

## SENATE COMMITTEE ON JUDICIARY

March 15, 2001 Hearing Room 343

1:00 p.m. Tapes 64 - 65

**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 444 Work Session**  
   **SB 220 Public Hearing**  
   **SB 774 Public Hearing and Work Session**  
   **SB 780 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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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 64, A</b>		
004	Chair Minnis	Calls the meeting to order at 1:17 p.m. and opens a work session on SB 444.
<b><u>SB 444 – WORK SESSION</u></b>		
005	Counsel Prins	Introduces SB 444 which would require the Department of Corrections and the State Board of Parole and Post-Prison Supervision to adopt rules to be followed when deciding where to place certain sex offenders upon release from custody. Talks about the -2 amendments ( <b>EXHIBIT A</b> ).
<b>019</b>	<b>Vice Chair Courtney</b>	<b>MOTION: Moves to ADOPT SB 444-2 amendments dated 2/26/01.</b>
021	Vice Chair Courtney	Inquires about the difference between predatory sex offenders and dangerous sex offenders.
023	Counsel Prins	Describes the differences as defined by statute.
037	Vice Chair Courtney	Asks if dangerous sex offenders are included under the current sex offender notification law.
048	<b>Darcey Baker</b>	<b>Clackamas County Community Corrections</b> Confirms they are.
<b>055</b>		<b>VOTE: 6-0-1</b>
<b>057</b>	<b>Chair Minnis</b>	<b>EXCUSED: 1 - Sen. Duncan</b> <b>Hearing no objection, declares the motion CARRIED.</b>
<b>058</b>	<b>Vice Chair Courtney</b>	<b>MOTION: Moves SB 444 to the floor with a DO PASS AS AMENDED recommendation.</b>

060	Sen. Beyer	Asks what “practical effect” the new terminology regarding children will have.
073	<b>Scott Taylor</b>	<b>Oregon Department of Corrections (DOC)</b> Talks about the reasons for changing the language.
083	Baker	Explains that the original language was too vague.
090	Sen. Beyer	Wonders if this new language actually loosens the definition.
093	Baker	States that she believes it will tighten the definition.
098	Chair Minnis	Discusses his understanding of the amendments.
		<b>VOTE: 6-0-1</b>
		<b>EXCUSED: 1 - Sen. Duncan</b>
<b>135</b>	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
		<b>SEN. METSGER will lead discussion on the floor.</b>
139	Chair Minnis	Closes the work session on SB 444 and opens a public hearing on SB 220.

**SB 220 – PUBLIC HEARING**

147	<b>Wes Ediger</b>	<b>Oregon Schools Activities Association (OSAA)</b> Testifies in support of SB 220 relating to changing the process for appealing a decision of the voluntary organizations that administer interscholastic activities.
162	<b>Don Carter</b>	<b>Attorney for OSAA</b> Testifies in support of SB 220.
231	Sen. Burdick	Verifies that there are no limitations to compiling the record in a contested case hearing.
236	Carter	Agrees.
240	Sen. Burdick	Inquires if the circuit court process is redundant.
244	Carter	Reports the circuit court recently rendered the same decision on a case as the state superintendent.
248	Sen. Beyer	Asks if the statute instructs the state superintendent to handle cases differently than he is currently doing.
253	Carter	Says that he disagrees.
260	Counsel Odell	Clarifies the current statute regarding contested case hearings. Explains that SB 220 is a “housekeeping measure” to clear up any confusion about what the proper process is.
291	Sen. Beyer	Asks what was the reason for changing the statute in 1987.
307	Ediger	Explains the appeals process prior to 1987. Says the legislature mandated that the OSAA formulate an appeals process “that made sense.”
326	Vice Chair Courtney	Asks about the changes made in 1993.
327	Carter	Talks about the revision of the education statutes in 1993.
403	Chair Minnis	Observes the issue before the committee is whether or not to maintain the existing statute regarding appealing OSAA decisions.
419	Counsel Odell	Remarks that a contested case is a “full evidentiary hearing.”
425	Chair Minnis	Asks if there are amendments to clarify the language.
431	Counsel Odell	Says there are no amendments yet.
444	Chair Minnis	Closes the public hearing on SB 220 and opens a public hearing on SB 774.

**SB 774 – PUBLIC HEARING**  
**TAPE 65, A**

021	Counsel Odell	Introduces SB 774 which clarifies that a personal representative of a decedent may bring civil action for abuse. Introduces the submitted testimony from Arnold Polk ( <b>EXHIBIT B</b> ).
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035	<b>Bertran Copp</b>	<b>Senior Advocate</b> Submits testimony and testifies in support of SB 774 ( <b>EXHIBIT C</b> ). Proposes an amendment to the language on page 1, line 19.
057	Sen. Duncan	Asks who would be considered to be “a person interested in the welfare” of an elderly person.
058	Copp	Describes persons such as close friend, or a social worker.
062	Chair Minnis	Requests clarification on what a “personal representative for an estate” is.
063	Copp	Explains this is a person representing the estate in court. Points out that some of the representatives appointed by the court are the people committing the abuse.
073	Sen. Metsger	Wonders if Mr. Cops’ proposed amendment actually addresses his concern.
080	Copp	Explains the intent of his proposed amendment.
094	Chair Minnis	Verifies his understanding that some of these personal representatives have defrauded the estate.
096	Copp	Agrees.
131	Counsel Odell	Offers additional explanation of what a personal representative is.
142	Chair Minnis	Closes the public hearing on SB 774 and opens a work session on SB 774.

**SB 774 WORK SESSION**

<b>148</b>	<b>Vice Chair Courtney</b>	<b>MOTION: Moves SB 774 to the floor with a DO PASS recommendation.</b>
155	Chair Minnis	Requests that committee counsel research whether there is a need for Mr. Copp’s proposed amendment.
163	Sen. Burdick	Suggests this amendment may be “broader than the scope of SB 774.”
<b>190</b>		<b>VOTE: 7-0-0</b>
<b>191</b>	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED. SEN. COURTNEY will lead discussion on the floor.</b>
196	Chair Minnis	Closes the work session on SB 774 and opens a public hearing on SB 780.

**SB 780 – PUBLIC HEARING**

208	<b>Pete Shepherd</b>	<b>Deputy Attorney General</b> Testifies in support of SB 780 which provides that a complaint of abuse of an elderly person, made by witness after commission of alleged abuse at issue, may be considered as evidence by trier of fact in trial or other hearing and is not subject to exclusion as hearsay.
247	<b>Stephen Schneider</b>	<b>Senior and Disabled Services Division, Department of Human Services</b> Submits testimony and testifies in support of SB 780 ( <b>EXHIBIT D</b> ).
285	Sen. Metsger	Requests an example of hearsay for elder abuse.
288	Schneider	Talks about financial exploitation of the elderly by their caregivers.
314	Sen. Burdick	Asks if SB 780 places the elderly in the same category as children when they are unable to participate in a prosecution case.

319	Schneider	Says that SB 780 attempts to put the elderly into the same hearsay exception language as children.
323	Sen. Burdick	Asks about any unique provisions in SB 780.
327	Schneider	Mentions alzheimer's and dementia as factors exclusive to elderly abuse victims.
340	Chair Minnis	Requests trial examples where evidence has been excluded.
345	<b>Rick Knapp</b>	<b>Washington County District Attorney's Office</b> Describes a potential scenario of elder abuse.
360	Chair Minnis	Suggests the investigating officer record the victim's statement.
362	Knapp	Points out that under OAR 803.26 the statements would not be admissible. Submits testimony and testifies in support of SB 780 <b>(EXHIBIT E)</b> .
422	Chair Minnis	Wonders if the medical exception to the hearsay rule could apply here.
425	Knapp	Explains in a typical abuse case, the victims are not seeing a doctor for medical problems. Clarifies the situations that SB 780 will address.
448	Chair Minnis	Asks about the possible need for a competency hearing if an elder abuse victim is alive and able to testify.
<b>TAPE 64, B</b>		
003	Knapp	Discusses several of the issues relating to statement admissibility and reliability. Points out that the most important part of SB 780 has been left out. Refers to page 3, line 6 – says that “or 65 years of age or older” should be inserted.
045	<b>John Turner</b>	<b>Marion County District Attorney's Office</b> Submits testimony and testifies in support of SB 780 <b>(EXHIBIT F)</b> .
070	Chair Minnis	Asks for additional clarification on where the apparent omission is on page 3, line 6.
078	Knapp	Explains how the definition of an elderly person does not go far enough.
093	Shepard	Remarks that the definition of elder abuse does not include financial abuse. Suggests the committee add a reference to the criminal mistreatment statute.
120	Turner	Continues his testimony in support of SB 780.
190	<b>Phyllis Rand</b>	<b>Governor's Commission on Senior Services</b> Submits testimony and testifies in support of SB 780 <b>(EXHIBIT G)</b> .
236	Sen. Burdick	Cites the “national studies” Ms. Rand mentioned. Asks if the abusers are non-related caregivers, or the victim's children.
240	Rand	Says she has not seen the study. ( <i>Unidentified man states that the majority of abusers are members of the victim's family.</i> )
251	Chair Minnis	Requests the list of proposed amendments.
257	Shepard	Talks about the proposed amendment to page 3, line 6. Proposes broadening the language of the criminal mistreatment statute to include the definition of elder abuse.
278	Knapp	Discusses why adding criminal mistreatment is important.
309	Shepard	Says that SB 780 cannot be used to amend the statute. Suggests adding a reference to additional statutes.
327	Chair Minnis	Remarks that additional work needs to be done on SB 780. Cites the issue of financial exploitation specifically.
349	Knapp	Agrees.

Submitted By,

Reviewed By,

Annola DeJong,  
Committee Assistant

Craig Prins,  
Counsel

**EXHIBIT SUMMARY**

**A – SB 444, -2 amendments submitted by staff, dated 2/26/01, 2 pp.**

**B – SB 774, written testimony from Arnold Polk, submitted by staff, dated 3/8/01, 1 p.**

**C – SB 774, written testimony submitted by Bertran Copp, 1 p.**

**D – SB 780, written testimony from Roger Auerbach, submitted by Stephen Schneider, Department of Human Services, dated 3/15/01, 2 pp.**

**E – SB 780, written testimony submitted by Rick Knapp, Washington County District Attorney’s Office, dated 3/15/01, 1 p.**

**F – SB 780, written testimony submitted by John Turner, Marion County District Attorney’s Office, dated 3/15/01, 1 p.**

**G – SB 780, written testimony from Phyllis Lissman, submitted by Phyllis Rand, Governor’s Commission on Senior Services, dated 3/15/01, 2 pp.**

**H – SB 780, written testimony from Mary Lou Ritter, Washington County Department of Aging and Veterans’ Services, dated 3/15/01, 1 p.**