

HOUSE COMMITTEE ON
RULES, ELECTIONS, AND PUBLIC AFFAIRS

July 07, 1999 Hearing Room D

3:00 p.m. Tapes 137 - 139

MEMBERS PRESENT: Rep. Mark Simmons, Chair

Rep. Richard Devlin, Vice-Chair

Rep. Bruce Starr, Vice-Chair

Rep. Roger Beyer

Rep. Randall Edwards

Rep. Dan Gardner

Rep. Kevin Mannix

STAFF PRESENT: Cletus Moore, Jr., Administrator

Judith Callens, Policy Analyst

Annetta Mullins, Administrative Support

MEASURE/ISSUES HEARD: SB 392 ñ Work Session

SB 535-A ñ Work Session

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 137, A		
004	Chair Simmons	Calls meeting to order at 3:14 p.m. and opens a work session on SB 392.
<u>SB 392 ñ WORK SESSION</u>		
007	Chair Simmons	Announces that SB 392 is scheduled for a work session but the committee will take public testimony.

010	Tom Cropper	Portland resident. Introduces sister, Janet Thompson, whose son is on death row. Submits prepared statement and news article (EXHIBIT A) and in opposition to the SB 392-5 amendments (EXHIBIT B). Opposed to speeding up the timetable for filings because people who may not be guilty may be put to death. Comments that the conviction rate is about 99 percent in Multnomah County and is suspicious while the national average is 17 percent of cases are a miscarriage of justice. Opposed SB 392 on Senate side because it seems to be directed by the Clinton so-called Anticrime Domestic Terrorism Act of 1996. Opposed to changing status quo, particularly this late in the session.
072	Janet Thompson	Portland. Comments of son's case. States she does not need to have the processes speeded up. They are buying time and starting fresh with a new attorney and new hope.
124	Cropper	Comments he was told by the judge who tried his nephew that his nephew was guilty because of overwhelming circumstantial evidence. States personal opinions on the case. Believes there should be better investigations. Defense attorneys are underpaid, the investigators are not doing their job and maybe they are not being paid enough. Comments there are more victims than the district attorney chooses to recognize.
158	Bob Rocklin	Assistant Attorney General, Appellant Division, Department of Justice. Comments he will testify in favor of SB 392 as amended. Submits prepared statement (EXHIBIT E). Will concentrate on the ñ4, -5 and ñ6 amendments.
165	Rocklin	Explains that at the meeting of the House Judiciary Criminal Law Committee meeting the Department of Justice proposed the SB 392-1, SB 392-2 and SB 392-3 amendments. They have made changes to those amendments and the amendments are replaced by the SB 392-4 (EXHIBIT C), SB 392-5 (EXHIBIT B) and SB 392-6 (EXHIBIT D) amendments. The Department of Justice is in favor of the -4, -5 and -6 amendments.
179	Judith Callens	Explains the SB 392-4 amendments (EXHIBIT C).
19	Callens	Explains the SB 392-5 amendments (EXHIBIT B).
206	Callens	Explains the SB 392-6 amendments (EXHIBIT D).
223	Callens	Informs members that the original bill did not have a fiscal or revenue impact and statements have not been received on the ñ4, -5 and ñ6 amendments.
225	Rep. Mannix	Explains that the bill was before the Judiciary Committee and the criminal defense lawyers indicated they had not had a chance to fully evaluate the impact of the ñ2 amendments and testify in response to them. Therefore the bill was sent to this committee. Adds that the Oregon Criminal Defense Lawyers (OCDLA), the governor's office and the attorney general's office have no objection to the ñ4 and ñ6 amendments, but the ñ5 amendments remain in controversy.
248	Rocklin	Explains they met with the attorney general's office, the State Court

		<p>Administrator's office, the public defender and a representative of the OCDLA and talked about the amendments. The changes in the ñ4 and ñ6 amendments address the concerns of the criminal defense bar and the attorney general supports the amendments. Agrees with Rep. Mannix that the controversy is on the ñ5 amendments.</p>
257	Rocklin	<p>Clarifies that the burden of proof on the next petition is by a preponderance of the evidence, not by clear and convincing evidence.</p>
266	Rep. Edwards	<p>Asks for an explanation of the differences between "clear and convincing" and "preponderance of" evidence.</p>
270	Rocklin	<p>States that "preponderance of evidence" is an easier burden to meet. It means 51 percent probability. "Clear and convincing" is something greater than preponderance of evidence and "beyond a reasonable doubt" is the highest burden of proof.</p>
279	Rocklin	<p>Comments that the details of the bill are covered in his written testimony (EXHIBIT E). Reviews history of bill.</p>
289	Rocklin	<p>Explains that the ñ4 and 6 amendments clarify the original bill. The ñ5 amendments cover the issues of undue delay in post conviction cases in death penalty cases. The main impetus behind the original bill was the two executions in 1996. The whole idea behind the main portion of the bill was to codify their experiences in those executions and make it simpler in the future for all parties to know what rules apply to challenges. The ñ4 and -6 amendments provide for periodic review if a death warrant is not issued.</p>
307	Rocklin	<p>Refers members to chart on page 15 of his testimony (EXHIBIT E). Comments that from experience with the process, they noted there seemed to be a huge delay in the post-conviction cases of death penalty inmates.</p>
336	Rocklin	<p>Explains appeals process. The ñ5 amendments require death penalty inmates to file their petition for post-conviction relief within 60 days after they file their appellant brief on direct and automatic review in the Oregon Supreme Court. Explains that the process then gets moving more quickly. The amendment does not allow endless chances to amend the petition and to create delays in the post-conviction court. Currently it is left up to the discretion of the trial judge. The ñ5 amendments say one must file the petition within 60 days, it can be amended within 120 days, and then can subsequently be amended if there is a showing that there was something the person could not have known about.</p>
367	Rocklin	<p>Comments they are not supporting speeding up the process. They are supporting finding some way to corral the undue delays they have experienced. Adds that it is unconscionable that a death row inmate should have spent six years in a trial court and still not have a final judgment. If the person is entitled to post-conviction relief, he/she should get it sooner than later. If the person is not entitled, then the victims and society as a whole have an interest in seeing that the punishment is carried out within a reasonable period.</p>

380	Rocklin	States that the attorney general supports the bill with the ñ4, -5 and ñ6 amendments and urges the committee to pass the bill with the amendments.
385	Rep. Devlin	In Oregon only those convicted of aggravated murder are eligible for the death penalty. Asked witnesses to walk through a case and explain what it might be like under the ñ5 deadlines.
389	Rocklin	Comments that all the cases are subject to automatic and direct review by the supreme court. Explains his duties and the steps in the appeal process.
445	Rocklin	Continues explanation of the appeal process.
TAPE 138, A		
024	Rocklin	Explains that the SB 392-5 amendments require the supreme court to issue rules to make sure all the cases are dealt with expeditiously by the trial court and the appellate courts.
031	Rep. Beyer	Asks when Oregon last passed the death penalty law.
031	Rocklin	States the current law was passed in 1984.
033	Rep. Beyer	Asks which case is furthest along in the steps outlined in the chart (EXHIBIT E, page 15).
039	Rocklin	Responds the furthest case right now is at step 4 in the post-conviction court, the trial court.
043	Rep. Beyer	Asks when the person was convicted of aggravated murder.
045	Rocklin	Responds the person was convicted in April 1991 and the court has not issued a final judgment. Reviews cases since 1984.
070	Rep. Beyer	Asks if the bill is retroactive.
072	Rocklin	Explains that the bill itself is not retroactive. With the -5 amendments, the time would be sixty days after the effective date of the bill for current people, and thereafter it would be 60 days after the appellant's brief is due.
084	Rep. Starr	Asks if a trial judge has the ability to come to a decision quicker.
090	Rocklin	Responds he believes it is within the discretion of the trial court. Thinks the trial

		courts are concerned about telling post conviction petitioners, especially in death penalty cases, they cannot have extra time. They want to make sure the person gets every chance to do something.
101	Rep. Starr	Asks if the supreme court can make rules without the bill.
105	Rocklin	Responds he is not sure what the rule-making authority is currently.
110	Rep. Starr	Asks if anything in the bill runs afoul of the Oregon or U. S. Constitutions.
111	Rocklin	Comments they have attempted to draft this so there are no infirmities but there is no doubt that litigation will follow.
131	Rep. Mannix	Asks how useful the bill would be to reduce some of the costs without adoption of the ñ5 amendments.
148	Rocklin	Responds that he thinks the amendments are best viewed as a package. The Department of Justice supports the ñ5 amendments most strongly; the -4 and -6 amendments do nothing to address delays.
154	Rep. Mannix	Asks if the bill with the -4 and -6 amendments would save money on indigent defense.
155	Rocklin	Responds he does not think so. Adds that their preference is the bill with the ñ5 amendments, but if it is a choice of the ñ5 amendments or nothing, they would like at least some portion of the bill to pass.
169	John Bradley	Multnomah County District Attorney's Office. Testifies they are here also asking for the -4, -5 and -6 amendments. The -4 amendments are important because from time to time people may try to fake mental illness. The ñ4 amendments set up a procedure throughout the state. The amendments say the state will have the right to have the defendant examined; that is critical for future hearings.
187	Bradley	The -5 amendments are important for post conviction relief. It has been his experience that truth gets lost with passage of time. In case of post conviction relief where the attorney was incompetent, you want to look at it as soon as you can.
218	John Hoover	Deputy District Attorney, Multnomah County. Introduces himself.
228	Rep. Gardner	Asks how the timelines in the ñ5 amendments compare to other states.
231	Rocklin	Responds he is not sure but remembers them being in the same neighborhood.

230	Hoover	Responds they got the message about the concerns of the defense bar on the amendments first proposed. Explains he believes there is significant agreement on the -4 and ñ6 amendments and changes were made to the ñ5 amendments to respond to concerns of the defense bar.
	Hoover.	Comments this should not be a referendum on the death penalty. The -5 amendments are an attempt to move up post conviction remedy. The purpose of post conviction relief filing is not to delay the imposition of the death penalty. The purpose is to find constitutional error.
299	Rep. Mannix	Asks if the practice of post conviction relief is to get delay.
300	Hoover	Comments it may be true.
302	Rep. Mannix	Makes analogy to delays in basketball game.
343	Hoover	Comments that essentially you are requiring that post conviction counsel be appointed and that counsel be reviewing the transcript probably about the same time as the appellate counsel.
384	Dave Groom	Director, State Public Defenderis Office. Introduces himself
385	Ingrid Swenson	Oregon Criminal Defense Lawyers Association (OCDLA). Submits packet of news clippings (EXHIBIT F) and states that the clippings represent 80 people who have been convicted and received death penalties and subsequently had their cases overturned. Testifies that the sooner the death penalty is imposed the less opportunity to find the truth.
463	Rep. Mannix	Comments he assumes from the testimony that some people in Oregon have been executed in Oregon since 1984 who were wrongfully convicted.
468	Swenson	Responds she does not know because there are cases that are not resolved. Some people are still challenging their sentences and some claim they are innocent.
474	Mannix	Asks if any person from Oregon is mentioned in the articles.
475	Swenson	Responds negatively. Adds that there have been murder cases where people, after the fact, have been found to innocent of the crime. There was controversy surrounding the cases because there was no mechanism for clearing those people.
TAPE 137, B		
033	Rep. Mannix	Asks where the balance is between the lost evidence with the post conviction proceeding as opposed to the long-term opportunity to wait for new scientific advances to get further evidence.

038	Swenson	Responds they are saying don't hasten the process just for the purpose of speeding it up. Gives examples of reasons not to speed up the process.
05	Swenson	Testifies they have had an on-going discussion with the attorney general's office regarding SB 392. The discussions started a couple of years ago and they had a pretty good consensus about how to deal with some issues that were not dealt with statutorily. They believed they were in agreement with SB 392 when it passed the Senate Judiciary Committee. The 4 and 6 amendments deal with fairly technical matters and generally they support the amendments.
		The 6 amendments do not deal with the situation when the death warrant is issued for a competent person, but the person becomes incompetent before the execution.
		While the 4 amendments are appropriate and they concur, if a motion is filed by the state, the burden would be on the defendant. Would urge the state should have the burden of proof.
090	David Groom	Director, State Public Defender's Office. Comments their office did not have objection to the original SB 392. Comments on two execution cases in Oregon.
124	Groom	Comments that the process was up in the air as to what the court was to do. SB 392 would give statutory structure.
126		Comments that one of the main problems is statutes get passed nearly every session that have not had enough time to be thought about and to be structured the way they should. Adds that the only beneficiary of this is the defense attorneys because it gives them a whole new set of appeals to raise and issues to raise on appeal.
138	Groom	States that the 5 amendments will give the defense attorneys a hey day of issues they can raise. States that problems with the bill are dual jurisdiction, money--because of timing of appointment of post conviction counsel, and difficulty in finding attorneys to do the work.
168	Groom	Cites statistics in California and comments there is a shortage of attorneys.
194	Groom	States he thinks there is an equal protection problem at the stage of eliminating one level of appeal for only capital cases but not for non-capital cases. The 5 amendments would require the elimination of the court of appeals phase after the post conviction judgment is entered. The non-capital person would have the right to an appeal, but the capital would not have the same right.
208	Rep. Mannix	Asks if they don't already do it for the direct appeal. They go straight to the supreme court.
215	Groom	Responds that is correct. Does not know if it would extend to the post conviction area or not. This will change some supreme court procedures as well, at least

		implicate how they take review of cases of this type.
233	Rep. Mannix	Comments that because of case loads the supreme court could pay more attention to the cases than the court of appeals.
236	Groom	Responds the supreme court's discretionary review is down to fewer than 50 percent of the cases. They don't have control over their caseload.
265	Groom	Comments he cannot figure out who benefits if we speed up the system of death.
267	Swenson	Comments that on the 5 amendments it is important to know that about one-half of death penalty appeals have been successful. There would be a cost if one assumes there will be post conviction in every single case. Narrowing the rights of those convicted of aggravated murder is an equal protection argument that will get made.
285	Kathleen Pugh	Salem. Submits and summarizes a prepared statement for herself (EXHIBIT G) and Donna Grund Slepack (EXHIBIT H).
350	Bob Castagna	General Counsel and Director, Oregon Catholic Conference. Asks committee not to adopt the 5 amendments. States that the Oregon Catholic Conference opposes the death penalty. Submits copies of articles delivered by Pope John Paul in St. Louis (EXHIBIT I).
363	Castagna	The Oregon Catholic Conference is opposed to amendments that would expedite the death penalty process and is neutral on the rest of the bill.
438	Rep. Mannix	Ask Castagna what he would think about an additional amendment that said the death penalty should not be carried out for at least years after the victim was killed in an aggravated murder situation.
442	Castagna	Comments that he wishes it were in the legislature's constitutional authority to declare a moratorium on the death penalty so the people could reconsider its application. Responds that the church could not be in any way in a position of placing a timeline or anything to expedite a procedure that results in the death of a human being.
TAPE 138, B		
012	Dee Dee Kouns	Crime Victims United. Testifies in support of SB 392. Believes there needs to be voices for the victims. States that technicalities are not innocence. Keeps hearing about the innocent people on death row. Gives examples of cases and speaks for the victims.
091	Rep. Mannix	Asks if a person should be entitled to a fair trial, not a perfect trial.

092	Dee Dee Kouns	Responds affirmatively.
100	Chair Simmons	Advises other witnesses that the committee has the votes to proceed with the bill today but has questions that need to be answered by Mr. Lazenby.
108	Henry Lazenby	Legal Counsel, Governor's Office. Submits prepared statement (EXHIBIT J). Governor opposes the five amendments and is opposed to shortening of the timeframes. Explains reasons for governor's position. States that the balance of the bill is valuable. States that he believes if the expedited procedures are in the bill, the governor will not approve it.
180	Rep. Edwards	Asks if the governor has an official position on the death penalty.
181	Lazenby	States that the governor opposed the death penalty when he initially ran for governor in 1994. Explains governor's decision to not grant clemency.
193	Rep. Devlin	Asks if there is any common ground between the governor and the attorney general positions.
197	Lazenby	Responds that the five amendments do not do anything to relieve the governor's general philosophical opposition to artificially shortening the timeframes.
212	Rep. Devlin	Asks if shortening the timeframe is not synonymous with the different process occurring concurrently.
221	Lazenby	Explains the process outlined in the amendments and states that it does shorten the timeframe.
240	Rep. Mannix	MOTION: Moves to ADOPT SB 392-4 and -6 amendments dated 07/07/99.
244	Rep. Mannix	Explains his motion.
		VOTE: 7-0-0 AYE: In a roll call vote, all members present vote Aye.
		Chair Simmons The motion CARRIES.
299	Rep. Mannix	MOTION: Moves SB 392 to the floor with a DO PASS AS AMENDED recommendation.

323		VOTE: 7-0-0 AYE: In a roll call vote, all members present vote Aye.
	Chair Simmons	The motion CARRIES. REP. MANNIX will lead discussion on the floor.
332	Chair Simmons	Opens a work session on SB 535-A.
<u>SB 535-A ñ WORK SESSION</u>		
336	Chair Simmons	Notes that the committee has before them the SB 535-A4 amendments (EXHIBIT K) .
338	Rep. Starr	MOTION: Moves to ADOPT SB 535-A4 amendments dated 07/07/99.
341	Rep. Starr	Explains the ñA4 amendments.
354	Rep. Gardner	Asks if the committee has received the fiscal and revenue impact statements on the ñA4 amendment.
355	Cletus Moore	Administrator. Explains that there are no statements on the ñA4 amendments because staff received the amendments shortly before the meeting.
360	Rep. Gardner	Comments that if the committee were to move the bill today, it would be in violation of committee rule 14.
395	Rep. Starr	Suggest the committee adopt the amendments and request a fiscal statement before acting on the bill.
398	Chair Simmons	Comments the committee has rules for a reason and it is important that the committee abide by them.
418	Chair Simmons	States that the bill does not have a fiscal or revenue impact until the next biennium.
		VOTE: 5-2-0

		AYE: 5 - Beyer, Devlin, Mannix, Starr, Simmons NAY: 2 - Edwards, Gardner
	Chair Simmons	The motion CARRIES.
TAPE 139, A		
008	Rep. Edwards	Submits the SB 535-A6 amendments (EXHIBIT L).
008	Rep. Edwards	MOTION: Moves to ADOPT SB 535-A6 amendments dated 07/07/99.
021	Chair Simmons	Asks Rep. Edwards if he would be willing to wait until the fiscal and revenue statements are received on the ñA4 amendments and the bill is rescheduled to adopt the ñA6 amendments.
031	Rep. Edwards	Withdraws his motion and states what he believes to be a more reasonable approach to a tax cut is to make sure every taxpayer to whom this is referred gets some benefit. Adds that he has attempted to parallel the same revenue impact tax cut as was designed in the original bill. The ñA6 amendments lower the tax rate for all taxpayers and phases it in in a manner similar to the original bill.
053	Chair Simmons	Closes the work session on SB 535-A and adjourns meeting at 5:11 p.m.

Submitted By, Reviewed By,

Annetta Mullins,

Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 392, prepared statement and news article, Tom Cropper, 2

B ñ SB 392, SB 392-5 amendments, Dept. of Justice and Rep. Mannix, 4 pp

C ñ SB 392, SB 392-4 amendments, Dept. of Justice and Rep. Mannix, 1 p

D- SB 392, SB 392-6 amendments, Dept. of Justice and Rep. Mannix, 2 pp

E ñ SB 392, prepared statement and chart, Robert B. Rocklin, 15 pp

F ñ SB 392, news clippings, Ingrid Swenson, 4 pp

G ñ SB 392, prepared statement, Kathleen Pugh, 2 pp

H ñ SB 392, prepared statement for Donna Grund Slepach, 2 pp

I ñ SB 392, articles by Pope John Paul II, Bob Castagna, 3 pp

J ñ SB 392, prepared statement, Henry Lazenby, 2 pp

K ñ SB 535, SB 535-A4 amendments, Rep. Starr, 8 pp

L ñ SB 535, SB 535-A6 amendments, Rep. Edwards, 4 pp