to clarify his understanding of the court process in a failure to appear situation.
155	Swank	Explains the court process and the Department of Motor Vehicles involvement.
176	Chair Minnis	Wonders if a person, who fails to appear, and receives a suspension notice from DMV, could still call and schedule a trial.
181	Swank	Responds that the person could. SB 74 would not preclude a trial.
183	Sen. Burdick	Wonders if failure to appear is on the rise in Oregon.
184	Swank	Comments that there are no actual statistics available yet.
200	Sen. Harper	Asks if the directive “the court clerk has to appear in person” is an interpretation.
203	Swank	Agrees with Sen. Harper. Responds further that the court would rather have people “come in and pay the fine.”
225	Chair Minnis	Inquires if the courts take VISA or MasterCard.
226	Swank	Answers that the courts are working on it.
245	Chair Minnis	Questions how the court actually obtains the money.
247	Swank	Relates that the OCAO is “working on an accounts receivable management system” that will include a collection element. States that each court has their own “collections process and policy” in place. Explains that legislation was passed in 1999 that allows judgements in traffic cases to be handled the same “for purposes of collections” in municipal and justice courts as they are in civil courts.
268	Chair Minnis	Asks if there is a greater fine for failure to appear.
260	Swank	Responds that failure to appear is a misdemeanor. Concedes that he does not know how high the fine can go if a person is charged and then convicted.
274	Chair Minnis	Suggests that there should be an “option to just levy the fine.”
282	Swank	Explains that when a traffic citation is issued a “base fine amount” is noted on the front, and this amount is about 40% of what the court could impose. States that in a default situation, the court may “order up to the full amount that they can charge under statute.”
308	Chair Minnis	Closes the public hearing on SB 74 and opens a work session.
<u>SB 74 – WORK SESSION</u>		
311	Sen. Duncan	MOTION: Moves SB 74 to the floor with a DO PASS recommendation.
318	Sen. Beyer	Questions Section 3 on page 2, wondering what the emergency is for. Points out that he has not “seen a bill drafted yet this session that isn’t an emergency.”
329	Swank	Explains that a request was made to see if SB 74 could “get done quickly.”
346		VOTE: 6-0-1
		EXCUSED: 1 - Sen. Courtney
347	Chair Minnis	Hearing no objection, declares the motion CARRIED.

SEN. DUNCAN will lead discussion on the floor.

348 Chair Minnis Closes the work session on SB 74 and opens a public hearing on SB 75.

SB 75 – PUBLIC HEARING

359 Nancy Miller

Director of the Juvenile Court Programs Division, State Court Administrator’s Office.

Submits testimony and testifies in support of SB 75 relating to eliminating the requirement that local citizen review boards conduct reviews of youth offender cases at key transition points **(EXHIBIT E)**. Discusses two issues that she would like the committee to consider: first, repealing the sunset, and second, repealing one section of the statute that mandates reviews at key transition points. Submits copies of conceptual amendments **(EXHIBIT F)**.

TAPE 10, B

008 Chair Minnis

Asks about the proposed amendments.

009 Miller

Explains what the amendments are and what they would accomplish.

042 Sen. Burdick

Wonders what the difference is between having “key transition points” vs. judging on a “case by case basis.”

048 **Victor Tescornia**

Volunteer, Citizen Review Board (CRB)

States the need for flexibility. Points out the some cases may require a review every six months, whereas some cases may require a review more often.

060 Miller

Gives an example of a youth offender in St. Mary’s Home for Boys – the case comes up for review six months before the youth is scheduled to be released. If the review shows that the youth is doing well, the parents are involved and there is an after care plan, another review at the time of release would be redundant.

070 Sen. Burdick

Expresses concern about the potential risk created by not having the “automatic prompts.”

074 Miller

Explains the step called “briefing” that occurs prior to the formal review, in which the Oregon Youth Authority supervisor informs the CRB about “the status of any youth that’s changed.” Adds that the CRB can decide if the case should be set for review.

087 Sen. Harper

Inquires about the sunset date.

090 Miller

Replies that the CRB and Oregon Youth Authority asked to return and tell the legislature if the process was working or not.

096 Counsel Prins

Clarifies that this was a temporary provision, and by repealing the sunset it will become a permanent statute.

100 Chair Minnis

Closes the public hearing on SB 75 and opens a work session.

SB – 75 WORK SESSION

103 **Vice Chair Courtney**

MOTION: Moves to ADOPT conceptual amendments to SB 75, dated 1/18/01.

VOTE: 7-0

112 **Chair Minnis**

Hearing no objection, declares the motion CARRIED

118 **Chair Minnis**

Closes the work session on SB 75.

120 **Sen. Duncan**

MOTION: Moves to SUSPEND the rules for the purpose of allowing Sen. Courtney to vote on SB 74.

123 **Chair Minnis**

Hearing no objections, asks Sen. Courtney how he votes.

124 **Sen. Courtney**

Votes “Aye.”

Submitted By,

Reviewed By,

Annola DeJong
Administrative Support

Craig Prins
Counsel

EXHIBIT SUMMARY

- A – SB 111, James Guelff Body Armor Act of 1998, submitted by Rep. Lowe, dated 1/27/98, 2 pp.**
- B – SB 95, State of Oregon v. Henry Guzman, submitted by staff, 9 pp.**
- C – SB 95, letter submitted by Kevin Mannix, dated 1/14/00, 2 pp.**
- D – SB 74, written testimony submitted by Bradd Swank, State Court Administrator’s Office, dated 1/22/01, 1 p.**
- E – SB 75, written testimony submitted by Nancy Miller, State Court Administrator’s Office, dated 1/22/01, 2 pp.**
- F – SB 75, conceptual amendments submitted by Nancy Miller, State Court Administrator’s Office, dated 1/18/01, 1 p.**
- G – SB 74, written testimony submitted by Steven Briggs, Oregon District Attorney’s Association, 4 pp.**