

## SENATE COMMITTEE ON JUDICIARY

April 25, 2001 Hearing Room 343  
1:00 p.m. Tapes 108 – 110

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

**MEMBERS EXCUSED:**        **Sen. Roger Beyer**

**STAFF PRESENT:**            **Craig Prins, Counsel**  
                                  **Jane Bodenweiser, Committee Assistant**

**MEASURE/ISSUES HEARD:**        **SB 419 Work Session**  
                                  **SB 722 Public Hearing**  
                                  **SB 664 Work Session**  
                                  **SB 472 Work Session**  
                                  **SB 83 Work Session**  
                                  **SB 921 Work Session**  
                                  **SB 249 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 108, A</b>		
006	Chair Minnis	Opens the meeting at 1:15 p.m. and opens a work session on SB 419.
<b><u>SB 419 WORK SESSION</u></b>		
013	Chair Prins	Introduces SB 419 that directs court to include in protective custody order findings about best interests of child. Submits the -2 and -7 amendments <b>(EXHIBITS A &amp; B)</b> .
027	<b>Vice Chair Courtney</b>	<b>MOTION: Moves to ADOPT SB 419-2 amendments dated 3/29/01.</b> <b>VOTE: 6-0-1</b> <b>EXCUSED: 1 – Beyer</b>
029	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>
030	<b>Vice Chair Courtney</b>	<b>MOTION: Moves to ADOPT SB 419-7 amendments dated 4/17/01.</b> <b>VOTE: 6-0-1</b> <b>EXCUSED: 1 – Beyer</b>
033	Chair Minnis	<b>Hearing no objection, declares the motion CARRIED.</b>
034	Vice Chair	<b>MOTION: Moves 419 be sent to the floor with a DO PASS</b>

	<b>Courtney</b>	<b>AS AMENDED recommendation.</b>
		<b>VOTE: 6-0-1</b>
		<b>EXCUSED: 1 – Beyer</b>
<b>037</b>	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
		<b>SEN. BURDICK will lead discussion on the floor.</b>
040	Chair Minnis	Closes the work session on SB 419 and opens a public hearing on SB 722.
		<b><u>SB 722 PUBLIC HEARING</u></b>
049	<b>Tom Mann</b>	<b>Oregon Association of Licensed Investigators (OALI)</b>
		Submits testimony and testifies in support of SB 722 ( <b>EXHIBIT C</b> ) and discusses the –1 amendments ( <b>EXHIBIT D</b> ). Explains that the amendments are a result of drafting a reorganization bill for the Oregon Board of Investigators (OBI).
158	Chair Minnis	Asks what issue Sen. Beyer raised.
159	Mann	Replies that if the Governor is mandated to choose from the list of investigators provided by OALI, it may not have legal standing.
175	Mann	Continues with his major points in support of SB 722.
286	<b>Stuart Steinburg</b>	<b>Oregon Association of Licensed Investigators</b>
		Testifies in support of SB 722. Says that OALI is firmly in favor of licensing and regulating this profession. Takes issue with the letter to Sen. Harper from Michael W. Miller of Medford ( <b>EXHIBIT E</b> ).
438	Vice Chair Courtney	Asks about the background checks on investigators.
441	Mann	Replies that the FBI does the checks through NCIC.
		<b>TAPE 109, A</b>
019	<b>Patrick Higgins</b>	<b>Licensed Investigator, Clackamas County</b>
		Testifies in support of SB 722. Discusses the meeting between OBI and OALI on 4/16/01.
088	<b>David Chin</b>	<b>Private Citizen</b>
		Discusses his experience with being defrauded by Jack Bentley, an investigator with OALI. Asks what will happen to his case if current members of OBI are removed. Says this bill will remove consumer protection.
138	Vice Chair Courtney	Asks if his comments address the amendments as well.
141	Chin	Replies, yes.
158	Chair Minnis	States his assumption that any on-going work by the Board would continue under the existing law.
182	<b>Joyce Bonk</b>	<b>Private Investigator, Coos Bay, OR</b>
		Submits testimony and testifies in opposition to SB 722 ( <b>EXHIBIT F</b> ).
		Wonders how a list of recommended investigators to sit on the Board can possibly come from polling all licensed investigators.
286	Chair Minnis	Discloses how the previous bill passed at the last minute and without public notice that formed the original Board of investigators.
332	Sen. Harper	Talks about a letter he received from a constituent last fall.
377	<b>Sallie Torres</b>	<b>Licensed Investigator</b>

		Testifies in support of SB 722. Talks about the need for a governing body that is more responsive to the investigator.
<b>TAPE 108, B</b>		
059	<b>Patricia Vollbrecht</b>	<b>Secretary of OALI</b> Testifies in support of SB 722. Says she has been to every OBI meeting and what she has observed has convinced her that there needs to be a change.
074	<b>Matt Mathews</b>	<b>Deschutes County, Oregon</b> Testifies in support of SB 722. Says he left law enforcement in 1983 to become an investigator and believes in the need to be licensed, regulated and held accountable, but says the current Board is preying more on the investigators than being a regulatory board.
111	Chair Minnis	Says he needs some clarification starting on line 25, page 9 of the -1 amendments and asks what is meant by "rehabilitation".
127	<b>Cynthia Hamilton</b>	<b>President, OALI</b> Responds that rehabilitation would include education, training, perhaps a probationary period, mentoring.
141	Chair Minnis	Asks that "shall" be changed to "may" on line 26 of page 9.
156	Chair Minnis	On page 10, line 15, asks for a change from "make" to "first consider making", and on page 13, line 7 asks for clarification.
175	Sen. Metsger	Wonders about Line 31, page 19, with regard to repealing ORS 703.455 (consumer protection).
184	Chair Minnis	Says that it is the intent of the Chair to reinstate ORS 703.455 and 703.460. Asks about the composition of the Board.
194	Hamilton	Explains that the composition would include 5 investigators and two attorneys.
203	<b>Carolyn Hammett</b>	<b>Licensed Investigator, Milwaukie, OR</b> Testifies in support of SB 722. Says that although she is no longer a member of OALI, she strongly supports SB 722.
212	Chair Minnis	Closes the public hearing on SB 722 and opens a work session on SB 664.
<b><u>SB 664 WORK SESSION</u></b>		
222	Chair Minnis	Says that SB 664 which creates mandatory minimum sentence of five years for person convicted for third time of felony having fraud as material element, needs to go to Ways & Means.
227	<b>Sen. Duncan</b>	<b>MOTION: Moves to ADOPT SB 664-2 amendments dated 3/22/01 (EXHIBIT G).</b> <b>VOTE: 6-0-1</b> <b>EXCUSED: 1 - Beyer</b>
231	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
233	<b>Sen. Duncan</b>	<b>MOTION: Moves SB 664 to the floor with a DO PASS AS AMENDED recommendation and BE REFERRED to the committee on Ways and Means.</b> <b>VOTE: 6-0-1</b> <b>EXCUSED: 1 - Beyer</b>
237	<b>Chair Minnis</b>	<b>Hearing no objection, declares the motion CARRIED.</b>
238	Chair Minnis	Closes the public hearing on SB 664 and opens a work session on SB 472.

**SB 472 WORK SESSION**

- 243 Counsel Prins Introduces SB 472 that enhances penalty for crime of failure to perform duties of driver to injured persons if accident results in a death and the –2 amendments (**EXHIBIT H**).
- 278 Vice Chair **MOTION: Moves to ADOPT SB 472-2 amendments dated Courtney 4/25/01.**
- 285 Chair Minnis Asks if there is a fiscal on this bill.
- 289 Phil Lemman **Criminal Justice Commission**
- Says that it is not completed yet, but there will be a fiscal.
- VOTE: 6-0-1**
- EXCUSED: 1 - Beyer**
- 290 Chair Minnis **Hearing no objection, declares the motion CARRIED.**
- 292 Vice Chair **MOTION: Moves SB 472 to the floor with a DO PASS AS Courtney AMENDED recommendation.**
- VOTE: 6-0-1**
- EXCUSED: 1 – Beyer**
- 299 Chair Minnis **Hearing no objection, declares the motion CARRIED. SEN. MINNIS will lead discussion on the floor.**
- 308 Chair Minnis Closes the work session on SB 472 and opens a work session on SB 83.

**SB 83 WORK SESSION**

- 310 Counsel Prins Discusses SB 83 that defines school safety zone, and the –1 amendments (**EXHIBIT I**) that elevate the penalty to a class A misdemeanor.
- 321 Vice Chair **MOTION: Moves to ADOPT SB 83-1 amendments dated Courtney 4/17/01.**
- VOTE: 6-0-1**
- EXCUSED: 1 – Beyer**
- 329 Chair Minnis **Hearing no objection, declares the motion CARRIED.**
- 331 Vice Chair **MOTION: Moves SB 83 to the floor with a DO PASS AS Courtney AMENDED recommendation.**
- VOTE: 6-0-1**
- EXCUSED: 1 – Beyer**
- 334 Chair Minnis **Hearing no objection, declares the motion CARRIED. SEN. COURTNEY will lead discussion on the floor.**
- 336 Chair Minnis Closes the work session on SB 83 and opens a work session on SB 921.

**SB 921 WORK SESSION**

- 337 Chair Minnis Introduces SB 921 that creates task force to assess resource needs for investigation of computer crimes to ensure Oregon eligibility for federal grants. Says it will have a fiscal and will need to go to Ways & Means.
- 343 Vice Chair **MOTION: Moves SB 921 to the floor with a DO PASS Courtney recommendation and BE REFERRED to the committee on Ways and Means.**
- VOTE: 6-0-1**
- EXCUSED: 1 – Beyer**
- 345 Chair Minnis **Hearing no objection, declares the motion CARRIED.**

347	Chair Minnis	Closes the work session on SB 921 and opens a work session on SB 249.
<b><u>SB 249 WORK SESSION</u></b>		
349	Counsel Prins	Discusses SB 249 that makes discovery requirements in criminal cases reciprocal between defense and prosecution except when privilege would be violated, and the –2 amendments ( <b>EXHIBIT J</b> ) which address the attorney/client privilege.
401	<b>Ingrid Swenson</b>	<b>Oregon Criminal Defense Lawyers Association</b> Testifies in opposition to SB 249. Says the bill may be misdirected. Suggests that this issue needs to be discussed in another forum, and that the Chief Justice has a forum in which the judges, district attorneys, and the defense lawyers talk about these very kind of issues.
<b>TAPE 109, B</b>		
085	<b>John Horton</b>	<b>Deputy District Attorney, Multnomah County</b> Testifies in support of SB 249. Responds to comments made by Ingrid Swenson with regard to the discovery aspect of a trial, not the investigation. Illustrates an example of trial by surprise.
140	Chair Minnis	Asks what is at risk that has not been covered in these discussions.
148	Swenson	Explains that it would be “work product” which is part of the relationship between client and attorney.
159	Chair Minnis	Asks where it says that an attorney would have to disclose his theories.
162	Swenson	Gives an example to explain. Says she believes there could be a constitutional challenge.
201	Sen. Duncan	Asks for Mr. Horton’s response to the same example.
203	Horton	Replies that chapter 135 of the criminal code states that work product would not have to be provided to the other side.
269	Vice Chair Courtney	Says that this is a very complicated issue with regard to constitutional implication. Says he would like to hear from others.
309	Chair Minnis	Says he is comfortable with the language on page 3 of the –1 amendments, lines 13 and 14, which state that disclosure of the material or information would violate a constitutional right of the defendant.
316	Horton	Says that the issue of constitutional rights will be raised by the defense.
394	Sen. Duncan	Wonders if Mr. Horton would be comfortable with the bill if he were a defense attorney instead of a prosecuting attorney.
418	Horton	Replies that he would be concerned if his client was guilty.
<b>TAPE 110, A</b>		
016	Sen. Metsger	Asks if it is expected that a delay would be asked for when new evidence is submitted.
027	Horton	Says generally that is the case.
035	Sen. Metsger	Asks how information is exchanged.
045	Horton	Explains the typical scenario of information exchange.
061	Sen. Metsger	Asks what if the prosecution had to provide the information 24 hours in advance.
069	Swenson	Replies that the state controls the prosecution so they can wait until they are ready to present their case.
083	Sen. Metsger	Discusses disclosure of information as described in the –2 amendments.

095	Swenson	Replies that she would use the “constitutional rights” issue if needed, but contends that the court would wonder why the statute was needed in the first place.
122	<b>Sen. Harper</b>	<b>MOTION: Moves to ADOPT SB 249-2 amendments dated 4/19/01.</b> <b>VOTE: 5-1-1</b> <b>AYE: 5 - Sen. Harper, Sen. Metsger, Sen. Duncan, Sen. Burdick, Sen. Minnis</b> <b>NAY: 1 - Sen. Courtney</b> <b>EXCUSED: 1 - Sen. Beyer</b>
124	<b>Chair Minnis</b>	<b>The motion Carries.</b>
125	<b>Sen. Harper</b>	<b>MOTION: Moves SB 249 to the floor with a DO PASS AS AMENDED recommendation.</b>
128	Vice Chair Courtney	Says that he is concerned about this bill tinkering with the burden of proof that is designed to protect the innocent, and cannot support this bill.
145	Sen. Metsger	States that he shares Sen. Courtney’s concern, but will move the bill to the floor.
152	Sen. Duncan	States his concern and says he will vote to move the bill, but may not support it on the floor. <b>VOTE: 5-1-1</b> <b>AYE: 5 - Sen. Burdick, Sen. Duncan, Sen. Harper, Sen. Metsger, Sen. Minnis</b> <b>NAY: 1 - Sen. Courtney</b> <b>EXCUSED: 1 - Sen. Beyer</b>
170	<b>Chair Minnis</b>	<b>The motion Carries.</b> <b>SEN. MINNIS to lead discussion on the floor.</b>
172	Chair Minnis	Adjourns the meeting at 3:15 p.m.

Submitted By,

Reviewed By,

Jane Bodenweiser,  
Committee Assistant

Craig Prins,  
Counsel

**EXHIBIT SUMMARY**

- A – SB 419, -2 amendments submitted by staff, dated 3/29/01, 16 pp**
- B – SB 419, -7 amendments submitted by staff, dated 4/17/01, 1 p**
- C – SB 722, written testimony submitted by Tom Mann, dated 4/25/01, 4 pp**
- D – SB 722, -1 amendments submitted by staff, dated 4/11/01, 10 pp**
- E – SB 722, written testimony submitted by Michael Miller, dated 4/18/01, 4 pp**
- F – SB 722, written testimony submitted by Joyce Bonk, dated 4/24/01, 2 pp**
- G – SB 664, -2 amendments submitted by staff, dated 3/22/01, 3 pp**
- H – SB 472, -2 amendments submitted by staff, dated 4/25/01, 5 pp**
- I – SB 83, -1 amendments submitted by staff, dated 4/17/01, 1 p**
- J – SB 249, -2 amendments submitted by staff, dated 4/19/01, 4 pp**