

SENATE COMMITTEE ON JUDICIARY

February 2, 2001 Hearing Room 343

1:00 p.m. Tapes 20 - 22

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 168 Public Hearing**
 SB 169 Public Hearing
 SB 341 Public Hearing

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 |
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| TAPE 20, A | | |
| 005 | Chair Minnis | Calls the meeting to order at 1:10 p.m. and opens a public hearing on SB 168. |
| <u>SB 168 – PUBLIC HEARING</u> | | |
| 012 | Dale Penn | Oregon District Attorney's Association Testifies in support of SB 168 relating to allowing the release of inmates from correctional facilities prior to trial under forced release agreement due to county jail population emergency. |
| 112 | Sen. Burdick | Inquires about the matrix system for prisoner release. |
| 120 | Penn | Says that the matrix is typically designed to consider the seriousness of the charge and the background of the offender. States SB 168 is for career criminals who are not committing violent crimes and do not appear for court. |
| 137 | Russ Spencer | Oregon Sheriff's Association Describes how formal and informal matrix is used during the booking process. |
| 146 | Vice Chair Courtney | Asks if SB 168 will apply only to individuals who are awaiting trial. |
| 151 | Penn | Agrees. Refers to lines 8 and 9 on page 1 that describe forced release. |
| 165 | Vice Chair Courtney | Wonders where bail factors into this issue. |
| 169 | Penn | Remarks that bail is a court release process, as is the recognizance release process for which there are statutory criteria. Explains SB 168 addresses those people in jail who do not qualify for recognizance release, or are unable to post bail. |

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| 197 | Vice Chair Courtney | States in jail over-population situations, these people are released with no release agreement. |
| 216 | Spencer | Asks to clarify what sorts of people are being released. |
| | | Explains the matrix system is designed to release the least dangerous prisoners possible. Indicates that under SB 168 the person being released would have to sign an agreement stating they will appear in court or be subject to the charge of failure to appear. |
| 232 | Sen. Metsger | Inquire about what would motivate a prisoner to sign a release agreement. |
| 246 | Penn | Relates the statute requires both the sheriff and prisoner sign the release agreement. Remarks that SB 168 justifies prosecution for failure to appear. |
| 262 | Sen. Burdick | Asks if inmates could sign an agreement upon entry. |
| 270 | Penn | Remarks that without knowing the next court appearance date, this would be difficult to do. |
| 288 | Spencer | States that the sheriff's view this as an issue of accountability to the community. |
| 291 | Chair Minnis | Refers to the issue of persons being held on domestic violence charges. |
| 294 | Penn | Responds that violent crimes are at the "top end" of a release matrix. |
| 307 | Chair Minnis | Clarifies if these persons could be subject to release. |
| 309 | Penn | Agrees. |
| 316 | Chair Minnis | Closes the public hearing on SB 168 and opens a public hearing on SB 169. |

SB 169 – PUBLIC HEARING

328 **John Wentworth**

Clackamas County Deputy District Attorney

Submits testimony and testifies in support of SB 169 relating to expanding the definition of property for the crime of arson in the first degree (**EXHIBIT A**). States the purpose of SB 169 is to remove the requirement that the property being burned have some value.

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| 417 | Vice Chair Courtney | Wonders if he could be prosecuted if he set fire to something of questionable value that was used to set fire to an object of value. |
| 425 | Wentworth | Replies that under the arson statute, the intent is the setting of the fire, the result is recklessly putting someone in danger. |
| 451 | Sen. Burdick | Describes a scenario where a person is burning leaves for a neighbor and the wind blows the flames on the neighbor's house. Inquires about what would protect the person from an Arson I charge. |
| 465 | Wentworth | States the circumstances of the event would aid in the determination of the person's recklessness. |

TAPE 21, A

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| 033 | Sen. Beyer | Asks about injury resulting from a Department of Forestry burn. |
| 040 | Wentworth | Cites several factors that are taken into consideration when determining the recklessness of someone's conduct. |
| 058 | Ingrid Swenson | Oregon Criminal Defense Lawyers Association Submits testimony and testifies in opposition to SB 169 (EXHIBIT B). |
| 161 | Sen. Duncan | Verifies that tossing a lighted match would be considered arson. |
| 166 | Swenson | Responds with further explanation. |
| 172 | Sen. Burdick | Inquires about having a requirement for someone who uses fire |

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| 181 | Swenson | with the intention to cause damage to something of value. |
| 187 | Chair Minnis | Answers this would be a good approach to use. Asks for help in understanding the meaning of the current statute. |
| 189 | Swenson | Discusses intentionally damaging property - people are presumably not going to intentionally light something on fire that has value. |
| 195 | Chair Minnis | Refers to Sen. Duncan's previous question; wonders how often an indictment might be issued in that situation. |
| 198 | Swenson | Mentions that prosecutors would likely disregard it, but they do not have to since the law allows prosecution under those circumstances. |
| 215 | Vice Chair Courtney | Cites the Whitley case, and wonders what other charges could have been levied. |
| 220 | Swenson | Responds that she does not know the details of that case, but there are many other crimes that would apply: criminal mischief, assault or attempted assault, and reckless endangering. |
| 245 | Counsel Prins | Refers to the Whitley case and suggests that she could have been charged with Attempted Assault I. |
| 272 | Chair Minnis | Talks about how dangerous weapons can be deadly weapons depending upon the manner and intent in which they are used. |
| 287 | Sen. Metsger | Points out line 15, item 3 on page 1- wonders if the wording was corrected to establish that property does not have value if there are certain end results. |
| 309 | Swenson | Agrees with Senator Metsger. Comments SB 169 "goes too far" and the wording should be narrower. |
| 314 | Sen. Metsger | Recommends the issue of intent be addressed. |
| 319 | Chair Minnis | Concurs with Sen. Metsger and Ms. Swenson. |
| 345 | Sen. Duncan | Acknowledges that the OCDLA has concerns with SB 169. Inquires about what suggestions they have to solve the problem. |
| 354 | Swenson | States there are many groups interested in arson crimes and they would need to be included in the discussion. |
| 380 | Wentworth | Explains the intent of SB 169. |
| 438 | Sen. Harper | Asks about the model penal code. (Sen. Harper's entire question was not caught on tape.) |
| 442 | Counsel Prins | Discusses the model penal code. |
| 477 | Chair Minnis | Suggests there are two intentional categories: a person intended to light a fire; the intended result of setting the fire would be serious injury. |
| 498 | Wentworth | Recognizes the committee's reservations about SB 169. |
| TAPE 20, B | | |
| 035 | Chair Minnis | Suggests the committee look at the "structure of mental intent." |
| 063 | Sen. Harper | Expresses concern that SB 169 is an "easy fix" and the committee is creating a bigger problem. |
| 065 | Chair Minnis | Agrees with Sen. Harper. Notes the committee may benefit by looking at the arson and reckless burning statutes. |
| 075 | Chair Minnis | Closes the public hearing on SB 169 and opens a public hearing on SB 341. |

SB 341 – PUBLIC HEARING

082 Joe McKeever

Assistant Attorney General, Oregon Department of Justice (DOJ)

Submits testimony and testifies in support of SB 341 providing that police investigative reports are not official case records for

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| | | the purpose of setting aside records of arrests or convictions (EXHIBIT C). |
| 203 | Michael Livingston | Attorney, Oregon Department of Justice (DOJ) |
| | | Testifies in support of SB 341. |
| 296 | Sen. Duncan | Confirms that people may be the subject of an investigation and not realize it and says that SB 341 will protect them. |
| 300 | Livingston | Agrees this is correct. |
| 323 | Sen. Duncan | Inquires how a person might prove they did, or did not know about an investigation. |
| 331 | Chair Minnis | Responds with an example from his experience as a detective. |
| 353 | Livingston | Describes another example. |
| 370 | Sen. Burdick | Wonders if there are other provisions that would keep employers from inquiring about investigations. |
| 377 | McKeever | Explains he is not aware of specific laws to prevent this. |
| 391 | Livingston | Compares SB 341 to the statute in the Juvenile Code that deals with expunction of juvenile court records. Points out that nothing in the amendment says information contained in these reports would be admissible in court proceedings. |
| TAPE 21, B | | |
| 007 | Warren Foote | Assistant Attorney General, Oregon Department of Justice (DOJ) |
| | | Submits testimony on behalf of the Board of Medical Examiners and testifies in support of SB 341 (EXHIBIT D). |
| 069 | Sen. Burdick | Inquires about a person who had their record expunged, yet the investigative records still exists-there would be a gap in their history, which could prompt the examining board to research why. |
| 080 | Foote | Mentions that investigative information before health licensing boards is confidential and not subject to disclosure under public record law. |
| 084 | Sen. Burdick | Asks about disclosing the information to the applicant, i.e. the person who was the subject of the investigation. |
| 089 | Foote | Points out that if the board was going to deny licensure, the applicant has the right to know why. Stresses that information contained in investigative reports is not sole basis for a decision. |
| 095 | Sen. Burdick | Offers another example in which a person could run into the “moral test” of the examining board. |
| 103 | Foote | Responds to the question, citing that there are many factors taken into consideration by the board. |
| 109 | Chair Minnis | Asks if there are any constitutional requirements on sealing, or removing records. |
| 110 | Foote | Responds, no. |
| 110 | Chair Minnis | Mentions that Oregon does not have to have a statute allowing for the sealing of records. |
| 113 | Sen. Harper | Suggests deleting that particular part of the statute. |
| 115 | Sen. Duncan | Refers to the personal history questions that might be asked, and wonders if the term ‘excessive’ is appropriate. |
| 125 | Foote | Relates this is a “gateway” to get people appropriately referred to diversion program. |
| 135 | Chair Minnis | Inquires about the difference between a ‘pardon’ and an ‘expunction’. |
| 143 | Livingston | Addresses Sen. Burdick’s previous question by noting that SB 341 addresses the recording of the event as an official event that |

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| | | is sealed and set aside. |
| 175 | Henry Kaplan | Oregon Education Association Submits testimony and testifies in opposition of SB 341 (EXHIBIT E). |
| 263 | Chair Minnis | Asks if an attorney, in an administrative procedure, has the power to subpoena persons to the hearing. |
| 268 | Kaplan | Replies in many cases an attorney cannot. |
| 270 | Chair Minnis | Restates his question about an attorney's power to subpoena. |
| 273 | Kaplan | States that until the actual hearing, an attorney does not know if police reports will be introduced. |
| 286 | Chair Minnis | Inquires if there is any form of discovery. |
| 289 | Kaplan | Answers the amount of discovery is typically limited. |
| 293 | Chair Minnis | Observes that files would include copies of police reports and names of witnesses who might be at the hearing. |
| 296 | Kaplan | Agrees. Notes that if the reports are not accurate, they should not be offered as evidence. |
| 326 | Chair Minnis | Asks if it is an error on the part of the judge to have accepted something that includes contradictory information. |
| 332 | Kaplan | Clarifies that hearsay evidence is admissible in administrative proceedings. Asserts that a licensing agency can do their work without police reports. |
| 426 | Chair Minnis | Wonders why police records are not open, and what is the compelling reason to expunge them. |
| 436 | Kaplan | States that a person who has been wrongly accused and acquitted, or convicted of a minor offense can go on with their lives and after the passage of time have employment opportunities. |
| 452 | Chair Minnis | Requests additional clarification on the difference between 'passage of time' and 'wrongly accused.' |
| 455 | Kaplan | Responds these are two situations: a person is found innocent; a person is convicted of a minor offense and, after several years, is eligible to have the records sealed. |
| 460 | Chair Minnis | Speculates about the element of relevancy-what significance the information would have on a person's professional career. |
| 485 | Kaplan | Points out there is nothing to inhibit an agency's ability to investigate and deny licenses to a person who has engaged in misconduct. Asserts this applies to situations where agencies are seeking to use police reports after the case has been dismissed. |
| TAPE 22, A | | |
| 035 | Sen. Harper | Comments there is a clear division between a conviction and an arrest as it relates to expungement. |
| 041 | Vice Chair Courtney | Inquires if Mr. Kaplan has ever challenged licensing boards on their application questions. |
| 047 | Kaplan | Relates he is unaware of any constitutional basis for "attacking" the questions he has seen. |
| 049 | Vice Chair Courtney | Refers to Mr. Kaplan's submitted testimony and if these questions have ever been challenged. |
| 057 | Kaplan | Responds there have been challenges on questions about political affiliation and religious beliefs, but not to the "common questions" used today. |
| 084 | Sen. Metsger | Refers to the Whitley case and asks if that record could be sealed under the current law. |
| 093 | McKeever | Agrees. (Mr. McKeever was standing at the back of the room |

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| 103 | Kaplan | and the microphone did not record his additional comments.) Adds additional comments to the statements made by Mr. McKeever. |
| 124 | Chair Minnis | Adjourns the meeting at 3:05 p.m. |

Submitted By,

Reviewed By,

Annola DeJong,
Committee Assistant

Craig Prins,
Counsel

EXHIBIT SUMMARY

A – SB 169, written testimony by David F. Paul and John D. Wentworth, submitted by John Wentworth, Clackamas County District Attorney, 1 p.

B – SB 169, written testimony submitted by Ingrid Swenson, Oregon Criminal Defense Lawyers Association, dated 2/5/01, 3 pp.

C – SB 341, written testimony submitted by Joe McKeever, Oregon Department of Justice, 1/31/01, 3 pp.

D – SB 341, written testimony submitted by Warren Foote, Oregon Department of Justice, 2/2/01, 2 pp.

E – SB 341, written testimony submitted by Henry Kaplan, Attorney, 2/2/01, 1 p.