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**SENATE COMMITTEE ON JUDICIARY**

**February 15, 1999 Hearing Room 343**

**3:00 PM Tapes 36 - 37**

**MEMBERS PRESENT: Chair Bryant, Chair**

**Sen. Courtney, Vice-Chair**

**Sen. Brown**

**Sen. Burdick**

**Sen. Nelson**

**Sen. Qutub**

**Sen. Tarno**

**STAFF PRESENT: Bill Taylor, Counsel**

**Kathy Courtney, Administrative Support**

**MEASURE/ISSUES HEARD: HB 2293**

**HB 2305**

**HB 2420**

**SB 394**

**SB 400**

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 36, SIDE A		

015	Sen. Brown	Calls meeting to order at 3:08 PM.
<b><u>HB 2293 PUBLIC HEARING</u></b>		
020	Jessie Barton	<b>Oregon State Bar Criminal Law Section</b>  Testifies in support of HB 2293. HB 2293 will facilitate plea negotiations in cases with significant pre-trial issues. Asserts that under current law, a defendant would sacrifice substantial rights if he pleaded guilty or no contest to a crime. States that HB 2293 does not change the ramifications of pre-trial motions.
39	Sen. Brown	Closes HB 2293 Public Hearing.
<b><u>HB 2305 PUBLIC HEARING</u></b>		
044	Keith Meisenheimer	<b>Oregon District Attorneys' Association</b>  Testifies in support of HB 2305. Explains that trial courts lack authority to set aside, dismiss or modify a jury verdict of guilty and that HB 2305 would allow this. Suggests inserting the clarification "modifying the jury verdict" in subsection 7 of the bill.
102	Sen. Brown	Have you drafted your proposed amendment?
105	Meisenheimer	No, but I will do so.
117	Ingrid Swenson	<b>Oregon Criminal Defense Lawyers' Association (OCDLA)</b>  Testifies in opposition to HB 2305. Discusses why the OCDLA opposes subsection 8 and 9 of the bill. Asserts that the courts have a remedy to correct inappropriate court actions under current law. Discusses the futility of transferring a trial court case in which a jury verdict has been set aside to an appellate court. States that a court should dismiss a case with prejudice only after successive failures.
179	Meisenheimer	Asserts that it is more appropriate to provide for a direct appeal by statute rather than rely on extraordinary remedies. Discusses dismissal of a case with prejudice and the ramifications of this discretionary act. HB 2305 provides a remedy for the current arbitrary, discretionary use of case dismissals with prejudice.
236	Chair Bryant	Closes HB 2305.
<b><u>HB 2420 PUBLIC HEARING</u></b>		
246	Cecilia von Beroldingen	<b>Oregon State Police Forensic Laboratory</b>

		Testifies and submits written testimony in support of HB 2420. <b>(EXHIBIT A)</b> Discusses current law requirements and techniques to create a DNA profile of sex offenders and those convicted of murder. Explains the technique for taking a buccal sample which is less invasive and less technical than taking a blood sample. Discusses law enforcement's use of the national genetic database. Discusses the fiscal impact of HB 2420.
337	Chair Bryant	Do law enforcement officials need a search warrant before taking a buccal sample?
340	Beroldingen	I don't think so. I'm not aware of anyone refusing to submit to the test.
353	Sen. Tarno	Will the DNA data from a buccal sample be entered into a national computer system?
360	Beroldingen	Yes, we are one of the first states to contribute to it. Discusses the process of matching DNA data by computer to solve crimes.
374	Chair Bryant	Will HB 2420 apply to those already in prison?
379	Sen. Brown	This bill simply changes the method in which DNA material is collected.
386	Taylor	What is a "cold hit" with regard to DNA matching?
392	Beroldingen	Discusses procedures for creating and storing DNA profiles.
417	Taylor	Do you compare actual DNA samples or computer profiles?
419	Beroldingen	We compare the actual data from the analysis, only if a match is established.
427	<b>Dave Cook</b>	<b>Director, Department of Corrections</b>  Testifies and submits written testimony in support of HB 2420. <b>(EXHIBIT B)</b> Affirms the advantages to buccal samples including the need for less skilled labor.
450	Chair Bryant	Discusses the scope of HB 2420. Inquires about House members' reaction to the scope of the bill.
482	Cook	I have not reviewed the House members' testimony on HB 2420.
<b>TAPE 37, SIDE A</b>		

034	Ingrid Swenson	<b>Oregon Criminal Defense Lawyersí Association</b>  Testifies in opposition to HB 2420. Agrees that the buccal samples are less invasive and less frightening for individuals, but opposes expanding the group of individuals who would be subject to them. Discusses the pitfalls and inaccuracies of placing genetic profiles in a permanent national computer system. Opposes HB 2420ís application to juveniles who commit burglary. Discusses the correlation between solving sex predator crimes and genetic profile matches. Questions how that correlation would apply to Oregon.
078	Chair Bryant	Under current law, do law enforcement officials fingerprint the groups subject to HB 2420?
081	Swenson	Yes.
082	Chair Bryant	Even those who had attempted burglary or assault, correct?
083	Swenson	Yes, during the course of arrest and prosecution, offenders are fingerprinted for identity purposes.
088	Chair Bryant	Isnít DNA used for identity purposes?
089	Swenson	Yes, but fingerprint data can be expunged from certain records.
093	Chair Bryant	I doubt that. How would one expunge fingerprint from a national registry?
095	Swenson	I agree. That would be difficult, if not impossible.
097	Sen. Tarno	Disagrees with excluding burglary offenders from HB 2420. Asserts that genetic profiling is too valuable a tool not to have on a national file.
104	Swenson	Discusses the retroactive nature of HB 2420 and how it unfairly applies to those who committed crimes prior to the law.
127	Chair Bryant	Perhaps itís unfair, but itís not unconstitutional.
129	Swenson	Most likely, buccal samples would be constitutional, but their implementation would require a court order, not coercion.
147	Sen. Brown	What is the minimum age for an offender to undergo genetic profiling and placement of that data on the national registry?
159	Swenson	I think it would be any age that can be adjudicated.

162	Tom Dixon	<b>Oregon State Police Forensics Services Division</b>  Responds to committee members' questions: youth offenders in the correctional system are 12 years of age or older. I will report back to the committee with further clarification.
168	Chair Bryant	Closes HB 2420 Public Hearing.
<b><u>HB 2420 WORK SESSION</u></b>		
170	Chair Bryant	Summarizes overview of HB 2420: authorizes use of buccal samples to secure genetic material and extends those subject to genetic profiling to Burglary I and Assault I offenders.
204	Sen. Burdick	Is the DNA database used for crime investigations, only?
227	Beroldingen	Yes, it is only for law enforcement criminal investigations.
244	Taylor	No doubt, this information is used to establish paternity, as well.
259	Sen. Brown	I'm concerned about including adolescent profiling on a national database.
267	Sen. Tarno	Asserts that criminal predators should not be tolerated, regardless of their age.
273	Chair Bryant	<b>MOTION: Moves HB 2420 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 7-0-0</b>
		<b>Chair Bryant</b>  <b>Hearing no objection, declares the motion CARRIED.</b>  <b>SEN. TARNO will lead discussion on the floor.</b>
<b><u>HB 2293 WORK SESSION</u></b>		
289	Sen. Courtney	<b>MOTION: Moves HB 2293 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 7-0-0</b>

	Chair Bryant	<p>Hearing no objection, declares the motion <b>CARRIED</b>.</p> <p><b>SEN. BROWN</b> will lead discussion on the floor.</p>
295	Chair Bryant	Closes HB 2293 Work Session.
<b><u>SB 394 WORK SESSION</u></b>		
305	Taylor	Presents SB 394 ñ1 Amendments. <b>(EXHIBITS C and D)</b>
328	Sen. Courtney	<b>MOTION: Moves to ADOPT SB 394--1 amendments dated 02/12/99.</b>
		<b>VOTE: 7-0-0</b>
	Chair Bryant	Hearing no objection, declares the motion <b>CARRIED</b> .
331	Sen. Courtney	<b>MOTION: Moves SB 394 to the floor with a DO PASS AS AMENDED recommendation.</b>
		<b>VOTE: 7-0-0</b>
	Chair Bryant	<p>Hearing no objection, declares the motion <b>CARRIED</b>.</p> <p><b>SEN. BROWN</b> will lead discussion on the floor.</p>
<b><u>SB 400 WORK SESSION</u></b>		
341	Taylor	Explains SB 400 that amends the crime of telephonic harassment.
362	Sen. Burdick	Does SB 400 prohibit an offender from leaving an answering machine message?

366	Taylor	Leaving an answering machine message is prohibited under current law. SB 400 extends telephonic harassment to causing the telephone to ring and intent to communicate.
<b>TAPE 36, SIDE B</b>		
023	<b>Christine Chute</b>	<b>Oregon Attorney General's Office</b>  Testifies in support of SB 400. Compares the current statute of telephonic harassment with SB 400. Discusses causing the phone to ring and intent to communicate requirements.
047	Sen. Burdick	When a person asks a caller not to phone again, does that request apply to a certain phone number or to any number that accesses the person?
053	<b>Ingrid Swenson</b>	<b>Oregon Criminal Defense Lawyers' Association</b>  The request would apply to the person's telephone. Explains the ambiguous language of SB 400 in regard to current technology.
091	<b>Sen. Qutub</b>	<b>MOTION: Moves SB 400 to the floor with a DO PASS recommendation.</b>
		<b>VOTE: 7-0-0</b>
		<b>Chair Bryant</b>  <b>Hearing no objection, declares the motion CARRIED.</b>  <b>SEN. QUTUB will lead discussion on the floor.</b>
096	Taylor	Introduces LC amendments: <ul style="list-style-type: none"> <li>• LC amendment 2228 that authorizes employment, certification and re-certification of part-time parole and probation officers;</li> <li>• LC amendment 2229 that redefines parole and probation officer to mean people whose primary duties involve supervision of parolees and probationers;</li> <li>• LC amendment 2678 that defines school zone for purposes of the Motor Vehicle Code;</li> <li>• LC amendment 1799 that defines the party recovering the greatest relief in action is the prevailing party for the purpose of awarding attorney fees;</li> <li>• LC amendment 276 that provides for income tax credit for costs incurred in seismic rehabilitation to qualify private property at earthquake risk;</li> <li>• LC amendment 1880 that authorizes licensure of persons who conduct money transactions for business; and</li> <li>• LC amendment 13 that requires the Department of Transportation to adopt rules exempting a person's ignition interlock requirements based on the</li> </ul>

		need for prescription medications.
130	Chair Bryant	Adjourns meeting 4:10 PM.

Submitted By, Reviewed By,

Kathy Courtney, Sarah Watson

Administrative Support Office Coordinator

#### **EXHIBIT SUMMARY**

- A. Written testimony on HB 2420, Cecilia von Beroldingen, 4pp**
- B. Written testimony on HB 2420, David Cook, 3pp**
- C. Proposed amendments to SB 394, Virginia Vanderbilt, 1p**
- D. SB 394-1 dated 2/12/99, 1p**