

SENATE COMMITTEE ON JUDICIARY

February 17, 1999 Hearing Room 343

3:00 PM Tapes 40 ñ 41

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Tarno

MEMBER EXCUSED: Sen. Qutub

STAFF PRESENT: Bill Taylor, Counsel

Travis Prestwich, Senate Judiciary Intern

Kathy Courtney, Administrative Support

MEASURE/ISSUES HEARD: SB 392

SB 20

SB 442

SB 59

SB 395

SB 35

SB 242

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 40, SIDE A

005	Chair Bryant	Calls meeting to order at 3:15 PM.
<u>SB 392 WORK SESSION</u>		
012	Robert Rocklin	Department of Justice Testifies and submits written testimony in support of SB 392. (EXHIBIT A) States that SB 392 provides for a death warrant hearing to establish challenges to a specific case and competencies of the offender. Discusses the necessity of next friend petitions in which a third party files appeals in behalf of a defendant in post conviction death penalty cases.
083	Chair Bryant	Why didn't this bill pass in the last legislative session?
086	Rocklin	Explains that some members of the defense community felt excluded from the initial process, so reaching a consensus on key issues was compromised.
090	Chair Bryant	Discusses the prisoner execution which occurred in September of 1996. SB 392 addresses some of the legal issues raised by that execution. How is legal counsel appointed in a death penalty case?
106	Rocklin	Generally, the same legal counsel handles the guilt and penalty phases of the death penalty trial.
117	David Groom	State Public Defender's Office Testifies in support of SB 392. Discusses the direct appeal process when a defendant does not want to pursue a legal recourse.
151	Chair Bryant	Discusses proposed amendments submitted by Bob Joondeph of the Oregon Advocacy Center. (EXHIBIT B)
166	Rocklin	Discusses Joondeph's proposed amendment to SB 392 to adopt competency standards that are approved by the American Bar Association. Defines the two types of competency: competency to waive counsel and competency to be executed.
198	Sen. Nelson	Would you elaborate on the next friend definition? Why did you include it in SB 392?
202	Rocklin	The definition references the current federal law on next friend petitions. Discusses the significant relationship requirement of the next friend definition.

217	Tom Cropper	<p>Cable Television Program Producer</p> <p>Testifies and submits written testimony in opposition of SB 392. (EXHIBIT C) Asserts that the language of SB 392 obscures the fact that SB 392 is a death penalty bill. Discusses the consequences of accelerating death penalty trials. States that SB 392 superficially establishes an appeal system but bars death penalty opponents from advocating for defendants.</p>
332	Chair Bryant	Closes SB 392.
<u>SB 392 WORK SESSION</u>		
335	Sen. Courtney	MOTION: Moves SB 392 to the floor with a DO PASS recommendation.
		<p>VOTE: 5-1-1</p> <p>AYE: 5 - Burdick, Courtney, Nelson, Tarno, Bryant</p> <p>NAY: 1 ñ Brown</p> <p>EXCUSED: 1 ñ Qutub</p>
	Chair Bryant	<p>The motion CARRIES.</p> <p>SEN. NELSON will lead discussion on the floor.</p>
361	Chair Bryant	Closes SB 392 Work Session.
<u>SB 20 WORK SESSION</u>		
363	Bradd Swank	<p>Oregon State Court Administratorís Office</p> <p>Testifies in support of and submits proposed amendments to SB 20. (EXHIBIT D)</p>
TAPE 41, SIDE A		
004	Bradd Swank	Continues discussion of OSCA proposed amendments to SB 20.
168	Chair Bryant	Recommends adopting SB 20 amendments to facilitate a thorough review of the bill in printed form. (EXHIBITS E ñ L)

180	Paul Snyder	<p>Association of Oregon Council of Counties</p> <p>Expresses reservations about SB 20. Explains that county councils address SB 20 offenses in court, not through an administrative process.</p>
198	Chair Bryant	<p>MOTION: Moves to ADOPT SB 20 -2,3,4,5,7,9,12 amendments dated 02/16/99.</p>
		<p>VOTE: 6-0-1</p> <p>EXCUSED: 1 - Sen. Qutub</p>
	Chair Bryant	<p>Hearing no objection, declares the motion CARRIED.</p>
206	Chair Bryant	<p>MOTION: Moves to ADOPT SB 20-11 amendments dated 02/16/99.</p>
		<p>VOTE: 6-0</p> <p>EXCUSED: 1 - Sen. Qutub</p>
	Chair Bryant	<p>Hearing no objection, declares the motion CARRIED.</p>
208	Chair Bryant	<p>Closes SB 20 Work Session</p>
<p><u>SB 442 PUBLIC HEARING</u></p>		
220	Chair. Bryant	<p>MOTION: Requests unanimous consent that the rules be SUSPENDED to allow SEN. BURDICK to CHANGE vote from AYE to NAY on SB 392.</p>
241	Sen. Courtney	<p>Oregon State Senator, District 17</p> <p>Testifies and submits written testimony in support of SB 442. (EXHIBITS M and N) Asserts that driving while intoxicated has a negative impact on public safety.</p>
295	Chair Bryant	<p>What is the fiscal impact of SB 442.</p>
296	Sen. Courtney	<p>I donit think it is significant.</p>

318	Taylor	Explains which DUII offenses are county responsibilities and which are state responsibilities.
322	Sen. Brown	Why not implement greater penalties after the first offense?
324	Sen. Courtney	That's an option.
325	Chair Bryant	Discusses the rarity of a major newspaper presenting a feature on current legislative bills.
346	Sen. Courtney	Discusses the press as a major player in the public policy arena. Asserts that the press cannot ignore magnitude of the drinking-driving issue.
399	Sen. Burdick	Asserts that feature reporting on current legislative bills is not unprecedented. Discusses the importance of newspaper editorial boards, whose members often disagree, taking a stand on legislative issues.
459	Sen. Tarno	Will SB 442 make any allowances for the time period between the second and third offense? Is this a valid concern?
475	Sen. Courtney	No, but that is a valid concern.
TAPE 40, SIDE B		
001	Patrick Dean	Columbia County Sheriff's Office Testifies and submits written testimony in support of SB 442. (EXHIBIT O) Compares SB 442 to Nevada laws on DUII offenses. Proposes expanding SB 442 to include Nevada's stricter provisions.
030	Jason Carlile	Oregon District Attorney's Association Testifies in opposition to SB 442. Asserts that SB 442 will yield less penalty and less probation under current sentencing guidelines. Discusses how SB 442 will decrease the penalties that currently apply to a third DUII.
073	Sen. Joan Duke	Oregon State Senator, District 1 Testifies in support of SB 442. Discusses the tragic consequences of driving while intoxicated.
116	Sen. Burdick	Why not impose a felony conviction after the first DUII?
119	Sen. Joan Duke	Discusses the use and effectiveness of diversion for the first DUII conviction. Asserts that the second DUII should be a felony conviction.

132	Kevin Campbell	<p>Oregon Association Chiefs Of Police</p> <p>Testifies in support SB 442. Discusses the public expectation of assessing severe penalties for habitual DUII offenses.</p>
152	Chair Bryant	Closes SB 442 Public Hearing.
<u>SB 59 WORK SESSION</u>		
165	Sen. Burdick	Discusses SB 59 §1 amendments that expand the definition of a public building. (EXHIBITS P and Q) Discusses the oversight in the current statutes that allow unconcealed guns on public transit vehicles.
192	Chair Bryant	Clarifies that SB 59 §1 amendments eliminate the broad definition of "weapons" and uses the term "firearms."
197	Sen. Burdick	Explains that the SB 59 §1 amendments anticipate §2 amendments. The §2 amendments ban other weapons from courthouses.
210	Bernie Bottomly	<p>Tri-Met Transit System</p> <p>Testifies in support of SB 59. Discusses history of SB 59. Discusses the difference in statutes regarding firearms on public buses within and outside of the Portland city limits.</p>
248	Sen. Tarno	Are recently purchased, packaged firearms permitted on city buses?
255	Bottomly	In that situation, the transit driver would alert transit security staff, but we would not enforce the ordinance.
285	Sen. Burdick	Relates a situation on a Beaverton bus when a transit driver and two passengers disarmed a threatening, armed passenger. Under the current statute, did the transit driver and passengers act within the law?
295	Bottomly	Yes, due to the threatening nature of the armed assailant's actions and the location of the incident.
321	Sen. Burdick	Are police officers and concealed weapons permit holders exempt from SB 59?
325	Bottomly	Yes, police officers, concealed weapons permit holders and members of the military are exempt from SB 59.
330	Sen. Tarno	Discusses page 2 of the SB 59 §1 amendments that extends public building protection to the residence of any elected state official. Why doesn't this protection extend to county and city officials?

342	Bottomly	This language was lifted from the current statute.
345	Taylor	Explains the new language added into the current statute extending the definition of a public building.
352	Bottomly	Discusses the term "weapons." States that the ñ2 amendments will confine the broader use of the term to courthouses.
378	Sen. Burdick	MOTION: Moves to ADOPT SB 59-1 amendments dated 02/17/99.
		VOTE: 5-0-2 EXCUSED: 2 ñ Chair Bryant, Sen. Qutub
Sen. Courtney		Hearing no objection, declares the motion CARRIED.
380	Sen. Courtney	Closes SB 59 Work Session
<u>SB 395 WORK SESSION</u>		
389	Taylor	Introduces SB 395 -1 amendments relating to habeas corpus petitions. (EXHIBIT R)
402	Sen. Brown	MOTION: Moves to ADOPT SB 395-1 amendments dated 02/15/99.
		VOTE: 5-0-2 EXCUSED: 2 - Chair Bryant, Sen. Qutub
Sen. Courtney		Hearing no objection, declares the motion CARRIED.
406	Sen. Sen. Brown	MOTION: Moves SB 395 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0-2 EXCUSED: 2 - Chair Bryant, Sen. Qutub

	Sen. Courtney	Hearing no objection, declares the motion CARRIED. SEN. BROWN will lead discussion on the floor.
<u>SB 35 WORK SESSION</u>		
424	Taylor	Discusses rationale for using the past tense on page 2 of SB 35. (EXHIBIT S)
TAPE 41, SIDE B		
007	Sen. Brown	MOTION: Moves to ADOPT SB 35-1 amendments dated 02/17/99.
		VOTE: 5-0-2 EXCUSED: 2 - Chair Bryant, Sen. Qutub
	Sen. Courtney	Hearing no objection, declares the motion CARRIED.
010	Sen. Brown	MOTION: Moves SB 35 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 5-0-2 EXCUSED: 2 - Chair Bryant, Sen. Qutub
	Sen. Courtney	Hearing no objection, declares the motion CARRIED. SEN. BURDICK will lead discussion on the floor.
<u>SB 242 PUBLIC HEARING</u>		
027	Julia Hinkley	Oregon State Police Crime Laboratory Testifies and submits written testimony in support of SB 242. (EXHIBIT T)

		Discusses the National Institute of Health Guidelines for urine specimens with regard to screenings and confirmatory tests. SB 242 adopts the language of these bills.
071	Chuck Hayes	Oregon State Police Testifies in support of SB 242. Welcomes questions from members.
074	Ray Grimsbo	Oregon State Police Forensic Laboratory Testifies and submits written testimony in opposition of SB 242. (EXHIBIT U) Asserts that the language of SB 242 promotes "dip stick" testing and prohibits confirmatory testing. Discusses the National Institute of Health urine test standards that are inadequate for forensic purposes.
132	Hinkley	Discusses the purpose for the National Institute of Health urine testing guidelines. Asserts that SB 242 relates to workplace drug testing, not testing within the correctional system. Discusses studies on drug tests sensitivity to social and habitual drug use.
187	Grimsbo	States that SB 242 fails to specify which groups of people will be tested or who will perform the drug tests.
207	Sen. Tarno	What are other states doing with regard to drug testing?
208	Hinkley	Only Oregon has adopted the National Institute of Health drug testing standards by law.
212	Sen. Courtney	Closes SB 242 Public Hearing.
218	Sen. Courtney	Adjourns meeting at 5:00 PM.

Submitted By, Reviewed By,

Kathy Courtney, Sarah Watson

Administrative Support Office Manager

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EXHIBIT SUMMARY

A. Testimony in support of SB 392, Robert Rocklin, 9pp

- B. Testimony in support of SB 392, Bob Joondeph, 2pp**
- C. Testimony in opposition of SB 392, Tom Cropper, 1p**
- D. SB 20 amendment proposals, Bradd Swank, 19pp**
- E. SB 20-2 amendments, Travis Prestwich, 2pp**
- F. SB 20-3 amendments, Travis Prestwich, 1p**
- G. SB 20-4 amendments, Travis Prestwich, 1p**
- H. SB 20-5 amendments, Travis Prestwich, 1p**
- I. SB 20-7 amendments, Travis Prestwich, 1p**
- J. SB 20-9 amendments, Travis Prestwich, 1p**
- K. SB 20-11 amendments, Travis Prestwich, 1p**
- L. SB 20-12 amendments, Travis Prestwich, 1p**
- M. Statesman Journal news feature, Under the Influence, Sen. Courtney, 40pp**
- N. Testimony in support of SB 442, Sen. Courtney, 1p**
- O. Testimony in support of SB 442, Patrick Dean, 10pp**
- P. SB 59-1 amendments, Bill Taylor, 2pp**
- Q. Testimony in support of SB 59, Michael Shrunk, 1p**
- R. SB 395-1 amendments, Bill Taylor, 2pp**
- S. SB 35-1 amendments, Bill Taylor, 2pp**
- T. Testimony in support of SB 242, Julia Hinkley, 2pp**
- U. Testimony in support of SB 242, Ray Grimsbo, 15pp**
- V. Testimony in support of SB 442, Bruce Hoffman, 1p**
- W. Testimony in support of SB 442, Peter Glazer, 1p**