

SENATE COMMITTEE ON JUDICIARY

April 23, 2001 Hearing Room 343

1:00 p.m. Tape 104 - 105

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**
 Bill Taylor, Counsel
 Annola DeJong, Committee Assistant

MEASURES HEARD: **HB 2092A Public Hearing**
 HB 2393A Public Hearing and Work Session
 SB 140 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
TAPE 104, A		
004	Chair Minnis	Calls the meeting to order at 1:18 p.m. Opens a public hearing on HB 2092A.
<u>HB 2092A PUBLIC HEARING</u>		
012	Rep. Betsy Close	House District 36 Submits testimony and testifies in support of HB 2092A (EXHIBIT A). States the measure expands the types of proceedings in which the murder of a witness may be classified as aggravated murder.
027	Janyce Iturra	Citizen, Eugene, OR Submits testimony and testifies in support of HB 2092A (EXHIBIT B). Provides an account of the murder of her son, who was the sole witness in a juvenile court case. Asserts that those who murdered and conspired to murder her son should be treated the same as those who commit similar acts against witnesses in adult court.
080	David Amesbury	Attorney, Salem, OR Testifies in support of HB 2092A. Comments regarding the case outlined by Ms. Iturra. States that HB 2092A is designed to close the loophole that was exposed by that case. Asserts that there is no appreciable difference between adult and juvenile proceedings to justify treating those who murder witnesses differently.
148	Clarence Pugh	Oregonians for Alternatives to the Death Penalty Submits testimony and informational materials and testifies in

215	Sen. Duncan	opposition to HB 2092A (EXHIBIT C). Contrasts the cost of maintaining versus abolishing the death penalty. States he opposes the death penalty but asserts that the case outlined by Ms. Iturra clearly demonstrates the need to classify the murder of a juvenile court witness as being identical to that of a witness to a criminal court case. Solicits suggestions as to how to address both problems.
238	Pugh	Responds that the legislature should draft a bill to outlaw or replace the death penalty in Oregon prior to taking action on HB 2092A.
260	Sen. Duncan	Asks Mr. Pugh whether he believes there is an appreciable difference between killing a witness in a juvenile proceeding and killing a witness in an adult criminal proceeding.
270	Pugh	Answers that he does not believe there is a difference, unless it is a juvenile that is accused of killing the witness in question.
282	Chair Minnis	Verifies he understands Mr. Pugh's position regarding the death penalty.
293	Robert Castagna	Oregon Catholic Conference Testifies in opposition to HB 2092A. Expresses condolences to Ms. Iturra. States that the Catholic Church has issued a global call for the abolition of the death penalty. Argues that HB 2092A is in effect an expansion of the death penalty.
350	Castagna	Mentions that the court determined that the state should not be allowed to assume there is no difference between juvenile and criminal proceedings. Suggests that a witness protection program would be preferable to executing offenders after the fact.
405	Castagna	Asserts that carrying out the death penalty effectively models state-sanctioned killing.
TAPE 105, A		
024	Chair Minnis	Inquires as to the legal justification for the death of an individual in cases of police action or of war.
030	Castagna	Responds that in cases of police action the legal defense is typically the defense of the common good, while in cases of war the taking of human life is outlined by ethics of just war principles. Asserts that society and philosophy has evolved such that there is no longer sufficient justification for the application of the death penalty to protect society.
049	Chair Minnis	Requests an explanation as to the theological difference between "killing" and "murder."
050	Castagna	Distinguishes between justifiable instances of killing and criminal murder.
057	Chair Minnis	Counters that killing and murder are treated differently theologically.
063	Castagna	Responds that both the law and morality differentiate between killing and murder by examining both the particulars of the case and the intent of the actor. States that the Catholic Church Catechism has an extensive discourse on killing and murder.
090	Chair Minnis	Opines that the difference between killing and murder is that the latter applies to the killing of an innocent person. Disagrees with the assertion that HB 2092A is a "death penalty" bill.
099	Sen. Burdick	Asks whether Mr. Castagna would oppose HB 2092A were it

105	Castagna	amended so that the death penalty is not an option. Replies that he would need to take the matter under advisement and consult church officials, considering that juvenile proceedings have historically been considered separate from criminal proceedings.
117	Sen. Duncan	Notes that one of the accused in the case described by Ms. Iturra was an adult and asks why her case would not be considered under the adult provisions.
124	Castagna	Recalls that the accused in that case, Mary Thompson, was accused of arranging the murder of a witness <i>in a juvenile proceeding</i> , which is why the aggravated murder statute did not apply.
130	Chair Minnis	Refers to the particulars of the case, in which the court indicated that because the text of the statute referred only to “criminal proceedings” it did not also apply to juvenile proceedings.
137	Castagna	Comments that the courts have traditionally distinguished between criminal and juvenile proceedings.
140	Chair Minnis	Acknowledges that the two are distinguished with regard to juveniles within the system but disagrees that it should also apply to an cases where the perpetrator is an adult.
142	Castagna	Draws a distinction between the terms “killing,” “homicide,” and “murder.”
150	Sen. Beyer	Asks whether the defendant in the case would have been subject to aggravated murder charges had the victim been under the age of 14.
161	Counsel Prins	Replies affirmatively.
168	Kathie Osborn	Juvenile Rights Project Testifies to a position of neutrality regarding HB 2092A. Disagrees that the Thompson case demonstrates a difference between criminal and juvenile cases with regard to the murder of witnesses. Asserts that if the same case were to occur today the current aggravated murder statute would apply.
215	Osborn	Explains that the courts consider juvenile court proceedings to be more closely associated with criminal proceedings than with civil proceedings. Concludes that the loophole referred to by the bill’s proponents no longer exists.
275	Sen. Harper	Inquires as to the difference in penalty between the charges of murder and aggravated murder.
279	Counsel Prins	Replies that the death penalty and a life sentence without possibility of parole can be applied only to those convicted of aggravated murder.
286	Osborn	Indicates that since the passage of Ballot Measure 11 the sentence for murder has been 20 years to life with possibility of parole.
302	Chair Minnis	Adds that in the Thompson case the defendant was sentenced to “true” life in prison.
310	Sen. Beyer	Asks whether a sentence of aggravated murder could have been imposed had the prosecution had accused the defendant of paying to have the victim murdered, as opposed to arranging the murder of a witness to a juvenile proceeding.
320	Counsel Prins	Confirms that paying to have a person murdered is punishable as aggravated murder but says it is unclear as to whether any money changed hands in the arrangement.

339	Chair Minnis	Clarifies that the question is whether the murder of any witness to any proceeding should be treated differently than the murder of a witness to a criminal proceeding.
355	Osborn	Restates that she does not believe that a loophole exists for the bill to close, but acknowledges there may be public policy reasons for passing the measure.
378	Chair Minnis	Asserts that like persons in like situations should be treated the same.
388	Sen. Metsger	Inquires whether a youth who stabs another youth has committed a criminal offense.
395	Osborn	Responds that current statute declares that if the offender is over the age of 15 it is a criminal act, otherwise it is a case of delinquency.
407	Sen. Metsger	Asks if the same holds true even if the victim is killed.
410	Osborn	Answers that if the youth is under the age of 15 a waiver can be sought to move the case to adult court.
416	Chair Minnis	Closes the public hearing on HB 2092A and opens a public hearing on HB 2393A.

HB 2393A PUBLIC HEARING

425	Chair Minnis	Notes that the bill has a subsequent referral to the Committee on Ways and Means.
433	Scott Taylor	Oregon Department of Corrections Submits testimony and testifies in support of HB 2393A (EXHIBIT D). Explains that HB 2393A updates the current interstate compact agreement for the supervision of adult offenders.

TAPE 104, B

020	Counsel Taylor	Provides additional background information regarding HB 2393A and the changes made by the House. Indicates that the subsequent referral is necessary because the bill must be inserted into the budget for the Department of Corrections.
032	Chair Minnis	Inquires as to the estimated fiscal impact of the measure.
034	S. Taylor	Estimates the fiscal impact at \$75,000.
037	Chair Minnis	Closes the public hearing and opens a work session on HB 2393A.

HB 2393A WORK SESSION

038	Vice Chair Courtney	MOTION: Moves HB 2393A to the floor with a DO PASS recommendation and BE REFERRED to the committee on Ways and Means by prior reference.
040	Sen. Metsger	Expresses opposition to the motion.
049		VOTE: 5-1-1 AYE: 5 - Burdick, Courtney, Duncan, Harper, Minnis NAY: 1 - Metsger EXCUSED: 1 - Beyer The motion Carries.
051	Chair Minnis	
053	Chair Minnis	Closes the work session on HB 2393A and opens a public hearing on SB 140.

SB 140 PUBLIC HEARING

067	Robert Castagna	Oregon Catholic Conference Testifies in support of SB 140. States the measure establishes that a mentally retarded defendant convicted of aggravated murder is not subject to the death penalty.
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100	Enid Edwards	Director, Public Policy Advocacy, Ecumenical Ministries of Oregon Submits testimony and testifies in support of SB 140 (EXHIBIT E). Asserts that the death penalty does not provide a deterrent against criminal acts, especially for offenders with an intelligence quotient (I.Q.) below 70.
150	Edwards	Mentions that the United States Supreme Court will be considering this very issue later this year.
164	Castagna	Notes that the Oregon Catholic Conference would oppose efforts to combine SB 140 and HB 2092, despite the fact that the conference supports both measures when considered separately.
177	Edwards	Indicates that Ecumenical Ministries of Oregon would also oppose efforts to combine the two bills.
181	Sen. Duncan	Remarks that he has served on the board of Ecumenical Ministries of Oregon for several years.
195	David Groom	Oregon Criminal Defense Lawyers Association (OCDLA) Submits informational materials and testifies in support of SB 140 (EXHIBIT F). Asserts that offenders with mental deficiencies should not be held to the same standard as other adults who commit serious crimes. Mentions that 35 mentally retarded individuals have been executed in the United States since the reinstatement of the death penalty, with an additional 350-400 currently on death row.
236	Sen. Duncan	Asks if Oregon has ever executed a mentally retarded person.
242	Groom	Answers that only two individuals have been executed in Oregon since 1984, adding that neither was mentally retarded. Indicates he is unsure whether any individuals on death row in Oregon could be classified as mentally retarded. Explains that the measure requires the individual to have been previously identified as mentally impaired.
266	Chair Minnis	Asks how it is determined whether the defendant was mentally impaired prior to the offense.
270	Groom	Replies that for legal purposes it would most likely have to have been identified while the defendant was in school or by a physician.
278	Sen. Beyer	Asks whether a prosecutor could use multiple avenues to prove that a defendant has sufficient mental capacity to stand trial and be subject to the death penalty.
293	Counsel Prins	States that SB 140 does not provide for the state to examine a defendant for purposes of determining mental capacity.
309	Groom	Counters that the bill does not seek to deny the state the opportunity to disprove mental retardation. States that mental retardation is not a subjective matter, but is instead an objective standard that can be brought forth at a pretrial hearing.
344	Sen. Harper	Requests the statutory definition of mental retardation.
347	Counsel Prins	Defines mental retardation, adding that for purposes of the bill it must be manifested before or during adolescence.
365	Sen. Metsger	Mentions that the United States Supreme Court has declared that a defendant may not be executed unless it can be demonstrated that they understand the crime committed and its consequences. Concludes that it is therefore possible to be mentally retarded and yet be accountable for the crime committed.

385	Groom	Responds that the 35 mentally retarded individuals who have been executed were tried in states that have different standards for determining the defendant's understanding of the crime and its consequences, which explains why the penalty has been imposed unevenly throughout the United States.
406	Counsel Prins	Asks whether jurors must now consider mental retardation as one of a defendant's mitigating circumstances.
417	Groom	Replies affirmatively, adding that the determination should be removed from the purview of a jury that may be swayed by the emotionalism of a case.
TAPE 105, B 003	Bob Joondeph	Oregon Advocacy Center Submits testimony and testifies in support of SB 140 (EXHIBIT G). Discusses the death penalty and its application to mentally retarded offenders. Asserts that passage of SB 140 will send a message that the Supreme Court should consider the issue.
060	Joondeph	Indicates that some mentally retarded individuals do understand what execution means, but may not connect the crime they committed with the punishment they are to receive. Argues that the punishment should fit not only the crime but also the perpetrator.
082	Chair Minnis	Asks Mr. Joondeph for a more concise definition of mental retardation.
094	Joondeph	Explains that parents, teachers, and doctors are able to diagnose mental retardation as young as three years of age, and extensive testing exists to further determine levels of impairment. States that the typical baseline is an I.Q. below 70, although some at or slightly below that level may be able to care for themselves to some extent.
134	Sen. Duncan	Suggests that the committee solicit testimony from the Oregon Department of Education (ODE) regarding mental retardation, considering the complexity of measuring I.Q.
162	David Fidanque	American Civil Liberties Union (ACLU) Testifies in support of SB 140. States that passage of SB 140 will make a clear delineation as to whether mentally retarded offenders should be subject to execution.
214	Marcus Thomas	Amnesty International Submits testimony and testifies in support of SB 140 (EXHIBIT H). Mentions that the State of Washington passed a similar measure in 1995, despite the fact that they also did not have any mentally retarded individuals on death row at the time.
264	Thomas	Remarks that all other western democracies have outlawed the death penalty.
309	Claudia Burton	Citizen Testifies in support of SB 140. States that many who are mentally retarded do not have the capacity to judge the future consequences of their actions.
371	Donald Turner	Attorney Testifies in support of SB 140. Assures that it is extremely unlikely that mental retardation could be faked. Suggests that the current level of competence is too low and should be replaced by the standard set by SB 140.

405 Chair Minnis Additional informational materials were submitted for the committee's consideration.
Closes the public hearing on SB 140 and adjourns the meeting at 3:05 p.m.

Submitted By, Reviewed By,

Annola DeJong, Craig Prins,
Committee Assistant Counsel

Transcribed By,

Patrick Brennan,
Committee Assistant

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EXHIBIT SUMMARY

- A – HB 2092A, written testimony submitted by Rep. Betsy Close, dated 4/23/01, 1 p.**
- B – HB 2092A, written testimony submitted by Janyce Iturra, 1 p.**
- C – HB 2092A, written testimony submitted by Clarence Pugh, 3 pp.**
- D – HB 2393A, written testimony from David Cook, submitted by Scott Taylor, Oregon Department of Corrections, dated 4/23/01, 1 p.**
- E – SB 140, testimony, Enid Edwards, 2 pp.**
- F – SB 140, informational materials, David Groom, 20 pp.**
- G – SB 140, testimony, Bob Joondeph, 2 pp.**
- H – SB 140, testimony, Marcus Thomas, 1 p.**
- I – SB 140, informational materials, Christine DeMoll, 111 pp.**

