

## SENATE COMMITTEE ON JUDICIARY

March 05, 2001 Hearing Room 343

1:00 p.m. Tapes 51 - 52

**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 437 Work Session**  
  **SB 133 Work Session**

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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 51, A</b>		
004	Chair Minnis	Calls the meeting to order at 1:00 p.m. and opens a work session on SB 437.
<b><u>SB 437 – WORK SESSION</u></b>		
<b>005</b>	<b>Vice Chair Courtney</b>	<b>MOTION: Moves to ADOPT SB 437-1 amendments dated 3/2/01.</b>
007	Counsel Prins	Introduces the –1 amendments to SB 437 which provides that there is no privilege under Oregon Evidence Code for statements that a reasonable person would understand to evidence intent to perform an act constituting a crime ( <b>EXHIBIT A</b> ).
016	<b>Bob Castagna</b>	<b>Director, Oregon Catholic Conference</b>
		Testifies in support of the –1 amendments to SB 437.
060	<b>Fr. Michael Maslowsky</b>	<b>Director, Pastoral Services for the Archdiocese of Portland</b>
		Testifies in support of the –1 amendments to SB 437.
135	Sen. Burdick	Inquires about a person who confesses to a crime they intend to commit.
140	Fr. Maslowsky	Explains that confession can only deal with past acts. Mentions that a priest might suggest to this person that the forum of confession is not the appropriate context to deal with a proposed action.
160	Sen. Burdick	Asks what a priest would do if they actually had this information.
164	Fr. Maslowsky	Explains that if the confessional seal is involved there is nothing a priest can do. Suggests that a priest might “condition the absolution” on the person’s willingness to seek counseling, or to turn himself in to authorities. States that a priest cannot take the information to a third party.

175	Sen. Burdick	Points out that this does not sound consistent.
179	Fr. Maslowsky	Gives an explanation of the confessional seal.
<b>211</b>	<b>Chair Minnis</b>	<b>Acknowledges the MOTION by Sen. Courtney to ADOPT SB 437-1 amendments dated 3/2/01.</b>
		<b>VOTE: 7-0-0</b>
<b>212</b>	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
<b>215</b>	<b>Vice Chair Courtney</b>	<b>MOTION: Moves SB 437 to the floor with a DO PASS AS AMENDED recommendation.</b>
224	Chair Minnis	Allows Ingrid Swenson to testify on SB 437.
227	<b>Ingrid Swenson</b>	<b>Oregon Criminal Defense Lawyers Association (OCDLA)</b> Testifies in opposition to SB 437.
272	Chair Minnis	Recesses the work session on SB 437 at 1:30 p.m.
284	Chair Minnis	Resumes the work session on SB 437 at 1:55 p.m.
308	Swenson	Continues her testimony in opposition to SB 437.
429	Chair Minnis	Discusses his understanding of SB 437.
450	Swenson	Suggests that SB 437 could undermine the relationship between a lawyer and client.
<b>TAPE 52, A</b>		
020	Chair Minnis	Wonders what would compel a therapist to caution a client that statements they make might be admissible in court.
026	Swenson	Explains that she has seen written information provided by psychotherapists to their clients that describe the limits of confidentiality.
041	Vice Chair Courtney	Inquires about a lawyer's vulnerability if they did not report instances of child abuse.
053	Swenson	Reports a lawyer would report instances of actual child abuse. Remarks that SB 437 deals with a person's intent to commit future crimes.
062	Vice Chair Courtney	Inquires if a lawyer should actually tell their client that "as of this moment" they will have to inform authorities.
074	Swenson	Replies that she has done that – advised a client that they have told her something that is not privileged. Notes that currently she does not have to report information that is privileged. Mentions that if the information comes from an unprivileged source, then she must report it.
089	Vice Chair Courtney	Inquires if Ms. Swenson has gotten together with the District Attorney's Association about SB 437.
092	Swenson	Responds they were not able to connect.
101	Sen. Duncan	Wonders if it is appropriate to advise clients that information relating to future crimes may not be privileged.
109	Swenson	Agrees. Explains that attorney's want their clients to feel comfortable and talk openly. Mentions that an attorney might advise their client that there are limits to confidentiality.
123	Sen. Duncan	Inquires about how other professions might handle this matter.
134	Swenson	Notes that the various therapists she deals with go over a form with the client prior to treatment-outlining the exceptions, understandings and limitations to confidentiality.
142	Sen. Burdick	Verifies that SB 437 has nothing to do with reporting.
146	Swenson	Agrees. Remarks that SB 437 does not create any new obligations to report, but would allow reporting where it is not currently allowed.
157	Sen. Burdick	Asks if SB 437 would allow for the reporting of crimes other

		than crimes involving harm to a person.
163	Swenson	Responds yes and no.
167	Sen. Burdick	Wonders if attorneys are actually called to the stand.
172	Swenson	Replies that it does happen.
179	Sen. Burdick	Inquires if SB 437 would apply to juvenile proceedings.
183	Swenson	Agrees. Explains how SB 437 would change the standard on whose belief is required.
226	Chair Minnis	Asks Counsel Prins to talk about any constitutional conflicts that SB 437 might raise.
229	Counsel Prins	States that the only constitutional issue he found was the relationship between priest/penitent. Suggests it poses a potential 1 <sup>st</sup> Amendment violation.
240	Chair Minnis	Says that the committee must determine whether they believe a person with privilege, should make someone's statements about their intent to commit a crime available to a prosecutor, and if these remarks should be admissible in court.
270	Sen. Burdick	Wonders if under SB 437, a person's counselor could be subpoenaed for a deposition.
276	Counsel Prins	Refers to the proponents of SB 437 for an explanation.
284	<b>Karin Immergut</b>	<b>Multnomah County District Attorney</b> Testifies in support of SB 437.
319	Sen. Burdick	Repeats her prior question about the effect of SB 437-would it allow for the reporting of crimes other than crimes involving harm to a person.
325	Immergut	Replies that SB 437 applies to essentially any crime.
332	Sen. Burdick	Confirms that SB 437 would put other professions into the same category as attorney/client.
335	Immergut	States that courts have not unanimously decided if statements about the intent to commit a future crime are unprivileged.
349	Vice Chair Courtney	Describes a hypothetical situation where the intent was revealed to an attorney years prior to the crime. Asks what would prevent the prosecution from calling him to testify.
377	Immergut	States that attorneys are bound by ethical and discovery rules. Remarks that this scenario is one where the prosecution should be allowed to elicit the information.
391	Chair Minnis	Asks whether the judge would determine the relevancy of that statement in relation to the crime.
397	Immergut	Agrees.
408	Sen. Metsger	Verifies his understanding that a prosecutor must have a reason to believe a person with privilege has some knowledge before questioning them.
424	Immergut	Describes the investigative process.
435	Sen. Metsger	Suggests a scenario where someone is committing a crime by taking drugs, but is also seeing a drug counselor. Inquires if it would be reasonable to talk to the counselor about statements the person might have made regarding their drug use.
470	Immergut	Discusses how SB 437 would allow for the admissibility of statements about the intent to commit a future crime. Mentions that in a "drug context" it would be covered since the types of crimes are not limited.
<b>TAPE 51, B</b>		
035	Sen. Metsger	Confirms that conversations with a drug counselor could be vulnerable.

042	Immergut	Does not agree.
046	Chair Minnis	Explains the circumstances that compelled the proponents of SB 437 and talks about the possibility for extreme application.
053	Sen. Metsger	Says he is trying to understand why SB 437 was not just limited to crimes against people.
057	Immergut	Points out that this issue was not actually discussed.
064	Sen. Metsger	Expresses concern about a person seeking help for personal issues.
076	Chair Minnis	Summarizes the issue is the admissibility of these statements- may a judge admit them as evidence.
084	Immergut	Agrees with Ms. Swenson’s previous statement that future crimes are already admissible. Remarks that in their experience, they found the law was not clear and the judge had a “very difficult time” making the decision about the statements admissibility.
103	Sen. Burdick	Refers to the situation in Multnomah County. Remarks the issue was what information can be used to convict a person.
112	Immergut	Disagrees with Sen. Burdick. Explains that the “murder for hire” was the real intent of the defendant.
125	Chair Minnis	Asks if there is any opposition to sending SB 437 to the floor.
130	Sen. Burdick	Inquires if any psychotherapists have testified on SB 437.
131	Chair Minnis	Responds, no.
136	Sen. Metsger	States that he would prefer to wait, yet he will vote to support it. Expresses concern that SB 437 might have secondary consequences. Reserves the right to change his vote on the floor.
148	Sen. Duncan	Agrees with Sen. Metsger’s position, and reserves the right to change his vote on the floor.
157	<b>Sen. Minnis</b>	<b>MOTION: Moves SB 437 to the floor with a DO PASS recommendation.</b> <b>VOTE: 6-1-0</b> <b>AYE: 6 - Sen. Metsger, Sen. Beyer, Sen. Courtney, Sen. Minnis, Sen. Duncan, Sen. Harper</b> <b>NAY: 1 - Sen. Burdick</b>
176	<b>Chair Minnis</b>	<b>The motion Carries.</b> <b>SEN. MINNIS will lead discussion on the floor.</b>
185	Chair Minnis	Closes the work session on SB 437 and opens a work session on SB 133.
<b><u>SB 133 – WORK SESSION</u></b>		
187	Counsel Prins	Talks about SB 133, which creates a crime of a felon in possession of soft body armor. Introduces the –4 amendments <b>(EXHIBIT B)</b> .
200	<b>Vice Chair Courtney</b>	<b>MOTION: Moves to adopt SB 133-4 amendments dated 2/27/01.</b>
205	Counsel Prins	Explains the –4 amendments.
264	Sen. Duncan	Confirms the –4 amendments combine SB 111 and SB 133.
267	Counsel Prins	Agrees.
280	<b>Rep. Kathy Lowe</b>	<b>House District 26</b> Testifies in support of the –4 Amendments.
306		<b>VOTE: 7-0-0</b>
307	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
309	<b>Vice Chair Courtney</b>	<b>MOTION: Moves SB 133 to the floor with a DO PASS AS AMENDED recommendation.</b> <b>VOTE: 6-0-1</b>

315                      **Chair Minnis**                      **EXCUSED: 1 - Sen. R. Beyer**  
**Hearing no objection, declares the motion CARRIED.**

333                      Chair Minnis                      Closes the work session on SB 133, and adjourns the meeting at  
3:00 p.m.

Submitted By,                      Reviewed By,

Annola DeJong,  
Committee Assistant

Craig Prins,  
Counsel

**EXHIBIT SUMMARY**

**A – SB 437, -1 amendment submitted by staff, dated 3/2/01, 1 p.**

**B – SB 133, -4 amendment submitted by staff, dated 2/27/01, 2 pp.**

**C – SB 437, written testimony submitted by Jeffrey A. Johnson, Oregon State Bar, dated 3/1/01, 2 pp.**

**D – SB 437, written testimony submitted by Bruce Fitzwater, Christian Science Practitioner, dated 3/5/01, 2 pp.**